

BOARD OF MASON COUNTY COMMISSIONERS' PROCEEDINGS

APRIL 13, 2004

1. Call to Order – The meeting was called to order at 9:01 a.m. by Chairperson Wesley E. Johnson.
2. Pledge of Allegiance – Chairperson Johnson led the flag salute.
3. Roll Call – Present: Cmmr. Dist. 1 – Herb Baze; Cmmr. Dist. 2 – Wesley E. Johnson; Cmmr. Dist. 3 – Jayni L. Kamin.
4. Approval of Minutes – The Board held the approval of regular meeting minutes of 3/2/04 & 4/6/04; special meeting minutes of 4/2/04 and briefing minutes of 3/1/04, 3/22/04 & 3/23/04 until the next regular meeting.
5. Board’s Calendar for week of April 13 – 20, 2004.
6. Correspondence and Organizational Business
 - 6.1 Correspondence
 - 6.1.1 Philip Wolff has submitted an application to serve on the Belfair SR3 Special Road Project Committee.
 - 6.1.2 Comcast Cable has given notice that their administrative office is changing locations as of April 16, 2004.
 - 6.2 Press Release - Todd Barr, Board of Equalization Clerk, announced that the Commissioners are seeking two individuals to be appointed to the Mason County Board of Equalization which terms will expire May 31, 2007.
 - 6.3 Press Release – Ron Henrickson, County Administrator, announced that Mason County is seeking an individual to fill a vacancy on the Pacific Mountain Workforce Development Council representing the business community. Applications will be accepted until April 30, 2004.
 - 6.4 Press Release – Steve Kutz, Public Health Services Manager, announced the National Infant Immunization Week, April 24 – May 1, which is an annual observance to promote the benefits of immunizations and to improve the health of children two years old and younger. The more people that are protected the less likelihood some of the illnesses will take root in our community. As part of the immunization program.
 - 6.5 County Administrator Ron Henrickson introduced Doug Micheau, Mason County Utilities & Waste Management Director. Mr. Micheau stated that he has experience in utilities and public works over the years.
7. Open Forum for Citizen Input - None
8. Adoption of Agenda – **Cmmr. Baze/Kamin moved and seconded to adopt the agenda as presented. Motion carried unanimously. B-aye; J-aye; K-aye.**
9. Approval of Consent Agenda:
 - 9.1 Approval to appoint Jack Miles to the Mason County Housing Authority for a five-year term, April 30, 2004 to April 30, 2009.
 - 9.2 Approval of the Coordinated Prevention Grant between Mason County Department of Health Services and the Washington State Department of Ecology. This grant is the funding source of the Mason County solid waste activities.
 - 9.3 Approval of Veterans Assistance Fund applications for Jesse Rodger Johnson - utilities \$54.16; Jerry D. (Kathleen) McFarlane - utilities \$252.90; Calvin (Rubie L) Becker - utilities \$133.86 for a total of \$440.92.
 - 9.4 Approval of Warrants

Claims Clearing Fund	69658-70472	\$760,093.02
Salary Clearing Fund	137753-138631	\$2,201,650.23

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- 9.5 Approval to set a public hearing on Tuesday, May 11, 2004 at 9:30 a.m. to consider Road Vacation File No. 326, portion of roads in the Plat of Detroit No. 2 as requested by Jorges Enterprises, Inc & James F. & Merna Bianchi. **Resolution No. 25-04 (Exhibit A)**
- 9.6 Approval for ER&R to call for bids for Emulsified Asphalt for 2004. Bid opening to be Friday, May 7, 2004 at 9:00 a.m.
- 9.7 Approval to set a bid opening date for CRP 1598, Skookum Creek Bridge (Old Olympic Highway). Bid opening to be Friday, May 7, 2004 at 9:15 a.m.
- 9.8 Approval to set a bid opening date for CRP 1789, Old Olympic Highway (roadway construction). Bid opening to be Friday, May 7, 2004 at 9:25 a.m.
- 9.9 Approval to set a bid opening date for the 2004 Asphalt Paving Contract. Bid opening to be Friday, May 7, 2004 at 9:35 a.m.
- 9.10 Approval of CRP 1827 to acquire right of way to perform minor construction/widening of Highland Road between milepost 3.63 and 7.93. **Resolution No. 26-04 (Exhibit B)**
- 9.11 Approval of the resolution amending the Non-Union Salary Range Alignment by changing the classification title of Utilities/Waste Management Director from Range 18 to Range 19 effective April 12, 2004. **Resolution No. 27-04 (Exhibit C)**
- 9.12 Approval to appoint Eileen Sterba to the Mason County Civil Service Commission to complete an unexpired term. The term will expire 12/31/06.
- 9.13 Approval for the Facilities & Grounds Department to post for quotes to paint the exterior windows at the Mason County Courthouse.
- 9.14 Approval to sign the agreement with the North Mason Little League to provide a self-contained food service vehicle at Sandhill Park. This is a two-year contract and the post for quotes was authorized on February 10, 2004. The bid amount is 10% of concession proceeds.
- 9.15 Approval for the ER&R Manager to utilize the post for quotes/telephone bid procedures to purchase a replacement heating system for the Belfair Road Shop. Approximate cost is \$4,000 plus tax.
- 9.16 Approval for the ER&R Manager to call for bids to furnish Mason County with one used Gradall 660E excavator for Public Works. Maximum cost is \$50,000 plus tax. Date and time of bid opening to be Friday, May 14, 2004 at 9:00 a.m.
- 9.17 Approval of two liquor license applications:
- 9.17.1 Special Occasion - Harstine Island Community Club; Date: May 19, 2004; Time: 4 pm - 2 am; Place: Community Hall, Harstine Island.
- 9.17.2 Assumption: From Sund & Nielsen, LLC dba Rest-A-While; Applicants: B & Y Easy Camp, Inc. Seungjun Yeom, and Seung Bang; Tradename: Rest-A-While RV Park Marina Dive; Privileges Applied For: Grocery Store - Beer/Wine.

Ray Hansen referred to consent agenda item 9.10 Approval of CRP 1827 to acquire right of way to perform minor construction/widening of Highland Road between milepost 3.63 and 7.93. and asked what is minor in terms of dollars.

Jerry Hauth, Public Works Director, stated that this is relative to working with the PUD and establishing a right-of-way alignment. Highland Road is one of the roads in the County that there was never any alignment established by survey or deeds and the PUD is trying to make improvements in that area and has asked the County to identify where the 60' right-of-way is located. The County will be purchasing right-of-way.

Cmmr. Kamin/Baze moved and seconded to approve consent agenda items 9.1 through 9.16 as presented. Motion carried unanimously. B-aye; J-aye; K-aye.

Cmmr. Baze/Kamin moved and seconded that there are no objections to consent agenda items 9.17 special occasion liquor licenses. Motion carried unanimously. B-aye; J-aye; K-aye.

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10. 9:30 a.m. Public Hearings and Items Set for a Certain Time
10.1 Public hearing time to review the request to rezone properties in the Rural Area of Mason County from the Rural Residential 5 zone to the Rural Natural Resources zone; the rezone request is from Taylor Shellfish. Rezone Request No. 04-01.

Allan Borden, Planner, noted that there are three properties involved (40 acre, 16 acre, and 64-acre parcels = 120 acres).

The Planning Staff recommended that the Board continue the hearing to a later date to allow for the 60-day review period by state agencies and other interested parties on-going until May 16, 2004. They felt that Taylor Shellfish is in compliance with the Rural Land Comp Plan policies dealing with allowing existing industrial commercial properties to expand in the rural areas or resource based industrial and commercial uses to locate or expand in the rural areas.

Mr. Borden noted that the current Taylor Shellfish operation in the rural activity center is 13 or 14 acres in size.

Cmmr. Kamin asked if this would not enlarge the rural activity center. It would be transferring to Rural Natural Resources zone.

Mr. Borden responded that is correct. If the property being requested were in a different location they might look at it differently, but if it meets the other rezone criteria it has a high chance of being approved.

Cmmr. Kamin asked if the natural resource zoning can only be used for that purpose. There can be no building of residential structures within that zone. The only buildings within that zone would need to be associated with the processing or the production of the natural resource.

Mr. Borden responded that is correct and he understood there was some provision for retail.

Cmmr. Johnson asked how this happened to be zoned as rural residential rather than natural resource zone initially.

Mr. Borden commented that most likely when the county created the zoning designations in 1999 and 2000 they were not aware that the operation had expanded into that area. Zoning was mainly based on current existing uses and rural residential 5 was the most appropriate for that area.

Diane Cooper, Taylor Shellfish, stated that the Planning Staff has done a great job in presenting their proposal. They agree that it is an appropriate designation. It reduces sprawl, lowers densities and maintains open space in the area. Most will be maintained in timberland and agriculture. She requested that the Commission hear their proposal prior to May 18. In the last legislative session (May 2003) the particular statute that Mr. Borden was referring to has changed and it does allow for counties to request an expedited review from the State agency. It requires that the state agency respond immediately and a decision can be made. She has contacted Washington State Department of Community Development and to the specific reviewer, Patrick Babineau. He has reviewed their rezone request, did not see any issues, and thought he could okay it.

Darren Nienaber recommended that Bob Fink talk with Diane Cooper and the Board hold a second public hearing which would allow a chance to call the Washington State Department of Community Development to confirm the information.

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Mr. Fink recommend the board continue the public hearing until next week so they don't have to readvertise.

No further testimony was received.

Cmmr. Kamin/Baze moved and seconded to continue the public hearing on the rezone Taylor Shellfish (Request #04-01) to April 20, 2004 at 9:30 a.m. to permit an expedited review by state agencies and other interested parties. Motion carried unanimously. B-aye; J-aye; K-aye.

- 10.2 Public hearing to review proposed new development standards contained in the Mason County Resource Ordinance and Title 14 Building Code.

Allan Borden, Planner, noted that there are six proposals for amendments to the Mason County development standards, which include changes in Mason County Development Regulations, Resource Ordinance, Title 15 Development Code and Title 14 Building Code. These recommendations have been sent to the Board for consideration by the Planning Advisory Commission and supported by the Department of Community Development.

- 1) Revise existing text in Resource Ordinance regarding inholding lands standards development review.
- 2) Revise existing text in Resource Ordinance for Public Works for two issues: 2.1) to use a submitted Biological Assessment or Biological Evaluation, instead of a habitat management plan, in the review of certain required Mason Environmental Permits; 2.2) Public Works to be exempt from maintenance of public roads performed using certain best management practices adopted in a regional road maintenance.
- 3) Revise existing text in Development Regulations, Resource Ordinance, and Title 15 Development Code on enforcement provisions to have standard enforcement procedure.
- 4) Revise existing text in Development Regulations, Resource Ordinance, and Title 15 Development Code variance provisions.
- 5) Revise existing text in Title 14 Building Code on easement provisions. Development in easements is normally a civil matter between private property owners. The proposed revision takes the County out of the civil process. The County has never proposed development within an easement.
- 6) Revise existing text in Title 14 Building Code on fire apparatus access roads provisions. Currently there are no standards to provide roads for fire apparatus with adequate dimensions for new or existing development. The proposal is to implement certain sections of the existing Washington Uniform Fire Code.

Steve Swarthout, Fire Marshal, explained they are trying to put into the Building Code a standard that has been used in the county since 1994. When they adopted the Uniform Fire Code in 1997 the state amended out the fire apparatus access requirements in the code. Every local jurisdiction was to adopt their own standards.

Cmmr. Kamin stated one of the things which is important as commissioner is to promote and encourage affordable housing wherever possible. She asked if there is an estimate on how much this new standard will increase the cost of a new home.

Mr. Swarthout stated that there should not be a sizeable increase in the cost of a new home because there needs to be an access there anyway. The proposal is requirements on what the road service has to look like and what the width has to be.

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If there is a residential or commercial fire in an area where there is no water or infrastructure after they run out of water they have to go get more water. There is a potential of equipment passing each other. There could be one fire truck going to the site and a tanker going away from a site.

Cmmr. Baze asked what will trigger this new provision.

Mr. Swarthout responded that new construction will be considered under this new provision. Anything already permitted by the County will not fall under this provision.

Cmmr. Johnson added that they have been working on this provision for quite a while and have had a lot of input on it.

Cmmr. Kamin stated that she feels more comfortable knowing that there is flexibility within the provision and with remodels.

Ed Klein stated that he has a dispute over a fence erected approx. 30 feet into the easement right-of-way. There was a Stop Work Order placed on the property in October 2002. The fence has made it inconvenient for oversize vehicles such as dump trucks, delivery trucks, etc. to get in and out of his driveway without little extra caution. There is no way two vehicles can pass on their road. He is asking that the fence be removed.

Mr. Borden stated that he has not addressed that case. An enforcement person will have the files.

Cmmr. Baze noted that this will be taken out of the County's hands and putting it in the civil court.

Mr. Borden responded, yes.

Mr. Klein asked why this should happen if the County came out and put a stop work order on it.

Cmmr. Baze noted that this is not the only instance where this has happened.

Bill Coleman noted that the 60' easement for Fantasy Crest was created by the County for the landowners' basic needs, ingress, egress and utilities. When surveyed to determine a lot size it would be from the center of the easement minus 30 feet to identify the lot corners. This would be the reference points minus any setbacks for building purposes. The said owners identified these points then removed and replaced the surveyor stakes 20 + feet into the easement for the construction of the fence and then moved them back to the original position. A stop work order was issued on 10/18/2002 by Mark Core. This is not a mailbox, school bus covered stop, or gate, but a 300' steel fence set in concrete that completely eliminates the road shoulders. If there was a fire on Fantasy Crest there would not be room for two vehicles to pass.

Theresa Henderson stated she lives next door to the owner of the fence. They have not had any problems with the fence being present. The fence sits at the edge of a slope. The size of the road could not be increased anyways. On the other side of the road it is flat for several feet. There are trees also on the easement on the opposite side of the road which would also cause problems for a fire truck to travel through. They have had dump trucks down their driveway.

Steve Whitehouse, Attorney, spoke as someone who is practicing law in the county and has seen generally the problems that this fence situation has created. He also represents Mr. & Mrs. Garoutte who are the owners of the fence. This ordinance has been under discussion for 4 – 6 years amongst attorneys in the County over interpretation and problems it has caused. It has

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caused problems where it did not intend to. Several of the problems are there is a property line in a rural area and no one knows exactly where it is located. It is surveyed and it is determined a piece of the house is over the line. There is not enough occupation to create an adverse possession case, except for one point. What the court is inclined to do in a similar case is to say that the house has been in place for ten years and the owner is allowed to leave it there and be given a five foot easement around it.

Cmmr. Kamin asked if it is not done by agreement does it have to be done through the court system.

Cmmr. Baze questioned if the County is bringing this process forward in an attempt to eliminate one of the bureaucratic processes. These issues will end up more than likely in civil court and this would take the county out.

Mr. Whitehouse concurred. The other point is if there was a utility easement going through a piece of property for the telephone company to string a wire. The ordinance would come into play and not allow the owner to build and there would be a setback even though the utility does not care. The law says if someone has an easement over your property, it is still your property as long as you don't interfere with the use to which the easement holder is wanting to put the easement. A lot of times there is a 60' easement and it is rarely used entirely. The owner of the ground is still entitled to use the ground. If, at some point, they wish to expand and there is an interference then if a person is reasonably going to do that and if their proposal is reasonable, they can ask that the obstruction be removed. Just as in this case, while there is a fence on one side of the roadway and trees on the other side of the road. The law says if you have private rights it is your right or responsibility to deal with those issues and not the county's responsibility.

The process has long been initiated before the Garouttes.

Deputy Prosecutor Darren Nienaber asked if Mr. Whitehouse is involved with enforcement of easement rights.

Mr. Whitehouse, responded yes.

Mr. Nienaber stated it would be the ordinary course of disputing property owners, if one person thinks it interferes with their rights to go to court to see if the court agrees with them.

Mr. Whitehouse concurred.

Jerry Goodwin explained he lives at the end of Fantasy Crest. The time the residents on Fantasy Crest have lived with this situation and what you do in your right-of-way area is simply a situation where it affects the other people or their need of access it is probably wrong. The fence is on a gravel grade and not on the side where it slopes down. He is the last one that built there and he would like to see the road cleaned up with a grader. The grader needs to get to the edge and curl the gravel off the surface of the road. With the fence being close to the edge that can't be done so they can't maintain the road.

Cmmr. Baze there was a fence built on an electrical right-of-way. It did not impede traffic, it didn't hurt anything, but it was built on an easement. An uninterested party asked that the fence be removed. Because of the law, the County was supposed to make the owner remove it because the neighbor is not pleased. He felt that it would be cleaner to let the judge make a determination, because that is where it will go. Regardless of what decision is made by the Commissioners,

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someone will be unhappy. It will likely go to court. They have asked the Deputy Prosecutor to work with the local attorneys and figure out a way to make this equitable for all involved.

Allan Borden, Planner, stated that the development standards are oriented from the edge of the easement. Fences don't require a permit if below 6' in height.

Cmmr. Baze asked if the County would have to ask everyone to remove all their fences back from all the utility easements.

Mr. Borden, responded, yes.

Cmmr. Johnson stated that the hearing has to do with the revisions in the development standards to easements as well as other things. They are talking about a specific regulation which has an issue.

Cmmr. Kamin stated she would like to have a week to review and study the regulations to understand the application and how they apply.

Chairperson Johnson concurred that he too would like additional time to understand what the underlying regulation is.

Jerry Swartos, FPD #11, asked if the Commissioners have any specific questions on the road easement issue. They have been working over 10 years trying to get this language adopted in Mason County.

Cmmr. Baze/Kamin moved and seconded to close the public hearing and render a decision next week, April 20, 2004 at 9:30 am. Motion carried unanimously. B-aye; J-aye K-aye.

11. Other Business (Department Heads and Elected Officials) - None

12. Administration - None

13. Adjournment - The meeting adjourned at 10:52 a.m.

BOARD OF COUNTY COMMISSIONERS
MASON COUNTY, WASHINGTON

Wesley E. Johnson, Chairperson

Jayni L. Kamin, Commissioner

ATTEST:

Rebecca S. Rogers, Clerk of the Board

Herb Baze, Commissioner

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