

ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING

REGULAR SESSION - JULY 13, 1998

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on July 13, 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 in attendance were Margaret Rosenkranz, Clerk of the Board, and Ellen Meyer, Administrative Assistant to the Board.

VOUCHERS AND PAYMENT OF BILLS

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

Voucher (War.) # 29647-29992.....\$397,605.28.

Veterans Assistance Fund: [emergency financial assistance to certain eligible veterans; the names and specific circumstances are maintained confidential], as recommended by the Veterans Assistance Review Committee: V98-11 \$50.00; V9812 \$1,257.44.

Employee Service Awards

Employee Ann. Date # Yrs Dept.

Chris Garden 6/20/88 10 Sheriff

Steve Hall 6/24/88 10 Sheriff

Marianne O'Neal 7/1/88 10 Prosecutor

Doug Rowalt 7/11/88 10 Solid Waste

EMPLOYEE OF THE MONTH – JUNE, 1998

Don White, Public Works

Oak Harbor Road Shop

PERSONNEL AUTHORIZATION ACTIONS

After receiving a presentation and explanation of five proposed personnel authorization actions from three departments, the Board by unanimous motion, approved the following:

Position

Department - PAA# - Position - No. - Type Action Eff. Date

Pros. Atty. - 059/98 - Chief Crim.Dep. - 1802 - Replacement 8/21/98

Planning - 062/98 - Adm Asst. –Temp - 1716 - Increase Hrs. to 40

and extend date to 8/31/98 7/13/98

Planning - 063/98- Plans.Ex.Bldg - 402.02 - New Position 60 days - 7/13/98

Insp. - Temp

Planning - 064/98 - Assoc. Planner - from 1707.01- Assistant Planner to

1708.04 Associate Planner 7/13/98

Public Works - 061/98 - Sr. Planner-Temp - New Position - FEMA permit

process – 4 months 7/13/98

Contract Amendment: #17519 001, Health

Passport Program, \$868

As discussed with the Health Services Director at recent Staff Session, the Board by unanimous approved Contract Amendment to contract with DSHS for Health Passport Program, providing \$868 in funding.

HEARING HELD: RESOLUTION #C-94-98 (R-35-98) Capital Improvement Program 1999-2004 AND Resolution #C-95-98 (R-34-98) Six-Year Transportation Improvement Program 1999-2004

A Public Hearing was held at 10:15 a.m., as scheduled and advertised, for the purpose of considering the Capital Improvement Program 1999-2004 and the Six Year Transportation Improvement Program 1999-2004. Larry Kwarsick, Public Works Director, confirmed both documents had been submitted to the Planning Commission and reviewed by the Planning Commission in public hearing. The matter is before the Board today for consideration and adoption.

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Six Year TRANSPORTATION Improvement Program

Mr. Kwarsick stated that the Transportation Plan is part of the Capital Plan, one of the on-going activities. In shaping the expenditure plan long-range information has been used out of the Plan in terms of looking at capacity problems there might be through the year 2020.

Dick Snyder, Construction Engineer, confirmed that the Program had been presented to the Planning Commission, had been discussed with the Board at several staff sessions. Comments were received from a Fire District and Island Transit. Staff worked with the City of Oak Harbor

to coordinate with that Plan, and coordinated with the State Department of Transportation on highway intersection projects. Since the plan was initiated a few projects have been moved around to fit the budget projections better. No projects have been canceled but several named projects have been added regarding signalizations.

Fire District comments related to Taylor Road their concerns about the route from Crescent Harbor to Taylor Road up to Fakkema Road. The Department believes that to be a good route now and that that area is being served well right now, Taylor Road having been rebuilt two years ago. Frostad Road is included in the 6 year plan, and depends on CRABoard assistance in funding. Taylor Road from Frostad Road south to Fakkema is in reasonably good condition.

Public Comment: none.

Board Action: By unanimous motion, the Board approved Resolution #C-95-98 in the Matter of Adoption of Island County's Six Year Transportation Improvement Program for the Years 1999-2004.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF ADOPTION OF ISLAND)

COUNTY'S SIX-YEAR TRANSPORTATION) RESOLUTION NO.

IMPROVEMENT PROGRAM FOR THE) C-95-98

YEARS 1999-2004) R-34-98

WHEREAS, the County Engineer, in accordance with RCW 36.70A.070, 36.81.121 and WAC 136-14-040, has submitted his recommended plan for construction of roads for 1999 through 2004; and

WHEREAS, the Island County Planning Commission has reviewed this program and found it in compliance with the Island County Comprehensive Plan;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Island County Board of Commissioners that the Six-Year Transportation Improvement Program for 1999 through 2004, as submitted this date, is hereby adopted.

ADOPTED this 13th of July, 1998.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Wm. L. McDowell, Member

Tom Shaughnessy, Member

Attest: Margaret Rosenkranz,

Clerk of the Board

Capital Improvement Program

Some modifications have been made in terms of the formatting of the document and the document begins with a summary explanation. Tables on page 6 and 7 show projects divided into two principal component parts: projects and on-going capital expenses and lists 11 projects planned to occur over the next few years: continuation of courthouse expansion and remodel efforts; efforts to provide new Camano road shop facility and complete Camano Family Resource Center and start process of new Camano Annex; completion of planning with regard to Whidbey Island road shops; Freeland and Clinton infrastructure planning to occur in two different years; added some additional funds for courthouse remodeling to handle of the current Camano Annex as the result of the vacation of the Sheriff's Office of a portion of the Annex area [Annex remodel is fairly conceptual at this point and is a reuse of existing spaces]. Mr. Kwarsick still saw from a departmental standpoint opportunity in the future for some consolidation planning on Whidbey that eventually could lead to the construction of a consolidated shop for the Coupeville and South Whidbey service areas; proposing some limited funding commitment to the Fair Board to help support some on-going capital maintenance needs.

Mr. Kwarsick believed that some good improvements were being made to the Coupeville road shop in terms of providing additional work space and areas. Commissioner McDowell shared a concern of Commissioner Shelton about timing on the Camano Road Shop construction, but as far as planning purposes, the proposal as presented today is satisfactory, but noted that the Board would like a briefing on status of funds as it gets closer to that time frame. Mr. Kwarsick stated intent was to bank money so it would not be a debt base construction activity.

As far as infrastructure planning for Clinton and Freeland and the difference in figures shown for each, those figures came from R. W. Beck, and probably were based on the fact that there had been prior planning work occur in Freeland

which helped reduce that figure for Freeland infrastructure planning. As part of the Makers planning effort that occurred in Freeland, there was some capital element for opportunities for sewage and as that community planning effort goes forward using and looking at the Makers effort would be a good starting point. Page 7 – Parks. IAC money is based upon a grant proposal and being ranked successfully so only one-half of that is "hard" money. Shown to come out of the Conservation Futures Funds are payments on the debt for the Greenbank Farm [#A at the top of page 7].

The comments the Planning Commission had when the CIP was presented was with regard to the Freeland and Clinton infrastructure planning with their recommendation to move those forward. Page 15 shows Restoration Acres project is projected out to 1999; during the budget period Lee McFarland can provide specifics in terms of what is being plan with Restoration Acres and decide whether or not the Board wants to make that commitment. In terms of Courthouse expansion and remodel project, the first meeting with the Town of Coupeville Design Review Board is scheduled for next Tuesday and the County can start presenting conceptual designs to the Town, and the County's consultant believes the project will be ready in Spring to go to bid.

Regarding a proposed juvenile detention facility, additional revenue source is shown [page 6] from proposed sales tax and bond combination. Chairman McDowell sees the intent for sales tax portion to be for the operating cost to run the facility once it is built. Commissioner Shelton acknowledged that the Board would need to decide whether to collect the total capital cost for construction from the 1/10th of 1% before building the facility. The question of Chairman McDowell: based on the years shown, will the estimated cost of the facility be collected by then; if not, how much are we short?

Commissioner Shelton referred to Page 7: if the tax is enacted in the Fall of 1998, then for the years 1999 through 2002 it is collected before the facility becomes operational. Mr. Kwarsick anticipation was being able to use those revenues on an on-going basis and if money is needed, to take out some loan to cover for a short period of time [i.e. 6 months during the construction period just to balance things out]. Mr. Kwarsick will meet with the Law & Justice Committee tomorrow at Noon to discuss work to date.

It was Commissioner Shelton's opinion that the County will have the availability of funds to build what the 1.2 million dollars represents, a 10-bed facility, not 10 cells. He agreed that the operational cost for a 20 bed facility would not be covered by 1/10th of 1% sales tax and that fact needs to be relayed to the Law and Justice Committee. The County expects collecting \$500,000 a year; the Sheriff indicated he could operate a 10 bed facility for approximately that amount and that is the concept Commissioner Shelton would agree to go forward with, not a 20 bed facility. Island County does not have a history of arrests that would support a 20 bed facility and the 10 bed facility would be adequate enough to project Island County out into the future and there is room for growth.

Commissioners McDowell and Shaughnessy agreed with that opinion. And Chairman McDowell made the point that Island County must not be placed in the position Franklin County was where they built a facility but did not have money to operate it for some period of time.

Public Comments on CIP: none

Board Action: By unanimous motion, the Board adopted Resolution #C-94-98 [R-35-98] in the Matter of Adoption of Island County's Six Year Capital Improvement Program for the Years 1999-2004.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF ADOPTION OF)

ISLAND COUNTY'S SIX-YEAR CAPITAL) RESOLUTION NO.

IMPROVEMENT PROGRAM FOR THE) C-94-98

YEARS 1999-2004) R-35-98

WHEREAS, the Public Works Director, in accordance with RCW 36.70A.070(3) and WAC 365-195-315, has submitted his recommended plan for capital expenditures for 1999 through 2004; and

WHEREAS, the Island County Planning Commission has reviewed this program and found it in compliance with the Island County Comprehensive Plan;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Island County Board of Commissioners that the Six-Year Capital Improvement Program for 1999 through 2004, as submitted this date, is hereby adopted.

ADOPTED this 13th of July, 1998.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Mike Shelton, Member

Tom Shaughnessy, Member

Attest:

Margaret Rosenkranz, Clerk of the Board

LITTER CLEAN-UP AGREEMENT #G9900026 – DEPARTMENT OF ECOLOGY

As presented and recommended for approval by Dave Bonvouloir, Solid Waste Manager, the Board by unanimous motion approved Agreement for Cleanup Program #G9900026 with the Department of Ecology, providing \$30,000 to Island County Public Works Department and the City of Oak Harbor for community litter cleanup.

RESOLUTION #C-96-98 [R-36-98] – Initiating CRP 98-13, Madrona Way intersection with Sherman ROAD

As presented and summarized by Mr. Kwarsick, the Board by unanimous motion approved Resolution #C-96-98 initiating County Road Project #98-13, Work Order #187, Madrona Way intersection with Sherman Road, to repair the embankment damaged in 1996-97, and includes the Reid Middleton contract. Total appropriation under the CRP is \$244,000.

FACILITIES ATTACHMENT LICENSE – G.T.E. NORTHWEST

A Facilities Attachment License, between GTE-NW and Island County , was approved and signed as authorized by unanimous motion of the Board, for the purpose of attaching a single traffic control circuit cable and control box at Crescent Harbor Road at Crescent Harbor Elementary School .

RESOLUTION #C-97-98 [R-38-98] APPROVING plans & specifications AND AUTHORIZING call for bids For 1998 ASPHALT CONCRETE PAVEMENT OVERLAYS ON WHIDBEY Island

As provided by Larry Kwarsick with recommendation of approval, the Board by unanimous motion, adopted Resolution #C-97-98 approving specifications and authorizing call for bids for 1998 ACP Overlays – Whidbey, CRP 98-08, Work Order #256, with bid opening set for

1::30 p.m., July 30, 1998, Human Resources Room 5, 501 Center Street. [INSERT C-97]

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

IN THE MATTER OF APPROVING PLANS &)
SPECIFICATIONS AND AUTHORIZING CALL) **RESOLUTION NO.**
FOR BIDS FOR **1998 ASPHALT CONCRETE) C-97-98**
PAVEMENT OVERLAYS WHIDBEY ISLAND) R-38-98
CRP 98-08, Work Order No. 256)

WHEREAS, sufficient funds are available in the Island County Road Fund for **1998 Misc. Asphalt Concrete Pavement Overlays, Whidbey Island**; NOW THEREFORE,

BE IT HEREBY RESOLVED that the Plans and Specifications are approved and that the County Engineer is authorized and directed to call for bids for furnishing said construction. Bid Opening is to be the 30th day of July, 1998, at 1:30 p.m. in the Human Resources Building, Room #5, 501 Center Street, Coupeville.

ADOPTED this **13th** day of **July, 1998.**

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Mike Shelton, Member

Tom Shaughnessy, Member

ATTEST:

Margaret Rosenkranz, Clerk of the Board

ADOPT-A-ROAD LITTER CONTROL AGREEMENT

The Board, on unanimous motion, approved an Adopt-A-Road Litter Control Agreement with the Arndt, Kwarsick & McNeil families for Maxwellton Road from Langley Road, south one mile.

PETITION FOR ROAD R/W VACATION FOR PORTION OF FIRST STREET,

PLAT OF SARATOGA, SOUTH WHIDBEY

The County Engineer now having completed review of Petition for road vacation, the Board by unanimous motion, scheduled a public hearing for August 3, 1998 at 10:15 a.m. to consider the Petition for Road right-of-way Vacation of a portion of First Street in the Plat of Saratoga, by Shirish & Anjali Sharma, and Edwin Allison .

PURCHASE OF COPIER AUTHORIZED

The Board, by unanimous motion, authorized purchase of a copier by the Public Works Department from State Contract #01597, for \$23,168.00 plus optional network installation package at \$890.00.

HEARING HELD: Ordinance #C-74-98 (PLG-027-98) Repeal of ICC Chapters 16.22 & 16.23, Camano Community Council Ordinance and Greenbank Community Council Ordinance

At 10:45 a.m. as scheduled and advertised, a public hearing was held for the purpose of considering Ordinance #C-74-

98 [PLG-027-98] repeal of Camano Community Council Ordinance and Greenbank Community Council Ordinance, Island County Code 16.22 and 16.23.

Vince Moore, Director, Planning and Community Development Department, reported the recommendation of the Planning Department for approval of the repeal of ICC 16.22 and 16.23, the Camano Community Council Ordinance and Greenbank Community Council Ordinance in light of the Supreme Court decision finding the basic state enabling legislation to be unconstitutional.

Public Testimony. No one in the audience indicated a desire to speak for or against proposed Ordinance #C-74-98. Public testimony portion closed.

Board Action

By unanimous motion, the Board adopted Ordinance #C-74-98 repealing ICC 16.22 and 16.23.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

REPEAL OF CAMANO COMMUNITY)

COUNCIL ORDINANCE AND)

GREENBANK COMMUNITY) ORDINANCE NO. C-74-98

COUNCIL ORDINANCE) PLG-027-98

_____)

WHEREAS, the State Legislature adopted the Community Council Act, chapter 36.105 RCW, as part of SHB 1201, which provided for the establishment of community councils in only one county of the state, Island County; and

WHEREAS, the voters of Camano Island and the voters of Greenbank established community councils for their respective areas; and

WHEREAS, in conformity with the Community Council Act, this Board adopted Ordinance C-004-95, codified as ICC chapter 16.22, and Ordinance C-04-96, codified as ICC chapter 16.23, ordinances to establish the framework with respect to responsibilities and functions of the two community councils; and

WHEREAS, on December 4, 1996, the Thurston County Superior Court entered its judgment finding that the Community Council Act was invalid and void as it was in violation of the Washington State Constitution and that the Camano Community Council was also invalid and void; and

WHEREAS, on June 3, 1998, the Washington Supreme Court issued its mandate upon its decision upholding the Superior Court finding that the Community Council Act was unconstitutional; and

WHEREAS, the Greenbank Community Council agreed to be bound by the decision rendered by the Court; and

WHEREAS, it is necessary to repeal the ordinances establishing the framework for the two community councils, which community councils were found to be constitutionally invalid and void; **NOW, THEREFORE**,

IT IS HEREBY ORDAINED that Ordinance C-004-95, May 2, 1995, codified as Island County Code chapter 16.22, and Ordinance C-04-96, February 26, 1996, codified as Island County Code chapter 16.23, are repealed and of no further force and effect.

Reviewed this 15th day of June, 1998, and set for public hearing on the 13th day of July, 1998 at 10:45 a.m. in the Commissioners' Hearing Room.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Mike Shelton, Member

Tom Shaughnessy, Member

ATTEST:

Margaret Rosenkranz

Clerk of the Board

Ordinance C- 74-98 is adopted this 13th day of July, 1998 following public hearing.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Mike Shelton, Member

Tom Shaughnessy, Member

ATTEST:

Margaret Rosenkranz

Clerk of the Board

APPROVED AS TO FORM:

David L. Jamieson, Jr.

Deputy Prosecuting Attorney and

Island County Code Reviser

Preliminary Site Plan Approval – SPR 290/97 - Public Works

Application by Island County Public Works Department for Preliminary Site Plan Review, SPR 290/97, was presented by Mr. Moore. The proposal is for construction of a 5,184 sq. ft. metal equipment storage building/workshop/sign shop on a 5-acre parcel zoned Rural Residential located adjacent to and north of the existing Island County Solid Waste

Transfer Station and Landfill at 630 SR 20, Coupeville. The Hearing Examiner heard the application on June 18, 1998, and issued Findings of Fact, Conclusions of Law and Recommendation signed on July 2, 1998, recommending preliminary site plan approval subject to ten conditions. The Staff Report to the Hearing Examiner recommended preliminary approval with waiver of the requirement for final approval but that was not provided for in the Hearing Examiner's recommendation to the Board.

By unanimous motion, the Board approved Preliminary Site Plan approval SPR 290/98 by Island County Public Works as recommended by the Island County Hearing Examiner and subject to the conditions of the Hearing Examiner.

**HEARING HELD: Ordinance #C-88-98 Amending to Clarify a Provision of Interim Application Procedures
ORD. #C-50-98 ICC**

A Public Hearing was held beginning at 11:00 a.m. as scheduled and advertised, for the purpose of considering Ordinance #C-88-98 [PLG-028-98] amending to clarify a provision of the Interim Application Procedures Ordinance #C-50-98.

Keith Dearborn, the County's GMA Legal Consultant, explained that Ordinance #C-88-98 was adopted as an emergency measure on June 22, 1998. Under State law, the County had 60 days within which to conduct a hearing after the adoption of that emergency measure. The Ordinance makes one clerical change in the Interim Application Procedures picking up four words in a line which were missed when the amended ordinance was adopted in June, to make sure that projects within interim UGAs do not have to comply with the special standards adopted in June. The adoption then was to conform the Interim Application Procedures ordinance to Judge Hancock's Order lifting invalidity. This issue was discovered when an applicant made a request within a UGA. The four word addition to 6.d [shown as underline] "outside Interim Urban Growth Areas" conforms the ordinance to what everyone thought it said and provides that when someone proposes within a UGA a Non-Residential development they do not have to comply with the functional and visual compatibility standards established when the revisions were adopted to the Interim Ordinance.

Vince Moore made the point that the Hearings Board did not invalidate any of the Code inside the UGAs.

Public Comments. none.

Board Action: By unanimous motion, the Board adopted Ordinance #C-88-98 in the matter of amending to clarify a provision of the Interim Application Procedures Ordinance #C-50-98 ICC.

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

IN THE MATTER OF AMENDING TO)	
CLARIFY A PROVISION OF THE)	ORDINANCE C-88-98
INTERIM APPLICATION PROCEDURES)	PLG-028-98
ORDINANCE C-50-98 ICC)	
)	

WHEREAS, the Board of Island County Commissioners enacted Ordinance C-50-98 on June 1, 1998 to comply with the Order of Judge Alan R. Hancock issued on May 15, 1998; and

WHEREAS, it was intended that Section 6.d. of Exhibit C for the nonresidential zone would apply only to nonresidential applications for development outside Interim Urban Growth Areas (IUGAs); and

WHEREAS, both Compliance Orders of the Western Washington Growth Management Hearings Board and Judge Hancock's Order are clear that Section 6.d. need not apply to nonresidential applications located within IUGAs; and

WHEREAS, Exhibit C, Section 6.d. to Ordinance C-50-98 inadvertently left out this clarifying provision; and

WHEREAS, clarification is necessary immediately to allow processing of pending applications; and

WHEREAS, RCW 36.70A.390 authorizes adoption of interim regulations without a public hearing if a hearing is held on the adopted ordinance within sixty (60) days of adoption.

NOW, THEREFORE, IT IS HEREBY ORDAINED that the Board of Island County Commissioners hereby adopts the attached clarifying amendment to govern applications under Chapter 17.02 Island County Code and that a hearing be held on this action on July 13, 1998 at 11:00 a.m.

BE IT FURTHER ORDAINED, that in all other respects the terms and conditions of Ordinance C-50-98 shall remain otherwise unchanged.

Adopted this 22nd day of June, 1998 and set for public hearing at 11:00 a.m. on the 13th day of July, 1998.

**BOARD OF COUNTY
COMMISSIONERS OF**

ISLAND COUNTY, WASHINGTON

[absent - Wm. L. McDowell, Chairman]

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST:

By Ellen Meyer, Acting Clerk, for

Margaret Rosenkranz, Clerk of the Board

Following Public Hearing , and in the absence of any further changes, Ordinance C-88-98 was approved and re-adopted this 13th day of July, 1998.

**BOARD OF COUNTY
COMMISSIONERS OF**

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST:

By Ellen Meyer, Acting Clerk, for

Margaret Rosenkranz, Clerk of the Board

EXHIBIT A

...

6. ICC 17.02.105 Non-Residential (NR) Zone

- a. Applications will continue to be accepted to repair or remodel all legally established uses.
- b. Applications will continue to be accepted for the expansion of existing structures for uses only if they (1) do not constitute "urban growth" as that term is defined in RCW 36.70A.030(17); (2) are inherently dependent upon being in rural areas; and (3) are compatible both functionally and visually with rural areas.
- c. All new site plan review applications will continue to be accepted in the Interim Urban Growth Areas designated by Island County pursuant to the Growth Management Act, Chapter 36.70A RCW.
- d. All new site plan review applications outside Interim Urban Growth Areas will continue to be accepted for uses that (1) do not constitute "urban growth" as that term is defined in RCW 36.70A.030(17); (2) are inherently dependent upon being in rural areas; and (3) are compatible both functionally and visually with rural areas.

...

ANNOUNCEMENT FROM EXECUTIVE SESSION JUNE 30, 1998

Chairman McDowell announced that the Board at their June 30, 1998, executive session, authorized Bogle and Gates to file motions with the Western Washington Growth Management Hearings Board and Island County Superior Court to rescind fully and unconditionally prior orders of invalidity.

Mr. Dearborn will be filing those motions today, and once the rulings are received, he was confident he would be back before the Board with an amendment to the Interim Ordinance to make it clear the new zoning code, comprehensive plan and development regulations will go into effect immediately upon adoption rather than the current Interim Application Procedures provisions which have a delayed effective date if there is any appeal.

GMA PUBLIC HEARINGS HELD

Ordinance #C-81-98, PLG-016-98, Adopting Amendments to Chapter 16.14C ICC, SEPA

Ordinance #C-82-98, PLG-017-98, Adopting Amendments to Chapter 16.13 ICC, Hearing Ex.

Ordinance #C-83-98, PLG-018-98, Adopting Amendments to Chapter 16.19 ICC, Land Use Review

Ordinance #C-84-98, PLG-019-98, Adopting a New Ordinance, Chapter 16.25 ICC, To Protect Farm and Forest Activities

Chairman McDowell opened a Public Hearing at 1:30 p.m. for the specific purpose, as scheduled and advertised, to consider proposed ordinances: Ordinance #C-81-98, Ordinance #C-82-98, Ordinance #C-83-98, and Ordinance #C-84-98. All members of the Board were present at the time of hearing, along with Keith Dearborn, County's GMA Consultant, and Vince Moore, Planning Director. Approximately eight citizens were in the audience at the time of hearing. An attendance sheet was circulated and a copy placed on file.

Comment letters for the record, provided to the Board and members of the public, were :

1. Letter dated 6/9/98 from Central Whidbey Island Historical Preservation District Advisory Committee
2. Comments on Draft Title 16, ICC 6/30/98 from the Coalition
3. E-mail message dated 7/9/98 received 7/10/98 @ 10:36 p.m. from Allen Peyser commenting on 16.19 ICC
4. Letter dated 7/8/98 from John E. Hitt, Executive Director, EDC regarding specific amendments to Ord. C-83-98, 16.19 ICC
5. E-mail 7/12/98 @ 11:53 a.m. from Tom Roehl regarding Land Use Review Ord. ICC 16.19, with attached annotated and footnoted version of proposed ICC 16.19 for the record on behalf of himself and ICPRA
6. FAX received 7/13/98 @ 12:51 from C. W. Crider, Executive Officer, Skagit/Island Counties Builders Association regarding County Land Use Ordinance Proposed Amendments

Mr. Dearborn had an opportunity to review the request from CWIHPDAC, the Coalition request, the request from EDC and from Tom Roehl, and he indicated he would provide specific suggestions on amendments to those. Again, to be clear for the record, today's hearing covers four ordinances [copies available to the public at the hearings]:

Farm and Forest Protection Ordinance – new chapter 16.25

Amendments to Chapter 16.13, Hearing Examiner Ordinance

Amendments to Chapter 16.14C, SEPA Ordinance

Amendments to Chapter 16.19, Land Use Review

Chapters 16.25, 16.14C and 16.19 are all recommendations of the Planning Commission forwarded to the Board on April 17, 1998, and are proposals that began the public review process on March 9, 1998. The proposals with the cover Ordinances sheets with the "Whereas" statements are the recommendations of the Planning Commission. Chapter 16.13 are minor amendments to the Hearing Examiner Ordinance which the Planning Commission was aware of and knew needed to be done, but classified actions in the Hearing Examiner ordinance to match 16.19. These have not been reviewed by the Planning Commission, and Mr. Dearborn believed the proposals were not substantive, purely procedural, and the Planning Commission was aware of them before they finished action on 16.19.

Proposed Amendments. Mr. Dearborn for the Board's information and public, as well as the record, presented hand-out documents on proposed amendments:

Chapter 16.19 ICC Land Use Review Changes the first page is a summary of the proposal from the Planning Commission; the attached materials are a series of proposed amendments based upon the comment letters Mr. Dearborn received through Saturday afternoon, which he proposed going through one at a time to be discussed in detail.

Composite Review of the Ordinance, dated "last saved 7/12/98 3:16 p.m." , with the right hand column marked in black where the proposal is changed, based on late amendments received Saturday from Staff and Tom Roehl. Some purely clerical and administrative, but some have some substance. The proposals with more substance than procedure he retained as specific amendments rather than including same in the composite ordinance.

The adopting ordinance as proposed on 6/22/98 when the Board set this date and time for hearing, includes two changes from the Planning Commission recommendation; the footer therefore is dated 7/13/98 Review Draft rather than the 4/17/98 Planning Commission Recommendation. The two changes are:

1. As a result of the completion of Phase A review process, a number of actions became actions for which

there needed to be created a new type classification - Type VI - legislative action. The first change recommended from the Planning Commission review is based upon the Planning Commission recommendation which never got in 16.19 – to create a new type of

decision, Type VI - legislative decision [this specifies how they will be made for GMA planning actions].

2. A proposal from Public Works to allow expediting of public projects when the public agency is implementing a capital improvement that has been approved by the County as a part of a comprehensive plan.

All of these ordinances had been subjected to SEPA review. No public comments were received during the SEPA process on the ordinances. The appeal period for SEPA on the ordinances expired Friday. No appeals were received on these ordinances as well. Comments received on the ordinances are those six mentioned above, none of which came in during the comment period under SEPA.

HEARING: Ordinance #C-84-98, PLG-019-98, Adopting a New Ordinance,

Chapter 16.25 ICC, To Protect Farm and Forest Activities

The proposed ordinance would not go into effect until the new zoning code goes into effect, now scheduled for October 1. The first thing the ordinance does is to declare a policy that farming and forestry activities permitted by the County and conducted according to good management practices are not nuisances in Island County. This codifies what is effectively State law, and is a re-declaration of policy in the county as to farming and forestry. The second provision includes three measures to protect farming and forestry, recommended by the Heritage Lands Task Force:

1. [done now as required by GMA on adjacent projects since 1985] With every short plat, subdivision, PRD, or building permit, if that activity is adjacent to property zoned forestry, forestry management or agricultural, those properties have to record a covenant regarding not complaining as long as the farm or forest activity is being conducted according to best management practices. GMA now requires an expansion of that notice to be within 300'. This proposal from the Heritage Land Task Force would increase that to projects that are within 500' of the boundary of a farm or forest zoned piece of land.
2. With every property recording that occurs in the County, there would have to be recorded with it a notice saying that the county does not treat farming or forestry operations being conducted with good management practices to be nuisances.
3. Once when the next property tax statements go out [1999] with it would be sent the same notice to every taxpayer in the county to make it clear that the county does not consider farming or forestry practices to be nuisances.

The last provision of the ordinance also comes as a recommendation of the Heritage Lands Task Force, and requires two additional public information means:

- educational brochure prepared by WSU to help people understand what good farming and forestry practices are and to make sure they understanding when being conducted why and how they are being conducted
- County post throughout the county [unspecified locations in unspecified number] signs to make it clear that the County encourages farming and forestry.

Mailed notice, brochures and signs are a cost which has not been calculated. All are recommendations of the Planning Commission. No comments were received on the Planning Commission recommendation and no requests for modification after the Planning Commission finished its work, other than the 6/9/98 letter from CWIHPDAC that has an indirect relation to 16.25 in that it is asking for the same kind of notice process for Ebey's Landing National

Historical Reserve.

Tom Roehl presented comments on proposed Ordinance #C-84-98, representing his business, Project Planning Services, Freeland; as a resident of Greenbank and husband of a Greenbank farmer, and also speaking for the Island County Private Property Rights Alliance. The problem with the ordinance is that the County has not adopted current State law regarding nuisances. RCW 7.48 makes no distinction in its protection of agriculture and forest between public and private nuisances. The law defines public and private nuisances differently and he recommends striking in the ordinance the term "public" from wherever the word nuisance is used. There is no qualifier in state law conforming with good management practices. As proposed he views the ordinance as an open book for attorneys to argue over and that caveat should be restricted. The restriction of the benefit to only lands zoned Rural Ag, Rural Forest or Commercial Ag is more restrictive than state law. Definition of nuisance should be revised to be the definition of RCW 7.48 "refers to unlawful activities that are annoying injurious, or dangerous to the comfort, repose, health or safety of others. Agricultural activities conducted on farmland and lawful forest practices are not nuisances." He submitted for a part of this record a copy of his 3/9/98 public review draft comments on Chapter 16.25 with his letter dated 3/31/98.

He commented too that the definition under policy "As long as these uses are allowed under County Code and are conducted and maintained in a manner consistent with good management practices and do not violate local, state, or federal regulations, they shall not be considered a nuisance or be declared a nuisance as defined in the Island County Code" should be revised by deleting "are allowed under County Code and are conducted and maintained in a manner consistent with good management practices and".

It was Mr. Roehl's suggestion that the "Mailed Notice" section be changed to read:

"Island County has established a policy for unincorporated areas to protect and encourage agriculture and forestry operations throughout the county. If your real property is located near an agriculture or forestry operation you may be subject to inconvenience or discomfort arising from such operations, including but not limited to noise, odors, fumes, dust, flies and other associated pests, the operation of machinery of any kind during any 24-hour period, the storage and disposal of manure, and the application of fertilizers, soil amendments, and pesticides. If conducted in a manner in compliance with local, state and federal laws these inconveniences or discomforts are hereby deemed not to constitute a nuisance for purposes of the Island County Code".

As far as the term "public nuisance", a public nuisance is one that only protects people from claiming they are a nuisance on an area wide basis. The definition of forest practice should be the definition in state law. Using the state definition a person could not file an action just because they perceive a nuisance, an action is filed because it can be proved actual.

Jeanne Hunsinger, representing the Frei Family Tree Farm, Langley, stated that some of the same issues Mr. Roehl brought up had been brought up by the Frei family previously as well. She did not believe their operation would be drastically hurt if this ordinance were approved as is, but thought it more restrictive than state law in that if farming in zones outside of Ag and Forestry areas this would not be a specific protection, whereas under state law would have protection. They did not know how much the signing would really be of help versus the cost to the County. She understood that the Heritage Lands Task Force proposal was for an educational brochure made up by a committee of citizens who were not necessarily from the farm and forestry community which in their opinion would not be very helpful.

John Hitt, representing himself and as the husband of a Greenbank farmer, appreciated what Mr. Roehl suggested and believed the changes he suggested would be very beneficial to those who practice agricultural activities on a small scale in the rural residential zone, and would meet the goal of preserving rural environment.

Benye Weber, Central Whidbey, representing herself as a land owner with small woodland parcel and individual who practiced small farming to take to a farmer's market for supplemental income, agreed with what Mr. Roehl and Ms. Hunsinger stated regarding farm and forestry practices. She pointed out that the federal and state governments have a number of laws regarding best management practices and "in compliance" that have to be adhered to; if not a farmer or

forester are deemed out of compliance and restricted as far as receiving any other type of program the government has in place [in any county in the nation]. Regarding "Mailed Notice" she questioned the language reading "consistent with proper and accepted standards", thinking instead it should refer to being out of compliance with state and federal law. There are many small land owners with parcels under cultivation as small as 2 to 5 acres, and that practice should be allowed all over the County.

Speaking now for the USDA/Whidbey Island Conservation District, Natural Resource conservation Service, Ms. Weber reported those groups had taken no position on this at all. Likewise, the Ag/Forestry Council of Whidbey Island took no position; the matter was discussed but the Council chose not to take a position.

Mr. Dearborn recalled that Ms. Hunsinger previously testified and the language she asked for the Planning Commission included in the ordinance, i.e. a reference to the Society of American Foresters on page 2 item f. With respect to Tom Roehl's comments, Mr. Dearborn spent some time discussing his initial argument that the ordinance is not needed. Mr. Roehl sent to the Planning Commission a letter March 31, and shortly after that, Mr. Dearborn talked with him at length about his letter and pointed out the sections of RCW 7.49 Mr. Roehl did not cite, and sections of GMA that required the ordinance in some form. As to argument it is not needed, Mr. Dearborn did not agree. Regarding the argument that it is more restrictive it is probably broader than what state law would require. Broadening it to all nuisances rather than just public nuisances he thought would put the county at running the risk subjecting the County to liability for activities occurring that are not being done according to best management practices if no qualifications are provided.

Further addressing comments and questions from Board members, Mr. Dearborn explained that the focus is on public nuisances and activities being conducted that are permitted under zoning, and activities conducted based upon the practices recommended by the bodies with expertise. As for the need for the ordinance and the process used to date, a Heritage Lands Task Force convened and came up with a series of recommendations. The Planning Commission considered the recommendations, as well as Tom Roehl's suggestions, and specifically discussed the question of whether it was needed or not, and concluded it was. The issue of whether it should apply to all lands was not a question addressed directly by the Planning Commission. Concern is not to the notice that is recorded or sent out with the property tax statement, but how would the County know whether that activity is in fact occurring or not in the rural zone. Reading the ordinance the way it is proposed, it would only be forest or farm operations within the zones that are protected; it would not be forest or farm operations in the rural area that would receive the same protection. The provision of this ordinance needed for GMA compliance is provision C on page 3, section .040, the 300' reference. The recommendation before the Board is that be 500' as proposed by the Heritage Lands Task Force. The signage would be permanent to go on the highway in areas yet to be determined. King County has a sign reading something like "now entering farming area of the county" identifying the boundaries of the area being devoted to commercial AG.

Vince Moore, Director, Island County Planning and Community Development, commented that this came as a recommendation of the Heritage Lands Task Force who discussed this at length and in part was an effort to get the county into promoting the Ag and Forest industry even though it may be a fairly small percent of the labor force and per capita income, it is a very significant industry in terms of preservation of the open space. The concept is more along the highway as opposed throughout the county and not associated with a particular activity that might be occurring.

The Board deliberated on various amendments to the ordinances and discussed same back and forth with Mr. Dearborn.

The Commissioners discussed including some type of statement or reference in the ordinance to make it clear that anything contained in the County's ordinance was not meant to increase or lessen any rights guaranteed by state law. Mr. Dearborn acknowledged that there would certainly be no harm caused by the reference and in fact, to the extent people need to be directed to look at the RCW as well, putting a reference to the specific section of RCW would be fine.

The Board members talked about the need for further information, clarity, and specifics on the proposed section in

16.25.050, Public Information, the proposal for educational brochures and signage. Further information needed such as cost/budget, how will the brochures be distributed and by whom, and generally believed this was premature and should be deleted. Mr. Dearborn suggested that should the Board decide to eliminate this section at this time, WSU could be asked to come back with a more specific proposal and a budget if the Board wanted to consider it as a separate item.

BOARD ACTION.

By unanimous motion, the Board adopted Ordinance #C-84-98 in the matter of adopting a new ordinance, chapter 16.25 ICC, to protect farm and forest activities, with the following changes:

Page 1. 16.25.010 Purpose

- First paragraph delete "that have been zoned by an agriculture or forestry zoning classification" and replace with: "that have agriculture or forestry operations".
- Second paragraph the second line after the word Act, insert "RCW 7.48".

Page 2. 16.25.010 Purpose

- Delete Section C entirely, and renumber D, E & F to C, D & E respectively
- Definition of Nuisance be changed to read: "Nuisance" refers to activities defined by RCW 7.40.

Page 3. 16.15.040

- Change first sentence to read: "The following measures shall be taken to protect agriculture and forestry operations in Island County:"

A. Mailed Notice. Notice language be changed to read:

"Island County has established a policy for unincorporated areas to protect and encourage agriculture and forestry operations. If your real property is located near an agriculture or forestry operation, you may be subject to inconvenience or discomfort arising from such operations, including, but not limited to, noise, odors, fumes, dust, flies, and other associated pests, the operation of machinery of any kind during any 24-hour period, the storage and disposal of manure, and the application of fertilizers, soil amendments, and pesticides. If conducted in compliance with local, state and federal laws, these inconveniences or discomforts are hereby deemed not to constitute a nuisance, for purposes of the Island County Code and shall not be subject to legal action as a public nuisance as provided in Chapter 7.48 RCW. "

B. Recorded Disclosure Notice language be changed to read:

"All recorded documents concerning the transfer of real property located within Rural Agriculture, Rural Forest and Commercial Agriculture and within 300' of lands zoned in these classifications, by sale, exchange, gift, real estate contract, lease with an option to purchase, any other option to purchase, or any other means of transfer, shall contain a statement containing the language set forth in subsection (1) above."

C. Property Declaration. five hundred (500) feet be changed to three hundred (300) feet

Page 4.

50. Public Information. Delete entire section.

Sections 16.25.060 and .070 be changed to .050 and .060 respectively.

HEARING: Ordinance #C-82-98, PLG-017-98, Adopting Amendments to

Chapter 16.13 ICC, Hearing Examiner

Mr. Dearborn summarized the proposal under this ordinance, which would also go into effect 1

October 1, 1998, and conforms the Hearing Examiner ordinance to fit the new classification system proposed in Chapter 16.19: Final Decisions, Type I; Appealable Decisions, Type II; and Recommendations, Type III. The proposal would eliminate from Section 110 the reference to use approvals for PRDs and NR floating zones because under the new proposal we will not have a use approval step in the PRD process and there is no proposal for a floating zone. Item 12 is a new provision [2nd page of the exhibit] added to allow an appeal provided for Public Works director decisions that come out of 11.02 and 11.03, the new code proposals.

Type I – appealable to Superior Court unless there is a denial which is appealable to the Board
or there are conditions imposed under SEPA

Type II – Hearing Examiner is the appeal body for a Type II decision

Type III- appeal to the Board

Type IV – Board decision; there is no administrative appeal for a type IV decision

Commissioner Shelton suggested an error had been included in Section B on page 2, showing "...unless such decision is appealed to the board" . Another suggestion was that Island County Board of Commissioners and the Shorelines Hearings Board be defined.

Mr. Dearborn agreed that none of the decisions contained in B are appealable and the reference should be deleted to the board altogether.

PUBLIC TESTIMONY

Tom Roehl, representing his business, Project Planning Services, Freeland, resident of Greenbank, and speaking also for the Island County Private Property Rights Alliance, referred to page 1, noting he did not believe any of those decisions listed should be final decisions of the Hearing Examiner because anytime the County takes an action to rescind a permit, approval, or PRD, etc., such action has the potential of subjecting the county to significant damage lawsuits. He suggested the Board may want to create an appeal process to the Board for such actions – that the existing provisions, #9, currently final with the Hearing Examiner should be appealable to the Board. The way this is worded now: "*A. Final Decisions. The decision of the hearing examiner on the following matter shall be final unless such decision is appealed to Superior Court as provided in ICC 16.19.180, or RCW 90.58.180 (Shorelines Hearings Board appeals); Type I decisions as specified in ICC 16.19.040 including:*" and then lists items 1 through 12. Question here is are items 1 - 12 Type I decisions or should it say "or type I decisions as specified in 040"? Item 12 is new and should be deleted for not and wait until there has been a full examination of chapters 11.02 and 11.03.

Mr. Roehl pointed out that items #1-8 were not all related to shorelines, and raised the issue associated with shoreline actions and asked that the County stop putting people with minor alleged shoreline violations in the situation of having to go to the State Shorelines Hearings Board.

John Hitt, Executive Director, EDC, recalled from the EDC Permit Review Study a few years' ago that one of the points made was that the whole appeal process seemed a little confusing and convoluted. The simpler and more consistent the appeal process the better

After discussion and further review with Mr. Dearborn, it was clear to the Commissioners that the proposal was confusing and that more work was necessary. The ordinance refers to Type I, II, III and lists those items, but when looking at ICC 16.19 the correlation between this proposal and 16.19 is not clear.

Mr. Dearborn agreed that it may be best to hold the ordinance until completion of review of the Shoreline Master

Program and final determinations made about what fits in what classifications.

He did not believe rewriting A, B and C could be avoided. The Hearing Examiner ordinance will have to be conformed to the Board's decisions on which activity is a Type I, II and III, and the list not needed at all if a comprehensive list is included in 16.19.

BOARD ACTION:

Consensus of the Board was that no action be taken on Ordinance #C-82-98, rather the ordinance to be rewritten as necessary after completion of Chapter 16.19 ICC and other codes that refer to appeals and decisions.

HEARING: Ordinance #C-83-98 [PLG-018-98] Adopting

Amendments to Chapter 16.19 ICC, Land Use Review

Mr. Dearborn explained the Ordinance and documents before the Board. Exhibit A, attached to Ordinance #C-83-98 has two changes in it from the Planning Commission recommendation:

1. Page 4 Item #4 provides for a Type IV decision

Page 5 Far right column incorporates the Type IV subject matters

- 2) Page 8 & 9 Proposal for Expedited Review of certain types of public projects

Again, for the record as previously noted, a series of letters and comments related to this Chapter:

- Comments on Draft Title 16, ICC 6/30/98 from the Coalition
- E-mail message dated 7/9/98 received 7/10/98 @ 10:36 p.m. from Allen Peyser commenting on 16.19 ICC
- Letter dated 7/8/98 from John E. Hitt, Executive Director, EDC regarding specific amendments to Ord. C-83-98, 16.19 ICC
- E-mail 7/12/98 @ 11:53 a.m. from Tom Roehl regarding Land Use Review Ord. ICC 16.19, with attached annotated and footnoted version of proposed ICC 16.19 for the record on behalf of himself and ICPRA
- FAX received 7/13/98 @ 12:51 from C. W. Crider, Executive Officer, Skagit/Island Counties Builders Association regarding County Land Use Ordinance Proposed Amendments

Two additional hand-outs:

- One-page summary of key provisions to 16.19, with a series of suggested amendments that have been requested by various comment letters attached
- Composite Chapter 16.19 that picks up a number of comments and includes specifically a number of suggestions made by Tom Roehl and staff, both comments received by Mr. Dearborn after he had prepared the amendment package

Although he had no opportunity to look at the comments from SICBA, he did receive the other comments suggesting specific changes through Saturday afternoon, along with comments from staff on Cha 16.19. The substance of SICBA request he believed was addressed by specific proposals that have been proposed by the EDC and/or Tom Roehl for sections .070 and .080.

This is the revision to the County's existing process and creates four classifications:

Type I – ministerial – appealable to court [3 exceptions]

Type II – administrative appealable to Hearing Examiner

Type III – quasi -judicial decisions are either decisions of the Hearing Examiner appealable to the Board or recommendations of the Hearing Examiner appealable to the Board Type IV – legislative – Planning Commission recommendations ultimately the Board makes the decision on

Type III decisions [every Subdivision, PRD 5 units or more] will have a required pre-application conference; for every other type of action it is optional.

Within 14 days of the receipt of an application County is required to send notice of complete application; failure to do so constitutes a determination that the application is complete; once the application is determined to be complete it is vested.

There is a 14-day public comment period on all Type I, II or III decisions, but only those Type I decisions that are not exempt from SEPA. After the end of the SEPA comment period, a decision is made on the project, with the SEPA determination. Type II is appealable to the Hearing Examiner; Type III is a recommendation of staff to the Hearing Examiner with a SEPA determination. Under the new system, there is a 14 day comment period, a decision is then made and a SEPA determination, appealable to the Hearing Examiner [both the SEPA determination and the decision on the project are appealable at the same time]. SEPA determination will be published and appealable with the decision to the Hearing Examiner or it becomes a part of the appeal to the Hearing Examiner on the hearing for a Type III decision. Once all of that has been done the public review process has been completed related to the project.

If there is to be no impact statement, the County cannot make a SEPA determination under 36.70B until that first public comment period is finished. Under state law, the County could allow a second comment period after the first comment period in the SEPA determination, but the proposal presented through the Planning Commission does not permit a second comment period.

The proposal sets approval time frames which are not binding, and comments have been received with respect to requesting those be compulsory. What has generally been found is that for many jurisdictions absent setting time frames for each type of permit, the smaller projects are taking longer and the larger projects taking less time. That problem has been anticipated by proposing specific time frames for each type of project application so staff has a target on each and there is a monitoring process that is proposed for staff to report back to the Board on permitting processing by type:

Type I 30 days

Type II 45 days

Type III 120 days [hearing of an appeal does not count within the 120 days]

The last change of consequence described by Mr. Dearborn [state law] was that all judicial appeals have to be done within 21 days. State statute prevents SEPA determination being made until after the end of the public comment period. Under this proposal the County would have to make the SEPA determination in 7 days of completion of the public comment period. There is clearly going to be an impact in that there will be a number of types of projects in the county where there is no public notice or public process today where potentially there will be under this proposal; in turn, some projects where there have been multiple opportunities for public comment and review, those opportunities are being reduced

Mr. Moore expressed some concern about the notice of completion time frame in terms of staff capability meeting the 14 days given current staffing situation.

Mr. Dearborn mentioned that with the proposals to come on Subdivision, PRD and Site Plan, there will be a complete redo of application requirements. If you submit a proposal that complies with the application requirements you are deemed complete. If staff subsequently asks for more information that does not affect the complete application determination; it's still complete, still vested. The point the Planning Director is concerned about is that at the end of that 14 day period if staff has not mailed a notice saying the application either is not complete or it is complete and failing to do that it will be deemed complete and the project vested at the end of that time period. A complete

application determination is a "checklist" and is not a background study of the property to decide, for example, if the wetlands delineation has been performed, but something determined later.

One of the consistent complaints received by the Commissioners has been that once an application has been deemed complete, staff continues to require something further and people complain consistently about piece-meal requests for additional information.

Mr. Dearborn explained that the complete application determination does not include a health or public works review; this is a check off at the counter against the ordinance and application requirements. Once a complete application determination is made the project is vested and then goes to health and public works for review not during the 14 day time period. Health and Public Works have to get their comments back by the close of the public comment period.

There are a series of suggested amendments so people can testify to those if they wish and document that incorporates a series of more ministerial type changes that includes one of the EDC recommendations

PUBLIC TESTIMONY

Shane Thatcher, Datum Pacific, Inc., Coupeville,

application process follow my recommendation would save staff time, money and simplify things in timely manner

Page 6. No reason not to strike B through F. If application process is a check list why not follow what Snohomish County does for a short plat and long plat - make up check list; the individual brings application to the counter and staff at the counter checks off those items submitted- application, map, signature, notarized, etc. when done hand it back and the individual can see what needs to be brought back in. When the remaining submittals are provided, staff at counter then accepts the application as complete. There does not need to be a 14 day waiting period or a letter written, it can be determined at the counter. The problem he has had in Island County over and over again is that given this time period to determine whether an application is complete, staff comes back and knit picks the application to death. The review process is being mixed up with the application process.

Page 7 .070 Requests for Additional Information. There needs to be some way to quantify that so it does not go on forever , and it should be under specific conditions. It cannot be subjective.

Page 8. What is trying to be accomplished? It seems that this makes it as complicated as possible and then gives it to a committee. Do not understand why all the time limits. There should be no time limits until conditional approval is reached.

Page 9. If the application process is changed on page 6, then on page 9 the vesting schedule should be changed also.

Page 10. For establishing adequacy of legal descriptions, it would make sense that a surveyor do that, or change the language to read: "County Engineer/Surveyor".

Tom Roehl, representing his business, Project Planning Services, Freeland, resident of Greenbank, and speaking also for the Island County Private Property Rights Alliance, summarized from his letter, the full text already a matter of record. He discussed Sections 16.19.060-070, and commented that when the County asks an applicant for more information the applicant has a deadline within which to provide that and if not meant, application canceled, denied or returned. If the County wants to ask for new information, delete references to applicant has 90 days to respond or else application is canceled. In 070.B he proposes addition of: "unless the applicant who may feel the requested additional information is not reasonable specifically requests in writing that the application be heard and/or decided with the information as submitted". Applicants should have the ability to take their chances in the process and the application go forward. At a minimum the deadline should be 120 days not 90, but his request is there be no deadline. Highlights from his e-mail document:

16.19.030 "Party of Record", add sentence to say "An applicant and/or owner making applicant is automatically a Party of record without need to apply for or request such standing".

16.19.040 Application/Decision Types and Permit Classifications. 5. Consolidated Permits, add "Consolidated permits shall be processed with a single fee as applicable to the higher application type involved". to make it clear there will be no fee duplication for a single process, such as PRD or Site Plan application which also involves land division.

Table B. Under Type I permits add "9. Water Tanks" because these are important to the management of Island County's groundwater and aquifers.

He mentioned that the Staff recommends adoption of recommendation of The Coalition having to do with critical area determinations being Type II decisions, however, the copy Mr. Roehl has already has that included. He objects to the recommendation that habitat management plans and decisions of the Director to alter a buffer be Type II decisions. By that time someone has invested significant funds in experts and those types of decisions should not be included unless part of a permit process that is a Type II decisions. He has no problem with a county wetland determination or critical area determination being a Type II decision, but had trouble with an applicant for a Type I application being put in a Type I process just because of a challenge to a habitat management plan, etc.

16.19.060.B. Add the sentence: "Determinations of completeness shall be based on whether an application substantively provides the information needed to form a basis of review in relation to adopted approval criteria. Applications shall not be deemed incomplete merely because of the style or format of information presentation nor for minor discrepancies in form."

F. Delete "cancel an incomplete application" and insert "cancel and return an incomplete

application together with any fees paid by the applicant; change 90 days to 120 days, and add a sentence: "The Department may not cancel an application if the requested additional information requires new surveying, engineering, or project re-design."

16.19.080.G Automatic approval clause – there needs to be some repercussion for cases where the county fails to meet deadlines.

16.19.110 D. Sentence to read: "Consolidated permit review shall not involve duplicative fees. They shall be processed with a single fee as applicable to the higher application type involved".

16.19.120 I. Suggest the sentence be rewritten to state: "The identification of parties who should, under this chapter, receive notice is the responsibility of the of the county, the Department may NOT require the applicant to provide mailing lists and mailing labels. The cost to provide mailed notice, when required, shall NOT be charged to the applicant in addition to application fees."

16.19.150.B. After the initial mailing the County should not have to subsequently mail staff reports or decision notices to the same mailing list, only to those who requested such notification after the first notice.

16.19.170.A. Administrative Appeals - Type I and II Decisions. His document recommends additional language to make it clear that appeals should not be available to anyone in the county who makes themselves a party of record, rather should meet the definition of Aggrieved Person. Continue the last sentence by adding the following: "the filing of said appeal, or the appeal may be dismissed as insufficient by the Hearing Examiner without a hearing. An extension of this 30 day period may be granted by the Hearing Examiner upon a showing of cause and with the consent of the applicant if the appeal is filed by a party other than the applicant. All appeals of Type I and Type II decisions shall be open record appeals."

16.19.210 Effective Date. Recommendation from Mr. Roehl is something he believes should be in all the ordinances, i.e. language to the effect that "provided that any applicant for a

permit filed prior to said effective date may choose to have their application reviewed pursuant to this amended chapter".

In some cases it would be beneficial for the applicant to do that. Previous staff did not allow that to happen [1987].

To ensure that that could be done, Mr. Dearborn agreed the change Mr. Roehl suggested would have to be made. He did not understand what the rationale would be to make someone re-file a new application to come under the new rules. Mr. Roehl's proposal would leave it up to applicant's choice.

As far as consolidation of permits, this is more likely to occur with commercial projects and he did not think there would be any increase in work that would justify an extra fee and the County wants to encourage people to submit all permits at one time rather than separately.

Regarding addition of water tanks as recommended by Mr. Roehl, Mr. Dearborn recalled that it was during the joint workshop on institutional uses that staff recommended that water tanks under a certain height and of certain diameter would be Type I decisions; water tanks over a certain height and diameter would be Type II decisions. The proposal by staff was 30', and after the workshop the Commissioners learned that water tanks come in 4' or 8' increments and the number should be 32' rather than 30'.

John Hitt, Executive Director, EDC, referenced his July 9, 1998 letter as suggested amendments

and summarized briefly some basic concepts. The key starting point was the issue of predictability, with three main sub-sections:

1. Application itself – what is a complete application. Everyone needs to understand what is needed to have a complete application and once turned in, know it is predictable
2. Time frames during the review process when additional information can be

asked for and under what conditions additional information can be asked for

[agrees with what Mr. Dearborn has proposed in today's "Chapter 16.19 ICC

Land Use Review Changes" document]

3) Final Decision. From EDC's perspective of the developers that call EDC about

time frames to receive final answer , bottom line is "can I build this project or can

I not build this project?". Because of issues of financing, feasibility, attracting investors, the County must commit to some positive time frame for this review process, reasonable and predictable.

The issue of coming back to the applicant for additional information i.e. Mr. Roehl's suggestion this be left open for no time limit, EDC would not oppose provided that leaving these applications open for an indefinite period of time did not interfere or somehow drag down the process or require additional paperwork on the part of staff, so those who do want to keep the process moving timely are properly serviced.

No others in the audience expressing a desire to speak on this issue, the Chairman closed public testimony portion on Ordinance #C-83-98.

BOARD DELIBERATION

Chapter 16.19. ICC Land Use Review Changes – Amendments [document bottom right hand corner "last saved 07/12/1998 3:09 PM"

Composite Document: Chapter 16.19 ICC Land Use Review Changes "{last saved 07/12/98 3:16 PM"; heavy dark line in the right side margin notes suggested change]

Prior to receiving Mr. Roehl's proposed amendments, Mr. Dearborn had an opportunity to review the

recommendations from EDC and The Coalition and prepared a series of amendment responses, and the format presented is a format the Planning Commission will be using to review amendments during final deliberations. He took the liberty to make a recommendation, with the intent to provide the Board with an explanation why he thought the Board should or should not adopt the proposed change. He did not include in the Composite Document any suggested change he thought were policy issues; rather, the changes included were almost all matters that Mr. Roehl or staff raised he thought were good clarifying points not effectively raising policy issues.

Composite Document

Page 2. Make it clear there will be open record hearings by the Planning Commission and the Board of Commissioners. Did not include Mr. Roehl's suggested definition for the Board because he thought that was clear, but it is a clarifying point that could be made adding that definition as well.

Page 3. For the Legislative action, there is no open record appeal to the Board. The Appeal from the Board's decision would be either to the Growth Hearings Board or Superior Court.

Page 6. [picking up language now the same as proposed in the PRD, Site Plan and Subdivision ordinance] The change would permit someone to use a form in the computer or Internet rather than the paper form that has been prepared by staff, and allow information provided in a slightly different form.

Page 11. Clarifying change Mr. Roehl suggested to make it clear there is no public notice for a Type I decision SEPA exempt.

Page 12. To make it clear, as suggested by Mr. Roehl, that something smaller could be used than 8-1/2 x 14" if it fit for the notice that is mailed out.

Page 13. Mailed notice only for Type III decisions in terms of when cities are provided notice. Suggest instead of referring to preliminary plat, site plans, PRDs, refer to all Type III decisions.

Page 14. Mr. Roehl correct. The language struck is the reference to state laws and federal statutes. The Planning Director is not making a judgment on whether an application complies with state law or federal statutes, but in terms of applicable county codes.

Page 16. Making clear those that receive notice of an appeal statement are parties of record.

[Type III decision – notice of hearing]

Page 18. A practice that needs to be made clear in Code is that if a department wishes to submit a comment on a Type III appeal to the Board in writing, there should be a deadline for submittal and not the day of the appeal hearing, but a date certain. Mr. Roehl suggested 7 days, but Mr. Dearborn thought that probably should be 10 days.,

Proposed Series of Amendments

1. Page 2 - EDC recommended revision for some limitation on the ability to request additional information. Mr. Dearborn re-fashioned the language to fit the structure of the ordinance and actually provides a shorter time period than EDC was suggesting. Some decisions will potentially be made within 30 days. Under EDC's proposal, staff cannot request additional

information for a Type I decision. [16.19.070 A and B] Only concern is that the County

would not be able to request additional information for a Type I decision and Mr. Dearborn

did not know what the impact of that was.

If this is really a ministerial decision, it is a matter of seeing that everything has been submitted required, there should be no circumstances where requests for additional information would be needed.

Commissioner Shelton was aware of some issues with Boundary Line Adjustments that have occurred.

Answering Commissioner McDowell's question if someone were turned down because a staff person said "I needed that information", Mr. Dearborn confirmed that would be appealed to the Board. As far as whether the applicant would have the ability to submit that information at the appeal before the Board, Mr. Dearborn believed as written now for Type I decisions, if this change were adopted and staff needed information they would have to deny the project which would be appealed to the Board and the applicant could argue that the information was not needed, but they could not provide that information. Under this proposal he thought a voluntary submittal of the additional information could always be done to avoid denial. The way structured it is a closed record appeal before the Board.

2. Page 3 – EDC recommendation on final decision deadlines [16.19.080 as requested in EDC

letter dated 7/9/98] . It is the wish that not only Mr. Dearborn as a private attorney representing private clients would have, but also the wish of organizations from the beginning, to put teeth into the deadlines. The only way the County can make that kind of commitment is that resources are available to process the applications. [page 7 of the ordinance and C and D of the revised proposal].

Staff requests they not sit there with that application indefinitely for that information to come in; that it be for a short period of time. In most jurisdictions what happens when someone comes in with an application at the counter it is either accepted or not accepted and the application and check is handed back to applicant. Apparently here staff takes whatever is given to them at the counter and then make a determination of complete application.

Commissioner McDowell agreed with recommendation of Shane Thatcher – use a checklist at the counter and accept the application or not right then.

Mr. Dearborn, having done far more applicant type work than municipal work, agreed that system made the most sense. In most jurisdictions the applicant schedules an intake appointment and submits the application [not a 15-minute walk in to the counter processing] and at that appointment, receives notice of complete application.

The Commissioners agreed with the need for a checklist type system in Island County and agreed with Mr. Dearborn that applications at the counter in fact not be accepted until it is a complete application as far as all the required information having been submitted according to that checklist. Staff at the counter in accepting an application is not making a judgment on whether to approve the application not; and it is a ministerial decision with a check off list, not as to the quality of the submittal. The Commissioners emphasized the purpose of deleting "F" is the Board's decision there be a checklist type system on the completeness of applicants.

To accomplish that, Mr. Dearborn did not believe wording needed to be changed, other than taking out F. The Legislative Intent of taking out F is to make sure the County has a check list system.

In terms of EDC recommendation there be teeth in those decision deadlines, Commissioner Shelton agreed; however, he thought that at the adoption of the Plan and through the appeal process there might be some arguments to be made that instituting this time frame now would be a very difficult task, and proposed to delay implementing the consequences of the time line for a year. That will allow time for staff education and develop the checklist system.

Hearing continued:

By unanimous motion, the Board continued the public hearing to July 20, 1998 at 1:30 p.m. to hear Ordinance #C-81-98 which was not heard today due to time constraints, and to continue Board review and deliberations on Ordinance #C-83-98, the public input portion of the hearing closed.

HEARING HELD: Ordinance #C-68-98, Public

Disturbance Noise Control

As scheduled and advertised, a public hearing was held beginning at 6:00 p.m., to consider proposed Ordinance #C-68-98, public disturbance noise control. Copies of the proposed ordinance were made available to the public, and approximately 50 copies mailed to various individuals prior to the hearing. Approximately 20 people attended; an attendance sheet was circulated and copy placed on file. On May 4, 1998, a public hearing was held on Ordinance #C-36-98, and the ordinance not adopted. At that time the Board opted to have the proposal re-drafted and re-worked based on public testimony, and a new hearing held. As agreed the legal ad for this hearing was advertised in the Coupeville Examiner, as well as the Whidbey News Times, South Whidbey Record, and Stanwood-Camano News.

Mike Hawley, Island County Sheriff, explained the need for such an ordinance came as a result of living in a County that is continuing to grow, density increasing, and there is a need to impose certain types of rules in order for everyone to get along, not unlike traffic regulation. His primary job is as keeper of the peace. Noise and problems associated with noise have been growing over the years. The original proposal has been modified based on public testimony to exempt certain activities, including:

- discharge of firearms during daylight hours so people with home ranges and can shoot safely on their property can do so without hindrance
- noises associated with agricultural or forestry businesses, home repair businesses dealing with vehicles during daylight hours between 7 AM – 10 PM.
- practicing of musical instruments

The types of activities the ordinance covers include those that are unreasonable types of frequent and repetitive sounds: large parties, dogs continually barking, the teenager rumbling up and down the block continually night after night at 3:00 a.m. with the stereo blasting and is not intended for the "occasional sound"; it is the very unreasonable sounds impacting the quality of life in the County.

On responding to a noise complaint, the sound would have to occur within the deputy's presence and observation, and be able to quantify the sound by some means in the report. Tickets will not be written based on testimony of one person, and typically they would like to have a witness; the deputy uses the "reasonable person standard". The Department would not write tickets right off the bat, and reminded that the violation would have to meet the "frequent and repetitive" test. More than likely no ticket would be issued until the third or fourth contact unless the violation so blatant there is no other choice. The goal of the ordinance is to provide the Department with a tool to help resolve neighborhood disputes before having to write tickets.

Chairman McDowell had some concerns the way Item #6 on Page 2 read: "Sound from motor vehicle audio sound systems, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source". Over the weekend he checked the vent fan hood inside his kitchen over the range, and found that with the fan on that through the vent and open window it was audible at 120'. The concern he has is that this is not a loud noise at all but it was audible well beyond 50'.

PUBLIC TESTIMONY

Bill Stebbins, Clinton, entered a letter into the record, summarized as follows:

The State of Washington has regulations but does not regulate. The Department of Ecology has no budget for enforcement and DOE encourages local governments adopt the State limits, or similar regulations and enforce them. Unless the County adopts the State code there is nothing to supplement and until the County enforces the State Code it would not know what supplemental regulations, if any, are required. Based upon these erroneous premises the proposed ordinance exempts the majority of activities that are most annoying, and invites some that would not normally occur to the most obnoxious neighbor. He would be disturbed if a neighbor started cutting firewood at 2:00 a.m. or if he lived near a gun club that instituted Midnight target shoots for members with night scopes on elephant guns, or if a "dirty harry" started practicing 5:00 a.m. He is annoyed by the diesel generator at the commercial installation next door and by

the kid a few lots over that roars around and around on an unmuffled motor cross bike. He urged that the Board put aside the idea of a nuisance ordinance until the County adopts the State regulations.

Malcom Ferrier, Langley, found on the Internet some 681 references to the harmful effects of noise and spoke in support for a noise control ordinance, but even a stricter one than proposed. He resides fairly close to a rifle range, does not sleep well and often has to try to sleep during the time the rifle range is open. He endorses the view that this can be monitored, i.e. decibel meters, to quantify and measure the noise.

Julian Gladstone, Camano Island, pointed to "Island County Code 6.08.130 –Prohibited Barking" in statute already and wanted to know how that tied in with the ordinance under consideration, and suggested perhaps that be eliminated. He was 100% in accord with Sheriff Hawley's opinion on noise, however, he asked that the word "habitual" be added to the ordinance to be used along with "unreasonable" .

Steve Osborn, Camano Island, observed that the Sheriff described the policy/ procedure he would use, and although that may be this Sheriff's intention, that policy is not written into the law. The law needs to mean what it says and say what it means. He asked whether it was the owner of the property or the people causing the disturbance who were responsible for what was occurring on the property, and who would be cited or fined. Enforcement where there is no sound measuring device provided by law is strictly an opinion, and if someone complains and the deputy agrees, there is a potential for citation. The proposal exempts having any sound measuring device at all to verify offenses at a level breaking the law. Penalties are laid out subjectively rather than objectively. A law can do some good if enforced on the right people at the right time, but should the political climate swing strongly to the left or right his concern is that such a law could be used as a weapon to silence people who are not with the current party line. The loudest noise on Camano Island are jets that fly over 500' up at 3 minute intervals day and night during practice periods; summer invasion of jet skis up and down the beach not only making noise but threatening kids in row boats, etc.

Mr. Osborn was referred to section .030.A in answer to his question "It is unlawful for any person to cause, or for any person in possession of property to allow to originate from the property".

Steve Reitz, Clinton, said he originally moved to the Island trying to escape exactly this type of law and thought it went overboard and was not needed here yet. The number of complaints received do not represent a large enough percent over the period of a year to warrant this kind of law or expenditure required to enforce same. As a professional musician he holds rehearsals a couple of times a week, and takes the time to call the Sheriff and let him know that will occur and will be finished at 10 PM. He has a day job and has to rehearse at night. He believed the law would ultimately become more of a tool for the Sheriff to enter on private property when not necessary to do so.

Jeanne Hunsinger, representing the Frei Timber Farm, Langley, felt the revised noise ordinance was a much more workable law for Island County, but had a few changes they would like to see. They are concerned about the restriction on sound coming from radios, etc., being audible no further than 50', which could essentially prohibit outdoor use of radios and suggested the 50' restriction be expanded and perhaps there be different standards for day and night. Deleting musical instruments from Section 9.60.030.A.5 indicates that the legislative intent is to exclude noises created by those learning to play a musical instrument from noises considered public disturbance noises, but the wording of the ordinance could be interpreted to prohibit such noises. She expressed their appreciation for the exemption included in the draft for noises associated with farm and forestry operations, which to them was another indication that Island County is committed to supporting those who are trying to continue farming and forestry operations in Island County.

Doug McLaughlin, Camano Island, former President, NOAH [National Organization for Animal Health], believed the ordinance a good proposal and did not have much criticism. He recalled those times when he received the phone calls almost every night about doing something about barking dogs but current code required there be three people complain before anything could be done, which almost never happened. Those who say just go to your neighbor to resolve the problem is not the answer inasmuch as these neighbors are not all that nice. He spoke in support of the ordinance being needed in Island County.

Steve Hull, Langley, realized that as time has gone on there has been more and more problems, and understood the Sheriff's position for the need for something. They have 5 dogs on 20 acres, more like children to them. All over at

night dogs can be heard singing with the coyotes. He likes the idea when the sun comes up the natural noises take form. Life as usual needs to go on. His thought was that it takes a certain breed of cat to live here and there are a lot of colorful characters with different manners of noise making, pets and machinery and "happy barks".

Kathy Sullivan, Greenbank, remembered hearing the Sheriff say at the previous hearing he received 500 calls last year, therefore she question if this ordinance is adopted will there then be a doubling of those calls and more deputies hired.

Chairman McDowell responded that Sheriff Hawley assured the Board that would not be his request to hire more deputies.

Sheriff Hawley advised that by State law the issuance of a citation has to be on view; a deputy has to actually see the incident happen. The reason he is opposed to put in specific ways to execute the ordinance is because just like every law there needs to be some gray area i.e. speeding, deputies exercise all sorts of discrepancies with speeding; that flexibility is needed. The problem with sound meters is that decibels are not necessarily a measurement of annoyance.

Adrienne G. Osborn, Camano Island, felt that the ordinance was so vague and so open to interpretation and believed there should be no gray area for interpretation for anyone.

Mr. Gladstone noticed for the first two years the Air Force stopped practice at 11:00 PM and now it is Midnight, and wondered if the County received any communication between the Commissioners and Air Force [*sic* Navy].

Chairman McDowell commented that State law as well as the proposed County ordinance exempts aviation. The Navy to his knowledge never had a policy to stop flying at 11 PM, the Navy's issue is that they have to prepare pilots to go the carrier. The County is in communication with the Navy yes, but the Navy's schedule is based on operational need.

Mr. Osborn commented that as urbanites move out to the country they bring urban views with them and often do not seem to care for roosters, hens cackling, cattle, those country sounds. Concerning discharge of fire arms, he made the point that it is sometimes a necessity for a farmer who needs to shoot at a coyote, for example.

Chairman McDowell noted Item B on the last page of the proposal that specifically exempts out those animals associated with agricultural or forestry.

Mr. Reitz pointed out that peacocks are a noisy bird but that is life on Whidbey Island. He spoke up in defense of dogs. He too has a dog that barks late at night sometimes, has an orchard constantly being harassed by deer and other creatures that like fruit; has cattle and sometimes run sheep. Dogs are still important on many rural parts of the Island. He sees a lot of the old time rural people starting to get a little pushed by the urbanites. He thought there were many areas considered urban and densely populated that were capable of forming their own ideas and community charters and making an agreement with the Sheriff to enforce the charters within their community instead of the County putting an ordinance in effect all over the County. This needs to be tapered down and target the communities where the problems are and let the communities decide how they want to deal with the problem.

Commissioner Shelton acknowledged the unfortunate fact that most laws are written to regulate a very small segment of the population--those who are not necessarily reasonable in their relationship with their neighbors. Clearly the Sheriff has stated the issues in relation to noise, and the ordinance has been modified to exempt things that people deem to be rural noises, and cover those who truly are obnoxious or who have animals whose owners allow them to stand at the neighbors fence and bark long and continuous. He lives in a small residential neighborhood and people who spend time in their yard working often turn on music to work by which can be heard; just because it is audible does not make a public disturbance and therefore items #6 and #7 on page 2 should be modified so that it would delete the 50' and say that it be operated at a volume such that it does not unreasonably disturb or interfere the peace, comfort and repose of property owners. The Commissioner expressed confidence in the Sheriff's Department and how Sheriff Hawley described how he would handle these complaints.

Sheriff Hawley agreed not to tie it to a specific amount, and confirmed that the key word in fact was "unreasonable". He supported the recommendation of Commissioner Shelton.

Commissioner Shaughnessy agreed with Commissioner Shelton's recommendation. He told the audience that he was not put into office to make more rules and regulations, but was very aware this was an issue in the County, one that had been an issue from day one when he took office.

Chairman McDowell agreed that the issue of 50' from the sound source did not seem to be in keeping with the remainder of the section. The concept of trying to work in a sound measuring device, from the perspective of owning such a device and being an engineer, he thought that deputies would find it very difficult to use in any reliable way. He mentioned that in a room such as the hearing room, just with lights on registered about 45 db and that is really not even noticed. The major concern is everyone has to read the ordinance at its worst case because that is what the law is, and this will be the law of the land. He has never particularly been a support of excessive controls in county government, but with the changes proposed by Commissioner Shelton, he would concur with adoption of the ordinance.

BOARD ACTION

By unanimous motion, the Board adopted Ordinance #C-68-98 as proposed and advertised, with the exception of changing on page 2, items 6 and 7, by deleting the reference to "audible greater than fifty feet from the source" and adding language to read as follows:

1. Sound from motor vehicle audio sound systems, such as tape players, radios and compact disc players, operated at a volume so that it unreasonably disturbs or interferes with the peace, comfort and repose of property owners or possessors.
2. Sound from audio equipment, such as tape players, radios and compact disc players, operated at a volume that unreasonably disturbs or interferes with the peace, comfort and repose of property owners or possessors.

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF PUBLIC)

DISTURBANCE NOISE CONTROL) ORDINANCE NO. C-68-98

_____)

WHEREAS, the state of Washington regulates maximum environmental noise levels pursuant to chapter 70.107 RCW chapter 173-60 WAC; and

WHEREAS, there are certain public disturbance noises which constitute public nuisances irrespective of sound levels established through the use of a sound-level meter reading device; and

WHEREAS, state regulations contained in WAC 173-60-060 specifically allow the county to regulate noise from any source as a nuisance; and

WHEREAS, the Board considered a prior proposed public disturbance noise ordinance, Ordinance No. C-36-98, on May 4, 1998, which the board declined to act upon but instead had that proposed ordinance re-drafted into the present form; and

WHEREAS, it is necessary to supplement the provisions of chapter 70.107 RCW and chapter 173-60 WAC to provide Island County Public Disturbance Noise Control regulations which promote the health, safety and welfare of the general public; NOW, THEREFORE,

BE IT HEREBY ORDAINED that the Public Disturbance Noise Control regulations attached hereto as Exhibit "A" are adopted.

Reviewed this 8th day of June, 1998, and set for public hearing on the 13th day of July 1998 at 6:00 p.m. in the Commissioners' Hearing Room.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Mike Shelton, Member

Tom Shaughnessy, Member

ATTEST: Margaret Rosenkranz

Clerk of the Board

Ordinance C-68-98 is adopted this 13th day of July, 1998 following public hearing.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Mike Shelton, Member

Tom Shaughnessy, Member

ATTEST:

Margaret Rosenkranz

Clerk of the Board

APPROVED AS TO FORM:

David L. Jamieson, Jr.

Deputy Prosecuting Attorney and

Island County Code Reviser Exhibit "A"

Chapter 9.60

Public Disturbance Noise Control

9.60.010 Declaration of Policy

It is hereby declared to be the policy of the county to minimize the exposure of citizens to the harmful nuisance, physiological, and psychological effects of excessive noise. It is the express intent of the Board of County Commissioners to control the level of noise in a manner which promotes commerce; the use, value, and enjoyment of

property; sleep and repose; and the quality of the environment.

9.60.020 Purpose-Limitation of Liability

A. It is expressly the purpose of this chapter to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be specially protected or benefited by the terms of this chapter.

B. Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the county, its officers, employees or agents, for any injury or damage resulting from the failure of anyone to comply with the provisions of this chapter, or by reason or in consequence of the implementation or enforcement pursuant to this chapter, or by reason of any action or inaction on the part of the county related in any manner to the enforcement of this chapter by its officers, employees or agents.

9.60.030 Public Disturbance Noises

A. It is unlawful for any person to cause, or for any person in possession of property to allow to originate from the property, sound that is a public disturbance which unreasonably disturbs or interferes with the peace, comfort and repose of property owners or possessors. The following sources of sound when they unreasonably disturb or interfere with the peace, comfort and repose of property owners or possessors shall be prohibited public disturbance noises:

1. Frequent, repetitive or continuous noise made by any animal, except that such sounds made in animal shelters, or commercial kennels, veterinary hospitals, pet shops or pet kennels licensed under and in compliance with ICC Titles 16 and 17 shall be exempt from this subsection; provided, that notwithstanding any other provision of this chapter, if the owner or other person having custody of the animal cannot, with reasonable inquiry, be located by the investigating officer or if the animal is a repeated violator of this subsection, the animal shall be impounded by the county animal control officer subject to redemption in the manner provided by ICC 6.08.170;
2. The frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle between the hours of ten p.m. and seven a.m., except as a warning of danger or as specifically permitted or required by law;
3. The creation of frequent, repetitive or continuous noise between the hours of ten p.m. and seven a.m. in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine on Residential and Rural Residential zoned property;
4. Frequent, repetitive or continuous yelling, shouting, hooting, whistling or singing, between the hours of ten p.m. and seven a.m.;
5. The creation of frequent, repetitive or continuous sounds which emanate from any building, structure, apartment or condominium, such as sounds from audio sound systems, band sessions or social gatherings;
6. Sound from motor vehicle audio sound systems, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source that it unreasonably disturbs or interferes with the peace, comfort and repose of property owners or possessors;
7. Sound from audio equipment, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source that it unreasonably disturbs or interferes with the peace, comfort and repose of property owners or possessors; and

8. Sound created by the discharge of firearms during evening and nighttime hours between one-half hour after sunset and one-half hour before sunrise except for discharge on authorized shooting ranges.

B. The provisions of subsection A above shall not apply to:

1. Regularly scheduled events at parks, such as public address systems for baseball games or park concerts or other authorized activities in parks;
1. Sounds originating from aircraft in flight and sounds that originate at airports and airfields which are directly related to flight operations; and
1. Sounds originating from officially sanctioned parades and other public events;
4. Sounds originating from agricultural operations, forestry operations and licensed businesses;
5. Sounds originating between the hours of seven a.m. and ten p.m. from residential property relating to temporary projects for the maintenance or repair of homes, grounds and appurtenances;
6. Sounds originating between the hours of seven a.m. and ten p.m. from temporary construction sites as a result of construction activity;
7. Sounds from the operation of motor vehicles on highways which are regulated under chapter 173-62 WAC; and
8. Sounds created by blasting between the hours of seven a.m. and ten p.m.

9.60.040 Penalties-Enforcement

A. Punishment for Violations

1. The first violation of provisions of section 9.60.030 by a person within the past year shall be a Class 4 civil infraction carrying a monetary penalty of twenty-five dollars plus statutory assessments.
2. The second violation of provisions of section 9.60.030 by a person within a one year period shall be a Class 2 civil infraction carrying a monetary penalty of one hundred twenty-five dollars plus statutory assessments.
3. A third or subsequent violation of provisions of section 9.60.030 by a person within a one-year period shall constitute a criminal misdemeanor punishable by a fine of up to one thousand dollars, ninety days in jail, or both.

B. In any prosecution for a civil infraction or criminal misdemeanor evidence of a sound level through use of a sound-level meter reading shall not be necessary to establish the commission of the offense.

C. Civil Infractions under this Ordinance shall be enforced pursuant to chapter 7.80 RCW and the court rules. For the purposes of both civil and criminal enforcement the Island County Sheriff and the Sheriff's deputies shall be enforcement officers.

9.60.050 Provisions Not Exclusive

The provisions of this chapter shall be cumulative and nonexclusive, and shall not affect any other claim, cause of action or remedy; nor, unless specifically provided, shall this chapter be deemed to repeal, amend or modify any law, ordinance or regulation relating to noise, but shall be deemed additional to existing legislation and common law on noise.

Special Sessions of the Board

JULY 14, 1998 @ 6:00 P.M. - Special Session; Joint Board of County Commissioners and Planning Commission (rescheduled from June 29, 1998) Hearing Room 1, Courthouse Annex Basement, Coupeville: Public Presentation: Release of Phase B Plan Elements, Phase B Development Regulations and DSEIS

JULY 16, 1998 @ 5:00 p.m. Special Session; Board of County Commissioners, Odd Fellows Hall, 96 S. Camano Ridge Road, Camano Island; Public Hearing: Ordinance C-73-98, R-29-98, Renaming Misc. County Roads on Camano Island

There being no further business to come before the Board at this time, the Chairman

adjourned the meeting at 7:30 p.m. to meet next In Regular Session on July 20, 1998

beginning 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