

## ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING

### REGULAR SESSION - APRIL 6, 1998

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on April 6, 1998 at 9:30 a.m. in the Island County Courthouse Annex, Hearing Room, Coupeville, Wa. Wm. L. McDowell, Chairman, Tom Shaughnessy, Member, and Mike Shelton, Member, were present. Also in attendance were Margaret Rosenkranz, Clerk of the Board, and Ellen Meyer, Adm. Asst. to the Board.

The Board, on unanimous motion, approved and signed the minutes from previous meetings: January 26, 28, 29, 30 and February 2, 1998. By unanimous motion, the Board designated Ellen Meyer and Joyce Kasperson as acting Clerk of the Board in the absence of Margaret Rosenkranz, the Board's appointed Clerk of Board.

### VOUCHERS AND PAYMENT OF BILLS

The following vouchers/warrants were approved for payment by unanimous motion of the Board: **Voucher (War.)**  
#23334-#23636.....\$ 238,418.58.

**Veterans Assistance Fund:** [emergency financial assistance to certain eligible veterans; the names and specific circumstances are maintained confidential]. The Board by unanimous motion approved Claim #V98-6 in the amount of \$75.00 for Veteran meeting place rent for 3-month period at Clinton Progressive Hall, and as recommended by the Veterans Assistance Review Committee, to deny Claim #V-98-5 in the amount of \$852.89.

### Bid Award FOR TITLE REPORTS: TREASURER'S FORECLOSURE SALE

Maxine Sauter, Island County Treasurer, presented the three bids received for Title Reports in conjunction with foreclosure title reports, under Resolution #C-17-98 dated March 9, 1998:

#### **LAND TITLE ISLAND TITLE FIRST AMERICAN**

Acreage \$ 372.25 \$ 430.52 \$ 419.73

Platted \$ 312.91 \$ 349.60 \$ 354.99.

With the Treasurer's recommendation to award to the low bidder, the Board by unanimous motion, awarded bid to Land Title.

### Hiring Requests & Personnel Actions

As discussed and reviewed with Dick Toft, Human Resource Director, the Board by unanimous motion approved PAA #025/98, Administrative Asst.-temp .75, for the Planning Department effective today. This is work associated with the GMA Comp Plan assisting Donna Keeler, approximately 20 weeks, with funding to come from Commissioner Contingency.

### Contract for Camano Tennis Court Resurfacing, ICPD-98-01

Lee McFarland, GSA Parks/Property Management, presented for the Board's signature and approval the Contract between Island County and Emerald Paving, Inc., for resurfacing the Camano Multi-Purpose Tennis Court in the amount of \$31,048.49, as discussed with the Board during recent staff session. The Board, by unanimous motion, approved Contract for Camano Tennis Court Resurfacing.

### HEARING SCHEDULED TO CONSIDER Ordinance #C-33-98

### Regulating and Prohibiting Inherently Dangerous Mammals

The Board by unanimous motion scheduled Ordinance #C-33-98 for public hearing on April 27, 1998 at 3:00 p.m. to consider securing and maintaining such levels of control over inherently dangerous mammals harbored and/or owned within the unincorporated area of Island county to protect the general public health, safety and welfare.

**Resolution #C-34-98 Reauthorizing and Increasing Certain Petty Cash, Change, and Revolving Funds Within Island County**

Margaret Rosenkranz, Budget Director, presented a Resolution recommending the Board's approval, to reauthorize and increase certain petty cash, change and revolving funds within Island County as described in Exhibit A.

By unanimous motion, the Board approved Resolution #C-34-98 reauthorizing and increasing certain petty cash, change and revolving funds within Island County.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF ISLAND COUNTY, WASHINGTON**

IN THE MATTER OF REAUTHORIZING AND )

INCREASING CERTAIN PETTY CASH, CHANGE, ) **RESOLUTION C-34-98**

AND REVOLVING FUNDS WITHIN ISLAND COUNTY)

WHEREAS, the Island County Board of County Commissioners has, by resolutions duly adopted, established petty cash funds, change funds, and revolving funds for Funds and Departments under its jurisdiction over a period of many years, and

WHEREAS, the adoption of C-111-91 by the Board of Commissioners on July 15, 1991 established Policies and Procedures with respect to Petty Cash Funds, and

WHEREAS, the Island County Auditor's Office has reviewed all authorized departmental Petty Cash, Change, and Revolving funds shown on Exhibits A and recommends each fund be reauthorized, increased or consolidated, NOW THEREFORE

BE IT HEREBY RESOLVED, that the funds shown on Exhibit A be reauthorized, increased, or consolidated as shown, and

BE IT ALSO HEREBY RESOLVED that this enabling resolution authorizing these actions replaces all the enabling resolutions creating the original funds, all as shown on the attached exhibit.

ADOPTED this 6<sup>th</sup> day of April, 1998.

**BOARD OF COUNTY COMMISSIONERS  
OF ISLAND COUNTY, WASHINGTON**

Wm. L. McDowell, Chairman

**ATTEST:** Tom Shaughnessy, Member

Margaret Rosenkranz, Mike Shelton, Member

Clerk of the Board

**Application for Class H Liquor License # 080980**

**Snug Harbor Bar & Grill, FREELAND**

Having received recommendations of approval by Island County Departments, the Board voted by unanimous motion to forward a recommendation of approval to the Washington State Liquor Control Board for issuance of Class H liquor license for The Snug Harbor Bar & Grill, Freeland.

**Resolution #C-35-98 Changing Beginning Times of Board Meetings**

A Resolution was prepared and presented for the purpose of amending Island County Code 2.08A.010, Board of County Commissioner Regular Meetings, to provide that the regular meeting of the Board scheduled for every fourth Monday at 11:00 a.m. rather than 1:30 p.m., to meet with County elected officials in a roundtable informal discussion, and to change the Board's Staff Session start up time in the afternoon on the first and third Wednesdays from 1:30 p.m. to 1:00 p.m.

The Board, by unanimous motion, adopted Resolution #C-35-98 as presented in regards the matter of change of time of beginning of regular Board meetings held on Fourth Monday and First and Third Wednesdays of Month.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN RE THE MATTER OF CHANGE )

OF TIME OF BEGINNING OF REGULAR ) RESOLUTION NO. C-35-98

BOARD MEETINGS HELD ON THE )

FOURTH MONDAY AND FIRST AND )

THIRD WEDNESDAYS OF MONTH )

\_\_\_\_\_ )

**WHEREAS**, the Board of Island County Commissioners, has by resolution, adopted a regular meeting schedule; and

**WHEREAS**, said meeting schedule includes a regular meeting on the fourth Monday beginning at 1:30 p.m. and first and third Wednesdays of the month staff session meetings with a luncheon recess from noon until 1:30 p.m.; and

**WHEREAS**, it is necessary to change the time of the beginning of said regular meetings; NOW, THEREFORE,

**IT IS HEREBY RESOLVED** that ICC 2.08A.010, most recently amended by Resolution C-131-90, August 6, 1990, is amended to read as set forth on attached Exhibit "A." Lined through material is deleted and underlined material is added.

DATED this 6<sup>th</sup> day of April, 1998.

**ATTEST: BOARD OF COUNTY COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

*Margaret Rosenkranz Wm. L. McDowell, Chairman*

*Clerk of the Board Mike Shelton, Member*

*Tom Shaughnessy, Member*

APPROVED AS TO FORM:

*David L. Jamieson, Jr.*

Deputy Prosecuting Attorney and

Island County Code Reviser

## **EXHIBIT "A"**

### **2.08A.010 Regular Meetings**

The Board of County Commissioners of Island County, Washington, shall hold regular meetings according to the schedule which follows for the purpose of transacting any and all business required or permitted by law, and provided that the board may adjourn any regular meeting from time to time as is expedient or desirable in order to properly transact the business of the county. On the first three (3) Mondays of each month, the meetings shall be held, beginning at 9:30 a.m., or as soon thereafter as possible, and continuing until 5 p.m., unless earlier recessed, with a luncheon recess from noon until 1:30 p.m. On the fourth Monday of each month, the meeting shall be held beginning at ~~1:30 p.m.~~ 11:00 a.m., or as soon thereafter as possible, and continuing until 9 p.m., unless earlier recessed with a luncheon recess from noon until 1:30 p.m. and a dinner recess from 5 p.m. until 6 p.m. When possible, public hearings will be held on the fourth Monday meeting, beginning at 6 p.m. These meetings shall be held in the County Commissioners' meeting room in the basement of the Courthouse Annex, Coupeville, Washington.

In addition, regular meetings shall be held in the County Commissioners' meeting room in the basement of the Courthouse Annex, Coupeville, Washington, with county departments on the first and third Wednesdays of each month, beginning at 9 a.m., or as soon thereafter as possible, and continuing until 5 p.m., or adjournment, with a luncheon recess from noon until ~~1:30~~ 1:00 p.m. In the event any regular meeting would fall on a legal holiday, such regular meeting shall not be held.

### **ADDITIONAL APPROPRIATIONS AUTHORIZED UNDER CONTRACTS BETWEEN ISLAND COUNTY AND KEITH W. DEARBORN AND BOGLE & GATES - SPECIAL COUNSEL - PLANNING CONSULTANTS - GMA PROCESS**

The Chairman brought forward for the Board's consideration, in light of Phase B of the GMA Comprehensive Plan and Development Regulation, need to increase available contract funds under contracts with Bogle & Gates and Keith W. Dearborn. Current contract for Bogle and Gates, at \$120,000, needs to be increased by \$150,000, and current contract with Keith W. Dearborn at \$60,000, be increased by \$75,000.

Commissioner Shelton moved approval of a supplemental appropriation to the contract concerning outside legal services with Bogle and Gates increasing the contract by \$150,000, and increasing the amount of contract with Keith W. Dearborn by \$75,000. Motion, seconded by Commissioner Shaughnessy, carried unanimously.

### **HEARING SCHEDULED TO CONSIDER Ordinance #C-36-98**

#### **Public Disturbance Noise Control**

By unanimous motion, the Board scheduled a Public Hearing to be held on May 4, 1998, at 11:00 a.m. to consider proposed Ordinance #C-36-98. The proposed ordinance is a public disturbance noise control ordinance and would prohibit sounds emanating from animals, motor vehicles, yelling, shouting, singing, audio sound systems, musical

instruments, bands, social gatherings and firearms which unreasonably disturb or interfere with the peace, comfort and repose of owners and possessors of real property.

**PUBLIC HEARING – Ordinance C-23-98 (R-8-98) RENAMING**

**MISCELLANEOUS ROADS ON WHIDBEY ISLAND**

At 10:15 a.m. as scheduled and advertised a Public Hearing was held to consider proposed Ordinance #C23-98 renaming miscellaneous County roads on Whidbey Island, in association and cooperation with Island County Emergency Operations Center (I-COM) to eliminate confusing road name situations in Island County and facility emergency response.

Larry Kwarsick, Director, Public Works Department, confirmed that staff supported the proposed name changes. Seven road names were proposed:

Existing Road Log # Description of

Name Mile Post Road Section Proposed Name

West Useless RL#23415 Entire length (Plat of Useless Bay Beach Deer Lagoon Road

Avenue & Country Club #6 SE 13-29-2E)

Robinson RL#21140 Southerly east/west end (Plat of Mutiny Mutiny lane

Road Bay Heights First Addn., W part of

N ½ 22-29-2E)

State Avenue RL#63650 Entire length (Plat of Eastgate State Street

SW 24-33-1E)

3<sup>rd</sup> Street RL#21050 Entire length (Plat of Mutiny Bay Eagles Perch Road

Heights First Addn., W part

N ½ 22-29-2E)

First Street RL#22350 Entire length (Plat of 1<sup>st</sup> Addn. to Where Pirate Lane

Ships Pass, NW & SW 15-29-2E)

A Street RL#35510 Ptn. west of North Bluff Rd (Plat of Cuthbert Drive

Beachcombers Div. #5, SW 33-31-2E)

E Street RL#35510 Ptn. west of North Bluff Rd (Plat of Scarab Road

Beachcombers Div. #5, SW 33-31-2E)

**PUBLIC COMMENTS**

Robert Bark, property owner of 2 lots on E Street in the Greenbank area, proposed to be renamed Scarab Road. He and two other property owners along the road do not like that name; it is not appropriate, meaning a type of beetle, is similar in pronunciation and spelling to a word meaning a Turkish knife. By way of signatures, he and three others

propose the name "Chickadee Drive". There are about 7 residents on that road.

Rich Murphy, representing I-COM, stated that as long as that name is not in conflict with any others that would be fine.

Ed Beaty, property owner at 5740 S. First Street, stated that the proposed name change to Pirate Street was acceptable to him.

Lew Legat, Assistant County Engineer, suggested that under another agenda item today for which a public hearing is being recommended for scheduling on Ordinance #C-38-98 (R-15-98) on April 20, 1998, that the proposed renaming of E Street be placed on that list for "Chickadee Drive" instead of "Scarab."

Regarding the proposed road name change from Robinson Road to Mutiny Lane, Mr. Murphy explained that the portion being changed is only a very small portion.

The Board, by unanimous motion, approved Ordinance #C-23-98 [R-8-98] as presented other than deleting from consideration today E Street to Scarab, instead the proposed name change from E Street to Chickadee Drive to be considered on April 20 among the changes proposed in Ordinance #C-38-98.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS**

**OF ISLAND COUNTY, WASHINGTON**

IN THE MATTER OF RENAMING MISC. ) **ORDINANCE NO. C-23-98**

COUNTY ROADS ON WHIDBEY ISLAND ) **R-8-98**

WHEREAS, the Board of County Commissioners adopted Ordinance No. C-32-96 (Interim 9-1-1 Addressing Policy) which allows the County to address the renaming of roads to avoid confusion; and

WHEREAS, the Board of Island County Commissioners has been requested by I-COM to rename the roads listed on Attachment "A";

WHEREAS, the renaming of said roads as shown would not be duplicating existing road names in Island County;  
NOW, THEREFORE,

BE IT HEREBY ORDAINED by the Board of County Commissioners of Island County, Washington:

1. That the County roads listed on Attachment "A" shall be renamed effective 45 days from the date of passage.
2. Island County Public Works shall fabricate and install a road sign to be posted on the effective date.
  3. I-COM shall notify, by mail, owners of property abutting on the road of the public hearing date, and the name change, address number change, if any, and the effective date of this ordinance.
  4. I-COM shall also notify appropriate agencies of the road/street name change, the effective date, and shall notify appropriate County departments so that County maps will show the changes.

REVIEWED this 16<sup>th</sup> day of March , 1998, and set for public hearing on the 6<sup>th</sup> day of **April, 1998 at 10:15 a.m.**

**BOARD OF COUNTY COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

*Wm. L. McDowell, Chairman*

*Mike Shelton, Member*

*Attest: Margaret Rosenkranz Tom Shaughnessy, Member*

Clerk of the Board

ADOPTED this 6<sup>th</sup> day of April, 1998, after public hearing.

**BOARD OF COUNTY COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

*Wm. L. McDowell, Chairman*

*Mike Shelton, Member*

*Tom Shaughnessy, Member*

*Attest: Margaret Rosenkranz,*

Clerk of the Board

**ATTACHMENT "A"**

<b>Existing Name</b>	<b><u>Road Log No.</u> Mile Post</b>	<b>Description of <u>Road Section</u></b>	<b><u>Proposed Name</u></b>
West Useless Bay Avenue	RL # <u>23415</u>	Entire length (Plat of Useless Bay Beach & Country Club #6 SE 13-29-2E)	Deer Lagoon Road
Robinson Road	RL # <u>21140</u>	Southerly east/west end (Plat of Mutiny Bay Heights First Addn., W part of N ½ 22-29-2E)	Mutiny Lane
State Avenue	RL # <u>63650</u>	Entire length (Plat of Eastgate SW 24-33-1E)	State Street
3 <sup>rd</sup> Street	RL # <u>21050</u>	Entire length (Plat of Mutiny Bay Heights First Addn., W part N ½ 22-29-2E)	Eagles Perch Road
First Street	RL # <u>22350</u>	Entire length (Plat of 1 <sup>st</sup> Addn. To Where Ships Pass, NW & SW 15-29-2E)	Pirate Lane

A Street	RL # <u>35510</u>	Ptn. west of North Bluff Rd (Plat of Beachcombers Div. #5, SW 33-31-2E)	Cuthbert Drive
E Street	RL # <u>35510</u>	<del>Ptn. west of North Bluff Rd (Plat of Beachcombers Div. #5, SW 33-31-2E)</del>	Scarab Road <i>Delete see R-15-98</i>

**ORDINANCE #C-11-98 [R-5-98] REGULATING SPEED LIMITS ON COUNTY**

**ROADS ON CAMANO Island County**

As a follow-on action from the Public Hearing held on Camano Island on March 26, 1998, regarding proposed Ordinance #C-11-98 [R-5-98] Regulating speed Limit on County Roads on Camano Island, the Board by unanimous motion formally continued that public hearing to April 28, 1998 at 2:00 p.m., Terry’s Corner Fire Station, Camano Island, and instructed the Clerk to post Notice of Continuance.

**AGREEMENT FOR PROFESSIONAL SERVICES – ATD Northwest, conduct an Origin and Destination Study of SR 20 at Deception Pass Bridge**

Mr. Kwarsick presented for approval a proposed agreement for professional services with ATD Northwest, to conduct an Origin and Destination Study of SR 20 at the Deception Pass Bridge, coming to the Board as part of the RTPO planning activities within the Island County RTPO region, the contract in the amount of \$9,547.00 [RTPO funding].

By unanimous motion, the Board approved Agreement for Professional Services with ATD Northwest as presented.

**AGREEMENT FOR PROFESSIONAL SERVICES - Fakkema & Kingma, Inc., Prepare comprehensive drainage plan, and prepare construction plans & specs of drainage plan - Camano Annex**

An Agreement for Professional Services between Island County and Fakkema & Kingma, Inc., was presented for approval. In this case, the Agreement is for the purpose of preparing a comprehensive drainage plan and also to prepare the construction plans & specs of the drainage plan for the Camano Annex property, undertaken in implementation of the Camano Annex Master Plan. Gary Hess, Construction Engineer, explained this will be for phased implementation. The Chair asked that this phasing implementation issue be brought to the Board for review and discussion.

By unanimous motion the Board approved the Professional Services Agreement between island County and Fakkema & Kingma to prepare as Task "A" a comprehensive drainage plan for the Camano Annex - \$11,600.00; and Task "B", to prepare construction plans and specifications for the drainage plan - \$18,480.00.

**LETTER OF CREDIT FROM MYERS FAMILY**

**LIMITED PARTNERSHIP: SPR 62/93**

Mr. Kwarsick presented a Letter of Credit submitted by Myers Family Limited Partnership for outstanding project construction activities for Camano Plaza under Site Plan Review #62/93. This is an irrevocable letter of credit in the amount of \$40,000 to guarantee completion of the work remaining, and staff recommended the Board’s acceptance.

By unanimous motion, the Board accepted the Letter of Credit #999633433 from the Myers Family Limited Partnership for the completion of work in connection with the project on Camano Island.

**INTERLOCAL PURCHASE AGREEMENT – City of Tacoma**

As presented and recommended for approval by Mr. Kwarsick, the Board by unanimous motion approved Interlocal Purchase Agreement with the City of Tacoma, to allow Tacoma to purchase from a call for bids associated with a

loader [bid awarded December, 1997].

Mr. Kwarsick verified that the Public Works Department would ensure the forwarding/filing of the interlocal agreement with the Auditor's per commented from the Deputy Prosecuting Attorney.

**HEARING SCHEDULED – SPECIAL SESSION: ORDINANCE #C-32-98 (R-14-98) – RENAMING MISCELLANEOUS COUNTY ROADS ON CAMANO ISLAND AND ORDINANCE #C-37-98 [R-16-98]**

Ordinance #C-32-98 [R-14-98] renaming miscellaneous county roads on Camano Island, was presented to the Board by Mr. Kwarsick for purposes of scheduling. This originally been scheduled for April 13, 1998 at 3:00 on Camano, but the hearing canceled because of a problem with publication of legal notice. Additional road name changes, under Ordinance #C-37-98 were requested to be scheduled for the same date and time, and Mr. Kwarsick requested a hearing date be set sometime during the week of April 27<sup>th</sup>.

The Board, by unanimous motion, scheduled a special session to be held on Camano Island April 28, 1998, scheduling a public hearing at 2:00 p.m. on Ordinances #C-32-98 and #C-37-98.

**HEARING SCHEDULED TO CONSIDER ORDINANCE #C-38-98 (R-15-98) RENAMING MISCELLANEOUS COUNTY ROADS ON WHIDBEY ISLAND**

A Public Hearing was scheduled, by unanimous motion of the Board, to consider Ordinance #C-38-98 [R-15-98] proposed renaming of miscellaneous county roads on Whidbey Island, for Monday, April 20, 1998 at 10:15 a.m.

**REQUEST FOR FUNDING PARTICIPATION WITH WSDOT**

**construction of Zylstra Road Channelization**

By way of a proposed joint agreement, Mr. Kwarsick presented a request for funding participation with Washington State Department of Transportation for the construction of the Zylstra Road/SR20 channelization project planned for construction in 1999. Joint Agreement was presented, the County's total project amount represents 1.9% of the total project cost \$1,170,000.

The Board by unanimous motion approved and signed Joint Agreement for Request for funding Participation with WSDOT for the construction of Zylstra Road Channelization.

**HEARING SCHEDULED TO CONSIDER Ordinance #C-39-98, AMENDMENT OF ISLAND COUNTY INTERIM 9-1-1 ADDRESSING POLICY**

By unanimous motion, the Board scheduled a public hearing to consider Ordinance #C-39-98, Amendment of Island County Interim 9-1-1 Addressing Policy on April 27, 1998 at 2:45 p.m.

The proposed ordinance amends Island County Code Chapter 14.04A, Interim 9-1-1 Addressing Policy, specifying which public roads should not be named, clarifies the responsibilities of the Addressing Board, and revises the road name appeal process to include an appeal to the Board of County Commissioners.

**Final Site Plan approval - SPR #139/97 - Whidbey INSTITUTE**

Debra Little presented for final site plan approval, SPR #139/97, Whidbey Institute, located at the end of Old Pietila Road off Campbell Road, South Whidbey. This project was granted conditional preliminary approval 11/5/97. The application was reviewed and all conditions of approval met; therefore, staff recommended the Board grant final approval. Ms. Little pointed out that the Health Department approval did not include any future buildings as shown on the final site plan.

The Board, by unanimous motion, approved Final Site Plan SPR #139/97 for Whidbey Institute, subject to conditions.

**HEARING HELD: Closed Record Appeal to review**

**Appeal #098/98, by Joanne Keefe**

A Public Hearing was held as scheduled and noticed for the purpose of conducting a closed record appeal, Appeal #098/98 by Joanne Keefe. The subject of the appeal is the Hearing Examiner decision granting to Diane Tinker a variance to construct a garage 14.5 feet from the property line on Parcel #R32805-095-5050 located at 7529 S. Maxwellton Road, South Whidbey.

Chairman McDowell read into the record the Board's Closed Record Appeal Procedure:

"The following procedure is established to provide a consistent and understandable process for hearing closed record appeals of a quasi-judicial nature coming before the Board of Island County Commissioners.

1. Under the Regulatory Reform Act, Chapter 36.70B RCW, a closed record appeal is an administrative appeal to this Board based upon the record before the Hearing Examiner. No new evidence or information will be allowed at this stage. The burden is on the appellant to show that the Hearing Examiner's decision either is not supported by substantial evidence or that the Hearing Examiner made an error of law. Please refer to specific numbered Hearing Examiner findings of fact or conclusions of law claimed to be in error when arguing that the Hearing Examiner made a reversible error.
2. Staff will present a concise statement describing the nature of the appeal, the hearing history to date, the relevant facts and statutory constraints.
3. The appellant, or designated representative, will be provided an opportunity to state their arguments in favor of opposition to the Hearing Examiner's decision.
4. The project applicant, or designated representative, if different from the appellant, will be provided a reasonable opportunity to respond to the argument of the appellant and argue the basis for upholding the Hearing Examiner's decision.
5. Other members of the public will be provided a reasonable opportunity to state their arguments in favor or opposition to the Hearing Examiner's decision.
6. Staff may comment on the arguments made by the appellant, project proponent and members of the public.
7. The appellant, or designated representative, will be provided an opportunity to reply to arguments of the project applicant, members of the public and comments of county staff.
1. Unless otherwise indicated during the hearing, a decision will be announced at public meeting within 14 days based on the record of the Hearing Examiner's hearing and applicable laws. The Board's decision will include the vote of individual Commissioners and a brief statement as to the basis for the decision.
2. After the Board's decision, the Planning Director will prepare a written decision for signature by the Board of County Commissioners. A copy of the decision will be provided to the appellant and project applicant by the Planning Department. "

## ***STAFF***

Stacy Tucker, Planner, presented the matter. On March 9, 1998, the Island County Hearing Examiner's Office received a written statement of appeal from Ms. Joanne Keefe setting forth the basis for appeal of the Hearing Examiner's Decision in File # VAR #304/97, appealing the Hearing Examiner's Decision dated February 23, 1998. The Hearing Examiner granted Diane Tinker reducing the front yard setback from the center line of Maxwellton Road from the required 50 feet to 35 feet, subject to conditions:

1) The depth of the garage shall be limited to 20 feet and shall be set as close

to the existing mound septic system as allowed by the Health Department.

2) The width of the garage may be increased to 23 feet, if desired by the applicant, in order to retain the desired storage space. The garage shall be placed as far from the south property boundary as allowed by the Island County Health Department. This would require the garage to be placed at least seven feet from the neighboring property line, if a 23 foot wide garage is constructed, and further from the neighboring property line if a smaller garage is constructed.

3) The garage should have wood siding and a peaked roof. The applicant shall obtain a building permit prior to construction.

## **APPELLANT**

**Joanne Keefe**, property owner, along with her husband and her sister, shared property owners in the parcel directly south of the application for the variance, presented her case for appeal. Part of the inconsistencies she thought occurred were clear when she transcribed portions of the hearings; she pulled out portions of transcription where she found random inconsistencies by the Hearing Examiner, and submitted that for the record at this time: Partial Review of Hearing Examiner first Proceeding September 18, 1997, and February 5, 1998, RE Variance Application of Diane Tinker App: 098/98, Appeal of VAR 304/97.

She sat through the three hearings having to do with this variance and submitted a fair amount of information expressing concerns about granting a variance to allow the construction of a two story garage right up against and even with her cabin. She realizes her cabin was outside of the required setback designated in ICC at this time but her cabin was built in the 1930's. Objection to the variance is there are other viable alternatives that have not been pursued by the applicant. The Hearing Examiner time after time put challenges to the applicant to review, explore and to bring factual information at the next hearing, and Ms. Keefe felt that never happened and the Hearing Examiner never held the applicant to those requests.

Excerpts from the hearing show that the Hearing Examiner talked about needing proof that there was no reasonable place to build the garage on the back of the lot, approximately a 90' x 90' area; talks about how expensive is it to clean out a 22 x 22' area since applicants had maintained that organic fill in the back of their lot makes it unfeasible to build on it. The Hearing Examiner at the first hearing was very pointed in his request of applicant to bring back information, that he could not base a variance on feelings that it would be too expensive and wanted them to look for feasible alternatives and bring back factual information so he could make a decision. Unless there is information shared between the applicant and Hearing Examiner she was not aware of there was no factual information, economic analysis of what it would cost. At the second hearing an engineering report was submitted by Ms. Tinker's son's boss who talked about the type of soil, the amount of excavation that would be needed in order to get down to native soil and the fact that fill would have to be brought in and compacted. The report did not say it was not buildable, but that there are certain conditions they would have to meet, and never addressed financial cost.

At the first hearing an issue was brought up by Stacy Tucker about lack of access to the back of the lot because of a reserve drainfield. The reserve drainfield was later relocated in agreement with the Health Department so there is no longer an obstacle to access in the back. As she measures it there is a 15' corridor along the south property border that accesses the back of applicant's lot. There is a wide enough strip along the south boundary to create a single family access driveway. Once that designated reserve was approved by the Health Department to be moved, the original

premise by county staff is gone because there is no lack of access.

Mr. Bobbink at the hearing asked Ms. Tinker about removing the soil down to native soil and replacing it with compacted fill and Ms. Tinker responded that that it was possible and then mentioned the wetland rules and ordinance. In the intervening hearing an issue came up

about the back area of the lot being a wetland. All of these lots at Maxwellton have been designated in the intervening years as category A wetlands. At the third hearing, Mr. Bobbink

stated:

"Well, I am more willing to disturb the wetland than I am to place your garage next to your neighbor's cabin. That wetland is nothing but your lawn. Well, a puddled lawn. Nevertheless, it is not a functioning wetland in any meaning of the word; it doesn't tell me it can't be done. It just says that some work has to be done to do it. Now I have to tell you that you've got neighbors that are opposed and if I give you a variance that doesn't stand up, all you are going to do is end up in court and lose anyway."

Ms. Keefe still felt at the third hearing the Hearing Examiner still was not making a decision based on any factual information given; much of it is opinion and continued to say the burden of proof is on the applicant. The burden of proof, however, is absent from hearing to hearing; never was there a presentation of the actual dollars and cents economics which from the very beginning of the process the Examiner told Applicant she had to prove that it was not buildable or economically not feasible. A lot combination was done in 1987, with interpretation by county staff that the lot combination done for purposes of developing the property, building on to cabin putting in a mound system that then put them outside of being able to be grandfathered in under the wetland designation and had to abide by the 100' buffer. Ms. Keefe at one of the hearings presented information about a case she felt brought the whole wetland designation into question, Washington State Supreme Court Case *Island County v. Dillingham Development Co.*, 29 Wn. 2d 215 (1983) stating that combining adjoining lots by a boundary line adjustment does not create additional lots.

In transcribing the tapes she realized why she left every hearing feeling like her issues and concerns were being dealt with. Even when she left the final hearing she felt like the Hearing Examiner was going to hold the applicant to the standard of exploring other options before granting a variance. When the final decision was released she was astounded because there was such a lack of continuity and thought process on the basis of the Hearing Examiner when he determined the variance was warranted.

Ms. Keefe has no problem with anyone building a garage on any piece of property but felt that variances for those types of construction when other alternatives have not been explored is not a fair and consistent application of variance rules.

**Peter Moote**, Ms. Keefe's husband, addressed issues he saw as factual and legal. Primary points included the fact this is a variance process and the Applicant looking for a process short-cutting the development process. As far as the findings, there is no evidence let alone substantial evidence to support the findings. Conclusions of Law were made without any evidence especially substantial or factual findings supporting the conclusions. He saw this as a clear case where the Applicant did not seek out any other alternatives. Applicant should have been prepared to show why the variance was needed, but started with what they wanted without having looked at any other alternatives. This to him is a real problem and a precedent in Island County not to have especially in a sensitive area like Maxwellton Beach. The Hearing Examiner gave the applicant every opportunity to put together a proposal that would provide some substantial evidence to support the request, and they did not do that. There were three hearings, continued twice for that very purpose.

Even though the burden on the appellant is to show there is not substantial evidence, the initial burden from the beginning is on the applicant to show there is no other reasonable alternatives and that a variance is necessary in order to have a reasonable use of the property. The applicant must show they would be deprived of reasonable use of their property without the variance.

Finding of Fact #7 indicates that both the front and rear areas of the Applicant's property are subjected to flooding and

are unstable, but Mr. Moote pointed out that all of Maxwellton Beach has flooding problems and instability problems as far as fill is concerned. No evidence was presented to show it would be any more difficult to build a garage in the back than it would be in the front. In Finding #7 the Examiner states that the property owner correctly pointed out that a garage can be built in the back if the owner was willing to go to the expense. At the November hearing, Applicant brought in a letter dated October 29, 1997 from an engineer giving soil structure in the back, period. The same exact area where fill had to be brought in was done with a prior remodel; in addition that particular remodel was built into the 100' wetland buffer without a problem, presumably with administrative approval because there is no problem with protection of the wetland area – just lawn applicant is building over.

As far as the economic burden is concerned there are no figures on cost to do this without a variance yet the Hearing Examiner concluded it would be economically unfeasible or an economic burden. The Examiner found that flooding in the rear was worse than flooding in the front but there is no evidence to support that. The file contains photographs submitted into evidence showing that in mid-January the area in the front is submerged with water and looks like a pond; at the same exact time the area in the back is dry. This proves that the hardship would be greater in the front than in the back.

Conclusion of Law #3 states that the applicant would be severely impacted by having to build in the back or not being granted the variance which is an arbitrary conclusion on the part of the Hearing Examiner because there is no evidence in the record to support that at all. The Hearing Examiner gave the applicant a second continuance to a third hearing giving applicant to come up with more evidence to show specifically why this would be a hardship and why it would be impractical and difficult to build. Applicant came up with nothing additional to provide facts to support that. The Hearing Examiner himself looking at the October 29<sup>th</sup> letter pointed out it was inadequate to prove what they were contending. The Examiner's conclusions are not supported by facts. Not only are the findings unsupported by substantial evidence, but conclusions are arbitrary in that there are no facts to support the conclusions by the Examiner.

A review of the statements made by the Examiner show why this variance is not justified or supported and should not have been granted, and should not be supported by the Commissioners.

Photographs provided at the hearing before the Hearing Examiner showed that the statements made by the Applicant about the property being flooded in the back and not in the front were untrue. The Examiner stated he would be inclined to look to the reduction in the wetlands under these circumstances especially since the house is already built into and invading the wetland buffer rather than granting a variance. The Hearing Examiner stated he was probably more liberal on variances than the case law will support.

From trying to balance out environmental interests, zoning requirements and construction, especially in a county with a lot of sensitive property, Mr. Moote believed was where this rested – there are other alternatives the applicant should have been looked at but did not and did not bring evidence forward. Findings are not supported. Conclusions are not supported and it is an abuse of the process. The error in law that was made was to make the Finding there would be a substantial hardship for the applicant that would permit a variance when there are no facts to support that. He asked that the Board reverse the Examiner's decision.

**Kerrie Keefe**, one-third property owner, focused on Conclusions of Law #3 where the Hearing Examiner weighs and balances interests in what types of variances should be granted, and the Examiner concluded it was a toss up – there is no public interest. She stated it was an erroneous conclusion that "in this case the neighboring property owner to the south would be minimally affected by the 13 foot yard setback reduction which this Hearing Examiner will grant in this case" because it is not based on facts supported in the record, in fact, the facts were contrary to the Hearing Examiner's conclusion. The only north facing window on the Keefe cabin is directly next to where the proposed garage is to be built if the variance is granted – this is light obstruction and there is an obstruction of view. Photographs are a matter of record taken in mid-January showing a puddle, probably over ½' of water in the front portion where Applicant proposes to build the garage. The garage is being proposed with a pitched roof and the water will have to go somewhere and the only natural course is to shoot over to her property adjoining Diane Tinker, which by the proposed variance would be 9' away. Other windows are on the south side, one facing west and one on the east I the back total 7+ 1 on the north, and a sliding glass door on the south side.

## **APPLICANT**

Diane Tinker explained that her reason for not presenting information on cost to remove soil was because it was consistently brought up at the hearings that cost was not an issue. She did submit proof that it would be a major project, that all the soil for the 150' driveway and the area of the garage would have to be dug out and removed to get down to native bearing soil and would have to be replaced. The back of the lot is fill, a swamp when she was a child. The front of the lot is natural native soil. The house is built on natural soil; no fill was brought in for the house or foundation. The back of the lot is organic fill [saw dust from an old saw mill at Maxwelton] , settled unevenly, and fill brought in 1986, and leveled. It is still sinking, lower than the front and the area that floods, historically always been the fact. She presented pictures and newspaper articles to the Hearing Examiner. The water comes from the bluff behind the property; it is a swamp, a wetland. The County built a new access drain so the area has drained, but whenever that access is blocked, as it was Winter 1996-97, properties flood. She felt she had shown the variance is needed.

The Health Department required additional information, a winter perc, which is why the hearing was continued until February. She consulted an engineer, two septic designers, and submitted professional evidence. She pointed out the fact that she will be living alone and needs access to her car, and to her it is reasonable to have the garage in the front where she can get out even if there is flooding. It is not reasonable to build in the back where she might not be able to get her car out. With respect to light for the north window of the Keefe cabin, there is a tree in front of the window now on the Tinker property at the property line which she thinks impacts the light much more than a garage would 16' away. The rainfall on the garage would be the same as rainfall would be on the empty land and she saw no additional water as a result. The view out of the north window of the Keefe cabin is of the Tinker's yard. Ms. Tinker thought the garage would be "a good neighbor", an attractive structure that would match the house, shingled with a peaked roof, and give more privacy to the cabin next door.

Responding to questions posed by the County Commissioners, Ms. Tinker said that the extension to her house was not placed on fill, rather natural ground. The addition was built

into the wetland buffer as referenced but at that time in 1987 she did not know it was a wetland and in fact received a permit from the County which required no variance. The designation of a wetland behind her house is not the result of a man made ditch, it has always been a wetland swamp naturally. Before the ditch, she said there was a natural outfall when she was a child. In the Fifties the ditch was made for the first time for better drainage; the ditch re-dug in the late Seventies. The fact that the County constructed a new outfall to keep the level of water in the ditch an appropriate level, has resulted [discounting the slide] in the back area of her property remaining relatively drier. And she agreed that the flooding issues that she experienced in times gone by have been resolved pretty much, hopefully, by the outfall. Silt is building up and she does not know who is responsible for maintaining the ditch. The hill is unstable and there can be slides.

Commissioner Shelton remembered when the flooding occurred that flooding was everywhere.

Ms. Tinker agreed, but noted it built up gradually. She stated that her property is pretty flat where the house is; there is a steep bluff behind. She would think the water would run towards the back towards the drainage ditch; that would be the natural outflow of water – east to the drainage ditch and then out.

## **FURTHER STAFF COMMENTS**

Stacy Tucker pointed out that at the first public hearing before the Hearing Examiner in September, 1997, there was not identification made that a made that a Category A Wetland existed on the back portion of the property. The Hearing Examiner at that hearing directed the Applicant to come back with further evidence indicating why they could not build a structure on the back portion of the lot. Further site investigation was done by staff at that time to further determine whether that might be a regulated system and the determination made that it was a regulated Category A Wetland system. Staff then sent documentation to the Appellant and Applicant notifying them this was a Category A Wetland system with provisions that apply to that. An interpretation by staff was made that the boundary line combination done in 1987 did preclude them from going through an administrative process to reduce the Category A Wetland buffer. The Hearing Examiner addressed that interpretation in his decision and determined that interpretation

was made erroneously and that an administrative reduction of the buffer would be available to the applicants in this case.

Commissioner Shelton asked if the ditch was a category A wetland. Ms. Tucker's response was that the system existed prior to the ditch. There were some adjustments made when the drainage ditch was installed but the existing wetland system was present prior to the ditch being there [interpretation made by Matt Nash].

Commissioner Shaughnessy asked for further clarification regarding whether or not staff had the authority to reduce the buffer. Ms. Tucker replied in the affirmative adding that it would be through an administrative process.

Commissioner Shelton wanted to know what kind of buffer reduction would be required in order to place the garage in the rear of the property. Ms. Tucker responded that it would require a 50% reduction in the wetland buffer, depending on location.

To the Chairman's question about the width of area available for a driveway to get to the back of the property, Joanne Keefe said she took measurements from her property line to the Tinker's existing mound system. She identified the locust tree that was in the variance application to not be disturbed that sits on the edge of the mound system, and found that the measurement from her property line to that tree was 18'. In intervening discussions at various hearings about setbacks needed to the mound system for a driveway, she recalled that at the last hearing the answer came back from the Health Department that it was a zero setback.

Ms. Tucker stated that the most recently filed as-built for the system on file #047/98 shows 9' from the property line to the existing mound system. The Chair stated the information he had on file shows 11'.

Tim McDonald, Health Services Director, had not looked at the issue at all, but in general stated that one should not drive over the mound area. Obviously there must be an issue of describing where the mound area is and apparently it has been re-described so as to be explicit.

Ms. Tucker thought that issued had been addressed by the Health Department during the hearings before the Hearing Examiner and a matter of record in the file.

Commissioner Shelton pointed out that clearly from the as-built the 9' is actually 9' between the proposed garage and the property line, but there seems to be some difference there as he aligns it, and the 11' or 12' may be a more appropriate number.

As noted in the project description and in staff report concerning solar access Ms. Tucker pointed out that the proposed garage would conform to all required side yard setbacks. No facts were submitted showing that the neighboring properties would be impacted by displacement of water.

### **APPELLANT REBUTTAL**

Mr. Moote thought the main issue was not being addressed; it is not the case that Applicant was unaware that cost was an issue. The Hearing Examiner stated that the mere fact it would cost extra money to bring in fill for a project was not justification for a variance but he never told the applicant he did not need to know what the cost was. The hearings were continued for more information from the applicant. At the last hearing the Examiner stated: "This hearing was continued for the Applicant to convince me they could not put the garage anywhere else on the property.". That did not occur; no factual information was presented. The Applicant stated the yard continues to settle in the back. Mr. Moote states it is fill in the front and back; the point is that the Hearing Examiner had no way of knowing what the cost was as far as the front or back is concerned. The whole of Maxwelton Beach sits on a fill. The existing house is on fill and goes right in to the buffer area. His question was how can you look at evidence and say it is not feasible to build the garage anywhere else? The facts are not there. If feasible the variance should not be allowed, only if there is no other alternative.

**APPLICANT REBUTTAL**

Mrs. Tinker stated that between the first and second hearing she found out about the wetland in the back and was told that she did not come under administrative guidelines s for 50' setback which was why she did not go ahead too much looking further at the back – they thought they could not build in the back. As far as obtaining actual costs, Joanne Keefe mentioned in both hearings economic cost was not an issue and the Hearing Examiner seemed to agree with that so the dollars did not seem to matter, rather it was what they would have to do in order to build and whether or not she would be able to obtain a wetland variance. As far as she knew the front is not fill. Her grandparents bought the property in 1914 and built on what was there which looks to be the original sandy dirt. The swamp area is behind where the house is which is where the fill is – when she was a teenager is when they started filling the old swamp area. The house was raised because of requirements to be above the 100 year flood level. The foundation is on the basic native soil.

**DECISION:**

A decision will be announced at public meeting within 14 days based on the record of the Hearing Examiner’s hearing and applicable laws. The Board’s decision will include the vote of individual Commissioners and a brief statement as to the basis for the decision. After the Board’s decision, the Planning Director will prepare a written decision for signature by the Board of County Commissioners. A copy of the decision will be provided to the appellant and project applicant by the Planning Department.

There being no further business to come before the Board at this time, the meeting adjourned at 12:05 p.m. The Board will meet next in Special Session on Camano Island at Terry’s Corner Fire Station 525 E. North Camano Drive, today beginning at 3:00 p.m. to consider two items: (1) 3:00 p.m. Public Hearing: Resolution C-25-98 (R-11-98) Renaming Miscellaneous County Roads on Camano Island; and (2) 3:30 p.m. Presentation by Camano Animal Facility Group.

**BOARD OF COUNTY  
COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

\_\_\_\_\_  
Wm. L. McDowell, Chairman

\_\_\_\_\_  
Tom Shaughnessy, Member

\_\_\_\_\_  
Mike Shelton, Member

**Attest:**

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Margaret Rosenkranz, Clerk of the Board