

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY COMMISSIONERS
TUESDAY, FEBRUARY 8, 2005**

- 8:30 a.m. – 9:00 a.m. Work Session – Vote-by-Mail Proposal by the Skagit County Elections Department
- *T 9:00 a.m. – 9:30 a.m. Public Hearing – Consideration of Testimony Regarding Extending the Interim Urban Growth Area Ordinance No. O20040015 For Six Months
- *T 9:30 a.m. – 10:00 a.m. Update – Cardinal Cove Safety Upgrades
- *T 10:00 a.m. – 11:00 a.m. Planning and Development Services – Gary Christensen, Director
1. Discussion – Status Report on 2005 Growth Management Act (GMA) Update
2. Update – State of the Department
3. Miscellaneous
- 11:00 a.m. – 12:00 p.m. Work Session – Ag-CAO (Critical Areas Ordinance) Related Work Accomplishments and Plans for 2005
- 2:00 p.m. – 3:00 p.m. Continuance of a Closed Record Appeal of the Hearing Examiner’s Decision Submitted by Charles Scheid Regarding the Denial of a Request For a Reduction in Setbacks (PL04-0560)

The Skagit County Commissioners met in regular session on Tuesday, February 8, 2005, with Commissioners Don Munks, Kenneth A. Dahlstedt and Ted W. Anderson present.

PUBLIC HEARING – CONSIDERATION OF TESTIMONY REGARDING EXTENDING THE INTERIM URBAN GROWTH AREA ORDINANCE NO. O20040015 FOR SIX MONTHS.

Kirk Johnson, Project Manager for this issue, stated that this final proposed extension of the interim ordinance will allow sufficient time to consider adoption of permanent Urban Growth Area (UGA) development regulations. A permanent proposal has been released for SEPA review and public review and comment and is scheduled for a Planning Commission public hearing later this month. Mr. Johnson said the Western Washington Growth Management Hearings Board has directed the County to adopt permanent development regulations applicable to the unincorporated municipal UGAs by April 29, 2005.

Mr. Johnson said the deadline for extending the interim ordinance is February 16, 2005, which is when the existing ordinance expires. The only changes to the interim ordinance reflect modifications to the Anacortes, Mount Vernon and Sedro-Woolley UGAs, enacted by Ordinance No. O20050001, adopting the 2003 Comprehensive Plan Amendment proposals. Mr. Johnson presented maps showing the already-adopted changes to the UGA boundaries. He indicated that only the Culbertson property in the Anacortes UGA was rezoned to Special District by that ordinance. Mr. Johnson said the others will be rezoned through the permanent UGA ordinance.

Mr. Johnson also indicated that there is a related text change. The reference to the “Petroleum Refinery Area” in Section 7(1)(c) Anacortes Special District has been deleted. This is because the Culbertson property is now part of the Special District but is not within the Petroleum Refinery Area.

Chairman Munks opened the public hearing.

Louis Requa, Skagit Surveyors and Engineers, 801 Metcalf, Sedro-Woolley, asked if there were any other changes in the interim ordinance other than what has been discussed and Mr. Johnson said there is only a related text change, which has already been addressed. Mr. Requa also asked if the CaRD option is still a part of the interim ordinance and Mr. Johnson assured him that it was.

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There being no further public testimony forthcoming, Commissioner Dahlstedt motioned to close the public hearing. Commissioner Anderson seconded the motion, which passed unanimously. The public hearing was closed.

A motion was made by Commissioner Dahlstedt to approve the interim ordinance as outlined by Mr. Johnson. The motion was seconded by Commissioner Anderson and passed unanimously.

UPDATE – CARDINAL COVE SAFETY UPGRADES

Bob Vaux, Parks and Recreation Director, stated that Skagit Valley College (SVC) initiated talks with the Skagit County Board of Commissioners during the previous two years regarding the College's interest in selling Cardinal Cove, located on the east shore of Big Lake. SVC and Parks staff have since been working on the details of a sale. It was determined that the County would lease the property for the minimum of a two-summer season in order to give the Parks Department a chance to explore the economic feasibility of community recreation, specifically a boating program, on the site.

Mr. Vaux said the lease language was delivered and a site visit with Risk Manager Billie Kadrmas was promptly scheduled. Ms. Kadrmas suggested five upgrades that would need to be done and after careful review, Project Manager, Patrik Dylan, indicated that four more upgrades would need to take place, which might require an update to the County Code.

Chairman Munks asked what would happen to the old dock. Mr. Vaux answered that Ms. Kadrmas believed if it were fenced at the shoreline then it might be passable. He said they haven't thoroughly explored the dock options.

Commissioner Anderson noted that if the Board approves the lease agreement and takes care of the capital improvements, the college should only be charging the County a nominal lease price. He asked Mr. Vaux to network with SVC to see what agreement could be worked out.

Commissioner Dahlstedt agreed that it would be worthwhile to talk to the college. He also said there is a new Cub Scout Pack at Big Lake and perhaps they would be interested in becoming involved with improvements to the site on a volunteer basis.

There was also some discussion about maintenance of the facility and the property, and Mr. Vaux said he would consider hiring a caretaker to manage the site.

Commissioner Anderson said operations and maintenance of the property should be considered at the same time a fee schedule is put into place for the boating program.

Chairman Munks said that he doesn't mind proceeding with the project as long as there is a financial plan in place.

PLANNING AND DEVELOPMENT SERVICES – GARY CHRISTENSEN, DIRECTOR

1. Discussion – Status Report on 2005 Growth Management Act (GMA) Update.

Guy McNally, Associate Planner, reported on the Department's progress in updating the Comprehensive Plan and development regulations. Each County conducting planning under the GMA, and the cities within them, are required to update their comprehensive plans and development regulations every 7 years, to ensure compliance with the Act. Skagit County's deadline to complete its update is December 1, 2005.

An important part of the GMA update is to ensure early and continuous public participation in the process. This not only brings the experience and expertise available in the community, but guarantees that local circumstances are considered in reviewing the relevance and compliance of the various policies.

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The centerpiece of Skagit County's update effort is the 15-member GMA Update and Public Outreach Steering Committee, which was appointed by the Board in September, 2004.

Mr. McNally stated that the public and city requests for parcel-specific map amendments that were submitted to the County in November are currently being reviewed by the Department. These proposals will be brought before the Commissioners for review. Mr. McNally said the Department will also work with the Commissioners to schedule a series of study sessions to discuss the work of the Steering Committee and the GMA update so far.

Mr. McNally asked the Board if they would like to hold a public hearing on site specific amendments prior to putting them on the agenda, and the Board agreed that it would be a good idea to have the public weigh in on these issues.

Mr. McNally also stated that a series of open houses have been scheduled to inform citizens of the GMA update, with the first one being held tomorrow at the Concrete Senior Center.

2. Update – State of the Department.

Gary Christensen, Director, reviewed a list of 2005 goals for the Planning and Development Services Department. He said that last year during reorganization efforts, there was a discussion of how to provide better customer service and address issues that were brought to the Department's attention by the Commissioners. A Development Review Organization Team (DROT) was formed to solicit comments and ideas from staff.

Oscar Graham, Deputy Director, stated that the group of people he convened helped to assess the functions that the development team would actually service in the Department. Mr. Graham said the very mention of reorganization always brings a certain amount of fear within staff. The DROT members were able to look objectively at the various functions of the Department and have contributed greatly to the reorganization effort. The members of DROT include: Dan Cox, Leah Forbes, Marge Swint and Tawni Bosman.

Mr. Christensen said it is important to establish goals with which to measure progress. Therefore, nine goals have been identified for 2005. He reviewed those items and noted that the goals were provided to the Client/Customer Advisory Board last week, and they were supportive of those goals. Mr. Christensen next reviewed "philosophical guidelines" for the Department.

The Board agreed that the goals and guidelines outlined today is a reflection of team effort on the part of the entire Planning and Development Services Department.

3. Miscellaneous.

There were no miscellaneous items to discuss.

CONTINUANCE OF A CLOSED RECORD APPEAL OF THE HEARING EXAMINER'S DECISION SUBMITTED BY CHARLES SCHEID REGARDING THE DENIAL OF A REQUEST FOR A REDUCTION IN SETBACKS (PL04-0560).

Chairman Munks announced that correspondence was received by John and Malia Santucci, which was reviewed by the County's Chief Civil Prosecutor, Don L. Anderson. Mr. Anderson has determined that the correspondence is not admissible for this closed record appeal.

Carly Ruacho, Associate Planner, said the property in question is located near Lake Cavanaugh, off of North Shore Drive and is approximately ½ acre in size. It is divided by North Shore Drive with the majority of the property line lying upland of the Drive. A small portion of the property is located on the lakeside, which has a small residence on it that appears to be used for a summer cabin.

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Ms. Ruacho said that the applicant is requesting to place a single family residence with a garage in an area of previous excavation, which would put the building approximately 10 feet from the right-of-way line. She said it is important to note that North Shore Drive does not take up the entire right-of-way at this point; it's a 60 foot right-of-way, with a 20 foot road surface, a 9 foot encroachment of the existing cabin, and about a 5 foot shoulder. This would put the proposed residence approximately 35 feet from the driven surface.

The property is zoned Rural Village Residential and has gone through the process of an administrative reduction request, which was denied by the Administrative Official on the basis that it did not meet the criteria. The allowance for reducing the setback is used when the topography lot size or critical areas impact the reasonable development of property. It was found that those conditions were not met in this case. That decision was appealed to the Hearing Examiner. The Examiner heard arguments on the appeal and ruled in favor of the Administrative Official, upheld the denial, and denied the appeal. The Hearing Examiner found that the legal basis for reducing the setbacks is when there isn't enough buildable area to carry out reasonable development and still meet the setbacks. The Examiner also determined that was not true in this instance, and that there was adequate space for development without reducing the setback from the road.

Ms. Ruacho referenced Exhibit 14, which shows there is an existing building envelope on the property that meets the required setbacks. She touched on a few key components to the decision reached by the critical areas staff after their review with regards to critical areas and found that there were no critical areas located within the setback. The Public Works Department also commented that a 10 foot setback would not allow public safety to be maintained. This is especially true in light of the fact that the Scheid's existing residence already encroaches on the right-of-way in that location for a distance of approximately 9 feet.

The requirement for a larger setback than 10 feet was to meet parking requirements. The Department acknowledges that the applicant is meeting those requirements of the zoning chapter with the two spaces in the garage; however, setbacks are required even when parking is allowed for in the garage, and that the public health, safety and welfare still need to be maintained. It was found that in this instance they would not be maintained.

This request met with much public opposition as evidenced in the letters and the testimony received at the hearing. Ms. Ruacho pointed out that regardless of the outcome of this decision, there is enforcement case currently pending that would require other action in order for the Scheid's to come into compliance. There are other development permit application processes that would need to occur in order to rectify that enforcement. Ms. Ruacho said that this matter regarding a reduction in setbacks, although related, would not satisfy the enforcement proceedings that are in effect.

Commissioner Anderson asked if a photo of the area under Tab 9 was part of the record Ms. Ruacho was alluding to. She agreed and said the enforcement action is for the grading that was done without the appropriate permits, which is depicted in the picture in Exhibit 9. Regardless of whether a reduction in setbacks is allowed or not, there are still permit requirements for the completed grading that need to be taken care of in order to satisfy those enforcement actions.

Commissioner Anderson said the reason this information is included in the record is because the grading took place where the house will be built. Ms. Ruacho agreed and said they would like to put the house within this area of excavation. The reason Exhibit 9 was included in the record is because it was part of a comment letter.

Chief Civil Deputy Prosecutor Don Anderson stated for the record that the appellant has to show that the Hearings Examiner was clearly erroneous in his decision.

David Hough said he is a Land Consultant representing the Scheid's. Judy Scheid and her daughter are present today. Mr. Hough presented pictures that were taken on a Saturday morning last July along North Shore Drive. He said the pictures are an example of how 50% of the lots along North Shore Drive

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are affected because of the topography. There is nowhere to park on the uphill side, so drivers end up parking along a narrow road. The Scheid's would like to build a reasonable single family dwelling on the uphill side of North Shore Drive. In order to do this, and provide reasonable access and comply with the code, the County says they will have to provide two off street parking spots for each single family residence. Skagit County Code does allow for parking inside a garage; therefore, the Scheid's would have adequate parking for four vehicles in the garage. The building itself will be set back 35 feet from the driving surface, so there is an additional spot for parking even though it is on the right-of-way.

Mr. Hough showed the Board several other photographs, which revealed that construction of garages and retaining walls that are far closer to North Shore Drive than the Scheid's property.

Commissioner Anderson asked who granted the variances for these residences, and Mr. Hough indicated that it was Wick Dufford, the current Hearing Examiner.

Mr. Hough also indicated that Mr. Scheid is making an attempt to resolve the parking issue. Anyone that lives on a lake knows that it is not unusual to have a tremendous parking problem. There are a lot of places around Lake Cavanaugh where there aren't any places to park except along the road.

Mr. Hough showed the proposed site plan and said that most of the lots around Lake Cavanaugh are only 60 feet wide. The Scheid's lot is approximately 60 feet wide by 350 feet long. On the westerly side is an existing access to an installed sewage system and a well site that is at the top of the lot. In order to get to where the buildable envelope is on the upper part of the property, it would require a driveway with a grade of between 17% and 20%. That is the testimony that was presented to the Hearing Examiner. The Fire Marshall has a maximum allowable of a 15% grade for private driveways. Therefore, if you put a structure at the top, it would be a violation of the code. If an emergency were to arise, it would be impossible to get a responding vehicle up there. Mr. Hough said it is his contention is that not only staff, but the Hearing Examiner were clearly erroneous in their determination that there was not a topography problem with this lot.

Commissioner Anderson asked if Mr. Hough raised the issue of the percentage of grade necessary for the roadway in front of the Hearing Examiner. Mr. Hough said he did and that there was no impact to the drainfield. However, the further a house is moved back it would affect the drainfield because the house would be sitting on top of it. Mr. Hough feels that all the criteria required of a variance have been met.

Ms. Ruacho stated that Mr. Hough indicated that there was no way the Scheid's could park on the uphill side. She provided additional photographs that evidence some neighboring homes, which are built on the natural grade. Those properties provide for their own parking on top of the natural grade rather than at road level. The driveway for homes built on a 60 foot wide lot can be located in the setback unless you decide to build a home that takes up setback to setback. Ms. Ruacho said there is nothing in the record that provides evidence that the driveway requirements cannot be met. Mr. Hough provided the same testimony at the Hearings Examiner hearing. He is correctly stating the requirements but there is no evidence, which was submitted in the original application or the appeal, that those requirements cannot be met in this case. Based on the evidence that there are homes located on the natural grade in the direct vicinity, one has to assume then that those requirements can be met.

Ms. Ruacho admitted that the problem with these existing homes is that some of them were permitted under a different code and some of them might not have been permitted at all. Unfortunately, Ms. Ruacho said we don't have the evidence in front of us to consider in our decision that Mr. Scheid can't meet the requirements and that a fire truck/fire department couldn't provide adequate protection. It was also unfortunate that a letter was not received from the Fire Marshall that could have been reviewed. It is agreed that the Scheid's do indeed meet the zoning parking requirements but the review by Public Works for the setback requirement was of a public safety concern. Ms. Ruacho said the County is not requiring the setbacks for parking; but are requiring the setbacks, which are required by code for construction of a home to provide safety.

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Ms. Ruacho also noted that a comment made regarding how additional parking could be allowed in the right-of-way was wrong. SCC 14.16.855(a) specifically precludes the storage of any vehicles in a right-of-way. Although it happens a lot, the Department has to insure compliance with the County Code when a proposal for development is submitted.

Commissioner Anderson stated that regardless of whether you get along with your neighbors or not, the laws have to be fair and equitable for everyone. If one person has to adhere to the parking rules then everyone else does, too. Commissioner Anderson said he finds it interesting that those very people that are complaining about parking along side the road are doing it themselves.

Commissioner Dahlstedt asked Ms. Ruacho about the mention of a reduced setback of 25 feet when this appeal was outlined last week. Ms. Ruacho stated that as a general rule, the Department in the past has been able to support a reduction down to 20 feet. Because of that, Public Works has indicted that would provide for enough space to place a current size vehicle between the wall of the garage and the property line. Therefore, anyone visiting could fit completely on the property. When cars are entering or exiting the garage doors and facing the property line, they would be able to exit their entire vehicle out of the garage and still be on their property. That way if the road ever does take up the entire right-of-way or closer to it, they are not endangering the motoring public by having part of their car jut out into the lane of traffic. In this case, the problem is the existing septic system. If the Scheid's wanted to continue to put their home at road grade then the system would have to be moved if they excavated further back. Ms. Ruacho said that is an option that is allowable. The other option would be to go up behind the system, leave the current system where it is, and build up on the natural grade.

Commissioner Anderson asked if there was room to build between the system and the well head protection area. Ms. Ruacho said there is a 100 foot protection area required between a septic system and a private well. Residences are allowed within those 100 feet as long as the garage has a concrete floor and there is no storage of hazardous materials. That is most important when the well is located downslope because the danger of contamination is greater.

Mr. Hough said he thinks it is ironic that the Scheid's property today is being used by all the neighbors when they aren't there. When one of the neighbors wanted to clear the logs off their property, they loaded the logs on the Scheid's property. It is not unusual to see 2 or 3 cars parked on the Scheid's property that don't belong to them.

Kennan Muzzy said he is a neighboring property owner and expressed his frustration over the process at this point. He's owned the property since 1968 and has been using it as a summer cabin. He said THAT when a tree fell on their cabin, they were forced to build in the same envelope, which was on the opposite side of the road from the lake. They met all the zoning requirements, and did not have to ask any special variance. All those in the neighborhood feel that this is a ploy by the Scheid's to get rid of the pending code enforcement action. According to Mr. Muzzy, over the course of 7 years Mr. Scheid has excavated into this hillside 5 to 7 times. His concern as a property owner is that this neighbor needs to be stopped in his attempt to do whatever he wants, whenever he wants, however he wants. Mr. Muzzy doesn't feel it is relevant to compare other properties that may or may not have been permitted or that may or may not have been issued a variance.

Mr. Muzzy also questioned whether there is even a well on this property. He said there is no topography to tell a person the grade of Mr. Scheid's road. Mr. Scheid drives up and down the road all the time, and it doesn't seem to be an issue. Mr. Muzzy said he would like to see documentation showing that the existing road doesn't meet the road grade. As Mr. Scheid continues to do work without getting permits, he feels the Scheid's don't deserve special treatment, especially when they don't meet the criteria.

Shirley Countryman, also a neighboring property owner, testified that a couple of years ago a tree fell on their cabin from an adjoining lot. In order to rebuild, they had to comply with everything the County required. They had to rebuild on the exact same footprint that was already in existence, and weren't allowed to enlarge it. Ms. Countryman feels if she and her husband had to abide by the law then everyone else should have to, including the Scheid's. She added that both she and Mr. Muzzy have driveways up to

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their cabins, which is the same type of road with a similar grade as Mr. Scheid. He doesn't seem to have any trouble getting to the top of his property as he drives there all the time.

Commissioner Dahlstedt motioned to deliberate and render a decision on this matter on Tuesday, February 15, 2005, at 2:30 p.m. Commissioner Anderson seconded the motion, which passed unanimously.

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:

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