

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on March 10, 1997, beginning at 9:30 a.m. in the Island County Courthouse Annex, Hearing Room, Coupeville, Wa. Mike Shelton, Chairman, and Wm. L. McDowell were present. Commissioner Tom Shaughnessy was absent due to his attendance at a funeral on Camano Island.

Also attending were: Art Hyland, Auditor and Clerk of the Board, and Ellen Meyer, Secy. to the Board. Minutes from the special session and regular session held on February 24, 1997, were approved and signed.

VOUCHERS AND PAYMENT OF BILLS

The following vouchers/warrants were approved for payment by unanimous motion of the Board: Voucher (War.) #175449-#175733.....\$605,953.06.

EMPLOYEE OF THE MONTH - FEBRUARY, 1997

Eileen Hart, Auditor's Office, was selected as the Employee of the Month for February. Among the things noted by members of the Island County Sheriff's Guild resulting in her nomination were her cheery nature, ready attitude and willingness to go the extra mile.

EMPLOYEE SERVICE AWARD

Lori Ronhaar, Auditor's Office, was presented with a five year service award. Her actual date of award for five years' service was November, 1995.

RESOLUTION #C-11-97 PROCLAMATION: APRIL 1997 CHILD ABUSE & PREVENTION AWARENESS MONTH

Neal and Linda Hooberman, Child Abuse Prevention Foundation, Inc., Freeland, appeared before the Board in support of the Board adopting a Proclamation declaring the month of April, 1997, as *CHILD ABUSE & PREVENTION AWARENESS MONTH*. The Hoobermans were pleased with the support received from the Commissioners, Prosecutor, Sheriff and County Health Department, as well as many other agencies throughout the County who are helping with this mission. Packets of information were handed out containing information, resource materials and ideas to help raise awareness about this issue and a "Blue Ribbon" campaign.

By unanimous motion, the Board adopted Resolution #C-11-97 in the matter of proclaiming the month of April, 1997, Child Abuse Prevention Month.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

IN THE MATTER OF PROCLAIMING)

THE MONTH OF APRIL, 1997) PROCLAMATION

CHILD ABUSE PREVENTION MONTH) Resolution #C-11-97

WHEREAS, child abuse is a tragedy that can be treated and prevented; and

WHEREAS, "It is estimated that for every \$3 spent on prevention, we save at least \$6 that might have been spent on child welfare services, special education services, medical care, foster care, counseling, and housing juvenile offenders." (Lung, C. T. and Daro, D. (1996) Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1995 Annual Fifty State Survey)

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WHEREAS, 1,097 children in Island County were referred to Child Protective Services in 1995, representing 6.2% of the child population, up from 5.8% in 1994 (statewide rate is 5.8% for 1995); and

WHEREAS, 634 Island County children age 0 to 17 were victims of 1187 accepted referrals to DSHS, which included sexual abuse (88), physical abuse (339), physical neglect (275) and other classifications between 1/1/95 and 12/11/96. (These numbers exclude referrals from 98278 zip code NAS Whidbey); and

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WHEREAS, most abusing parents do not want to harm their children and would respond to help available through community resources.

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NOW, THEREFORE, BE IT RESOLVED THAT the Board of Island County Commissioners do hereby proclaim April 1997, as **CHILD ABUSE & NEGLECT PREVENTION AWARENESS MONTH** in Island County, Washington, and call upon all citizens, parents, governmental agencies, public and private institutes, businesses, hospitals and schools throughout Island County to help raise awareness about this critical public health issue and join Island County in "drawing the line" to prevent child abuse and neglect.

ADOPTED this 10th day of March, 1997.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

[absent - Tom Shaughnessy, Member]

Attest: Art Hyland, County Auditor

& Ex-Officio Clerk of the Board

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INTERLOCAL AGREEMENT, OLYMPIC MICROLOAN FUND

John Hitt, Executive Director, Island County Economic Development Council, Oak Harbor, came before the Board regarding the Interlocal Agreement for Olympic

Microloan Fund, continued from March 3, 1997 because the Board had received the proposed amendment only and not the original contract, and Dave Jamieson, Jr., Deputy Prosecuting Attorney, stated on the Island County Contract Review Form: "note that sections 5,7,8.,9,10, 11,12,13,14,15,16 & 17 of the original agreement still will apply to Island County."

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By letter dated March 6, 1997, Mr. Hitt provided the original Interlocal Agreement Regional Microenterprise Project-Community Development Block Grant as amended, showing all sections of the original agreement that have been struck with a reference to the Amendment superseding the stricken section. The amended sections take the place of the same numbered section in the original agreement. In requesting the Board's approval of the Agreement, Mr. Hitt also asked that in accordance with Section 6a of the Interlocal Agreement that an Island County Local Loan Committee be appointed consisting of: Ken Hulett, InterWest Bank; Andrew Hunter, Whidbey Island Bank; and Dave Ellis, Building Source, Inc., and that he be appointed to the Olympic Microloan Fund Advisory Committee.

Mr. Hitt confirmed that If for some reason loans are not paid back, Island County is not liable; the funds are issued in and through the State of Washington and it is understanding as part of this program once those funds are released to the Olympic Microloan Fund there is no obligation or liability and is up to the local loan fund to manage and disburse the funds.

By unanimous motion, the Board approved and signed the Interlocal Agreement Regional Microenterprise Project Amendment #1, and appointed John Hitt to the Olympic Microloan Fund Advisory Committee on behalf of Island County, and appoint to the Local Loan Committee Ken Hulett, Andrew Hunter and Dave Ellis. [risk mgt. contract control #97-0014]

LIQUOR LICENSE CLASS P - GIFT DELIVERY SERVICE, THE GROTTO,
724 HACIENDA DRIVE, COUPEVILLE

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Continued from March 3, 1997, the Board considered again application for Liquor License #080236E by Jessie Evelyn and Wouter VanLonden, for gift delivery services or florist with wine, at 724 Hacienda Drive, Coupeville. As previously noted, both the Health Department and Sheriff recommended approval. The Island County Planning Department provided a further memorandum dated March 4, 1997, as follows:

"Review of the Assessor's Database has determined that this parcel, located at 724 Hacienda Drive in Sierra, is owned by Max N. Berger & James K. Godfrey (Trustee) of 1491 N. West Beach Road, is classified R - Residential. The license applicants, Jesse and Wouter VanLonden, apparently lease the property. There is no permit on file for the conduct of this business at this location. Unless the gifts and/or flowers are made/grown on the premises, it would not qualify for a home occupation under ICC 17.02. Depending on the volume of the business, traffic considerations may also be an issue. See attachment Focus Sheet on Home Occupations (ICC 17.02.150.F.) Accordingly, the Planning Department recommends denial of the application."

Based on the recommendation of the Island County Planning Department, the Board by unanimous motion recommended denial to the Washington State Liquor Control Board on liquor license application #080223-6E by Jessie and Wouter VanLonden.

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APPLICATION FOR LIQUOR LICENSE "RENEE'S ON CAMANO"

The Board received for action Liquor License application #080226-4A for proposed restaurant "Renee's On Camano Island, located at 170 E. Cross Island Drive, Camano Island. While the Sheriff and Health Department recommended approval, the Planning Department reported by memorandum dated March 4 as follows:

Review of the Island County Tax Assessor's and the Planning Department's databases has determined that this parcel, owned by John F. and Renee L. Gerke of 3906 S. West Camano Drive, is currently zoned Rural Residential (RR). The Board of Island County Commissioners issued preliminary approval for a reclassification to a Non-Residential Floating zone and for a site plan for a farmhouse type restaurant on December 18, 1995. The license applicants/property owners are currently working to meet the conditions of preliminary approval of the reclassification and the site plan in order to receive final approval and open the restaurant. The issuance of a liquor license is in accordance with the approved restaurant use. Accordingly, the Planning Department recommends approval of the application with the condition the liquor license may not be used until the reclassification and the site plan have received final approval from the Board."

By unanimous motion, the Board voted to recommend approval of the license subject to the condition that the liquor license not be used until the reclassification and the site plan receive final approval from the Board.

RESOLUTION #C-12-97 APPROVING SPECIFICATIONS AND AUTHORIZING
CALL FOR BIDS FOR TITLE REPORTS

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By unanimous motion, as prepared and presented by the Island County Treasurer's Office, the Board approved Resolution #C-12-97 approving specifications and authorizing call for bids for title reports, with bids to be received April 7, 1997 at 9:45 a.m.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF APPROVING)
SPECIFICATIONS AND AUTHORIZING) RESOLUTION #C-12-97
CALL FOR BIDS FOR: TITLE REPORTS)

WHEREAS, the purchase of title reports is required for tax foreclosure sale preparations, now, therefore,

BE IT HEREBY RESOLVED that Attachment A, Invitation For Bids (with bid form), for Title Reports, and specifications is approved as written. The County Treasurer is authorized and directed to call for bids for furnishing Island County with these services. The bids are to be received by the Island County Treasurer not later than 3:00 p.m. on April 4, 1997, with bid award to occur at 9:45 a.m. on April 7, 1997 in the Hearing Room, Courthouse Annex, Coupeville, Washington.

ADOPTED this 10th day of March, 1997.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

J. Michael Shelton, Chairman

William L. McDowell, Member

[absent - Tom Shaughnessy, Member]

Attest: Art Hyland, Auditor

& Clerk of the Board

APPOINT INTERIM ISLAND COUNTY AUDITOR

By unanimous motion, the Board appointed Margaret Rosenkranz as the Interim Island County Auditor effective upon Art Hyland's formal departure, according to his letter of resignation, at 12:01 a.m. on 17 March 1997.

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CONTRACT #HS-03-97 COUNTY MENTAL HEALTH MILLAGE DOLLARS
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As requested by the Health Services Director, the Board, by unanimous motion, approved Contract #HS-03-97 in the amount of \$16,000, representing County Millage Funds for Mental Health Services, Skagit Community Mental Health, for early intervention services for children and their families, for the period 1/1/97 through 6/30/97.

SOLID WASTE RATE STUDY

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Larry Kwarsick, Public Works Director, and Dave Bonvouloir, Solid Waste Manager, presented a Purchase Order to hire services of Paul Running to perform Solid Waste Rate Study for the period 1998-2000, at a cost of \$16,875.00 for the study. The County entered into a 21 year contract with Waste Management with 7 year pull-out points, and the first pull-out opportunity will be at the end of 1998. At this time Waste Management in anticipation of that date is considering some reduction in fees and charges to the County. Staff recommends accelerating the rate analysis. Part of the contract would also be to look at some comparisons in short haul transportation costs in the event that a new intermodel facility is constructed in the Mt. Vernon area.

Commissioner McDowell wanted to make sure that the contractor on this study will discuss with the City of Oak Harbor what their plans are to see if that would affect the result of study at all. Mr. Bonvouloir confirmed that a letter had been sent to E. T. Silvers to provide notification of the rate study and the County's desire to bring both City Supervisor and Council in up front to know exactly what is going into the study as far as setting the rate involves.

By unanimous motion, the Board approved the Purchase Order to hire the services of Paul Running in the amount of \$16,875.

UTILITY EASEMENTS ACCEPTED

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As recommended by Mr. Kwarsick, and outlined by Roy Allen, County Engineer, the Board by unanimous motion accepted and approved utility easements for the Marshall Drainage Project from Barbara J. Chase, Parcel #R42931-469-1150 and Emma Goehner, Parcel #R42931-460-1050.

RESOLUTION #R-16-97 INITIATING CRP 96-13, EAST CAMANO DRIVE PHASE I

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The project has gone through bidding and contract procurement process and Mr. Kwarsick asked that the Board now initiate the County Road Project, CRP 96-13, work order #137, for East Camano Drive, Phase I construction, for a total appropriation of \$953,000. The project is included in the officially adopted Annual Program as Item #2 and construction is to be accomplished by contract in accordance with RCW 36.77.020.

The Board by unanimous motion approved Resolution #R-16-97 initiating CRP 96-13 as presented and recommended.

MAXWELTON ROAD - EMERGENCY INSTALLATION - NEW CULVERT

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Mr. Kwarsick advised the Board that the emergency work on Maxwelton Road to install a new culvert had been completed and the roadway temporarily paved and striped. He expressed his appreciation to staff for the great job done pulling the project together and managing the project through timely completion. Unfortunately the project was determined not FEMA eligible for reimbursement because it was an existing identified project included on the six year road program, even though the emergency situation accelerated the problem.

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RESOLUTION #PLG-005-97 REDUCING BUILDING PERMIT FEES FOR REPAIR/REPLACEMENT OF BUILDINGS - STORM RELATED DAMAGE

Vince Moore, Director, Planning and Community Development Department, along with Bob McCaughan, Building Official, presented for Board approval a Resolution which would reduce building permit fees for the repair or replacement of storm-damaged buildings as a result of storms that occurred during the period

December, 1996 through January 1997. This would be a one-time 50% reduction with verification of damage and time period.

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Mr. McCaughan recalled that the Board previously brought up some questions with regard to the proposed three year time period. That amount of time is being provided since in many cases it takes people some amount of time to decide whether or not to rebuild and to arrange financing and loans. Provisions to ensure the ability to receive the 50% reduction three years' from now are stated in Planning Department policy, and he specifically quoted the last paragraph of the policy:

"Applicant must provide verification that the building was legally built and/or altered during its life, providing evidence in the form of date of construction, permit numbers if any and type of permit".

Mr. Moore explained that the Department did not want to make it too tight as a practical matter. This would not be provided for those buildings illegally built, and Mr. McCaughan stated that he would accept it as legally built prior to records without any other requirements.

The Commissioners suggested some revised language to the last paragraph of the policy to make it much clearer, such as: "... recognize prior to 19__ there were no records and our assumption is anything built prior to that was legally built".

Mr. Moore agreed to modify department policy accordingly and bring the policy back to the Board at a later date since it is not part of the Resolution.

Commissioner McDowell moved approval of Resolution PLG-005-97. Motion, seconded by Commissioner Shelton, carried unanimously.

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

IN THE MATTER OF REDUCING BUILDING
PERMIT FEES FOR REPAIR / REPLACEMENT
OF STORM DAMAGED BUILDINGS DURING
PERIOD OF DECEMBER 1996 THROUGH
JANUARY 1997

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) RESOLUTION PLG-005-97

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WHEREAS, many buildings and structures in Island County suffered damage during the severe winter storms and their aftermath in December 1996 and January 1997; and

WHEREAS, Island County officials desire to alleviate the cost of repair and or replacement of such buildings or structures; and

WHEREAS, the reduction in fees will be limited to only that portion of the previously existing square footage and will not apply to any expansion or enlargement of said buildings; and

WHEREAS, in order to obtain the reduced fee the applicant will need to show verification of the square footage by means of a previously approved building permit; and

WHEREAS, the one-time reduction in building permit fees will be limited to fifty percent (50%) of the fee schedule currently in effect for building permits; and

WHEREAS, individuals who have received permits for storm damaged buildings prior to this Resolution may apply for a refund based on this Resolution and Policy # 1-97 until December 31, 1997; and

WHEREAS, verification will be required that the damage to the building or structure occurred in the time period from December 1996 through January 1997, **NOW, THEREFORE,**

IT IS HEREBY RESOLVED by the Board of Island County Commissioners that the fifty percent (50%) one-time Building Permit fee reduction for repair or replacement of buildings or structures damaged by the storm during the period of December 1996 through January 1997 is hereby approved and adopted. Expires 12/26/99.

APPROVED AND ADOPTED this 10TH day of March, 1997.

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

Mike Shelton, Chairman

Mac McDowell, Member

ATTEST: Art Hyland, Auditor & Tom Shaughnessy, Member

Ex-Officio Clerk of the Board

BOARD OF COUNTY COMMISSIONERS FINDINGS, CONCLUSIONS AND DECISION
REGARDING APPEAL #049/97 BY ERNEST & PATRICIA DIRE

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Based on the Board's statement of decision unanimously approved at public meeting on March 3, 1997, in the matter of Appeal #049/97 by Ernest & Patricia Dire, staff prepared proposed Findings, Conclusions of Law and Decision. Commissioner McDowell proposed the Board adopt an amended version he prepared over the weekend, and read same for the record, with a copy provided to Vince Moore and Matt Nash, Senior Planner, allowing time for their review.

Commissioner McDowell, subject to the revised Findings of Fact, Conclusions of Law and Decision for File NO. APP 049/97, moved the Board's adoption of the Findings of Fact, Conclusions of Law and Decision document as amended. Motion was seconded by Commissioner Shelton.

Under discussion, Mr. Moore asked for clarification in that a project exempt from a shoreline development permit still requires shoreline exemption process. He had some concern about precedence being established. The Dires did not request an exemption, only use approval. Part of the issue is whether or not this project is jurisdictional under the Shoreline Management Act, and if it is, it requires either a shoreline development permit or shoreline exemption.

Commissioner McDowell stated that the Board made a decision that this project falls under the \$2500 exemption and the Dires will not have to come in and ask whether or not they qualify for an exemption. The Board on this particular project made the decision the project is exempt. The Planning Department is not being asked to make that determination, the Board already made that determination and it would make no sense for the Dires to come to Planning Department for an exemption because the Board made that decision already.

Chairman Shelton made it clear that the Board did not intend by this decision to set precedence for doing away with the exemption process, rather this Board believes this project qualifies for an exemption. The Board believes this project qualifies for an exemption and want this decision to result in that exemption, and the Planning Department should issue the exemption based on the Board's decision.

Commissioner McDowell quoted from paragraph vii page 4: as to the Board's finding this project is exempt:

"The Hearing Examiner made an erroneous conclusion and decision and we further find that the driveway does not require a Substantial Development Permit. The applicant is not required to request an exemption as this decision finds the driveway is exempt from requirements for a Substantial Development Permit insofar as it has a fair market value and actual cost of less than \$2500. Additionally the proposal for the entire length of the proposed driveway involves less than 250 cubic yards of material and is necessarily associated with the construction by the Dires of a single family residence on their lot."

Chairman Shelton reiterated the decision of the Board that this project is exempt from shoreline development permit and that the exemption would allow for the installation of the driveway without a shoreline development permit

Commissioner McDowell confirmed his belief this decision would do nothing to affect any other project. This decision was made through an appeal process, and is not a precedent setting decision on the one issue, but would set precedent on what those three sentences mean, when the Board states that the Hearing Examiner erred in his interpretation of Island County Code sections 16.21.075(B) (1) (2) and (3).

The Board's decision, according to Chairman Shelton's understanding, is that this is the way the Code needs to be interpreted and the Board as a result of this decision is directing the Planning Department make whatever necessary changes believed appropriate to the Code so this issue will not come up again. The Board wants this included in the exemption process - that verbiage clarified so this issue clearly reflects the wishes of this Board. The exemption process is clearly important. The Board wants the exemption process to go forward but the conclusions under the exemption process to be like the Dires and not as stated in the Hearing Examiner's decision. The Board does not believe that for a project under \$2,500 that have to do a SDP.

Again, the Chairman stated the direction of the Board with regard to the Dires was that the Planning Department issue a shoreline exemption to the Dires inasmuch as the decision that the exemption will be issued has been made by the Board.

Motion, as made and seconded, carried unanimously.

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

IN THE MATTER OF AN APPEAL OF
THE ISLAND COUNTY HEARING

) FILE NO. APP 049/97

EXAMINER'S DECISION IN USA 470/95, ERNEST AND PATRICIA DIRE) APPEAL DECISION) <u>FINDINGS OF FACT AND</u>) <u>CONCLUSIONS OF LAW</u>
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This matter came before the Board of Island County Commissioners on February 24, 1997, upon appeal by Ernest and Patricia Dire of the Hearing Examiner's January 16, 1997 decision denying Use Approval Applicant No. 470/95, **a proposal to fill some 900 sq. Ft. Of a 200+ acre shore-line-associated wetland** for the purposes of providing access to a proposed building site for a single-family residence on an existing lot on Assessor's Parcel No. R13124-417-2730. This is closed record appeal. **The record of this appeal includes the entire record as was before the Island County Hearing Examiner including all applicable State and County codes and regulations and prior decisions of the Island County Hearing Examiner, Together with Appellants' notice and basis of appeal filed with this Board.**

Having read the Hearing Examiner's decision, reviewed applicable application files, and having independently reviewed applicable ordinances and legislation, THEREFORE, the Board of Island County Commissioners makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I.

The Dires are owners of a single-family residential lot **abutting** in the plat of Admiral's Cove (Parcel # R13124-417-2730). ~~The parcel consists primarily of fill, legally deposited prior to the 1976 adoption of Island County's Shoreline Management Master Program.~~ Much of the lot is surrounded by wetlands **primarily of a meadow environment.** Access to the nearest public road (Keystone Avenue) is not available except by crossing **a small portion (some 75 lineal feet)** of **said** wetland or by crossing property which is not under the Dire's ownership. **Prior efforts on the part of the Dires to obtain alternative access by easement failed.**

II.

There is no evidence in the record that an easement exists to allow the Dires to cross properties which lie between their lot and Keystone Avenue.

III.

The Dire's made application for Use Approval (Application No. 470/95) in 1995, proposing to place fill **within said small portion of** the wetland on their property in order to access the proposed building site. Island County Planning and Community Development staff recommended that the Hearing Examiner deny the application for Use Approval.

IV.

The Hearing Examiner, in his decision dated January 16, 1997, denied the application, citing a direct contravention with the provisions of the Island County Shoreline Management Master Program, specifically ICC 16.21.075(B)(2), which states that "Landfill shall not be permitted in estuaries, tidelands, marshes, ponds, swamps or similar water retention areas".

V.

The Hearing Examiner also concluded, in the referenced decision, that even if the proposal were exempt from Shoreline Substantial Development Permit requirements, Island County could not approve the proposal due to the

direct contravention with code as referenced above.

VI.

The Hearing Examiner also stated in his decision that the Dires have not submitted sufficient information to allow approval of their use approval application even if the project was not forbidden under the Island County Shoreline regulations.

CONCLUSIONS OF LAW

I.

The Hearing Examiner made an erroneous interpretation in Paragraph VI of Conclusion of Law thereby leading to an incorrect or erroneous conclusion and decision. Among other things, Paragraph VI cites portions of Island County Code 16.20A.020B and WAC 173-14-140(3). The Hearing Examiner did not discuss RCW 90.58.020 Legislative findings--State policy enunciated--Use Preference. Among other things the fourth paragraph states:

"Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures....".

Use preference for alteration of the shoreline natural condition is given to single family residences. In fact, the RCW mentions single family residences ahead of all other preferences. Clearly a goal and policy of the Shoreline Management Act is for allowing Single Family Residence. One method in which the goals and policies are created is by the inclusion of various exemptions in the RCW. One exemption is the \$2500 exemption that more or less states if the project cost is no more then \$2500 and does not materially interfere with the normal public use of the shoreline, it is exempt. This exception has no other caveats. ~~The Dire application has a cost of less than \$2500.~~

The Dires have demonstrated that their entire proposal has a fair market value and actual cost of less than \$2500.

II.

The Hearing Examiner concludes in last section of Paragraph VI that:

"...even if exempt from shoreline substantial development permit requirements, and that an applicant cannot undertake such development unless the development is consistent with the Shoreline Management Act and the Island County Shoreline Management Master Program. This proposed fill is in direct contravention of a prohibition on fill within associated wetlands, as indicated above.

The Hearing Examiner's conclusion does not take into consideration the primary or preferential use of state shoreline that is being altered is for a single family home. Therefore the exemption has priority since it helps carry out a preferred use or goal of the Shoreline Management Act and

cannot be prevented by an interpretation that somehow a prohibited use takes preference over a use that is always allowed by exemption, especially when that exemption clearly supports a goal of the Shoreline Management Act. Simply put, an action that is exempted to meet the goals of the Shoreline Management Act cannot then be prohibited.

III.

Additionally, the Hearing Examiner states, among other things in Section VII Conclusions of Law that:

"The Island County Hearing Examiner of the Island County Planning Department does not have the authority to overturn the direct prohibition contained in ICC 16.21.075(B)(1)."

Section 16.21.075(B)(1) & (2) contain the words "shall be permitted" and "shall not be permitted" where as, Section 16.21.075(B)(3) contains the words "strictly prohibited." 1 & 2 refer to the issue of after a proposal has reached the threshold of requiring a substantial development permit (SDP) (i.e. not exempted) then 1 & 2 state whether they will or will not be permitted (i.e. issued an SDP). ICC 16.21.075(B)(3) however, by use of the words "strictly prohibited" it states that it is not allowed or is prohibited (the issues of permitting or exceptions is not considered). While the Hearing examiner does not have the authority to overturn Code, however, the Hearing Examiner made an incorrect interpretation of Island County Code Section 16.21.075B (1) (2) and (3) by assuming that if an application is exempted from an SDP then section 16.21.075(B)(2) would somehow strictly prohibit an action that was exempted from SDP requirement.

IV.

The Hearing Examiner also erred in Paragraph X of preliminary information. Among other things that paragraph states:

"However the applicant has failed to provide a mitigation plan or ...".

The Hearing Examiner apparently failed to recognize a mitigation plan prepared by Shapiro and Associates, Inc. was submitted by Mr. Roehl on October 8, 1996, and is listed in the index. Among other things, the report states:

"The impacts could be minimized by constructing the driveway with the narrowest possible roadway prism and by keeping the alignment as close to the existing fill slope as zoning allows. Planting the north and west edges of the driveway where it would cross the wetland with an assortment of native shrubs and trees after construction could mitigate for adverse effects on the wetland as a result of the intrusion."

While the report is short (1 page), the impact is only on 900 sq. ft. out of a 8,712,000 sq. ft. of wetland. The report is certainly proportional in size and content to the size of the area of wetland impacted to the wetland total size.

V.

Access is needed to a single family homesite if the applicant is going to have reasonable economic use of the property . The applicant has attempted to obtain an access easement from his neighbor to no avail. The only access controlled by the applicants is through the area that contains 900 sq. ft. of a 8,712,000 sq. ft. Category B wetland meadow. Therefore, two choices are available, a bridge or sufficient fill to cross the 900 sq. ft. The fill is less than 250 cu. yds. and less than \$2500. The bridge cost would be at least a magnitude of ten, if not 30 to 50 times the cost of the fill.

A bridge would not allow reasonable economic use of the property. Therefore, application under the reasonable use section of 17.02.110 is appropriate. In addition, the applicant has met the criteria of reasonable use. A prior decision of the Hearing Examiner was made part of the record, USA 007/91 Laura Garrison. USA 007/91 was also an application under reasonable use Section 17.02.110. Under reasonable use, the Hearing Examiner in 007/91 stated in the Conclusion of Law, "Because the alteration is necessary to allow reasonable economic use, it is not necessary for the applicant to meet the other conditions for Use Approval or alteration of a wetland." In the Dire application the alteration is necessary to allow reasonable economic use, therefore, just as in the 007/91 decision and consistent with prior Hearing Examiner decisions, it is not necessary for the applicant to meet the other conditions for Use Approval or alteration of a wetland.

VI.

The Engineering Department and Health Department personnel have not provided any objection and have stated they have "no problems" with this proposal.

VII.

The Hearing Examiner made an erroneous conclusion and decision and we furthermore find that the driveway does not require a Substantial Development Permit. The applicant is not required to request an exemption **as this decision as the finding finds the driveway is exempt from a Substantial Development Permit under the \$2500 exemption. insofar as it has a fair market value and actual cost of less than \$2500. Additionally the proposal for the entire length of the proposed driveway involves less than 250 cubic yards of material and is necessarily associated with the construction by the Dires of a Single Family Residence on their lot.**

DECISION

Based upon the foregoing, we find that:

a) The application of Ernest and Patricia Dire for Use Approval USA 470/95 is consistent with the goals and policies of the Shoreline Management Act and Island County Shoreline Master Program and the **Island County Zoning Ordinance**, and

b) Said application is hereby **APPROVED and the decision of the Hearing Examiner set aside**, subject to the following conditions:

1. The applicant shall meet the mitigation measures stated in Sentences 3, 4, and 5 of the Fourth Paragraph of Shapiro & Associates' Report dated July 10, 1996.
2. the applicants are not required to apply for a Shoreline Substantial Development Permit since the proposal is a exempted action under the \$2500 cost exemption.
3. The driveway will be placed to fit in the gap between the trees and the property line mentioned in the Appeal Hearing.
4. That portion of the driveway located in the approximately 900 sq. ft. of the approximately 8,712,000 sq. ft. of the wetland meadow shall be in substantial conformance with the site plan entitled "A Residential Site Plan for Patricia and Ernest Dire" prepared by T. J. Roehl & Associates and submitted with the appeal documents.

DATED this 10th day of March 1997.

BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Mac McDowell, Member

Tom Shaughnessy, Member

ATTEST: ART HYLAND, County

Auditor & Ex-Officio Clerk of the Board

CONTRACT # CO-000702: DSHS AND ISLAND COUNTY - FAMILY PLANNING

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Tim McDonald, Health Services Director, presented for approval a contract between the Department of Social and Health Services and Island County in the amount of \$14,570.00 to establish a family planning information and referral services through a public health nurse. The service is included within the 1997 health budget, and the administrative cost has been calculated and included at 18%.

Carol McNeil, Nursing Supervisor, explained that the project was designed to help women who are on financial assistance through DSHS not to have repeat pregnancies so soon after the one that probably brought them to DSHS Office in the first place, and to refer them to the appropriate community agencies. This has been a very successful program in other areas of Washington State.

By unanimous motion, the Board approved and signed Contract #CO-000702 as presented, in the amount of \$14,570.00 for family planning services.

There being no further business to come before the Board at this time,
the Chairman adjourned the meeting at 11:20 a.m., to meet next In Regular
Session on Monday, March 17, 1997 at 9:30 a.m.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

Attest: [Absent: Tom Shaughnessy, Member]

Margaret Rosenkranz, Interim County

Auditor & Ex-Officio Clerk of the Board