

Overview of Intervenor Motion to Recuse/Disqualify Hearing Examiner

Prepared *by* Larry J. Kunzler

for April 9, 2014

Hearing Examiner Hearing



Point 1

1. The Honorable Examiner has based a decision on the Applicant's word while not having any supporting evidence.
 - Where are the floodplain permits? There was a list of permit #'s which evidently were 3 or 4 grading permits & their reissues. Where is the cumulative impact analysis?
 - What type of lawyer goes to a hearing, says his client has the permits and doesn't produce the permits upon request?
 - For that matter, with all due respect Mr. Examiner, what kind of an adjudicator makes decisions with a 'trust me, the check is in the mail' approach?
 - Without all the necessary permits do you legitimize illegal activity?



Point 2

2. Electronic Records required by SCC 14.06.240(8) could not be made available, however the Hon. Examiner did not require that the hearing be held over or to require that all the same individuals testify, and to date has refused to make his and his assistants notes taken at the first hearing available to the public thereby keeping the public from knowing what testimony he relied upon to make his decision.
 - What did you utilize to make your decision besides the staff report & the misleading information from the applicants?
 - What specific information did you utilize from the general public?



Point 3

3. The Hon. Examiner like the City of Burlington, the Dike District, and the Skagit County Planning Department ignored crucial evidence that was submitted regarding the hydraulic impacts of the levees on upstream property owners.

- Mr. Examiner, I showed you the impacts the levee system in place in 1990 had on upstream property owners. Wasn't that important to you?
- Mr. Halverson spent hundreds of dollars taking surveys of the Skagit River. Those surveys showed a marked difference between the Mt. Vernon gage (37.3) & the height of water around the man-made storage basin (41.9). Wasn't that important to you?



Point 4

4. The Hon. Examiner failed to address the floodway issue which is crucial to any work being proposed to the levee system.

- I submitted several letters from FEMA Headquarters in DC & you didn't mention them.
- When controversy presents itself is it not the adjudicator's job to settle it, not ignore it?
- Burlington says it cut a deal with FEMA: Where is the deal? Same place as the permits?



Point 5

5. The Hon. Examiner ignored provisions of the SMA with respect to the floodway issue and improvements versus maintenance by the applicant.

- Maintenance is defined by the same WAC at §.040(2)(b) which states in part:

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction... (*Emphasis added.*)



Point 6

6. The Hon. Examiner by limiting the testimony to just the first three issues identified by the county commissioners is denying citizens the right to express themselves in accordance with the last directive from the county commissioners in which they stated all matters not decided herein are expressly reserved for further proceedings.

- Government should not limit public testimony. The citizens have a right to be heard.
- With all due respect Mr. Examiner I am concerned that you have not listened to the citizenry, only relying on what Applicants and the Skagit County Planning Staff Report have told you.

