RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
TUESDAY, MAY 20, 2003

***T**	10:00 a.m. – 11:00 a.m.	Public Hearing Continued – Proposed Amendment to Skagit County Code 7.04.060(8), Which Sets Forth Requirements Regarding Liability Insurance for Exotic and Wild Animals
	2:00 p.m. – 3:00 p.m.	Closed Record Appeal by Day Creek Sand & Gravel (PL03-0222) of the Hearing Examiner's Decision Issued on Appeal No. PL02-0720, Reversing an Administrative Official's Mapping Error Interpretation (PL02-0549)
	3:00 p.m. – 4:00 p.m.	Closed Record Appeal by Fidalgo Aggregation in Review (FAIR) (PL03-0320) of the Hearing Examiner's Decision Issued on Appeal Case No. PL02-0777

The Skagit County Board of Commissioners met in regular session on Tuesday, May 20, 2003, with Commissioners Kenneth A. Dahlstedt, Ted W. Anderson, and Don Munks present.

PUBLIC HEARING CONTINUED – PROPOSED AMENDMENT TO SKAGIT COUNTY CODE 7.04.060(8), WHICH SETS FORTH REQUIRMENTSREAGARDING LIABILITY INSURANCE FOR EXOTIC AND WILD ANIMALS.

Hilary Thomas of the Prosecuting Attorney's Office reported that this is continuation of a public hearing on the Ordinance to amend Skagit County Code 7.040.060(8) to require $1 million liability insurance for owners of exotic and wild animals. At the last meeting, on April 28, 2003, it was proposed that the liability insurance be reduced to $250,000 if the owner obtained United States Department of Agriculture (USDA) or American Zoo and Aquarium Association (AZA) certification. After receiving public testimony, it was decided to continue the public hearing. The language has now been changed to indicate that that $1 million liability insurance will be waived if USDA or AZA certification is provided. Ms. Thomas stated that after researching this issue she discovered that the USDA only provides licensing for breeders or those who exhibit animals. This waiver will not apply to those who just wish to have exotic animals as pets.

Commissioner Anderson stated that the hearing was continued to provide regulation, but also to allow those who wished to have an animal to be able to do so.

Commissioner Munks reported that he had a conversation with Dave Coleburn, and Mr. Coleburn had verified that those people who had just a few wild animals or small animals would not fall under the jurisdiction of the USDA. Commissioner Munks suggested that the County initiate a Control Board made up of those who were USDA certified to oversee the individuals who owned wild and exotic animals to insure that they were receiving proper care.

Commissioner Anderson questioned whether Nostalgia Farms would fit under the USDA definitions. Ms. Thomas stated that they would probably fit under the designation of exhibitor.

Ms. Thomas stated that the former Skagit County Code established a committee to oversee the permitting process for exotic and wild animals. That committee was a five-member body, appointed by the Board, with members that represented a cross-section of the community and included a veterinarian.

Commissioner Anderson stated that committee could be part of the permitting review process, but he felt they should not be responsible for enforcement.

Ms. Thomas stated that the ordinance could be amended to state that the $1 million insurance would be waived if there was proof of USDA or AZA certification, or if the permit application has been approved by a committee.

Chairman Dahlstedt stated the number one concern is the safety and the health of the public. He asked if there were members of the public who wished to speak.

Dave Coleburn, 6128 Parkside Drive, Anacortes, spoke about the USDA inspections. The inspections are conducted by licensed veterinarians, are very thorough, and include an apprenticeship. He stated that he is supportive of a task force. He recommended that the AZA requirement be struck because all AZA members must be USDA approved. He also recommended that only cats and bears that weight more than 100 pounds be subject to the requirements because the smaller animals do not present a danger to humans.

Mike Jones, 2304 Prairie Road, Prairie Road, Sedro-Woolley, stated that he was in favor of the USDA certification, but it should require an exhibitor's permit. He stated that is the requirement in Island County, and the exhibitor's permit is the most difficult to acquire. Mr. Jones said that the breeders permit was too lenient and would create an over abundance of the animals. He also supported the concept of having a committee to review the permits, and agreed with the weight requirement.

Commissioner Anderson said he did not want to create an ordinance that has too many specifications or exclusions, because that makes enforcement even more difficult. He felt the weight restrictions would be difficult to determine. Commissioner Anderson supported Commission Munks' idea of a appointing a five-member committee to review the applications prior to Board approval.

There being no more public testimony forthcoming, Commissioner Anderson moved and Commissioner Munks seconded the motion to close the public hearing. The motion carried unanimously.

Chairman Dahlstedt said he felt the certification using the exhibitors permit wording would be appropriate. He also felt the weight restrictions of animals would be difficult to enforce.

Commissioner Munks expressed concerns about those who owned small animals and wondered if there was a way to address that issue.

Commissioner Anderson moved that the Ordinance be approved with the language amended to indicate a requirement of an exhibitors permit with the USDA and to establish a five-member advisory board, with broad representation and expertise on the committee, to review permit applications. Commissioner Munks asked for clarification of the process. Commissioner Anderson stated that the committee would be made up of those who had expertise, including a veterinarian, and other exotic animal owners. The committee would review the permit applications and would then make recommendations to the Board. Commissioner Munks then seconded the motion. The motion carried unanimously.

CLOSED RECORD APPEAL BY DAY CREEK SAND & GRAVEL (PL03-0222) OF THE HEARING EXAMINER'S DECISION ISSUED ON APPEAL No. PL02-0720, REVERSING AN ADMINISTRATIVE OFFICIAL'S MAPPING ERROR INTERPRETATION (PL02-0549)

Tom Karsh, Natural Resources Manager, outlined the process and documents that were provided in the file that was given to the Board for the appeal hearing. Mr. Karsh, who previously was Skagit County Planning Director, was the Administrative Official who made the mapping error interpretation. The Hearings Examiners' findings were issued on March 11, 2003. The Hearing Examiner upheld the Planning Department staff report with one recommendation, which was that this mapping error be corrected through a Comprehensive Plan amendment process.

Mr. Karsh reviewed the required procedures for the appeal hearing indicating that there is a staff presentation, a presentation by the appellants, a presentation by the respondent, and rebuttal or clarifying statements by staff and the appellant. No new evidence or testimony can be given. The Board will examine the evidence and may take one of the following courses of action: remand the matter for the further consideration by the Hearing Examiner; deny the appeal and affirm the decision of the Hearing Examiner; or the Board if the believes the Hearing Examiner's decision is clearly erroneous, they may adopt their own findings, conclusions, and decision based on the record made before the Hearing

Examiner. Chairman Dahlstedt reported that some materials were provided by Attorney Gerald Steel today and the Commissioners chose not to review that information.

Attorney Tom Moser, representing the appellant Day Creek Sand and Gravel, introduced his clients Tom Higgins and Kevin Sullivan. He stated that the site of the appeal consists of approximately 31 acres located on the north side of the South Skagit Highway. Mr. Karsh, who was the Administrative Official, found that there was an obvious mapping error in the mineral overlay map that was adopted in 1996. Mr. Moser went through several of the Findings and Conclusions of the Hearing Examiner that his clients believe to be accurate. The property has been used since 1960 for mineral extraction and the operation is recognized by the County as a non-conforming use. The property has mineral deposits that have been recognized by the County and other agencies such as DNR. The property to the south was mistakenly placed where no mineral deposits exist and is a wetland. There was an error made in the mapping of this area by the Citizen's Advisory Committee (CAC) because there was no basis for putting the mineral resource overlay (MRO) south of the Day Creek property. The administrative official, who at that time was Tom Karsh, has the authority under County Code to correct a mapping area. Dave Hough, Planning Consultant for the appellant, brought forward a map that was projected to illustrate a finding by the Hearing Examiner that a pencil mark exists on the map. Mr. Moser stated that by finding in favor of his clients would only give them the opportunity to apply for permits. He shared some original maps that illustrated the location of the property in question.

Mr. Moser summarized his main areas of disagreement with the Hearing Examiner. The Hearing Examiner's decision renders the County Code that grants the ability to correct a mapping error meaningless. The Hearing Examiner failed to recognize that the maps before the CAC, which all contain evidence of what was intended because all the mineral deposits were north of the line shown on the maps. He failed to recognize an erased line on a working map that show the logical and intended use of the intended mineral resource area. He also failed to recognize that wetlands did not qualify as mineral overlay. He failed to recognize that the mineral resource map used by the CAC supports the erased line as the intended location of mineral resource area. Mr. Moser asked that the Board reverse the decision of the Hearing Examiner and allow Mr. Karsh's decision to stand since the Hearing Examiner did not follow the County Code, which renders the decision invalid, and since there was no finding that there was clearly any erroneous decision made by County staff.

Gerald Steel, Attorney for Day Creek Stewards and Friends of Skagit County, provided a written copy of his May 20 letter to the Board, which included a transcription from the tape of the hearing. Mr. Steel commented that the existing pit that has been in use since 1960 is only a small part of the area that has been requested to be redesignated as MRO by the applicant. The Hearing Examiner noted that Day Creek Sand and Gravel does not need a mineral designation to continue to use the existing pit. Mr. Steel projected a copy of the working map and the erased line. He stated that there was nothing in the record to indicate that the erased line had any meaning at all, and the mineral resource land is a very tiny portion of the area between the current MRO line and the three-mile erased line. Mr. Steel added that the findings stated that the appellant theorized that the erased line should be the northern line and that its unexplained removal was the justification for the mapping error. Mr. Steel said that if the mapping error was granted that would be granting a Comprehensive Plan amendment. He shared a letter written by John Cooper that provided a geological map review. The letter indicated that criteria other than the map lines were used to determine the MRO designation, and that there was not adequate data to justify the designation of the parcels outside the MRO. Mr. Steel stated there were many pits in the County that were not designated MRO in the Comprehensive Plan, so there is no evidence that County made a mistake in their designation of this pit. He said that the appellants are simply trying to capture a tiny inclusion, and there is nothing in the record before the Examiner to justify this as a mapping error. Mr. Steel also commented that the administrative decision that was made regarding the mapping error did not move the entire area of the erased line. He added that the Hearing Examiner stated that administrative interpretation could not be used in this process, because this could not be done if it was required to rebalance the criteria. Any change in designation must be done through the Comprehensive Planning Process.

Mr. Moser responded to Mr. Steel's statement that Mr. Karsh did not change the designation to the line. The reason that the designation was not changed was because that small area was the only area under request. He responded to Mr. Steel's statement that the only area with mineral deposits is the area being mined, stating that there are other known mineral deposits in the area under consideration. In response to Mr. Steel's statement that the erased line had no meaning, Mr. Moser said that in addition to the line, there was also the fact that there were known mineral deposits in the area being considered.

Mr. Steel said that in rebuttal, he did not state there were no minerals on the property in question. He said that in Mr. Cooper's letter there was no evidence that the minerals were economically viable.

Tom Karsh indicated that John Cooper was present if the Board had questions. H added that he did not include Mr. Cooper's statement to the Project Planner because once he determined that he was using the designation criteria, he felt it was not appropriate to forward that information to the Hearing Examiner. Guy McNally, Project Planner for the project, had asked for Mr. Cooper's opinion on the mapping error as well.

Commissioner Anderson advised the other Commissioners, that as Commissioner for the 3rd District, early on in the mineral overlay process he had shown the pit to Gary Christensen, Jay Derr, and John Moffat and stated that the pit needed to be included in the MRO mapping.

Mr. Steel objected to Commissioner's Andersons statement if this is evidence that will be considered in the deliberation process.

Commissioner Dahlstedt stated that a decision would be rendered on this appeal next Tuesday, May 27, at 1:30 p.m.

CLOSED RECORD APPEAL BY FIDALGO AGGREGATION IN REVIEW (FAIR) (PL03-0320) OF THE HEARING EXAMINER'S DECISION ISSUED ON APPEAL Case No. PL02-0777

Linda Kuller, Senior Planner, spoke about her overview comments and a map of the parcels in question. This hearing is an appeal by Fidalgo Aggregation in Review (FAIR) of Hearing Examiners decision regarding an appeal submitted by Mr. and Mrs. Corbiere and John R. Cox & Associates regarding Skagit County's revocation of a building permit. The revocation was based on the staff's interpretation of the provisions of Skagit County Code related to Innocent Purchaser. This is a closed record appeal. The burden of proof is on the appellant to prove that the Hearing Examiner's decision was clearly erroneous. No new evidence or testimony can be presented. Ms. Kuller outlined the procedures for the closed record appeal.

Ms. Kuller provided a brief history of the lot that is under appeal. Lot 13 is part of Division 7 of Rancho San Juan Del Mar Subdivision, which was recorded in 1956. Adjacent to Lot 13 are Lots 6 and 7, which are part of Division 8, which was recorded in 1960. Prior to the sale of these lots, they were held in common ownership by the Vaughan Revocable Living Trust. Each of these individual parcels was later sold after the adoption of the Interim Ordinance, which implemented the lot aggregation requirements that had been in place in Skagit County Code prior to July 24, 2000. The County recognizes the Corbieres are Innocent Purchasers.

Ms. Kuller stated that the Hearing Examiners decision in the Corbiere's appeal of the revocation of the building permit determined that the lot was created when the lots were originally platted in 1956 and the Corbieres should be eligible for a building permit. The Hearing Examiner also determined that the lots were in compliance with Skagit County Codes since there was no zoning in place at that time. The Hearing Examiner determined that the Corbieres were Innocent Purchasers since they signed a purchase and sales agreement at a time when the lot aggregation rules were not in effect. The Corbieres later purchased the home site shortly after the lot aggregation rules were adopted. In addition the Hearing Examiner noted that the former Skagit County Code did not aggregate contiguous properties. This interpretation by the Hearing Examiner makes the Corbieres eligible for building permits. The Board may select one of the courses of action: remand the matter for the further consideration by the Hearing

Examiner; deny the appeal and affirm the decision of the Hearing Examiner; or if the Board believes the Hearing Examiner's decision is clearly erroneous, they may adopt their own findings, conclusions, and decision based on the record made before the Hearing Examiner.

Attorney Gerald Steel, representing FAIR, stated that the facts are lengthy and he provided a letter chronologically outlining the facts of record. He stated that in essence there were three contiguous parcels owned by the same owner from 1981 to March 7, 2002. The aggregation Ordinance was put into effect approximately five and-one half weeks prior to the sale of the property. Mr. Steel went over the definition of "lot" in the Skagit County Code. "Lot; a contiguous quantity of land in possession of, owned by, or recorded as the property of a person. A lot shall also include an individually numbered or separately designated parcels of property in an approved subdivision or development." Mr. Steel stated that the under that definition, the three contiguous parcels owned by the same owner are a lot. Prior to the subdivision ordinance in the County in 1965, there was no subdivision approval process. After Lot 13 was sold in March of 2002, it then became a lot. Mr. Steel noted that staff denied a building permit in 1998 to Mr. Vaughan, who was the owner of the three parcels. Mr. Vaughan had requested a variance for Lot 6, which was denied by staff. Mr. Vaughan appealed the staff decision, and their decision was supported by Hearing Examiner Scolfield in 1999. The request was for a variance to create sub-standard lots. Mr. Steel stated that if these lots were already created in 1956, this request for a variance to create them would have been unnecessary. The Hearing Examiner at that time denied the request.

Mr. Steel reiterated that under the definition of "lot" the three contiguous pre 1965 parcels were a "lot" until the Corbieres purchased Lot 13 in 2002. The Hearing Examiner standard that was used to find the staff clearly erroneous was the Innocent Purchaser Ordinance. If these lots were created in 1956 the Innocent Purchaser Ordinance could not give relief since this Chapter was not created in 1956. The administrative official when rescinding the permit stated that the lot was created at the time of purchase by Mr. Corbiere. The staff had the matter reviewed by legal council who determined the lot was created in March 7, 2002, and therefore no building permit was issued. If the lot was created in 1956, the Innocent Purchasers provision was not allowable and was not consistent with the Scholfield decision. If it was created in 2002, then the Innocent Purchaser Provision may apply, and Mr. Corbiere can rescind the sale and get his money back.

Mr. Steel stated that FAIR represents tax-paying citizens who support the concept of lot aggregation as a means of limiting urban sprawl on Fidalgo Island. This case is a prime example of land that should be protected. Mr. Steel asked the Board of County Commissioner's to find that Innocent Purchaser relief not be available if the lot was created before 1965, and that based on the definition of "lot" and the decision of Examiner Scolfield in 1999, the date of the lot creation should be March 7, 2002. He asked the Examiner's decision be reversed and the administrative officials decision be reinstated.

Tom Moser, the attorney representing the property owners in this case, stated that this appeal is by unidentified individuals to challenge the decision of the Hearing Examiner to reinstate a building permit. The owners of the property are Patrick and Kathleen Corbiere and John R. Cox and Associates. He objected to the letter from Mr. Steel, stating that there was new evidence contained in the letter. Mr. Moser asked that the references by Mr. Steel to the decisions made by Mr. Scofield in 1999 and an appeal filed by Mr. Vaughan be ignored. Mr. Moser stated he does not recall those references being part of the original record. He showed a plat map of San Juan del Mar, and stated that there was no question that the lot was created in 1956. This was supported by the Hearing Examiner. It was also a common practice in Skagit County that if the property was in a different plat, it was considered a separate piece of property.

Mr. Moser stated that the lot was purchased prior to the reinstatement of the lot aggregation Ordinance. He added that the Skagit County Permit Center originally gave a lot certification and a building permit to the Corbieres because they were Innocent Purchasers. Then Mr. Steel objected on behalf of FAIR and County staff revoked the permit. The Hearing Examiner supported all the County decisions up until the point that the permit was revoked due to pressure by the individuals represented by Mr. Steel. Mr. Moser agreed that the whole case does turn on when the lot was created, and he said that it is clear that this lot was created in 1956.

Mr. Steel stated that the Scofield appeal information from 1999 was all in the record. He also responded to Mr. Mosier's comment that anyone could clearly see the lot was created in 1956. Mr. Steel stated that was a matter of interpretation and there was no evidence that anyone was contacted for their opinion. In response to Mr. Mosier's statement that the practice of staff was not to aggregate properties in separate plats, Mr. Steel stated that staff realized that wasn't supported by the Ordinance and decided that it did not apply. The decision-making process is to read the Ordinance and determine when the lot was created. Mr. Steel stated that it is clear that the Hearing Examiner's decision was clearly erroneous if you read the rules.

Mr. Mosier did not agree that it was a mistake by the County in their practice not to aggregate the lots; it was just simply the practice.

Commissioner Anderson questioned if there was a practice that lots which were created prior to 1965 were exempted from aggregation rules. Ms. Kuller stated it was lots that were platted after 1965.

Ms. Kuller commented on Mr. Moser's comment that his client received over the counter information, which is true; however, that is not a formal interpretation of County Code. There was a lot aggregation policy in place when this application was received. Ms. Kuller stated that the Ordinance has been found to be legal. It was an unfortunate circumstance that the owner did not know of the changing regulations.

Commissioner Anderson would like to see the information relating to the public hearing for that Ordinance prior to making a decision.

Chairman Dahlstedt asked that if any construction was done. Ms. Kuller stated that a draft letter was issued, in her absence and a permit tech thought that everyone had reviewed the permit. The permit was issued and some preliminary site preparation work was done. Mr. Steel stated that for the record no actual building has been done.

Commissioner Dahlstedt stated that a decision would be rendered on Tuesday, May 27, at 2 p.m.

ADJOURNMENT.

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

BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

_____
Kenneth A. Dahlstedt, Chairman

_____
Ted W. Anderson, Commissioner

_____
Don Munks, Commissioner

ATTEST:

_____
Shirley Knapp, acting Clerk of the Board for JoAnne Giesbrecht
Skagit County Board of Commissioners