

**RECORD OF THE PROCEEDINGS  
SKAGIT COUNTY BOARD OF COMMISSIONERS  
TUESDAY, NOVEMBER 29, 2011**

The Skagit County Board of Commissioners met in regular session on Tuesday, November 29, 2011, with Commissioners Ron Wesen, Kenneth A. Dahlstedt, and Sharon D. Dillon present.

I. CALL TO ORDER:

Chairman Wesen called the proceedings to order at 9:30 a.m.

II. PLEDGE OF ALLEGIANCE:

Chairman Wesen led the gallery in the salute to the flag.

III. AGENDA:

- a) 9:30 a.m. - 11:00 a.m. Closed Record Appeals of Preliminary Approval of Short Plat 93-0040, a Three-Lot Short Plat, Submitted on June 10, 1993, Approved November 3, 2010:

Chairman Wesen welcomed all parties to the closed record appeal and excused Commissioner Dahlstedt who would be arriving later in the morning. Chairman Wesen announced how long each party would have for their presentations and stated that no new evidence or testimony could be heard.

Senior Planner Marge Swint gave some background information on the application which was submitted in 1993. Ms. Swint described the property which was designated as residential at the time of application. Ms. Swint stated that the application was reviewed by multiple parties and the property was foreclosed on and purchased by Mr. Dent who met with Planning and Development Services to discuss what needed to be done in order to finalize the land division. Planning and Development Services granted preliminary plat approval on November 3, 2010. The matter was appealed by Mr. Weeks. After the hearing, the Hearing Examiner overturned Planning and Development Services approval of the plat, however, after Mr. Dent filed a request for reconsideration the Hearing Examiner reversed his initial decision on the appeal and affirmed the preliminary approval of the short plat saying that further argument was needed. Timely appeals were filed by Mr. Weeks and Evergreen Islands and after the Commissioners hear the arguments they may either remand the matter back to the Hearing Examiner for further consideration, deny the appeal and affirm the decision of the Hearing Examiner, or adopt their own findings and conclusions if they find the Hearing Examiner's decision clearly erroneous.

1. Case No. PL#11-0362, submitted by Robert Weeks

Attorney Tom Moser was present on behalf of his client Mr. Robert Weeks. Mr. Moser stated that the application was seriously flawed and incomplete, and that the applicant abandoned the project and foreclosed on the property. Mr. Moser stated that after 17 years, in 2010, Mr. Dent who had purchased the property, reapplied to Planning and Development Services (PDS) under

the same 1993 application and PDS allowed Mr. Dent to amend the application and move it towards finalization.

Mr. Moser stated that had Mr. Dent submitted a new application in 2010, it would not have been allowed to be processed. Mr. Moser believed PDS made many mistakes in the processing of the application and PDS should not have allowed Mr. Dent to reactivate the 17 year old application. Mr. Moser stated that he had correspondence from PDS to the original applicant which showed that PDS needed more information in order to process the application, and that this letter was ignored and the application lapsed. Mr. Moser stated that the 17 year old expired application could not have been vested. Mr. Moser pointed out Skagit County Code 14.06.100 lapsed an application if additional information is requested and not received within 180 days. Mr. Moser discussed case law with the Commissioners regarding vesting of property.

Mr. Moser ended by stating that if the property had vested, it lapsed; and he pointed out that there was no connection between the original applicant and Mr. Dent; and that the property in question was now zoned as 5 acre minimum lot sizes. Mr. Moser thanked the Commissioners for their time.

2. Case No. PL#11-0366, submitted by Evergreen Islands

Attorney Jeffrey Eustis was present on behalf of his client, Evergreen Islands, which is a non-profit group of Skagit County citizens who wish to protect and preserve the character of Skagit County marine islands and shorelines. Mr. Eustis stated that the application was incomplete and was not entitled to vested rights. Furthermore, he stated that if the property was vested, Mr. Dent was not entitled to succeed the vested rights since they would have ended with the foreclosure of the property. Mr. Eustis stated that according to state law, only fully completed applications could be vested and that the application in question was not completed as there were four specific things that PDS requested from the applicant in 1993. Also, Mr. Eustis stated that according to state law, property could not be vested unless it was approved by a permit and substantial improvements had been made to the property. Mr. Eustis stated that neither of these requirements were met. Mr. Eustis stated that staff at PDS did not have the authority to approve an old application which, according to state laws, was not vested. Mr. Eustis discussed case law with the Commissioners regarding an issue where staff approved an application which should not have been approved.

Mr. Eustis ended by saying that when Mr. Dent purchased the property, he did not automatically inherit the application which was started by the previous owner. He stated that Mr. Dent only inherits the title to the property.

Robert Carmichael was present on behalf of his client Mr. Larry Dent. Mr. Carmichael stated that Mr. Dent went through a very lengthy process to have this approved by PDS and reconsidered by the Hearing Examiner. Mr. Carmichael pointed out that the Hearing Examiner reversed his original decision on the matter and approved the preliminary short plat after carefully reviewing each argument and issue. Mr. Carmichael stated that Mr. Dent purchased the property as an investment and that he confirmed annually that the application was complete. Mr. Carmichael stated that staff at PDS placed the application on hold. They did not

determine it incomplete and return the application. Mr. Carmichael stated that PDS requested more information, and often does when processing short plats, but that the information was not needed for the application to be complete.

Mr. Carmichael discussed case law with the Commissioners regarding information needed when processing short plat subdivisions that proved Mr. Dent's application was vested. Mr. Carmichael argued that Mr. Eustis provided incorrect information regarding the criteria necessary to consider an application complete. Mr. Carmichael urged the Commissioners to review the case law and ordinance. Mr. Carmichael stated that the application could not have lapsed since it was considered complete.

Mr. Carmichael further pointed out that Skagit County had no code in place to trigger a lapsed application. Mr. Carmichael stated that argument was made asking how a 17 year old application could be placed on hold and reactivated? Mr. Carmichael pointed out that no ordinance was in place to lapse the application and that Mr. Dent was never given notice that the application had lapsed.

Mr. Carmichael stated that when Mr. Dent purchased the property, he did not move forward with the application right away since he needed to first obtain water rights for the property. He received water rights in 2010. Mr. Carmichael stated that Skagit County now had an ordinance in place that provided a way to lapse applications, however, this was not in place or in effect for Mr. Dent's application.

Mr. Carmichael stated that argument was made which raised the issue of Mr. Dent being able to take over the application from the previous owner. This was an issue brought up by the Hearing Examiner, not the appellants, and the Hearing Examiner could find no clear authority for ruling on this issue. Mr. Carmichael stated that researching this matter in this case would involve a lot of time and resources since this is a case of first impression and the issue has the potential of going to the Court of Appeals and Supreme Court. Mr. Carmichael ended by saying that the appellants did not meet the burden of proving the Hearing Examiner made a clearly erroneous decision and no legal authority was given to prove their cases.

Senior Deputy Prosecuting Attorney Arne Denny stated that the matter discussed by the attorneys of whether or not Mr. Dent could take over the application from the previous owner after the property was foreclosed on would be a case of first impression and may warrant investigation. The other issues raised were application completeness and vesting and there is the question of which issue prevails. Mr. Denny stated that it may be a good idea to remand the matter back to the Hearing Examiner for further consideration.

Mr. Moser stated that Mr. Carmichael said that Mr. Dent was never given notice that the application had lapsed. Mr. Moser stated that such notice was impossible as Mr. Dent was not the applicant who notice would have been sent to. Mr. Moser stated that in order for Mr. Dent to move forward with the application, he would have to successfully link together the issues of application vesting, lapse, notice, and assignment, which had not been done and could not be done. Mr. Moser stated that the Hearing Examiners decision needed to be reversed.

Mr. Eustis stated that Mr. Carmichael's argument of requirements for application completeness were incorrect and that the ordinance and laws were one and the same and that the application was incomplete and could not be vested.

Chairman Wesen thanked each party for their presentations and stated that a decision would be made on December 13, 2011 at 11:00 a.m. Chairman Wesen reminded the parties that since the Commissioners were sitting as judges on this matter, further questions or comments should be directed to the civil deputy prosecuting attorney or the clerk of the board. Chairman Wesen recessed the proceedings at 10:49 a.m.

- b) 11:00 a.m. - 11:30 a.m. Planning and Development Services - Gary Christensen, Director:

Chairman Wesen reconvened the proceedings at 11:01 a.m.

1. Discussion/Possible Action - 2011 Comprehensive Plan Amendment Docketing

Senior Planner Kirk Johnson stated that the Commissioners have had an opportunity to consider each proposed comprehensive plan amendment and decide which ones to consider for docketing. Mr. Johnson stated that adding a proposed item to the docket would allow it to be reviewed and considered but not guarantee its final approval.

Chairman Wesen asked the Commissioners for their input.

Commissioner Dillon stated that she reviewed each of the four items and is committed to maintaining and preserving farmland in Skagit County. For that reason, she said that she would not recommend docketing item no. 1, PL11-0239 of James Ritchie; item no. 2, PL11-0240 of Art Jensen; and item no. 3, PL11-0249 of Triton-America LLC. She said that she would recommend docketing item no. 4, PL11-0250 of Lake Erie Trucking so that the matter could be investigated properly in order to determine whether or not a map amendment would be appropriate.

Commissioner Dahlstedt briefly discussed item no. 1 and no. 2 with Mr. Christensen and Mr. Johnson. Commissioner Dahlstedt believed that Planning and Development Services may have made a mistake in 1964 when they failed to include Mr. Ritchie's parcel in the re-designation. Commissioner Dahlstedt also believed that item no. 2 would be worth investigating since he realized that the lines which are drawn on maps do not always make sense. Commissioner Dahlstedt recommended docketing item no. 4 and recommended not to docket item no. 3.

Chairman Wesen stated that he went out and looked at the Ritchie property, item no. 1 and saw the ditches they discussed and saw that it was, indeed, a long, skinny parcel that would make it more difficult to farm. Chairman Wesen stated that item no. 1 warranted a closer look and review and he would recommend docketing it. Chairman Wesen then discussed item no. 2 and is aware of the residential growth in the Bayview area. He questioned the drawing of a line on a map according to an electric fence and stated he believed this would warrant a closer look as well. After reviewing item no. 3, Chairman Wesen decided it would not be an appropriate item to docket and Chairman Wesen has many concerns regarding item no. 4 that should be addressed and he would recommend docketing it so that questions may be

answered.

A motion was made by Commissioner Dahlstedt to approve to docket item numbers 1, 2, and 4: PL11-0239 of James Ritchie, PL11-0240 of Art Jensen, and PL11-0250 of Lake Erie Trucking; and the policy amendment proposals C1, C2 and C3 by Planning and Development Services. Chairman Wesen seconded the motion.

The vote passed on a 2 - 1 vote with Commissioner Dillon dissenting.

Mr. Johnson said that Planning and Development Services would prepare a resolution for the Commissioners signature reflecting their vote on this matter and that the next step for the 3 applicants be to complete SEPA checklists.

Chairman Wesen recessed the proceedings at 11:15 a.m.

c) 11:30 a.m. - 11:45 a.m. Public Comment Period

Chairman Wesen reconvened the proceedings at 11:30 a.m.

Michael Hawkings of 25816 Minkler Road in Sedro-Woolley was present to discuss his access to a piece of property he owns in the concrete area. He stated that he has been granted a temporary easement across Skagit County property to his 25 acre parcel and he discussed his past attempts to gain permanent access to his property. He asked the Commissioners if they would consider some sort of a land trade so that he would be able to gain permanent access to his land.

Commissioner Dahlstedt stated that the Commissioners would need to make decisions based on what is best for the general public and they would also prefer not to hinder Mr. Hawkings access to his land.

Chairman Wesen asked Mr. Hawkings to put together some proposals for the County to review.

Carol Ehlers of Fidalgo Island was present to comment on land divisions, drainage issues, and Homeowners Associations in Skagit County. She also commented on the difficulty of interpreting black and white well water maps of Skagit County and that it was difficult to determine what amount of water was available for property owners. She ended by saying that landslides are caused by topography, geography, water, and human activity. She stated that the Public Works Department has many drainage systems and that not all of the locations are known

IV. ADJOURNMENT:

Chairman Wesen adjourned the proceedings at 11:43 a.m.

The Commissioners attended an executive session from 2:02 p.m. to 3:12 p.m. on Wednesday, November 30, 2011. The purpose of the executive session was Personnel Disciplinary Matters - RCW 42.30.110(1)(f). (Matters relating to complaints against County employee or elected official.) Commissioners Ron Wesen, Ken Dahlstedt, and Sharon Dillon, and County Administrator Tim Holloran, Human Resources Director Billie Kadrmas, and Budget and Finance Director Trisha Logue also attended the executive

session.

**BOARD OF COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON**

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Ron Wesen, Chairman

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Kenneth A. Dahlstedt, Commissioner

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Sharon D. Dillon, Commissioner

ATTEST:

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Linda Hammons, Clerk of the Board