

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
TUESDAY, FEBRUARY 21, 2017**

The Skagit County Board of Commissioners met in regular session on Tuesday, February 21, 2017, with Chair Ron Wesen, Commissioner Kenneth A. Dahlstedt, and Commissioner Lisa Janicki present.

I. CALL TO ORDER:

Chair Wesen called the proceedings to order at 9:46 a.m.

II. PLEDGE OF ALLEGIANCE:

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

III. AGENDA:

a) *8:30 a.m. - 9:00 a.m. Briefing - County Commissioners/County Administrator, Planning and Development Services, and Public Health

b) 9:45 a.m. - 10:30 a.m. Public Works - Dan Berentson, Director:

Director Berentson indicated that if there was time after the ferry and bridge updates, they would provide some information regarding Fish Creek in the Concrete area.

1. Update: Ferry Replacement & Burlington Northern Overpass Projects

Ferry Operations Division Manager Rachel Rowe provided a timeline which outlined meetings, studies, research and actions taken from 2012 to the present involving plans for the replacement of the Guemes Ferry.

Link to the Guemes Ferry Replacement Project Timeline:

<ftp://ftp.skagitcounty.net/countycommissioners/documents/agendapackets/02202017/>

Ms. Rowe and the Commissioners discussed the Request for Qualifications that was being released for naval architecture and marine engineering services.

Next, Director Berentson introduced Project Manager Jennifer Swanson to provide an update on the Burlington Northern Overpass Bridge project.

Ms. Swanson informed the Commissioners that demolition of the current bridge would be occurring in mid-March 2017 but that the exact schedule depended on final approval from BNSF Railway. She said that they were working on scheduling “windows of work” for when complicated work could be performed during times when no trains were scheduled to be moving through the area. Ms. Swanson also shared plans for signage for a detour to Avalon Golf Course.

Discussion was held regarding the demolition of the bridge and taking additional precautions due to the proximity of homes to the east of the area.

Public Works ended their update with information provided by Engineer Paul Randall-Grutter regarding Fish Creek and sediment that was blocking a culvert at Grasmere Road where it crossed Highway 20. He shared possible solutions to improve the flow of the creek.

Further discussion was held with the Commissioners and they requested Public Works hold a meeting to gather input from the affected property owners and community regarding a solution.

Chair Wesen recessed the proceedings at 10:13 a.m.

- c) 10:30 a.m. - 11:30 a.m. Closed Record Appeal #PL16-0552 Submitted by Lori and Paul Lindsay of Case #PL15-0485 Regarding the Hearing Examiner's Decision, Dated October 26, 2016, in the Matter of the Appeal of an Administrative Order to Pay Civil Penalties

Chair Wesen reconvened the proceedings at 10:30 a.m. and provided introductory remarks outlining the closed-record appeal process.

Justin Rothboeck, Attorney for the Appellants, provided a presentation outlining that his clients, Lori and Paul Lindsay of Flower of Life Farms, had a vested right on their property to finish the installation of hoop houses in a 30,000 square foot area. Mr. Rothboeck said that at the time of the Hearing Examiner's decision, the Lindsays presented evidence that they had already established and installed, within the 30,000 square foot area, was Cat 5 electrical cabling and fertilizer and irrigation lines which should have secured them the right to finish their installation plans of the hoop houses.

Mr. Rothboeck also discussed the complication to the question regarding when the right was vested due to the nature of the approval process for the Lindsays operation, which did not require a permit, and therefore needed to be considered differently. He summarized that the Lindsays had established the foundation, approximately half, of their project in time to complete it with the installation of hoop houses. Mr. Rothboeck also pointed out that the neighbors fears and concerns about the nature of the business were not well founded, nor would they change according to the size of the business. He asked the Commissioners to overturn the determination of the Hearing Examiner and allow the Lindsays to finish the project (which had started with a site plan in 2013).

Appellant Lori Lindsay provided a presentation regarding their decision to grow marijuana on their property in Skagit County and the roadblocks they had experienced.

Assistant Director Ryan Walters of Skagit County Planning and Development Services provided a presentation outlining that staff had worked with the Lindsays and resolved all but one issue: their expanded grow operation from 7,800 structural square feet to 30,000 square feet. Mr. Walters said that the code had been applied properly and that the appellants did not provide adequate proof or case law to overturn the Hearing Examiners decision.

Mr. Walters also discussed vesting and legally established, pre-existing, non-conforming uses: uses where a structure is established legally, but is no longer permitted due to an update in the code. He indicated that one would then have a legal non-conforming structure or use which could remain, but could not be expanded. Mr. Walters asked the Board to uphold the Hearing Examiners decision, since there was no legal authority provided, and dismiss the appeal.

Mr. Rothboeck said that the county's interpretation of when a non-conforming use was vested was too ridged and absolute, and that coming into compliance over the last three years had been difficult for the Lindsays due to the number of updates made to the code.

Lori Lindsay said that she felt that Skagit County did not support their business and was disappointed when the county became reactive with their neighbors about their endeavors.

Mr. Walters said that the question of the non-conforming use was irrelevant since there was no application or permit issued for tempering a judgement. He said that in this type of situation, when a new rule goes into effect, what you have established at that time is what you are allowed to have.

Civil Deputy Prosecuting Attorney Will Honea outlined the process in place in order to resolve a code-related dispute with Planning and Development Services before filing a lawsuit in court. (If a person believes Planning and Development Services made a bad decision, the matter is taken to the Hearing Examiner. If a person believes the Hearing Examiner also made a bad decision, then the matter is taken to the Board of County Commissioners who hold a quasi-judicial proceeding and hear arguments based on the record from the Hearing Examiner.)

Mr. Honea asked if he understood the issue that there's a contention that the right to cover 30,000 square feet was vested? He was answered in the affirmative. Mr. Honea said that, unfortunately, both parties failed to refer to any case law to help prove their position.

Mr. Honea researched case law regarding vested rights and found a case from the Washington Court of Appeals to apply to the Lindsays appeal: Potala Village, LLC v. City of Kirkland. He briefed Mr. Rothboeck and Mr. Walters on the case and asked them to address the controlling aspects of the case in absence of any other case law.

Discussion was held regarding the application of Potala Village, LLC v. City of Kirkland and at what level of infrastructure would a vested right have been triggered for the Lindsays since a permit did not apply (although other requirements had been met through a site plan meeting and set back requirements). Discussion was also held that no new facts could be considered in the Lindsays appeal, but that relevant case law could always be presented and referred to.

Mr. Honea said that the Commissioners needed to decide whether or not the Hearing Examiner made a clearly erroneous decision in that: the Hearing Examiner made a legal mistake. He believed that precedential case law from the courts would provide guidance for a decision.

Commissioner Dahlstedt clarified the issue decided on by the Hearing Examiner (covering 30,000 square feet).

Chair Wesen provided closing remarks and announced that a decision would be rendered on Tuesday, March 7, 2017, at 9:30 a.m.

Chair Wesen recessed the proceedings at 11:26 a.m.

d) 11:30 a.m. - 11:45 a.m. Board of County Commissioners:

Chair Wesen reconvened the proceedings at 11:32 a.m.

1. County and Individual Success Stories

No one was present to provide county and individual success stories.

2. Public Comment Period

Ed Stauffer of rural Skagit County discussed concerns he had with the Rural Forestry Initiative.

Tina Champeaux of Sedro-Woolley provided comments regarding a meeting she attended which was hosted by the National Park Service regarding grizzly bear restoration in the North Cascades. She said that many people objected to the introduction of bears and she hoped that the Commissioners would join them in their objections. Brian Lipscomb of Sedro-Woolley provided comments regarding the mismanaged Washington State elk herd (and implied that any introduced bears would enjoy the same level of mismanagement), and shared his experience in applying for a permit from Washington State Fish and Wildlife to fix a culvert that Skagit County Public Works incorrectly fixed a number of years prior.

George Wolner of Sedro-Woolley provided comments about living in Alaska where bears were abundant. He also shared concerns about compensation for livestock or property destroyed by bears. Mr. Wolner said that he had come to the conclusion that if grizzly bears wanted to live in the North Cascades, they would already be there.

3. Miscellaneous Announcements

The Commissioners commented on the locations chosen by the state to hold public meetings regarding grizzly bear restoration options in the North Cascades and the difficult task to manage wildlife.

Chair Wesen recessed the proceedings at 11:49 a.m.

e) 1:30 p.m. - 2:30 p.m. Consent Agenda, Vouchers, Warrants and Miscellaneous Items

f) 2:45 p.m. - 3:30 p.m. Public Hearing/Possible Action: To Consider Testimony Regarding Dissolving the Bullerville Sewer District

Chair Wesen reconvened the proceedings at 2:46 p.m. and introduced Senior Deputy Prosecuting Attorney Erik Pederson.

Mr. Pederson provided background information on the creation of the Bullerville Sewer District (District), which became a water utility district in 2002. Mr. Pederson said that although the district had been approved by a general vote, assessments had never been made, or fees charged for the provision of services. He asked that the district be dissolved for multiple reasons including: the absence of elections over the last seven years (inactive district), the district not operating within norms, and an outstanding judgement from the Washington State Department of Commerce for activities taken by the district to obtain state funding (and could only now be paid back due to the potential sale of properties to another party.)

Mr. Pederson invited Elections Supervisor David Cunningham to confirm when the Bullerville District last held an election.

Elections Supervisor David Cunningham informed the Commissioners that he had reviewed elections records and the last election activity held by the Bullerville District was November 2009, more than seven years ago.

Assistant Attorney General from Department of Commerce Mark Calkins was invited to brief the Commissioners on their claim against the District. Mr. Calkins said that the Department of Commerce was formerly known as the Department of Community, Trade and Economic Development (CTED) which awarded the grant to the Bullerville District and received the audit finding due to misappropriated funds (by way of receiving payment from Skagit County through a grant, and then taking the same invoices and submitting them to CTED for additional payments). Mr. Calkins discussed the steps taken to collect the funds without success. He said that a lawsuit had been filed and judgement obtained in the amount of \$421,000. The only other outstanding invoice that he was aware of was an invoice for \$68,000.

Mr. Calkins informed the Commissioners of the pending bankruptcy of the properties within the Bullerville District and said that if the Commissioners agreed to dissolve the District and transfer the water system into the bankruptcy, then the State would be able to resolve the outstanding debt obligations when the property was sold to a prospective buyer.

Discussion was held regarding water use at the District and concerns regarding continued water use at the property once sold.

Mr. Pederson informed the Commissioners that if they dissolved the inactive District, there would be a 30-day period of time where a person could take steps in Superior Court to pursue keeping the District active, and, where the Commissioners would be able to investigate any other questions they had regarding water rights, etc.

Commissioner Dahlstedt informed Mr. Pederson and Mr. Calkins that Senator Pearson had recently learned about this matter and also had additional questions.

Federal Bankruptcy Trustee Andrew Wilson for Glacierview Haven, LLC Bankruptcy briefed the Commissioners on the situation and indicated that a purchaser was prepared to buy all of the properties within the District area. He said this would allow payment to the creditors and improved tourism for the area (the purchaser wanted to create a resort). He said that it would be difficult to sell the properties one-by-one as individual parcels and that he supported the inclusion the water system in the bankruptcy.

Chair Wesen opened the public hearing at 3:19 p.m. Don Clark of Rockport provided testimony regarding the formation of the Bullerville Sewer District, why it was changed to a water district, and discussed the grants that were received from Skagit County and also from the Department of Community, Trade and Economic Development (CTED). Mr. Clark said that after Skagit County PUD No. 1 performed a study which concluded that the Marblemount and Rockport areas needed utility districts to provide water to residents, Bullerville received a grant from Skagit County in the amount of \$400,000 which was used to build half of their water system since it only covered half the cost. Then, Bullerville District obtained a second matching grant from CTED. Mr. Clark said that CTED requested copies of the invoices that had been sent to Skagit County for payment and that after invoices were copied and sent to CTED, a check was sent to Bullerville for \$395,000 and the water system was completed.

Mr. Clark also provided information that the resort failed because after working with Planning and Development Services for 20 years to attempt to obtain all of their required permits, one of

the Commissioners at the time, Commissioner Dillon, cancelled their permits.

Chair Wesen asked Mr. Clark about the elections held by the Bullerville District.

Mr. Clark informed Chair Wesen that elections were held in 2012 or 2013. He also said that the District had worked with the State of Washington to help close the District in 2015.

Seeing no further public testimony forthcoming Commissioner Dahlstedt made a motion to close the public hearing at 3:29 p.m. Commissioner Janicki seconded the motion and the vote passed unanimously. Commissioner Janicki confirmed that if the Commissioners approved the dissolution of the District, people would still have 30 days to answer additional questions.

A motion was made by Commissioner Janicki to approve Ordinance to dissolve Bullerville Sewer District (**Ordinance No. 020170001**) Commissioner Dahlstedt seconded the motion.

The vote passed unanimously.

Chair Wesen recessed the proceedings at 3:31 p.m.

g) 3:30 p.m. - 4:00 p.m. FFA Week in Skagit County Proclamation: February 18 - 25, 2017

Chair Wesen reconvened the proceedings at 3:36 p.m.

Craig Knutzen of Burlington FFA was present representing the Skagit Valley FFA chapters. He said that Skagit Valley had three chapters present from the Sedro-Woolley, Burlington, and Mount Vernon schools. Mr. Knutzen reported that FFA was the largest youth program in America and that FFA prepared students for life after high school and furthered their knowledge in agriculture.

Student representatives from each high school shared information about FFA programs and activities.

The Commissioners shared memories about their time in FFA and acknowledged that the training received from FFA helped with skills well beyond high school.

Commissioner Dahlstedt read proclamation regarding FFA Week in Skagit County.

IV. CONSENT AGENDA ITEMS FOR FURTHER DISCUSSION:

Commissioner Dahlstedt reconvened the proceedings at 1:30 p.m. and excused Chair Wesen.

Interim EMS Director Kevin Chao provided additional information regarding Consent Agenda item no. 4.

Parks and Recreation Director Brian Adams provided additional information regarding Consent Agenda item no. 6.

Sheriff Will Reichardt provided additional information regarding Consent Agenda item No. 11.

Ferry Operations Division Manager Rachel Rowe provided additional information regarding Consent Agenda item no. 9.

Watershed Planner Kara Symonds provided additional information regarding Consent Agenda item no. 10.

V. CONSENT AGENDA FOR TUESDAY, FEBRUARY 21, 2017 (items 1 through 11):

A motion was made by Commissioner Janicki to approve Consent Agenda items 1 through 11, including all items requiring ratification, vouchers and warrants for Tuesday, February 21, 2017. Commissioner Dahlstedt seconded the motion.

The vote passed unanimously. Chair Ron Wesen's absence was excused

Commissioner Dahlstedt recessed the proceedings at 1:49 p.m.

a) COMMISSIONERS:

1. Record of the Proceedings for Tuesday, February 7, 2017. **(Approved)**
2. Record of the Proceedings for Monday, February 13, 2017. **(Approved)**
3. Record of the Proceedings for Tuesday, February 14, 2017. **(Approved)**

b) EMERGENCY MEDICAL SERVICES:

4. Amendment No. 5 to Personal Services Agreement No. C20140616 with Central Valley Ambulance Authority for the provision of trauma and verified ambulance services 24 hours per day/7 days per week. This Amendment increases monthly payments for Advanced Life Support Services to \$204,079.50 for 2017 and also adds county reimbursement for an ambulance in 2016 (\$214,237.99) and a Medical Service Officer vehicle in 2017 (will not exceed \$45,000). All other terms and conditions of the original Agreement and subsequent Amendments shall remain in effect. **(Amendment No. A20170014)**

c) HUMAN RESOURCES:

5. Resolution establishing leave benefits for the District Court Commissioner Classification. **(Resolution No. R20170032)**

d) PARKS, RECREATION & FAIR:

6. Real Estate Purchase and Sale Agreement between Patricia Bowen, Jerry L. Wickwire and Skagit County to acquire certain real property, Parcel Number P39250, located in the 25,000 block on State Route 20 in Sedro-Woolley for the Cascade Trail system. Compensation shall not exceed \$6,000. The Agreement shall commence on the date of execution. **(Contract No. C20170090)**

e) PROSECUTING ATTORNEY:

7. Personal Services Agreement with Attorney Jesse Eldred to handle Deputy Prosecuting Attorney responsibilities associated with the Civil Involuntary Treatment Act Commitment Hearings and associated duties while other staff is out on temporary leave. Compensation shall not exceed \$22,765. The Agreement shall commence on February 21, 2017, and continue until June 20, 2017. **(Contract No. C20170091)**

f) PUBLIC WORKS:

8. Resolution calling for bids for one (1) new latest model excavator. The bid opening is scheduled to take place on Monday, March 13, 2017, at 2:30 p.m. or as soon thereafter as possible. **(Resolution No. R20170033)**
9. Resolution awarding the bid for Temporary Passenger-Only Ferry Service between Anacortes and Guemes Island for 30 days of service plus an additional ten hours of service to Arrow Launch Service, Inc. in the amount of \$109,000. **(Resolution No. R20170034)**
10. Interlocal Cooperative Agreement with Skagit Conservation District to carry out specific activities of the Firewise Communities Program. Compensation shall not exceed \$20,000. The Agreement shall commence on the date of execution and continue through December 31, 2017. **(Contract No. C20170092)**

g) SHERIFF:

11. Interlocal Agreement with the Town of Concrete for law enforcement services. Compensation shall be paid quarterly to the County and shall not exceed \$824,189. The County will also provide additional officers and equipment at the Town's request at additional cost. The Agreement is being ratified to commence on January 1, 2017, and will continue through December 31, 2019. **(Contract No. C20170093)**

VII. ADJOURNMENT:

Chair Wesen adjourned the proceedings at 3:49 p.m.

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Ron Wesen, Chair

Kenneth A. Dahlstedt, Commissioner

Lisa Janicki, Commissioner

ATTEST:

Clerk of the Board