

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
TUESDAY, SEPTEMBER 10, 2013**

The Skagit County Board of Commissioners met in regular session on Tuesday, September 10, 2013, with Chair Sharon D. Dillon, Commissioner Ron Wesen, and Commissioner Kenneth A. Dahlstedt present.

I. CALL TO ORDER:

Chair Dillon called the proceedings to order at 8:30 a.m.

II. PLEDGE OF ALLEGIANCE:

Chair Dillon led the gallery in the salute to the flag.

III. AGENDA:

a) 8:30 a.m. - 9:00 a.m. Public Works - Henry Hash, Director:

1. Discussion/Possible Action: Consideration of an Ordinance Amending Skagit County Code Chapter 12.18

Henry Hash, Director, was present to introduce the agenda item and answer questions.

Kevin Renz, Solid Waste Division Manager, indicated that the proposed ordinance would amend Skagit County Code 12.18 to bring it in line with stated solid waste policy as expressed in Skagit County Resolution No. R20070141 which directed Public Works staff to draft an amendment to Skagit County Comprehensive Solid Waste Management Plan (CSWMP) and chapter 12.18 of Skagit County Code, the amended CSWMP and Skagit County Contract No. C20080306, an Interlocal Cooperative Act Agreement (as amended by Amendment No. A20100124) between Skagit County and municipalities.

There was a discussion about flow control, the ability to make amendments to rate structures, recycling, and the ability for redevelopment in other areas.

A motion was made by Commissioner Wesen to approve adopting the Ordinance amending Chapter 12.18 Skagit County Code with the requirement that rate structure will be reviewed in 60 days. **(Contract No. C20130002)** Commissioner Dahlstedt seconded the motion. The vote passed unanimously.

2. Miscellaneous

There were no miscellaneous items for Public Works to discuss.

Chair Dillon recessed the proceedings at 8:38 a.m.

b) 9:00 a.m. - 9:45 a.m. Public Works - Henry Hash, Director:

Chair Dillon reconvened the proceedings at 9:00 a.m.

1. Public Hearing/Possible Action: Consideration of a Resolution Authorizing Execution of a Franchise Agreement with Thomas James Dodd and Consideration of a Nonexclusive Franchise Agreement with Thomas James Dodd

Henry Hash, Director, was present to introduce the agenda item and answer questions.

Tory Nelson, Engineering Technician, provided a map depicting the location of the proposed Franchise Agreement. He stated that the Franchise Agreement was a result of the terms in the Settlement Agreement Contract No. C20130234 between Mr. Dodd and Skagit County.

Steve Fallquist, Civil Deputy Prosecuting Attorney, indicated that the terms of the Settlement Agreement did not obligate the County to execute the Franchise Agreement, he believed that it would be in the County's best interest to execute the Agreement, preserve the right of way and be permanently dismissed from the lawsuit.

Chair Dillon opened the public hearing at 9:05 a.m.

Craig Cammock indicated that he represented Mr. Dodd in the matter and provided information about the background on the property. Mr. Cammock requested that the County approve the Franchise Agreement which would allow Mr. Dodd to complete construction of his house.

Roger Peterson of 12354 Bayview Cemetery Road in Mount Vernon indicated that his family had owned the property since 1903. He indicated that the property dispute began with a 1999 survey and provided a brief history of the dispute and addressed his objection to the assertion that Mr. Dodd owned the property in question.

Mr. Fallquist pointed out that the lawsuit was essentially between Mr. Dodd and the Petersons. He indicated that the Settlement Agreement was not intended to resolve the dispute between Mr. Dodd and the Petersons. Mr. Fallquist went on to explain that the County does have the authority to grant the Franchise Agreement and recommended that the County execute the Franchise Agreement and settle the litigation and permanently dismiss the County from the lawsuit.

There was a discussion about the number of right of ways with Franchise Agreements for utilities, and the accuracy of surveys.

Mr. Cammock commented on the survey lines and the County's concerns about running into this issue in the future and discussed the note on the survey.

Mr. Peterson responded stating that there was a definite difference of opinion regarding the ownership of the property.

Commissioner Dahlstedt made a motion to close the public hearing at 9:30 a.m. Commissioner Wesen seconded the motion which passed unanimously.

A motion was made by Commissioner Wesen to approve rendering a decision of a Nonexclusive Franchise Agreement with Thomas James Dodd on Tuesday, September 17, 2013, at 3:00 p.m. Commissioner Wesen seconded the motion. The vote passed unanimously.

Chair Dillon recessed the proceedings at 9:30 a.m.

c) 9:45 a.m. - 11:45 a.m. Board of County Commissioners:

Chair Dillon reconvened the proceedings at 9:50 a.m.

1. Closed Record Appeal Submitted by the City of Sedro-Woolley Appeal PL#13-0265 of the Hearing Examiner's Decision, Dated June 28, 2013, Regarding Skagit County Dike, Drainage and Irrigation District No. 12 Request for Shoreline Substantial Development Permit No. PL12-019

Chair Dillon made an opening statement and indicated that the purpose of the Closed Record Hearing Number PL13-0265, submitted by the City of Sedro-Woolley of a Shoreline Substantial Development Permit PL12-0194, submitted by the Skagit County Dike, Drainage and Irrigation District No. 12 regarding the Hearing Examiner's decision, dated June 28, 2013. The time set for the hearing was two (2) hours. The Commissioners would hear presentations from the Planning department staff, up to 20 minutes; from the Appellant, for approximately 20 minutes; from the Respondent, or any Parties of Record, being any person who had testified at the prior hearing on the issue or who had submitted a written statement, or had formally

requested to receive information on this issue, for approximately 20 minutes; and then finally, rebuttal statements from the staff, then from the Appellant for up to 10 minutes each.

Chair Dillon went on to state that this was a closed-hearing, so under Skagit County Code, the Commissioners could not hear any new evidence or testimony. Instead, they would hear arguments based on the record that was before them from the Hearing Examiner.

John Cooper, Senior Planner, provided a brief summary of the proposal submitted by Skagit County Dike, Drainage and Irrigation District No. 12 and stated that the appeal submitted by the City of Sedro-Woolley was submitted in a timely manner.

Craig Sjoström, Attorney for the Appellant, made an opening statement on behalf of the City of Sedro-Woolley. He indicated that the City did not believe that there had been adequate consideration given to the upstream effect of the dike project. He indicated that the decision approved the dike project without requiring additional studies to show the effects of the proposed project on the City of Sedro-Woolley, nor did it require any protective measures designed to eliminate, or at least ameliorate, the concerns raised by the City of Sedro-Woolley. He indicated the decision further allowed the dike project to go forward, independent of the ongoing Skagit River General Investigation (GI) Study process. Mr. Sjoström went on to say that the City was not opposed to flood control but were opposed to the piece-meal process that was not fully integrated. Mr. Sjoström requested that the Commissioners remand the matter to the Hearing Examiner for further study, require additional protective measures, including but not limited to additional diking around the Hospital, the City of Sedro-Woolley's Water Treatment Plant, and integrate the project with the GI process.

Eron Berg, City of Sedro-Woolley Supervisor/Attorney, stated that the City was not opposed to one community protecting itself, he addressed concerns about where the water would flow.

John Shultz, Attorney for the Respondent, made an opening statement and indicated that the City of Sedro-Woolley concerns had been addressed and discussed that the project would have no effect to the City of Sedro-Woolley. He provided an Exhibit from the Army Corps of Engineering and stated that the project had been reviewed by the Hearing Examiner and that he had determined that the project should not wait for the GI study to be completed. Mr. Shultz indicated that the project had been closely studied and analyzed. He went on to provide information about the Environmental Impact Study and discussed several exhibits that had been submitted during the hearing before the Hearing Examiner. Mr. Shultz requested that the permit approval by the Hearing Examiner be approved and affirmed by the Skagit County Board of Commissioners and that the appeal of the City of Sedro-Woolley be denied.

John Semrau, Civil Engineer representing Dike, Drainage and Irrigation District No. 12, provided a brief summary from testimony before the Hearing Examiner, Exhibit 32, Exhibit 17, 19 and from within the EIS. He stated that the analysis in the EIS showed the impacts using both the Army Corps of Engineers and PIE Hydrology. He provided a map from page 55 of the EIS depicting the project. Mr. Semrau discussed the impacts and the amount of change that would be caused by the project. He indicated that the impacts and amount of change were so minimal and difficult to measure, he provided a map which showed the 0.1 foot impact. He indicated that the project does not propose to stop the Dike District 12 Spill at Whitmarsh Road at the 100 year Corps flow. He concluded by stating that one of the many reasons the Northeastern Levee Project was separate from the Three Bridge Corridor Levee Project was because they were independent hydraulically and that there was no engineering reason to connect the two projects.

City of Sedro-Woolley Mayor Mike Anderson commented on the backup of the water and addressed concerns about public safety issues for the City of Sedro-Woolley.

Larry Kunzler addressed concerns that the Respondent and their consultants had mislead the facts of the project. He provided a map depicting the hydraulic analysis prepared by NHC. He indicated that it was not the Burlington Northern Santa Fe Bridge that was backing up the water, that it was Dike District 12. He requested that the Commissioners remand the issue back to the Hearing Examiner.

Lorna Ellstad, Dike District 12 Commissioner, commented on the information produced by the GI Study and the benefits of the project.

There was a discussion about which EIS hydrology numbers the Federal Government would adopt, whether the County had the authority to condition a Flood Shoreline Permit on Federal Flood Standards, and if there would be Federal Preemption Issues associated with the Project.

Mr. Semrau made a rebuttal statement regarding the goal and purpose of the EIS. He indicated the project was tailored to not have an adverse impact either upstream or downstream.

Mr. Sjostrom made further rebuttal statements and proposed that the issue be remanded to the Hearing Examiner.

Mr. Berg urged the Commissioners to review pages 47 and 50 and to review the contour lines.

Chair Dillon stated that under Skagit County Code, the Board of County Commissioners, were directed to render its decision within sixty (60) days of the appeal; she noted that the sixty (60) decision period had been waived by all the parties. Chair Dillon indicated that the Board would consider the evidence and were scheduled to render its decision in public session on Tuesday, September 24, 2013, at 10:00 a.m. She said that this was a quasi-judicial proceeding, which meant in this instance, the Commissioners were sitting as judges, not lawmakers. She instructed the parties not to contact members of the Board about this matter before a decision had been rendered. If the parties had questions, they are directed to contact Civil Deputy Prosecuting Attorney Will Honea, who is representing the Board in this matter, or the Clerk of the Board Linda Hammons.

Chair Dillon recessed the proceedings 11:15 a.m.

d) 11:45 a.m. - 12:00 p.m. Board of County Commissioners:

Chair Dillon reconvened the proceedings at 11:45 a.m. Commissioner Dahlstedt's absence was excused from the public comment portion of the proceedings.

1. Public Comment Period

Seeing no public comment forthcoming, Chair Dillon closed the public comment period at 11:46 a.m.

2. Miscellaneous Announcements

The Washington State Department of Transportation would slide the permanent span for the Interstate 5 Skagit River Bridge into its final location and the roadway would reopen to traffic at approximately 2:00 p.m. on Sunday, September 15, 2013.

The Board of County Commissioners would make a decision on closed record hearing number PL13-0265, submitted by the City of Sedro-Woolley of a Shoreline Development Permit PL12-0194, submitted by the Skagit County Dike, Drainage and Irrigation District No. 12 on Tuesday, September 24, 2013, at 10:00 a.m.

Public Hearing to consider testimony regarding a Planning and Land Use Legislative Reform Ordinance was scheduled to be heard by the Board of County Commissioners on Tuesday, September 24, 2013, at 10:30 a.m.

VII. ADJOURNMENT:

Chair Dillon adjourned the proceedings at 11:49 a.m.

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Sharon D. Dillon, Chair

Ron Wesen, Commissioner

Kenneth A. Dahlstedt, Commissioner

ATTEST:

Clerk of the Board