

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
TUESDAY, April 16, 2002**

TUESDAY, APRIL 16, 2002:

- 8:30 a.m. – 9:00 a.m. Work Session – Operations Division Manager/District Maintenance Supervisors
- *T 9:00 a.m. – 10:00 a.m. **Public Work Department – Chal Martin, Director**
1. Public Hearing – Regarding Consideration of Revision of the Six-Year Transportation Improvement Program 2002 – 2007
 2. Discussion – Response to Solid Waste Advisory Committee Letter of March 8, 2002
 3. Discussion and Signature – Grant Agreement No. 04073, Modification No.003 – U.S. Department of Interior Fish and Wildlife Service Cooperative Agreement No. 134108J420
 4. Update of Skagit County Marine Resources Committee Activity and Signatures A) Personal Service Agreement – People for Puget Sound For Shoreline Survey Project (Samish Island and a Portion of March’s Point) B) Department of Ecology CZM310 Grant Agreement No. G0200302 – Northwest Straits Project: Shoreline Inventory, Derelict Gear Inventory, and Forage Fish Habitat Mapping in Skagit County
 5. Miscellaneous
- *T 10:00 a.m. – 11:00 a.m. **Planning & Permit Center, Tom Karsh, Director**
1. Decision – Planning Commission Recorded Motion on “90-Day” Compliance Issues in Western Washington Growth Management Hearings Board Case No. 00-2-0046c
 2. Deliberations – Planning Commission Recorded Motion Regarding Consideration of Interim Ordinance No. 18499 Amending Sections of the Critical Areas Ordinance, Specifically SCC 14.24.120(3) (g) and (4)(e), to Extend the Timeline for Compliance for Implementation of Site – Specific Plans and referring the Matter to the Planning Commission for a Public Hearing.
 3. Discussion – Legislative Action and Resultant Delay of OCD Grant Tasks: 1) Review of Skagit County’s Comprehensive Plan and Development Regulations; and 2) Review of Skagit County’s Natural Resource Lands Designations, Policies, and Development Regulations
 4. Miscellaneous
- *T 11:00 a.m. – 11:30 a.m. Presentation- Port of Anacortes Pier 2 Completion Project Funded Under The Public Facilities Grant
- 2:00 p.m. – 3:00 p.m. Closed Record Hearing – Appeal No. PL00-0034, Resolution No. 17827 Hooper al. v. Skagit County and Frizzell

The Skagit County Board of Commissioners met in regular session on Tuesday, April 16, 2002 with Commissioner Don Munks, Commissioner Kenneth A. Dahlstedt, and Commissioner Ted W. Anderson present.

Public Work Department – Chal Martin, Director

1. **Public Hearing – Regarding Consideration of Revision of the Six-Year Transportation Improvement Program 2002 – 2007**

Steve Flude, Assistant County Engineer, presented to the Commissioners the revision of the Six-Year Transportation Improvement Program for 2002-2007.

Chairman Don Munks opened the hearing for public comment.

Since there was no public comment, Commissioner Dahlstedt motioned to close the public hearing. Commissioner Anderson seconded the motion, which passed unanimously.

Commissioner Dahlstedt motioned to approve the 2002-2006 Six-Year Transportation Plan as presented. Commissioner Anderson seconded the motion, which passed unanimously. (**Resolution No.20020129**)

2. **Discussion – Response to Solid Waste Advisory Committee Letter of March 8, 2002**

Chairman Munks opened the discussion by advising that the commissioners have met in Executive Session to discuss the recommendations of the Solid Waste Advisory Committee outlined in their letter dated March 8, 2002.

Commissioner Anderson said he would withhold his comments at the present time. Commissioner Dahlstedt indicated that he has not been involved in this discussion until recently.

Chairman Munks elaborated, explaining that Waste Management made a proposal to the county in 2001 for an additional transfer site. At that time, the County's legal responsibility was considered. The Public Works Department put together a letter from the commissioners to the Solid Waste Advisory Committee outlining the discussions that occurred with legal counsel.

The Commissioners' position is that we do not want the county to incur legal liability, and by amending the Solid Waste Management Plan to allow for more than one transfer site in the county, legal liability would be alleviated. That means that Waste Management or anyone else could come into the county and develop an additional transfer site. The commissioners want to make sure the county covers the indemnification process and that bond payments are made.

Commissioner Anderson said it was unfortunate the SWAC Committee didn't receive a response from the Commissioners prior to this time. The County has a variety of responsibilities. One of those responsibilities is to minimize county liability and to provide solid waste disposal to all citizens of Skagit County in the cheapest and most efficient manner possible. One of the difficult issues relative to allowing another transfer site in the county is to make sure the county does not violate the contract with Rabanco to haul waste away for the county. The commissioners have been seeking the middle ground in order to avoid litigation. "The SWAC committee did some yeoman work and the more we get into solid waste the more complex the issue is. Certainly, at least from my standpoint, we are contracted with Rabanco until the year 2013." The obligation of the cities ends in 2006 in the event they decide to do something else.

Commissioner Dahlstedt said, solid waste, sewer and water are critical to the county but he wants to make sure the county meets the contractual agreements that are in place. Because cities and counties work together, it is important to communicate with the cities. He emphasized that his personal goal is that the county have improved communication and cooperation with the cities.

Chal Martin said the SWAC feels the cities will extend their agreement until 2013, which could change the picture.

Chairman Munks said he would like to receive a letter from each of the cities, authorized through the city councils, that states that. Each city will have to go through it's own city council for a recommendation before making any kind of commitment. The county's perspective has to do with liability to the people in rural Skagit County. The courts looked at the legal aspects and, as it stands, Skagit County has a solid waste plan that does not allow for multiple transfer sites. Waste Management has asked the county for authorization to build another transfer station. In looking at that last year, the commissioners decided that the easiest thing to do would be to change the plan and include an indemnification clause in the revision. The second issue was to make sure the county is able to make the bond payments until the bond is paid off. That is what was brought to SWAC and other meetings, and it has taken a life of its own. "I want to make sure that whatever we do we make sure we are securing what is best for Skagit County."

Mr. Martin asked the board if they wish him to send an inquiry to the cities?

Commissioner Anderson said there are conflicting reports, depending upon whom you talk to in the city. "We don't want to create another incinerator thing in the county where you make a big capital investment and the cities do something else." Relative to litigation with regard to Rabanco, ending up in court is a very expensive process. If the county allows another solid waste facility but still honors the long haul contract with Rabanco, it puts the county in a fairly well balanced position. He agreed with Commissioner Munks that it would be helpful to have the information from the cities

Commissioner Dahlstedt agreed. The SWAC Committee has worked very hard but now it is important to make sure the cities will indeed follow that direction.

Mr. Martin agreed to send a letter to the cities asking for a response before replying to the letter from the Solid Waste Advisory Committee.

Commissioner Anderson said there are obviously a lot of people interested who are present and asked that they receive a copy of the letter.

Discussion and Signature – Grant Agreement No. 04073, Modification No.003 – U.S. Department of Interior Fish and Wildlife Service Cooperative Agreement No. 134108J420

Dave Brookings, Public Works Administrator, explained that the grant agreement with the U.S. Department of Interior Fish and Wildlife Service must be renewed from year to year. They are asking that it be extended until September 2002.

Chairman Munks agreed that the funding should stay in place until there is a clear direction.

Commissioner Anderson said, one of the things this hinges on is how it affects agriculture in that area. If test wells are put in at the Blanchard site and they adversely affect agriculture there has to be an agreement to modify it.

Commissioner Dahlstedt added that it is also important to address Edison Slough.

Commissioner Dahlstedt motioned to approve Grant Agreement #04073, Modification #003 to Agreement No. 134108J420 between Skagit County and the U.S. Department of Interior Fish and Wildlife Service Cooperative Agreement extending the term of the agreement to September 30, 2002. Commissioner Anderson seconded the motion, which passed unanimously.

Update of Skagit County Marine Resources Committee Activity and Signatures A) Personal Service Agreement – People for Puget Sound For Shoreline Survey Project (Samish Island and a Portion of March’s Point) B) Department of Ecology CZM310 Grant Agreement No. G0200302 – Northwest Straits Project: Shoreline Inventory, Derelict Gear Inventory, and Forage Fish Habitat Mapping in Skagit County

Mr. Brookings provided an update of the Skagit County Marine Resources Committee activity. He explained that they have a DOE grant for two projects, which he described to the board. This is a no match required grant.

Commissioner Dahlstedt asked if there would be public involvement. Mr. Brookings responded that there would be.

Commissioner Anderson asked that the committee be invited to make a presentation to the county commissioners.

Chairman Munks agreed, stating that it is a very worthwhile project.

Commissioner Dahlstedt motioned to approve the Personal Services Agreement – People for Puget Sound For Shoreline Survey Project (Samish Island and a Portion of March’s Point) B) Department of Ecology CZM310 Grant Agreement No. G0200302 – Northwest Straits Project: Shoreline Inventory, Derelict Gear Inventory, and Forage Fish Habitat Mapping in Skagit County. Commissioner Anderson seconded the motion, which passed unanimously. **(Contract No. 200201**

MISCELLANEOUS

1) Chal Martin reported on the La Conner-Whitney Road project outside of the city limits of La Conner. Because the costs are going to be higher than originally estimated, it is being brought back for consideration before the commissioners.

Steve Flude reviewed the proposals, stating that from an operational standpoint, the proposal for a “round about” is probably the best idea.

Chal Martin said it is a bold proposal, but it lends itself very well to the uniqueness of La Conner. He suggested asking the Town of La Conner for their input to see which proposal they would prefer. The important thing is to tie this project in with the Morris Street project. He said he thinks the bids will be reasonable.

Chairman Munks asked if there would be adequate space for trucks if they decide to build a “turn about”. He also asked if there is a problem with the configuration that exists there now.

Mr. Flude said the more traditional intersection, the first option, is sized properly for a 38’ trailer and 10’ truck. The “round about” will handle a longer and larger vehicle. The data suggests that a “round about” would be a good solution. Another potential site for consideration of a “round about” is outside of Mount Vernon by Big Rock.

There has been discussion about the business and agriculture at the location, with the possibility that two access sites could be provided.

Commissioner Dahlstedt emphasized the importance of making sure the retail business is not affected.

Mr. Martin said they would take this to the Town of La Conner and wait for their input prior to making a decision.

2) Mr. Martin said this is the season for grant applications, and Public Works is interested in applying for an ALEA grant. He asked for the approval of the board to submit an application to CNA for the grant. He explained that applying for the grant doesn't commit the county to accepting it, but at least it leaves the door open.

3) Steve Flude presented an update on the work of the consultant relative to the Guemes Ferry. The consultant will interview a number of people, including the three Commissioners, the County Administrator, the Public Works Director, the ferry crew, the ferry committee and the Guemes Island Homeowners Association.

Planning & Permit Center, Tom Karsh, Director

1. Decision – Planning Commission Recorded Motion on “90-Day” Compliance Issues in Western Washington Growth Management Hearings Board Case No. 00-2-0046c

Linda Kuller, Senior Planner, presented the above ordinance to the board for signature. She reminded the board that they approved of the ordinance at their last Planning Department meeting.

Commissioner Dahlstedt motioned to approve for signature an Ordinance Relating to Various Findings of Noncompliance in Western Washington Growth Management Hearings Board Case No. 00-1-0046C relative to Compliance Issues in Western Washington Growth Management Hearings Board Case No. 00-2-0046C. Commissioner Anderson seconded the motion, which passed unanimously. **(Ordinance No. 20020130)**

2. Deliberations – Planning Commission Recorded Motion Regarding Consideration of Interim Ordinance No. 18499 Amending Sections of the Critical Areas Ordinance, Specifically SCC 14.24.120(3) (g) and (4)(e), to Extend the Timeline for Compliance for Implementation of Site – Specific Plans and referring the Matter to the Planning Commission for a Public Hearing.

Kendra Smith, Assistant Director, Planning and Permit Center, reviewed the history of the discussions with the commissioners about the interim ordinance and the extension of timelines for compliance for implementation of site-specific plans. The commissioners approved the ordinance with two separate motions. The first motion was to have the timeline on the buffers extended until May 24. Approval was given to go ahead and drop MARP as an option. She said they want the commissioners to know that at some point in time they would like to go back and look at other, perhaps smaller, buffers. The Planning Commission voted 5-2 to eliminate the MARP due to a lack of supporting science.

Chairman Munks suggested that the commissioners deal with this as two issues.

Commissioner Anderson motioned to approve extension of the timeline for compliance on the buffers until May 24, as per the recommendation of the Planning Commission. Commissioner Dahlstedt seconded the motion, which passed unanimously.

After further discussion, the commissioners decided to wait until a final ordinance is prepared to make a motion to eliminate the MARP buffers.

3. Discussion – Legislative Action and Resultant Delay of OCD Grant Tasks: 1) Review of Skagit County's Comprehensive Plan and Development Regulations; and 2) Review of Skagit County's Natural Resource Lands Designations, Policies, and Development Regulations

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Tom Karsh explained that they have been successful in obtaining a grant from OCD. For that money they have agreed to look at updating the population and land use allocations based on industrial/commercial needs in Skagit County. A growth management indicator's program will be developed to evaluate how successful the county's land use decisions are. There is already a contract with a consultant for two of the tasks. One task is to determine how large the county's urban growth areas need to be. The second contract will determine how well the comp plan policies are being put into place. There is a requirement that before the comp plan is significantly changed, the indicator's program needs to be used to see if the plan is consistent and going in the right direction. Both contracts are for \$20,000.

Mr. Karsh then spoke about the effects of legislation on contracts three and four. Senate Bill 5841 passed the legislature and extends the law to December 31, 2005. This presents the opportunity to update the Comp Plan. There was a September deadline when the commissioners indicated their desire to go with Skagit Surveyors. Mr. Karsh said he would like to request permission from the Commissioners to officially notify Skagit Surveyors and the other unsuccessful bidders for this work that, because of the extensions in the timeline, the work on the first two tasks needs to take place before any significant changes are made to the County's Comp Plan or land use regulations.

He asked for the commissioners' input, saying that if they concur he will go back and get the contract with OCD amended. He then reviewed the available funding with the commissioners suggesting the possibility of using the \$40,000 the county allocated to match the OCD funding that could be used for items three and four. Planning staff is compiling a task list to bring to the commissioners on April 30.

Commissioner Munks emphasized the importance of having a clear understanding of where we are going with our process. He said he is committed to making sure we have a process in place that allows for local firms to have the opportunity to be involved. That needs to be part of the discussion along with these contracts and where we are going in the future.

Mr. Karsh said he spoke with Civil Division Attorney Hilary Thomas about this. The question of hiring local firms is a question not only for Planning, but for the Public Works Department. The commissioners at some point may wish to reactivate the task force and amend procedures.

Commissioner Anderson said the problem as he sees it is not local or out of county firms. In the guidelines we emphasized having a firm with out of county experience. If that were modified it would allow local firms to compete on a level playing field. Firms with out of county experience have received preferential treatment. He suggested moving ahead with the natural resource part and putting it out to bid so local firms can compete on an equitable basis. They would be selected with the criteria that there is no preference given for location. Then take the rest of the money and begin working on the South Fidalgo Subarea plan.

Commissioner Dahlstedt agreed that it is a good idea to have a task force but said it is important to look at whether the criteria meets the need of what is going to be done. Another area of concern is the number of commitments that have been made. The priorities need to be the immediate issues. He suggested that a work session be scheduled with the commissioners to reevaluate the tasks. It would be good to get into compliance with GMA and get out of court.

Commissioner Munks agreed with Commissioner Anderson and Commissioner Dahlstedt. It is important to look at what is the best fit for a particular job. Regardless of who is selected, there needs to be a selection process that allows the county to hire the best consultant. The commissioners also need to sit down with staff and review some of the issues. Thankfully, the governor signed the timeline extension, which provides us with the opportunity to look at available resources and to accomplish the designated tasks.

Mr. Karsh said they would return as soon as possible with enough discussion time for the commissioners to clarify where they want to go.

4. **Miscellaneous**

1) John Moffat, Chief Legal Counsel, came to the board about the county's appeal of various issues with the cities. We have been having settlement discussions with the cities over the last two months and one of the proposals to settle one of those issues is a request to the Boundary Review Board to make some changes in their procedures. The Commissioners asked that this be put on the agenda for formal action.

Commissioner Anderson said he spoke to Carole Korelin of the Boundary Review Board and her comments were that there might be some legal standards with the state they may have to meet which could affect their ability to revise the procedures. He suggested that Ms. Korelin discuss this matter with Gary Jones, the attorney the Boundary Review Board retains when there are issues with the county.

Chairman Munks said the commissioners would like to see a resolution relative to the consensus part of the procedures.

Commissioner Dahlstedt motioned to approve for signature a letter to the Boundary Review Board.

Ms. Korelin spoke, saying that the Boundary Review Board is interested in making improvements to their process that would make it more user-friendly. She said she would take this to the Boundary Review Board and suggest they open the process, which could take about two or three months. These proposals would be included in that process.

She said she is concerned that some of these suggestions may be beyond the statutory scope of the Boundary Review Board. They will retain Gary Jones but right now there is no budget to allow this. She requested an amendment to the budget so they can work with Mr. Jones.

Chairman Munks said they would sit down with Brad Whaley, Budget Director, and work something out. Commissioners Anderson and Dahlstedt agreed.

The motion was carried unanimously.

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, April 16, 2002, the Board, by a majority vote, did approve for payment those vouchers included in the above-mentioned list and further described as follows:

Payroll Suspense Fund 699 to the Payroll Warrant Clearing Fund 695 in the amount of \$907,709.31 for warrants 97067 through 98013. **(P-14-02)**

Warrant 119072 through 119073 in the amount of \$3,632.87, Clearing Fund 696. **(C-34-02)**

Warrants 956918 through 956996 in the amount of \$80,367.76, Clearing Fund 695. **(PP13-02)**

Presentation- Port of Anacortes Pier 2 Completion Project Funded Under The Public Facilities Grant

Dan Stahl, Executive Director of the Port of Anacortes, stated that they have come before the commissioners today to thank them for the public facilities money they were awarded for the improvements on the Port of Anacortes, Pier 2 Facility.

He provided an update on the improvements for Pier 2. There will be an equivalent of 14 full-time positions supported by the coke operations at Pier 2, and an equivalent of 10 full-time jobs supported by the log yard operations at Pier 2. The average wage for various job classifications is estimated at \$30.00 to \$40.00 an hour, including benefits. The total project costs were \$2,123,633, with Skagit County Public Facility Funding providing \$408,000 of the costs and the Port of Anacortes picking up the balance of \$1,715,633.

He introduced Becky Darden, Contract Administrator, and Bob Elsner, Director of Projects and Planning, who he credited with having done the most work on the project.

Commissioner Anderson complimented Mr. Stahl, Ms. Darden and Mr. Elsner, saying that they have done an outstanding job on this project.

Chairman Munks said it is heartening to see a funded project with the work done and completed.

Commissioner Dahlstedt thanked them and said it is really nice to have people come back and show what they have accomplished.

Closed Record Hearing – Appeal No. PL00-0034, Resolution No. 17827 Hooper al. v. Skagit County and Frizzell

Chairman Don Munks opened the Close Record Hearing. John Moffat, Chief Civil Deputy, advised that neither of the attorneys were present. Louis Requa is standing in for Mr. Frizzell's attorney.

Mr. Moffat indicated that there had been a question recently about the ownership of the property. Mr. Frizzell is the applicant, but recent ownership information indicates that the property has been sold to Calvin Self.

Mr. Frizzell said this matter was discussed with county officials, stating that it is family property, which is now owned by his parents.

Commissioner Anderson stated that Calvin Self is his wife's dad's second cousin and offered to remove himself from any decisions if anyone objects to his being involved.

There was some discussion about this matter, with Mr. Frizzell stating he has no problem with Commissioner Anderson being present and involved in a decision. Mr. Hooper thought this should have been brought forward sooner and asked Commissioner Anderson to leave the proceedings.

Mr. Moffat explained that if there is a potential appearance of fairness issue it would go on the table for discussion about why Commissioner Anderson shouldn't sit, but it doesn't mean he would have to leave the room. There are a variety of kinds of fairness issues.

Commissioner Anderson said that Commissioner Dahlstedt and Commissioner Munks have no involvement in this and would be able to handle it in a neutral way. He said he has no problem stepping aside and left the closed record appeal hearing at 2:10 p.m.

Mr. Moffat then provided a brief procedural history of Mr. Frizzell's variance request as noted in Mr. Moffat's memorandum of March 13 to the commissioners. The Commissioners adopted Resolution No. 17827 reversing the Hearing Examiner and granting a lot size variance to Gary Frizzell on his lot in the Sedro Woolley Urban Growth Area. A group of neighbors appealed this decision to Snohomish County Superior Court. On

December 18, 2001, Judge Anita Farris reversed the commissioners granting of the variance in Resolution No. 178827 and remanded the matter back to the Board for further proceedings.

The judge determined the county had applied the wrong law to the application for variance. There is a long history between Mr. Frizzell and the City of Sedro Woolley to get a sewer extension to his property, which he then wanted to divide into two lots. According to the city code the lots were going to be substandard. Mr. Frizzell received an agreement from the city to get a sewer extension only if the lots were a certain size. He came to the County in 1998 with a short plat application and had the subject lot divided up into two portions, both of which were over 7200 square feet. To do that he had to use a portion of the cul-de-sac abutting the property, which apparently was allowed at that time by the city. The problem was that the city regulations did not apply to this property at that time because it was outside of the city limits. In March 1999 when the county adopted the city's regulations everything would have been fine, but during that time period the city had changed its regulations. The city said the cul-de-sac could not be used as part of the lot size designations.

Basically, the county approved the application, understanding that he could use the higher figure for the lot size configuration. The judge said you can't do that, but must use the laws in place when the variance was applied for. Therefore, a mistake was made and you have to go back and see if he is entitled to a variance under city standards, which the county has adopted.

From reading the judge's opinion, the real issue in this case is the lot size. The judge says the county should have used the city's variance criteria and the county was wrong in allowing Mr. Frizzell to use the cul-de-sac as part of the lot size calculation. By removing the cul-de-sac one of the lots is now 5300 square feet, which would not appear to meet the criteria the city told him he would have to meet.

Mr. Moffat then referred to Findings of Fact No. 3 on page two of the courts' decision. The real question is whether Mr. Frizzell is still entitled to a variance?

Chairman Munks then opened the appeal hearing for comments from Mr. Frizzell to be followed by Mr. Hooper.

Mr. Requa, representing Mr. Frizzell, said the question before the commissioners today is whether or not to grant a lot size variance. Throughout this entire process it has been very clear what Mr. Frizzell was going to do. He referred to the minutes of the July 10, 1995 council meeting, which were entered into the record. At that meeting the size of the property was disclosed and the city granted outside sewer service to Mr. Frizzell.

Mr. Requa then read from page 3 of the hearing examiner's report and the city council minutes. The council should make a concession about this because Mr. Frizzell was led to believe that he could build on the lots as a motion was passed to allow outside sewer service and to divide the property into two parcels. They said he would be required to meet all city standards and the council was in agreement with this.

Mr. Requa then questioned the square footage as cited by Mr. Moffat. At the time this work was being produced the square footage of the lot included the panhandle if you were in the city of Sedro Woolley.

To further substantiate that the city was okay with this lot configuration in December 1997, Mr. Requa said that in December 1997 he received a letter from the city's planning director Gloria Rivera. He said the letter is supposed to read "short plat" and referred to the corrections initialed by Ms. Rivera. He read her letter for the board. She indicated that she was in agreement with the lot layout on the site plan. Since 1999 there have been two interpretations of the same ordinance.

In qualifying the aspects of the variance criteria, there is no detriment to neighbors or the general public. The special circumstances are sufficiently unique that they will not undermine the intent of the zoning ordinance. Mr. Requa concluded his remarks by stating that this boils down to what size lot everyone is willing to allow Mr. Frizzell to have. The zoning in Sedro Woolley for lots is R6000, and it is not uncommon in Sedro Woolley to have 6000 square foot lots.

Mr. Charles Gordon Hooper spoke on behalf of the neighborhood. Back when this started no one thought the city would let Mr. Frizzell split the lot up this much. The city has given a variance and now they want more. He said he owns part of the cul-de-sac. He reviewed Exhibit 15, stating that the residents feel it will make it a sub-standard lot. There are 22 people who are opposed to the granting of the variance. In terms of the sewer hook up, at no time did the city or neighborhood know about sub-standard lots in the neighborhood. Sharon Dillon voted against this special treatment for Mr. Frizzell. The big issue is, they are saying it doesn't matter what size the lots are if the lots behind them are smaller.

Mr. Hooper said the lot sizes are wrong because at the hearing examiner session they said the lot sizes were in the neighborhood of 8000 square feet.

Mr. Moffat interjected that the closed record appeal does not allow for arguing that point, as the judge has already ruled on that. This is not a hearing where additional information can be submitted. He then read from the judge's ruling, which suggested that there were sufficient lots of less size than the lots in question.

Mr. Hooper said that this is not the right information.

Mr. Moffat said it is important to move on and pointed out that the issue is not the key point the commissioners are dealing with.

Mr. Hooper said this is the smallest lot.

After a period of silence, Mr. Hooper spoke again and said the lots behind him are a lot bigger and with another neighbor, he will be too close. He said Commissioner Anderson was incorrect in his calculations at a previous hearing.

They were never notified by the city when this was approved and no one in the neighborhood ever thought this would happen with a lot this size.

Mr. Frizzell said the information Mr. Hooper is providing was not in the record.

Mr. Moffat emphasized that if the hearing is going to go smoothly it has to go without interruptions.

Chairman Munks stated that the time allotted for the hearing is almost over and asked that Mr. Hooper wrap up his comments to allow time for a rebuttal.

Mr. Hooper concluded. As a neighborhood they want to be protected from this and would not wish it on anyone else's neighborhood.

Mr. Moffat reviewed Exhibit 56, which involves the key issue, the special circumstances under 2A. It says public sewer was available and the property owner signed a sewer agreement with the city recognizing that the lots can be less than 7200 square feet. The requirement for lot size was 8400. Mr. Frizzell then went to the city council and asked that the lot size requirement be less than 8400 square feet. The council agreed to the 7200 square foot extension. When the county commissioners granted this variance two years ago they thought the lots met the 7200 square feet criteria. It has now been found that the lots don't meet that criteria because the cul-de-sac can't be included. Mr. Requa says the city knew all along that the size was less than 7200 square feet, although there doesn't appear to be any discussion in the council minutes after that time that the city knew the lots were less than 7200 square feet. By the time the application came through, the square footage was less than 700 square feet. He said he does not understand how if the lot size is 5900 square feet they are going to meet the 7200 square foot minimum assigned by the city.

Mr. Requa said the issue is whether to grant a variance to Mr. Frizzell for a net area of approximately 6,000 square feet. Mr. Frizzell has been caught up in a lot of GMA tactics and moratoriums and a few other things that were going on at the time that caused severe delays. We were ready to move in 1997. There were moratoriums and invalidity issues going on that caused delays he had no control over. The information presented to the hearing examiner and to the court is correct as they are about equal to 6500 square feet. The city granted an outside sewer service agreement to Mr. Frizzell. Seventy two hundred square feet was calculated at that time. There were no restrictions against including the square footage in the panhandle. The court has stated that there is no significant adverse impact with the gross size of 7200 square feet or a net size of 5947 square feet or 5950 square feet, whatever it is. The decision the commissioners have to make is whether the applicant should be allowed to build, just as the opportunity was given for others to build on the other lots in the area. It has nothing to do with square footage.

Chairman Munks said the commissioners would set a time for a decision on this matter.

As there were no further comments the closed record appeal concluded.

ADJOURNMENT

Commissioner Dahlstedt motioned to adjourn the proceedings. Commissioner Anderson seconded the motion, which passed unanimously.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Don Munks Chairman

Kenneth A. Dahlstedt, Commissioner

Ted W. Anderson, Commissioner

ATTEST:

Jean Terry, Acting Clerk of the Board