

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
Tuesday, November 14, 2000**

7:30 a.m. – 8:00 a.m.	Commissioners' Staff Meeting.
8:00 a.m. – 8:30 a.m.	Executive Session – Personnel, Litigation and Land Acquisition.
8:30 a.m. – 9:00 a.m.	Work Session – Operations Division Manager/District Maintenance Supervisors.
9:00 a.m. – 10:00 a.m.	<u>Public Works Department – Chal Martin, Director.</u> 1) Signature – Change Order No. 1 to Professional Services Agreement with Burlington Northern & Santa Fe Railway – Farm-to-Market Road Improvement Project, ES31010-2. 2) Miscellaneous.
11:00 a.m. – Noon	Appeal by James A. Duffy and Nancy Duffy, c/o Dan Russell, CC Beverage Corp., of the Hearing Examiner's Decision Denying the Appeal of an Administrative Interpretation regarding Vested Rights in C/LI Zoning at Property North of Cook Road and West of Old Highway 99 (AP-00-0221).

The Skagit County Board of Commissioners met in regular session on Tuesday, November 14, 2000, with Commissioners Harvey Wolden, Ted W. Anderson, and Robert Hart present.

PUBLIC WORKS DEPARTMENT – Chal Martin, Director.

1. Signature – Change Order No. 1 to Professional Services Agreement with Burlington Northern & Santa Fe Railway – Farm-to-Market Road Improvement Project, ES31010-2.

Jim Karcher, Engineering Division, asked the Board for approval of Change Order No. 1 to an existing Professional Services Agreement with Burlington Northern & Santa Fe Railway. He explained that Burlington Northern is a sole source provider and the County is bound to pay them for the work they performed on the Farm-to-Market Road Improvement Project. The change order would raise the amount of this contract to \$42,185. Commissioner Hart moved to approve Change Order No. 1 as explained by Mr. Karcher. Commissioner Anderson seconded the motion, which passed unanimously. **(Contract No. 04364)**

2. Miscellaneous.

The Board presented a plaque of appreciation to Dan Tolliver, a Public Works Department Engineer, leaving the County's employ to go to South Africa.

Dave Brookings, Public Works Administrator, reviewed the various project that Mr. Tolliver had worked on during his tenure with the County, noting that Mr. Tolliver was not only technically strong, but communicated well with non-technical individuals.

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APPEAL BY JAMES A. DUFFY AND NANCY DUFFY, C/O DAN RUSSELL, CC BEVERAGE CORP., OF THE HEARING EXAMINER'S DECISION DENYING THE APPEAL OF AN ADMINISTRATIVE INTERPRETATION REGARDING VESTED RIGHTS IN C/LI ZONING AT PROPERTY NORTH OF COOK ROAD AND WEST OF OLD HIGHWAY 99 (AP-00-0221).

Tom Karsh, Planning & Permit Center Director, reviewed the history of the subject appeal. He reported that a few months ago the department was approached with questions about vested rights for the subject property owned by the appellants and the question was whether information submitted for a rezone and short plat in the late 70's vested that site for 150-unit motel and other commercial businesses. In reviewing the record, Mr. Karsh had issued an Administrative Interpretation denying that there were vested rights accrued to that site. The Hearing Examiner upheld that interpretation and this matter is now before the Board as a closed record appeal. The record was not supplemented by the Planning Department for this appeal. However, Jon Sitkin, an attorney representing the appellants, had submitted some additional information on November 13.

Commissioner Hart queried Mr. Karsh about whether there is a properly vested right in Commercial Zoning at the property. Mr. Karsh stated that the bottom line is that the appellants would like to build based on the 1977 short plat as described in the contractual agreement granting the rezone.

A brief discussion ensued regarding the parameters and specific wording of the contractual agreement granting the rezone.

Commissioner Hart indicated that mitigated rezones are not uncommon and often contain negotiated conditions.

Mr. Karsh clarified that there are all sorts of rezones that have the term "contract" in their titles, and such a term is not defined in County Code or State Law, but is basically a rezone that has conditions attached to it.

Jon Sitkin, 1500 Railroad Avenue, Bellingham, stated that the uses his clients believe are vested through the contract rezone were the 150-unit motel, additional commercial uses, and a gas station that has been constructed. He reported that no other parties attended this appeal, only his clients and the County. In 1977, a contract rezone was issued and granted for this property, and that is part of the record. He reviewed the particulars of the contract rezone. He stated that the issue starts with whether his client was vested with the contract rezone. He reviewed that in 1982, his clients specifically contracted with PUD for a certain amount of water for a 150-unit hotel. He stated that his clients have investment-backed arguments in that they have made payments over time for water and sewer. He reviewed the issues and concepts of the standards of fairness, together with citations from the Noble Manor case. He reviewed the provisions of RCW 58.17.033 where vesting was extended to sort plats. He stated that the vesting doctrine is rooted in the fundamentals of fairness. He reiterated that the site has been identified as the future location of a motel and other commercial activities, with substantial investments made by his clients.

Mr. Sitkin indicated that if the County's interpretation is taken to a logical conclusion, no plats prior to the adoption of RCW 58.17 would be vested for uses in the application, together with no zoning changes adopted under growth management. He stated that this is not a retroactive application as a proper application was initially filed and vesting should be applied to the uses identified in the application. He stated that it is fundamentally unfair for his clients to enter into a contract in 1977, make infrastructure investments, follow the short plat procedure with the County, give a full disclosure of the intended use of the property, and then be denied the remaining development to occur.

Mr. Sitkin urged the Board to change the Conclusions of Law without altering the Findings of Fact, which is allowable under the provisions of the Skagit County Code. He stated that his clients maintain their right to vest occurred when the application was filed in 1982, and prior to that in 1977.

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Commissioner Anderson reiterated some of the provisions of Noble Manor, together with the history of the subject property. He stated that he does not see any legal basis for the Hearing Examiner's decision, adding that should this matter end up in Court, the end would be similar to Noble Manor.

Mr. Karsh reported that the Department did not dispute the findings and history that has been brought forward, but believed that the Noble Manor case was predicated on the codification of the state statute that put in place vesting for platting that had not been in place prior to Noble Manor and prior to that statute.

Commissioner Hart spoke to the intent of the Constitution, and the fact that Mr. Karsh and counsel obviously struggled with the technicalities involved. He stated that he did not disagree with the methodical analysis, but felt that too much time was being spent on specifics. He indicated that, in his opinion, the intent of the Constitution was to recognize projects when they were identified. The project was therefore identified in the rezone. He moved to overturn the Hearing Examiner's decision and develop the necessary findings. Commissioner Anderson seconded the motion. The motion passed with a unanimous vote.

Commissioner Hart clarified that his motion was to uphold the Findings of Fact and make Mr. Sitkin's suggested changes to the Conclusions of Law as listed in his November 13 letter. Commissioners Anderson and Wolden concurred with Commissioner Hart's clarification.

(Resolution to be provided by Staff 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