

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on June 16, 1997 beginning at 9:30 a.m., in the Island County Courthouse Annex, Coupeville, Wa. Mike Shelton, Chairman, Wm. L. McDowell, Member, and Tom Shaughnessy, Member, were present. Also in attendance were Margaret Rosenkranz, Auditor/Clerk of the Board, and E. Meyer, Secy. to the Board. Minutes from June 2, 1997, meeting were approved and signed.

VOUCHERS AND PAYMENT OF BILLS

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

Voucher (War.) #4918-5136..... \$ 426,262.34.

Veterans Assistance Fund: [emergency financial assistance to certain eligible veterans; the names and specific circumstances are maintained confidential]. Claim #V97-25 was approved by unanimous motion of the Board in the amount of \$1377.98, as recommended by the Island County Veterans Assistance Review Committee.

Request for Proposals: Public Defense Services

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Jane Koetje, Administrator, Public Defense Department, presented for the Board's approval and authorization to proceed, a Request for Proposals for provision of Public Defender Services to Island County for the period 1998 and 1999. The RFP is basically quite similar to the RFP five years' ago, with some minor language changes and updating, and providing for a two year contract versus a five year contract.

The Board, by unanimous motion, approved the Request for Proposal as written and presented.

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Hiring requests AND personnel actions

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Dick Toft, Human Resources Director, presented the Board with three Personnel Action Authorizations for review and action.

PAA #59/97 Human Resources Department. Office Assistant, part time, Position #2303, replacement. Individual occupying position accepted another position within County, effective June 23, 1997.

ACTION: The Board by unanimous motion approved PAA #59/97 effective 6/23/97.

PAA #55/97 Auditor's Office. Accountant-Deputy Auditor, Position #202.01, replacement. Resignation submitted effective the last day of the month.

ACTION: The Board by unanimous motion approved PAA #55/97 effective 7/1/97.

PAA #54/97 County Commissioners Office. Budget Director, Position #300.

Establish position of Budget Director, including duties as Clerk of the Board, to be effective no later than November 19, 1997, on certification of the election of a new County Auditor.

ACTION: The Board, by unanimous motion, approved PAA #54/97 effective no later than November 19, 1997. Press Release follows.

PRESS RELEASE : COUNTY RE-ESTABLISHES BUDGET DIRECTOR

The Board unanimously appointed Margaret Rosenkranz, currently serving as the Island County Auditor, to be the new Budget Director. The Board commented that the topic of the need for a full time Budget Director continues to come up both internally and externally in the county. The County had a Budget Director earlier in this decade but it was done away with as a cost cutting measure some years ago. The Board has commented that the various department heads and other elected officials would benefit from having a greater opportunity to work on and discuss their various budgets in a less compressed fashion that has been the practice in the past few years. The Board also has a desire to continue the progress it has established in responsibly and intelligently allocating funds to those areas that have the greatest need and show the greatest benefit to the people of Island County. In addition to her duties as Budget Director, Ms Rosenkranz will serve as the Clerk of the Board. The Board recognizes Ms. Rosenkranz's in-depth knowledge of the financial health of Island County. Over the many years she has worked with the county, she has developed a sound understanding of the various departments and their needs. In accepting the appointment, Ms. Rosenkranz acknowledged that she would not be running for the office of Island County Auditor this Fall. She will continue serving as the County Auditor until a new one is elected at which time she will assume her duties as Budget Director and Clerk of the Board.

NORTHWEST SENIOR SERVICES BOARD

By unanimous motion, the Board reappointed Bonnie Roseberry from Camano Island to a three-year term to June 30, 2000, on the Northwest Senior Services Board.

REQUEST AND RECOMMENDATION TO FORGIVE DEBT ISLAND

COUNTY SUPERIOR COURT CAUSE # 94-2-00354-7

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Joye Emmens, Environmental Health Director, presented request by Ardis Moa, Camano Island, to forgive debt in connection with Island County Superior Court Cause #94-2-00354-7. A Judgment was filed on September 9, 1994, in Superior Court requiring Ms. Moa to cease and desist use of improperly installed sewage system and to vacate the residence until such time as an approved sewage system was installed. Ms. Emmens confirmed that Ms. Moa recently secured USDA loan funding for the repair and obtained a sewage permit from the Health Department for the repair, but the loan must be used by June 23, 1997, to assure funding. She also needs to get her title cleared from the County's judgment lien, and due to financial constraints, requested costs of judgment be waived. In an effort to achieve a satisfactory sewage repair, the Health Department supports the request. Ms. Emmens pointed out that as part of the judgment the Court awarded costs to the County, consisting of about \$201.50 plus interest of \$64.48 through June 9, 1997 and continuing to incur interest at an additional 7 cents a day. The Board of County Commissioners has the authority to release a debt owed to the County under RCW 36.32.120(8). Ms. Moa is moving ahead with drainfield repair in order to move back in her home and she really is trying to make this work. The Department has been working with her for years, and the lack of finances is an issue. Ms. Moa is making every effort to resolve this.

Commissioner McDowell suggested taking a second position: repair the system first, then come to the County to forgive the debt, treating this issue in the same manner as an enforcement order.

Ms. Emmens reiterated that Ms. Moa has the permits in hand to proceed and has to make use of the loan by June 23.

Commissioner Shaughnessy preferred going ahead and excusing the debt and letting the work proceed, and moved that the Board proceed with excusing the debt under Superior Court Cause #94-2-00354-7 (exact amount to be determined by the Deputy Prosecuting Attorney). With the motion not being seconded by Commissioner McDowell, the Chair seconded the motion.

Commissioner McDowell proposed an amendment to the motion to change the time of removal of the debt until after completion of the sewage system and to take a second position. Amendment died for lack of a second.

The original motion, as made and seconded, carried by majority vote, with Commissioner McDowell voting in opposition.

Public Input AND COMMENTS

Linda Lee Martens, Island County Health Department.

Ms. Martens reported from the County Cancer Relay for life 10th Anniversary June 13 & 14. The Island County Team had 17 employees participating, along with friends and family members, to walk the 24 hours. The fund-raising goal for 1997 was \$32,500 and 28 teams; that goal was surpassed: \$41,000 was raised and there were 41 teams. The County Team raised \$1,472.50, and important to note that not one person was scheduled to walk more than 1 hour unless they requested otherwise. Ms. Martens, along with Benye Weber, thanked the Board for supporting the event through donations and participating in the walk.

Don Timmens, 234 E. Driftwood Shores, Camano Island.

Mr. Timmens asked that the Board consider providing a better road for access and hopefully a wider ramp at Cavalero County Park. The ramp is in disrepair and is the only boat ramp on the East side of the Island. Some 2500 residents try to use the ramp actively. During last year's winter, the road washed out. Although gravel was placed on the road in an attempt to repair it, the road situation is still critical when trying to get up or down the road, and traction is poor. Residents planted a huge hedge alongside their property which cut 6' off the access to the ramp. Also, there are some residents without actual access to their homes who park vehicles in front of the ramp, making it even more difficult to launch boats. Mr. Timmens submitted a letter/petition from the Driftwood Shores Water System, Inc., supporting funding to provide for the repair and maintenance of the County Park at Cavalero.

Chairman Shelton agreed to schedule discussion on this issue as part of this Wednesday's Staff Session with Public Works and the Parks Department.

RECOMMENDATION TO PARTIALLY LIFT RESTRICTIONS ON ROAD CLOSURES: GEORGE DRIVE AND DRIFTWOOD DRIVE IN SCATCHET HEAD

Mike Hawley, as the Emergency Services Director for Island County, along with Chairman Shelton, met with neighbors and members of the Scatchet Head Community Association last Tuesday, along with a geologist, to discuss actions necessary in order to partially lift the closure of the private road known as Driftwood Drive located to the west of George Drive, within the Scatchet Head community, closed January 18, 1997, as a result of weather related landslides that occurred during the 1996 winter storm. At the time of the closure, Scatchet Head Community Association utilized the Road Department barricade on George Drive to warn traffic of the dangerous situation ahead, though George Drive was never officially closed. Another Road Department barricade was placed at the intersection of George Drive and Driftwood Drive to indicate that the County closed that portion of Driftwood Drive because of imminent danger of landslides. Since the closure, the Association obtained two technical geological opinions, established a maintenance and mitigation of hazard plan and are now requesting that closure of the private road be partially lifted.

Mr. Hawley inspected the site, and based on recommendations of two geologists, was fairly comfortable to recommend removal of the warning barricade on George Drive and partially lifting closure of Driftwood Drive, west of George Drive, to open it to access from the George Drive intersection to just past the Scatchet Head Community Clubhouse. The Road Department barricade and sign would then be moved to a point just past the Clubhouse to indicate that from the sign West, Driftwood Drive remains closed to vehicles.

By unanimous motion, the Board approved the recommendation of the Emergency Services Director to relocate the road closed sign at the Community pool site on Driftwood Drive.

HEARING HELD: 1998-2003 Six-Year Capital Improvements Program, 1998-2003 Six-Year Transportation Improvement Program with 1998 Annual Construction Program

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A Public Hearing was held at 10:15 a.m. as advertised, for the purpose of receiving public input on the 1998-2003 Six-Year Capital Improvements Program, 1998-2003 Six-Year Transportation Improvement Program with 1998 Annual Construction Program.

Dick Snyder, Construction Engineer, provided opening comments on the topic and noted that the format was slightly modified to more resemble the Washington State Department of Transportation (DOT) six year plan, including an explanation of the different codes used. Of note, he mentioned that in 1998, work will begin on some phase of the first 31 projects (except project #26 which begins in 1999). Many are flood-related due to late December early January storm events; therefore, some projects on last year's program which were to have begun next year have been slightly delayed because of funding and work load. This Plan was presented to the Island County Planning Commission last Tuesday, and it is anticipated that the Plan will be adopted by the Board next Monday. Mr. Snyder summarized the three main areas of concern/discussion by different members of the Planning Commission:

1) Highway 20, south of Oak Harbor - widen to 4 lanes to provide climbing lane uphill, and a turn lane. This would be a long-range DOT project, but would

incorporate some County road intersections.

2) New Road south of Coupeville to connect to Highway 525 with a county arterial road for emergency bypass (alternate route due to construction, flood/landslide, or major accident).

3) Crawford Road, South Whidbey.

Public Comments

Frank Billera, residing at 5443 S. Pleasant View Lane, Freeland, with future address 3605 Old County Road, commented on a petition submitted in January with 26 signatures regarding improvements to Old County Road, Greenbank. Mr. Billera acknowledged receipt of a letter dated May 30 from Roy Allen, County Engineer, advising that the project was approved and scheduled for 1999. The residents were thankful for the consideration but would appreciate the work being done earlier if at all possible. He spoke by phone with Mr. Allen about something being done about the stretch of road before 1999 on the north side of road, i.e. fill with gravel,

so that children getting off the school bus do not have to slog through water to get to their homes on the other end of the bog, and Mr. Allen thought that could be done.

Bob Michael, 3575 Old County Road, was concerned that with straightening of the road and making the improvements, people would have even more of a tendency to speed down the straight stretch. He asked if the County could place speed bumps or speed control apparatus when improvements are made.

Chairman Shelton advised that the County posts speed limit signs and if speeding becomes an issue, there could be some enforcement work there, but the County does not use speed bumps to control speed.

Carol Umbreit, 3572 Old County Road, inquired where exactly on the schedule the improvements were for the road. She commented that visibility was nonexistent in at least two places, the road very narrow in a low spot and water drains over the road during periods of heavy rainfall.

The Chair noted that the letter Mr. Billera referred to from Mr. Allen in May stated that the improvements appear on the program for the year 1999, and Mr. Billera also mentioned that from his conversation with Mr. Allen there apparently were some preliminary improvements that can be done in relation to Old County Road.

Mr. Allen advised that the low spots Ms. Umbreit referred to were within +/- 300 l.f. of single lane dirt road portion of Old County Road where the abutting property owner had protested the County's assertion that a right-of-way even exists, and that is why that area has never been maintained.

Staff/Board Review

Mr. Snyder reviewed several potential administrative changes necessary between now and the next Monday on the following projects:

- Project #23 - Mabana Shores Flood Damage - not sure right amount of funds included for the scope of

work

- Project #35 - Chapman Creek Culvert - Have not received response from Department of Fisheries to County's appeal - very expensive if DOF forces County per DOF request. County proposal is to maintain the culvert which will cost about \$3500 and do construction project 20 years' from now, as opposed to what DOF wants which will cost \$350,000. To be determined: show funding \$350,000; \$150,000 and remainder DOF participation; or just maintenance at \$3500?

Board Action:

By unanimous motion, the Board continued the public hearing until next Monday, June 23, 1997 at 2:30 p.m., with the topic to be discussed at Staff Session on Wednesday.

LETTER OF CREDIT #999631593 - MYERS FAMILY LIMITED PARTNERSHIP-

CAMANO PLAZA PROJECT, SITE PLAN REVIEW #SPR 62/93 - SEPTIC

TRANSMISSION LINE IN RIGHT-OF-WAY, EAST CAMANO DRIVE

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Mr. Allen recommended acceptance of Letter of Credit #999631593, Whidbey Island Bank, on behalf of Myers Family Limited Partnership in the amount of \$50,000, for a period of time to June 6, 1998, guaranteeing completion of septic transmission line in the right-of-way, for the Camano Plaza Project, SPR 62-93. Approximately 4,363 feet of transmission line is involved.

By unanimous motion, the Board accepted the Letter of Credit as presented.

PUBLIC HEARING SCHEDULED TO CONSIDER PROPOSED ORDINANCE #R-40-97

- RESTRICT ROADWAY TO ONE LANE IN VICINITY OF SLIDE AREA AND PLACE

10 TON WEIGHT RESTRICTION - POSSESSION ROAD, SO. WHIDBEY

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Mr. Allen requested the Board act to set a Public Hearing on an ordinance to restrict Possession Road, Sections 11 & 14, T28N, R3E, to one lane where the recent embankment failed on the bluff side of the road, and also place a 10 ton weight restriction from Brockman Road southerly to the County road end.

A Public Hearing, by unanimous motion of the Board, was scheduled for July 7, 1997, at 10:35 a.m.

RESOLUTION #C-29-97 RETAINING FOSTER PEPPER & SHEFELMAN, PLLC
AS BOND AND SPECIAL COUNSEL FOR THE COUNTY

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As indicated by Larry Kwarsick, Public Works Director, at last week's meeting, a Resolution was brought forward as a formal agreement with Foster Pepper & Shefelman to serve as bond counsel for the County, with regard to issuance of \$10 million general obligation bonds intended for four different purposes previously outlined: Marshall Surface Water Utility Drainage improvements; Greenbank Farm; refinance existing debt; and implement Coupeville Courthouse Master Plan. By unanimous motion, the Board approved Resolution #C-29-97 retaining Foster Pepper & Shefelman as bond and special counsel for Island County.

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

A RESOLUTION OF THE BOARD OF)
COUNTY COMMISSIONERS OF)
ISLAND COUNTY, WASHINGTON,)
RETAINING FOSTER PEPPER &) RESOLUTION NO. C-29-97
SHEFELMAN, PLLC AS BOND AND)
SPECIAL COUNSEL FOR THE COUNTY.)

WHEREAS, it is deemed necessary and in the best interests of Island County, Washington (the "County"), and its inhabitants that the County from time to time issue and sell its bonds or bond anticipation notes for proper County purposes; and

WHEREAS, it is deemed necessary and advisable that attorneys who are skilled in such matters be employed as bond counsel to draft the resolutions and other documents necessary for the issuance and sale of such bonds and notes, that firm to furnish its legal opinion of the validity of those bonds or notes at the time of their issuance and sale; and

WHEREAS, the law firm of Foster Pepper & Shefelman, PLLC ("FP&S") of Seattle, Washington, is skilled in providing legal advice with respect to governmental financing of this type, and the legal opinions of that firm are nationally recognized by investors in municipal securities; and

WHEREAS, it is deemed in the best interests of the County that counsel experienced in such matters be retained to provide special bond counsel services; and

WHEREAS, RCW 36.32.200 requires a written contract of employment between the County's legislative authority and special counsel to be executed by the parties, and approved by the presiding superior court judge of the County, for such employment;

IT IS HEREBY RESOLVED by the Board of Island County Commissioners that:

1. The law firm of FP&S of Seattle, Washington, is employed by the County as bond counsel to prepare the resolutions and other documents required by the County in connection with the issuance and sale of its bonds (the "Bonds"), bond anticipation notes (the "Notes") and other obligations (such as, other notes, warrants and installment contracts), that firm to furnish its legal opinion on the validity of the Bonds and Notes and the exclusion from gross income for federal income tax purposes of the interest thereon at the time of the delivery thereof to the purchasers thereof when that interest qualifies for such exclusion. Included in the services to be rendered by that law firm is participation in the drafting of all resolutions and other documents necessary through the issuance and sale of the Bonds, Notes, and other obligations and furnishing of an approving legal opinion upon the validity of the Bonds and Notes at the time of the delivery thereof to the purchaser, but there shall not be included the drafting or review for accuracy of any official statement, offering circular or other sales material relating to the issuance of the Bonds, Notes and other obligations prepared by the County or its financial advisor or otherwise used in connection with such Bonds, Notes, and other obligations, except for the accuracy and completeness of the description of the Bonds, Notes or other obligations and resolutions authorizing those obligations.

2. The County shall pay FP&S as compensation for its services to be rendered for bond issues as aforesaid in accordance with the following schedule:

RID'S*

LTGO's & UTGO's Revenue

Issue Size TAN's COP / CSC's

\$100,000 or less \$2,000 \$2,000

\$100,000 - \$999,999 \$2,000 + 3.00 \$2,000 + 4.00

\$ 1M - \$4.999 M \$4,700 + 1.50 \$5,600 + 2.00

\$ 5M - \$9.999 M \$10,700 + 1.00 \$13,600 + .75

\$ 10M & up \$15,700 + .50 \$17,350 + .50

KEY: "+ 3.00" means \$3 per thousand dollars in excess of the lower number shown

* Fees for RID obligations only; formation expenses billed separately as set forth below

** Also used for competitively bid fire protection district issues

SPECIAL RULES:

BANs: 2/3 the bond fee, then 1/2 the bond fee on each rollover

REFUNDINGS: 1.25 times the bond fee for LTGO/UTGO issues

1.45 times the bond fee for Revenue issues

RIDs: Fee Estimates: RID obligations are billed under the fee schedule set

(Includes LIDs) forth above.

RID (and LID/ULID) formation and assessment roll confirmation advice and document preparation are to be billed hourly. Bills should be sent when first obligations are issued (or earlier if there is money available to pay) and billed monthly thereafter.

Total fees related to LID's on which we serve as bond counsel and actively participate in formations and assessments, may be estimated according to the following schedule (but should be billed hourly as set forth above):

Estimated Size of Assessment Roll Total Fee Estimate

Under \$ 1 million \$5,000

\$ 1 million to \$ 5 million 7,000

\$ 5 million and over 9,000

The following adjustments shall be made in the above schedule under the following circumstances: (1) The fee for refunding issues shall be the amount calculated on the schedule times 1.3; (2) The fee for Notes shall be the amount calculated on the above schedule for the size of the issue times .66, and if Notes are rolled over, the fee will be the amount calculated on the schedule times .5; (3) an additional fee of \$350 per road improvement district (RID) or local improvement district (LID) included in a bond issue shall be charged for reviewing the formation transcript and, if bond counsel prepares the RID or LID formation and transcript documents, an additional fee of \$1,250 per RID or LID shall be charged.

For warrant, installment contracts, lease-purchase contracts and other borrowing transactions, including defeasances, the fee shall be based on the hourly charge referred to in Section 4, plus \$100.

Bond counsel also shall be reimbursed for any actual out-of-pocket expenses, such as travel, document production and reproduction, and communications, incurred by it in rendering its services. The payment of the fee is contingent on the successful delivery of the Bonds, Notes or other obligations, respectively.

3. The County shall furnish FP&S a complete certified transcript of all proceedings had in connection with the issuance of the Bond, Notes and other obligations in order to enable that firm to furnish its approving opinion on the validity thereof at the time of the sale and delivery of such Bonds, Notes and other obligations. The County also shall cause the purchaser of the Bonds, Notes and other obligations from the County to furnish to bond counsel before final printing and circulation thereof any proposed official statement, underwriting circular or bond prospectus for review of the accuracy of any statement relative to the services of bond counsel and to the description of the Bonds and Notes and laws relating thereto.

4. If the Board of County Commissioners shall in writing request FP&S to perform other legal services relating to the issuance and sale of such Bonds, Notes and other obligations, the County shall compensate that firm at an hourly rate of not to exceed \$200 per hour (based on that firm's billing rates for lawyers' and legal assistants' time) for such services actually performed, plus its out-of-pocket expenses. Other conditions for the furnishing of such services may be arranged between that firm and the Board of County Commissioners. If as a part of such other legal services the firm agrees to perform a "due diligence" review of any official statement, offering circular, bond prospectus or other sales material, or continuing disclosure review, the furnishing of the firm's legal opinion provided for in Section 1 shall be conditioned on its satisfaction of the sufficiency of such statement, circular, prospectus or other material.

5. FP&S's services shall be furnished by FP&S as an independent Contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this resolution by FP&S as an independent contractor. FP&S shall manage its delivery of services in a manner developed after consultation with the County Treasurer. The County will not withhold federal or state income taxes. All compensation received by FP&S will be reported to the Internal Revenue Service at the end of the calendar year and FP&S shall be solely liable for any tax obligation arising from its duties pursuant to this resolution.

6. The terms of this resolution shall be effective from April 1, 1997, and for a period of two years after its adoption and shall apply to any Bond, Note or other obligation issue, the sale of which has been specifically authorized, issued or closed during that period. The services of FP&S shall continue with respect to other bond or note issues for which that firm previously has been retained, employed or worked. The County may terminate FP&S' services at any time, with or without cause. In that event, FP&S shall be reimbursed for its out-of-pocket expenses, and if obligations on which FP&S was working are later issued, FP&S will be compensated for time expended directly on that issue of obligations. FP&S may terminate its representation at any time with or without cause but without compensation or reimbursement.

7. Any actions previously taken of officers or employees of the County and consistent with the provisions of this resolution are ratified and confirmed.

APPROVED AND ADOPTED this 16TH day of June, 1997

BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

ATTEST: Margaret Rosenkranz

Clerk of the Board Mike Shelton, Chairman

Tom Shaughnessy, Commissioner

APPROVED AS TO FORM: Mac McDowell, Commissioner

David L. Jamieson, Jr.

Deputy Prosecuting Attorney

We accept employment as bond counsel in accordance with the provisions of the foregoing resolution.

FOSTER PEPPER & SHEFELMAN, PLLC

By: Hugh D. Spitzer

The foregoing contract is approved this 12th day of June, 1997.

Alan R. Hancock, Presiding Judge of the
Superior Court of the State of Washington
In and for Island County

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HEARING HELD: OPS # 020/97 John G. Lussmyer, Open Space Timber
17 acres of a 20.09 acre parcel - BAKKEN ROAD, NEAR GREENBANK

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A Public Hearing was held at 10:45 a.m. as scheduled and advertised, for the purpose of considering Application OPS#020/97 by John G. Lussmyer, for open space timber status for 17 acres out of a total 20.08 acres, Assessor's Parcel #R23008-200-1700, located on Bakken Road near Greenbank.

Matt Nash, Senior Planner, explained that the application was submitted so that the owner could create a homesite of approximately 3 acres in the center of the parcel, keeping remaining 17 acres in open space. Once under 20 acres of timber classification, Board approval is

required. Approval of the application would not result in any tax shift because the property is already in designated forest and being taxed at that lower rate. The 3 acres for the homesite, according to the Assessor's office, will be a negligible shift in taxes. The minimum open space timber is 5 acres. The 1993 State Legislature changed the approval criteria and hearing criteria for open space timber applications whereby hearing by the Planning Commission is no longer required, the applications going directly to the Board of Commissioners for hearing. Staff recommendation on this application is approval, subject to conditions:

1. all future forest practices on the subject property shall be consistent with the submitted Forest Management Plan; and
2. all development shall be limited to the 3.09 acres as described in the

Forest Management Plan; and

3. That no further clearing, road building or other activity may take place except as directly related to and compatible with the production of timber.

If the application is approved by the Board, the Applicant will be required to sign an Agreement with the County accordingly, notarize same and return the Agreement to Island County.

No members of the public commented at this time either for or against the application. By unanimous motion, the Board approved OPS 020/97 by John G. Lussmyer per Planning staff recommendation.

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PRD 204/95, Preliminary Approval of Seascape at Elger Bay PRD:
USA 205/95, Use Approval for Density Increase; REZ 377/96 for 10
acres from FM to RR - Larry Richmond, Owner

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The Board received Planning Commission Recommendation for approval of Rezone #377/96, a 10 acre rezone; conditional preliminary approval of PRD 204/95 Seascape at Elger Bay (Planned Residential Development) and USA 205/95 (Use Approval) density increase on RR zoned portion of the site. The property is located on Camano Island, approximately 600' south of the intersection of West Camano Drive and Wagner Road, adjacent to the west side of Wagner Road, extending south to the shoreline of Elger Bay and west approximately 1300', on Tax Parcels #R33131-255-3510, R33131-259-4200, R33131-365-3950, R33131-328-3540 and R33131-428-3890.

Debra Little, Development Services Manager, summarized the purpose of the public meeting, three requests: preliminary approval of a PRD for 21 lots on approximately 50 acres; use approval for an increase of density on the RR (Rural Residential) portion of the property; and a rezone of a 10 acre parcel now FM (Forest Management) to RR (the area shown on a vicinity map posted for project location). Six lots are proposed along the shoreline and the other 15 upland.

The matter was heard by the Planning Commission on Camano Island resulting in a recommendation of approval of all three applications, with conditions. Staff recommendation is also for approval. Packets provided for the Board included: application materials and documents for the application; staff report; minutes from the Planning Commission hearing May 13, 1997; and a copy of the Planning Commission recommendation. Ms. Little advised that according to Island County Code (ICC) Chapter 16.19 the options before the Board are to accept, reject or remand the application back to the Planning Commission, or the Board may hold its own public hearing.

There were, according to Ms. Little, four applications submitted in the Summer of 1995: a rezone application; PRD application; Use Approval for the increased density application. The fourth application, SDP (shoreline substantial development permit) went before the Hearing Examiner in December and the Examiner issued a decision earlier this year for approval. SEPA determination (State Environmental Protection Act) was issued and appealed, heard at the same time SDP heard by the Hearing Examiner and SEPA appeal denied and staff decision upheld.

She mentioned that the Western Washington Growth Management Hearings Board Invalidation Order issued on April 10, 1996, invalidating various portions of the Island County Zoning Ordinance, resulted in rejection of the rezone application because rezone applications cannot be vested. Applicant was given 30 days to redesign the application to meet requirements, and the Applicant submitted a new application for rezone under a different provision of the Code that was not invalidated, which was the "show no reasonable use of the property" provision.

Answering a question from the Chair as to how the rezone was accomplished in terms of the GMA ruling, she explained that the GMA Hearings Board invalidated certain portions of ICC 17.02.210, invalidated certain rezone actions and certain parts of rezone actions. The ruling invalidated the rezone action from FM and AG to RR for people with properties designated forest or agriculture could automatically obtain a rezone. One of the subsections not invalidated is where someone can show they have no reasonable use of their property in that zone. In this case, the Applicant submitted a rezone application to show that he had no reasonable use of the FM zone.

Larry Richmond, Applicant, 15210 Sunwood Boulevard South, Tukwila, Wa., representing his family on a family project, was present to answer any questions about the project. It was his firm belief he met or surpassed regulations of every regulatory body that could possibly be interested in the project. He grew up with the property and tried to make the project fit the property and believed it to be a great project and environmentally sound. Bringing now his grandson to the property is fifth generation. He plans to live right next door to the property.

Steve Erickson, Whidbey Environmental Action Network (WEAN), stated his case against approving the application based on the following reasons:

- 1) Rezone application cannot be vested until final approval. To say that the initial application which included permit applications besides the zoning could be vested and have the zoning not be vested and reapply is preposterous. The GMA Hearings Board when invalidating various portions of ICC invalidated other portions which affect those other permits. To say those permit applications filed before the invalidation are vested when the rezone is necessary to make the project fly does not work.

2. "Reasonable Use" is intended to be used as spelled out very specifically with regard to wetlands, i.e. Island County's position is that you can always build a single family residence on any parcel, assuming compliance with other applicable codes. There is no such definition of reasonable use attached to the reasonable use provision for a forest rezone. Mr. Richmond has not shown that he cannot make reasonable use of the parcel. He has not shown that he cannot build a single family residence there or log it.

Rene Davis, 1034 NE 70th, Seattle, whose family owns property in the Elger Bay area across Wagner on the other side of the beach, a family cabin in their family since the late Thirties, recommended the project not be approved for the following reasons:

1. In violation of GMA with regard to density. GMA does not allow this type of density outside adopted interim urban growth areas

2. Issue with regard to vesting, a rezone is never vested until the time it is approved by the Commissioners and that point has not been reached yet.

3. Approval would violate the WEAN GMA Decision. County Deputy Prosecuting Attorney Jamieson submitted a brief on behalf of Island County in September of 1996 discussing the

issue (copy provided: Superior Court No. 96-2-00376-4, Respondent and Intervenor's Memorandum of Authorities in Support of Motion for Summary Judgment, Whidbey K.S.C., L.I.C., a Washington limited liability company, Petitioner, v. Island County, Respondent, and Save the Woods on Saratoga, Intervenor), this case also a rezone. Page 5 of the brief talks about provisions of ICC 17.02.210.(d)(1)(c), and in the brief Mr. Jamieson states that rezones simply do not vest.

Ms. Davis felt this was a case of trying to increase the density beyond what is even allowed and also requesting a rezone. The PRD cannot go forward without that rezone; the entire viability of the proposal rests on the rezone, which does not vest.

Scott Missall, Attorney, Short Cresman & Burgess, Seattle, representing Larry Richmond, indicated that this matter had been extensively considered by a number of planning agencies and approved at every step along the line, including the SDP and SEPA. As to the arguments raised by Mr. Erickson and Ms. Davis, at each step the Hearing Examiner and Planning Commission accepted the rational that in fact this project is appropriate and does meet all the legal requirements.

Ms. Davis advised that the Hearing Examiner did not address this issue; rather had to do with SEPA appeal and SDP, and the Examiner specifically ruled he did not have the jurisdiction to decide this issue.

No further comments by any members of the public were provided, for or against the project.

With regard to the issue of reasonable use, Ms. Little confirmed that matter had been reviewed thoroughly by staff and the Planning Commission. Mr. Richmond provided some information showing how the property was originally designated as FM to ten acre parcels and doesn't meet the minimum lot size requirement for an FM property. The Planning Commission determined that it was not reasonable to leave a 10 acre parcel surrounded by RR in FM and recommended approval of the rezone because of the reasonable use argument. Staff and Planning Commission were in agreement. Minimum size for FM is 20 acres for 1 dwelling unit. Mr. Richmond would be allowed to have 1 dwelling unit because of the non-conforming FM parcel.

Commissioner Shaughnessy moved approval of PRD 204/95, Seascape Elger Bay PRD; USA 205/95 Use Approval, and Rezone 377/96 FM to RR. Motion, seconded by Commissioner McDowell, carried unanimously.

**DECISION of the BOARD OF
ISLAND COUNTY COMMISSIONERS**

Applications Numbers:

Preliminary Planned Residential Development, PRD 204/95 Rezone
REZ 377/96

Use Approval USA 205/95

Administering Agency:

Island County Department of Planning & Community Development

P. O. Box 5000

Coupeville, WA 98239

Name and Address of Applicant:

Lawrence Richmond

15210 Sunwood Blvd., South

Tukwila, WA 98188

Requesting The Following:

Preliminary approval of the Seascape at Elger Bay PRD, a rezone from Forest

Management (FM) to Rural Residential (RR) on 10 acres, and approval of a Use Approval for an increase of density from 1 dwelling unit on five acres to one dwelling unit on 3.39 acres on the RR zoned portion of the site to create a total of 231 lots and approximately 42 acres of open space clustered on approximately 53.27 acres.

Upon The Following Property:

The site is located approximately 600 feet South of the intersection of West Camano Drive and Wagner Road. The site is adjacent to the west side of Wagner Road, extending south to the shoreline of Elger Bay and west approximately 1300 feet to encompass much of a shoreline associated wetland in Section 31, Township 31 North, Range 3 East, W.M., on south-central Camano Island, Island County, Washington. (The project includes Assessor Parcels R33131-255-3510, R33131-259-4200, R33131-365-3950, R33131-328-3540 and R33131-428-3890).

Planning Commission Recommendation & Date:

On May 13, 1997, the Planning Commission held a public hearing and reviewed the applications. They recommended approval subject to conditions to be met before final approval of the PRD and signed the Findings and Recommendation on May 27, 1997.

The use described in this permit shall be undertaken pursuant to the conditions of approval as set forth in the attached Planning Commission Recommendation dated the 27th day of May, 1997.

APPROVED AND ADOPTED ON this 16th day of June, by the Board of Island County Commissioners.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

Tom Shaughnessy, Member

ATTEST: Margaret Rosenkranz,

Auditor & Ex-Officio Clerk of the Board

BOND ACCEPTANCE: LETTER OF CREDIT #999631585 WHIDBEY ISLAND BANK -

KENT MYERS - LANDSCAPING FOR CAMANO PLAZA \$55,000

-

Ms. Little presented Letter of Credit #999631585, Whidbey Island Bank, in the amount of \$55,000 on behalf of Myers Family Limited Partnership, for purposes of guaranteeing landscaping for Camano Plaza project, and recommended the Board accept same.

By unanimous motion, the Board accepted Letter of Credit as presented and recommended.

Resolution #C-30 -97 authorizing applications for funding assistance for a Washington Wildlife & Recreation program to the Interagency Committee for Outdoor Recreation as provided in Chapter 43.98A

(English Boom Waterfront Trail Property and Amber Property)

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As submitted to the Board under Memo June 3, 1997, from Lee McFarland, Parks Superintendent, the Board by unanimous motion approved Resolution #C-30-97 to authorizing application for the Amber Property and English Boom Waterfront Trail Projects under Washington Wildlife & Recreation Program through IAC.

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

IN THE MATTER OF AUTHORIZING APPLICATION(S))
FOR FUNDING ASSISTANCE FOR A WASHINGTON)
WILDLIFE & RECREATION PROGRAM TO THE ISLAND)
COUNTY INTERAGENCY COMMITTEE FOR OUTDOOR) RESOLUTION #C-30-97
RECREATION (IAC) AS PROVIDED IN CHAPTER)
43.98A RCW, WASHINGTON WILDLIFE &)
RECREATION PROGRAM)

WHEREAS, Island County has approved a Non-motorized Trail Plan for the area that includes English Boom - Waterfront Trail Property and Amber Property; and

WHEREAS, under the provision of Washington Wildlife & Recreation Program, state and federal funding assistance has been requested to aid in financing the cost of land and facilities for local public bodies; and

WHEREAS, Island County considers it in the best public interest to acquire the English Boom - Waterfront Trail Property and Amber Property;

NOW THEREFORE, BE IT RESOLVED, by Island County of Washington,

1. That the Board of Island County Commissioners be authorized to make formal application to IAC for funding assistance.
2. That any fund assistance received be used for the Acquisition of the English Boom - Waterfront Trail Property and Amber Property.
3. That Island County anticipates its share of project funding will be derived from Conservation Futures Fund.
4. Island County acknowledges that they must support all non-cash commitments to the local share should they not materialize.
5. Island County acknowledges that any property acquired or facility developed with IAC financial aid must be placed in use as an outdoor recreation facility or habitat conservation area and be retained in such use in perpetuity unless otherwise provided and agreed to by Island County, IAC, and any affected federal agency.
6. That this resolution becomes part of a formal application to IAC.
7. That Island County provided appropriate opportunity for public comment on this application.

Approved this 16th day of June, 1997.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

Tom Shaughnessy, Member

Attest: Margaret Rosenkranz, Auditor &

Ex-Officio Clerk of the Board

Financial Reports

Auditor Monthly Review of Revenues and Expenditures

Margaret Rosenkranz, Auditor, reported that revenues are up and look much better than last month. For example, District Court revenues up more than 7% over last year at this time, with fines at 56% at the end of May and fees at 72% for the year at the end of May. Superior Court is at 24% where last year this time only at 17%. Sales Tax Equalization figures show \$39,000 more than projected (will review and try to get a better prediction, in writing, as to what the State predicts this figure will actually be). Expenditures are slightly below at this time of year.

[Due to conference commitment, the Treasurer was unable to attend this meeting to provide the Treasurer's Current and YTD Cash Report or County Investment Report]

There being no further business to come before the Board at this time, the Chairman adjourned the meeting at 11:30 a.m. to meet next In Regular Session on June 23,

1997, beginning at 1:30 p.m.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

Attest: Tom Shaughnessy, Member

Margaret Rosenkranz, County Auditor
& Ex-Officio Clerk of the Board