

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
TUESDAY, JULY 26, 2005**

- *T 8:30 a.m. – 9:00 a.m. Discussion/Possible Action – Interlocal Communications Network Consortium Agreement
- 9:00 a.m. – 9:30 a.m. Review/Signature – Red Hawk Estates Land Division
- *T 9:30 a.m. – 10:00 a.m. Discussion/Possible Action – Economic Development Grant Awards
- *T 10:00 a.m. – 11:00 a.m. Planning and Development Services – Gary Christensen, Director
 1. Discussion – Report on County Population Data Including Urban/Rural Growth Ratio
 2. Discussion – Development Review Timeline and Trend Analysis
 3. Discussion – Request for Proposals on Transfer of Development Rights Feasibility Study
 4. Discussion – Alger Subarea Plan Update
 5. Miscellaneous
- *T 11:00 a.m. – 12:00 p.m. Appeal Submitted by Roger Pederson of the Skagit County Health Officer's Decision Regarding Solid Waste Fine For Improper Disposal of Animal Carcasses

The Skagit County Board of Commissioners met in regular session on Tuesday, July 26, 2005, with Commissioners Don Munks and Kenneth A. Dahlstedt present. Commissioner Ted W. Anderson's absence was excused.

DISCUSSION/POSSIBLE ACTION – INTERLOCAL COMMUNICATIONS NETWORK CONSORTIUM AGREEMENT.

Information Services Director Mike Almvig presented an Interlocal Communications Network Consortium Agreement to the Board, which allows the creation of a communications network throughout Skagit County. The Agreement is between Skagit County, the City of Anacortes, the City of Burlington, the City Of Mount Vernon, the City of Sedro-Woolley, Public Utility District #1 and the Port of Skagit County. Mr. Almvig said the network spans from Anacortes to Concrete and all cities of Skagit County are using the network, including the Swinomish Tribe.

Commissioner Dahlstedt said he is pleased to see this partnership come together. Chairman Munks agreed and thanked Mr. Almvig for his efforts in making fiber optics available throughout the County.

Commissioner Dahlstedt motioned to approve the establishment of an Interlocal Cooperative Agreement between Skagit County, the Cities of Anacortes, Burlington, Mount Vernon, Sedro-Woolley, PUD #1 and the Port of Skagit County, as outlined by Mr. Almvig. Chairman Munks seconded the motion, which carried.

REVIEW/SIGNATURE – RED HAWK ESTATES LAND DIVISION.

Brandon Black, Senior Planner with the Department of Planning and Development Services, came before the Commissioners to request an alteration of final plat #PL05-0025, submitted by Landed Gentry. Mr. Black indicated that the proposed amendment is to adjust the lot lines of eight lots previously approved as Red Hawk Estates in 2000 to make the lots more easily developed.

Commissioner Dahlstedt made a motion to approve the Red Hawk Estates Alteration of Final Plat #PL05-0025 and sign the final plat mylar. The motion was seconded by Chairman Munks and passed.

(Approved)

DISCUSSION/POSSIBLE ACTION – ECONOMIC DEVELOPMENT GRANT AWARDS.

Budget/Finance Administrator Trisha Logue reviewed the Skagit County Economic Development Public Facility projects that were approved by the Public Facilities Project Review Committee. They are as follows:

- | | |
|---|-----------|
| • Bullerville Utility District - Water Utility Replacement | \$ 50,000 |
| • Port of Skagit County - TTM Building Improvement | \$200,000 |
| • City of Mount Vernon - College Way/Riverside Drive | \$300,000 |
| • City of Mount Vernon - College Way, Freeway Drive, Stewart Road | \$170,000 |
| • Town of Hamilton - Water System Relocation | \$300,000 |
| • Port of Anacortes - Pier 1 Redevelopment Phase I | \$400,000 |
| • City of Anacortes - Thompson Road Sewer Extension | \$ 66,000 |
| • City of Sedro-Woolley - Fruitdale/SR 20 Signalization | \$150,000 |

County Administrator Gary Rowe noted that Commissioner Anderson asked that improvements to Polte Road as requested by the City of Sedro-Woolley be reconsidered.

After a brief discussion, Chairman Munks motioned to approve the Committee's recommendations, including the Polte Road improvements in the amount of \$152,000. Commissioner Dahlstedt seconded the motion, which passed.

Ms. Logue indicated that a Resolution will be on the Consent Agenda for Monday, August 1, 2005.

PLANNING & DEVELOPMENT SERVICES – GARY CHRISTENSEN, DIRECTOR

1. Discussion – Report on County Population Data Including Urban/Rural Growth Ratio.

Senior Planner Kirk Johnson provided worksheets regarding the amount and location of population growth in Skagit County between 1995 and 2004. Mr. Johnson indicated that the information was compiled by Mark Personius, a land use consultant who assisted in developing the 2002 Skagit County Growth Management Indicators Report. Various Steering Committee members have requested this data, according to Mr. Johnson. They say it is hard to advise the County on its Comprehensive Plan without up-to-date information on development trends.

The area of greatest interest has been the ratio of urban to rural population growth. Compiled data revealed that the percentage of new growth going to urban areas (municipalities and unincorporated Urban Growth Areas) dropped below 80% from 2002 through 2004, although the trend appears to be moving back upward. The total or target that 80% of new population growth should go to urban areas is established in the Countywide Planning Policies. CPP 1.2 reads:

Cities and towns and their urban growth areas, and non-municipal urban growth areas designated pursuant to CPP 1.1 shall include areas and densities sufficient to accommodate as a target 80% of the County's 20 year population projection.

The policy specifically speaks to the sizing of UGAs sufficient to accommodate, as a target, 80% of the County's 20 year population projection. The focus is on achieving that target by enabling development in the UGAs rather than limiting it in the rural area. This is consistent with GMA's directive that counties and cities adequately plan for projected urban growth, and allow growth outside of UGAs "only if it is not urban in nature."

Not only must UGAs be sized adequately, but the cities (or non-municipal UGA providers, such as the County at Bay View Ridge) must be able to provide adequate infrastructure to accommodate the growth

**RECORD OF THE PROCEEDINGS
TUESDAY, JULY 26, 2005
PAGE NO. 3**

coming their way. Cities must also ensure that new development within their urban limits is occurring at appropriate urban densities, generally regarded as 4 dwelling units per acre, or greater.

Mr. Johnson said there are visual and anecdotal evidence that urban housing development is booming. While it is important to know where development is occurring, he feels it is also important to remember that the 80/20 target is established in the Countywide Planning Policies. It may be valuable to consider how the Comprehensive Plan can help to achieve the target, provided there is recognition that the plan and regulations in and of themselves do not specifically regulate how much development occurs in what locations in a given period of time.

Mr. Johnson also mentioned a memorandum that he received from Mr. Personius. Part of the memorandum states that population growth is closely associated with housing construction. Urban housing development, in particular, is most closely associated with employment growth – either locally or within commuting distance – while housing development in rural areas is typically subject to greater influence by non-employment driven factors such as lifestyle choice, density, and natural amenities. The economic recession experienced nationwide from 2001-2003 contributed to significant slowing of job growth, and even job losses, in the Puget Sound region and Skagit County, thus slowing the rate of urban housing development. This is likely to be a significant, though not necessarily the sole, contributor to the decreased share of urban housing growth experienced in the County during that period.

The Commissioners thanked Mr. Johnson for the update.

2. Discussion – Development Review Timeline and Trend Analysis.

Bill Dowe, Building Official, provided an update on timelines associated with development review and an analysis of trends in the County.

3. Discussion – Request for Proposals on Transfer of Development Rights Feasibility Study.

Gary Christensen, Director, stated that Skagit County is seeking a qualified consultant to evaluate the feasibility of a Transfer of Development Rights (TDR) program for designated agricultural and forest lands of long-term, commercial significance; environmentally-sensitive or critical areas; and lands of historical significance.

Natural resource land production in Skagit County is a big business, a way of life, and cherished by many. Mr. Christensen said there is increasing pressure to convert farms and forests to non-natural resource lands due to fluctuating economic conditions and population growth pressures. Also, there is the need to protect historic sites, critical areas and habitat within Skagit County as the area experiences rapid growth.

Mr. Christensen indicated that Planning and Development Services will continue to move forward with this proposal and will engage the help of the Ag Boards and Forestry Board in putting the program together.

Chairman Munks said the County must be careful to select a consultant that is familiar with the Farmland Legacy Program. The Program is moving along slowly, but it is working. Chairman Munks said he doesn't want to create any problems that may detract from its continued success.

Mr. Christensen indicated that an important component of Phase I is to look at programs elsewhere and decide if they would be feasible in Skagit County.

4. Discussion – Alger Subarea Plan Update.

Associate Planner Jeroldine Hallberg reported that the first community meeting for the Alger Subarea Plan is scheduled from 7:00 p.m. to 9:00 p.m., Wednesday, August 24, 2005, at the Alger Community Hall. Ms. Hallberg said approximately 1,300 residents will receive an initial mailing, which outlines the

**RECORD OF THE PROCEEDINGS
TUESDAY, JULY 26, 2005
PAGE NO. 4**

Community Plan. All citizens are invited to participate so the plan will be as all-inclusive as possible. A Citizens Advisory Committee will be appointed by the Board of Skagit County Commissioners. Ms. Hallberg indicated that Mark Personius will be the Plan consultant.

5. Miscellaneous.

- a) Senior Planner Brent Morrow asked the Board to approve a time and date to hold a public meeting to consider the Pulley Ridge Final Binding Site Plan, PL98-001A. The Plan has been submitted by the Upper Skagit Indian Tribe and is located on Bow Ridge Drive.

Commissioner Dahlstedt motioned to hold a public meeting as outlined by Mr. Morrow on Tuesday, August 9, 2005, at 11:30 a.m. Chairman Munks seconded the motion, which carried.

- b) Oscar Graham, Assistant Deputy Director, provided an update on the Critical Areas Ordinance. He indicated that a contract with Berryman & Heniger, consultants for the project, will be brought forward under a future Consent Agenda.

- c) Mr. Christensen brought forth an Interim Ordinance establishing interim controls on the permitting of single family residences in the Industrial Forest-Natural Resource (IF-NRL) zone that are located outside of existing fire district boundaries. The immediate adoption of an interim control affecting applications for permits for the construction of single family residences in the IF-NRL zone, but outside of an existing fire district, is necessary to achieve consistency between the County's Planning Policies, Comprehensive Plan, and Unified Development Code and for the immediate preservation of the public peace, health, and safety and for the support of County government and its existing institutions. Mr. Christensen noted that the Interim Ordinance would remain in effect for six months unless extended; however, a public hearing will be scheduled.

Commissioner Dahlstedt made a motion to approve the Interim Ordinance as outlined by Mr. Christensen. The motion was seconded by Chairman Munks and passed. **(Ordinance No. 020050010)**

Commissioner Dahlstedt also motioned to authorize a public hearing on this matter to be held on Monday, August 22, 2005, at 1:30 p.m. Chairman Munks seconded the motion, which carried.

APPEAL SUBMITTED BY ROGER PEDERSON OF THE SKAGIT COUNTY HEALTH OFFICER'S DECISION REGARDING SOLID WASTE FINE FOR IMPROPER DISPOSAL OF ANIMAL CARCASSES.

Richard Sybrandy, Attorney at Law, Mount Vernon, represented Roger Pederson. He provided a broad background of the factual chronology of what has taken place thus far. Mr. Sybrandy stated that on April 15, 2005, a search warrant was obtained for Mr. Pederson's property. Pursuant to the search warrant, two dead carcasses were found on the property. The Health Department made a determination that this was a violation of Skagit County Code, dealing with the disposal of dead animals. Mr. Sybrandy said a copy of the Notice of Violation was left on the premises; however, Mr. Pederson testified that he never received a copy of a warrant or any kind of Notice of Violation.

Mr. Sybrandy stated that Dr. Howard Leibrand, Skagit County Health Officer, did not treat this as a proper service in his report. Mr. Pederson testified that on April 19, 2005, he incinerated the two animals identified by the Board of Health that constituted a violation. He also submitted written testimony from Mr. Harris indicating that he assisted Mr. Pederson with incinerating the animals. On May 17, 2005, a second warrant was served; however, it was not for a continuing violation, but to investigate reports of animal cruelty. It was on that day that Matt Kaufman of the Health Department gave a copy of the Notice of Violation to Mr. Pederson. At that time, Mr. Kaufman also inspected a burn pile that held the remains of a dead animal. Mr. Pederson testified that this was not the same animal that had been subject to the first Notice of Violation, but a subsequent dead cow that he had incinerated. On May 20, 2005, Mr.

**RECORD OF THE PROCEEDINGS
TUESDAY, JULY 26, 2005
PAGE NO. 5**

Kaufman conducted a second inspection and found that the third carcass was gone and the issue was closed.

Mr. Sybrandy said the statute that establishes the violation of Skagit County Code (SCC) has certain requirements that need to be met. SCC 12.16.440 is what establishes the right and ability of the Health Department to assess penalties. Under subsection 4 of SCC 12.16.440, it states that "all notices, orders, civil penalties or assessed costs issued shall include a copy of Section 12.16.460, Hearings and Appeals. It was conceded at the prior hearing on this matter that the notice was never given in any of the correspondence that Mr. Pederson received. Without giving Mr. Pederson the right to appeal, the Department is deprived jurisdiction to assess this civil penalty, according to Mr. Sybrandy. Dr. Leibrand said in his report that because Mr. Pederson filed an appeal, this was not an issue. However, Mr. Sybrandy said the statute requires that an appeal notice be given and it wasn't.

Mr. Sybrandy stated that in SCC 12.16.440 it says that each continuing day constitutes a new and separate violation. Mr. Pederson said he incinerated the two cows on April 19, 2005, and has a witness to prove it. The Board of Health knew no differently because on May 17, 2005, they came to Mr. Pederson's property a second time. They had no idea when the two cows that constituted the initial violation were actually incinerated. The burden of proof is on the Board of Health to establish each and every continuing separate violation, according to the statute.

Mr. Sybrandy said Dr. Leibrand stated in his written decision that "The Appellants claim that the animal carcasses were completely destroyed on April 19, 2005. However, the Appellants made no attempt to notify the Health Department of this at the time so verification of destruction could not be made as required by code." Mr. Sybrandy said there is no code cited by Dr. Leibrand. In fact, there is no code that states that requirement. He said if you look at the way SCC 12.16.440 is written, it says each and every day is a separate violation and if it is, then the burden of proof has to remain every single day on the Department of Health to prove that the violation continued to exist. The Board of Health can not do this as they were not on Mr. Pederson's property again until May 17, 2005. They also can't prove that the partially burned carcass that they found at that time was one of the two carcasses that had been the subject to the Notice of Violation issued on April 15, 2005.

Mr. Sybrandy stated that the statute clearly states that a civil penalty cannot be assessed until service has been properly made. The jurisdiction to assess the civil penalty starts on the day that either personal service is made or certified mail is made. The statute says the notice must be sent to a residence, not a post office box. Mr. Sybrandy said the notice had been sent to Mr. Pederson's post office box and not to his residence. In addition, had Mr. Pederson known that it was his responsibility to call the Health Department and invite them to inspect his property for the proper disposal of the carcasses; he would have done so, argued Mr. Sybrandy. He urged the Commissioners to ignore any perceived political ramifications and abide by the rules.

Corinne Story, Environmental Health Supervisor, stated that Mr. Pederson was requested in the first letter that was sent to contact the Health Department regarding confirmation that the animals in question had been incinerated. The usual standard procedure for any solid waste violation is to contact the person and achieve cooperation to properly dispose of the animals. Confirmation of proper disposal of the animals was not received until May 17, 2005. At that time, it was apparent that the carcasses were not completely incinerated.

Mr. Kaufman stated that when he visited Mr. Pederson's farm on May 17, 2005, Mr. Pederson never indicated that the partial incinerated remains were anything other than the previous animals that were being investigated. Mr. Kaufman noted that the mailing address on the Assessor's database is the address that Mr. Pederson had selected for his preferred method of receiving information. The database did have the physical address as well as the mailing address. Mr. Kaufman also mentioned that for solid waste complaints, dated receipts are an acceptable means of showing that an animal has been properly disposed of. The Health Department does suggest to the individuals that they call the Department and confirm that the situation has been corrected. Mr. Kaufman also stated that he hand delivered the violation on April 28, 2005.

**RECORD OF THE PROCEEDINGS
TUESDAY, JULY 26, 2005
PAGE NO. 6**

Dr. Leibrand stated that during the previous hearing, he asked Mr. Pederson specifically if the partially consumed cow was the remains of the original cow or if it was another animal. Mr. Pederson would not answer that question, nor confirm whether this was a new cow or an old one.

Mr. Sybrandy said allegations can be made regarding the third animal; however, it is an unrelated allegation. Even though Mr. Kaufman stated that the Health Department always asks that verification be made confirming the incineration of the animals, the letter signed by Mr. Kaufman doesn't state that requirement. Mr. Sybrandy also asked why Mr. Pederson would file an appeal if the two animals had not already been disposed of. SCC states that "service of all notices, orders, civil penalties and unassessed costs shall be in person or by certified mail to the alleged violators and/or property owners last known place of residence. Mr. Sybrandy said if they are unable to deliver certified mail to that residence, then they must give it to them in person, like Mr. Kaufman did. It's on that day that a civil penalty can begin being assessed. That was done long after any evidence in this case shows that those two carcasses were destroyed, stated Mr. Sybrandy.

Ms. Story clarified the need for confirmation that the animals were disposed of.

Commissioner Dahlstedt motioned to render a decision on the appeal submitted by Roger Pederson on Tuesday, August 2, 2005, at 9:00 a.m. Chairman Munks seconded the motion, which carried.

ADJOURNMENT.

Commissioner Dahlstedt made a motion to adjourn the proceedings. Chairman Munks 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, Clerk of the Board
Skagit County Board of Commissioners