

**RECORD OF THE PROCEEDINGS  
SKAGIT COUNTY BOARD OF COMMISSIONERS  
Monday, August 28, 2000**

9:30 a.m. – 9:45 a.m.	Public Comment Period.
9:45 a.m. – 10:30 a.m.	<b>CONSENT AGENDA. MISCELLANEOUS.</b>
10:30 a.m. – 11:30 a.m.	Appeal by Ruby Monteith of the Hearing Examiner's Decision Denying a Variance to Allow the Creation of a Substandard Sized Lot (7.4 Acres) in an Area Designated as Rural Resource (40 Acre Minimum) (VA 99-0706).
2:30 p.m. – 3:30 p.m.	Discussion – Emergency Medical Services Levy.

The Skagit County Board of Commissioners met in regular session on Monday, August 28, 2000, with Commissioners Harvey Wolden, Robert Hart, and Ted W. Anderson present.

**PUBLIC COMMENT PERIOD.**

There were no citizens present for the Public Comment Period.

**CONSENT AGENDA.**

Commissioner Hart moved to approve the Consent Agenda for Monday, August 28, 2000, items 1-15. Commissioner Anderson seconded the motion, which passed with a unanimous vote.

**COMMISSIONERS' OFFICE:**

1. Record of the Proceedings for Monday, August 21, 2000.
2. Record of the Proceedings for Tuesday, August 22, 2000.
3. Resolution Appointing an Interim County Auditor beginning September 1, 2000 until such time as a successor is either elected or appointed as required by law. **(Resolution No. 17970)**

**COOPERATIVE EXTENSION/APPLE MAGGOT PROGRAM:**

4. Amendment "B" to an Agreement with Haines Tree & Spray, Inc., extending the term of the agreement from July 31, 2000 through October 31, 2000. There is no change in the compensation rate. **(Contract No. 04072)**

**FACILITIES MANAGEMENT:**

5. Amendment "C" to an Agreement with Burns Security extending the contract for three years through June 30, 2003. Compensation will increase from \$10.85 per hour billing rate per security officer to the rate of \$11.35 per hour. **(Contract No. 03035)**

**FARMLAND LEGACY PROGRAM:**

6. Conservation Easement for Michael & Jeanne Youngquist permanently protecting approximately 75.44 acres of farmland on Jungquist Road. The easement is required by the County to fulfill a land division requirement under SCC 14.04.112 which permits the creation of a substandard lot

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for an existing residence in the agriculture zone. This easement was previously approved by the Board in May, however, the version of the easement was revised to meet the conditions required by Key Bank. The Farmland Legacy Program is not paying the landowner for this easement; the County will be responsible for future costs associated with the monitoring and enforcement of the terms of the easements. **(Contract No. 05020)**

### ASSIGNED COUNSEL:

7. Amendment to a Personal Services Agreement with Jennifer Howson, Attorney, at Law, to reflect negotiated compensation for representation in a Felony Information/Murder 1 case. Compensation is set at a flat fee of \$10,500 plus \$440 jury trial per diem. If the charge is amended to Aggravated Murder, the amount will be renegotiated. **(Contract No. 03421)**

### PARKS, RECREATION & FAIR:

8. Vendor Services Agreement with Bell & Sons Construction for repairs at the 12th Street Activity Center for a total not-to-exceed amount of \$2,310.47. The contract begins July 1, 2000, and will terminate upon completion of the repairs. **(Contract No. 05021)**

### INFORMATION SERVICES:

9. Service Level Agreement with the Washington State Department of Information Services, Telecommunication Services Division for Internet Access Services. An Internet Access fee will be charged to the County for use of the DIS Internet gateway by County employees. This fee will be based on the total number of FTE's that are employed by the County, which would amount to a monthly charge of \$300. **(Contract No. 05022)**

### YOUTH & FAMILY SERVICES:

10. Personal Services Agreement with Douglas P. Meyer, M.S., to provide specialized child, adolescent, adult and family assessment, evaluation and treatment (group and/or individual), for the period July 1, 2000 through December 31, 2001. Compensation ranges from \$20 per our for travel to \$70 per hour for group therapy. **(Contract No. 05023)**

### PUBLIC WORKS DEPARTMENT:

11. Rural Arterial Program Project Prospectuses for submission to the County Road Administration Board for Peterson Road (MP 2.236 to 3.33), Kelleher Road (MP 0.0 to 0.9 and Milepost 0.9 to 1.8); and Francis Road (Milepost 2.87 to 4.38 and Milepost 4.38 to 5.78). **(Approved)**
12. Resolution regarding Request for Proposals for Procurement of Maintenance Materials, with the proposal opening scheduled for September 19, 2000, at 1:30 p.m. **(Contract No. 17971)**
13. Professional Services Agreement with Earth Systems Science, Inc. to perform environmental services such as wetland delineation and development of a biological evaluation to support permit acquisition. The contract is not to exceed \$12,000 and is for the period September 28, 2000 through February 28, 2001. **(Contract No. 05024)**
14. Vendor Services Agreement with Hayes Drilling, Inc. to decommission four domestic water wells on Benson Heights Road, identified as the Johnson, Tuggle, Carroll and Thomas wells. The project is associated with the PUD water line extension project. The not-to-exceed amount of the contract is \$16,000, with the contract beginning September 1, 2000 and continuing until the work is completed. **(Contract No. 05025)**

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15. Out-of-State Travel Request for Jeff McGowan to attend the American Water Resources Association Conference in Portland, Oregon, August 28-30, 2000, for a total cost of \$971. **(Approved)**

### MISCELLANEOUS.

1. Vouchers audited and certified by the auditing officer as required by R.C.W. 42.24.080, and those expense reimbursement claims certified as required by R.C.W. 42.24.090, have been recorded on a listing, which has been made available to the Board.

As of this date, August 28, 2000, the Board, by a majority vote, did approve for payment those vouchers included in the above-mentioned list and further described as follows:

Payroll warrants numbered 953644 through 953729 in the total of \$78,735.04 (Transmittal No. P-32-00);

Payroll warrants numbered 58451 through 59582 in the total of \$982,021.85 (Transmittal No. P-33-00);

Warrants numbered 77161 through 77659 from Clearing Fund 696 in the total dollar amount of \$1,528,161.41 (Transmittal No. C-55-00); and,

Warrant numbered 77660 from Clearing Fund 696 in the total dollar amount of \$4,455.00 (Transmittal No. C-56-00).

2. Members of the Health Department (Peter Browning, Ken Willis, Polly Dubbel, Britt Pfaff, and Dr. Howard Leibrand) were present to discuss a letter received from Lowell Ashbach, Jr., an attorney representing Ed Little and Sunland Bark & Topsoils Company regarding a stop work order at Sunland.

Mr. Willis discussed the Department's long history with Mr. Little at the Dai-Zen Egg Farm in bringing the commercial composting operation to compliance with State and County regulations.

Britt Pfaff, Environmental Health Specialist, reviewed in detail the history leading to the current situation. She stated that all composters began in 1994 to comply with the Solid Waste code. Sunland was one of those compost facilities, and were allowed to phase in some of the improvements on their property, so as to give them time to plan and finance the scope of work needed for compliance. Sunland investigated several different sites, and eventually settled on the Dai-Zen site, but failed to meet the requirements for compliance at the end of 1996, while other composters did meet the requirements and became permanent sites. She stated that Mr. Little needed to remove the last of the material from the Dai-Zen site by the end of 1997. Through 1998 and 1999 the Health Department worked with Mr. Little to move the material, while also working with the owner of the site. At the end of 1999, Sunland removed the material from the Dai-Zen site and cleaned the site as required. Dai-Zen Farms then went under a notice of violation and work order through the Department of Ecology, with Dai-Zen being required by DOE to develop a farm plan. Dai-Zen is preparing that plan throughout 2000 and 2001. In the spring of 2000, Sunland came back on the Dai-Zen site and started once again the operation of mixing sawdust and manure. The Department of Ecology work order had been placed on Dai-Zen at the end of 1999, and Sunland and Dai-Zen were in violation of that work order. Ms. Pfaff reported that there is still about 1,300 cubic yards of sawdust and chicken manure that Sunland brought from the Dai-Zen site to the Sunland Reservation Road site. The Health Department has ordered Mr. Little to remove the material from the Reservation Road site because it is not a permitted composting site. She stated that the material must either be in an enclosed building or on an impervious pad. Ms. Pfaff indicated that the Health Department gave Mr. Little several options

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where he could take the materials, including to a licensed compost facility or put directly on agricultural fields as determined by the Conservation District. Mr. Little and the Department have been trying to work towards that end during the last several months. Mr. Little asked about appealing to the Health Officer, and Hilary Thomas, Civil Deputy, wrote him a letter stating that if he did in fact want to appeal, he needed to do so in writing and direct it to the Health Officer. No such letter has been received by the Health Officer until the subject letter was received by the Board of Commissioners.

Commissioner Anderson asked about the operations at Dynes Chicken Farm, stating that they spread manure on open fields.

Ms. Pfaff responded that agricultural operations are governed by the Department of Ecology and Best Management Practices.

Commissioner Anderson wanted assurances that everyone is being treated the same and is being required to follow the same set of guidelines.

Ms. Pfaff explained that an agricultural site could apply manure according to their farm plan, which they have formulated with the Conservation District, as long as such a plan meets the clean water standards of the Department of Ecology. Composters, however, fall under the Solid Waste regulations of the County.

A discussion ensued on the differences between a commercial agricultural operation and a composting operation.

Polly Dubbel, Environmental Health Specialist, reported that Mr. Chang, the owner of Dai-Zen, was running all of the manure from his farm through the Sunland Topsoils operation, so that the manure was not being utilized on agricultural land, but was being processed at a composting operation. She explained that the County Health Department shut this operation down in order to get Mr. Chang to come up to the requirements of the Department of Ecology.

A discussion ensued on the different practices for spreading manure and the adherence to regulations set by the Department of Ecology and the County Health Department.

Dr. Howard Leibrand, County Health Officer, stated that at this time of year there are no problems with leaching.

Commissioner Anderson explained that he was not objecting to the application, but wanted to make sure that whatever position the County took should be defensible.

Commissioner Wolden cautioned on the literal interpretation of the code and law without using common sense.

Ken Willis, Environmental Health Supervisor, stated that the County has offered opportunity after opportunity and deadlines have been extended for Mr. Little, to give him every benefit of the doubt, but at the end of the process, the County requires a site that is permitted and is not substandard.

Commissioner Anderson reiterated his concern that Mr. Little is not coming under any greater scrutiny than anyone else in the same business.

Mr. Willis explained that if a farmer is generating manure and using the composting product on his own property or agricultural land, then the Health Department does not get involved. He stated that what Mr. Little wants to do is to take the product off his property to an unpermitted site,

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and combine it with topsoil. Consequently, Mr. Little is not following the rules and playing on a level playing field. Mr. Willis stated that composting is a good way to utilize chicken manure and gain commercial value, however, it also has a lot of potential to pollute.

Chairman Wolden asked if Mr. Little had a concrete slab where is a dumping the material, and had a leachate system, would that be legal. Mr. Willis responded that if Mr. Little would work earnestly at accomplishing this, he would not have a problem.

Commissioner Hart noted that the Skagit Soils Project has an impervious surface, with active piles of material located on concrete slabs. Ms. Pfaff added that they also have a leachate pond liner.

Peter Browning, Health Department Director, added that the Swinomish Tribe and the City of Anacortes are watching this closely due to the continued problems with Turners Bay.

Commissioner Anderson stated again that all he wanted to make sure of is that there is a level playing field and that no one has it in for Ed Little.

Dr. Leibrand explained that the Health Department's major problem with Sunland is the huge pile that has accumulated at the Sunland site with no collection and no way to funnel leachate.

Ms. Pfaff reviewed her testing of compost material at the Dai-Zen property back in January of 1999 and the high levels of fecal coliform found therein.

Mr. Browning commented on the restrictions of the Health Department to only manage one small piece of these regulations, with the bulk of the regulations falling under the Department of Ecology.

Mr. Willis reported that this is an example of another way Mr. Little has avoided going through the proper steps. He was sent a letter granting him an indefinite period in which he could appeal to the Health Officer, during which time the County worked through the issues with Mr. Little. In late July, Hilary Thomas, Civil Deputy, wrote a letter after much communication but obvious refusal by Mr. Little to continue to work at correcting the situation. Ms. Thomas advised Mr. Little that he would need to appeal to the Health Officer within ten days. Mr. Little was told that the only way to get the Board of Health involved was to go through an appeal process starting with the Health Officer. Instead, Mr. Little did not appeal to Health Officer, and now has his attorney write directly to the Board. Mr. Little did not utilize an established process that is defined clearly in County Code.

Ms. Dubbel explained that it is not good to have the raw material on the ground, and consequently the Department was forced to make Mr. Little come up to the Department of Ecology's codes. He needs to find a legal way to dispose of the chicken manure.

The Board indicated that they would review the situation further after considering the input from Staff.

### **APPEAL BY RUBY MONTEITH OF THE HEARING EXAMINER'S DECISION DENYING A VARIANCE TO ALLOW THE CREATION OF A SUBSTANDARD SIZED LOT (7.4 ACRES) IN AN AREA DESIGNATED AS RURAL RESOURCE (40 ACRE MINIMUM) (VA 99-0706)**

Chairman Wolden opened the proceedings.

Marge Swint, Planning & Permit Center Staff, reviewed the exact location of the subject property on a map. She explained that the property consists of approximately 7.4 acres off of Sturgeon Road in

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Darrington and is designated as rural resource. She stated that this acreage is left after a series of land transactions among the Monteith family. She reviewed the history of the formation of the subject property. She reported that a mobile home and septic system had been placed on the property without permits. A boundary line adjustment also complicated the situation. The boundary line adjustment was completed with County review and approval. The 7.4 acres, however, were quit claimed without County review and approval by Monteith Sr. to Monteith Jr. She further advised that the 7.4 acre parcel had not followed the required short plat process. Under today's regulations, Ms. Swint reported that a 7.4 acre could not be created legally at this location. When reviewing variances and following Skagit County Code Chapter 14, topographical hardships are considered, and it had been determined that there is no need to form a substandard sized lot in this situation. She reviewed that the original parcel was 40 acres in size, and that parcel would have had four building rights. Three of those rights have been created. The fourth was created illegally without county review. Staff contends that the special conditions and circumstances are the fault of the applicant. Ms. Swint reviewed in detail the arguments presented by the appellant and the sequence of events leading up to the current variance request. She reiterated that the need for the variance was created by the proponent's own actions.

Ruby Monteith, 91 Evergreen Lane, Priest River, Idaho, reviewed that she and her husband have owned the subject land since 1994. She admitted that they did not correctly short plat the land, and that they did hire a surveyor who did not complete the survey correctly. She stressed that the County did not notify them when their property was rezoned from 2.5 acre zoning to 40-acre zoning. She explained the situation of living in Skagit County, but being served by Snohomish County newspapers and services. Consequently, Ms. Monteith did not realize there was a problem with their land until April of 1999 when adjoining relatives began to separate their land. She reviewed her contacts with the Governor, Commissioner Anderson, and Marge Swint in the Planning & Permit Center. It was determined that it would be necessary for the Monteiths to apply for a variance, and they consequently appeared before the Hearing Examiner who denied their variance. She reported that Friends of Skagit County are opposing this variance because it is illegal. She stated that she has been told by everyone that everything with her property is wrong. She stated that she would never live in Skagit County because it is the worst place ever.

Ms. Monteith stated that she and her husband are interested in providing a place for their son to live. She explained that he is bi-polar and depressed, and that they are obligated as parents to provide a place for him to live. She stated that he was a normal kid for his whole life until he tried to get permits to build on this property. Now, she stated, he will never be right. He has been living with the Monteith, Srs., but they are now too elderly to care for him.

Ms. Monteith indicated that if she and her husband would have known the County was going to rezone their property, they would have acted sooner. She stated that she does not have a lot of money, and are not close to the other family members who own the adjacent property. She stated that they do not need the other family members, but they do need to have a place for their son to live. She reviewed the difficulties in selling the land due to the adverse condition of the zoning and lack of a lot certification.

Ms. Swint indicated to the Board that the information about the Monteith's son was not presented to the Hearing Examiner and should not be considered.

Ms. Monteith explained the difficulties in subscribing to the Skagit Valley Herald, stating that it would have been helpful to receive a personal rezone notice.

Doyle McClure, Friends of Skagit County, reviewed the June 28, 2000 decision and conclusions of the Hearing Examiner, together with a review of the parcel's history. He stated that the Monteith's obviously knew about the requirements for a short plat in 1990, well before the zoning change in 1996. He stated that clearly there is a long history, but that is not to say that Ms. Monteith is due some consideration if there is a reasonable way to certify the lot. He reiterated, however, that variance requirements are not all met, i.e. there are no special conditions and the status of the subject parcel is the result of the applicant's

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own actions. This would confer a special privilege and would have to apply to all of the other substandard lots in the area. Consequently, it is not possible to overturn the Hearing Examiner's decision. Mr. McClure explained that such action would not only demolish the variance procedure, but the whole subdivision ordinance would become moot, together with zoning laws. He indicated that this property could be rezoned to rural reserve if the area lots support the criteria for same, so there is a process that would give the appellant relief if the conditions would justify it. Mr. McClure urged the Board to uphold the Hearing Examiner's decision, and to look into the possibility of a lawful rezone.

Commissioner Anderson indicated that he had visited the site several times, and that it is obvious that the area was erroneously zoned rural resource as the County did not follow the proper criteria when assessing how the property was to be zoned. He stated that he did not like using words such as "illegal" or "against the law" when discussing the Monteiths. He stated that their actions were simply "inadvertent." He commented on the rezone of the land from 2.5 acres to 40 acres, and the lack of proper notification to this special portion of Skagit County. He stated that if they had been notified, they most likely would have proceeded differently. He stated that these people are not land use experts and most likely live under the opinion that they still have some property rights. Commissioner Anderson acknowledged that this particular area is serviced by Snohomish County fire districts, newspapers and mail routes, so they were virtually unaware that such rezoning was occurring. He stated that the Monteith, Srs., were simply trying to have equality among his children. Unfortunately, now the 7.4 acres is not worth anything. He reiterated the lack of notification issue.

Chairman Wolden asked if the family is fragmented on this property division, or is there a possibility of a boundary line adjustment.

Commissioner Hart stated that everything is separate. He stated that he understands Commissioner Anderson's position, but that granting the variance would only mean the filing of a lawsuit by Friends of Skagit County, which would cost the Monteith's additional funds. He asked if there is any legal recourse for approving the variance.

Commissioner Anderson stated that the lack of notification is enough to approve the variance request.

Ms. Swint confirmed that the Monteith's can create the lot, but would not have any development rights.

Commissioner Anderson reiterated that if the County did not notify them of the potential rezone from 2.5 acre zoning to 40-acre zoning, then the County created their problem. He stated that if it is decided to uphold the Hearing Examiner, it is extremely unfair to the Monteiths. He stated that this is a unique circumstance where a piece of property consisting of 7.4 acres is not buildable.

Ms. Swint reviewed that there are three houses currently on the adjacent properties. She detailed the location of these houses and the lot creation. She reviewed that it should have been obvious to the Monteith's in 1990 when the Monteith, Srs., came in to do a short plat, that there was a process in place that needed to be followed when creating a lot. She explained that the family does not get along, and information was perhaps not shared.

Commissioner Anderson reiterated the re-zoning of the property from 2.5 acres to 40-acres and the lack of notification.

Chairman Wolden commented that the Monteith's lot was registered with the title company, and that they receive a tax statement from Skagit County. He stated that the County and the title companies are ignorant of each other's activities. He indicated that the title insurance should say whether a building site is included. Consequently, it would be viewed by everyday people that this lot was a legal lot of record with a building site the same as any surrounding property.

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Ms. Swint pointed out that even if the property was rezoned to rural reserve, it would still be 10-acre zoning. She stated that the Monteith's would have another building right through the CaRD process. However, the family had indicated that it was not interested in the CaRD process at all

Commissioner Anderson stated that we have lost sight of the elements of the case. He indicated that he has read the whole initial record, looked at the site and reviewed the densities in the area. He stated that the cold hard facts are that this was 2.5 acre zoning. That is the whole issue, and all of the other information presented is superfluous to this fact.

Commissioner Hart indicated that he would like to review this information with Counsel to perhaps find a way to help the Monteiths. He stated that he did not feel there should be a delay in making a decision, unless Counsel thought there was case law that would apply in overturning the Hearing Examiner's decision. He stated that there is no reason to send them to court and pay an attorney, just to end up with the same result.

The Board agreed to discuss this matter with legal counsel and come back with a decision on Wednesday, September 6, at 10:00 a.m.

### **DISCUSSION – EMERGENCY MEDICAL SERVICES LEVY.**

Chairman Wolden opened the session, stating that the Board is here to discuss setting the Emergency Services Levy rate and placing in on the November ballot. He commented that if it is decided to put this on the ballot at 25 cents per \$1,000 of assessed valuation for six years, there would not be an opportunity to increase that amount for the six year time period. He noted, however, that increased growth and new construction would certainly continue to supplement the amount designated.

Commissioner Anderson discussed that currently the EMS levy is not being taken at the full amount, leaving 2 cents for a reserve cushion. He stated that it might make sense to place the levy at 30 cents per \$1,000 of assessed valuation to be prepared for unforeseen expenditures due to increased population and demands for services.

Commissioner Hart stated that there would be a significant increase year-by-year with increased new construction. He indicated that EMS does a tremendous job for the people of Skagit County, however, the public does not trust government not to take the full amount levied. Consequently, he felt that EMS could live with the 25 cent levy. He explained that the 911 Center may need to find some way to get financial assistance from different sources, such as state or federal grants. He expressed the need to keep the proposed levy very clean to make sure the public knows that this levy addresses only emergency and first responders.

Commissioner Anderson indicated that the public should have a chance to vote on the increase to 30 cents. He stated that there is no guarantee on increased growth. He added that the Growth Management Act has made some rural areas highly impacted with the need for expanded services.'

A discussion followed concerning the pros and cons of increasing the levy amount from 25 cents per \$1,000 of assessed value to 30 cents per \$1,000.

Lee Kue, Executive Director of Emergency Medical Services, stated that the public expects EMS to be there when there is an emergency. He indicated that the influx of new people and business will eventually cause response times to increase without further expansion.

Chairman Wolden stated that if there was the possibility of no new construction, he would feel justified in increasing the levy to 30 cents per thousand. However, adding new construction and having a larger tax base to draw from, he stated that EMS would be in pretty good shape.

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Commissioner Hart moved to put the 25 cents per \$1,000 of assessed value Emergency Medical Services levy on the November 7 ballot. Chairman Wolden seconded the motion. Upon call for the question, Commissioners Wolden and Hart voted for the motion, and Commissioner Anderson voted "nay." The motion passed.

**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**

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Harvey Wolden, Chairman

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Robert Hart, Commissioner

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Ted W. Anderson, Commissioner

ATTEST:

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