

Mark Lundsten
P.O. Box 1376
Anacortes, Washington 98221
January 11, 2021

Skagit County Planning Commission
Skagit County Board of Commissioners

Planning Commission and Board of Commissioners:

At the September 22, 2020, meeting of the Skagit County Planning Commission (PC), the PC censured me, a fellow Planning Commissioner, for publicly criticizing the PC's actions on docket items P-4, regarding Great Blue Herons, in 2020, and P-12, regarding South Fidalgo zoning, in 2018 (Appendices 1 and 2).

I request the PC remove the censure. If the PC does not do so, consider this letter to be notice of appeal to the County Commissioners (BCC) to remove it. The censure needs to be lifted because it is an unlawful attempt to deprive me of a federally secured right under the color of state law. In addition, I request that the PC provide a provision for minority reports in their bylaws in order to accommodate dissent.

I stand by what I did and what I said. I told the truth and did so through our existing, proper public process and by exercising my freedom of speech. I broke no law, rule, or standard that made my actions wrongful, improper, or unlawful.

I object to what the PC did, and how they did it. The censure reprimands me without cause for exercising my right to publicly criticize the actions of the PC. The PC complainants said that my disagreement with their majority opinion was an "attack," and "disloyal," and constituted "malfeasance" and "misconduct." Those assessments are subjective, presumptive, and false. In addition, the PC passed the censure through questionable legislative processes.

In the first place, and most important, all my comments objected to by the PC are protected by the First Amendment. As the Washington State Supreme Court recently made clear in its October, 2020, decision in the Matter of the Recall of Jason White - No. 98663-1: "legislators do not have a general duty . . . to abstain from criticizing the actions of other public officials" (p. 13, summary decision). Any PC member, now and in the future, has a right to express personal views and opinions pursuant to our Constitutional guarantees of freedom of speech. The PC's censure wrongly opposes that fundamental freedom.

Secondly, the five points of the censure's recorded motion are not only invalid - inaccurate, based on false assumptions, or subjective judgments without legal basis - they also were never discussed. The measure we voted on was not the recorded motion. The recorded motion was written by Commissioner Candler and signed by Chairman Raschko after the meeting was adjourned and a vote taken on a different motion (Appendices 3 and 4). I never had an opportunity to dispute those five points. That is not good legislative procedure.

Judges do not hear a case of someone charged with one infraction and then, after the trial, decide to change that charge to something else that no one had a chance to address during the trial.

As stated above, I handled all of the letters and materials objected to by the PC with due process. All were sent to staff for proper distribution to the PC, according to the requirements of the Open Public Meetings Act (OPMA) as made clear to me when I became a Planning Commissioner in August, 2017.

The OPMA is not insignificant. It is known as a "sunshine law" that governs meeting notice requirements of the PC to ensure that the public has a clear view of the business of governing. Actions in

violation of the OPMA can be nullified and individual violators can be fined \$500 or more. The OPMA means business.

For the PC, the OPMA requires that any discussions among a quorum - five or more of our nine members - require public notice. Without public notice, that action is not allowed and may result in the above-mentioned nullifications and fines.

When Chairman Raschko emailed a letter of his, along with the one of mine that criticized P4, to the Board and the Commissioners, an action which essentially began the censure process, Commissioner Woodmansee “replied to all” and stated his agreement with the Chair’s position. That “reply to all” to the other eight members of the PC legally constitutes taking action. That reply effectively began a discussion among all of the members of the PC, an electronic/email meeting held without public notice in violation of the OPMA. Soon after, Chairman Raschko chose to make my letter about P4 an agenda item for the next meeting. Meanwhile, Commissioner Woodmansee’s opinions on an upcoming agenda item already had been shared with all of the PC, but not the public, via that private email discussion.

The lack of public notice for this online meeting presents an obvious and potentially serious problem. It shows why I follow process prescribed to me by the staff of the PDS: send emails for the rest of the PC to staff and let them distribute the material to the other PC members. I explained my procedure to Chairman Raschko on a phone call prior to the censure meeting and I thought he understood my actions. He obviously changed his mind. I also attempted to explain it during the meeting and clearly did not succeed.

But the record shows that that is exactly the process I followed on April 16, 2020, when I emailed the full and verbatim P-4 letter material, along with proposed edits to other PC materials, to Peter Gill of the PDS. As always, Mr. Gill distributed those materials to the PC on April 29 (Appendix #5), five months prior to the PC’s decision to censure. The P-12 letter was sent to staff and the Board a year and a half prior, in December, 2018, and also published as a link on an internet forum, the Skagit Scoop (<https://skagitscoop.org/blog/power-and-money-trump-residents-efforts-to-protect-south-fidalgo/>), in August, 2019, over a year prior. Everything was distributed according to proper County process and the OPMA, as all the records show, and all within the rights of free speech. It was all public information, properly presented. No one objected for five months on P4, and for well over a year on P12. Then, in September, 2020, the Chair decided those materials had become objectionable, and put my P4 letter on the agenda for the next meeting.

Unlike the censure, my dissent did not criticize any individual. I criticized how the PC did its job. It is similar to peer review; an assessment of work that has been done. The U.S. Supreme Court does it with almost every decision it makes. Teachers, editors, scientists, and committee members of all kinds do it every day, without getting personal. The censure did the opposite. It did not deal with issues. Rather, it blamed me for discussing them.

The censure process took two hours of the County’s and the public’s meeting time. It has no binding consequence and achieved nothing positive, except, for some people, the free publicity of an article in the paper at the height of a political campaign. Besides that, its main result was to establish a negative precedent: a strong, unhealthy disincentive to express disagreement with the majority. The censure also has been a cloud that has shadowed and slowed our discussion of the bylaws, as some PC members attempt to reframe and rephrase those bylaws to rationalize and conform to the restrictive and censorious intentions of the censure. The censure is not only illegal; it is unwise.

The basis of my dissent is my implicit confidence in the integrity of our system. I trust that the County and the PC have the ability to absorb dissent, digest it, and progress. I publicly criticized the PC with the expectation of opposition and debate, certainly, but also with the expectation of a better level of understanding, for the PC and for the public.

On the other hand, the complete rejection of my criticisms, to the point of deciding to censure me, reveals a mistrust of that system. The willful exclusion of criticism from differing points of view betrays a lack of confidence by the censuring majority of the PC in the value of their own deliberations.

The PC did not follow good procedures or process in the motion to censure. The PC needs to review and decide how better to follow the OPMA and Robert's Rules. That is a problem, and not that hard to fix. Much more important is the censure's intention to curtail freedom of speech. We must not allow this ill-conceived motion to stand, or to establish a problematic precedent. Rather, we should ensure that all PC members, of all points of view, now and in the future, feel free to dissent.

Thus, in summary, I have two requests of the PC: one, to remove their censure, and two, to provide PC members a mechanism for filing a minority report, the lack of which is a flaw that needs to be corrected.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Lundsten".

Mark Lundsten

cc: Skagit County Prosecuting Attorney's Office
Skagit County Planning and Development Services staff
Parties to P-4 and P-12
Local Press

Appendix 1 - Letter re: P-4

8/28/20

to: Skagit County Board of Commissioners
from: Mark Lundsten, Skagit County Planning Commission

Dear County Commissioners,

As a member of the Planning Commission (PC) who cast the only vote in favor of the 2019 Comprehensive Plan Proposal P-4, Great Blue Herons, I am writing to offer a different version of that motion's findings of fact, as submitted to staff a few months ago. I am not trying to question or change the PC's vote, but to more accurately inform your deliberations of P-4.

The findings of fact by the PC conglomerated 21 statements about a large number of mostly disparate issues that I think obscured the intentions of both the motion and the proposal instead of clarifying them. It was my assumption that when those findings were recorded at the end of the PC's deliberations on P4 at the February 25, 2020, meeting, they were only the raw material that would be winnowed down to more understandable essentials at our next meeting.

So, I submitted my own draft edit of the findings for later discussion as I understood the staff had requested us to do. But, when we revisited those findings at the June 23, 2020, meeting, the PC did not discuss the findings except to approve the 21 point document.

I do not think the PC's decision was the result of those 21 points. I think it was mostly the result of one point: Skagit County Planning Policy 6.2. I respectfully request you compare the two sets of findings in order to better understand the public's and the Commission's respective viewpoints. My version does not take long to read.

Again, I am not trying to change the Planning Commission's decision. I am only asking to review my version of why we made that decision before you make your own.

Thank you for your consideration.

Sincerely,



Mark Lundsten

cc:
Hal Hart
Mike Cerbone
Peter Gill
Molly Doran
Tim Manns
Marlene Finley
Ellen Gray

Appendix 2 - Letter re: P-12

Skagit County Board of Commissioners
December 26, 2018

Dear Board of Commissioners,

At the October 16, 2018, meeting of the Skagit County Planning Commission (PC), I was the only Commissioner present in favor of docket item P-12, the rezone proposal for South Fidalgo Island. I am not re-arguing the Commission's recommendation to the Board nor appealing the Board's decision to follow that recommendation. I am saying that our deliberations about P-12 were inadequate. A major reason for this was that we remained silent about a misinformation campaign. We treated false statements as if they were true and thus enabled confusion instead of promoting understanding.

The 2018 P-12 proposal was the result of public input, made in good faith to the County. The proponents made two points about South Fidalgo Island: water supply needs to have a plan and commercial/industrial development needs limitations. In 2017, specific objections to P-12 arose, map borders and agricultural processing, for example. Proponents, in conjunction with the Planning Department and at the direction of the Board, amended P-12 to address those problems. Those changes formed the 2018 proposal.

That new proposal attracted even more support than it had in 2017, when the majority of testimony at the Planning Commission already was in favor of P-12. In 2018, about 350 people signed a petition encouraging the Board to pass it. But in 2018, the opposition had changed. Instead of testimony discussing actual, resolvable issues with the proposal, and whether or not the new version of P-12 successfully addressed those issues, the opposition this year mostly expressed generalized fears manufactured from the repetition of false claims.

We heard over and over that P-12 would take away rights, ruin futures, and deprive posterity of a homestead. How those injustices would be enacted was never clear. Rather, the public seemed to generate their fears from inaccuracies: I won't be able to fly a plane, ride motorcycles, raise and sell flowers, sell wine, or walk my dogs, among others.

Before and during our deliberations, we never acknowledged this problem. The public's repetition of falsehoods seemed to make them think that those falsehoods were true, and significantly, to promote the expression of false outrage, a groundless and purely political indignation that served no purpose at all except to obscure a real discussion of policy. By not acknowledging this issue, let alone addressing it, we crippled our deliberations and did a disservice to the public, who counted on conscionable and honest consideration from the County.

The issues of P-12 remain: water supply needs a plan, as do large-scene commercial and industrial activities. When those issues appear again, I hope the Planning Commission takes a different approach to their deliberations.

Sincerely,

Mark Lundsten

Mark Lundsten

Skagit County Planning Commissioner

cc: Hal Hart
Stacie Pratschner
Kathy Jewell
Ellen Bynum
Tom Glade
Roger Robinson
Patty Wasson
Marlene Finley
Brenda Cunningham

Chair Raschko: **Can you state your motion** in a way that staff can get some things written down and repeat it? Yeah, thank you.

Commissioner Candler: Okay. Sure. I will do my best to do that. I move that the Skagit County Planning Commission censure Commissioner Lundsten – Commissioner Mark Lundsten – that – under our bylaws, page 5, Appendix A, Section c(3)(e), the clause requiring members to be respectful and to lose gracefully, and also for a violation of Robert's Rules of Order, Duty of Loyalty. And I think that we should indicate that the specific conduct is writing a letter disparaging the Planning Commission, including content that disparages the public; not cc-ing us; failure to cc us as a group, and whatever other input people have; and that we should incorporate by reference at least the 2020 letter, perhaps also the 2018 letter. And that I think we should just basically indicate that this serves as a notice that if Commissioner Lundsten continues to breach the duty of loyalty we may take further action in terms of malfeasance and misconduct. We're going to change our bylaws – **and that's the motion**. We're going to change our bylaws. We may add a clause if we choose to for whether or not someone should have the ability to dissent, and make that a part of our recorded motion. We may want to set a barrier on what type of a vote split would include something like that. It is unfathomable to me that a person who's in a single-person minority would think that they know more about what the Planning Commission's intent was, what the Planning Commission's deliberations were all about. It's a lot of confidence, I guess you could say. But – anyway, listening to the Commissioner tonight talking about this and that it – you know, his words were it wasn't an attack on us individually. It was an attack on the product of our work. I don't know what better admission of it being a disparagement to our Commission there could possibly be. **And that's the motion.**

Vice Chair Mitchell: Second.

Chair Raschko: Okay, could – Peter, are you able to read back the motion, or is that a tall task?

Mr. Gill: That's a pretty tall task, but I'll tell you what I have: Skagit County Planning Commission would censure Commissioner Lundsten under bylaws page 5, Appendix A (c)(3) requiring respectful and – respectful treatment of Planning Commissioners and losing gracefully, with the specific conduct of disparaging the Planning Commission.

Chair Raschko: Commissioner Candler, does that adequately **reflect your motion**? You have to unmute.

Commissioner Candler: Essentially yes. I was trying to send an email to Peter Gill that would kind of aid in all of that and I can certainly do it, but it certainly **reflects the gist of the motion**.

Chair Raschko: Okay. I think it's going to be – I think it's **real important to have it right**.

Commissioner Candler: **The motion is supposed to be verbatim under Robert's Rules**. I get that. So at this point what I think is appropriate is for me to say I move to censure Commissioner Lundsten, and then **we can draft the recorded motion based on other people's input as well if there is more. But the motion I think should be kept simple right now. The motion is to censure Commissioner Lundsten.**

CENSURE OF COMMISSIONER MARK LUNDSTEN

On September 22, 2020, at a meeting of the Skagit County Planning Commission, the commission passed a motion to censure Commissioner Mark Lundsten, specifically citing page 5 of Appendix A section C(3)(e); the clause requiring members to be respectful and to lose gracefully and the general duty of loyalty under Robert's Rules of Order.

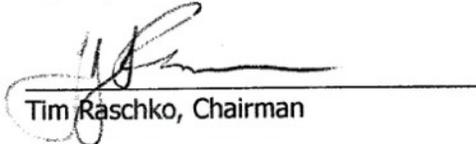
The commission specifically found conduct objectionable to include:

- 1) Using his Commissioner title to further personal views against the vote of the commission
- 2) Disparaging the Commissions deliberation
- 3) Disparaging the members of the public who spoke against the Commissioner's viewpoints by indicating that their beliefs were based on false or misrepresented information.
- 4) Failure to disclose affiliations
- 5) Failure to cc planning commission on letters

The motion passes by a vote of 7 to 2 with Commissioner Lundsten participating in such vote.

Commissioner Lundsten is hereby put on notice that if he continues to breach his duty of loyalty to the Planning Commission as noted above, the Planning Commission may recommend that the Board of County Commissioners take further action under SCC 14.02.080.

Signed,



Tim Raschko, Chairman

2 **Item P-4: Great Blue Herons**

3 1. The Planning Commission recommends to the Board of County Commissioners to deny the
4 request.

5 a. The Planning Commission agrees with the consensus of public opinion [ML] finds
6 that the Great Blue Heron population within Skagit County is of great importance.

7 b. The Planning Commission received a large amount of written and verbal public
8 testimony unanimously in favor of this proposal but for one letter from the Forest
9 Advisory Board asking for more study of this issue prior to making a decision. [ML]

10 c. This proposal received a large amount of public attention during the public
11 comment period, including a front page article in the weekly paper. [ML]

12 d. No individuals or businesses within the affected area of the proposal spoke or wrote
13 in opposition to this proposal. [ML]

14 e. This proposal fulfills the Comprehensive Plan Goals 5A-1 and 5A-5. [ML]

15 f. This proposal fulfills the Skagit County Planning Policies 10.1 and 10.6. [ML]

16 g. The Planning Commission finds this proposal in opposition to Skagit County
17 Planning Policy 6.2. [ML]

18 ~~b.h.~~ The Planning Commission finds the overall population of the Great Blue Heron is not
19 in decline.

20 ~~e.i.~~ Bald Eagles may be the primary reason for nesting site abandonment.

21 ~~d.j.~~ The Planning Commission finds that there is no known reason as to why the rookery
22 at Samish Island was abandoned.

Commented [PG4]: Commissioner Lundsten (ML): I do not think the list of twenty-one findings defines how we handled this proposal. The PC's problem with the proposal was the perceived infringement on the rights of property owners in the affected area. A majority of members of the PC did not think that property owners should have to follow noise level restrictions during certain parts of the year on activities within the County's control for the sake of one species of bird. Clearly the single, core issue, it was not mentioned in the list of twenty-one. The list below includes what I think are salient points.