

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
Thursday, August 10, 2000**

1:30 p.m. – 2:30 p.m.

Consider Dismissing Appeal of Hearing Examiner's Decision filed by Twin Bridge Marine Park LLC due to Failure to Pay Appeal Fee (Case Nos. AP-00-0014 and AP-00-0015).

The Skagit County Board of Commissioners met in regular session on Thursday, August 10, 2000 with Commissioners Harvey Wolden, Robert Hart, and Ted W. Anderson present.

CONSIDER DISMISSING APPEAL OF HEARING EXAMINER'S DECISION FILED BY TWIN BRIDGE MARINE PARK LLC DUE TO FAILURE TO PAY APPEAL FEE (CASE NOS. AP-00-0014 AND AP-00-0015).

Chairman Wolden opened the session by stating that he had been challenged by the City of Anacortes on whether he should be able to hear this appeal due to a long-standing personal relationship with the Youngsman family. He stated that he does not have a close relationship with the Youngsmans, although he does know the family and went to school with members of the family. Chairman Wolden further explained that the Youngsman family had conducted business with the County over the years, but that he was not aware of any particulars. He stated that he did not believe that this constituted any reason for him to step down and that the challenge, therefore, was not valid.

John Moffat, Chief Civil Deputy, explained that there had been challenges on two bases – one being the purported long-standing personal relationship with the proponents. The other challenge had to do with the requirements under the appearance of fairness statute RCW 42.36.060 regarding ex parte contact with either the proponent or opponent to the pending action.

Chairman Wolden stated that he had not had any ex parte contact with the parties to this appeal.

Commissioner Hart indicated that he had also been challenged as explained by Mr. Moffat. He stated that he had a long-standing business relationship with Jim Youngsman when Mr. Youngsman was the owner/operator of Skagit Gardens. Commissioner Hart stated that since he sold his retail business ten years ago, and Mr. Youngsman also sold his business, Commissioner Hart had only talked to Mr. Youngsman on one or two social occasions. He stated that he did not see anything in this type of contact that should preclude him from hearing this matter. He stated that during the past year, he has spoken with the City of Anacortes on many issues, but not on this particular issue. He stated that there has also been miscellaneous correspondence, which had been produced at recent depositions in this matter. He further confirmed that he has had no ex parte contact with the parties.

Mr. Moffat asked if the City of Anacortes was also challenging Commissioner Anderson's participation in the subject appeal.

Ian Munce, Anacortes City Attorney, stated that there was no challenge to Commissioner Anderson.

Mr. Moffat stated that another requirement under the statute is that the Board not only address the challenges under the appearance of fairness, but also needed to make an announcement that the other parties can rebut the responses to the challenge. Chairman Wolden so advise those in attendance.

Mr. Munce spoke in rebuttal, stating that there is much more to this than the appearance of fairness document. He indicated that the County's Administrative Officer has been directing activities in the Planning Department, and has had consultations with individual commissioners. He stated that this course of conduct indicates that two of this Board are very partial to this project. He stated that he was

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obliged to bring this issue up when the Board is directing staff via the County Administrator on a daily basis.

Commissioner Wolden commented that he has not received any phone calls regarding this issue and has not had daily contact with the Planning Staff regarding the subject project or any other project.

Commissioner Anderson confirmed with Mr. Moffat that the meeting today was for a discussion on whether the appeal to the County Commissioners was properly filed and to decide whether the Board should hear the subject appeal.

Mr. Munce stated that is the City of Anacortes' one opportunity to raise their objection regarding the Board's conduct which shows partiality to the project. He again stated that the Board should not hear this appeal when they have been having day-to-day contact with Staff.

Chairman Wolden reiterated that the reason for the meeting today was to decide whether the appeal was properly filed and should be heard by the Board. He asked Tom Karsh, Planning & Permit Center Director, to review the pertinent facts in this regard.

Mr. Karsh stated that on June 21, 2000, the Skagit County Hearing Examiner issued a decision and order pertaining to the Twin Bridge Marine Park project. He advised that any person on the record has 15 days within which to appeal for the Board of County Commissioners for a closed record hearing. This would mean that any appeal would need to be submitted by July 6th. On July 5, an appeal was submitted to the Board of County Commissioners' Office, with a copy delivered to the Planning & Permit Center. This appeal therefore met the timeliness test. There was, however, no fee paid. Mr. Karsh reported that when Staff asked the appellant why no fee was paid, we were advised that County Staff had advised them that no fee was due. The appellant advised that when presenting the document to the County Commissioners' Office and inquiring about a fee, the appellant was told no fee was necessary. Appellant identified the person offering this information as "Jean." Mr. Karsh then read into the record a written statement from Jean Terry of the County Commissioner's Office. Ms. Terry was under the impression that the document being delivered was simply correspondence to the Board of County Commissioners.

As Mr. Karsh explained, a copy of the appeal was then delivered to the Planning & Permit Center and employee Robin Tempest was the employee who received the document. Mr. Karsh read Ms. Tempest's written statement into the record, which stated that Ms. Tempest questioned the need for an appeal fee and was told that the fee had already been paid and that the documents being submitted were simply additional documents for the record. The packet that was submitted did not include a check for the \$350 appeal fee.

Mr. Karsh was on vacation that week, and did not review the packet of information submitted until July 14th. Mr. Karsh explained that at that time it was brought to his attention by the Commissioners' Office that the appeal had not been properly stamped in and that no fee had been collected. Consequently, the appeal did not follow the normal process. The circumstances were brought to the attention of legal counsel and staff, and it was decided to air this matter at a public meeting, so that the appellants could explain their reasons for not paying an appeal fee.

Mr. Karsh stated that Staff is asking the Board to decide whether the unusual circumstances constitute a complete submittal, both timely and proper. He stated that this situation has not happened before in the County and that our codes do not address how to handle this situation.

Sam Baker, attorney for Twin Bridge Marine Park, indicated that he appreciated the accuracy of Mr. Karsh's report in identifying the background facts. He stated that he was not aware of the written statements by Skagit County employees. He stated that the \$350 filing fee was not paid on July 5, and that is what creates the issue. He reported that the appeal was filed one day in advance of the deadline,

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and was a comprehensive 15-page document, which was in full compliance with every requirement of the Skagit County Code, except for the fact that the fee was not paid.

Mr. Baker stated that the Skagit County Code provides for a filing fee as set by resolution of the Board of County Commissioners. When Claudia Augustine, an attorney in their office, sought to file the matter, she went both to the Office of the Skagit County Commissioners and to the Planning & Permit Center. She inquired about the filing fee at the Commissioners' Office and was advised that none was required. Ms. Augustine also had secretary call the Commissioners' Office, and she subsequently spoke with Jean Terry and was advised that no filing fee was required. The Code, as Mr. Karsh indicated, does not clearly address this procedure. Mr. Baker stated that the issue here has to do with the substantial compliance doctrine. He commented at length on the submittal by the City of Anacortes and the legal cases cited therein and the relevance to this situation. He stated that he believed that the Board has the authority to apply their discretion and allow this appeal because substantial compliance with the County's rules has occurred. He further explained that the lawyer in his office believed that the payment of the \$350 fee by the City of Anacortes may well have covered the entire series of events. He added that the fee schedule is not clear and is confusing. He reiterated that the Board has the authority to waive the filing fee as a requirement and allow the appellants to post the fee at a later date.

Mr. Munce reviewed an excerpt from the Skagit County Code wherein it is stated that the appeal needed to be filed with the Administrative Official, the County Planning Department. He indicated that filing the right document in the right place is a jurisdictional requirement, and is not discretionary. The appellant's effort was to try to file the case in the wrong office. He reiterated that it is necessary to file the right papers and pay the fee in the right office or there is no jurisdiction. He submitted that this case has not been properly filed and therefore the Board does not have jurisdiction.

Mr. Baker countered that there is no question that this appeal was filed in both the offices of Planning and County Commissioners. The fact is that the required fee was not paid. He stressed that this matter is of profound importance to the Youngsmans and that a grave injustice would result if the appeal is not heard. He urged the Board to apply the discretion of their authority and allow the appeal to go forward.

Mr. Munce stated that this is an important matter to the City of Anacortes and their ratepayers. He indicated that filing requirements are enforced in Washington State, so the City asked that the Board apply Skagit County's rules and dismiss the appeal for lack of payment of the required fee.

Commissioner Anderson stated that, as a County official, he would like to evaluate appeals to the Board based on the merits of the case. He spoke to the provisions of the Skagit County Code and the clear direction that appeals are to be turned in to the Administrative Official, which is the Director of the Planning Department. He stated that he found it inconceivable that Mr. Baker's law firm would not go to the Code Book, and not recognize the fact that an appeal needs to be filed properly. He stated that it is the attorney's responsibility to interpret the Code correctly. He spoke to the fact that the \$350 fee is miniscule compared to the multi-million dollar scope of the project. Commissioner Anderson further commented that it is not Jean Terry's responsibility to tell an attorney whether an appeal fee is necessary or not. The appeal should have been turned in to the Planning Department, which was the proper venue for the filing of the appeal. He stated that this puts him in an uncomfortable position, but he must hold the appellant to the same letter of the law as everyone else and cannot make an exception. He assured Mr. Baker that he was not being mean-spirited, but that it was the appellant's responsibility, through the representation and expertise of their attorneys, to know where to file the appeal and that an appeal fee was necessary.

Commissioner Hart concurred with Commissioner Anderson's remarks, adding that he was bewildered by Ms. Augustine's actions as an attorney in filing the documents in the wrong place.

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Chairman Wolden indicated that it is very clear in the Code that the Administrative Official is the Planning & Permit Center Director. He expressed his disgust that the Board would not be able to hear this appeal because an attorney did a poor job of representing her client.

Chairman Hart moved that the Skagit County Board of Commissioners does not have jurisdiction in this case and directed counsel to prepare an appropriate resolution memorializing the events leading up to this decision. Commissioner Anderson seconded the motion, which passed unanimously. **(Resolution to be provided at a later date)**

ADJOURNMENT.

Chairman Wolden made a motion to adjourn the proceedings. Commissioner Hart seconded the motion and it passed unanimously.

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Harvey Wolden, Chairman

Robert Hart, Commissioner

Ted W. Anderson, Commissioner

ATTEST:

Patti J. Chambers, Clerk of the Board
Skagit County Board of Commissioners