

BOARD OF MASON COUNTY COMMISSIONERS' PROCEEDINGS

SEPTEMBER 4, 2001

The meeting was called to order at 9:01 a.m. by Chairperson Herb Baze. Commissioners Wesley Johnson and Bob Holter were in attendance.

CORRESPONDENCE

UGA – GMA ACCOUNTING

Jeff Carey commented on Urban Growth Areas and the accounting needed of the communities infrastructure.

VARIANCE - SMILANICH

Correspondence on the variance applied by Bud & Chris Smilanich and Tim & Nancy Pinkney were received from: Ed McBride; Harvey Warnaca; Stephen L. Bank; Tom & Jackie Brown; Bob Estes; Dick & Linda Mortenson; Robert Aura; John & Susie James; and Ruth Kraft.

BUSINESS

LIQUOR LICENSE APPLICATION

Special Occasion: Shelton Skookum Rotary Club; Date: October 6,2001; Place: Small Hall; Buildings 15 – 23; Building 22; Time: 9 am – 7 pm

Special Occasion: Shelton Skookum Rotary Club; Date: October 6, 2001; Place: Olympic Hall; Time: 9 am – midnight; Date: October 7, 2001; Time: 9 am – 7 pm.

Cmmr. Johnson/Holter moved and seconded there are no objections to the Special Occasion liquor license for October 6, 2001 at the Small Hall, Buildings 15-23 and Building 22 at the Mason County Fairgrounds from 9 a.m. to 7 p.m. Motion carried unanimously. B-aye; J-aye; C-aye.

Cmmr. Holter/Johnson moved and seconded to approve the Special Occasion liquor license for the Skookum Rotary Club at the Olympic Hall for October 6, 2001, 9 a.m. to midnight and October 7, 2001 from 9 a.m. to 7 p.m. Motion carried unanimously. B-aye; J-aye; H-aye.

RESOLUTION - APPLICATION TO IAC

The Sheriff's Department recommends the Board adopt a resolution authorizing application for funding assistance for a continuing project of education and enforcement of ORV (off road vehicle) law to the Interagency Committee for Outdoor Recreation (I.A.C) as provided by off-road and non-highway vehicle act (RCW 46.09).

Cmmr. Holter/Johnson moved and seconded to approve the Resolution 94-01 authorizing the application for funding assistance for a continuing project of education and enforcement of ORV law to the Interagency Committee for Outdoor Recreation as provided by off-road and non-highway vehicle act (RCW 46.09). Motion carried unanimously. B-aye; J-aye; H-aye. Resolution No. 94-01 (Exhibit A)

HEARING EXAMINER ORDINANCE AMENDMENT

The Planning Department has requested the Board set a hearing to consider the Planning Commission recommendations regarding the Hearing Examiner Ordinance.

Cmmr. Johnson/Holter moved and seconded to set a hearing for consideration of amendments to the Hearing Examiner Ordinance on Tuesday, October 2, 2001 at 9:15 a.m.. Motion carried unanimously. B-aye; J-aye; H-aye.

SMALL WORKS ROSTER - GATE INSTALLATION

Bob Thuring, Public Works, requested the Board authorize Public Works to obtain a contractor through the Small Works Roster for the installation of a gate on Herbert Baze, Sr. property adjacent to the Skokomish Valley Road. This has been approved by the Skokomish Valley Flood Control Advisory Board and will be paid from those funds.

Cmmr. Holter/Johnson moved and seconded to authorize the Department of Public Works to obtain a contractor through the Small Works Roster process for the installation of a gate on the Herbert Baze, Sr. property adjacent to the Skokomish Valley Road. Motion carried. B-abstain; J-aye; H-aye.

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Cmmr. Holter/Johnson moved and seconded to authorize the Chair to sign the above noted documents related to the purchase of lot 41, Division 5 in Lakeland Village for the placement of a sewer collection system pump station. Motion carried unanimously. B-aye; J-aye; H-aye.

RECESS

The Board recessed from 9:25 a.m. to 9:45 a.m.

HEARING – Variance to Development Regulations; Applicants: Bud & Chris Smilanich and Tim and Nancy Pinkney.

Michael MacSems, Planning, presented the staff report. The applicants would like to divide their 3/4 acre lot into two pieces. (Mr. MacSems clarified that the property is referred to as 2.1 acres by the applicant's representative, Mr. Rob Johnson, and it is shown as 2.1 acres in the Assessor's records. The discrepancy is the portion of the property that is dry land vs. the portion that is in the lake.) Resulting lot sizes would be .33 acre and .43 acre, each with 82.5' of waterfront. The Smilaniches and the Pinkneys bought the property in 1990 with the intention of subdividing it into two parcels and developing a home site on each. Over the years the owners extended utilities to the site, placed a well, a septic system and received approval for a second septic system. In 1990, the owner's subdivision proposal would have had a chance of receiving County approval, subject to the requirements of the Shoreline Master Program and the Department of Environmental Health.

When the Comprehensive Plan and Development Regulations were enacted in 1996, the owners essentially lost their ability to subdivide the property as the average density of the area was set at one unit per five acres. The applicants wrote a letter in 1996 opposing the regulations however it is the understanding of the Planning Department that vesting is only achieved with the submittal of a complete application.

The applicants correctly state that their proposal is in conformance with the Mason County Shoreline Master Program. However, for a project to be approved, it must comply with all applicable regulations. The Development Regulation's density provisions are more restrictive and therefore prevail. No subdivision application has been received and a variance to the Development Regulations and a waiver from the Washington State Department of Health would be required. This variance addresses the requirements of the Development Regulations.

Approval of a variance request requires a positive finding on all four of the following items. (Dev Reg 1.05.035):

A. There are special circumstances applicable to the subject property such as shape, topography, location or surroundings, which circumstances do not apply generally to other property in the same Development Area;

Staff analysis is that the Planning Department cannot distinguish at this site any special circumstances such as shape, topography, location or surroundings, which do not also apply to other properties in the vicinity.

B. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity, but because of special circumstances is denied to the property in question;

Staff analysis is that all property in this designation is subject to the same minimum density requirements as the parcel owned by the applicants. If this variance were to be granted, the owners of the subject property would enjoy a property right not available to others in the vicinity.

C. The granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity in which the subject property is located; and

Staff analysis is that because the lots would be under one acre and have no access to a public water system, a waiver for non-conforming parcel size would have to be obtained from the State Department of Health. This suggests there are health issues and hopefully the Department of Health process would be adequate to deal with them. Without a Department of Health waiver, the Planning Department cannot make a positive finding that this proposal is not detrimental.

D. That the granting of the variance is in substantial harmony with the Comprehensive Plan.

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factors, is the variance fair to the property owner and is it fair to the community.

He referred to Martel v. Vancouver where the Court of Appeals upheld the granting of a variance to a property owner to subdivide his property where the property in question was larger than adjoining properties. The property was situated in an area where adjoining properties had previously been developed into smaller residential lots.

With regard to it being fair to the community, it is currently being used by the two families as residential recreational property. It is improved with a septic and Mr. Johnson understands they have recreational vehicles on the property and they are installing a second septic system. He stated the septic system is a non-issue for the Board, there are development regulations in place to deal with those issues.

He pointed out the Board is sitting quasi-judicial and they need to look to the laws of the state to make the findings of fact. He believes the applicants have met their burden that their proposal will not cause material harm. Their proposal is consistent with the vast majority of other properties in the area and therefore a prima facie burden has been met.

He believes the proposal is in harmony with the Comprehensive Plan because it is consistent with the way Spencer Lake has been developed. He believes there is no logical reason to require the last lot in a development be a minimum of five acres where every other lot in the development is on 1/4 acre lots.

Mr. Johnson pointed out there has been a substantial show of support from surrounding property owners for this proposal. He believes the variance criteria have been met and he asked the Board to approve the variance request.

Mr. Johnson submitted a letter of support from Warren and Karen Gray.

Cmmr. Johnson asked Mr. Johnson if he believes the circumstances in the Martel case are similar to this proposal. He understands that case had to do with the lot size needing a variance from 20,000 to 19,000 square feet.

Mr. Johnson responded, with regard to the Martel case, the minimum lot size was 20,000 square feet, the actual parcel size was 36,840 square feet. He stated the scope of the variance is not a criteria. To a certain extent, Mason County planning staff can grant a 5% deviation. He pointed out there are several layers of development regulations that apply to this property, one of them being the Shoreline Management Act and this parcel does meet all requirements of the SMA for a residential building site. He stated the distinction that this is a greater variance than in Martel does not change the applicability of the law. The law being that a special circumstance based on size and surrounding developments.

Mr. Johnson stated that if this is divided, the lots will be in conformance with the surrounding lots. He pointed out this is an in-fill situation so would not have a domino affect.

Cmmr. Johnson asked Mr. Johnson if it is his opinion that the argument that applied in Martel would apply to this proposal even though this would go from 5 acres down to a .33 and .43 acre.

Mr. Johnson responded that the legal standard that was applied in Martel was location and surrounding development.

Cmmr. Johnson noted that Martel was back in 1983 which was before growth management. He asked about the correlation between the fact there is a different set of regulations today, 2001, as opposed to 1983.

Mr. Johnson replied that in 1983, there was a gigantic difference between the City of Vancouver and Mason County. Clark County and the City of Vancouver had zoning and restrictive land use laws that were designed much like growth management. He believes the legal principles discussed in the Martel case are applicable to the variance criteria and the Growth Management Act.

Cmmr. Holter stated he believes Mr. Johnson has done a good job in describing his clients position and their visual displays have it made it very clear how it would work out with the understanding they may or may not be successful with their endeavors to obtain septic permits, which is not in front of this Board at this time.

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Cmmr. Johnson referred to the criteria that the granting of the variance is in substantial harmony with the Comprehensive Plan. He asked if Mr. Johnson's argument would be that it meets this condition because they are waterfront lots.

Mr. Johnson responded that is an issue in this case. He stated the Comprehensive Plan is to preserve the wide open rural spaces and that is not applicable to this area of the county. He believes that the fact the variance procedure is there is to fit unique circumstances where application of the Comprehensive Plan just doesn't make sense.

Tim Pinkney stated when they purchased the property in 1990, their plan was to subdivide the property and build homes. He pointed out their lots on a picture and how they envision it would look when it is divided and homes are built. He stated they have an approved second septic system and it will comply with all rules and regulations. He stated several surrounding property owners support their proposal.

Cmmr. Baze asked about previous information that was received from a title company.

Bud Smilanich stated the issue was when the report came from the title company, there was no recorded means of access. At that time, 1988, the project stalled.

Cmmr. Baze asked why the property wasn't divided when it was allowed.

Mr. Smilanich stated he found, in county records, the recorded easements so that issue was mitigated. They didn't realize the severity of what was going to happen. They also didn't realize they could apply for the permit to subdivide without having to have building permits.

Mr. Pinkney concluded that they have always had the intent to subdivide, it is consistent with the four variance criteria, they have community support and he asked that the variance be granted.

Mr. MacSems pointed out that if the variance is granted, it doesn't necessarily mean the land division is granted. They can then apply for a division and then deal with whatever land issues that come up. He noted that because of the small lot sizes, a waiver from the Washington State Department of Health will need to be obtained.

Cmmr. Holter stated he is swayed by the arguments to grant the variance but he asked for a week extension in order to view the site. He noted that if the Comp Plan were absolutely to state there were to be 5 acre plots only, there wouldn't be a variance procedure. He believes it is a reasonable request. He too, is a waterfront property owner, and believes there is a difference between rural land and waterfront property. He doesn't believe it is realistic to have 5 acre waterfront tracts.

Cmmr. Johnson agreed that he would like to see the site before voting. He agreed with Cmmr. Holter's comments. He stated he does have the concern that if the variance is granted, what is the impact elsewhere in the county. He believes that this being waterfront is a distinguishing feature in comparison to other requests that may come in.

Cmmr. Baze agreed with the other commissioner's comments. He thanked everyone for attending and for the presentation. He would also like to go on site.

Cmmr. Holter/Johnson moved and seconded to continue the hearing to 9/11/01 at 9:15 a.m. Motion carried unanimously. B-aye; J-aye; H-aye.

RESCIND INTERIM AMENDMENTS

Ron Henrickson, Director of Community Development, presented a resolution for the Board's approval to rescind the interim amendments to the Mason County Resource Ordinance, Shorelines Master Program and Development Regulations. He explained these were interim amendments and in order to place them into the record permanently, a different process has to be followed.

Cmmr. Holter/Johnson moved and seconded to rescind interim amendments to the Mason County Resource Ordinance, Ordinance No. 58-01; Shorelines Master Program Ordinance No. 59-01; and Development

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MASON COUNTY, WASHINGTON

Herb Baze, Chairperson

Bob Holter, Commissioner

ATTEST:

Wesley E. Johnson, Commissioner

Rebecca S. Rogers, Clerk of the Board