

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
Monday, March 19, 2001**

9:00 a.m. – 9:30 a.m.	Work Session – County Administrator.
9:30 a.m. – 10:00 a.m.	Work Session – Commissioners' Staff Meeting.
10:00 a.m. – 11:00 a.m.	Appeal by Landex Associates (Ken Wolcoski) of the Hearing Examiner's Decision regarding Special Use Permits for an RV Park and Riding Arena near Turner's Bay (PL00-0109 and PL00-0110).
11:00 a.m. – 11:30 a.m.	Consent Agenda and Miscellaneous Items.
11:30 a.m. – 11:45 a.m.	Public Comment Period.

The Skagit County Board of Commissioners met in regular session on Monday, March 19, 2001, with Commissioners Don Munks and Kenneth A. Dahlstedt present. Commissioner Ted W. Anderson's absence was excused.

APPEAL BY LANDEX ASSOCIATES (KEN WOLCOSKI) OF THE HEARING EXAMINER'S DECISION REGARDING SPECIAL USE PERMITS FOR AN RV PARK AND RIDING ARENA NEAR TURNER'S BAY (PL00-0109 and PL00-0110).

Commissioner Dahlstedt stated that he would be acting as Chairman due to Chairman Anderson's absence. He advised those assembled that, consequently, Chairman Anderson would not participate in the decision regarding this appeal either.

Brandon Black, Associate Planner, reviewed the exact location of the project, advising that Landex Associates had filed applications for two Special Use Permits for the operation of a Recreational Vehicle Park and a Horse Riding Arena facility (Equestrian Center) on approximately 56 acres. The project proposal included the location of an RV park on the southern 2/3 of the property, which would include an office/activities clubhouse of approximately 5,000 square feet and approximately 150 individual and group RV sites. The proposal also included an approximately 4-mile system of horse trails that would be located through the park area. The Riding Arena facility would be located on the northern portion of the parcel and would consist of a 16,000+/- square foot arena with an area available for approximately 100-horse stalls at build-out. There would be both indoor and outdoor riding facilities and parking would be provided for up to 130 vehicles. On January 17th the Hearing Examiner issued his decision on the Special Use Permit applications. The applicant filed a timely appeal to the Board of County Commissioners. The appellants seek to have revised conditions of approval. Appellants believe that the Hearing Examiner erred in his decision on two basic issues:

- 1) The decision did not consider the record of proceedings before the Hearing Examiner; and
- 2) The decision is contrary to the legislative authority provided to County agencies in their approval of permits.

Mr. Black reviewed that pursuant to Skagit County Code 14.06.170, the Board may select one of the following courses of action:

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- 1) Remand the matter for further consideration by the Hearing Examiner;
- 2) Deny the appeal and affirm the decision of the Hearing Examiner or, if the Board believes the Examiner's decision is clearly erroneous, the Board may adopt its own findings, conclusions and decision based upon the record made before the Hearing Examiner.

David Hough, 17483 West Big Lake Boulevard, a land use consultant representing Landex Associates, the appellant, advised that the sole owner of Landex, Ken Wolcoski, was present and could answer any questions the Board may have about the specifics of the project.

Mr. Hough summarized that the issues have been covered in detail in the submitted appealing papers. He reviewed the history of the project and the applications filed with the County. He stated that the relevant hearings began in September and ran through November, and included 25-30 hours of testimony. The Hearing Examiner issued his decision 2-1/2 months after the close of testimony. Mr. Hough advised that his client had intended to file a reconsideration request to the Hearing Examiner, however, there was a misunderstanding on the timing for such filing. It was thought that the filing time for reconsideration was 14 days, but in double-checking the County Code, it was discovered that the reconsideration needed to be filed within 10 days. Consequently, the reconsideration request would have been submitted too late. Therefore, Mr. Wolcoski filed the subject appeal before the Board of Commissioners.

Mr. Hough next spoke to the level of review on submitted projects. Historically, he stated, the applicant submits preliminary drainage plans, critical areas review, and wetlands reconnaissance among other items. Once the project receives land use approval, it is then necessary for the applicant to complete further detailed documents for project approval. During the review of the land use application, the information is conceptual and preliminary in nature and demonstrates that there is adequate area available to address such possible problems. He detailed the specifics of this preliminary information.

Mr. Hough advised that, throughout the conception of the project, Mr. Wolcoski had been very open, inviting neighboring property owners to walk through the site, explaining the location of the proposed project. He subsequently invited everyone to comment on the environmental review process, and held open houses in this regard.

Mr. Hough explained that the appeal can be broken into three areas: 1) much of the Hearing Examiner's decision was not supported by the record; 2) a portion of the Hearing Examiner's decision and conditions are beyond the authority of the Hearing Examiner; and 3) the decision is in effect a denial of the entire project. He indicated that the appealing documents show that Mr. Wolcoski believes that the Hearing Examiner's decision is not based on the record, or is a misunderstanding of the record. It is believed that the Hearing Examiner misunderstood that the storm drainage reports, water quality systems and other documents were final submittals, not preliminary plans of action. He reviewed the details of the proposed on-site sewage system. Mr. Hough reported that, in this regard, the Hearing Examiner misunderstood the number of RV sites that were to be connected to the on-site sewage system of the project. He commented that the Hearing Examiner has no authority to address County Code Health issues relative to Skagit County Code 12.05.202, which outlines the administration of the approval of on-site sewage disposal. It is well stated that any such appeal or consideration beyond the Health Officer is to the Skagit County Board of Health (the Commissioners) and the Hearing Examiner has no authority to mention Title 12 of the County Code.

Mr. Hough stated that further, the Swinomish Tribe continues to confuse the issues by quoting the new code adopted in July of last year. This project is vested to the old code, according to Mr. Hough, so the new regulations do not apply. He further commented on the Tribe's allegation that the Hearing Examiner modified the Mitigated Determination of Non-Significance.

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Mr. Hough indicated that the appellant feels that the conditions of the decision basically deny the project in its entirety. He stated that the Hearing Examiner's decision was based on non-scientific reasons and that the limitations imposed destroy the economic viability of the project. The final design will meet all county, state and clean water actions, together with best management practices. Mr. Hough stated that the Hearing Examiner is requiring a design based on some future science and standards that are not even available today. He briefly discussed the monitoring of the on-site sewage systems proposed.

Mr. Hough requested that the Hearing Examiner's decision be modified as detailed in the submitted appeal papers. As an option, the appellant requested that this be remanded to the Hearing Examiner for reconsideration based on the appeal submitted. Mr. Hough asked that if the Board chooses the "remand" option, the appellant would request that the Hearing Examiner be directed to respond within a reasonable time limit. He commented that even though the County Code says the Hearing Examiner must make a decision within 10 days of the hearing, the appellant's project decision took 70 days.

Commissioner Dahlstedt asked about the confusion over the information on the reconsideration requested deadline.

John Moffat, Chief Civil Deputy, clarified that on page 25 of the Hearing Examiner's Decision, underneath the Hearing Examiner's signature there is a brief statement that reads:

A request for reconsideration may be filed as provided in SCC 14.06.180. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Clerk of the Board within 14 days after the date of the Examiner's decision, or decision on reconsideration if applicable.

Mr. Moffat stated that there is nothing erroneous about the information given in this particular paragraph, however, it appeared that the appellant read the two sentences together and thought the 14-day deadline applied to both a reconsideration and an appeal.

Mr. Hough added that the language was confusing and that the Hearing Examiner has re-written this clause on decisions issued after this one.

Alix Foster, attorney representing the Swinomish Indian Tribe, reviewed that she had previously submitted a brief to the Board for their consideration in this appeal. She stated that the Tribe became involved because the project is located on the uplands of Turner's Bay, which is home to salmon, bull trout and forage fish. These species are important to the welfare of the Tribe and State law protects their habitat. She described the exact location of Turner's Bay and the shellfish harvesting closures of adjacent Similk Bay. She described the soil condition and the rocky nature of the land.

Ms. Foster further reviewed the project description and the concern of the Tribe to the impacts of the potential increase of fecal coliform to the neighboring shellfish beds and overall water quality. In this regard, she stated that the horses housed in the Equestrian Center would produce 92 cubic yards of manure daily. She stated that horse manure presents two problems -- not just additional fecal coliform into the water, but also the introduction of additional nutrients into the water. She reviewed that the Tribe had several experts testify with regard to on-site sewer systems, fecal coliform, and the impacts to water quality. She reviewed some of the particulars of this testimony, which was contained in the Tribe's brief.

Ms. Foster reviewed the Hearing Examiner's Decision and his affirmation of the Mitigated DNS with two exceptions. The Hearing Examiner approved the RV Park, but limited it to 35 sites until the stormwater and sewage systems were designed and approved. He denied the Equestrian Center. She stated that in looking at the record as a whole, there is adequate proof to support this decision. She stated that Mr. Wolcoski cannot meet the burden of proof by using only selected sections of the record. She advised the Board that they must be convinced that a mistake has been made, and only then can the Board modify the Hearing Examiner's findings and decision.

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Ms. Foster commented on Mr. Wolcoski's proposal to use detention ponds. She stated that if the evidence is reviewed, the improvements Mr. Wolcoski suggests do not address the problems. With regard to Mr. Wolcoski's contention that the Hearing Examiner's decision was contrary to law because he is trying to usurp the functions of the Health Department, Mr. Wolcoski has misunderstood what the Hearing Examiner has done and what the law says. The law clearly allows the Hearing Examiner to add conditions to the MDNS and the Special Use Permits.

Commissioner Dahlstedt confirmed with legal counsel that the brief submitted by Ms. Foster did not contain any new evidence.

Doyle McClure, 7827 Parker Road, Sedro Woolley, representing Friends of Skagit County and Skagit Audubon, requested that the Board uphold the Hearing Examiner's decision of January 17 based on the following factors. First, the Hearing Examiner has made a thorough and professional evaluation of the substantive issues to protect the marine waters of Turners and Similk Bay. This decision was based on firm legal mandates including SEPA, RCW and Skagit County Code governing the requirements for Special Use Permits to conform with the County Comprehensive Plan. These laws specifically preclude pollution of the waters. The jurisdictional authority of Skagit County Code 14.06.050 specifically gives the Hearing Examiner the authority to review and make decisions on Special Use Permits.

Mr. McClure reviewed that there were 5 days of public hearing testimony, with a complete review by public staff, and testimony by 15 technical witnesses. He discussed the major issues of the location and steep rocky slopes and adjacency to Turner's Bay, and the inability to preclude environmental impacts. He stated that manure management is a major issue, and the continued problems of Similk Bay are a basis for concern. He asked that the Board uphold the Hearing Examiner's decision, which he thought was prudent and thoughtful.

Brian Wetcher, 814 26th Street, Anacortes, representing the interests of Evergreen Islands, suggested that the Board uphold the Hearing Examiner's decision. Evergreen Islands feels that the Hearing Examiner addressed the concerns expressed at the hearing. Barring an Environmental Impact Statement, it is felt that the Hearing Examiner has put in place adequate monitoring for this project. He stated that many of the supposed Hearing Examiner errors alleged by the appellant are misconceptions and extrapolations of the appellant. Mr. Wetcher urged the Board to deny the appellant's appeal and uphold the Hearing Examiner's decision.

Steve Aslanian, Skagit Audubon Society, spoke to the functions of the proposed on-site septic system and the lack of protection for the surrounding waters. He stated that the Hearing Examiner did not error in his findings. The conceptual designs proposed are only conceptual designs, and the Hearing Examiner took great pains to filter and condition these permits by making prudent findings. Mr. Aslanian stated that the Board must consider the best interests of the citizens of the County in balancing developing and keeping a close eye towards precluding damage to the environment. He asked that the Board support the Hearing Examiner's decision.

Angelo Spadavecchia, Skagit Audubon, indicated that 100 horses and the nutrients they would produce would add pressure to an eco-system that is already under too much pressure. The project would add extra burdens to the life in the Bay.

Ken Wolcoski, Anacortes, indicated that he is the appellant and wanted to explain some issues and concerns. He discussed the open way he proposed this project, wanting to get constructive feedback and concerns of surrounding property owners and other interested parties. He stated that at the beginning the main issue was water quality. During the approval process, he talked with the Tribe and others regarding manure management plans, monitoring, and his willingness to adapt the project to the concerns expressed. He started to speak about an adjacent project that he recently completed in closer proximity to Turner's Bay.

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Ms. Foster stated that this information was not a part of record.

Mr. Wolcoski added that the Tribe has selectively used evidence and misinformation, noting that there has been much confusion about the stormwater system. He stated that it was his understanding that all of the items submitted were preliminary in nature and were conceptual, and that he would continue to work with the County on a final plan.

Commissioner Dahlstedt announced that the Board would consider the testimony presented and would render their decision in this matter on Monday, March 26, 2001, at 11:30 a.m.

CONSENT AGENDA.

Commissioner Munks moved to approve the Consent Agenda for Monday, March 19, 2001, items 1-14. Commissioner Dahlstedt seconded the motion, which passed unanimously.

COMMISSIONERS' OFFICE:

1. Record of the Proceedings for Monday, March 12, 2001.
2. Record of the Proceedings for Tuesday, March 13, 2001.
3. Record of the Proceedings for Thursday, March 15, 2001.

ADMINISTRATIVE SERVICES:

4. Resolution Establishing 2001 Salary Increases and Health and Welfare Benefits for Non-Union Employees. **(Resolution No. 18191)**
5. Resolution effectuating the Transfer of Surplus Computer Equipment to the Town of LaConner. **(Resolution No. 18192)**

FACILITIES:

6. AIA Agreement with Structures West Construction, Inc. for construction of the Skagit County Parks & Recreation Burlington Facility for a total contract sum of \$424,133. **(Contract No. 05233)**

PROSECUTING ATTORNEY:

7. Addendum No. 1 to Personal Services Agreement with Rebecca Clark changing the compensation rate for services to \$2,000 per month and adding reimbursement for mileage incurred in traveling to and from hearings at the County's prevailing mileage rate. **(Contract No. 05178)**
8. Settlement Agreement with the San Juan Fidalgo Holding Company wherein Skagit County will pay \$15,000 to San Juan Fidalgo as full and complete settlement of all claims, costs and attorney's fees related to the Lawsuit involving same. **(Contract No. 05234)**

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HEALTH DEPARTMENT:

9. Amendment No. 1 to the Consolidated Contract with the State Department of Health for 2001 adding \$2,034 and \$1,017 for the WIC L.A. Reimbursement Program. This amendment increases the contract by \$3,051 for a total of \$410,483. **(Contract No. 05194)**
10. Personal Services Agreement with Kimberly Schmaus, DDS, to provide dental screenings to 2nd and 3rd grade students who participate in the Sealant program. Compensation shall be \$360 per day for six days for a total of \$2,160. The contract begins February 26, 2001 and will continue through May 31, 2001. **(Contract No. 05235)**
11. Amendment No. 1 to Personal Services Agreement with the Skagit County YMCA adding \$10,000 to the contract for a total annual maximum of \$25,000 or until funding is terminated. The term of the agreement commences on January 1, 2001 and continues until terminated. **(Contract No. 04739)**

PUBLIC WORKS:

12. County Road Administration Board Annual Certification for 2000. This Annual Certification will result in issuance of the Certificate of Good Practice from CRAB. **(Approved)**
13. Professional Services Agreement with Leonard, Boudinot & Skodje, Inc. for completion of design and construction oversight for the Aldon Creek Fish Passage Project. Compensation is not-to-exceed \$22,000, with the term of the agreement being February 20, 2001 through December 31, 2001. **(Contract No. 05236)**
14. Agreement for Partial Fund of Distribution Main Extension with Public Utility District No. 1 of Skagit County, which allows for a partial refund to Skagit County Public Works, Solid Waste Division. This refund is for each water service, branch or side lateral distribution pipeline connected to the distribution main of which construction was paid for by the Solid Waste Division. This agreement becomes void and no refunds allowed ten years after January 3, 2001, and shall be void when final payment of refunds totals \$56,743.37. **(Contract No. 05237)**

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, January 2001, the Board, by a majority vote, did approve for payment those vouchers included in the above-mentioned list and further described as follows:

Warrants numbered 91498 through 92089 from Clearing Fund 696 in the total dollar amount of \$1,313,611.65 (Transmittal No. C-17-01).

2. Alicia Huschka, Budget/Finance Director, presented for the Board's consideration a Resolution which would consent to the extension of the maturity of the Line of Credit Revenue Bond, 1996, of the Housing Authority of Skagit County pursuant to the terms of a Contingent Loan Agreement with the Authority as previously authorized by Resolution No. 16198. After a brief discussion, Commissioner Munks moved to approve the Resolution as presented, and Commissioner Dahlstedt seconded the motion. The motion passed with a unanimous vote. **(Resolution No. 18193)**
3. Ms. Huschka next presented two Resolutions to the Board regarding property tax levies for 2001. She explained that the first Resolution certified the tax levies for all of the taxing districts as required

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by RCW. Commissioner Munks moved to approve the Resolution to certify the Skagit County tax levies for 2001. The motion was seconded by Commissioner Dahlstedt, and passed unanimously. **(Resolution No. 18194)**

The second Resolution would allow for the diversion of road levy tax to the current expense fund for traffic enforcement on roads in the unincorporated areas. Ms. Huschka explained that this would allow for the transfer of approximately \$665,000 of the total road levy to fund traffic deputies. Commissioner Munks confirmed that this transfer was routine and that the Public Works Department was aware of this transfer. Commissioner Munks moved to approve the Resolution as presented by Ms. Huschka. Commissioner Dahlstedt seconded the motion, which passed with a unanimous vote. **(Resolution No. 18195)**

PUBLIC COMMENT PERIOD.

Howard Gulley, 15815 Yokeko Drive, Anacortes, stated that two weeks ago he posed a question to Commissioner Anderson about the rebuilding of his garage and his neighbor's ability to somehow get around the shoreline permit requirements. He stated that he is jeopardy of having his building permit cancelled due to time constraints. Upon query from Commissioner Munks, Mr. Gulley stated that his building permit would expire in April.

Commissioner Munks stated that he could try to get an extension of the permit.

Mr. Gulley stated that he wanted his permit issued as he needs to have the excavating completed and the existing building torn down to proceed with a cement pour. He stressed the need to have some semblance of moving forward

Commissioner Munks assured Mr. Gulley that he would check on the extension of the permit and would check with Commissioner Anderson on the status of the situation.

ADJOURNMENT.

Commissioner Dahlstedt made a motion to adjourn the proceedings. Commissioner Munks seconded the motion and it passed unanimously.

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Ted W. Anderson, Chairman

Kenneth A. Dahlstedt, Commissioner

Don Munks, Commissioner

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ATTEST:

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