

**SKAGIT COUNTY BOARD OF COMMISSIONERS
RECORD OF THE PROCEEDINGS
TUESDAY, JULY 2, 2002:**

- *T** 9:00 a.m. – 10:00 a.m. **Board of Health – Peter Browning, Director**
1. Welcome Summer Intern
 2. Variance Application for Howie's Diner
 3. Arsenic in Drinking Water Report From the State Department of Health
 4. Pertussis Update
- 10:00 a.m. – 10:30 a.m. Decision – Appeal by the State of Washington of the Hearing Examiner's Decision Regarding the Annual Review of Conditional Use #75-0233, a Conditional Use Permit for the Walker Valley ORV Trailhead Located East of Big Lake off of Walker Valley Road
- 10:30 a.m. – 10:45 a.m. Bid Opening – North Fork Bridge #40037, Rail Upgrade Project, CRP ES 40037-3
- 10:45 a.m. – 11:00 a.m. Consideration of the Hearing Examiner's Recommendation for Approval of a Timber Open Space Application for John B. Wade and Gayle K. Smith for property located in the bow Hill area (C/U TTR #3-2002)
- *T** 11:00 a.m. – 11:30 a.m. Public Hearing – 2002 Supplemental Budget
- *T** 11:30 a.m. – 11:45 a.m. Presentation by Economic Development Association of Skagit County (EDASC) Regarding Washington Community Economic Revitalization Team (WA-CERT) Grant Funding
- 11:45 a.m. – 12:15 p.m. Discussion/Possible Action – Skagit County Citizens' Commission on Salaries for Elected Officials
- 1:30 p.m. – 2:00 p.m. Work Session – Review of Skagit County Space Planning
- 2:00 p.m. – 3:00 p.m. Work Session – Drainage Utility Update
- 3:00 p.m. – 4:00 p.m. Work Session – Samish River Watershed Planning Process

The Skagit County Board of Commissioners met in regular session on Tuesday, July 2, 2002 with Commissioner Don Munks, Commissioner Kenneth A. Dahlstedt and Commissioner Ted W. Anderson present.

Board of Health – Peter Browning, Director

1. Welcome Summer Intern

Corrine Storey, Environmental Health Supervisor, introduced Sherry Weber, a new summer intern who will be working on the arsenic project, which they will report on later in the meeting. She is completing her Master's Degree from the University of Mexico.

2. Variance Application for Howie's Diner

Corrine Storey reported. She reviewed two letters requesting a variance from the code from Mr. and Mrs. Howard and a letter of response from Dr. Leibrand denying the variance request. She then provided a

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brief history, explaining that the Howard's have been building a new restaurant based on the premise that there would be a new PUD water system they would hook up to. The system is still under construction and has not yet been completed. Therefore, the Howard's have applied for the variance until the system can be completed.

The Health Department position is that the department is not comfortable with this restaurant opening until an approved water source is in effect. If the variance is granted it is in violation of the State Code. Also, there are restaurants that have requested expansion over the years and they have not been approved based on the water system. The department feels that to allow the variance would open up significant liability. A legal opinion has been requested from the Prosecuting Attorney's Office, which Hilary Thomas is now working on but has not yet completed.

Commissioner Anderson said there are lots of businesses in Marblemount operating right now who are utilizing their own water systems. The State has red tagged them even though they are not contaminated. He felt that the Health Department should not do things that are discriminatory. He also pointed out that if you look at the economy of the upriver community and if someone makes an investment in something, if they can't move forward they lose the whole summer. "Sometimes in our zeal to abide by State laws we do a real disservice. First of all, there is nothing wrong with the water in Marblemount." If the Howard's use bottled water and open the restaurant it would be in the short term until the new water system is in and functional. To lose a whole season there is very costly.

Ms. Storey said there are a number of people in Marblemount who are on their own water systems and the Health Department has a history of water samples from those people. There is no history with the Howard's water system. Relative to the use of bottled water, the Health Department is willing to work with the Howard's but with a very limited menu, which is what has been allowed with other restaurants there. The Howard's proposal is for a full service restaurant.

Commissioner Anderson said the water in Marblemount is probably the best water in Skagit County. "We don't want to lose sight of that fact. The water would be the same water the Howard's would use." He said he is just suggesting that the County look for a way to make something happen rather than rigidly adhere to the RCW's.

Commissioner Dahlstedt asked whether Mr. and Mrs. Howard were aware of the fact that until the new water system was in place they couldn't open their restaurant?

Mr. Howard spoke to the Board and Mrs. Howard provided the Commissioners with a memorandum. He explained that he is an unemployed sawmill manager and has been unable to find a position in the states where he has applied for positions. Since he and his wife have experience in the restaurant business, they decided to build a restaurant. In Marblemount, businesses are starting to look a little better.

In August 2001 they drew up plans for a restaurant. They were told that no new restaurants could be built until there was a public water system. A month later they were advised that the water system would be done by early 2002 and hooked up by June 2002. Brad Spangler advised that all of the permits were approved and completed. Based on his statement, they began construction of the restaurant after obtaining a building permit in December 2001. They met with Peter Browning and were told that all they could do was operate the restaurant with prepared food brought in from elsewhere because of possible contamination by the water. They were then denied approval by Dr. Leibrand. He said they could understand this if the source of the water was contaminated, however, they had the water tested and it was satisfactory. They have personally used the water for five years without ill effects.

Mr. Howard emphasized that logic must be used in applying a law. They are asking for a variance until the new water system is approved. The water they will be using is the same as the next door restaurant. It is very clean.

Commissioner Anderson said that Brad Spangler has really tried to move this forward.

Mr. Howard agreed and concluded by asking that common sense be used in regard to these laws. This restaurant is the only restaurant in Marblemount that is going to be up to building codes. It has two bathrooms, dishwashers, triple sinks, and everything that is required and more. Everything is being done to code. They have a very sophisticated kitchen. He again emphasized that they are only asking that common sense be used.

Commissioner Munks said he would prefer to wait until he hears what the Prosecuting Attorney has to say about this.

Corrine Storey said that Hilary Thomas indicated she would provide an opinion by next week.

Commissioner Anderson said the Board of Health has a right to grant a variance. You have to be able to apply the law in a fair and equitable manner. The fact that everyone up there is using it and the fact that this restaurant is up to code makes it even safer. He does not want to see anyone lose a whole season up there.

Mr. Browning said he agrees with Commissioner Anderson that sometimes the laws have to be looked at. But with 8 businesses asking to expand, "we should look at changing the state law" and not incur liability in a situation. "We should go to the state and tell them this is not serving our county well and it needs to change." He agrees that the water is excellent, but it does not meet the state requirements.

Commissioner Anderson said if they didn't want the Board of Health to look at these things they wouldn't allow a variance process. The Log House Restaurant is operating every day. Where will they expand? Most of those people are operating. In terms of liability, every day County crews are out there where there is liability.

Mr. Browning said this needs to be addressed in the JPO process. He said he is only concerned about not adhering to the JPO with the state. The JPO is an agreement with the state where the County agrees with the rules relative to the operation of wells and the law.

Commissioner Anderson said his frustration with this is that he has worked five years on getting this water system in. The state comes up with a law based on "potential" contamination. They should have gone back and looked at all of the water samples that have been taken. It kills these little rural communities when you come in and say, "based on potential". They have no scientific documentation that this water is not pure.

3. **Arsenic in Drinking Water Report From the State Department of Health**

Wade Bessett, Environmental Health Specialist, presented a map of the County representing areas where there are arsenic levels which have been found when water samples are taken because of building permit applications.

About a month and a half ago in looking at water quality in Skagit County, he began to pay more attention to arsenic in the water and reducing it down. Most of the water in Skagit County doesn't have a high level of arsenic, although there are some scattered areas.

Commissioner Anderson pointed out that there is not a single one in Marblemount where the arsenic is high.

Mr. Bessett said the Health Department would be increasing the number of samples we have to have a better idea of arsenic levels in Skagit County. In order to understand this a lot of data needs to be collected.

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Mr. Browning advised the Commissioners that Wade is leaving Skagit County. He said that this would be a real loss to the County.

Mr. Bessett said he is going to travel down to the bottom of South America and has plans to work with volunteer organizations about water systems. There is a lot of need for that. He said he has had a really good 5-1/2 years with Skagit County.

Mr. Bessett then introduced Denise Clifford of the State Department of Health, explaining that she is an important part of this whole process.

Ms. Clifford reported that she has traveled the state telling counties about the new water standards and gauging what kind of assistance local departments are going to need from the state. She referred to some of the handouts the board received. In terms of arsenic levels, the biggest area they are dealing with is the northwestern counties. Snohomish and Island Counties are probably going to have the most significant problem. Arsenic is natural in the environment and has a lot to do with the geology of the area. There are some hot spots throughout other parts of Washington but it is generally in this general area where they will be doing a lot of outreach to help counties reach compliance.

After years of debate over what was considered an acceptable level, the Clinton administration started this and the Bush administration put it on hold until there was enough scientific data. The new standard does apply greater protection from arsenic related illnesses.

Commissioner Anderson asked if samples have been taken.

Ms. Clifford said the only sampling they been involved in is some toxic sites. A geologic study has not been done. The US Geological Service has done some work and they are looking at the data they have. They have asked public water systems to submit a new sample to them so they can have a better snapshot of where these areas are.

Commissioner Anderson said one of the problems with the water systems is the amount of use, as oftentimes you don't get the water circulating enough. Would that have any bearing on this?

She said most likely not. There are times when the arsenic level will fluctuate, but generally it will stay the same in your drinking water.

Commissioner Dahlstedt noted that it should say parts per billion.

Ms. Clifford said the new standard is 10 parts per billion, which is a significant change. It is one of the costliest new regulations that have come out. The goal of the State Department of Health is to make sure people have safe drinking water.

Commissioner Anderson asked how risks are reduced?

Ms. Clifford said there are a number of technologies. They are typically for small water systems. The least costly is a point system for use in the home using iron and other constituents to remove the arsenic from the water at the point of source.

The compliance date for new standards for drinking water is 2004 and existing systems have until 2006.

Commissioner Anderson asked about the side effects relative to arsenic in water at the levels described. "How would someone know they were being poisoned by arsenic?"

Ms. Clifford said chronic poisoning occurs when moderate amounts of arsenic are ingested over long periods of time. It could occur with some people and not others. It could decrease the production of red

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and white cells and cause skin damage. Bladder, lung and other cancers have been associated with long term exposure and circulatory and cardiovascular problems at low levels, even down to 5 parts per billion.

From the perspective of the Department of Health, a team has been put together to look at the toxicology problems but not to look at standards. The department has pulled toxicologists, engineers, water quality people and policy makers to look at innovative ways to apply the law in Washington. The bigger issue for us is the people who have private wells and have smaller water systems.

The department will begin putting together a rule making standard this fall and look at Group A and Group B water systems so there are not two different standards in Washington State. The State Board of Health has asked that they be as innovative as possible to get smaller water systems into compliance. One of the concerns is that people are being exposed to arsenic through multiple pathways. She said they are looking at developing a position paper that will look at all the ways people are exposed to arsenic and the effects and potential effects. They will be returning to talk about this.

4. Pertussis Update

Sandy Paciotti, Communicable Disease Nursing Supervisor, explained that pertussis, or whooping cough, is an acute bacterial disease spread through the nose and bodily secretions. It causes an extreme cough that usually will last one to two months. Infants less than six months old, adolescents and adults do not often have the whooping sound. Approximately 100,000 deaths would have occurred if we did not have pertussis vaccine. Eighty percent of deaths still occur in children less than one year of age. In Washington state approximately 100 to 500 cases are reported each year. The reason there is an increase is because there is a decrease in the number of people receiving vaccination or a shortage of vaccine. There was a shortage of vaccine here but now they are back on track.

It is recommended that everyone see a doctor if they have a cough lasting more than two weeks with either spasms of coughing or post cough vomiting. It is also recommended that members of the household receive vaccination and that everyone check the status of their children. The person with pertussis should be isolated from other family members.

Decision – Appeal by the State of Washington of the Hearing Examiner’s Decision Regarding the Annual Review of Conditional Use #75-0233, a Conditional Use Permit for the Walker Valley ORV Trailhead Located East of Big Lake off of Walker Valley Road

Chairman Munks opened the meeting. Commissioner Anderson recused himself since he was not part of the original hearing.

Linda Kuller, Senior Planner, Planning and Permit Center, reviewed the possible decisions the Commissioners may make.

Commissioner Dahlstedt suggested that this appeal be remanded back to the administrative official to review the conditions. He then read the resolution as below and motioned that it be approved as written.

WHEREAS, the Skagit County Board of Adjustment issued Conditional Use Permit No. CU 75-0233 (CU 75-0233) on May 1, 1975, to the Department of Natural Resources (DNR) to develop a trailhead on approximately two acres in Walker Valley for use by all-terrain vehicles, equestrians and picnickers subject to two conditions, one of which is that Permit No. 75-0233, be subject to a yearly review by the Board of Adjustment; and

WHEREAS, in August 2001, the Skagit County Planning and Permit Center directed the DNR to request an annual review of CU 75-0233, which review was sought in January 2002; and

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WHEREAS, the Planning and Permit Center issued its Findings of Fact dated January 30, 2002, a copy of which was provided to the Hearing Examiner, which Findings state that CU 75-0233 addresses only the trailhead facility and that the trail system is not the subject of CU 75-0233; and

WHEREAS, the Skagit County Hearing Examiner held a public *meeting* on February 13, 2002, which meeting was advertised as a public meeting and not a public *hearing*; and

WHEREAS, the Skagit County Hearing Examiner issued Findings of Fact, Conclusions of Law and Order in Annual Review No. PL 02-213 on April 23, 2002, imposing additional conditions on the Walker Valley ORV trail system; and

WHEREAS, the DNR filed a timely appeal (No. PL 02-0244) to the Skagit County Board of Commissioners of the Hearing Examiner's decision; and

WHEREAS, the Skagit County Board of Commissioners deliberated on this matter on July 1st, 2002, and reviewed the record and the Hearing Examiner's decision; and

WHEREAS, the only other condition of the permit, aside from the annual review, is for DNR to maintain the trailhead and access road in a "presentable fashion"; and

WHEREAS, the Skagit County Code ("Code") has been modified since 1975 and the Board of Adjustment and "conditional use permits" no longer exist under the current Code; and

WHEREAS, under the current Code, SCC 14.16.900(2)(b)(iii), the conditions of special use permits may only be modified upon a finding that the conditions have not been satisfied by the Applicant; and

WHEREAS, if the Administrative Official requests modification of the conditions of a special use permit, such a review must be done via a public *hearing*; and

WHEREAS, the Skagit County Board of Commissioners is restricted under the Code to review of the two conditions of the permit in this matter;

WHEREAS, it was outside the scope of the Hearing Examiner's authority to modify and impose additional conditions upon CU 75-0233 without a request from the Administrative Official for modification of the permit conditions and without a public hearing;

NOW, THEREFORE, BE IT RESOLVED that the Hearing Examiner's Findings of Fact, Conclusions of Law and Order dated April 23, 2002, are hereby vacated and this matter is remanded to the Hearing Examiner with instructions that the matter be remanded to the Administrative Official to determine whether or not the two conditions in CU 75-0233 have been satisfied, and for further proceedings as necessary.

Hilary Thomas, Skagit County Prosecutor's Office, noted that a couple of minor changes need to be made to the document prior to the Board signing it.

Commissioner Dahlstedt said there were considerable concerns raised at the meeting he attended and the Commissioners feel the hearing examiner didn't follow the proper procedure; therefore they are remanding it back to the Hearing Examiner.

Commissioner Munks said they respect the comments from the neighbors in the area about their concerns noting that there will be further meetings about this.

Commissioner Dahlstedt said they hope to work out the concerns.

Ms. Thomas presented the corrected resolution to the board.

Commissioner Dahlstedt noted the changes: It should read July 3 rather than July 9 and the heading was changed. He motioned then that it be approved with these corrections. Commissioner Munks seconded the motion, which was carried. **R20020228**

Bid Opening – North Fork Bridge #40037, Rail Upgrade Project, CRP ES 40037-3

Janice Marlega, Engineer, and Karen Cade, of the Skagit County Public Works Department were present and opened the following bids:

Coral Construction	\$151,155.00
Peterson Brothers	\$116,461.33
Dirt an Aggregate of Tacoma	\$175,055.50

Ms. Marlega stated that they will review the bids and come back before the Commissioners with a recommendation.

Consideration of the Hearing Examiner's Recommendation for Approval of a Timber Open Space Application for John B. Wade and Gayle K. Smith for property located in the Bow Hill area (C/U TTR #3-2002)

Chairman Munks opened the meeting reviewing the hearing examiner recommendation as noted above.

Commissioner Dahlstedt motioned to approve of the Hearing Examiner's Recommendation for Approval of a Timber Open Space Application for John B. Wade and Gayle K. Smith for property located in the Bow Hill Area (C/UTTR #3-2002). Commissioner Anderson seconded the motion, stating that they are upholding the Hearing Examiner's recommendation for approval. The motion was carried unanimously. **R20020229**

MISCELLANEOUS

1) Commissioner Dahlstedt motioned to approve an emergency resolution relative to the heavy rain on June 27, 28 and 29, 2002 and the fact that an emergency was declared at approximately 11:00 a.m. with Public Works, Sheriff, Department of Emergency Management and Information Services personnel present and, therefore, the Commissioners authorize the expenditure of funds as required to meet the emergency. The Skagit River reached a level of 28.5 feet. No significant flooding was reported and the EOC was closed at 2:00 p.m. Commissioner Anderson seconded the motion, which passed unanimously. **R20020230**

3) Kristen Miller with Information Services requested approval of an Out of State Travel request for an additional person, Janice Baird of the GIS Department, to attend the ESKI Conference in San Diego, California from July 8 through July 12, 2002. The registration fees have been waived for us and for GIS to attend. Other costs will be split between GIS and Information Services.

Commissioner Dahlstedt motioned to approve the out of state travel request as requested by GIS for Janice Baird to attend the ESKI Conference as noted above. Commissioner Anderson seconded the motion, which passed unanimously.

Public Hearing – 2002 Supplemental Budget

Chairman Munks opened the public hearing at 11:00 a.m. Chris Stamey, Budget Department, requested the approval of the Commissioners to a resolution authorizing a supplemental budget to the Current Expense Fund, Parks and Recreation Fund, Senior Services Fund, Conservation Futures Fund, Hanson

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Creek Sub-Flood Control Zone Fund and the Capital Improvements Fund as each of these funds will incur unanticipated expenditures that must be budgeted.

Chairman Munks opened the meeting for public comment. Since there were no comments, he entertained a motion to close the public hearing.

Commissioner Dahlstedt motioned to close the public hearing. Commissioner Anderson seconded the motion, which passed unanimously.

Commissioner Dahlstedt then motioned to approve the resolution authorizing a supplemental budget Commissioner Anderson seconded the motion, which passed unanimously. **R20020233**

BID OPENING – RECONVENE

Chairman Munks reconvened the bid opening to open an additional bid that was received timely.

Barbara Hathaway, Engineer, Public Works Department, opened the bid received from KLM Construction in the amount of \$123,654.00.

Presentation by Economic Development Association of Skagit County (EDASC) Regarding Washington Community Economic Revitalization Team (WA-CERT) Grant Funding

Don Wick, Executive Director, Economic Development Association of Skagit County, reviewed the applications for WA-CERT grant funding with the Board, asking for the board to approve the addition of three projects to the list.

Commissioner Anderson motioned to approve the addition of three projects to the priority list of projects for Skagit County to the Washington Community Economic Development Revitalization Team. Commissioner Dahlstedt seconded the motion, which passed unanimously.

Discussion/Possible Action – Skagit County Citizens’ Commission on Salaries for Elected Officials

Chairman Munks opened the meeting and read into the record a communication he received from Brock Stiles dated June 28, 2002, submitting his resignation to serve on the Salary Commission.

Commissioner Dahlstedt read a resolution amending resolution No. 18482 accepting Brock Stiles resignation and appointing Christian Oakes, Attorney at Law, 609 Murdock Street, Sedro Woolley, WA 98284. He then motioned to approve the resolution and Commissioner Anderson seconded the motion, which passed unanimously. **R20020232**

Chairman Dahlstedt then read another resolution into the record to amend Resolution No. 18481 Establishing the Salary Commission. He then motioned to approve the resolution for signature. Commissioner Anderson seconded the motion, which passed unanimously. **R20020231**

Commissioner Anderson said he they thought they had followed the process very carefully and said that he takes responsibility for this, as he was chairman of the board when this occurred. He pointed out that the Salary Commission had the authority to either lower or increase the county commissioner salaries. The decision of the Salary Commission was irrevocable. The Commissioners then met in public session to approve the recommendation of the Salary Commission.

He spoke about the fairness of the process especially noting that the commission members represent various areas of expertise in the community. Commissioner Dahlstedt said he thinks it is important to have fairness and he felt that every effort was made to achieve that. A number of reviews have been done with various departments to make sure that salaries are comparable to other counties of similar size.

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Commissioner Munks said he thought that everything was handled equitably and legally and he still believes in the process they established. The Commissioners should not be in the business of establishing salaries for themselves or others. This process takes the politics out of the process.

MISCELLANEOUS

Commissioner Dahlstedt motioned to approve a Public Works Department Personal Services Agreement with Leonard, Boudinot and Skodje. Commissioner Anderson seconded the motion, which passed unanimously. **C20020235**

ADJOURNMENT:

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

BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

Don Munks, Chairman

Kenneth A. Dahlstedt, Commissioner

Ted W. Anderson, Commissioner

ATTEST:

Jean Terry, Acting Clerk of the Board
Skagit County Board of Commissioners