

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
Wednesday, May 2, 2001**

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| 9:00 a.m. – 10:00 a.m. | Appeal by Jim & Mary Mayhew of the Hearing Examiner's Decision approving Dike District No. 1's Application for a Special Use Permit to Construct a 60' x 40' Storage Building at 17917 Behrens-Millett Road (PL00-240). |
| 5:30 p.m. | Business of the Year Award Reception (Skagit Valley College Resource Center, 204 W. Montgomery, Mount Vernon). |

The Skagit County Board of Commissioners met in regular session on Wednesday, May 2, 2001, with Commissioners Ted W. Anderson, Don Munks, and Kenneth A. Dahlstedt present.

APPEAL BY JIM & MARY MAYHEW OF THE HEARING EXAMINER'S DECISION APPROVING DIKE DISTRICT NO. 1'S APPLICATION FOR A SPECIAL USE PERMIT TO CONSTRUCT A 60' x 40' STORAGE BUILDING AT 17917 BEHRENS-MILLETT ROAD (PL00-240).

Brandon Black, Planning Department, stated that on April 28th, 2000, Dike District #1 submitted a Special Use Permit request for the construction of a 60' x 40' square foot storage building for the purpose of storage for sand bags, sand bagger, and other flood fighting equipment. The appellants are requesting that the Board overturn the Hearing Examiner's Decision and deny the issuance of a Special Use Permit to construct this building.

He explained that the appellants seek to have the Dike District locate the structure at the other end of the parcel, on the eastern side of the site, or request that the District trade the parcel for another site, or purchase a specific parcel along Penn Road in order to relocate their proposal.

Pursuant to Skagit County Code 14.06.170, the Board of Commissioners shall select one of the following courses of action:

- (1) Remand the matter for further consideration by the Hearing Examiner or Planning Commission, depending on which entity made the decision or recommendation being reviewed.
- (2) In the case of an appeal of a Level I or II decision, the Board may either 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.
- (3) In the case of a Level III recommendation:
 - (a) If the Board, upon review of the record, agrees with the recommendation of the Hearing Examiner or Planning Commission, it shall approve the recommendation.
 - (b) If the Board, upon review of the record, disagrees with findings, conclusions or recommendations of the Hearing Examiner or Planning Commission, the Board shall adopt its own finding and conclusions based on the record below and modify or deny the Level III permit.

Chairman Anderson cautioned that only material that had been presented to the Hearing Examiner could be relied on in this hearing.

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Mary Mayhew, the Appellant, 17915 Behrens-Millett Road, Mount Vernon, reviewed her lack of experience in dealing with such land use issues, and did not realize that there was a file that contained all of the information on this matter until she visited the Planning Department. She showed pictures of her property that were included in such file. She stated that she thought officials would not allow the building to be built as proposed. She stated that she has lived in her home for 23 years, raised her children, and that the value of her home will be lowered a tremendous amount if the building is built. She reviewed with the Board a photograph with the proposed building simulated at its proposed location.

On query from Commissioner Anderson, Staff confirmed that the building was indeed simulated to scale and at the proposed location.

She discussed that the area is zoned Agricultural Natural Resource Land as indicated in the Skagit County Comprehensive Plan as of 1997. Mrs. Mayhew reviewed that the Hearing Examiner ruled that the proposed public use is necessary and would not result in adverse impact to the existing rural character of the area. She stated that there would be significant adverse impact to her and her family. She advised that the Skagit County Public Utility District has dug up her driveway several times to provide water service to the proposed project. However, she stated that water service is not supposed to be installed without a valid building permit. Somehow the water service has been installed without such permit.

Mrs. Mayhew stated that all four residents in this small neighborhood are opposed to this project. She presented excerpts from the neighbors' letters, which were a part of the file.

Mrs. Mayhew stated that the building would be right in front of her house, and no one on the Dike District Board would want that building in front of their house.

She reviewed a petition, which contained 94 signatures of people against the issuance of the building permit. She discussed her interaction in neighboring communities and areas as she sought such signatures. She stated that she was surprised at the support and strong statements she heard when people were informed of what the Dike District wanted to do.

Mrs. Mayhew spoke to the issue of notice to the surrounding property owners. She stated that she could not believe that the dike district could build at this soggy wet location. She reviewed a map of the exact location of the building, and ready several excerpts from neighbors in the area.

She discussed the issue of surface water in the area. She reviewed the parameters of the project, the height of the building, and the resultant blockage of her view. She stated that the lights would glare into her home, and limit the recreational opportunities for her children in her front yard. Further, the country setting of her home would be diminished as would her enjoyment of her property.

She offered that more police protection would be necessary due to the paved area and potential for problems. She stated that the questionnaire submitted by the Dike District was not answered carefully and accurately. Mrs. Mayhew went on to state that at the time of the hearing, there was no legal lot of record certification. She stated that she had personally check at the Assessor's Office in this regard. She reiterated that the proposed building does not need to be located on this particular piece of property. Mrs. Mayhew indicated that she had written a letter to Bob Dean suggesting an alternative site. Mr. Dean had responded that an alternative site would cost the Dike District \$200,000, making the project worth \$600,000. She stated that this was misleading, because she has property for sale for \$45,000 that would be an acceptable site on Penn Road.

She urged the Board to rule against the issuance of this special use permit.

John Shultz, an attorney representing Dike District No. 1, stated that the Dike District has gone to great lengths to prepare for the Special Use Permit process. He asked the Board to uphold the Hearing Examiner's decision.

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Mr. Shultz stated that most of the Appellant's complaints are subjective, given that the blockage of view will occur. He stated that progress oftentimes means the blockage of a view. Mrs. Mayhew is the only affected property owner. He stated that none of the items mentioned by the appellant give rise to a legal defect that would entitle the Board to reverse the issuance of the Special Use Permit. He reviewed that the Dike District Commissioners are Bob Dean, Bob Moe and Tom Shane, and that they have spent considerable funds judiciously in applying for this special use permit. The Dike District has gone through all of the required legal hoops, and have met the requirements necessary for issuance of the Special Use Permit. The Hearing Examiner found this to be true. Mr. Shultz reiterated that the only complaint brought forward by the Mayhews is that the building will block their view.

Mr. Shultz explained that the Dike District proposal would benefit the entire valley, especially all nearby and affected property owners, for flood fighting at a location near a weak area of the dike. Commissioners could mobilize more readily and store a good supply of sandbags and the sandbagger in this most appropriate location. He stated that such protection affects 10,000 property owners and millions of dollars of property value. He asked the Board to balance those considerations. He stated that the location is a certified building lot, is properly zoned, and fits well with the zoning. He indicated that the county supports this project. The Hearing Examiner found in one conclusion that the Appellant conceded that the building is aesthetically fitting for the area, but the Appellant just does not want it near their property. Consequently, there are no legal issues, only subject issues, according to Mr. Shultz.

Mr. Shultz also reported that all of the County codes were satisfied, as well as growth management, and other pertinent regulations. The project has been engineered and surveyed, and the Dike District Commissioners have done a good job of going the extra mile to make sure the project complies with all statutes and codes.

Mr. Shultz next discussed that if the proposal is denied, the Dike District could sell the lot to anyone, who could in turn build a large two-story home, with a larger footprint, or to a farmer who could grow a stand of cottonwoods. These actions would also destroy the view of the Mayhew property. Mr. Shultz stated that this use is the highest and best use for this property and benefits the public. He commented that the Appellants could find themselves in a worse position if this Special Use Permit were denied.

Mr. Shultz briefly commented on the petition submitted by Mrs. Mayhew, which had 94 names on it with hardly any living in the immediate area. He stated that if there is evidence the Board should reject, it is the petitions and letters that are not relevant. He also stated that regarding the issue of notice, the Hearing Examiner found that everything was in order and done according to code.

Mr. Shultz discussed the Dike District's intent to keep the dike area mowed, and to reduce water in the area. He stated that the building is properly sited, and is outside of the 200-foot area of the high water level. He stated that there is going to be a retention pond and berm to protect adjacent property owner. There would also be a noxious weed program. Every single item of Skagit County code 14.04.050 has been complied with and the Special Use Permit should be upheld. He reiterated that the complaints submitted are subjective. He stated that the Appellant should have addressed any environmental concerns when the Determination of Non-Significance was issued July 20, 2000, and no adverse environmental impacts were found for this project. Mr. Shultz stressed that blockage of view to one party does not rise to the level of legal basis and does not give authority to override.

Mr. Shultz next addressed the issue of notice in more detail. He stated that people couldn't come to a hearing and say they did not get notice. The Hearing Examiner dealt with that and found that there was adequate notice. He added that the complainant was given extra time to present the case, and the Hearing Examiner extended the public comment time to allow for such additional testimony. Mr. Shultz reported that the length of the Hearing Examiner's conclusions of law, findings of fact, and lengthy decision show that the Hearing Examiner went through this case with a fine-toothed comb and left no stone unturned.

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Mr. Shultz stated that the Hearing Examiner properly found that there is no statute requiring the Dike District to look at other properties. In order to go outside of the area, the Dike District would have to spend additional money for the purchase of commercial property. The consequences to the taxpayer are not acceptable to the Dike District Commissioners.

In summary, Mr. Shultz asked the Board to uphold the Hearing Examiner's decision and not deny the Special Use permit because of a subjective complaint that the adjoining neighbor's view will be blocked. The Dike District has fully complied to the letter of the law with all regulations and requirements. Mr. Shultz stated that the Hearing Examiner's decision was not erroneous, and asked the Board to uphold the Hearing Examiner's decision and grant the Special Use Permit.

Mrs. Mayhew commented that the \$40,000 that the Dike District has spent was not mentioned in the original hearing. She reiterated that the building would not only block their view, but would lower the value of their house. She stated that no lot certification was on file at the time of the hearing. She stated that the feeling of the people who signed the petition and wrote letters was that they could understand how they would feel if a building such as proposed was built next door to their own homes. She indicated that Appellants were not aware of the possibility of commenting on the Determination of Non-Significance. She stated that the extension of time was posted in the wrong place and that is why they were allowed extra time following the original hearing. Mrs. Mayhew agreed that the Hearing Examiner said that there is no requirement to move the building, with the caveat that such an option could be looked into.

Mr. Shultz clarified that the lot certification was accomplished on April 6, 2001. He discussed the letters of the neighbors. He stated that the devaluation to Mrs. Mayhew's property has never been confirmed by an appraiser, and is all speculation. He added that her property value might be more adversely affected by a larger house being placed on the lot. Mr. Shultz reiterated that the Dike District has met all legal requirements, and that the Hearing Examiner's decision was not reached erroneously. He urged the Board to uphold the Hearing Examiner's decision.

Chairman Anderson indicated that the Board would render its decision on Tuesday, May 8, at 11:00 a.m.

Mr. Black confirmed that the lot certification was not a requirement for the application for the Special Use Permit, only a legal description is required.

ADJOURNMENT.

Chairman Anderson 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