

ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING

REGULAR SESSION - APRIL 27, 1998

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on April 27, 1998, beginning at 11:00 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 E. Meyer. Adm. Asst.

Roundtable Meeting with County Elected Officials

ATTENDANCE:

County Commissioners: Mac McDowell; Tom Shaughnessy; Mike Shelton

Elected Officials: Tom Baenen; Marilee Black; Bill Hawkins; Mike Hawley; Maxine Sauter; Suzanne Sinclair

Staff: Margaret Rosenkranz; E. Meyer

Salaries . Some concern expressed about Elected Officials salaries. Elected Officials receive a 5% increase every other year whereas all other county employee COLAs are 3% plus longevity. Already Elected Officials staff make more than the Elected Official. However, that is not their priority item at this time, rather want to focus instead on staff needs to support and run their offices.

Union Negotiations. Elected Officials would like to have a little more input in union negotiations. The last time Elected Officials met with Management's Consultant they did not necessarily feel it had been satisfactory. Some concerns are: some information relayed to consultant, if passed on to the Union, was after the fact; elected officials blamed for dragging out the process and not going along when in fact that was not the case and Elected Officials do not want to be put in that position again. That last session created hardships: (1) there was a tight money market and there were issues that affected Elected Officials more than the Board; (2) seemed to be one delay after another and for some reason that caused hard feelings among Union folks who thought elected officials were dragging their feet in the process. Suggest starting the process a little earlier [i.e. the Elected Officials would agree even a copy of a letter from Consultant to Union requesting to set up the first meeting].

Follow-up. Chairman reminded that the Consultant works for "Management" and the Elected Officials are part of that management. If Elected Officials have something that needs to go to the Consultant they feel is not being properly conveyed put it in writing to the Consultant with a copy to the Board. Board to follow with a letter to consultant to get underway with negotiations.

Budget ProceSS . Most Elected Officials are not happy with the budget procedure and do not feel they are able to submit what they feel are realistic budgets when they are told they have to "hold the line". Officials need a process to give them some indication where they can work each year. The process has been based on last year's budget and there is no way to operate a department and hold the line year in and year out. Feel put in the position of submitting a hold-the-line budget based on the past year's budget and then coming back to the Board to beg for funding something needed in the budget.

There is a certain amount of money available and there are questions about how to spend that money and a matter of how to go about process. Starting about 1990 there has been a "hold the line budget" and departments told that is all the Board will consider. There was no budget director at that time; the process has been resulted in almost an absence of communication. Elected Officials as part of County management should see revenue figures and brought to the table and given a say.

For about the last eight years Elected Officials have been told to submit a hold the line budget, which in the Prosecutor's opinion does not conform to the budget act. The budget act indicates that Elected Officials are obligated to tell the Commissioners how much money will be needed to perform statutory duties the next year. Elected Officials are

not sure what the Commissioners have done because nothing has been explained at the end of the process.

The Auditor provided information pulled from the system as it exists regarding number of employees on a set date each year in Island County, and separated into those departments managed by the Commissioners and those managed by Elected Officials [significant number is at the bottom of the sheet showing the total employees]. From 1989 forward provides some comparison; the increase in employees over the 18 years for departments headed by the County Commissioners is 78%; for Elected Officials departments, except the Sheriff, that number has been about 40%. If the Sheriff's Department is included, it would be about even, 72% compared to 78%. One of the things that has to happen from management perspective is to see the broader picture. It is recognized that most of the increases of responsibility within departments are directed by the State without the accompanying funding. There are demands increased by population growth in the County. Another way of looking at this is to compare Island County and this issue to other counties similarly situated. The second hand out showed some of the state statistics relative to population and assessed value with other counties, and compared what those other similarly situated counties with Island County.

There is concern with regard to purchase of capital expenditures; Departments are told that comes in a separate budget in March under direction of another department. Departments know what equipment they need when the original budget is put together; that never gets in the original budget, therefore there is no really true picture of what a particular office is asking for. And, departments may not find out until some months into the next year whether or not they will receive the equipment, and if approved, could be some 9 months into the year before receiving the equipment. There needs to be a review about when that list is submitted by departments.

The Chair noted that the March-April time frame was really when the Commissioners and the County find out specifically the year-end balance and know what is or is not available for capital expenditures. A preliminary list has been received from Cathy Caryl as of last week; she is still pricing some items out, but the plan is to discuss the list at the Staff Session May 6.

Some ideas as a result of this brain-storming session were:

- look for new ways to raise revenues to meet needs; not necessarily raising taxes, but find some means to latch on to something for funding, i.e. something like the distressed county issue, or even taking equalization and instead of 75% of the average take that to 95-100% of the state average
- Island County does not receive timber tax revenue and is not considered a distressed county; the problem there could lie in communications and relations with Olympia and may be a good idea to identify the problem through the legislature
- some thought of a different potential procedure for the budget process
- zero in on the State sales tax equalization account
- take law and justice budgets altogether as a law and justice community instead of separately- a lot better planning will come out from having all of that information at the table [and even some pre-planning beforehand.

Budgetary planning is needed so that the process is a year-around process with the Board making the ultimate final decision at the budget hearing and not as a result of a ½ hour meeting with each department head. Budgetary planning is a tool to enhance the Board's ability to budget more than just in that condensed period of time and have some budget forecasting.

The Chair asked that the Auditor provide figures on a chart from 1993 on as opposed to 1989; and keep in mind the fact that temporary employees are brought on to take care of certain issues.

The Board expressed a commitment to include the Elected Officials more into the budget process. Elected Officials will see the revenue forecast. In terms of what the Board will see from individual departments on the budget as the beginning point is: last year's budget plus the agreed-upon COLA increases, plus what other budgetary increases they believe their department needs, prioritized. The Board will get together and talk to Elected Officials about those

individual things that were funded or not funded and the reason why. There will be an explanation at the end of the process.

Elected Officials have an open invitation to come to any and all meetings. Board agrees with the idea of having all law and justice sitting at one table.

Potential subject for next month: record management.

[note: May 25th is a holiday and there will be no meeting; next scheduled

Elected Officials roundtable with the Board is 6/22/98 @ 11:00 a.m.]

VOUCHERS AND PAYMENT OF BILLS

The following vouchers/warrants were approved for payment by unanimous motion of the Board:

Voucher (War.) - #25104-#25331..... \$ 159,320.75

Diking Improvement District #4: \$ 354.97

Veterans Assistance Fund: [emergency financial assistance to certain eligible veterans; the names and specific circumstances are maintained confidential]. Claim V98-7 denied by unanimous motion of the Board based on recommendation of the Veterans Assistance Review Committee.

-

RESCIND PRIOR APPOINTMENT AND NAMING NEW MEMBER

TO ISLAND COUNTY FAIR BOARD

The Board, by unanimous motion appointed Raymond Gabelein, Clinton, to serve on the Island County Fair Board representing the South Whidbey School District, refilling the position left vacant on resignation of Dan Ollis, for a term to October 8, 1999. The Board's motion included rescinding the April 20, 1998 action of the Board appointing Jim Eakin of Langley to that position.

What occurred, as Commissioner Shelton explained, was that there had been two open seats on the Fair Board. The Fair Board nominated and elected Mr. Eakin, and at the same time, the Board of Commissioners appointed Mr. Eakin to fill the Commissioner appointment.

REAPPOINTMENT TO PUBLIC HEALTH AND SAFETY NETWORK

By unanimous motion, the Board reappointed Carol McNeil, Island County Health Department Nursing Supervisor, to another term as a member on the Island County/Stanwood Community Public Health and Safety Network representing Island County in the category "fiduciary interest", with the term to January 1, 2001.

Staff Session SCHEDULE for May

Staff Session schedule for May was approved by the Board. The staff sessions are to be held as regularly scheduled, May 6 and 20, beginning at 9:00 a.m. [copies are distributed to departments and press; copies also available on request]

Human Resources DEPARTMENT

Hiring Requests & Personnel Actions

After summary by Dick Toft, Human Resources Director, the Board, by unanimous motion, approved PAA #030/98, Position #4014.10, replacement action, Sheriff's Department, effective May 18, 1998.

Resolution #C-46-98 Implementing Washington State Deferred Compensation Program for Island County Employees

Mr. Toft presented the proposed resolution, a matter previously reviewed and discussed with the Board at recent staff session. This action provides to employees a third option in selecting the State deferred compensation program. By unanimous motion the Board adopted Resolution #C-46-98 in the matter of implementing Washington State Deferred Compensation Program for Island County employees.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF IMPLEMENTING)

WASHINGTON STATE DEFERRED COM-)

PENSATION PROGRAM FOR ISLAND) RESOLUTION #C-46-98

COUNTY EMPLOYEES)

_____)

WHEREAS, Island County was formed in accordance with RCW 36.04.150 in 1853; and,

WHEREAS, the Department of Retirement Systems, Deferred Compensation Program in accordance with RCW 41.50.770 administers the deferred compensation plan for the employees of the State of Washington as outlined in WAC Chapter 415-500; and,

WHEREAS, RCW 41.50.770 permits Counties, Municipalities, and other political subdivisions to participate in the State of Washington Employees Deferred Compensation Plan; and,

WHEREAS, Island County, has reviewed the State plan and agrees to accept all terms and conditions of the State plan as established and as hereafter amended; and,

WHEREAS, Island County, understands and agrees that all monies deferred by its employees remain the property of Island County.

NOW, THEREFORE, BE IT RESOLVED, that Island County requests approval by the Department of Retirement Systems, Deferred Compensation Program to participate in the aforementioned deferred compensation subject to the plan for the employees of Island County, requirements of RCW of 41.50.770 and WAC Chapter 415-500.

ADOPTED this 27th day of April, 1998.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

ATTEST: Tom Shaughnessy, Member

Margaret Rosenkranz, Mike Shelton, Member

Clerk of the Board

Resolution #C-47-98 Continuing Wellness Incentive Program/Plan 1997-98

The action recommended by Mr. Toft was adoption of a resolution to continue the Wellness Incentive Program/Plan for Island County Employees for Plan 1A and Plan 2A only, allowing employees to convert a certain number of days of unused sick leave to annual leave. By unanimous motion, the Board adopted Resolution #C-47-98 continuing the Wellness Incentive Program/Plan, Plan 1A and Plan 2A for 1997-98 program year.

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

**IN THE MATTER OF CONTINUING THE)
WELLNESS INCENTIVE PROGRAM/) RESOLUTION C-47-98
PLAN FOR ISLAND COUNTY EMPLOYEES)**

WHEREAS, the Board of Island County Commissioners adopted Resolution C-31-97 on June 23, 1997 which continued the Wellness Incentive Program; and

WHEREAS, the above Resolution requires an analysis of potential costs to be reviewed no later than April 1, 1998, after which the program may be renewed for program year 1997-1998, and

WHEREAS, by participation in the program the Island County employees demonstrated that a percentage of employees favored incentives for maintaining health life styles and incentives for unused sick leave; and

WHEREAS, absenteeism is expensive to the County, both in paid time off and lost productivity to the organization; and

WHEREAS, after review it has been determined that the Wellness Incentive Plan for 1997-1998 will only contain Plan 1a and Plan 2a, **NOW THEREFORE**

BE IT RESOLVED, that an analysis of potential cost be review no later than April 1, 1999 at which time the program may be renewed for program year 1999-2000.

ADOPTED this 27th day of April, 1998.

Board of County Commissioners

Island County Washington

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Margaret Rosenkranz, Clerk of the Board

Mike Shelton, Member

Plan One

To be eligible for, and participate in the Wellness Incentive Plan #1, an employee must first have established a minimum base (balance) of 160 HOURS of accrued sick leave. Once this has been established, the employee may elect, on

an annual basis to:

- a. Convert up to a maximum of twelve days of unused sick leave accrued within the calendar year to annual leave. The ratio of conversion shall be two (2) full days of sick leave for each one (1) full day of annual leave. (If the addition of annual leave brings the employee over the established limits of allowed annual leave, the employee will be required to use the excess hours within that calendar year.)
- b. Convert up to a maximum of twelve days of unused sick leave accrued within the calendar year to cash. The ratio of conversion shall be three (3) full days of sick leave for each one (1) day of pay.
- c. Employees may choose a combination of "a" and "b" above.

Plan Two

To be eligible for, and participate in the Wellness Incentive Plan #2, an employee with a minimum balance of 48 HOURS of accrued sick leave, may elect on an annual basis to:

- a.
- b. Convert up to one half the number of days of unused sick leave accrued within the calendar year to cash. The rate of conversion will be as outlined in Plan #1b above.
- c. Employees may choose a combination of "a" and "b" above

AUTHORIZE ADDITIONAL FUNDS REQUIRED for legal services

By unanimous motion, under Resolution #C-14-98 dated March 2, 1998, the Board authorized the addition of \$4,191.28 to pay for services related to Hale v. Island County, Snohomish County Superior Court Cause No. 96-2-02020-8, increasing the maximum payable to Langabeer, Tull, Sitkin & Lee, P.S., Special Counsel, from \$8,000.00 to \$12,191.28.

First Amendment to Interlocal Agreement between Island County and Island County Emergency Services Communication Center

(I-COM) to increase funding

By way of Memorandum dated April 14, 1998, Kathy McClymont, Director, I-COM, submitted for Board approval

First Amendment to the Interlocal Agreement between Island County and I-COM to recognize a State approved increase in the Military Department Contract #EM997062 with Island County for the year terminating December 31, 1998. The increase allows funding for I-COM to complete the addressing for implementation of Enhanced 9-1-1 in Island county prior to that date, the increase in the amount of \$48,000 . The First Amendment was signed and approved by I-COM, reviewed and approved by the County's Deputy Prosecuting Attorney and Risk Management Department.

By unanimous motion, the Board approved and signed First Amendment to Interlocal Agreement between Island County, Washington, and Island County Emergency Services Communications Center (I-COM). [Identification No: BICC 98-220]

HEALTH CONTRACTS APPROVED

With the Board having had an opportunity to review certain health contracts during recent staff session with the Health Department, the Board by unanimous motion, approved the following:

- Contract #HS-03-98 - County Millage, Catholic Community Health Services, \$13,889
- Contract Amendment TO #HS-08-97 (01) The Recovery Center, \$785.00.

HEARING SCHEDULED: RESOLUTION #C-48-98 Declaring EMERGENCY IN CURRENT EXPENSE FUND BUDGET, Equipment Rental & Revolving Fund and Capital Improvement (REET 1)Fund Budgets

By unanimous motion, the Board acted to schedule a date for public hearing to consider Resolution #C-48-98, an emergency appropriations in the 1998 Current Expense budget; ER&R Budget and Capital Improvement REET 1 Budget, a total of \$369,860) on May 18, 1998 at 9:55 a.m.

CONSULTANT CONTRACTS FOR LEGAL SERVICES GROWTH MANAGEMENT COMP PLAN AND DEVELOPMENT REGULATIONS

By unanimous motion, the Board approved and signed Amendment #1 – to the Contract between Island County and Keith W. Dearborn, changing the date of completion from May 1 to December 31, 1998, and Amendment #1 to the Contract with Bogle & Gates also to reflect date of completion from May 1 to December 31, 1998.

BID AWARD – Liquid Asphalt Materials for period of 5/1/98

to 5/1/99 (CRS-2, CMS-2, CSS-1)

As recommended by Larry Kwarsick, Director, Public Works Department, the Board by unanimous motion, awarded bid for Liquid Asphalt Materials for the period of May 1, 1998 to May 1, 1999, for all shops, to the low bidder, Chevron of Seattle.

BID AWARD – Asphalt Concrete Materials for period 5/1/98 to 5/1/99

In the matter of awarding bid for Asphalt Concrete Materials for the period of May 1, 1998 to May 1, 1999, the County Engineer sent a recommendation for award, but based upon discussions that occurred last week at Staff Session, the original recommendation has been modified to show that for Tack Oil and A.T.B. that the bid be awarded to all bidders. There is not a lot of use of tack oil and A.T.B. but when needed, the department wants to go to the closest provider and this be the basis of price. The remainder of bid award, as Mr. Kwarsick outlined, was recommended to Lakeside Industries Hoffman Road Site for Whidbey Island Shops for Modified G and Class B; and Modified G and Class B for Camano Shop: Lakeside Industries Burlington Site.

By unanimous motion, the Board awarded bid to Lakeside Industries at their Hoffman Road Site for Modified G, Class B for Whidbey Island shops, and Lakeside Industries at their Burlington Site for Camano shop, and that award of bid for Tack Oil and A.T.B. be awarded to all bidders.

AMENDMENTS TO COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENTS

Mr. Kwarsick recommended the Board's approval and signature on two Amendments to CDBG Agreements, representing no change to contract amounts, rather the date of completion as follows: (1) **Camano Family Resource Center** – extend time from 5/31/98 to 3/31/99; and (2) **South Whidbey Family Resource Center** – extend time from 12/31/97 to 2/28/99.

The Board, on unanimous motion, approved both CDBG Agreement amendments as presented.

ADOPT-A-ROAD LITTER CONTROL PROGRAM AGREEMENT

By unanimous motion, the Board approved and signed Adopt-A-Road Litter Control Program Agreement with Keith Grisim, North Camano Drive from Arrowhead Road to Campbell Drive.

BOND RELEASE – SPR 62/93, Camano Plaza, Kent Myers,

bond was to complete septic transmission line

By way of Memo dated April 22, 1998, the County Engineer reported that the obligor, Kent Myers, Camano Plaza Site Plan Review #62/93, had completed requirements under the bond and therefore recommended bond release. The bond, by way of Letter of Credit #999631593, was for completion of a septic transmission line as required by the site plan and franchise #275. Mr. Kwarsick concurred in Mr. Allen's recommendation of release of bond at this time.

The Board, by unanimous motion, approved Release of Bond for Kent Myers, Camano Plaza,

SPR #62/93.

ORDINANCE #C-49-98 [PLG-009-98] - AMENDMENTS TO CRITICAL AREA REGULATIONS FOR WETLANDS, ADOPTED UNDER CHAPTER RCW 36.70A

Keith Dearborn, special legal counsel, GMA Comp Plan and Development Regulations, presented and summarized proposed ordinance to implement changes to the County's Wetlands Regulations that were reviewed during the public process which began on March 9, 1998, with four hearings. The changes were included in the Team Draft proposal released March 9. These were commented on by individuals and State agencies. The Planning Commission deliberated on these changes, the changes were included their recommendation to the Board of April 17, and the Board accepted the changes on Monday, April 20.

The Ordinance would put the changes into effect immediately. All changes relate to issues that are currently on appeal that have been expressly identified by the Growth Board and by incorporating these changes into the Code, will hopefully simplify the appeal hearing as these will no longer be issues in question in the appeal. Exhibit A lists the issues in the appeal on wetlands; Exhibit B includes the express changes to Title 17.02 that address the three issues; Exhibit 3 in a narrative form explains exactly how each of the three issues are being addressed. The ordinance explains the reasons for enacting the changes now rather than waiting and the

Planning Commission discussed that question specifically and in their recommendation asked the Board to consider implementing these changes immediately. Having the regulations in place now provides more clarity and certainty for permit issuance, public projects and agricultural practices in the Spring and Summer, and avoids the Growth Board having to address this issue at all.

Mr. Dearborn explained that the action is being done as an emergency under SEPA, not an emergency under RCW 36.70. Public notice and public hearings were held under RCW 36.70, but because of an inadvertent error, the public notice did not specifically reference SEPA. All of the changes are designed to provide greater protection from an environmental standpoint so there is no substantive failure to comply with SEPA by incorporating these changes now.

Commissioner Shelton moved that the Board approve Ordinance #C-49-98, PLG-009-98, in the matter of an ordinance

concerning amendments to the Critical Area Regulations for Wetlands Adopted Under Chapter 36.70A RCW. Motion, seconded by Commissioner Shaughnessy, carried unanimously.

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

IN THE MATTER OF AN ORDINANCE CONCERNING AMENDMENTS TO CRITICAL AREA REGULATIONS FOR WETLANDS ADOPTED UNDER CHAPTER 36.70A RCW))) ORDINANCE C-49-98) PLG-009-98))))
---	--

WHEREAS, in 1992 the Board of Island County Commissioners enacted Ordinance PLG-006-92 adopting amendments to the wetland overlay zone ICC 17.02.110A and determined, as amended, the wetland overlay zone and associated standards in Chapter 17.02 ICC constituted GMA critical area regulations for wetlands; and

WHEREAS, in December 1997 this action was appealed to the Western Washington Growth Management Hearings Board; and

WHEREAS, in February 1998 the Western Board identified in its Pre-Hearing Order, attached hereto as Exhibit A, three specific issues relating to wetlands; and

WHEREAS, Island County prepared amendments to its wetlands regulations that address these three issues; held workshops; public hearings; and completed a thirty-day formal public review process on these amendments as well as other critical area regulations that would govern fish and wildlife habitat conservation areas; and

WHEREAS, Island County originally intended to adopt all of its GMA Comprehensive Plan and Development Regulations before the end of April 1998. However, some plan elements, i.e., housing, transportation, capital facilities shorelines and natural lands could not be completed in time to permit the planned adoption and final action has been delayed until August 1998; and

WHEREAS, delays in construction of public projects scheduled to be constructed in the Spring; uncertainty regarding permissible Springtime farming practices; and uncertainty regarding residential construction on Island County's shorelines could result if Island County waits until August to adopt these wetland amendments; and

WHEREAS, the Planning Commission has recommended that the Board consider implementing the change to wetland regulations immediately; and

WHEREAS, WAC 197-11-880 provides that actions such as proposed by this ordinance are exempt from the requirements of Chapter 43.21C RCW.

NOW, THEREFORE, BE IT HEREBY ORDAINED, that the Board of Island County Commissioners hereby adopts the amendments to ICC 17.02.030 and ICC 17.02.110A recommended by the Planning Commission as modifications to the County's GMA critical area regulations for wetlands, attached hereto as Exhibit B. The Board also hereby adopts the Explanation attached as Exhibit C and Planning Commission Findings No. 86-90, 93, 123, 124, 126-131 and 136 attached as Exhibit D; and

BE IT FURTHER ORDAINED, that having completed four public hearings on March 16,

18, 24 and 26 and a thirty (30) day public comment period which ended on April 9, 1998, there is a need for these amendments to take affect immediately to prevent an imminent threat of serious environmental degradation to wetlands; establish uniform rules that will permit public projects scheduled for construction in Spring 1998 to be carried out without delay resulting from appeals; to clarify the circumstances under which existing agricultural practices that are exempt from wetlands regulations; and to ensure that building permits for shoreline residential development can be issued with certainty; and

LET IT BE FURTHER ORDAINED THAT the Board of Island County Commissioners intends that these amendments respond fully to the issues identified in the Pre-Hearing Order for Case #97-2-0064, thereby avoiding the need for any party or the Western Board to expend time addressing wetlands issues identified in the pre-hearing order.

APPROVED AND ADOPTED this 27th day of April, 1998.

BOARD OF COUNTY COMMISSIONERS
OF

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST:

Margaret Rosenkranz, Clerk of the Board

APPROVED AS TO FORM:

David L. Jamieson, Jr.

Deputy Prosecuting Attorney

& Island County Code Reviser

EXHIBIT A

Excerpt from Pre-hearing Order

#97-2-0064, Page 2

Western Washington Growth Management Hearings Board

III Issues

1. Did Island County use the correct procedures in the designation and/or the adoption of development regulations (DRs) that protect any or all of the following critical areas: wetlands; frequently flooded areas; geologically hazardous areas; and critical aquifer recharge areas.
2. As to any critical area designation and/or DR adoption that was not properly adopted, should any or all of the following be declared invalid:
 1. ICC 17.02.110.a.1.(c) with regard to "temporary" disruption of wetlands or their buffers for utility work?
 2. ICC 17.02.110.a.3.(b)(2) involving 25-foot buffers for shoreland associated wetlands.
 3. ICC 17.02.110a.4.(a)(4) exempting critical areas from agricultural activities including new activities on land zoned agricultural and

further exempting all existing agricultural activities on land not zoned agricultural?

EXHIBIT B

1. Amend ICC 17.02.030 to add the following definitions:

Agricultural Activities, Existing and On-Going: Those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock. These activities include the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Activities which bring an area into agricultural use are not part of an on-going operation. An operation ceases to be on-going when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and on-going agricultural activity. Forest practices are not included in this definition.

Best Management Practices: Conservation practices or systems of practices and management measures that:

- 1. Control soil loss and reduce water quality degradation; and
- 2. Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of wetlands.

2. Strike ICC 17.02.110A.1.c):

.

c. Temporary disruption of a wetland or its buffer for the installation, extension, replacement and/or emergency repair of utility lines such as water lines or underground wiring, may be authorized by the Planning Director, provided that the use of heavy equipment shall be limited to buffer areas if at all possible, only minimal disruption shall occur and the applicant shall restore the wetland and/or its buffer after said work is completed.

.

2. Strike ICC 17.02.110A.3.b)(ii)

(ii) The wetland is a marsh, bog or swamp as defined in 173-22 WAC and regulated by the Shoreline Management Act, 90.58 RCW, and the Island County Shoreline Management Master Program, Chapter 16.21 ICC (SMMP) or is a lake as defined in 17.02.020.

4. Amend ICC 17.02.110A.4.a) as follows:

.

- iv. Farming and ranching, plowing, planting, fertilizing, spraying, harvesting and grazing on Agriculture zoned parcels when such activities are part of normal farming or ranching practices. In all other zones, such activities shall be exempt if they were occurring on December 31, 1984, and have not been discontinued for a period longer than three (3) years since that date. In all zones, conversion to a non-agricultural use which involves alteration of a wetland, deep-water habitat or their buffers shall require Use Approval.
 - i. Existing and on-going agricultural activities when undertaken pursuant to best management practices to minimize impacts to critical areas.

.

(ix) For the following utility activities, when undertaken pursuant to best management practices to minimize impacts to critical areas and immediately to restore any disturbed area.

(1.) Normal and routine maintenance or repair of existing utility structures or rights-of-way.

(2.) Relocation within improved rights-of-way of electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of 55,000 volts or less only when required by a local government agency.

(3.) Relocation within improved right-of-way utility lines, equipment or appurtenances only when required by a local the governmental agency and the local government agency approves the new location of the facilities.

(4.) Installation or construction in improved County road rights-of-way, and replacement, operation, or alteration of all electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of 55,000 volts or less.

- 1. Installation or construction in improved County road rights-of-way and replacement, operation, repair, or alteration of all utility lines, equipment, or appurtenances.

EXHIBIT C

EXPLANATION:

- 1. The first section under review in #97-2-0064 is ICC 17.02.110A.1.c) with regard to "temporary" disruption of wetlands or their buffers for utility

work. The draft regulations strike all of ICC 17.02.110A.1.c. and replace it with an exemption for utility work in rights-of-ways only when undertaken pursuant to best management practices to minimize impacts to critical areas and immediately to restore any disturbed area. The Central Puget Sound and Western Boards have acknowledged that BMPs are an appropriate mechanism to ensure these kinds of wetland activities are going to minimize impacts to critical areas.

2. The second provision under review in #97-2-0064 is ICC 17.02.110A.3.b)(ii), involve 25-foot buffers for shoreland associated wetlands. The amendment strikes this provision from the definition of "Category B" wetlands (which have a 25-foot buffer.) Shoreline wetlands meeting the criteria for Category A would then be classified as Category A.
3. The final provision under review in #97-2-0064 is ICC 17.02.110A.4.a)(iv) agricultural activities including new activities on land zoned agricultural and further exempts all existing agricultural activities on land not zoned agricultural;. This exemption is also struck. In its place an exemption is proposed only for "Existing and on-going agricultural activities when undertaken pursuant to best management practices to minimize impacts to critical areas." "Existing and on-going agricultural activities: is defined as in DOE's model wetlands protection ordinance. The Central Puget Sound and Western Boards have acknowledged that BMPs are an appropriate mechanism to ensure these kinds of wetland activities are going to minimize impacts to critical areas.

Exhibit D

PRELIMINARY FINDINGS OF FACT

Island County GMA Comprehensive Plan and Development Regulations

.

CRITICAL AREAS

Previous Actions to Comply With GMA Requirements for Critical Areas

86. Following the adoption of the GMA, Island County undertook a review of its regulations governing wetlands. In 1992, the Board of Commissioners ("Board") adopted Ordinance PLG-006-92 with certain amendments to the Wetlands Overlay Zone determining that, as so amended, the County's regulations governing wetlands comply with the requirements of GMA to designate and protect wetlands.
87. Following these actions by the Board, the legislature adopted the following amendments to the GMA which affect critical areas:
 - (a) In 1995 it amended the definition of wetlands;
 - (b) In 1995 it adopted a new section providing that cities and counties shall include best available science in developing policies and development regulations to protect the functions and values of critical areas and that these cities and counties shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.
 - a. In 1997 it amended the requirements for the rural element of a comprehensive plan to explain that protection of rural character includes protection of critical areas as required by RCW 36.70A.060; and
88. The Western Washington Growth Management Hearings Board ("Western Board") has ruled that the requirement to include best available science applies prospectively. Therefore, it would not apply retroactively to the County's adopted regulations governing wetlands, frequently flooded areas,

geologically hazardous areas and aquifer recharge areas.

89. Almost all of Island County's shorelines are contained in the Rural Area, including Rural Areas of More Intensive Development.

Wetlands

90. Wetlands currently are regulated and protected to varying degrees by the State Shoreline Management Act, Hydraulics Code and Environmental Policy Act; and the federal Clean Water Act, and Rivers and Harbors Act.

.

93. Currently Chapter 17.02 classifies all wetlands within the shoreline jurisdiction as Category B wetlands. In order to protect rural character and important shoreline functions, wetlands should be classified based upon their functions, not their jurisdictional location.

.

Agricultural Uses

123. Considering Goal 8 of the Growth Management Act, RCW 36.70A.060(1) and the decisions of the Western Board, existing agricultural activities should be exempt from critical areas regulations, but should be required to implement best management practices to control soil loss and minimize adverse impacts to surface and groundwater and wetlands. However, the expansion of the new agricultural activities and existing agricultural activities can create impacts on critical areas and should not be exempt.

124. Island County should adopt the Department of Ecology's Model Wetlands Protection Ordinance definition of existing and on-going agriculture.

.....

Generally

126. A review of wetland, stream and buffer alterations in Island County from 1985 to the present indicates that 41 applications have been made which proposal would create impacts to wetlands, streams tributary to wetlands, or their buffers. Of these applications, 20 applied to buffers; 21 applied to wetlands or streams. 4 were denied. A number of these applications were to allow access to property. These applications were generally granted with conditions requiring that the impact to the critical area be minimized, disturbed areas be immediately restored and mitigation be provided where possible. This review demonstrates that it is appropriate to make road and utility crossings a permitted use where fill is minimized, best management practices are implemented during construction and mitigation is provided where possible. In addition, the County should adopt the Department of Ecology's recommendation that, in order to permit this use, the County must find that the crossing is the least damaging alternative. In evaluating the least damaging alternative proportionaity of cost and impacts should be taken into account.

127. The Department of Ecology's Model Wetlands Protection Ordinance addresses normal maintenance, repair or operation of existing serviceable structures, facilities, or improved areas be an allowed use in wetlands or their buffers so long as there is no modification that changes the character, scope or size of the original structure, facility, or improved area or the construction of a maintenance road.

128. Considering Goals 3 and 12 of the Growth Management Act and the decisions of the Western Board and the Department of Ecology's Model Wetlands Protection Ordinance, it is appropriate to provide exemptions for low-impact utility

activities, such as maintenance and repair, when undertaken to pursuant to best management practices to minimize impacts to critical areas and immediately to restore any disturbed critical area or its buffer.

129. In recommending this exemption, the Planning Commission reviewed a summary of Central Puget Sound utility exemptions. The summary indicates that, of 40 Central Puget Sound jurisdictions, all but five provide an exemption for utility activities with minor impacts such as normal maintenance and repair of utility facilities within an improved right-of-way.

130. Considering Goals 6 and 7 of the Growth Management Act, and the Department of Ecology's Model Wetlands Protection Ordinance, it is appropriate to provide exemptions for reconstruction, remodeling and maintenance of existing structures that do not further intrude into the critical area or its buffer.

131. Considering Goals 3, 10, and 12 of the Growth Management Act, and the Department of Ecology's Model Wetlands Protection Ordinance, it is appropriate to provide exemption for maintenance or reconstruction, serviceable public or private roads and associated facilities and maintenance and repair of existing drainage facilities or systems. Such activities should be undertaken pursuant to best management practices, and should immediately restore any disturbed critical area or its buffer open completion of work. Expansion of any of these facilities should be subject to the critical areas regulations.

.

136. Work performed by Island County should comply with its critical areas regulations.

maps, contained in the Element, be updated prior to final adoption.

CRITICAL AREAS CODE CHANGES TENTATIVELY SCHEDULED

A related matter Mr. Dearborn brought before the Board for information, was that the Planning Commission had also recommended that the Board enact, before the end of the review process scheduled for August, the amendments for Fish & Wildlife Critical Areas. The County is under a compliance order to complete that work mid-June. Notice will go out in this Saturday's Whidbey News Times to start the SEPA review period; the notice in March failed to mention the SEPA portion and there will be a new SEPA determination on the fish & Wildlife amendments, a 15-day comment period, 15-day appeal period, and presuming no appeals of those amendments under SEPA, and that tentatively, a hearing date of June 8, 1998, at 1:30 p.m., be set to hear Fish & Wildlife Amendments. These were all a part of the Team Draft and part of the Planning Commission deliberations. The recommendations of the Planning Commission are the proposal going out for SEPA review starting Saturday. The notice will make sure people know the action the Board has taken today has occurred and these changes will be for purposes of public review included in the document at the time of hearing, June 8th.

PUBLIC HEARING SCHEDULED: ORDINANCE #C-50-98 -[PLG-008-98]

CONCERNING AMENDED INTERIM APPLICATIONS PROCEDURES

AFFECTING CHAPTER 17.20, ISLAND COUNTY CODE

As presented by Mr. Dearborn, the Board by unanimous motion, scheduled a public hearing on May 18, 1998 at 10:45 a.m. to consider Ordinance #C-50-98 [a/k/a PLG-008-98] concerning Amended Interim Application Procedures Affecting Chapter 17.02 ICC.

Mr. Dearborn explained this ordinance would enact the Judge's compliance request and before the hearing date, counsel will have presented an agreed order between the parties implementing the Judge's order and this ordinance will effectuate that order of the court.

**HEARING HELD: Ordinance C-39-98 Amendment of
Island COUNTY INTERIM 9-1-1 ADDRESSING POLICY**

A Public Hearing was held beginning at 2:45 p.m. for the purpose of considering Ordinance #C-39-98, Amendment to Island County's Interim 9-1-1 Addressing Policy.

Kelly Whitney, Manager, Planning Department Permit Center, presented the revision to the Interim Addressing Ordinance. She submitted to the Board another change being recommended, adding item K to section .120 [not part of the proposed ordinance at this time, nor advertised in public notice for this particular hearing].

Rich Murphy, I-COM, two years ago passed interim 9-1-1 addressing ordinance

as we been going through addressing and re-addressing process of the County found a few things in the ordinance that need to be fine tuned, added or omitted. Went through item by item as advertised for today's hearing, which included some minor language changes as well as some more significant changes. [copies provided – Exhibit A; material lined through is deleted; material underlined is added]

.020 Definitions A. The word "private" has been inserted before "road name determinations" so the Addressing Board will be dealing with private road names. Public road names are held before the Board of County Commissioners for finalization; inappropriate to suggest the Addressing Board be related to the process of approval for anything except private road names.

.030 Naming of Public Roads

All public roads that serve to connect two or more other named roads or provide primary access to private properties or as deemed necessary by the Addressing Board shall be named. The following public roads do not require naming:

A. roads which only serve as access to publicly owned facilities such as parks, parking lots, boat ramps, maintenance shops, etc.

A. A wide portion of a road within the right-of-way of the main road which does not physically form an intersection with the main road. A driveway joining the main road is not considered an intersection.

Mr. Murphy explained there are some things in the County's road log that have a road number but are not what are typically considered roads. For example, a parking lot for the park at Maxwellton is paved and has a road number. The State, he understands, required the County to identify certain wide portions of pavement – not even a complete cul-de-sac, just a wide portion of the road, separate road log numbers. It is clear these are 9-1-1 issues.

.040 Naming of Private Roads

- A. All private roads providing access to ~~five or more detached dwelling units~~ or five or more parcels of land shall be named.
- B. ~~Property~~ Owners may opt to have private roads serving two or more properties named.

In this case, Mr. Murphy said this was so the only criteria for naming a private road is if the road accesses 5 or more parcels. Recommendation is not to name a road just because it is on a single parcel and there happens to be 5 dwellings on it.

.070 Approval of Road Names

- A. When a private road has to be named or renamed, the assessed property owners on that road

shall be requested by the Island County Planning and Community Development Department or its authorized agent in writing, by mail, to select a road name subject to the above criteria.

If a majority of the property owners on a road do not make a recommendation within 45 days, or if the recommendation duplicates or substantially duplicates the name of a road already in use or previously recommended, the ~~Addressing Committee~~ Island County Planning and Community Development Department or its authorized agent will make a name selection.

- B. ~~The Addressing Board shall approve all road name changes for private roads from a list of names proposed by the Department of Planning and Community Development, or its authorized agent, or by owners of property gaining access from roads subject to naming.~~
- C. ~~The Addressing Board shall recommend name changes for public roads to the Board of County Commissioners for its consideration.~~

Mr. Murphy explained this change was proposed so that the Planning Department could make a name selection in the cases noted. Originally the thought was that at the end of the 45 day period the Addressing Board would help make the determination; in process that has not been

necessary. As a matter of practicality, he has found it sufficient to work with the owners to resolve any conflict, if any, and it is not necessary to bring in the Addressing Board. The Addressing Board comes into play when citizens disagree in how I-COM interprets the

ordinance or the need for 9-1-1 address location. [note that the proper term is Addressing Board, not Addressing Committee].

Kelly Whitney explained that under .030 the Addressing Board helps to make determination as to whether or not a road needs to be named. The Addressing Board does not always decide if a road needs a name.

Mr. Murphy pointed out that the Addressing Board is used primarily for dispute resolution with citizens. It is envisioned that typically the Planning Department would propose a name, citizens will be solicited. In the case of a public road a public hearing will be held before the Board of County Commissioners.

An additional change needed was noted by Chairman McDowell, that being the section .heading for 070 to read: Approval of Private Road Names. Mr. Murphy agreed.

.090 Posting Road Names

D. ~~No building permit for an addition or alteration of an existing structure shall be issued unless and until an address in conformity with this chapter has been assigned and posted.~~

The Chairman disagreed that a building permit not be issued until the address is posted. He understood the way it originally read because that referred to an addition or alteration of an existing structure; now it would apply to a blank piece of property requiring posting of an address on a house that does not exist. Perhaps it should refer to posting in a temporary manner as opposed to some permanent type sign. There are three different times identified when these addresses are to be up.

Ms. Whitney indicated that until something was there the address could be posted, for example, at the end of the driveway. Building inspectors look for it when they "final" a structure.

Commissioner Shelton suggested the addition of another sentence to say that a temporary posting at the end of the driveway is appropriate for new construction, or a temporary address posting at the end of the driveway within one week from the start of construction. Normally every construction site has an address posted at the end of the driveway to allow for delivery of materials as well as 9-1-1 purposes during construction.

.100 Addressing System

Delete (See diagram 5). Add "s" to the word quadrant.

.110 House Numbering System

Additional sentence to A: "Addresses shall coincide with the addressing grid. Even numbers shall be on the right hand side of the road, facing the direction in which the numbers progress. (See diagram 1)". That language was left out previously and needs to be inserted; it does not represent a change.

.120 Address Assignment

C. Addresses shall be assigned according to the location of the driveway's intersection on the named road. An address may be assigned on the basis of a building's main entrance if that entrance is clearly visible from the named road and provides the most direct access to the main entrance of the building provided ~~the applicant/owner provides additional~~ that sufficient information is provided for an adequate determination. (See diagram 4)

H.

1. Mobile home parks and similar establishments shall designate each unit or space with a number in the address (i.e. No. 1, Space 1, etc.) unless the owner elects to name the roads and address each unit or space as individual parcels.

This is strictly voluntary, Mr. Murphy explained, on the part of the owner of a mobile home park. In one case the owner requested that the roads be named and each space be assigned an address and 9-1-1 agencies felt it was actually beneficial and should be allowed if owners opt to do so.

2. All other types of development sharing a single parcel, such as multiple single family residences, apartments, duplexes.....

New section proposed as Ms. Whitney earlier noted:

K. Parcels that are primarily accessed by pedestrian paths or sidewalks and are not accessible to land based emergency response vehicles shall be assigned addresses relative to the pedestrian access as if the pedestrian access were a road. The pedestrian access shall be named in accordance with 14.04A.050-Road Naming Criteria except that the classification shall be "Walk".

.140 Appeals

B. A decision of the Addressing Board may be appealed to the Board of County Commissioners within 21 days of the date that written notice of the decision of the Addressing Board is sent to the property owner. To be timely, the written notice of appeal must be received within the 21 day time limit.

It was explained by Mr. Murphy that there had been no previous language that stated what a person could do once the Addressing Board denied an appeal; this would allow the next step – an appeal to the Board of Commissioners. The Planning Department under normal day to day business would handle the naming of roads. If a citizen or group requested an appeal based on

what the Planning Department did, that would go to the Addressing Board for private road name issues; if the Addressing Board denied the appeal, the citizen or group would have the ability to take that before the Board of Commissioners. Under Item A of definitions,

Addressing Board is defined ".....for the purpose of assisting I-COM and county staff in assigning road names and hearing appeals of address assignment and private road name determinations".

The Chairman commented that definition did not net up an appeal procedure, however. Mr.

Murphy believed that Item A on page 8 outlined the procedure.

PUBLIC COMMENTS

Glen Nichols, Langley, told the Commissioners that he and his wife were on the Citizens on Patrol. He commented on section .130.B of the proposed changes. He agreed at the road there needed to be identification, but also identification of all the properties going back in from that road. Additionally, once on those driveways and/or spurs there should be identification showing which direction to get to which address. Example: road going to the airport has a community residential area - 10 mailboxes in a row; across the street two driveways; searched for almost an hour and never did find the house they were looking for.

Mr. Nichols also believed that during this transition period something should be done about the confusion of showing two addresses on some mailboxes. Under section .90.B he suggested the same rule apply to posting an address. Building inspectors should be able when making

final inspections to locate "building D" and check to see if same is properly identified for location and 9-1-1 purposes. His other suggestion was that the ordinance include penalties

for vandalism - the willful removal of or vandalizing posted address signs.

Mr. Murphy referred to section .130 "Within 30 days of mailing written notice from the County or its authorized agent, the property owner shall post the address in a manner that can be read from the public or private road accessing the addressed property.....". As far as the

dual posting of numbers on some mailboxes, nothing in the ordinance disallows people to continue to keep posted their old numbers during the transition period. He has found that many people find it useful and he was not sure it would be good to deny the public to have both addresses posted for a certain amount of time.

ACTION: By unanimous motion, the Board closed the hearing and voted to take no action on Ordinance #C-39-98, instead to make changes discussed today, including the new item introduced today, re-schedule the matter for a new public hearing on June 1, 1998 at 11:00 a.m. The ordinance, with the corrections, to be reviewed at staff session on May 6.

Board Decision Announced: Appeal #098/98 by Joanne Keefe of Hearing Examiners decision, #304/97, variance application of Diane Tinker, Continued from April 20, 1998

In the matter of appeal of the Hearing Examiner's decision #304/97, granting Diane Tinker, Applicant, a Variance with conditions to allow construction of a garage at 35' from the Maxwellton Road centerline instead of the regulated 50' distance, the Board held a closed record appeal on April 6, 1998. In accordance with "Procedure To Hear Closed Record Appeals" the Board decision was to be announced at public meeting within 14 days based on the record of the Hearing Examiner's hearing and applicable laws and the Board's decision to include a vote of individual Commissioners and a brief statement as to the basis for the decision. On April 20, 1998, the Board continued the matter for one week to allow Commissioners McDowell and Shaughnessy an opportunity to make a site visit, the Board's announcement continued to April 27, 1998 at 2:50 p.m.

The Commissioners statements were read into the record as follows:

Mike Shelton, Commissioner District #1

Joanne Keefe has filed an appeal on the above granted variance which enables Diane Tinker to build an accessory building, a garage within the setback from the street. Ms. Keefe explains that the granting of the reduction would adversely affect her home located on the adjacent lot.

No one in the appeal questions the fact that Ms. Tinker has the available square footage to construct the garage in a different location on her property; however, in moving the structure to the rear of her lot, she

would incur additional costs. The amount of the additional costs were not determined.

DECISION

The appeal is granted and the decision of the Hearing Examiner is reversed. The variance procedure is in County Code to accommodate those situations where no reasonable alternative exists. In this particular case, it has been established that an alternative exists and it is up to the applicant, not the appellant, to prove that the alternative site is not reasonable. The applicant has failed to do this.

The Hearing Examiner stated he would much rather grant a waiver to build in the wetland setback rather than grant the variance, and then went against his own recommendation and granted the variance. The County has constructed an outfall from the ditch running north and south on the east side of Ms. Tinker's property, further making the rear of the lot a feasible building site. The fact that Ms. Tinker would have to construct a longer driveway and possibly place some structural fill is not a reason to grant the variance.

Granting variances needs to be considered very carefully lest we make a mockery out of existing code. Convenience can set a very poor precedent and make it difficult in the future to say no.

Wm. L. McDowell, Commissioner District #2

Joanne Keefe (Appellant) filed an appeal of the Hearing Examiner's decision, 304/97, granting Diane Tinker (Applicant) a variance with conditions that would allow construction of a garage at 35 feet from the Maxwellton Rd centerline instead of the regulated 50 foot distance. The Island County Board of County Commissioners held a closed record appeal on April 6, 1998.

Exhibit #1, Island County Planning and Community Development staff report on Pages 3 and 4 of 6 summarizes the standards for granting variances. I find the Hearing Examiner did correctly apply Island County Code in granting the variance.

A garage on a lot containing a single family residence is a reasonable expected use of that lot and is not at odds with the County Zoning Code. Reviewing Exhibit #13, an assessors map of the area, the Hearing Examiner did correctly find that the requested variance would not be out of the setback character for the neighborhood. The Appellant did not show that property values would be substantially reduced resulting from the variance, and the Hearing Examiner did find correctly that the house and lot values would not be adversely affected since there are currently structures with similar reduced setbacks. This variance will not provide any special privileges denied others in the area. Other houses are allowed and do have garages. For the issues reviewed per I.C. C. 17.02.150.L.3, with Applicant meeting required side yard setback, Applicant satisfactorily meets visual compatibility, access for fire safety, solar access, etc. The final issue of "Is the variance necessary for the reasonable use of the land?" The Hearing Examiner found correctly, "Yes, the variance is necessary for reasonable use. First, a garage is reasonably expected use for a residential lot. The final issue on the topic is the question , "Is there a more reasonable or minimum alternative?" Again, the Hearing Examiner correctly found the front yard setback reduction is the correct alternative.

At issue is the question of locating either in the front of the lot with reduced front setback or in the rear yard. In addition to the fact the rear yard is in a wetland buffer, the soil located in the rear yard was characterized as comprised of unconsolidated fill i.e. not suitable for construction. Exhibit #30, submitted and stamped by a professional engineer, indicates various layers of uncompacted fill and, in some areas, in the rear yard – 48 inches deep. I find that for constructing a garage, it is not reasonable to expect to provide structural fill up to 48 inches deep for a garage and driveway. To allow reasonable use, all requirements of the variance are met.

Tom Shaughnessy, Commissioner, District #3

In response to the appeal filed by Joanne Keefe regarding the Hearing Examiners Decision entered

February 23, 1998 granting a street yard setback variance from the centerline of Maxwellton Road from the requisite 50 feet to 35 feet for the purpose of allowing construction of a garage, I offer the following statement for the record:

I. *Where either a variance or wetland buffer reduction is required in order to make reasonable use of the property*, an applicant is entitled to one of the two to obtain reasonable residential use of a property. The Hearing Examiner has routinely allowed setback variances for accessory buildings such as a garage, as this is a normal accessory use of a residential lot. There is nothing in the Island County Code which specifically gives guidance as to whether the setback variance or the wetland buffer reduction should prevail in circumstances where one or the other is needed. An appropriate resolution of which kind of variance to grant should be reached based on the circumstances of each individual request. Factors to be balanced include the general public interest, the impact on adjoining property owners, and a determination of which type of variance most effectively removes the hardship on an individual property owners.

II. In this case, the neighboring property owner to the south would be minimally affected by the 13 foot front yard setback reduction which this Hearing Examiner has granted in this case. *The* public interest does not appear to be measurably impacted by either a wetland buffer reduction or the requested front yard setback reduction. However, the applicant would be severely impacted by a determination requiring a wetland buffer reduction instead of a front yard setback reduction. In this case, it is more appropriate to grant a front yard setback reduction as opposed to a reduction in the wetland buffer. Requiring the applicant to build in the area which would be made available by a reduction in the wetland buffer would be much more onerous on the property owner than would allowing the applicant to build in an area requiring a front yard setback reduction because of the high water table regular flooding, and unstable fill in the buffer area.

III. There is no evidence that the granting of the variance in this case would substantially diminish property values of the surrounding neighborhood. The factors set forth in ICC 17.02.150.L.3 have been reviewed and a variance to building in the location requested by the applicant is generally consistent with these criteria.

It should also be noted that this is an area consisting of small lots located between a bluff and Maxwellton Road, with the waterfront just on the other side of Maxwellton Road. Maxwellton Road dead ends into this community. The community contains lots ranging from 45 feet to 100 feet in width and the location of the proposed garage 11 to 15 feet from the neighboring property owners home is in character with the surrounding community.

Based upon the foregoing, it is the decision of this Commissioner to deny the appeal and uphold the decision as entered by the Island County Hearing Examiner.

The Planning Director will now prepare a written decision for signature by the Board, with a copy of the decision to be provided to the Appellant and project Applicant by the Planning Department.

HEARING HELD: Ordinance #C-33-98 Regulating

Inherently Dangerous Mammals

A Public Hearing was held as scheduled and advertised for the purpose of considering Ordinance #C-33-98, to regulate inherently dangerous mammals by prohibiting the ownership or possession of Felidae (non-domesticated members of the cat family and hybrids such as cougars) and regulate the ownership and possession of Canidae (non-domesticated members of the dog family such as wolf hybrids), and restricting the number of Canidae that can be kept, requiring secure enclosures and prohibiting Canidae from being at large; violations would be punishable as a civil infraction. There were three people present in the audience at the time the hearing was called to order.

Betty Kemp, Director, General Services Administration, explained the proposed ordinance had evolved from a number of incidents that happened within the County over the last past number of months that caused concern about

public safety. Staff reviewed similar type ordinances from adjoining counties, and came up with the present proposal, the final product she thought fairly liberal.

Commissioner Shelton made the observation that the real strength of the proposed ordinance was contained on Page 3, Section 6.20.050, Standards for Keeping Canidae and Hybrids Thereof:

- A. Owners of the animals must live on the same property where the animals are kept.
- B. No more than two canidae or hybrids thereof may be owned and possessed by one owner or family unit living on the same property.
- C. Canidae, or hybrids thereof, shall be confined in a proper enclosure. The canidae shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall also provide protection from the elements for the animal."

Commissioner Shelton recommended a the following language be added as a last sentence to item B above: "The exception provided would be for newborns from birth to 12 weeks."

The Chairman and Commissioner Shaughnessy agreed with his point allowing for the puppies to remain until reaching the age of 12 weeks. One thing mentioned by the Chairman was awareness that several adjoining counties outlawed hybrids completely and he does not want to see Island County become the receiving ground for this type animal; item A prevents people living in Snohomish County from leasing a piece of property in Island County and leaving the animals on that property.

Public Comments

No one in the audience expressed a desire to comment, either for or against the proposed ordinance, when the Chairman opened the hearing for public comments.

In response to a question from the Chairman, Carol Barnes, Animal Control Officer, indicated she would be able to enforce what the ordinance states.

Board Action

The Board, by unanimous motion, adopted Ordinance #C-33-98 in the matter of regulating and prohibiting inherently dangerous mammals, with the amendment to section 6.20.050 B, adding a sentence "The exception provided would be for newborns from birth to 12 weeks".

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF REGULATING AND)

PROHIBITING INHERENTLY DANGEROUS) ORDINANCE NO. #C-33-98

MAMMALS)

WHEREAS, certain wild animals or hybrids thereof kept as household pets can create a danger to public health, safety and welfare; and

WHEREAS, there are existing wolf hybrids and felidae, not customarily domesticated by man, being kept as pets in Island County; and

WHEREAS, it is necessary to either regulate or prohibit the possession of certain animals in the unincorporated area of Island County; NOW, THEREFORE,

IT IS HEREBY ORDAINED that the Ordinance attached hereto as Exhibit "A" is adopted.

Reviewed this 6th day of April, 1998, and set for public hearing on the 27th day of April, 1998, at 3:00 p.m.

**BOARD OF COUNTY
COMMISSIONERS**

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

Attest: Margaret Rosenkranz, Clerk of the Board

Ordinance C-33-98 is adopted this 27th day of April, 1998, following public hearing.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST:

Margaret Rosenkranz, Clerk of the Board

APPROVED AS TO FORM:

David L. Jamieson, Jr.

Deputy Prosecuting Attorney and

Code Reviser

CHAPTER 6.20

INHERENTLY DANGEROUS MAMMALS

6.20.010 Purpose

It is the public policy of Island County to secure and maintain such levels of control over inherently dangerous mammals harbored and/or owned within the unincorporated area of Island County as will protect the general public health, safety and welfare.

6.20.020 Definitions

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A. "Animal Control Officer" or "Island County Animal Control Officer" means either animal control independent contractors who contract with the Island County Board of County Commissioners or animal control officers appointed by the Board of County Commissioners as county employees.

B. "Inherently Dangerous Mammals" means:

1. Canidae, including any member of the dog (canid) family not customarily domesticated by man, or any hybrids thereof, including wolf hybrids which are a cross between a wolf and a domestic dog, but not including domestic dogs (*canis lupus familiaris*).

2. Felidae, including any member of the cat family not customarily domesticated by man, or any hybrids thereof, but not including domestic cats (*Felis catus*).

C. "Harboring of an inherently dangerous mammal" means to allow an inherently dangerous mammal to remain, lodge, be fed, or to be given shelter or refuge within the person's home, store, yard, enclosure,

outbuilding, abandoned vehicle or building, place of business, or any other premises in which the person resides or over which the person has control.

6.20.030 Prohibitions on Inherently Dangerous Mammals

A. No person shall own, harbor, possess or have custody or control of felidae in the unincorporated area of Island County.

B. No person owning or harboring, having custody, control, or possession of an inherently dangerous mammal shall permit or allow the same to be at large upon any highway, street, lane, alley, court, or any other place, public or private, or within the premises of such person, in such manner as to endanger any person lawfully entering such premises.

6.20.040 Exemptions

The following are exempt from all provisions of this Ordinance:

A. Any facility accredited by the Association of Zoos and

Aquariums (AZA);

B. Any licensed or accredited research or medical institutions;

C. Licensed or accredited educational institutions;

D. Veterinary clinics in possession of inherently dangerous mammals for treatment or rehabilitation purposes;

E. Traveling circuses or carnivals;

F. Persons temporarily transporting inherently dangerous mammals through the county provided that the transit time shall not be more than three (3) days;

G. Any facility licensed as an Exhibitor by the United States Department of Agriculture (USDA) under the Animal Welfare Act; and,

H. Any person having a valid Wildlife Rehabilitation Permit from the Washington State Department of Fish and Wildlife as a Wildlife Rehabilitator.

Although the above are exempt from the provisions of this Ordinance, they must comply with all other applicable federal, state and local regulations, including but not necessarily limited to chapter 16.52 RCW, concerning the prevention of cruelty to animals.

6.20.050 Standards for Keeping Canidae and Hybrids Thereof

A harbinger and/or owner of any canidae and hybrids thereof shall comply with the following standards.

A. Owners of the animals must live on the same property where the animals are kept.

B. No more than two (2) canidae or hybrids thereof may be owned and possessed by one owner or family unit living on the same property. The exception provided would be for newborns from birth to twelve (12) weeks.

C. Canidae, or hybrids thereof, shall be confined in a proper enclosure. The canidae shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall also provide protection from the elements for the animal.

6.20.060 Sale and Transfer of Inherently Dangerous Mammals

Any person who sells, gives, or in any way transfers possession or ownership of an inherently dangerous mammal to another person within the unincorporated area of Island County shall maintain records reflecting the name, address, and telephone number of the receiver of the animal; a complete and accurate description of the animal transferred. This information shall be communicated to the Animal Control Officer prior to or at the same time as the transfer occurs.

6.20.070 Running At Large/Duty to Notify Animal Control Officer

Any person owning or harboring, having custody, control, or possession of an inherently dangerous mammal shall have the duty when they know or should reasonably know said inherently dangerous mammal is at large as defined in 6.20.030.B hereinabove to notify the Animal Control Officer of such fact, within thirty (30) minutes.

6.20.080 Compliance with Other Laws

In addition to complying with all provisions of this Ordinance, no person shall harbor and/or own an inherently dangerous mammal within the unincorporated area of Island County without complying with all other applicable federal, state and local laws, ordinances and regulations.

6.20.090 Limitation of Liability

This Ordinance is not intended to create any class of persons to be benefited or protected nor to create any reliance relationship between Island County and any person owning or harboring, having custody, control or possession of an inherently dangerous mammal or anyone injured or killed by those animals. This Ordinance is not intended to create any duty running in favor of particular persons. The obligation to comply with the provisions of this Ordinance are upon persons owning or harboring, having custody, control or possession of inherently dangerous mammals. Acts or omissions to act by Island County, or its officials, employees or contractors, under this Ordinance shall not create any liability on the part of Island County, its officials, employees or contractors.

6.20.100 Violations - Civil Infraction - Enforcement Authority

A. Penalty. It shall be unlawful and punishable as a Class 1 civil infraction under chapter 7.80 RCW for any person or corporation to violate the provisions of this Ordinance. Each day on which such violation continues shall constitute a separate Class 1 civil infraction.

B. Enforcement Authority. The Animal Control Officer, the Island County Sheriff and his deputies, and any other law enforcement officer are enforcement officers within the meaning of chapter 7.80 RCW.

6.20.110 Effective Date

This Ordinance is effective on the date of passage; except that persons owning, harboring, having custody, control or possession of the canidae, or hybrids thereof, shall have four (4) months to come into full compliance with the provisions of this Ordinance. This Ordinance is effective on the date of passage for persons owning, harboring, having custody, control or possession of the felidae, or hybrids thereof, unless exempted under Island County Code 6.02.040.

6.20.120 Severability

If any section sentence, subdivision or clause of this Ordinance shall for any reason be held invalid or unconstitutional such decision shall not affect the validity of the remaining portions of this Ordinance.

COMMENTS ON ORDINANCE #C-49-98 [PLG-009-98] AS ADOPTED

Tom Roehl, resident of Greenbank, d/b/a Project Planning Services, Freeland, and representing the Freeland Water district, apologized for arriving late, but indicated he had been under the impression that action of the Board would not occur on Ordinance #C-49-98 until 2:45 p.m. and since there was a 2:45 p.m. hearing, it would occur after that.

The Ordinance, he understood, was adopted as an emergency measure and represented in the "Whereas" section to be an immediate adoption of the recommendations of the Planning Commission regarding critical areas, yet the amendments made he believed were less than that.

The problem he has relates to item 3 under ix: "relocation within improved right-of-way utility lines, equipment or appurtenances only when required by a local governmental agency and the local government agency approves the new location of the facilities." There is sometimes the need to locate as opposed to relocate such lines, and there are private parties who have need to locate utility lines and/or utilities in buffers, private roadways on private easements and people need to be able to do that without having to go through use approval.

Mr. Roehl read from the Planning Commission recommendation on the Zoning Ordinance regarding permitted uses, item 1: "road or utility crossings where least environmentally damaging..... best management practices are implemented..." – intent was to allow those utility crossings, subject to best management practices. However, this Ordinance eliminates that. Inasmuch as the Board took action on the ordinance, he asked if it were possible instead of waiting until completion of the entire comprehensive plan to amend the emergency action so that in the next 6, 12, 24 months utilities and property owners can still have this option available. The nature of ownership of the utility is irrelevant to the planning issue.

Chairman McDowell thought Mr. Roehl brought up a valid point and suggested the Board take the issue back to staff. The Board agreed to take the matter under advisement.

There being no further business to come before the Board at this time, the Chair adjourned the meeting at 4:00 p.m. to meet next in Special Session April 28, 1998, at 2:00 p.m., Terry's Corner Fire Station, Camano Island. The next regular session is scheduled for May 4, 1998, at 9:30 a.m.

**BOARD OF COUNTY
COMMISSIONERS**

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST: _____

Margaret Rosenkranz, Clerk of the Board