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**Inside: Why Skagit doesn't
need rural sprawl – Please
renew your membership –
Thanks!**

In This Issue.

- Should the BOCC make “deals” to permit possible illegal developments in exchange for clean up of old landfills? You be the judge. Read June Kite’s testimony to the Board of County Commissioners Hearing on a proposed 59 house subdivision near Lake Sixteen in Conway. View the County’s presentation and the public comments at accessskogit.net, click on Skagit 21, look under Archives on Demand for February 15, 2011. The BOCC will make a decision on March 1. Contact them if you oppose the project.
- Article #4 in FOOSC’s Continuing series on Managing Growth – “*Water*” by June Kite
- Water versus Growth Management by Diane Freethy, Member, Skagit River Water Resources Advisory Committee
- Transition Communities – what are they? Find out inside.
- Did you know that the Downtown Mount Vernon Association has a Main Street Program and it is one of 12 Main Street programs in Washington State? For more information go to www.mountvernondowntown.org and click on Main Street Program.
- Envision 2060 seeks to create a series of models showing options for Skagit County’s development over the next 50 years. The 4 year project funded by an EPA grant (total \$1.4million with one-third, around \$462,000, from County matching funds) to Skagit County. The project is seeking comments from the public. If you can’t attend the ongoing community workshops and want to comment go to accessskogit.net, Click on Quick Guide and then Envision 2060 to learn more.

Thanks for your 2011 membership renewal!

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Water vs Growth Management

by Diane Freethy – Member, Skagit River Water Resources Advisory Committee

The Skagit River In-stream Flow Rule (Rule) was adopted in 2001 after controversial debate involving a 1996 memorandum of agreement among Skagit County officials, water purveyors and local tribes. Five years later, after a lengthy court battle between the County and the State Department of Ecology, the Rule was amended to address an oversight concerning rights for residential wells. Incidentally, there is no In-stream Flow Rule for the Samish River.

Under current provisions of the Rule, the Skagit Basin is divided into sections to facilitate monitoring of surface and groundwater withdrawals and to maintain a constant supply of water in the river to meet public demand and sustain the local fishery. Water "reservations" have been designated for the river and for each of its major tributaries. Sub-basin reservations are subject to closure when groundwater allocations are depleted and, since building permits are not issued without proof of water availability, new development cannot occur in a "closed" area.

According to the Department of Ecology, the Carpenter/Fisher allocations were depleted in 2009 and, under the Rule, new development in the Carpenter and Fisher sub-basins was halted. However, a US Geological Survey study released in 2010 identified certain hydrogeological anomalies that challenge the "science" on which the Rule is based. Those findings caused Ecology's water resources division to temporarily suspend its closure ruling until modeling of the USGS study is complete.

Lack of water is an effective deterrent to growth, but convincing anyone that Skagit County is short of water is difficult to say the least. Whether or not the originators of the Rule planned to use water management as a tool for controlling growth, the subject is worthy of further discussion.

Meanwhile, the Rule remains in limbo and is still as controversial as growth management itself.

#4 - Article -- continuing series on Managing Growth Water by June Kite

Managing growth is about planning where and how to locate the increasing population. The previous 3 articles covered Skagit County Comprehensive Planning, Regulations and the public process. This article is about water and how it defines and limits growth.

Every person has a right to have clean air to breath and clean water to drink. The water comes from the skies above and runs down hill. Rain water fills rivers and streams (surface waters) and finds its way into the ground to fill aquifers that can be tapped by wells (ground water). Water is not owned by any person to be bought and sold, but every person is responsible for the wise and equitable use of the water, thus there are Water Rights.

The State of Washington regulates how water is used and Public Utility Districts were formed to supply and maintain piped water systems. The utility is granted an allocated amount of water for the population that it serves. The user then pays for the maintenance and operations of the piped service. Most urban populations receive their water from surface waters. In Skagit County the major water purveyors draw water from the Skagit River and pipe it to individual users following treatment. Some small communities rely on ground water pumped from well. All purveyors are granted water rights for the amount needed to serve their respective populations.

As population growth increases so also does the amount of water needed to supply residential, commercial and industrial users (agricultural and forestry). In 2001, the Washington State Department of Ecology introduced the "in-stream flow rule" to regulate water use to protect fish and wildlife. (See "Instream Flow" article). There has been much controversy over the WA State Department of Ecology's in-stream flow rule.

In rural areas not supplied by public piped water the population is primarily single-family residents on rural properties with private wells known as "exempt wells." Permits are not required to dig or drill these wells but they are limited to 5000 gallons per day for domestic use only. Community wells that serve more than one residence have additional regulations administered by the State and County health departments.

Managing growth in rural areas is managing water and density of the population that is permitted in the rural zones. The WA State Growth Management Act and Skagit County Comprehensive Plan limits the expansion of "urban services" (piped water, sewage systems, fire protection, schools, etc.) outside of urban growth areas (UGAs). Some State agencies advocate that there should be no new private wells in rural Skagit so that there would be more water available to send water to new developments inside the UGA.

Friends of Skagit County is a volunteer citizen group that has monitored development applications in rural areas for the past 18 years. Friends wants to make sure that rural Skagit County doesn't become "low density urban sprawl" and that farms and forests will be conserved for future residents.

TRANSITION COMMUNITIES

Want to know more about the skills needed to become a sustainable community? There are a number of Transition Community groups in Skagit and Whatcom counties that meet on a regular basis and have a number of programs and committees doing on-going work. For an overview of the program go to www.transitionus.org. For local programs go to: www.transitionfidalgo.org, (formerly Beat the Heat) www.transitionwhatcom.org, www.chuckanuttransition.wordpress.com.

December 8, 2010

Comments for Hearing Examiner Hearing - Welts/Tosti preliminary plat PL96-0058

(Exhibit #1)

The subject area is the **Hill Ditch watershed basin**, a collection of creeks that drain the hillside to the Skagit River from Mount Vernon south to Snohomish County. The Hill Ditch levee protects the farm ground in the I-5 corridor. Bulson Creek and Fisher Creek are the two large sub-basins on the south and Carpenter Creek is the most northern Sub-basin. This basin is a focus of the Dept. of Ecology's In-stream Flow ruling, the allocation of **water rights** and plays a large part in planning for **rural development**. The Welts 1996 development is in the Bulson Creek sub-basin and the Starbird proposed golf course is in the Fisher creek Sub-basin. Nookachamps Hills (a long plat subdivision in the Big Lake Area) was submitted before 1990.

(County Comprehensive Planning & Growth Management)

1965 – The first Comprehensive Planning **establishing zoning and development regulations**.

1970's 1980's – updated plans and adopted joint agreements with cities and towns.

1979 – **5 acre Rural zoning is adopted**

1990 – State Growth Management Act (**GMA**) **adopted 13 Goals** – RCW 36.70A.070 (5)
preserve rural character

1992 – Starbird PUD (Planned Unit Development & Golf Course).
Proposed to use well water to irrigate golf course.

1993 – Environmental Impact Statement (EIS) Alternatives and SEPA scoping meetings.
Provides for alternative proposals and feasibility analysis.

1993 - **County Wide Planning Policies (CWPP) & Interim Urban Growth Areas (UGA's)** –
All growth outside of UGA shall be **rural**, (CPP 1.8) 5-acre minimum.

Exhibit #2 - Skagit County Map Section #16 - T33N R04E -

The map illustrates proximity of proposed development to Hermway Heights and Lake Sixteen.

*** - Note Sinnes Road – unopened R.O.W.

1993 & 1994 – Short Plats for Keith Johnson – Sinnes Road property (later acquired by Welts)

1995 – Friends of Conway (FOCCL) Appealed the Starbird PUD – use of Ground water wells.

Proposal changed to waterline from PUD #1

1995 – Draft Comprehensive Plan released for public review

*** - 1995 – December - **County rescinded the 5-acre Moratorium** on Rural Skagit County. (well, that was a big NO, NO) Friends of Skagit County (FOSC) appealed to Growth Management Hearings Board (WWGMB)

1996 - Welts long subdivision application & Schmidt Trust Land PUD applications submitted. ***

1996 - February 7 - The Hearings Board issued a **non-compliance and Invalidity** declaring *sections of the zoning regulation invalid, any application for new lot under 5 acre would not be vested*. Applicants were instructed that the **rules in effect when the invalidity is lifted will apply**.

1996 - March – Interim Ordinance re-established Rural 5-acre minimum in Rural Skagit County.

(May 1996 – Memorandum - Exhibit #3) The Schmidt Swan Ridge & Welts subdivision was under planning SEPA review. Welts Plat is the subject of a GMHB challenge to the vesting. *Until this is resolved Mr. Welts is unwilling to make commitments to further work on this project*. Swan Ridge did not pursue the proposal.

1996 – May – Welts sold Lot #1 – Malaki is current owner. The 1993 and 1994 short plats illustrate ownership. Sales history shows David Welts for the remainder of the lots.

1996 - May – Snohomish County Superior Court - #95-2-00686 - Judge Allendorfer remanded back to County. The decision to be made - Rural or Urban

1997 – February – Judge Allendorfer – Final Court Order – (**Exhibit #4**)

“A reversal voiding the Starbird project approval and ending this case.”

The Court ruled Starbird did not vest until 1995 with a change to waterline from PUD #1, and Concludes that Starbird (#5) proposal is such an intensive use of land that it requires urban governmental services. On this analysis Starbird is urban.

1997 – June – County adoption of new Comprehensive Plan – Gets out of Invalidity

1998 – A developer working on Road Construction (Johnson/Welts) short plats interrupted the Sanitary Landfill, failed to get a Forest Practice Permit, and Moratorium was given. That would explain why there was a 10-year gap before the 1996 application was resubmitted.

Plat of Welts Subdivision, PL 96-0058 (Exhibit #5) Section Map16,T-33 N, R.4.E, W

2006 – Welts re-submits the 1996 subdivision – Section map shows location of Sanitary Landfill, Public Road ends and private roads cross the short plats. The proposal included access

thru Hermway Heights that was rejected by local residents. **No plat approval was given.** No development activities.

2007 –Tosti (Windward Real Estate Services purchased three parcels (**Exhibits #6,7,& 8**)

Parcel P16701 – Parcel P16707 and portion of Parcel P16667 (of Short Plat 93-057)

**Planning Staff report indicated that Parcel-P16701 did not have a complete application until 2007 – (with the change of ownership and proposed corporate road access to plat)

2009 – **Comprehensive Landfill Remediation and Land Division Agreement** –

and signed by the Board of County Commissioners, Welts, and Tosti. Tosti agrees to fix the landfill problem in exchange the Commissioners agree to support approval of the 1996 Welts subdivision.

2010 – The 1996 Subdivision was re-submitted, access changed to show only Sinnes Road that terminates offsite and would cross private property.

Exhibit #5 – PL 96-0058 *Preliminary Plat & Vicinity* – (Map 1 of 4) – *Site Plan (Topography and Phasing)* Map 3 of 4 - *Native Condition and Retention Area* – (Map 4 of 4).

(Welts Subdivision PL 96-0058 Preliminary Plat and Vicinity Map)

August 2010 David Welts died. It is not known who is the legal owner or trustee of the David Welts properties.

Page 1

1. Zoning - Fails to indicate the **Rural 5acre** minimum established in 1979 and confirmed with the County Wide Planning Policies 1993.

2. **Vesting** will be the primary issue. It is 20 years since adoption of the GMA and 18 years since adoption of the County Wide Planning Policies. Both were in effect when Welts proposal was submitted.

Page 2. 2nd paragraph. - The **variance** requested is to reduce roadway widths – is part of the proposal for a rural development that is urban in character, consists of private corporate roads and should not be permitted in the first place. Criteria for a variance includes language that does not permit the variance to give special privilege that others in the area do not have. Others cannot put in an urban development in rural Skagit County.

4th paragraph – Proposed extension of Sinnes Road from its current eastern terminus through an **“intervening parcel”** is thru private property (P16677), a 5acre parcel (lot 1 of SP-94-008). The Land Fill Remediation is on P#16667, 12+acre SP-93-057. The Landfill Remediation became necessary as a result of a disruption of the Sanitary Landfill due to road construction in 1998 and not repaired properly until the 2009 settlement agreement is satisfied.

Pg.3 - Item #4 a Forest Practice Moratorium placed on the Short Plat for failure to request an application in 1998.

Pg.6 – Item 2. Processing. **“Letters of completeness were not issued for any of the applications”**. It is County usual procedure to issue such a letter within 28 days of receiving an application.

Pg.12 –Public Services – Fire Code Standards and Potable Water.

Pg. 17 – **B. Planning Item #1** – SCC 14.12.140 – SEPA reviews - Concerns of Economy, Social, **Cost Benefit Analysis**, and others. There should be some analysis in the Preliminary Plat process before there is any groundwork started. Has there been any figures presented for cost of roads, water installation and critical areas drainage?

Pg.18 - #11. 1st item established the separate corporate entity of owners establishes a Homeowner Association.

Pg.19 – C. Environmental Health, sewage, water #1. PUD Requirements

F.#1. Fire Marshal – 500 gallons per minute for 30 minutes & fire hydrants.

Pg. 20 #3. – **If adequate water not available**..... or can be a non-potable water stand alone system.

If it is not adequate it fails to meet Fire Marshal standards.

Pg. 21-22 – **Variance Criteria reviewed** – Items b. and c. “provisions of this chapter would deprive rights enjoyed by others in the area – it would instead grant special rights not afforded to others in the same area. This is an urban development and not rural. (see response above)

Pg. 22-23 #8 – Item D –Streets or roads... other public ways... *No Access thru Hermway Heights* as was proposed for the 1996 Plat application. No hearing, No approval.

Off site road improvements to Sinnes Road and Bulson Road introduces the **Phasing plan**. It is not clear what is included in Phase 1 as phase 1 is the road construction to access the Landfill Remedial action, is off site and thru private property and provide for Forest harvesting throughout the site? Question?? Is it before Final Approval ?? Before all other road construction??

Pg. 25. Recommendations: **“Planning & Development Services would recommend approval”** --- because the BOCC has agreed that the “County” will support approval of the preliminary plat.

The Settlement agreement signed by the Board of County Commissioners interferes with the public process that provides a Public Hearing **before approval**. The 1996 preliminary plat is getting its first hearing in 2010 – 14 years has transpired and many code changes have been made in that time.

Friends of Skagit County (FOSC) Position Statement for Preliminary Plat

The Proposed development application of 1996 on 83 acres does not comply with:

- * Skagit County Rural Zoning ordinance – 1 residence to 5 acres
- * Density shall not change the underlying density or character of the neighborhood.
- * An application must be complete before it can be accepted as vested.
- * State Growth Management Act prohibits urban growth outside of urban growth areas.
- * County Wide Planning Policies (1993) prohibits urban growth outside UGA.
and should not be approved.

#1. Issue – Rural Density - The planned 60 lot development is a private home owners development designed for the primary use of the residents who, through a home owners association, maintains the private facilities including road and drainage systems. There are no public lands, open space or recreational activities proposed. A density of 60 homes to 80 acres) **fails to meet the standard 5acre density - GMA Rural standard.**

#2. Issue – Rural Character - Welts proposal was processed during the same time span (1993 thru 1997) as the Starbird proposal, both planned for private residential use, both rural zones, both with urban densities. The Court decision reversed the approval of Starbird as the County failed to demonstrate it was rural in character. Adoption of 1997 the County Comprehensive Plan reaffirmed the Rural 5 acre density. Density is the ruling factor – 1 per 5 for rural. County failed to enforce the Interim Ordinances.

#3. Issue – Complete Application - In 2006 the same Welts application was submitted. The 1996 proposal did not receive a public hearing and did not get approval. The Skagit County Assessor’s record show multiple buying and selling of adjacent properties, reveals the **Sanitary Land Fill** problem, and private access to the site. The Planning staff noted that Welts application was not “complete” until 2007, the time that Tosti acquired the 3rd lot that included the **Sanitary Land Fill** problem. The developer was restricted from any project approval until the Settlement agreement.

#4. Vesting – *“A judicial and legislative doctrine designed to protect private property owners from governments changing rules mid-stream... the law generally requires that the project proponent file a complete application to lock in vested rights.” David Bricklin, attorney, Seattle, WA.*

Starbird Court decision stated the 1993 application was not vested as it did not have a complete application. The Judge also commented that Growth Management was not to be ignored.

Road access thru Hermway Heights was rejected by home-owner association. The Sinnes Road, a County Road, terminates before reaching the proposed development. Private property does not provided access.

The 1996 Welts application was not complete. (Density 1 to 5).

The 2006 application was not complete. Density was changed (1 to 10).

The 2010 application would be complete if density is 1 to 10.

#5. County Failure to Comply with 1993 Interim Ordinance - The Board of County Commissioners illegally rescinded the 1993 ordinance, the sole purpose to allow development applications to be submitted.

The Hearings Board ruled that action was invalid and also instructed the county that “*any application for lots under 5 acre would not be vested.*”

#6. Approval – may be granted only if the zoning codes, State and County regulations are met. A developer may not pick and choose what regulations he wants to use.

Respectfully submitted by June Kite – Vice President – Friends of Skagit County.

Summary of Legal Notices

1996 – Notice of Development Application – PL96-0058 – David Welts
(No hearing scheduled – no approval of development)

2006 – The same application was resubmitted and again no hearing & no approval

April 22, 2010 – Variance Request – PL10-0025 & Forest Practice Conversion – PL10-110
Variance for change to some roads would presume approval had been given in 1996

May 6, 2010 – Application & SEPA comment for public works Sinnes Landfill - PL10-0175

May 11 – MDNS for Welts Preliminary Plat PL96-0058 & Forest Conversion PL10-0118
Comment period and Public Hearing to be scheduled with H.E.

May 27 – MDNS and Notice of Decision for Public works Sinnes Landfill – PL10-0175

(Landfill Remediation and Land Division Agreement made available)

***Mar/Apr 1009 signed by BOCC and Tosti and Welts – Tosti agrees to fix the landfill in exchange the BOCC agrees to not oppose the Land Division P10-96-0058

July 1, 2010 – Public Works Response to MDNS Comments - PL0-0175

October 17 – Preliminary Plat Approval – **Hearing Nov. 17, 2010** –

As of Oct. 28 Staff Report is still a work in progress to be made available before the Hearing. It is lengthy and available to those who request it. It is presumed to be ready next week and published in Legal Notices.

Hearing Continued to Dec. 8, 2010 – Staff Report of Findings available Wednesday, Dec. 1, 2010.