

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
MONDAY, APRIL 12, 2004**

8:00 a.m. – 8:45 a.m.	Work Session – Commissioners
8:45 a.m. – 9:30 a.m.	Work Session – County Administrator
9:30 a.m. – 10:00 a.m.	Judges for Skagit County’s First Annual Spring Bonnet Contest
10:00 a.m. – 10:15 a.m.	Proclamation – Washington State Arbor Day – April 14, 2004
10:15 a.m. – 10:45 a.m.	Consent Agenda and Miscellaneous Items
10:45 a.m. – 11:00 a.m.	Public Comment Period
11:15 a.m. – 11:30 a.m.	Bid Opening – Two Portable Buildings at the Guemes Ferry Terminals (Opening Date Extended to April 20, 2004 at 11:00 a.m.)
11:30 a.m. – 11:45 a.m.	Bid Opening – Two New Electronic Reader Board Signs for the Guemes Ferry (Opening Date Extended to April 20, 2004 at 11:15 a.m.)
11:30 a.m. – 1:30 a.m.	Quarterly Luncheon with Area Mayors (Max Dales Restaurant – 2030 Riverside Drive, Mount Vernon)
2:00 p.m. – 3:00 p.m.	Closed Record Appeal No. PL04-0082 Submitted by Glen and Candy Smith
3:00 p.m. – 4:30 p.m.	Executive Session – Personnel, Litigation and Land Acquisition

The Skagit County Board of Commissioners met in regular session on Monday, April 5, 2004 with Commissioner Ted W. Anderson and Don Munks present. Commissioner Kenneth A. Dahlstedt’s absence was excused.

PROCLAMATION – WASHINGTON STATE ARBOR DAY – APRIL 14, 2004.

Carolyn Kelly of the Skagit Conservation District, introduced Kristi Carpenter, Public Information and Education Coordinator. Ms. Carpenter introduced Blossom, a “Treeture” who visits classrooms and teaches about the importance of trees.

Ms. Carpenter provided background on the history of Arbor Day, noting that Arbor Day was first proclaimed on March 20, 1874. Wednesday, April 14, 2004, will be the 132nd anniversary of this holiday that is now celebrated in all 50 states.

Al Crainey, the Conservation District’s Service Forester, encouraged all citizens to celebrate Arbor Day. He spoke about the enormous contributions that trees make to the environment.

Commissioner Munks read and motioned to approve the proclamation, designating April 14 as “Arbor Day in Skagit County.” Chairman Anderson seconded and the motion carried.

CONSENT AGENDA.

Commissioner Munks motioned to approve the Consent Agenda for Monday, April 12, 2004, items 1 through 13. Chairman Anderson seconded the motion, which passed unanimously.

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COMMISSIONERS' OFFICE:

1. Record of the Proceedings for Monday, April 5, 2004.

ADMINISTRATIVE SERVICES:

2. Resolution AND Interagency Agreement between the State of Washington Conservation Commissioner and Skagit County to complete salmon intertidal habitat restoration planning process tasks identified in Engrossed Second Substitute House Bill 1418. The agreement shall be effective September 23, 2003 through June 30, 2004 and is expected to total \$13,000. **(Resolution No. R20040128 AND Contract No. C20040176)**

BUDGET/FINANCE DEPARTMENT:

3. Interlocal Cooperative Agreement, per Resolution No. R20020326, between Skagit County and the City of Anacortes to provide \$105,000 of Distressed County Funds for the Reservation Road Sewer Extension project. The agreement shall become effective April 2004 and continue through April 2006. **(Contract No. C20040177)**
4. Resolution calling for a public hearing regarding an application to amend the Community Development Block Grant Public Service Funds to include an additional \$70,852.92 to aid homeless families impacted by the 2003 flooding in Eastern Skagit County. The hearing will be held on Monday, April 26, 2004 at 10:30 a.m. **(Resolution No. R20040129)**

FACILITIES MANAGEMENT:

5. Standard Form of Agreement between Skagit County and Roosendaal-Honcoop, Inc. for the remodel of 1800 Continental Place. The agreement shall commence on the date of signature and continue 185 days from the Notice to Proceed date. Compensation is expected to total \$920,620. **(Contract No. C20040178)**
6. Amendment No. 1 to Building Lease **No. 04193** with Robert J. and Theresa L. Goldston, which extends the lease agreement to December 31, 2005 at the original \$5,400 monthly lease payment for property at 609-613 South Second Street. All other terms and conditions shall remain in effect. **(Amendment No. A20040073)**

HUMAN RESOURCES:

7. Resolution approving sick leave transfer for Linda White, an employee of the Assessor's office. **(Resolution No. R20040130)**

PLANNING & PERMIT CENTER:

8. Resolution establishing a Citizen Advisory Committee to address Master Planned Resort Development regulations. **(Resolution No. R20040131)**

PROSECUTING ATTORNEY:

9. Personal Services Agreement with Bart Freedman and Preston Gates & Ellis to provide legal counsel, representation and negotiation services for the Skagit County Prosecuting Attorney's Office relating to the Bureau of Indian Affairs and the Swinomish and Samish Tribes. The agreement shall commence on April 1, 2004 and continue through December 31, 2004. Compensation shall be variable as appropriate. **(Contract No. C20040179)**

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YOUTH & FAMILY SERVICES:

10. Personal Services Agreement with Youthnet to provide summer school to students referred by Skagit County Youth and Family Services at the Emerson High School Summer School 2004 program. The agreement shall commence on April 11, 2004 and continue until April 10, 2006. Annual reimbursement for this program shall not exceed \$7,500. **(Contract No. C20040180)**

PUBLIC WORKS:

11. Letter to Pete Kremen, Whatcom County Executive, approving the draft Nooksack River Salmon Recovery Interlocal Agreement, Version 3.2. **(Approved)**
12. Vendor Services Agreement with Concrete Nor'West for maintenance materials with purchases expected to exceed \$25,000. The agreement shall commence on April 1, 2004 and continue until March 31, 2005. **(Contract No. C20040181)**
13. Local Agency Standard Consultant Agreement with Graham-Bunting Associates for permitting services associated with FEMA road repair projects relating to the severe October 2003 storms. The agreement shall commence on March 26, 2004 and continue through December 31, 2005. Compensation shall not exceed a total of \$99,900. **(Contract No. C20040182)**

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 12, 2004, the Board by majority vote, did approve for payment those vouchers included in the above-mentioned list and further described as follows:

ACH Transfer Request Form and Certification to Premera Blue Cross from Clearing Fund 696 in the total dollar amount of \$44,126.24 (Transmittal No. C-45-04); and

Warrants numbered 167436 through 168094 from Clearing Fund 696 in the total dollar amount of \$4,954,288.75 (Transmittal No. C-46-04); and

ACH Transfer Request Form and Certification to Premera Blue Cross from Clearing Fund 696 in the total dollar amount of \$93,048.51 (Transmittal No. C-47-04); and

Warrants numbered 168095 through 168096 from Clearing Fund 696 in the total dollar amount of \$65,211.03 (Transmittal No. C-48-04); and

Payroll warrants numbered 143070 through 143843 in the total dollar amount of \$962,912.36 (Transmittal No. P-13-04); and

Payroll warrants numbered 962448 through 962588 & M95001 in the total dollar amount of \$167,536.76 (Transmittal No. P-14-04).

2. Staff presented a resolution awarding the bid for re-roofing of County buildings located at 121 Broadway Street, Mount Vernon and 320 Pacific Place, Mount Vernon to Hytech Roofing, Inc. for the low bid of \$59,200.

Commissioner Munks made a motion to approve the resolution and Chairman Anderson seconded the motion, which passed unanimously. **(Resolution No. R20040132)**

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3. Staff presented a Memorandum of Agreement with the Skagit County Chamber Executive Director's Association for the promotion of "Skagit County Tourism" and other festivals as hosted by joint chambers. The agreement term is calendar year 2004 and the County will provide \$25,000 in funding.

Commissioner Munks motioned to approve the agreement as outlined. Chairman Anderson seconded the motion, which carried. **(Contract No. C20040183)**

PUBLIC COMMENT PERIOD.

Bill Knuth, 24230 Alexander Street, Sedro-Woolley, thanked Chairman Anderson for making contact with the Public Works Department on his behalf. Mr. Knuth said he filed a complaint with the Planning and Permit Center regarding ongoing violations that are taking place next door to his property. He indicated that a developer had erected a ten foot concrete wall located within a floodplain without obtaining any permits. After speaking the Carolyn Spies, Code Enforcement Officer for Skagit County, she said she couldn't find any violations. Erick Aurand of Public Works told Mr. Knuth that there was nothing he could do about the situation either.

Mr. Knuth also spoke of illegal logging practices that are taking place at the end of Prevedel Road and wonders who is overseeing the County. He then provided documents for the Board to review.

Chairman Anderson said he would examine the documents and contact the City of Sedro-Woolley, the Planning and Permit Center and the Public Works Department. He said he would contact Mr. Knuth with the results of his inquiry.

CLOSED RECORD APPEAL NO. PL04-0082 SUBMITTED BY GLEN AND CANDY SMITH.

Chairman Anderson outlined the perimeters of the closed record appeal process.

Brent Morrow, Senior Planner, reviewed the site plan and discussed the points of interest in the closed record staff report. He stated that this is a closed record appeal of an Administrative Decision for the reduction in setbacks pursuant to Skagit County Code (SCC) 14.16.810(4) to allow for reduction of the front setback from 35 feet to approximately 22 feet for the placement of a single family residence.

The applicants, Glen and Candy Smith, applied for an Administrative Decision for the reduction of setbacks per SCC. The code states the Administrative Official may reduce the required front, side or rear setbacks where topography or critical areas or the lot's size and configuration impact the reasonable development of the property. To reduce the front or rear setback, the Administrative Official must determine that the public health, safety and welfare will be maintained. Consultation with the Public Works Department concerning traffic safety may be solicited during this analysis.

The subject property is located on the north side of Josh Wilson Road and is approximately 2.6 acres in size. The lot is rectangular in shape and lies in an east/west configuration. The property measures 452 feet long and 219 feet wide with a 400-foot panhandle leading to the property off of Josh Wilson Road. There is an existing 30-foot by 48-foot shop located towards the back (north) portion of the property approximately in the center with a gravel driveway turnaround area.

The applicant is proposing to place a single family residence approximately 22 feet from the south (front) property line. The property is designated Rural Reserve. SCC 14.16.320(5)(a)(i-iii) outlines setbacks for a primary structure as 35 feet in the front, 8 feet on the sides for an interior lot, and 25 feet at the rear.

Mr. Morrow stated that a timely appeal was submitted on behalf of the Smith's on October 21, 2003. The basis of the appeal was the applicant's felt the 35 foot setback requirement was inaccurately applied and a 25 foot setback on a minor access road would have been more appropriate.

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An open record appeal was held before the Skagit County Hearing Examiner on December 10, 2003. At this hearing the Department stated that its decision was based on the initial request for the reduction, which was related to the impact of the critical area on the reasonable development of the property, not on which setback requirement would apply. It was also noted for the Examiner, that the 25 foot setback for a minor access road is not an available option in the rural Reserve zone.

In the Hearing Examiner's decision, he reiterated the Department's view "that there does not appear to be topographic constraints on development on the west half of the lot. The critical areas on the site impact the area available for development, but the impact is not so great as to require a reduction of setbacks in order for reasonable development to occur. The configuration of the lot with its panhandle does not have any effect on where reasonable development can occur within the lot".

The Hearing Examiner went further in his decision stating "The Appellants here did not carry their burden of proving that the Administrative Official's determination in this case was clearly erroneous. 'Reasonable development' as used in SCC 14.16.810(4) is not synonymous with maximizing scenic views. Under all the circumstances, there appears to be ample space available to build a reasonably-sized house on the property consistent with the standard front setback.

The applicant filed a timely reconsideration request (PL04-0026) on January 15, 2004 believing that there was a judgment in error concerning where the front lot line is for purposes of measuring the setback. The Hearing Examiner reviewed the request and concluded "that no material legal error had occurred nor had any material factual issues been overlooked that would change the previous decision. Pursuant to SCC 14.06.180 the request for reconsideration was denied."

Subsequently, a timely appeal (PL04-0082) was filed by the Appellants on February 6, 2004 for a closed record appeal. The basis of this appeal is that the applicant's feel the south property line does not meet the criteria of a front lot line.

Mr. Morrow said the Department would like to note that the applicant submitted the original site plan for review that correctly identified the front lot line. The Department has consistently determined that the front setback in this case should be measured from where the panhandle portion of the lot meets the main body of the lot.

The justification to reduce setbacks was based on the fact that the critical area located on the eastern portion of the property affected the desired location of the proposed residence. The key part of this decision is whether the reasonable development of the property – single family residence – is impacted by the critical area on the property. The Department determined that the critical area did not affect reasonable development and the Hearing Examiner ruled that the Department was not "clearly erroneous" in making that decision.

Mr. Morrow said that based on the record, including the most recent decisions of the Hearing Examiner, the Department recommends that the Board of County Commissioners uphold the Hearing Examiner's decision that the Administrator's denial of the reduction of setbacks should be upheld.

Pursuant to the referenced code, the Board of Commissioners may select one of the following courses of action:

- a) Remand the matter for further consideration by the Hearing Examiner, or
- b) Deny the appeal and affirm the decision of the Hearing Examiner, or
- c) If the Board finds the Hearing Examiner's decision is clearly erroneous, the Board may adopt its own findings, conclusions and decisions based upon the record made before the Hearing Examiner.

John Abenroth, Skagit Surveyors and Engineers, reviewed the chronology of events. He said that in August-September 2003, Suzanne Gilbert of LAI architects prepared a site plan, which was based on a statement by the Planning Department that the property line in question was a front property line. This

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was unacceptable to Mr. and Mrs. Smith so they requested an Administrative Decision to reduce the setback from 35 feet to 22 feet. That decision was denied so the Smith's retained Skagit Surveyors and Engineers to represent them in this request for reconsideration.

Mr. Abenroth indicated that this whole case springs out of what he believes is misinformation by the Permit Center. The Smiths and their architect were told that the line in question is a front lot line. Mr. Abenroth disagrees with the finding and believes that the development regulations do not support that finding.

The property is in the Rural Reserve zone, which requires a front setback of 35 feet. Mr. Abenroth provided definitions of a front setback and a front lot line from the definitions section of the development regulations. He said it is quite clear that the front lot line is the 30 foot long line that is adjacent to the Josh Wilson Road right-of-way.

Mr. Abenroth believes the line in question to be a side lot line. The code provides that a side lot line is any line that is not a front or a rear line, with the rear lot line being the boundary of a parcel that is opposite the front. Therefore, this conclusion is consistent with the development regulations. It is also consistent with the proposed use of the land and with the basic reason for having a front setback requirement. The purpose for this is to prevent buildings from being built too close to County roads.

Commissioner Munks motioned to render a decision on this matter on Monday, April 26, 2004 at 10:00 a.m. Chairman Anderson seconded the motion, which carried.

ADJOURNMENT.

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

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Ted W. Anderson, Chairman

Don Munks, Commissioner

Kenneth A. Dahlstedt, Commissioner

ATTEST:

JoAnne Giesbrecht, Clerk of the Board
Skagit County Board of Commissioners