

ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING

REGULAR SESSION – MAY 11, 1998

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on May 11, 1998, beginning at 9:30 a.m., in the Island County Courthouse Annex, Hearing Room, Coupeville, Wa. Wm. L. McDowell, Chairman, Tom Shaughnessy, Member, and Mike Shelton, Member, were present. Also present: Margaret Rosenkranz, Clerk of the Board, and Ellen Meyer, Adm. Asst. to the Board. Minutes from the joint Board and Planning Commission Workshops held on February 5 and 11, 1998 were signed and approved, as well as Board minutes from the March 26, 1998 meeting.

VOUCHERS AND PAYMENT OF BILLS

The following vouchers/warrants were approved for payment by unanimous motion of the Board: **Voucher (War.) # 25830-26081..... \$192,487.20.**

Employee Service Awards

EMPLOYEE DEPARTMENT #YEARS ANN. DATE

Cyndy R. Smith District Court 15 4/28/83

Mary Hamel Health 10 5/16/88

Ingrid Smith Prosecutor 10 5/2/88

Michael J. Beech Sheriff 5 5/17/93

John T. Lee Public Works 15 4/1/83

Hiring Requests & Personnel Actions

As presented, along with summary/description of proposed action by Dick Toft, Human Resource Director, the Board by unanimous motion approved the following personnel action authorizations:

Dept. PAA # Position Action Effect. Date

Assessor 033/98 Appr. Trainee Replacement 6/3/98

Position #1098.01

Auditor 034/98 Acct/Dep.Auditor Replacement 5/11/98

Position #202.01

Sup.Court 035/98 Court Reporter New Position 7/1/98

Position #2002.02-Replacing Court Recorder with Court Reporter

APPOINTMENT TO THE ISLAND COUNTY ADDRESSING BOARD

By unanimous motion, the Board appointed Irvin L. White, Greenbank, as an alternate member on the Addressing Board representing Whidbey Island.

APPOINTMENT TO ISLAND COUNTY PLANNING COMMISSION

On recommendation of Commissioner Shaughnessy, District #3, the Board by unanimous motion appointed Pat Churchill, Camano Island, to serve on the Island County Planning Commission replacing Susan Banel who earlier resigned, for a term to January 2, 2002.

**RESOLUTION #C-52-98 – ADOPTING ISLAND COUNTY ELECTRONIC COMMUNICATIONS
ACCEPTABLE USE POLICY**

Mike Estes, representing the County's Central Services Department, was present in support of and to answer any questions about the proposed County Electronic Communications Acceptable Use Policy, covering computer network access, e-mail, Internet access, and intranet development termed "electronic communications".

The Board, on unanimous motion, adopted Resolution #C-52-98 Establishing an Island County Electronic Communications Acceptable Use Policy.

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

IN THE MATTER OF ESTABLISHING AN)

ISLAND COUNTY ELECTRONIC COMMUN-) RESOLUTION C-52-98

ICATIONS ACCEPTABLE USE POLICY)

WHEREAS, Island County has developed a wide variety of centralized technologies such as computer network access, e-mail, internet access, and intranet development termed as Electronic Communications and

WHEREAS, the primary purpose of Island County's Electronic Communications is to facilitate the timely and efficient conduct of County business and

WHEREAS, it has been determined that there is a need to establish an Electronic Communications Acceptable Use Policy within Island County to establish guidelines for all users of these resources, NOW THEREFORE

BE IT RESOLVED, that the above described policy which can be found attached is hereby established as of this date.

ADOPTED this 11th day of May, 1998.

BOARD OF COUNTY
COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

Attest: Margaret Rosenkranz,

Clerk of the Board

ISLAND COUNTY ELECTRONIC COMMUNICATIONS ACCEPTABLE USE POLICY

All County Computer workstation/ network users and users of the Internet must be familiar with current policy regarding the acceptable use of these resources. If you have not done so previously, please review these documents now.

INTRODUCTION

The primary purpose of Island County's electronic communications is to facilitate the timely and efficient conduct of County business. The communications are also provided to encourage and facilitate the free exchange of business related communications and ideas between employees. This includes, but is not limited to, electronic mail systems (e-mail), voice mail systems, faxes, Internet and other electronic media that generate, store, transmit and display correspondence for internal and external business communication purposes. All electronic data are the property of Island County and may be public records under the Public Disclosure Act (RCW 42.17)

This policy applies to all employees, contractors, extra help employees, volunteers and other individuals who are provided access to Island County's electronic communications.

Employees are representing the County, and thus all communications shall be professional and appropriate. Employees are prohibited from using electronic communications for solicitation of funds, political messages, harassing messages, and other such messages as specifically prohibited. Employees who have resigned, are terminated or laid off have no right to the contents of the County electronic communications and will not be allowed access. The misuse of electronic communications may subject the employee to disciplinary actions, including but not limited to termination of employment.

E-MAIL POLICY

- I. E-Mail is for Business Use. Island County's electronic mail system is primarily for official business. The system is not to be used for employee personal gain or to support or advocate for non-county related business. The County reserves the right to monitor the use and content of e-mail.
- II. E-Mail Is Not Private. E-mail is not private or confidential and should not be used for any information you consider personal or private. Any e-mail message is annotated with your e-mail address and can therefore be traced to you. Any message sent can be forwarded to anyone else on the network or to the internet. It is also possible to retrieve deleted e-mail messages. All messages are Island County records and are the property of Island County. Island County reserves the right to read, use and disclose e-mail messages.
- III. E-Mail Decorum and Content. When using the e-mail system, keep in mind that you are using Island County property. As a result, your comments must be appropriate to our business setting. All outgoing messages which do not reflect the official position of Island County must include the following disclaimer: "The opinions expressed here are my own and do not necessarily represent those of Island County."
- IV. Discretion when using "ALL". Users should avoid sending or replying to distribution lists "ALL" when communication to a few individuals will suffice.
- V. Virus Warning E-mail. In the event that user receives e-mail containing warnings of viruses or other "scare tactic" e-mail, user must immediately contact network administrator for a determination of authenticity. At no time should user forward these e-mails onto other users within Island County network. Violation of this clause will be determined as abuse and user will be terminated from network for undetermined amount of time.

Island County, in general, cannot and does not wish to be the arbiter of the contents of electronic mail. Neither can Island County, in general, protect users from receiving electronic mail they may find offensive. Employees of Island County, however, are strongly encouraged to use the same personal and professional courtesy and consideration in electronic mail that they would in other professional forms of communication.

Unless an "authenticated" mail system is in use, there is no guarantee that electronic mail was in fact sent by the purported sender. It is relatively easy, although a violation of this Policy, for senders to disguise their identity. Furthermore, electronic mail that is forwarded may be modified as well. Because of the ease with which e-mail addresses can be "spoofed" or forged, e-mail should not be used for official documentation or official notification, unless authenticity is verified by an independent method.

This Policy applies only to electronic mail in its electronic form. The Policy does not apply to printed copies of electronic mail. This Policy applies equally to transactional information (such as e-mail headers, summaries, addresses, and addressees) associated with e-mail records as it does to the contents of those records.

INTERNET POLICY

- I. Internet is for Business Use. Access to the Internet should be strictly for county related business and is only allowed via the County's centralized Internet connection (no connections via modems). Alternate methods of Internet access, such as using a modem to access internet services (Whidbey connections, Compuserve, etc.), would compromise the County's network security, exposing it to potential harm from computer hackers. Internet resources for which there are fees must not be accessed without prior approval of a supervisor; any costs incurred while accessing the Internet without approval are the responsibility of the employee (see III.B)
- II. Internet Use is Not Private. When sites are accessed on the Internet, IP addresses are recorded. Comments are not anonymous, and any electronically stored communication sent or received may be retrieved. Island County reserves the right to review user accounts, workstations and file server space in order to determine whether specific uses of Internet information systems are appropriate.
- III. Unacceptable Internet Site. Management reserves the right to make final determinations in all cases of appropriate use of the Internet. There is a wide variety of information on the Internet. Some individuals may find some information on the Internet offensive or otherwise objectionable. Individual users should be aware that the County has no control over and can therefore not be responsible for the content of information available on the Internet. The following are examples of unacceptable sites and are not intended as an all inclusive list:
 - a. Pornographic, religious, or partisan political sites.
 - b. Any site that charges a fee. Visiting such a site must be pre-authorized in writing. If you do visit such a site by mistake, do not give out any billing information such as a credit card number or business phone number. If you are asked for billing information, cancel out of the screen immediately. Resources for which there are fees must not be accessed without prior written approval of a supervisor. Any costs incurred while accessing the Internet are the responsibility of the employee unless approved in advance by the supervisor or department head.
 - c. Vendor sites to purchase personal items. Business purchasing must exclusively go through the contract review process of the County or Central Services.

- d. Downloading of any software from the Internet into a server or workstation without prior approval. Most software on the Internet is not free. Software companies will offer free demos to download, users are still obligated to purchase the software after free trial or remove it from their systems. This is hard to track and would be a potential copyright infraction.

IV. Harassment through the Internet. If you believe that you are the victim of harassment, please follow these procedures:

- a. Don't delete the message.
- b. Don't respond.
- c. Do notify your supervisor, elected official/department head, or appropriate designate.

INTRANET POLICY

Island County users must comply with the following Island County Network Rules. No set of rules can cover every contingency. These are an attempt to provide a sense of what constitutes "acceptable use." There are no network police and therefore, these rules will only be effective through cooperation by all employees of Island County utilizing the ICnetwork. (Island County network)

I. Fraudulent use of the network is prohibited. Fraudulent use includes, but is not limited to:

- a. Using the ICnetwork for personal profit
- b. Attempting to intentionally interfere with the performance of the ICnetwork.
- c. Using a computing user-id or account belonging to another individual without his or her permission.
- d. Attempting to access data being transferred through the ICnetwork or files on any computer connected to the ICnetwork without the owner's permission.
- e. Interfering with the legitimate work of other users.
- f. Unauthorized copying or transmission of software. All proprietary computer software is legally protected by copyright, patent or trade secret law.
- g. Abusing any interconnected network such as the Internet.
- h. Using the ICnetwork to attempt to violate any connected computer system's security.
- i. Using the ICnetwork to spread computer viruses, Trojan horses, worms or any program designed to violate security, interfere with the proper operation of any computer system or destroy another user's data.
- j. Using the ICnetwork in any manner which violates any federal state, or local law.

II. Each user is responsible for any misuse of his/her User-ID.

III. Password(s) should be changed often in order to protect users and their data. The following recommendations are provided for selecting passwords.

- a. Pick passwords which are difficult for someone else to guess.

- b. Avoid words which might appear in the dictionary.
 - c. Select a password which has imbedded numbers or punctuation or consists of multiple words.
 - d. Do not write your password where it might be found by an unauthorized user.
- IV. As a network user you are expected to conserve resources by avoiding unnecessary large file transfers.
- I. If ICnetwork administrative personnel request that you cease a network activity because of its negative impact on the ICnetwork or other users, you are expected to cease that activity immediately.
- V. Policy Implementation:
- a. Elected Officials/Department heads are responsible for communicating this policy to their staff.
 - b. Central Services shall monitor and coordinate policy revisions to meet ongoing business changes.
 - c. Elected Officials/Department heads reserve the right to review employee Internet use to determine whether those uses are appropriate.

ISLAND COUNTY INTERNET HOME PAGE POLICY

Island County only assumes responsibility for the information provided on the home page.

Island County does not monitor and has no control over the information accessed through the Internet. The Internet offers access to many valuable local, national, and international sources of information. However, not all sources on the Internet provide accurate, complete, or current information. A good information consumer evaluates the validity of information found. The Internet is a global entity with a highly diverse user population and information content. Island County cannot censor access to materials or protect users from materials they may find offensive. In choosing sources to link to our home page, we follow generally accepted government practices. Beyond this, we do not monitor or control information accessible through the Internet and do not accept responsibility for its content. Island County is not responsible for changes in content of the sources to which we link, nor for the content of sources accessed through secondary links.

Island County Electronic Communications Policy Implementation:

- a. Elected Officials/Department heads are responsible for:
 - o Distributing a copy of the policy to each staff member
 - o Obtaining a signed acknowledgment of receipt and understanding of the policy which includes agreement to comply and maintaining the signed acknowledgment in the user's personnel file.
 - o Assessing the need for Internet access by their staff on a case by case basis and submitting a request for access to Central Services for each user.
 - o Being aware of all Copyright software used by staff members and be responsible for preventing potential violations of Copyright laws and misuse of software within their departments.
- a. Central Services shall monitor and coordinate policy revisions to meet ongoing business changes.

- b. Elected Officials/Department heads reserve the right to review employee Internet use to determine whether those uses are appropriate.

The Chairman asked that Mr. Estes provide a copy of the policy dated today to all users of e-mail in the County.

1998 ISLAND COUNTY DEPARTMENTAL EQUIPMENT REQUESTS APPROVED

Requests from county departments for office equipment were discussed briefly during budget workshops, and a separate line item budgeted for equipment purchases to be approved later in the year. Departmental equipment requests were submitted in late March, coordinated through Central Services and the Budget Director. A list of all requests was presented and discussed initially at Staff Session on April 8, 1998. The Board provided tentative approval during Staff Session on May 6 to accept the first three pages of the four page list submitted [total of 4 pages] by Cathy Caryl, with more formal approval to be followed at Board meeting this date.

By unanimous motion, the Board confirmed approval of the first three pages of the equipment list submitted by Central Services Department, for an approximate total of \$103,365, representing Items #98-001 through #98-971.

HEALTH DEPARTMENT CONTRACTS APPROVED

Two Health Department contracts, having been previously discussed with the Board at a recent staff session, were by unanimous motion approved by the Board, as follows:

- **Consolidated Health Contract Amendment - #CO6977(2)** – representing a Funding decrease in the amount of \$100 in the Perinatal Hepatitis B fund.
- **Contract #916001321** between DSHS and Island County for Alternative Response, in the amount of \$24,000 [families which are screened by CPS to be low risk to moderately low risk of abuse or neglect].

INTERAGENCY AGREEMENT BETWEEN STATE OF WASHINGTON DSHS AND ISLAND COUNTY JUVENILE COURT SERVICES, CONTRACT #RM-JUV-98-0025

By way of Memo dated May 6, 1998, the Board received from Elizabeth McKay, Juvenile Court Services Director, the Consolidated Juvenile Searches contract between Island County and DSHS for approval/signature. As the memorandum explained, this is an annual contract, and represents only half of the biennium. Funding is in the amount of \$108,290.00 and is used to pay for one probation counselor and services to juveniles at high risk of re-offending and services for sex offenders who remain in the community.

The Board, by unanimous motion, approved Interagency Agreement with the State of Washington DSHS, Contract #RM-JUV-98-0025 as submitted in the amount of \$108,290.00.

BID AWARD – South Whidbey Family Resource Center

Larry Kwarsick, Director, Public Works Department, reported results from bids received and opened last Thursday, the low bid from the contractor who performed the work under the block grant for the Hospital District renovation of the South Whidbey facility. The recommendation of staff is to award bid to the low bidder, for the South Whidbey Family Resource Center, J & L Builders, in the amount of \$361,735.00 [without alternatives].

Gary Hess, Public Works Engineer, discussed add-ons explaining the proposal is not to use this contractor for any of the additives. Going through the project, landscaping requirements will be achieved hopefully at a reduced cost from that proposed. The budget available is \$379,100. Once the project is completed, an evaluation will be done to determine whether or not some of the additional items can be accomplished.

Mr. Kwarsick commented that the site is a rural wooded site and a significant amount of existing vegetation is being retained. This contractor is not being used to landscape the site.

The Chairman asked that when staff recognized a likelihood of being over budget on a project that be brought to the Board's attention at staff session and discussed.

By unanimous motion, the Board awarded bid for the South Whidbey Family Resource Center, Work Order #202, to J & L Builders based on their low bid of \$361,735.

**PURCHASE ORDER #01321 FOR sign making machine
and inventory system**

The Board, by unanimous motion, authorized and approved Purchase Order #01321 from Midwest Sign and Screen Printing Supply, Seattle, a sign making machine at a total cost of \$6,303.70, as discussed at the last staff session with the Public Works Department.

RESOLUTION #R-20-98 [C-53-98] INITIATING CRP 98-03,

Work Order 220, Brighton Beach Road

By unanimous motion the Board approved Resolution #R-20-98 [also known as #C-53-98] initiating County Road Project #98-03, under Work Order 220, Brighton Beach Road repair; including consultant fee, contract construction, PE & CE for a total of \$184,000.

**RESOLUTION #R-21-98 [C-54-98] Initiating CRP 98-04, W.O. #128, Crescent Harbor Road Flashing Signal
Lights at Elementary School**

By unanimous motion the Board approved Resolution #R-21-98 [also known as #C-54-98] initiating County Road Project #98-04, Work Order 128, to place a flashing signal light to warn motorists of students during school hours at Crescent Harbor Elementary School, for a total appropriation of \$17,000.

**RESOLUTION #C-55-98 AMENDING ISLAND COUNTY'S SIX YEAR CAPITAL IMPROVEMENT
PROGRAM FOR THE YEARS 1998-2003 TO INCLUDE FAIRGROUNDS IMPROVEMENTS**

Last, Mr. Kwarsick presented for the Board's consideration a proposed resolution to amend the Island County Six Year Capital Improvement Program for the years 1998 to 2003 to include Island County Fairground Improvements. In association with the annexation of the Fairground property, there is proposed improvement [private and grant funds] for the HOPE facility arena. The Capital Improvement Program proposes to pay the building permit costs associated with the construction of that facility and also the cost of installing the necessary sewer service to the facility in the amount of \$7,200.00.

By unanimous motion, the Board approved Resolution #C-55-98 in the matter of amending Island County's Six Year Capital Improvement Program for the years 1998 to 2003 to include Fairground improvements.

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

**IN THE MATTER OF AMENDING ISLAND)
COUNTY'S SIX-YEAR CAPITAL)
IMPROVEMENT**

PROGRAM FOR THE YEARS 1998-2003 TO) RESOLUTION NO. C-55-98

INCLUDE FAIRGROUND IMPROVEMENTS)

WHEREAS, the Public Works Director, in accordance with RCW 36.70A.070(3) and WAC 365-195-315, submitted his recommended plan for capital expenditures for 1998 through 2003; and

WHEREAS, the Island County Board of County Commissioners adopted the 1998-2003 Capital Improvement Program (CIP) on June 23, 1997 by way of Resolution R-43-97; and

WHEREAS, the Fairground Improvement project could not be foreseen at the time the CIP was adopted; and

WHEREAS, per ICC 3.04A.040 real estate excise tax funds can be used for financing capital projects specified in the capital facilities plan element of the Island County Comprehensive Plan; and

WHEREAS, HOPE (Horsemanship Opportunities for Potential Equestrians) is constructing a building at the county fairgrounds which includes office, meeting, and storage space to be used in their therapeutic program which benefits Island County residents, and

WHEREAS, that building will include a small kitchen, restrooms, and a new announcer's booth for the arena, which will be used for the Island County Fair,

NOW THEREFORE BE IT HEREBY RESOLVED that the 1998-2003 Capital Improvement Program is amended to include Fairground Improvements to include payment for the building permit and for sewer extension to the building to be funded out of REET 1 in the amount of \$2,200 and REET 2 in the amount of \$5,000 in 1998.

ADOPTED this 11th day of May, 1998.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

Attest: Margaret Rosenkranz

Clerk of the Board

Signature on Boards written decision – Appeal #098/98 by Joanne Keefe of Hearing Examiners decision #304/97, variance

application of Diane Tinker

With regard to the 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. On April 20, 1998, the Board a decision on the matter for one week to allow Commissioners McDowell and Shaughnessy an opportunity to make a site visit, and the Board's announcement continued to April 27, 1998 at 2:50 p.m. at which time each Commissioner read into the record their individual statement/decision. After that, Planning Department staff prepared and submitted to the Board a draft written decision May 4, 1998, which the Board at that time took under advisement and set this date for action.

Commissioner Shaughnessy moved that the Board approve and sign the written decision of the Board in the matter of an appeal of the Island County Hearing Examiner's Decision VAR 304/97, File No. APP 098/98 Appeal Decision Findings of Fact and Conclusions of Law. Motion, seconded by Commissioner McDowell, carried by majority vote, Commissioner Shelton voting in opposition.

A copy of the Board's Decision is to be provided to the Appellant and Applicant by the Planning Department.

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

IN THE MATTER OF AN APPEAL OF THE ISLAND COUNTY HEARING EXAMINER'S DECISION IN VAR 304/97, TINKER)))))	FILE NO. APP 098/98 APPEAL DECISION <u>FINDINGS OF FACT AND</u> <u>CONCLUSIONS OF LAW</u>
--	-----------------------	---

This matter came before the Board of Island County Commissioners on April 6, 1998, upon appeal by Joanne Keefe of the February 23, 1998, Island County Hearing Examiner Decision granting approval of Variance #304/97. The decision granted approval to Diane Tinker for a street yard setback variance which would allow the placement of a garage 37 feet from the centerline of Maxwellton Road or 14.5 feet from the property line. This is a closed record appeal. The record of this appeal includes the entire record as was before the Island County Hearing Examiner including the materials and information in the application file, the Island County staff report, the Hearing Examiner decision, the minutes of the public hearing, the materials submitted by the appellant and applicant during the hearing process, the Island County Code and Comprehensive Plan, the applicable State codes, together with Appellants' notice and basis of appeal filed with this Board.

Having reviewed the record and 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.

Diane Tinker is the owner of an approximately 1.1 acre parcel of land located between the toe of a bluff and Maxwellton Road, in a waterfront community accessed by Maxwellton Road.

Development on the applicant's parcel currently consists of an existing two bedroom home with deck and an existing mound septic system. The existing two bedroom home and mound system encompass the central portion of the lot, which is higher than either the rear of the lot or the front portion between the home and mound system and South Maxwellton Road. This area, including the applicants property, has been identified as a flooding/ponding area. There is a defined water channel in the back of the lot, approximately 200 feet from Maxwellton Road, and approximately 35 feet from the toe of a steep bluff. The area between the house and the toe of the bluff is a Category A wetland or its buffer, under the current Island County Zoning Ordinance. This wetland has been significantly altered over the years through the placement of fill and the digging of the current drainage channel. A well is also located in the back portion of the lot near the toe of the bluff.

II.

An application for a street yard setback variance on Assessor parcel #R32805-095-5050 located at 7529 S. Maxwellton Road was signed by the owner and submitted to Island County on July 21, 1997. Island County accepted the application as complete for review on August 4, 1997. The applicant has indicated an intent to construct a two-car garage with cedar shingle siding and a pitched roof that is in character with the surrounding community.

III.

During the application review regarding this matter it was discovered by the Health Department that, based on the site plan submitted, the required setback between the proposed garage and the drainfield was less than the required 10 foot minimum and that, based on the existing as-built for the drainfield reserve, the proposed garage would be located in the area designated as the drainfield reserve. As a result, the Health Department did not recommend approval of the application, unless the applicant could identify a 100 percent reserve area to meet Health Department requirements for a septic reserve area set aside from development. After review by Island County, the Planning and Community Development prepared a staff report and recommended that the Island County Hearing Examiner deny the application, unless the Island County Health Department conditions could be met.

On September 18, 1997, a public hearing was held to review the application. At this hearing, the appellant, Joanne Keefe who is the neighboring property owner of the applicant to the south, raised objections to the requested variance. The hearing was extended until November 6, 1997 to allow the applicant time to comply with Island County Health Department concerns and to provide further evidence demonstrating the need for the garage to be located on the front portion of the lot.

In October, 1997 an additional site visit was conducted by Island County Planning staff, at which time it was determined that a Category A wetland was present in the rear portion of the lot. In a letter dated October 15, 1997 the Planning Department informed the applicant of the presence of a Category A wetland and noted that the presence of the wetland and its associated buffer precluded construction of the garage on the rear portion of the property without prior County approval to reduce the wetland buffer. At the November 6, 1997 hearing, this information was presented at the open public hearing. The applicant submitted further information to the Hearing Examiner from a professional engineer noting that the soil located in the rear yard is characterized as comprised of unconsolidated fill and is not suitable for construction. Exhibit #30, submitted and stamped by a professional engineer, indicates various layers of uncompacted fill which, in some areas, extend to a depth of 48 inches. As such, placement of the garage on the rear portion of the property would require the applicant to apply and receive approval for a wetland reduction, as well as remove existing materials and provide structural fill up to 48 inches in depth for the proposed garage and the access driveway.

The hearing was extended until February 5, 1998 to allow the applicant time to comply with Island County Health Department continuing concerns with the proposal. At the February 5, 1998 hearing the Health Department submitted agency comments noting that the applicant had submitted a sewage disposal system by a licensed designer that is feasible if the proposed garage is placed no more than nine feet from the property line.

On February 23, 1998 the Hearing Examiner issued a decision granting variance approval for the placement of a slightly smaller than requested garage 37 feet from the centerline of Maxwellton Road or 14.5 feet from the property line.

The appeal of the decision was received by Island County on March 9, 1998, and is a timely appeal filed within 15 calendar days of the date of the issuance of the decision. The closed record hearing by the Board of Island County Commissioners was set for and held on April 6, 1998, in conformance with ICC 16.19.160, Land Use Review Process - Appeals. The Board's decision was announced to the public at their meeting held on April 27, 1998. (copy attached)

IV.

The lot is located within 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.

This area of Maxwelton Beach includes numerous lots with homes and garages which encroach on the current setback requirements much in the way proposed by this applicant. Building the garage in the proposed location would not be out of character with the surrounding community, which is characterized by development close to the road. The applicant proposes a garage constructed of wood exterior siding with a peaked roof, similar to existing homes in this area.

County agencies have indicated that the granting of this variance will not have a negative impact on the public interest due to fire and safety concerns or intersection site distance. Since the proposed garage will be located near the south property line (i.e., just north of the neighboring property owners cabin) and will be located to exceed minimum side yard setback requirements, the proposed garage will not negatively impact solar access, views, or traffic site distances.

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.

V.

The applicant does not currently have a garage or off road parking area on the property. A garage on a lot containing a single family residence is a reasonable expected use of the Residential-zoned lot.

VI.

The neighboring property owner to the south has objected to the requested variance. One of the issues the neighboring property owner has raised is whether viable alternatives for placement of the garage on the lot exist which would preclude the need for a variance to reduce the street yard setback. The only place the proposed garage could be located on the parcel, except for the requested location which requires a variance, would be to the east or rear of the property between the existing home and mound system and the man made water channel. This portion of the property is located within a Category A wetland buffer. Placement of a garage within the buffer would require Island County approval of a wetland reduction. There is no location on this lot which a reasonable size garage could be located without either a variance from the road setback requirements or a reduction of the wetland buffer requirements.

VII.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

In order for a variance to be approved it must be consistent with the variance criteria and requirements as set forth in ICC 17.02.200.D. In general variances are allowed when necessary to allow a reasonable permitted use on the property. The proposed garage structure is a permitted use on this property. The granting of a variance for this garage would not constitute a Grant of Special Privilege so long as the proposed garage was consistent with the remainder of the variance criteria.

II.

It is possible to place the proposed garage on the rear portion of the property. If the garage was placed in this location a road setback variance would not be required. However, to place the garage in this location would require a reduction in the 100 foot Category A wetland buffer. Wetland buffer requirements are designed to protect the public interest and the functions of the wetland, including habitat. Wetland buffer reductions are also available when necessary to allow reasonable permitted use of a property. A reduction in a required wetland setback, either through administrative use

approval or through a use approval granted though the hearing process amounts to no more than a variance from the wetland buffer requirements. In this case the applicant must obtain a variance either from the front road setback requirements or from the wetland buffer requirements.

III.

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.

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. 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. In this case, it is more appropriate to grant a front yard setback reduction as opposed to a reduction in the wetland buffer.

IV.

There is no evidence that the granting of a variance in this case will 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 build in the location requested by the applicant is generally consistent with these criteria.

V.

The approved variance requested is not the minimum necessary to allow reasonable use.

VI.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

Based upon the foregoing, we find that:

The conditional approval of a variance from the street yard setback requirements by the Island County Hearing Examiner on February 23, 1998 under VAR #304/97 approving a reduction in the front yard setback from the center line of Maxwellton Road from the required 50 feet to 35 feet on Parcel #R32805-095-5050 to allow the construction of a two-car garage is **UPHELD**.

This decision is approved and adopted this 11th day of May, 1998.

**BOARD OF COUNTY
COMMISSIONERS**

**OF ISLAND COUNTY,
WASHINGTON**

Wm. L. McDowell, Chairman

Tom Shaughnessy, Commissioner

[Mike Shelton, Commissioner – voted
against]

ATTEST: Margaret Rosenkranz,

Clerk of the Board

HEARING SCHEDULED TO CONSIDER ORDINANCE #C-56-98,

INTERIM 9-1-1 ADDRESSING POLICY

On April 27th the Board held a public hearing on proposed Ordinance #C-39-98, on conclusion took no action and instead directed changes be made ad discussed at that time, and a new ordinance be scheduled for public hearing. A revised ordinance was presented by staff today, and by unanimous motion, the Board scheduled Ordinance #C-56-98, Interim 9-1-1 Addressing Policy for public hearing June 1, 1998 at 11:00 a.m.

-

**HEARING SCHEDULED: RESOLUTION #C-57-98 [PLG-010-98] AMENDING BUILDING PERMIT FEES
AND BUILDING PERMIT VALUATION SCHEDULE**

A Public Hearing was scheduled, by unanimous motion of the Board, for June 1, 1998 at 10:45 a.m. to consider Resolution #C-57-98 amending Building permit Fees and Building Permit Valuation Schedule.

CONTRACT APPROVAL: EARTH TECH, CONSULTANT

As submitted for review and approval, the Board by unanimous motion approved a Professional Services Agreement between Island County and Earth Tech, Consultant, to assist the Planning Department in completion of the update of the Shoreline Management Master Program.

**HEARING HELD ON APPLICATION TLC #108/98 TO reclassify parcel to Timberland, BY Mark Hein &
Elizabeth Lee, owners**

As scheduled and advertised, a public hearing was held at 11:00 a.m. for the purpose of considering the Application of Mark Hein and Elizabeth Lee, TLC #108/98, for Open Space Timber Status for 19 acres of a their 20-acre Parcel #R23025-297-3300 located off Brainers Road on South Whidbey.

At the time of hearing, both Mark Hein and Elizabeth Lee were present in support of their application.

Matt Nash, Senior Planner, participated in the review of the application for transfer into Open Space Timber. The 20 acres is currently in Designated Forest and applicants request for a transfer into Open Space Timber status for the purpose of developing a one-acre residential building site. Based on site and parcel history review, there are no concerns regarding this property. The property has been logged and reforested. Applicants have a Forest Management Plan which accurately describes the property and meets technical standards. Staff recommends approval.

At the time the Chairman called for public comments, no one in the audience spoke in favor of or in opposition to the Application. Written letters of support are on file with this application.

By unanimous motion, the Board accepted the recommendation of staff and approved Open Space Application #TLC 108/98 by Mark Hein and Elizabeth Lee to place 19 acres of a 20 acre parcel in open space/timber current use taxation status for Parcel #R23025-297-3300 located on South Whidbey Island, subject to the condition that all future forest practices activity on the subject property shall be consistent with submitted Forest Management Plan and with the Washington Forest Practices Regulations, RCW 76.09 and WAC 222.

There being no further business to come before the Board, the meeting adjourned at 11:05 a.m. The Board will meet next in Special Session to conduct a joint workshop with the Planning Commission, on May 15, 1998, 9:00 a.m. to 3:00 p.m., Hearing Room 1, Courthouse Annex, Coupeville. The next regular meeting is scheduled for May 18, 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