

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
TUESDAY, DECEMBER 21, 2004**

- 9:00 a.m. – 10:00 a.m. Closed Record Appeal No. PL04-0781 by George Terek of the Hearing Examiner's Decision on Shoreline and Land Use Variance Application Nos. PL03-0694 and PL03-0695
- *T 10:00 a.m. – 11:00 a.m. Planning & Permit Center – Gary Christensen, Director
1. Discussion/Possible Action – Proposed Resolution Combining Seven (7) 2004 Comprehensive Plan Amendments with 2005 Comprehensive Plan Update Schedule
 2. Discussion – Proposed Letter to Lake Tye Property Owners
 3. Discussion – “State of the Department”
 4. Decision – Funding Request from Guemes Island Planning Advisory Committee
 5. Set Date and Time for Discussion/Possible Action Regarding Several Miscellaneous Code Amendments Not Associated with the 2005 Update
 6. Miscellaneous
- *T 11:00 a.m. – 11:30 a.m. Public Hearing – Increase in Emergency Medical Services Property Tax Revenues
- *T 1:30 p.m. – 2:30 a.m. Deliberations/Possible Action – Comprehensive Solid Waste Management Plan
- *T 2:30 p.m. – 3:00 p.m. Deliberations – Planning Commission Recorded Motion on Master Planned Resort Ordinance

The Skagit County Board of Commissioner met in regular session on Tuesday, December 21, 2004, with Commissioners Ted W. Anderson, Don Munks and Kenneth A. Dahlstedt present.

CLOSED RECORD APPEAL NO. PL04-0781 BY GEORGE TEREK OF THE HEARING EXAMINER'S DECISION ON SHORELINE AND LAND USE VARIANCE APPLICATION NOS. PL03-0694 AND PL03-0695

Chairman Anderson outlined the Closed Record Appeal process. He reminded the parties that only the materials presented to the Hearing Examiner could be discussed, and that no new information could be presented to the Board of Commissioners at today's appeal.

Associate Planner John Cooper said that the appeal is related to a 10' x 14' underground sauna/cellar that includes a wood burning stove, which is vented through the roof. The property owner, Mr. George Terek, built the sauna on the eastern boundary of his property at 6764 Salmon Beach Road, Anacortes, adjacent to Similk Bay. The structure was built by connecting retaining walls and the neighbor's concrete fence on the eastern property line. A front wall, roof and door were added to complete the structure. The sauna was built in violation of the 8 foot setback requirement. Mr. Terek is seeking a shoreline and zoning variance from both the applicable side yard setbacks.

Mr. Cooper went over the Findings of Fact and Conclusions of Law provided by the Hearing Examiner. The Department of Fish and Wildlife assessment stated that the sauna has no measurable effects on wildlife or fish. Mr. Cooper stated that Mr. Terek has indicated that the sauna has cultural significance for his wife; however, it is a residential accessory and does not need to be underground. It could be placed in a number of other locations on the property. The Hearing Examiner denied the variance request stating that it simply does not meet the criteria for approval of the variances sought. Mr. Terek's application for appeal of the Hearing Examiner's decision described the structure as an emergency shelter. Mr. Cooper

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felt this could be considered new information. He also noted that the location of the structure was chosen by Mr. Terek for convenience, in order to utilize the existing retaining walls. Mr. Cooper added that under the rules of Closed Record Appeal, the appellant has not clearly demonstrated in his application that the Hearing Examiner made an error in his judgment of the law.

Commissioner Anderson asked for clarification that the single issue in question is the shoreline and zoning setback, which was confirmed by Mr. Cooper.

Mr. Jones, the Attorney for George Terek, stressed #9 in the Conclusions of Law by the Hearing Examiner, which states, "To say no, in this instance, may seem silly because the structure does no physical harm. It has no adverse environmental or shoreline impacts and does not aggravate the already-cluttered aesthetics of the property boundary." Mr. Jones said that a lot of effort has been made by the Tereks to come into compliance. They have drafted an agreement with the neighbor, who has recently purchased the adjoining property. There is no longer a justification for saying no, other than being bound by rules and being unwilling to consider the Terek's application. Mr. Jones said that the objection by the Fire Marshall should not carry any weight because the structure is under ground. He added that it is true that this is a matter of convenience, but it makes sense. The only issue is the setback and the fact that the structure is buried. He asked the Board to reverse the Hearing Examiner's decision and allow the variance.

Commissioner Dahlstedt asked if the other properties in the vicinity that have reduced setbacks less than 8 feet were permitted uses. John Cooper said that there was no record that those were permitted uses.

Commissioner Munks moved and Commissioner Dahlstedt seconded a motion to render a decision on the Closed Record Appeal by George Terek on January 10, 2005, at 10:30 a.m. The motion carried unanimously.

PLANNING & PERMIT CENTER – GARY CHRISTENSEN, DIRECTOR

1. Discussion/Possible Action – Proposed Resolution Combining Seven (7) 2004 Comprehensive Plan Amendments with 2005 Comprehensive Plan Update Schedule

Jeroldine Hallberg, Associate Planner, presented a resolution that would combine seven 2004 Comprehensive Plan Amendments applications to be considered as part of the 2005 Comprehensive Plan Update process. This will allow an evaluation of the cumulative impacts. The application for Karma Gardens will be processed separately due to an appeal.

Commissioner Munks moved to approve the resolution to combine seven 2004 Comprehensive Plan Amendment applications with the 2005 Update schedule. Commissioner Dahlstedt seconded the motion, which carried unanimously. **(Resolution No. R20040448)**

2. Discussion – Proposed Letter to Lake Tyee Property Owners

Bill Dowe, Building Official, discussed a letter that he will be sending to 800 residents in Lake Tyee. There has been confusion among property owners regarding obtaining building permits and code enforcement by the County. Commissioner Anderson stated that this is long past due, and that Lake Tyee residents need to abide by the codes just like everyone else in the County.

3. Discussion – "State of the Department"

Deputy Director Oscar Graham gave an update on progress that the department is making. They want to keep the Board informed on a regular basis. The Latimer Study regarding the permitting process review is continuing. The study is to get a handle on the permit flow and to focus on problem areas. Mr. Graham said that Grace Rader has developed method for working through boundary line adjustments that was recognized in the study as one of the best in the state. Mr. Latimer is bringing a group of people to visit her. The department has created a Development Review Organization Team that is looking at a team

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approach to reorganize daily work. Staff members are enthusiastic and creative in looking at ways to solve problems. He asked the Board to consider a new name for the Planning and Permit Center that more correctly reflects the manner in which department services have evolved.

4. Decision – Funding Request from Guemes Island Planning Advisory Committee

Ms. Hallberg said that members of the Guemes Island Planning Committee were present to hear the Board's decision and to discuss the Work Program that was submitted along with the DOE grant for shoreline services.

Joost Businger of the Guemes Island Planning Advisory Committee stated that he understood that the Board would be considering the Work Program that was presented approximately a month ago. He asked to hear the Board's comments and if they had considered the work program.

Commissioner Munks said that he was in agreement with the Plan that had been brought forward. He recognized the work of the group to move forward. Commissioner Munks recognized Guemes Island for moving forward to begin the work without County funding. He said that the County has other funding commitments and cannot promise funding for this project.

Mr. Businger said that the Island residents believe they can provide most of their own funding. They are asking for approval of the Work Plan, and they will come back at a later date if funding is needed.

Commissioner Dahlstedt said that he is supportive of the Plan, and he echoed the fact that other communities have been waiting for sometime for funding assistance. He added that the County has provided a significant amount of money to Guemes Island for other projects.

Commissioner Anderson said that the County has an obligation to Alger since they made the first attempt; however, Guemes Island can come back to the County for assistance in the future.

Commissioner Munks moved to agree in principle with the Plan that Guemes Island has put forward for the Subarea Plan. Commissioner Dahlstedt stated that he felt that the form should be reviewed by legal before final approval. Commissioner Anderson suggested that the work program be approved as presented subject to legal review. Commissioner Dahlstedt seconded the motion, which carried unanimously. The Planning and Permit Center will prepare a resolution for approval.

5. Set Date and Time for Discussion/Possible Action Regarding Several Miscellaneous Code Amendments Not Associated with the 2005 Update

Director Gary Christensen said that there are a variety of Code amendments that have come up over time that need to be addressed.

Associate Planner Carly Ruacho added that Planning Commission held a public hearing on December 7, 2004, regarding the amendments and no comment was received. The Commission made a recorded motion for the Board of Commissioners' consideration.

Commissioner Munks moved and Commissioner Dahlstedt seconded the motion to set January 11, 2005, at 10:00 a.m. to consider and take action on the Planning Commission's recommendation regarding several miscellaneous Code amendments.

Planning Department Name Change

Mr. Christensen said that due to timing, he would like to follow-up on an earlier agenda item discussed by Mr. Graham regarding the establishment of a new name for the Planning and Permit Center. The department is asking the Board to consider this request now because the department needs to order new business cards and letterhead. He said that they would like to change the name to "Planning and Development Services" because it better captures how department services have evolved over time.

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Commissioner Munks moved to rename the "Planning and Permit Center" to "Planning and Development Services." Commissioner Dahlstedt seconded the motion, which carried unanimously.

PUBLIC HEARING – INCREASE IN EMERGENCY MEDICAL SERVICES PROPERTY TAX REVENUES

County Administrator Gary Rowe stated that the levy request and proposal for 2005 is the 1% increase allowed by law. The voters approved the Emergency Medical Services levy in November of 2000, which authorized a maximum amount of 25 cents per \$1000 of assessed property value. The levy amount has gone down from 25 cents in 2001 to approximately 23 cents this year, for a total amount of \$2,360,000.

Tony Splane, 714 Sapp Road, Sedro-Woolley, expressed his appreciation that the tax rate is lower this year.

Commissioner Munks moved and Commissioner Dahlstedt seconded the motion the close the public hearing, which carried unanimously.

Commissioner Munks motioned to approve a resolution authorizing a property tax limit factor increase of 101% for the Emergency Medical Services Levy. Commissioner Dahlstedt seconded the motion, which carried unanimously. **(Resolution No R20040449)**

Commissioner Munks moved and Commissioner Dahlstedt seconded the motion to approve a resolution authorizing a property tax increase for 2005 for the Emergency Medical Services Levy in the approximate amount of \$2,360,000. The motion carried unanimously. **(Resolution No. R20040450)**

DELIBERATIONS/POSSIBLE ACTION – COMPREHENSIVE SOLID WASTE MANAGEMENT PLAN

This item was removed from the agenda. The Commissioners will be discussing the Plan with Mayors and Council Members as part of the regular agenda on Tuesday, January 11, 2005, at 10:30 a.m.

MISCELLANEOUS

1. The Board by unanimous vote approved an ACH Transfer Request Form and Certification to Premera Blue Cross from Clearing Fund 696 in the total dollar amount of \$150,318.64 (Transmittal No. C-166-04).
2. Commissioner Munks moved and Commissioner Dahlstedt seconded approval of a contract with the Westlaw Group for legal research for the Law Library. The contract is effective from January 1, 2005, through December 31, 2007. **(Contract C20040527)**

DELIBERATIONS – PLANNING COMMISSION RECORDED MOTION ON MASTER PLANNED RESORT ORDINANCE

Mr. Christensen gave an overview of the materials being presented related to the Planning Commission's recommendations on a proposed Master Planned Resort Ordinance. The Board has three options today: 1) to approve the Planning Commission's recommendations and findings; 2) to remand the matter back to the Planning Commission; or 3) to defer action to a later date. In April of 2004, a Citizen's Advisory Committee was formed to advise the Department on issues of concern regarding the development of Master Planned Resorts. The committee met several times in 2004 and drafted proposed regulations. The regulations were reviewed by legal counsel, who recommended some changes. A public meeting with the Planning Commissioner was held in October to review the proposed changes. A public hearing was held and the Planning Commission's findings and recommendations are now being forwarded to the Board for approval. The recommendations for a Master Planned Resort follow a two-step process. First, obtaining a Master Planned Resort designation through a Comprehensive Plan amendment. Once that

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designation is granted, a party is then able to pursue a development agreement which would enable them to enter into a contract with the County regarding the type of development and the uses over time.

Commissioner Munks expressed concern that while the Finding 1 of the Planning Commission states they are "interested in helping existing resorts in the County develop as master planned resorts" the language laid out for vested resorts in the Code is not specific. He said that if an individual is already in the system, has done work, and invested money, it is important that what is adopted by the Board does not require them to start over again. Clark's Cabins is a perfect example.

Mr. Christensen read Section 8e, which he feels attempts to address vested uses. Commissioner Munks said that he read that section, and if someone has already completed a plan and the criteria have changed their money is wasted.

Mark Personius, the consultant who assisted with the development of the Master Planned Resort (MPR) regulations, said that Clark's Cabins has a vested approved conditional use permit, which approved the existing campground. In the mid-90's, they applied for two additional permits. The applications were accepted, but they were never approved or denied by the County. It was hoped that a MPR Code could be developed that would get the resort in and extinguish the old permit applications. There is a component under the GMA statute for existing resorts that states that they must comply with County critical areas regulations. He said that the language in section 8e was added to clarify this issue and allow Clark's resort to move forward. The Code cannot specify the vested rights for Clark's Cabins because the other permits are still pending. The issue of vested language was discussed at length in the Citizen Advisory Committee. The resolution of the vested status is a legal determination.

Kirk Johnson, Senior Planner, said that he understands the MPR statute to say that vested rights are vested and no one can take them away; however, the statute says that vested rights cannot be packaged with a Master Planned Resort to have the best of both worlds.

Commissioner Anderson said the fatal flaw to that concept is that when Mr. Clark made his original application there was no Comp Plan. Things have evolved since then, and now we have a Master Planned Resort designation. To start all over and apply today's shoreline rules, would involve a total redo. He added that he believes that a Code was developed to try to assist the Clark's. He wants to move ahead and does not want to start all over with this process.

Commissioner Munks stated that most small business owners must do things in phases due to financing issues. He said he would like some assurance that the phases won't be lost or stalemated. He said that his concerns are related to the little person, rather than a big business theme park type project.

Mr. Personius said that the drafted code allows for long-time phasing and that more opportunities are allowed under this new Code than under the combined previous zoning and codes. The site specific vesting issues can be addressed at the development agreement stage once the regulations are approved.

Commissioner Dahlstedt confirmed that the process is to give opportunities for new development of resorts. The vested rights can be determined through the processes that exist in the Planning Codes. The intent of this document is not to enhance or negate the vesting process, just to provide opportunities and a process if a reasonable development agreement cannot be reached.

Commissioner Anderson said that pre-existing uses have been recognized throughout the County. He feels that the fear of the Clarks is that the language is vague and there is not clear evidence that they will get what they have already paid for.

Don Clark, owner of Clark's Cabins, stated that a section of the proposed Code was removed that addressed existing resorts with an already existing Master Plan. The way it is written now, there is nothing to address his particular circumstances. He asked if his resort could their existing Master Plan.

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Gary Christensen said that Mr. Clark's Master Plan Resort submittal of 1994 could be considered as an application under the proposed Ordinance as drafted, but it may need some supplemental information. That doesn't mean that he would need to start all over again. Mr. Clark would need a letter stating that he was resubmitting his application.

Mr. Clark asked if Section 14 "New Master Plan for an Existing Resort" of the draft Ordinance would apply to his resort. Mr. Personius said that if this Code were adopted Mr. Clark's resort would be identified under Section 14; however all that says is that he would need to submit a plan.

Mr. Clark said that all he is asking is for the County to acknowledge his Plan in 1994 and that it meets his need for MPR zoning. His concerns are related to the fact that the Critical Areas Ordinance came two years after his plan was submitted, he might need to move areas of his resort. Mr. Personius said that Mr. Clark's plan would be recognized if this Code were adopted. The plan would not have to be revised. A letter would be needed stating how he is in compliance. Then the County would start their review process, and make any recommendations. The issues related to the Critical Areas Ordinance would be addressed during the review process.

Mr. Christensen said that any development agreement will come back to the Board for final approval.

Commissioner Dahlstedt stated that he did not want to make a decision that would give Mr. Clark an assumption that he would be able accomplish something that won't be accurate.

Mr. Christensen suggested that the Board postpone their decision, and that the department attempt to find an amicable solution centered on vested rights. The department would obtain legal opinions and come back to the Board after the first of the year for additional discussion.

Commissioner Munks moved to table the discussion and come back at a future date to explore a remedy. Commissioner Dahlstedt seconded the motion, which carried unanimously.

ADJOURNMENT.

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

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Ted W. Anderson, Chairman

Don Munks, Commissioner

ATTEST:

Kenneth A. Dahlstedt, Commissioner

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