

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
MONDAY, March 21, 2005**

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| 8:00 a.m. – 8:45 a.m. | Work Session – County Commissioners |
| 8:45 a.m. – 9:30 a.m. | Work Session – County Administrator |
| 11:00 a.m. – 11:30 a.m. | Consent Agenda and Miscellaneous Items |
| 11:30 a.m. – 11:45 a.m. | Public Comment Period |
| 1:30 p.m. – 2:30 p.m. | Closed Record Appeal (PL05-0046) Submitted by Don and Teri Saben of the Hearing Examiner's Decision Affirming the Denial of a Building Permit (BP03-1161) For a Residence |
| 2:30 p.m. – 4:30 p.m. | Executive Session – Personnel, Litigation and Land Acquisition |

The Skagit County Commissioners met in regular session on Monday, March 21, 2005, with Commissioners Don Munks, Kenneth A. Dahlstedt and Ted W. Anderson present.

CONSENT AGENDA

Commissioner Dahlstedt motioned to approve the Consent Agenda for Monday, March 21, 2005, items 1 through 20. Commissioner Anderson seconded the motion, which passed unanimously.

COMMISSIONERS' OFFICE:

1. Record of the Proceedings for Monday, March 14, 2005.
2. Record of the Proceedings for Tuesday, March 15, 2005.

BUDGET/FINANCE:

3. Contract between Skagit County and the Humane Society of Skagit Valley to provide shelter services for 2005. The agreement shall commence on January 1, 2005, and continue through December 31, 2005. Compensation shall total \$72,000 plus additional fees as needed on a per animal basis beyond a 72-hour period. **(Contract No. C20050138)**
4. Resolution AND Interlocal Cooperative Agreement between Skagit County and the Washington State Community Trade and Economic Development (CTED) for a \$15,000 Old Growth Diversification Fund Grant, which was awarded to Skagit County. The County will work with a regional team to complete an economic impact feasibility analysis to evaluate the creation of a value-added agricultural product and business development facility. The agreement shall commence on January 20, 2005, and continue through June 30, 2005. **(Resolution No. R200500090 and Contract No. C20050139)**

FARMLAND LEGACY:

5. Resolution AND Interlocal Cooperative Agreement between Skagit County and the Skagit Conservation District who will assist the Farmland Legacy Program in the monitoring of conservation easements in 2005 and 2006, as well as establishing "baseline" documentation where necessary. The agreement shall commence on March 1, 2005, and continue through December 31, 2006. Compensation is expected to total \$40,000. **(Resolution No. R200500091 and Contract No. C20050140)**

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HEALTH DEPARTMENT:

6. Amendment No. 1 to Personal Services Agreement **No. C20040073** with Sea Mar Community Health Clinic, which extends the contract duration to June 30, 2005, and adds an additional compensation amount of \$4,000 for a new contract total not to exceed \$9,000. This amendment allows for continuation of the project to apply dental sealants to eligible children in Skagit County schools. All other terms and conditions of the original contract shall remain in effect. **(Amendment No. A20050060)**

INFORMATION SERVICES:

7. Resolution authorizing the transfer of surplus computer equipment to the City of Anacortes. **(Resolution No. R20050092)**

PARKS & RECREATION:

8. Resolution authorizing a call for bids for sports field lighting at Custer Field at the Skagit Valley Playfields. The bid opening will take place on Monday, April 4, 2005, 9:45 a.m. **(Resolution No. R20050093)**

TREASURER:

9. Application to purchase tax title property from Donna Knutzen. The property is located in Cascade River Park No. 1, Lot 165. **(Approved)**

YOUTH & FAMILY SERVICES:

10. Interlocal Cooperative Agreement, per Resolution **No. 17300**, between Skagit County and the Anacortes School District to provide mental health services. The agreement shall commence on January 1, 2005, and continue through December 31, 2006. Compensation is not to exceed \$8,000 annually. **(Contract No. C20050141)**
11. Interlocal Cooperative Agreement, per Resolution **No. 17300**, between Skagit County and the Sedro-Woolley School District to provide mental health services. The agreement shall commence on January 1, 2005, and continue through December 31, 2006. Compensation is not to exceed \$7,400 annually. **(Contract No. C20050142)**
12. Interlocal Cooperative Agreement, per Resolution **No. 17300**, between Skagit County and the Mount Vernon School District to provide mental health services. The agreement shall commence on January 1, 2005, and continue through December 31, 2006. Compensation is not to exceed \$8,900 annually. **(Contract No. C20050143)**
13. Personal Services Agreement with the Center for Research and Learning, Laura J. Collins, Ph. D., to work with staff and consultants for the development and implementation of policies to screen at intake, refer for diagnosis, and intervene with juveniles with fetal alcohol spectrum disorders. The agreement shall commence on February 25, 2005, and continue until December 31, 2005. Compensation for these services is not to exceed a total of \$9,238. **(Contract No. C20050144)**

PUBLIC WORKS DEPARTMENT:

14. Resolution calling for bids for the 2005 Aggregate Crushing Project. The project provides crushing and stockpiling 65,000 tons of crushed screenings at Butler Hill Pit, which is necessary to provide for County road needs. The bid opening will be held on Tuesday, April 12, 2005, at 8:45 a.m. **(Resolution No. R20050094)**

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15. Annual Certification for Calendar Year 2004 County Road Certificate of Good Practice from the County Road Administration Board. **(Approved)**
16. Resolution awarding the bid for the procurement of maintenance materials with purchases expected to exceed \$25,000 annually to multiple vendors. **(Resolution No. R20050095)**
17. Amendment No. 1 to Personal Services Agreement **No. C20040172** with Likkel & Associates to provide transcription services on an as needed basis. The amendment extends the expiration date through June 30, 2006, and updates the fee schedule. All other terms and conditions of the original contract shall remain in effect. **(Amendment No. A20050061)**
18. Amendment No. 1 to Vendor Services Agreement **No. C20040461** with Dakota Creek Industries, Inc., which increases compensation in the amount of \$13,500 to a maximum of \$26,500 and adds additional language to the Scope of Work to include the replacement of #2 outdrive due to mechanical failure and other maintenance as needed. All other terms and conditions of the original contract shall remain in effect. **(Amendment No. A20050062)**
19. Professional Services Agreement with Parametrix, Inc., to provide engineering services for Inman Landfill, focusing on the operation of the existing landfill gas system. They will also determine if the system's flare may require downsizing to ensure proper and fulltime operation. The agreement shall commence on December 15, 2004, and continue through December 31, 2005. Compensation is not to exceed a total of \$5,000. **(Contract No. C20050145)**
20. Supplemental Agreement No. 1 to Local Agency Standard Consultant Agreement **No. C20040293** with Nicholls Engineering for the Helmick Road Improvement Project. The amendment extends the expiration date to December 31, 2005. All other terms and conditions of the original agreement shall remain the same. **(Amendment No. A20050063)**

MISCELLANEOUS ITEMS

1. Steve Flude, Assistant Public Works Director, presented an Emergency Resolution for the dry docking of the Guemes Ferry that occurred March 11-20, 2005. Commissioner Dahlstedt moved to approve the Resolution as presented, which was seconded by Commissioner Anderson. The motion carried unanimously. **(Resolution No. R20050096)**
2. Budget and Finance Administrator Trisha Logue presented a Resolution to award the issuance of bonds to Wells Fargo for solid waste refunding and purchase of property for the Family Resource Center. Commissioner Dahlstedt moved to approve the Resolution. Commissioner Anderson seconded the motion, which carried unanimously. **(Resolution No. R20050097)**
3. 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, March 21, 2005, 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 Xpress Flex from Clearing Fund 696 in the total dollar amount of \$258.50 (Transmittal No. C-35-05); and

ACH Transfer Request Form and Certification to Premera Blue Cross from Clearing Fund 696 in the total dollar amount of \$117,156.49 (Transmittal No. C-36-05); and

ACH Transfer Request Form and Certification to Premera Blue Cross from Clearing Fund 696 in the total dollar amount of \$68,006.29 (Transmittal No. C-37-05); and

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Warrants numbered 192926 through 193400 from Clearing Fund 696 in the total dollar amount of \$935,299.45 (Transmittal No. C-38-05); and

Purchase Card Electronic Payment to J.P. Morgan Chase from Clearing Fund 696 in the total dollar amount of \$28,073.23 (Transmittal No. C-39-05).

PUBLIC COMMENT PERIOD

Jack Cross of the Lake Cavanaugh Improvement Association spoke to the Board regarding the Park Comprehensive Plan. He urged the Commissioners to read the letter he submitted on March 16, 2005, regarding the Frailey Mountain Shooting Range.

Rich Royston of the Fair Advisory Board challenged the Commissioners to participate in a milking contest competition during the Skagit County Fair in August.

Mike Youngquist, 16402 Jungquist Road, Mount Vernon, spoke to the Board about a Community Trade and Economic Development (CTED) grant for Farmworker Housing. He asked for a revision to his previous request, which would name Skagit County and Douglas County as co-sponsors with Skagit County as the lead agency.

CLOSED RECORD APPEAL (PL05-0046) SUBMITTED BY DON AND TERI SABEN OF THE HEARING EXAMINER'S DECISION AFFIRMING THE DENIAL OF A BUILDING PERMIT (BP03-1161) FOR A RESIDENCE

Senior Planner Brent Morrow provided a map illustrating the property site and outlined the history of the permit and appeal process. On September 17, 2003, the applicants applied for a building permit; on February 2, 2004, the permit was denied by way of a Notice and Order to Abate. This action also revoked associated permits for a detached garage, a detached shop/garage, and an onsite sewage system. The applicants filed an appeal of the Notice and Order to Abate, which they withdrew.

On March 9, 2004, the permits for the garage, the detached/shop garage, and the onsite sewage system were reinstated and the plan review was allowed to resume for the building permit. The Planning and Permit Center issued a Notice of Decision denying the permit for a new residence on July 16, 2004. An appeal of the decision was filed by the appellant's counsel. The Hearing Examiner affirmed the administrative decision denying the appeal of building permit (BP03-1161) for a residence. The appellants filed a request for reconsideration, which was denied. The appellants then filed a Closed Record Appeal to the Board of County Commissioners.

The property of the appellants, Don and Teri Saben, is located at 30628 Lake Cavanaugh Road, Mount Vernon. The property is zoned Industrial Forest Natural Resource Lands. The appeal generally states that the appellants were not treated fairly by the County in terms of processing their permits associated with developing a residence in a Natural Resource Zone, which has caused the appellants to incur financial hardship and placed their lives in turmoil. Their counsel has interpreted Skagit County Code 14.16.410 to mean that the Sabens have a right to develop a residence on their property provided the specific conditions for residential development have been met. Mr. Morrow went over the appeal process procedure as outlined in the Skagit County Code.

Jeffrey Eustis, Attorney for the appellants, spoke about the appearance of fairness doctrine. He stated that the Board was sitting in the capacity of judges in this appeal, which is quasi-judicial proceeding, and the Sabens have a right to a proceeding that is fair in fact and appearance. He said that in Washington law the appellant must raise the issue of fairness at the beginning of the proceeding. Mr. Eustis asked if the Board had read all of the Sabens' exhibits. Commissioner Anderson stated that he had read the entire record and would be happy to answer any questions Mr. Eustis might have. Chairman Munks and Commissioner Dahlstedt expressed no opinion. Civil Attorney Don Anderson objected stating that this hearing was not a time to question the Board of Commissioners, but a time to present the argument of the client and the evidence that was presented at the hearing.

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Commissioner Munks agreed saying that it was the Board's responsibility to read the documents, which they had.

Mr. Eustis also spoke about predisposition. He asked if the Board had met in Executive Session on this matter. Attorney Don Anderson objected again, and Chairman Munks agreed with the objection.

Mr. Eustis stated that Mr. Anderson was the opposing counsel in the proceeding before the Hearing Examiner and he is now giving legal advice at this proceeding. Mr. Eustis stated that this is not fair to the Sabens since his viewpoint has a direct channel to the Board. He then asked if Mr. Anderson had met with the Board in Executive Session regarding the Sabens' permit. Attorney Don Anderson objected, stating once again that this hearing was not an opportunity to question the Board. He added that he was disappointed Mr. Eustis had waited until now to bring these questions forward. The discussion with the Board was brought forward by the Sabens' as a result of a lawsuit that they filed in Superior Court against the County. Any decision brought before this Board puts the County Attorney in a strange position because he not only serves as an advisor to the Planning Department, but also the Board of Commissioners.

Chairman Munks said that the Board was here to hear an appeal and no more questions would be allowed.

Mr. Eustis said that he did not know until this afternoon that Mr. Don Anderson would be appearing in this matter. He stated that the Sabens' are longstanding residents of Skagit County. They purchased a piece of property on Pilchuck Creek. They then came up against a number of inconsistent decisions by the County. The property consists of 18.9 acres off Lake Cavanaugh Road. Before closing on the property, the Sabens' applied for permits for a garage, shop, septic system, and a house. Also prior to closing, they received approval on garage, shop, and septic permits, and they received site plan approval on the house. Three months later, after giving these assurances the County changed its position for the first time. Mr. Eustis read a letter dated February 2, 2004, which revoked the permits for the garage, the shop and the septic system and denied the permit for the house because the residence did not meet the requirements for development in Industrial Forest Natural Resource Lands. He said that the Sabens were assured that they could get permits and they closed on their property thinking they could build a house.

On March 9, 2004, the Sabens received a letter from the County stating that upon review with legal counsel, the projects were in compliance with County Code, and that the three revoked permits would be reinstated and the review process for the residence would resume. Two items were identified that needed to be addressed – the property had to be accessory to timber use and have an individual water system. As a result, the Sabens withdrew their appeal of the Notice and Order to Abate, which they had filed in February. They then proceeded with developing the property, invested in Christmas trees, sold their residence and moved to the property. They invested approximately \$30,000. Mr. Eustis provided photos of the property and the shop.

In July, the Sabens received a letter from the Planning and Permit Center, which denied the permit for the residence stating that the project did not meet all the requirements for land development in the Industrial Forest zone and cited Skagit County Code 14.16. Section 410. This was basically the same position that was taken in February and opposite from Planning's position in March. Mr. Eustis said that the County gave the Sabens four readings on the project. He believes that the Sabens have been treated unfairly. There is an issue of government treating citizens fairly. He said that in the area of land use the owner has a right to use his/her land as they see fit unless there is a specific law to the contrary; land use laws are the exception to the common law right and are to be narrowly applied; and if the law is ambiguous the interpretation in favor of the free use of land is the one that prevails. He said that Section 410 and Section 850 of the County Code can be interpreted two ways because the County has done that. He stated that the interpretation that favors the Sabens should be followed. Mr. Eustis went over Section 410 and the criteria that must be met. He then went over Section 850 which states the exceptions for building outside a fire district. There is no dispute that the Sabens met those criteria, which apply to any zone. The Sabens have two recorded covenants from Big Lake and Lake Cavanaugh Fire Departments saying

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they will provide fire protection. Mr. Eustis stated that the Sabens are living on the property in an RV and issuance of the building permit would make a difference in the quality of their lives.

Attorney Don Anderson said the burden of the appellant is to show that the Hearing Examiner's decision was clearly erroneous and there is no evidence to that effect. The decision to close on the residence was made by the Sabens. He stated that they entered into the agreement to purchase the property subject to issuance of a building permit in three months. They received permits for the shop, garage, and septic system, but no permit was received for a residence and the Sabens closed on the property. If they had not closed on the property, the Sabens would not be in this position. Mr. Anderson said this was an error in judgment freely made on their part.

Mr. Anderson said that the Hearing Examiner stated that they met all the requirements of Section 850. However, the Hearing Examiner clearly stated that although there was ample evidence that the Sabens spent money based on the expectation of a permit, there was none showing that others similarly situated have been treated differently by the County in the past. The counsel for the Sabens would have the Board believe there was ambiguity and that in this case there should be a finding in their favor. Mr. Anderson said that this is not a case of ambiguity. It is a case of interpreting two County Code sections together. This interpretation of Section 410, if adopted by the Board, would allow building of any residence in any area with the permission of the fire chief. This withstands the specific code that says you cannot build in the Industrial Forest if you are outside a fire district. The Hearing Examiner stated that there was no requirement to notify the applicants as to how the County would interpret the Code. Mr. Anderson read a section from the Hearing Examiner's Findings and Conclusions stating that regarding the interpretation of the Planning and Permit Center, houses can be built outside of fire districts with certain safeguards, but specifically, Industrial Forest Natural Resource Lands district houses cannot be built outside of fire districts at all. A total ban of development of residences on Industrial Forest Land is entirely consistent with conservation of the land. The findings also stated that under the circumstances, the County's choice of readings was a rational one, and this choice was not clearly wrong.

Commissioner Anderson stated that he'd read all of the exhibits and couldn't find a record of a residential permit ever being issued. He asked Mr. Eustis if one had been issued and Mr. Eustis' response was no. He said this was a case of first impression, and there is no proof that assurances were made. There was no inconsistency, and the decision was not clearly erroneous.

Mr. Eustis said that the decision was clearly erroneous and it was also arbitrary and capricious for an agency such as the County to flip-flop on their analysis of their rulings. Four different rules were adopted. It is also clearly erroneous for the Hearing Examiner to give effect to Section 410 of the Skagit County Code and not the exceptions of Section 850

Commissioner Anderson stated that accessory buildings on resource lands are viewed differently than residences. He asked for clarification as to whether a building permit was ever issued and revoked.

Mr. Eustis stated that no building permit was ever issued and revoked. A letter was sent by the County stating that a review of the building permit process was resuming.

Commissioner Dahlstedt moved to render a decision on closed record appeal (PL-04-0046) submitted by Don and Teri Saben of the Hearing Examiner's decision affirming the denial of a building permit (BP-03-1161) for a residence on April 11, 2005, at 1:30 p.m. Commissioner Anderson seconded the motion, which carried 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:

Shirley Knapp on behalf of JoAnne Giesbrecht, Clerk of the Board
Skagit County Board of Commissioners