Skagit County Planning Commission
Mount Vernon Wa. 98273

November 4, 2013

RE; Comments on Parks and Rec Comp Plan

We encourage the Planning Commission to recommend that this Park and Rec Plan be brought back and reviewed in front of this Planning Commission with a work session.

With the over 50 age group growing rapidly, with the Parks survey clearly showing needs for indoor facilities that we don't have, why the need for more trails?

Questions raised are - is there a need for Chapter 5 "Fish and Wildlife Habitat Conservation" to be included in this plan? Page 5-6 Trends and Concerns- Quote " A number of factors have been listed as potentially contributing to the degradation of the marine environment ... such as tide gates, increased pollution such as various impacts from agriculture." Our concern is farmers along the Samish River have been fined by Dept. of Ecology because of potential to pollute. Then farmers have to prove they are innocent at the farmers expense.

Page 5-11 Trends and Concerns- Quote " Agricultural cultivation of these and former open lowlands has reduced species diversity, as has forest management in current and former wooded areas." Our concern is again just opinions and assumptions, no science to back up these accusations.
Why is there a need for Chapter 5 in this Parks and Rec. plan. Many other government agencies, non-profits, tribes and private are competing for these same grant monies. As we know all grants have strings attached which are detrimental to recreation and agriculture. Conservation projects are one of the biggest threats to Skagit County farmland.

Park and Rec Plan fails to address legal public process requirements and property rights.

Lack of legal public process on Path of Corruption (Cascade Trail) paving project.

1. No public process as required by Skagit County Comp Plan Policy 8A-6.3 that required trail paving project be included on 6 yr. TIP.
2. Funds from Fund 102- for non-motorized projects only, were used on paving project that Walters claimed was a recreation project.
3. Public's first knowledge of paving project was April 29, 2013 on County Commissioners Consent Agenda.
4. Input to this specific project was a few letters solicited by one trail promoter representing one civic group and given to Parks Dept. with most letters cc back to this individual. The letter from Sedro Woolley School District was never considered or approved by the Sedro Woolley School District Board.
5. Was the circumventing of public process by the Parks Dept., county Commissioners and county administrator used to get around SEPA environmental review?

Is this the Skagit County staff's pathetic attempt to claim a legal public process was followed?

Language needs to be added to this Park and Rec Plan that:
1. A legal public participation process is followed.
2. Projects in compliance with Skagit County Comp Plan Policies.
3. RCW,s shall be followed.
4. Private property rights shall be addressed by willing seller and willing buyer.

Randy Good Aileen Good

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Two documents attached describes the Path of Corruption
1. Memorandum October 16, 1992- Moffat tells Commissioners how to take railroad easements without paying for them.
2. October 27, 2013 - Rails to Trails: A train wreck for property owners.

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MEMORANDUM

TO: Board of County Commissioners

FROM: John R. Moffat
Chief Civil Deputy

DATE: October 16, 1992

RE: Acquisition of Burlington Northern Right-of-Way

Jon Aarstad has advised me that he intends to place on your agenda in the near future your consideration of the purchase from Burlington Northern of approximately 101 acres of abandoned railroad right-of-way for the Centennial Trail. The negotiated purchase price with Burlington Northern is $113,254.00, approximately one-third of the appraised value of the acreage which is $326,992.23.

We wish to be sure that you are aware of the fact that one of the reasons why Burlington Northern may be willing to sell at a reduced value is that it is likely that the railroad does not have clear title to the right-of-way which it is selling to the County. The case of King County v. Squire Investment Co., 59 Wash. App. 888 (1990)(copy attached) indicates that where a railroad abandons right-of-way for railroad purposes, the railroad no longer owns the right-of-way; rather, the adjoining property owners own it.

In the Squire Investment Co. case, the Court found that the deed from the property owners to the railroad back in the 1890's conveyed only an easement interest and that after the railroad abandoned the railroad line in 1985 the ownership of the right-of-way reverted to the adjoining property owners. As stated in the Squire Investment Co. case:

> Burlington Northern formally abandoned the right of way on July 29, 1985. The easement was extinguished at that moment and its interest reverted to the Squires' (original grantor) heirs. Burlington Northern had no interest to convey to King County for use as a

railroad much less as a trail. Even if the right of way had not been formally abandoned, Lawson v. State, (107 Wn.2d 444 [1986]) defeats the County's argument. Responding to a similar argument, the court stated:

> Applying common law principles, we hold that a change in use from "rails to trails" constitutes abandonment of an easement which was granted for railroad purposes only. At common law, therefore, the right of way would automatically revert to the reversionary interest holders.
>
> Lawson at 452. . . .
>
> In summary, the Squire deed conveyed an easement to the railroad which terminated when its successor, Burlington Northern, abandoned the line with the approval of the ICC. The reversionary interest passed to the successors of the grantors. The trial court's alternative holding that the Squire deed conveyed an easement and, consequently, King County acquired no interest in the right of way is affirmed.

59 Wash. App. at 894-95.

In our case, it is impossible to ascertain the exact nature of the ownership of the right-of-way without examining each and every deed through which Burlington Northern or its predecessor-in-interest acquired title to the railroad right-of-way.

It is instructive to note that the Squire Investment Co. case came about because King County elected to file an action to quiet title and to condemn the entire portion of the right-of-way that it intended to use as a trail before it declared the same as a trail. This is certainly the safer way to go and would avoid problems arising later regarding the ownership of the trail. However it would also be more likely to alert adjoining property owners of their potential interest in the trail property.

If the Board is concerned with adjoining property owners exerting a claim to the trail without the County having established formal ownership thereof, an appropriate course of action would be for the County to commence a quiet title action to the 101 acres, color of

title to which it is acquiring through the purchase from Burlington Northern. Then, any adjoining owners who contest the County's quiet title action can be addressed separately either through private negotiation or a subsequent condemnation action. The County may be able to establish title by default judgment against a number of the adjoining property owners in the quiet title action, thus obviating the necessity of paying any compensation to them through a condemnation suit.

Alternatively, the County could post signs indicating the trail is County property and proceed to treat it as County property, subject to being challenged by adjoining landowners for a period of seven years pursuant to RCW 7.28.050. This procedure could result in the County paying less for the land to adjoining owners, but would also result in additional uncertainty of title for some time.

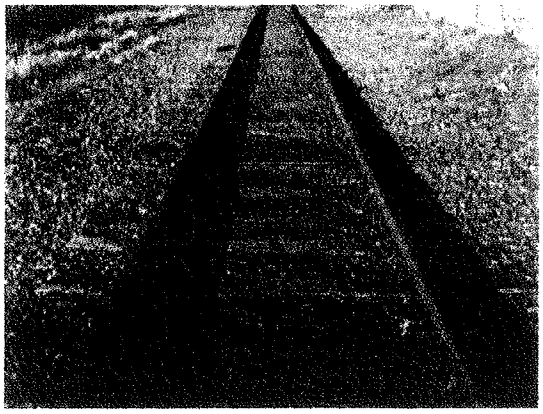
If you have any further questions regarding this, please let me know.

JRM:tad
cc: Jon Aarstad
Steve Colby
Dave Fleming

Reason.com

Rails to Trails: A Train Wreck for Property Owners

Kathryn Ciano | Oct. 27, 2013 12:00 pm



Beau Lawrence

Rails to Trails is a government program to convert abandoned railroad tracks to recreational trails. Sounds great, except that the tracks run over private property, and the private landowners haven't been paid for this permanent land grab. A case before the Supreme Court this term, *Brandt v. United States*, demonstrates the program's problems.

The Brandt family owns 83 acres of Wyoming property, split in half by a railroad right of way. Under the General Railroad Right-of-Way Act of 1875, the government paid the Brandts' predecessors to use their land for the limited purpose of laying train tracks. The understanding at the time was that the land would revert to private property if and when the railroads ceased operating.

The railroad's right to use the Brandts' property ended when it abandoned its right of way to the the land in 2003. The Brandts should now be able to use the strip of land however they please. But in 2005, under the "Rails to Trails" statute, the government told the Brandts that it would be converting the abandoned railway into a recreational trail.

In 1988, a century after contracts were signed, the federal government passed a "Railbanking" law to preserve its possession and establish its right to turn abandoned railroad tracks into recreational parks. This was not what landowners had agreed to and was not within the terms of the government's limited right to use the Brandts' land.

Converting the tracks into a trail makes the government's use of the land permanent rather than temporary and conditional on the railroad's use. It also changes the nature of how the government plans to use the land. If the government wants to convert the expired railroad easement into a recreational trail, it should have to pay the Brandts just compensation for this new, permanent taking.

The Pacific Legal Foundation, which filed an amicus brief on the Brandts' behalf, writes that, because existing precedent is so clear, the "case should have been open-and-shut." Instead, the "United States tried to circumvent Federal Circuit precedent by filing a quiet title action in a Wyoming federal district court," claiming that its "implied" right to use the land trumped the Brandts' interest. The government relied on weak authority to convince the Tenth Circuit that it had an "implied reversionary interest" in the railroad easement, and that the common law of property does not apply to disputes over ownership

of railroad easements.

But common law principles of ownership always apply to property. The Supreme Court has repeatedly applied common law to railroad easements, including requiring subsequent purchasers of the underlying land to purchase the entire tract, including the easement portion conditionally contracted to the railroad. That means that the land the Brandts bought included the strip the feds now claim belongs to them, and the price the Brandts paid reflects that they, not the government, own that strip.

In 1875 the government paid landowners minuscule sums of money for the right to run tracks on private property. The government never attempted to make a clean purchase or negotiate permanent takings under the doctrine of eminent domain.

Today, business has evolved and railroads have abandoned vast swaths of rail crisscrossing the country. In many cases, dangerous, decayed tracks sit forgotten on private land. While pedestrian trails would likely be an improvement to the land, they are categorically different from enjoying the private backyard the Brandts paid for—or even from the commercial wealth the trains would have brought.

None of this controversy is a surprise to the government, which has been defending these programs in court since the beginning. As early as 1942, the Supreme Court interpreted the Railroad Right of Way Act to grant only an easement, rather than a more expansive property right. More recently, in 2002, Assistant Attorney General Thomas L. Sansonetti warned Congress that then-pending rails-to-trails cases across the country involved 4,550 private property owners and exposed the government to over $57 million in constitutionally-required compensation for these takings.

In 1998, DC attorney Nels Ackerson described Rails-to-Trails as a "vast program for the quiet confiscation of land." He noted that it has "created a blank check drawable from the account of the U.S. Treasury" that "may cost the taxpayers hundreds of millions of dollars or more."

Property rights are one of the more fundamental principles of free society. The government cannot avoid the Constitution by avoiding the most basic principles of ownership. The Supreme Court should respect landowners' common law rights and expectations and grant quiet title to the Brandts, or else require the government to pay just compensation for taking the Brandts' land.