

ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING

REGULAR SESSION - SEPTEMBER 14, 1998

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on September 14, 1998 beginning at 9:30 a.m. in the Island County Courthouse Annex, Hearing Room, Coupeville, Wa. Present were: Wm. L. McDowell, Chairman, Tom

Shaughnessy, Member, and Mike Shelton, Member.

The Board, by unanimous motion, approved the following minutes of meetings:

February 23, 1998-regular session [previously omitted from final printing and approval]

February 23, 1998-special session [approved but not signed at the time presented]

July 22, 1998 – special session July 27, 1998 - special session

July 27, 1998 - regular session July 28, 1998 - special session

VOUCHERS AND PAYMENT OF BILLS

The following vouchers/warrants were approved for payment by unanimous motion of the Board: Voucher (**War.**)
#33193-33624.....\$ 641,158.96.

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, the Board by unanimous motion took the following action:

V98-14 Approved in the amount of \$525.00

V98-15 Approved in the amount of \$741.46

V98-16 Approved in the amount of \$625.00

EMPLOYEE SERVICE AWARDS

Public Works Department

Employee No. of Years

Larry A. Frostad 10

George Ann Sherry 15

Dennis C. Houston 5

EMPLOYEE OF THE MONTH - AUGUST, 1998

MARTI BODLEY, General Services Administration

REAPPOINTMENTS TO NOXIOUS WEED CONTROL BOARD

The Board, by unanimous motion, reappointed Ron Muzzal, Oak Harbor, to serve as District #II representative and Marlene Will, Clinton, District #IV representative, on the Noxious Weed Control Board, with terms expiring July 6, 2002.

Hiring Requests And Personnel Actions

Based on review and summary provided by the Human Resources Department, the Board, by unanimous motion, took the following action on Personnel Action Authorizations as presented:

PAA No. Position and Position No. Action Effective Date

079/98 Public Health Nurse #2406.09 Replacement 10/5/98

080/98 Env. Health Spec. #2403.02 Replacement *Date at which \$4,000 buy-out is reached from Current Expense buy-out fund, or the date that \$5,000 is reached using Current Expense buy-out up to \$4,000 and remainder funded from Public Health.*

078/98 Assoc Planner/Code Enf. #1708.01 Replacement 9/14/98

084/98 Plans Ex./Bldg. Insp. #402.02 Extend 60 days 9/14/98

083/98 Plans Ex./Bldg. Insp. #402 Extend 60 days 9/14/98

081/98 SW Att II, Coupeville #2248.03 Upgrade from I to II 9/14/98

Claims for Damages

#RM 98-025CD Donald Fletcher

Betty Kemp, Director, GSA/Risk Management, presented her recommendation of denial of the Claim submitted by Donald Fletcher in the amount of \$355,000.00 alleging damage to property at 7365 S. Humphrey Road, South Whidbey. On investigation of the claim, the County Engineer found that Island County was not at fault and the claim should be denied.

The Board agreed with the recommendation and by unanimous motion, denied the claim.

#RM 98-023CD Pamela Berkebile

In the case of Claim by Pamela Berkebile, Ms. Kemp reported that based on information gathered during investigation of the Claim, the County Engineer recommends payment in an amount sufficient to cover those portions of the claimants Corvette Classic damaged per adjuster's findings [copy provided]. Claimant commented that rental car would be required, but at this time, an amount was not submitted and or verified by attached statement/bill. Ms. Kemp recommended at this time, the amount of \$4,286.38 be approved for damage to the vehicle.

By unanimous motion, the Board approved the claim as recommended by Ms. Kemp, in the amount of \$4,286.38 to cover damage to Corvette Classic per adjuster's findings.

#RM-98-19CD Sherman. By unanimous motion, the Board re-scheduled consideration of Claim #RM-98-19CD until next Monday's meeting.

Revise – Contract Review Form

Ms. Kemp asked that the Board approve a revised insurance and indemnification language revised from the original policy dated August 9, 1993, and revised June 12, 1995. The focus is on industry standards up-to-date insurance language. Contract Review Form and all other procedures have not changed.

The Board, on unanimous motion, approved the revision to the Contract Review form as provided and recommended by Ms. Kemp, with copy provided to each Elected Official and Appointed Department Head.

Contract for 2% Hotel/Motel Tourism Promotion – 1998 Program Year – Lighthouse Environmental Program/WSU Beach watchers

The Board approved, by unanimous motion, a contract between Island County and the Lighthouse Environmental Program/WSU Beach Watchers, providing 2% Hotel/Motel award

funds for 1998 program year [award previously granted].

Intergovernmental Agreement – Washington State Military Department, Enhanced 911

The Intergovernmental Agreement between the Washington State Military Department and Island County, #EM99062B, was approved by unanimous motion of the Board, this amendment providing total funds to be reimbursed to the County not to exceed \$1,837,333 [previous total \$1,781,273] for purposes of Enhanced 911 implementation.

HEALTH DEPARTMENT CONTRACTS APPROVED

DSHS, Family Planning Interagency Agreement

By unanimous motion, the Board approved a Department of Social and Health Services, Family Planning Information Contract [0916001321 and 9863-15194] not to exceed \$15,000.

Contract: Employment Securities, Substance Abuse Prevention, AmeriCorp.

The Board, by unanimous motion, approved a contract with Employment Security Service

ESD Contract #99-121, AmeriCorps, in the amount of \$3,000.

AMENDMENT #4 TO ECOLOGY GRANT #G-9300149-RECYCLING

Dave Bonvouloir, Solid Waste Manager, presented for Board approval Amendment #4 to Ecology Grant #G9300149 between State of Washington Department of Ecology and Island County, providing s for Island County recycling and waste reduction and recycling capital. The grant amendment is a reallocation of existing grants received over the past five years and redefines certain tasks under the grant, including the purchase of a recycling truck solely devoted to and used in support of the City of Oak Harbor's expanded recycling collection program.

The Board by unanimous motion approved and signed Amendment #4 to Ecology Grant #G9300149 between State of Washington Department of Ecology and Island County, providing for Island County recycling and waste reduction capital projects and a recycling truck for City of Oak Harbor, new final maximum eligible cost now includes \$20,704.54 for Island County's capital upgrades, and \$68,333.32 for the City of Oak Harbor.

RESOLUTION #C-115-98 (R-48-98) ApprovING specifications and authorizING call for bids for Crushed Rock Supplies for 1999 through 2001- Bayview, Coupeville & Camano Road Shops

By unanimous motion, the Board approved Resolution #C-115-98 approving specifications and authorizing call for bids for crushed rock supplies for 1999, 2000 and 2001, for Bayview, Coupeville and Camano Island Road Shops, setting call for bids on October 22, 1998 at 1:00 p.m., and correcting #C-115-98 under Camano Island Road Shop, second line to read: 27,000 tons Crushed Surfacing Base Course (CSBC).

S T A T E O F W A S H I N G T O N

C O U N T Y O F I S L A N D

IN THE MATTER OF APPROVING }

SPECIFICATIONS & AUTHORIZING } RESOLUTION #C-115-98

CALL FOR BIDS FOR: } RESOLUTION #R-48-98

CRUSHED ROCK SUPPLIES FOR }

1999, 2000 & 2001 }

WHEREAS, sufficient funds are available in the ROAD/E.R.& R. FUND for the purchase of:

CRUSHED ROCK SUPPLIES FOR 1999, 2000 & 2001 FOR Bayview, Coupeville and Camano Road Shops:

BAYVIEW AND COUPEVILLE ROAD SHOPS:

6,000 tons Crushed Surfacing Top Course (CSTC)

54,000 tons Crushed Surface Base Course (CSBC)

12,000 tons 3/8"-#10 Aggregate for Bituminous Surface Treatment

CAMANO ISLAND ROAD SHOP:

3,000 tons Crushed Surfacing Top Course (CSTC)

27,000 tons Crushed Surfacing Base Course (CSBC)

3,000 tons 3/8"-#10 Aggregate for Bituminous Surface Treatment

NOW, THEREFORE, BE IT HEREBY RESOLVED that Attachment A, Specifications, is approved as written, and the County Engineer is authorized and directed to call for bids for furnishing Island County with said supplies; **BID OPENING** to be the 22nd day of October, 1998 at 1:00 p.m., in Main Street Conference Room #7, 400 N. Main, Coupeville, Washington.

ADOPTED this 14th day of September, 1998.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST:

Ellen K. Meyer, Deputy, Clerk of the Board

INTERLOCAL AGREEMENT between Island County and

Maxwelton Salmon Adventure

On recommendation of Larry Kwarsick, Public Works Director, the Board by unanimous motion authorized the Chairman to sign the Interlocal Agreement between Island County and Maxwelton Salmon Adventure, Risk Management Contract #RM-PW-2048, under the Central/South Whidbey Watershed Action Plan specifically involving the development and implementation of a Watershed Stewardship Program, with the appropriate recipient being described as an incorporated entity.

EASEMENT – to Whidbey Telephone Company for South Whidbey Family Resource Center

The Board, on unanimous motion, approved an Easement to Whidbey Telephone Company as needed for the South Whidbey Family Resource Center, Assessor's Parcel #R32910-221-2520.

**WSDOT TRANS-AID FUNDING AGREEMENT FOR
GLENDALE ROAD CULVERT REPLACEMENT**

The Board, by unanimous motion, approved the Washington State Department of Transportation (WSDOT) Trans-Aid Funding Agreement, dealing with Glendale Road culvert replacement, providing \$18,900 worth of DOT funds as part of the overall project in the amount of \$27,100.

WSDOE LOAN AGREEMENT FOR GLENDALE PROJECT

The Board, by unanimous motion, approved Washington State Department of Ecology Loan Agreement for the County's Glendale Road Project and authorized the Chairman's signature on same once the Agreement has been returned from the Prosecuting Attorney's Office, for the 5 year no-interest loan in the amount of \$645,000 from the DOE Water Pollution Control Revolving Fund.

REQUEST & AGREEMENT FOR REIMBURSABLE WORK – Washington

State Parks & Recreation Commission

The Board by unanimous motion, approved the Engineer's recommendation on Public Works Department Request & Agreement for Reimbursable Work for Washington State Parks & Recreation Commission, to chip seal West Beach parking lot at Deception Pass Park.

**HEARING SCHEDULED: ORDINANCE #C-116 -98 [R-49-98] RENAMING MISCELLANEOUS COUNTY
ROADS ON WHIDBEY Island**

The Board took action by unanimous motion setting a public hearing for October 5, 1998 at 10:15 a.m. to consider Ordinance #C-116-98, renaming six miscellaneous county roads on Whidbey Island.

**Hearing HELD: Ordinance #C-100-98, PLG-030-98 Ordinance Concerning Amended Interim Application
Procedures Affecting Chapter 17.02 Island County Code**

A Public Hearing was held on Ordinance #C-100-98, PLG-030-98, as scheduled and advertised, and continued from August 24 1998, Concerning Amended Interim Application Procedures Affecting Chapter 17.02 Island County Code. The hearing on August 24 was continued to this date and time, having been continued from August 17 and July 27th. Public input was closed inasmuch as public input taken and completed previously and today's hearing for the Board's deliberation and action.

Changes proposed are based on Superior Court hearing July 24, 1998, when Judge Hancock ruled based on the Skagit Surveyor's case and modified his Order deleting the conditional effective date for the comprehensive plan and development regulations. The proposed ordinance modifies the ordinance the Board adopted to match Judge Hancock's ruling. The County is not adopting a new interim ordinance, but continuing the effect of the interim ordinances already adopted and that those would cease to be effective when the County's GMA Comp Plan and Zoning Code are adopted.

Vince Moore, Planning and Community Development Director, confirmed that on August 25, 1998, the Western Washington Growth Board rescinded their finding of invalidity and found that the County's adoption of Ordinance #C-78-97 as amended by Ordinance #C-50-97, complies with the interim controls provision of the Growth Management Act, with compliance conditioned upon the limitations set forth by the Superior Court, and ordered that the previous finding of invalidity be vacated. The Board of Island County Commissioners on August 24, 1998, continued their public hearing on the ordinance awaiting the action by the Western Board.

By unanimous motion, the Board approved Ordinance #C-100-98 [PLG-030-98] in the matter of an ordinance concerning amended interim application procedures affecting Chapter 17.02 Island County Code, with the addition of a final "Whereas" paragraph on page three of the ordinance to indicate that on August 25, 1998, the Western Washington Growth Board made its Findings attached as Exhibit F".

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

IN THE MATTER OF AN ORDINANCE CONCERNING AMENDED INTERIM APPLICATION PROCEDURES AFFECTING CHAPTER 17.02 ISLAND COUNTY CODE)) ORDINANCE C-100-98) PLG-030-98))
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WHEREAS, the Island County Board of Commissioners enacted Ordinance C-78-97 establishing interim application procedures to comply with the Western Washington Growth Management Hearings Board's Compliance Orders; and

WHEREAS, on April 17, 1998 the Honorable Alan R. Hancock, Superior Court Judge for Island County entered a Memorandum Decision finding that Island County used proper legal procedures in its action adopting Ordinance C-78-97; and

WHEREAS, Judge Hancock also ruled that Sections 1, 2, 3, 4, 8 and 9 of Ordinance C-78-97 were effective in removing the reasons for the Board's determination of invalidity; and

WHEREAS, Judge Hancock also ruled that if Sections 5, 6 and 7 of Ordinance C-78-97 are modified as specified in his Memorandum Decision that the ordinance would be effective in removing the reasons for the Board's determination of invalidity; and

WHEREAS, Judge Hancock also ruled that Ordinance C-78-97 must remain in effect until the Western Washington Growth Management Hearings Board determines that Island County's Comprehensive Plan and Development Regulations adopted under the GMA do not substantially interfere with the goals of the GMA with respect to the subjects covered by Ordinance C-78-97; and

WHEREAS, the Board adopted Interim Urban Growth Areas pursuant to the Growth Management Act, Chapter 36.70 RCW for Coupeville and Langley on November 11, 1993, and Oak Harbor on November 15, 1993; and

WHEREAS, on April 20, 1998 the Board of Island County Commissioners accepted a GMA compliance schedule and work plan, attached hereto as Exhibit A, and the County's Compliance Schedule, attached hereto as Exhibit B, which commits the County to enact its GMA Comprehensive Plan and Development Regulations by August September 1998; and

WHEREAS, on May 15, 1998 Judge Hancock entered an Order implementing his Memorandum Decision, attached hereto as Exhibit BC; and

WHEREAS, on June 1, 1998, the Board of Island County Commissioners adopted Ordinance C-50-98 which implemented Judge Hancock's May 15 Order; and

WHEREAS, based on the Washington Supreme Court Decision in Skagit Surveyor vs. Skagit County No. 64798-4, Judge Hancock modified his May 15, 1998 Order, attached hereto as Exhibit D; and

WHEREAS, on July 13, 1998, the Board of Island County Commissioners adopted Ordinance C-88-98 which clarified one provision of C-50-98 to conform to Judge Hancock's Order; and

WHEREAS, WAC 197-11-800(20) provides that adoption of legislation relating solely to governmental procedures and containing no new substantive standards shall be exempt from SEPA,

NOW, THEREFORE, BE IT ORDAINED, to comply with the April 10, 1996 and October 6, 1997 Orders of Invalidity of the Western Washington Growth Management Hearings Board and the Order of Judge Alan R. Hancock issued on May 15, 1998, the Board of Island County Commissioners hereby adopts the attached interim application procedures governing applications under Chapter 17.02 of the Island County Code as shown on Exhibit C.

The procedures shall be applicable only to areas located outside the interim urban growth areas adopted by the County on November 11, and 15, 1993, pursuant to the GMA, Chapter 36.70A RCW.

BE IT FURTHER ORDAINED, that these interim application procedures will remain in effect for the nine specific sections of Chapter 17.02 ICC set forth in Exhibit C until Island County adopts a Comprehensive Plan and Development Regulations pursuant to the Growth Management Act, Chapter 36.70A RCW and for sixty (60) days after notice of that adoption is published. If an appeal is filed challenging compliance for the portions of the plan or development regulations that affect land currently affected by these nine sections, then the interim application procedures will remain in effect for those lands until the Western Washington Growth Management Hearings Board determines that the challenged modifications do not substantially interfere with the goals of the GMA. The new comprehensive plan and development regulations which govern the same issues for those lands as are governed by these interim application procedures shall not take effect for those lands until these procedures cease to be in effect as provided above.

NOW, THEREFORE, BE IT ORDAINED by the Board of Island County Commissioners that the interim application procedures adopted by Ordinance C-78-97 and amended by Ordinances C-50-98 and C-88-98 attached hereto as Exhibit E, shall remain in effect until Island County adopts a Comprehensive Plan and Development Regulations pursuant to the Growth Management Act, Chapter 36.70A RCW and shall cease to be effective upon the effective date of the new Island County GMA Comprehensive Plan and Zoning Code.

Reviewed this 27th day of July, 1998, and set for public hearing at 10:45 a.m.. on the 17th day of August, 1998; amended and continued to 24 August 1998 at 2:45 p.m.; and 14 September 1998 at 10:45 a.m.

BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST:

Ellen K. Meyer, Acting Clerk of the Board

Adopted this 14th day of September, 1998.

**BOARD OF COUNTY COMMISSIONERS
OF**

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST:

Ellen K. Meyer, Deputy Clerk of the Board

[Note: exhibits referenced in #C-100-98 are on file attached to the Original Ordinance #C-100-98]

SITE PLAN APPROVAL - SPR 124/98 - Ledcor Industries

Debra Little, Development Services Coordinator, presented for approval Site Plan Review #124/98 by Ledcor Industries, to construct a 1,416 sq. ft. equipment shelter, located at 1845 W. Crosby Road, North Whidbey, to house electronics used to boost the signal in a fiber optics cable connecting Seattle, Victoria and Vancouver, B.C. The Hearing Examiner recommended approval subject to 15 conditions [8/24/98 File No. SPR 124/98 Findings of Fact, Conclusions of Law and Recommendation of the Hearing Examiner]. The recommendation includes waiver of final site plan requirements. Applicant has agreed with all conditions.

By unanimous motion, the Board gave preliminary approval for SPR 124/98 by Ledcor Industries as presented per the Hearing Examiner's recommendation, including approval of waiving final site plan requirements. [approval document signed and placed on file]

RESOLUTIONS #C-117-98 AND #C-118-98 – SET FOR HEARING

By unanimous motion, the Board scheduled two resolutions to be considered at public hearing on September 28, 1998 at 2:45 p.m. as follows:

Resolution #C-117-98 [PLG-032-98] Adopting a Public Facility Concurrency & Adequacy Management Program, Procedures and Requirements in Island County

Resolution #C-118-98 [PLG-034-98] Adopting a Resolution establishing the Basis of Assessment for the PBRs, Chapter 3.40

FINAL APPROVAL - PRD 198/95 Woodglen Estates and TDRs

As presented with staff recommendation of approval provided by way of Memorandum dated September 2, 1998, by Ms Little, the Board by unanimous motion gave final approval of PRD #198/95, Woodglen Estates and TDRs, Assessor's Parcel #R13207-100-4620, North Whidbey, 20 lots and open space on 20-acre parcel zoned Rural Residential, approval including Transfer Development Rights [TDRs] acceptance and signature on Deed conveying 24 TDRs and the PRD final mylar.

**APPROVAL OF SPR 402/95 Extension of Preliminary Approval – South Whidbey School District
Transportation Facility Site Plan**

Ms. Little presented staff recommendation of approval of a one year extension of SPR #402/95 Preliminary Approval for the South Whidbey School District Transportation Facility Site Plan, Assessor Parcel #R32910-095-1630, to October 16, 1999.

She explained somewhat of a complication on the Transportation Facility stemming from an old short plat where an

owner and county had a condition for a 75' buffer of no-build undisturbed open space along Maxwelton Road. That condition still exists although the School District has used that area by putting in a drainfield, and that technical issue needs to be worked out before the site plan can be approved establishing a different set of conditions from the existing recorded set of conditions.

The Board by unanimous motion approved a one year extension of SPR 402/95 Preliminary Approval for the South Whidbey School District Transportation Facility Site Plan, Assessor Parcel #R32910-095-1630, to October 16, 1999. [approval document signed and placed on file]

FINAL APPROVAL - SPR 280/95 South Whidbey

High School Final Site Plan

By unanimous motion, the Board approved Final SPR #280/95, South Whidbey High School Final Site Plan, Assessor Parcel #R32915-485-2450, Maxwelton Road, approving and signing site plan and mylar for the new South Whidbey High School project, based on staff recommendation of approval.

FINAL APPROVAL - SPR 080/96 South Whidbey Primary and Intermediate School Facility Final Site Plan

With staff recommendation of approval, the Board, by unanimous motion, approved Final SPR #080/96, South Whidbey Primary and Intermediate School Facility Final Site Plan, Assessor Parcel #R32910-260-1900, Maxwelton Road, South Whidbey.

REQUEST FOR SERVICE AREA REDUCTION - WSR 222/98, Point Allen Water Association; Range 3, Township 30, Section 25, Camano Island,

Request to reduce existing water service area to a

total of 50 hook-ups

Vince Moore, Planning and Community Development Director, presented a request for service area reduction - WSR 222/98, a request to reduce the existing water service area to a total of 50 hook-ups, by the Point Allen Water Association, located in Rge. 3, Twp. 30, Sec. 25, Camano Island, reporting staff recommendation of denial of the request for service area reduction.

Mickie Jarvill, Attorneys At Law, Arlington, Wa., Attorney for Point Allen Water Association (PAWA), advised notice received just last Wednesday this matter would be considered today. She has examined the recommendations of both Joye Emmens and Ms. Little of the Planning Department. PAWA does not disagree with the statement of the purpose of the Critical Water Supply Services Area Act (Act), and agreed the primary purpose of the Act was to curb unnecessary proliferation of small water systems and individual wells, but disagreed on the recommendation and suggestion it is the best way to avoid the proliferation of small water systems. PAWA in 1992 signed such an agreement with Island County and in June of 1994 PAWA and J. B. Garrison entered into an agreement to divide up responsibility for serving what originally had been the PAWA service area. At that time PAWA membership decided not to serve more than 50 hookups and determined they would not take responsibility for an additional water source or wells, nor apply for additional authority to serve more hookups than the 50 authorized by the State Department of Health in January, 1992. PAWA revisited and confirmed that decision in 1996 and 1997, confirming it again August of 1998. PAWA as a purveyor is not one of the choices for serving the area that was once part of PAWA's original service area; the membership of PAWA decided not to serve it and not to pursue additional hookups nor take responsibility for additional wells, which she believes is the right and privilege of a private citizen or private non-profit corporation like PAWA. Whether the County acknowledges the voluntary relinquishment of service area or not would not affect PAWA's decision. The issue is whether the County will recognize that voluntary relinquishment and allow Mr. Garrison to develop an independent water system to provide service to that area. The other purpose of the Act she believed was to assure a water service purveyor -- that water is available to every buildable lot, applicant or water user within a critical supply area. Next, she addressed some legal points in a letter sent to Ms. Little dated September 11, 1998, and pointed out that PAWA in 1992 signed a service area agreement containing the following

language:

"Now therefore the undersigned purveyor having entered into this agreement by signature of its authorized representatives, concurs with and will abide by the following provisions". Important for today's discussion, Ms. Jarvill noted was the language on page 2, paragraph 2:

"Portions of the service area may be relinquished by the purveyor, at its own discretion, or if the purveyor is unable to provide duly requested service in a timely and reasonable manner". Ms. Jarvill stated it had been pointed out to her by the Prosecutor's Office that WAC 248-56-530 provides for the commissioners to approve a service area change. She noted that WAC 248-56-730 [re-codified as WAC 246-293-250 and as the Prosecutor's Office noted, paragraph #1 of that section reads: *"The service area boundaries of public water systems within the Critical Water Supply Service Area shall be determined by written agreement among the respected existing purveyors and approved by the appropriate legislative authority."* They do not disagree with that. Paragraph 5 of the same section, however, makes the following statement: *"Failure of the legislature authorities to file with the Department objections to service area agreements within 60 days from receipt of the agreement shall indicate automatic approval."*

PAWA's 1994 agreement for establishing a water utility service area boundary and the Island County Critical Water Supply Service Area was acknowledged by the County, according to Ms. Jarvill, as having been received on August 31, 1994. On August 7, 1994, PAWA received an approval from the Planning Department and that approval followed an approval by the State Department of Health acknowledging PAWA's difficulty in serving the area, its limitation of water service hookups and approved the relinquishment of the service area. There was not an objection or an issue raised by the Commissioners until approximately 14 months after PAWA's application for service agreement was acknowledged by the County as having been received. Ms. Jarvill hoped the Commissioners would agree that PAWA, having received the letter from the Planning Department approving and indicating that the boundary change had been noted and made a matter of record, and having received the State's approval for relinquishment of the service area, that PAWA was entitled to rely after a period of months on the Commissioners automatic approval, if not express approval.

Responding to Commissioner Shaughnessy's question, Ms. Jarvill confirmed that PAWA as a private non-profit corporation decided not to seek additional authorization; it would require them to incur costs that would require them to tax their membership and that it would also involve some risk to the Association. PAWA made a number of factual determinations and concluded that it is in the best interest of the Corporation to not assume more responsibility than it currently has and will not ask for additional service capacity, will not take responsibility for additional wells and decided that the Corporation is serving all that it can and intends to serve into the future, assuming all 50 water shares that have been sold and are currently owned by people who own property in the retained service area, assuming they all hookup. Those 50 shares have been bought and paid for by people who purchased property from Mr. Garrison. It is debatable whether the decision by PAWA is the best decision given the circumstances, i.e. is it best for PAWA to relinquish control of the service of a portion of what was the original service area to another person or purveyor, but it is the decision PAWA made.

Commissioner Shaughnessy pointed out that the original service area and the number of lots available was roughly 99-100, and believed the water service was installed to serve the entire area, not just 50 lots, and understood that most of those lots in the area were 2-1/2 to 5 acre pieces. If those properties PAWA wants to exclude from the service area are that size, each of those could conceivably contain a well in the future – how wise is it for PAWA to relinquish control over that area and allow another 50 wells in that service area. As a County Commissioner, he must look at the properties involved and not personalities, and consider the concern and consequences of the potential at the south end of Camano Island of another unregulated 50 wells with no management over the source. He cannot help disagreements among the parties or rule on those; rather, has to look at the facts of the potential of 50 unregulated individual wells at that end of Camano Island.

Ms. Jarvill acknowledged infrastructure that extends throughout the area; it is not complete; she agreed it was her understanding too that most of the lots were in the area of 2-1/2 to 5 acres, and was sure there had been in-depth consideration and concern about that issue. The history of PAWA and difficulties encountered attempting to work out a solution that could avoid what PAWA and Mr. Garrison decided on in June, 1994, creates an environment that maybe changes the balance in how one might consider the pros and cons. Whether there is an acknowledgment that

PAWA has made a voluntary relinquishment or not, each and every time a water user comes to PAWA and receives a letter in the negative as far as providing service, each of those individuals denied service have the right to come before the Board and ask to relieve them of the obligation they seek water from PAWA and allow them to establish a new system or provide their own independent well. The dilemma is that, wise or not, PAWA decided it will not serve more than 50 properties. At a time when Mr. Garrison was claiming to own the PAWA infrastructure and wells, there might have been room for debate about whether or not it was wise to recognize PAWA's relinquishment of service area, but she did not think it a valid issue now because PAWA owns the infrastructure – there is an advisory ruling of arbitrator Christian Skinner to that effect and PAWA decided they will not expand beyond what their current capacity is and what current approved DOH authority is. The Agreement between PAWA and Mr. Garrison did not contemplate individual wells throughout this area, but that Mr. Garrison would obtain approval for his new water system and he made application, apparently withdrawn his interest in that. It would be best if Mr. Garrison proceeded with his water system plan that would provide that control the County is looking for and that PAWA assumed would be there.

Michael J. Garrison, Attorney in Seattle, was present on behalf of a purchaser in the PAWA service area, Eric and Valerie Negler, who own 4 lots, and denied service by PAWA on the basis that their property is outside of the service area. Mr. Garrison believed there had been misstatements of fact and pointed out that the first agreement between Island County and PAWA for the service area occurred in 1988, not 1992. At that time PAWA committed to serve its entire service area. It was also in 1988 that Island County adopted its critical water service plan wherein the PAWA service area was deemed an established service area. He felt it important to note that PAWA is a nonprofit corporation licensee of the State Department of Health (DOH) and any power it has with regard to the regulation of its activities is subject to the control and regulation of DOH; it does not have the unilateral authority on its own to decide whether or not it will serve a service area. This issue was before the Board of County Commissioners before on at least two other occasions: November 1995 the issue was taken up with regard to the application of Joseph Garrison for a series of "six-packs" [six user water system] and the Board at that time denied the application. Again in May of 1996, the Board rejected PAWA's application. PAWA did not appeal either decision of the Board to deny their application for reduction of service area.

In September of 1994, PAWA recorded a right to assess for the entire PAWA service area. PAWA is the nominal holder of the exclusive water right for the entire PAWA service area and PAWA has not to date made any application to DOE to reduce that water right. Therefore, Mr. Garrison believed what PAWA is asking the Board to do is to allow a reduction in their service area while they control the entire water right. In November of last year, the Attorney General's Office issued Opinion #6 that prohibits a landowner who has contiguous property from establishing a series of "six packs"; therefore the very agreement made in 1994 cannot happen unless an individual water right is approved for those six-packs. For consistency in planning and for fairness, it is important that landowners within the service area that PAWA's application be denied and the record correctly reflect the facts that have been before the Board before and reflect the state of the application.

As far as the water right, Mr. Garrison stated that the water right currently owned by PAWA is 30 acre feet. He noted a study had been done by DOE in 1993 and again in 1994 – and 30 acre feet deemed adequate and in fact, the basin the water is drawn on probably has upwards of 68 acre feet. PAWA applied for an additional 68 acre feet in 1993 during the time the parties were in litigation. If there needs to be an additional right, it perhaps could be applied for but the problem is that PAWA has the right for the area now. He pointed out that the water right is not technically perfected because they have had some 23 unused water shares for over 5 years and under the recent Washington State Supreme Court Decision in Skagit County those 23 shares would be deemed to not perfect the water rights when in fact they only have 27 of the 50 users actually hooked up to the system.

Chairman McDowell observed the request before the Board was a request to reduce the service area. The Board denied that request previously in 1995, and was not sure the Board would reopen that discussion unless there had been a change in circumstances.

Mr. Moore commented that although a draft resolution appeared in the Board's packet for today's meeting, if the Board wanted to reaffirm its earlier denial the resolution probably was not necessary.

Commissioner Shelton moved that the Board reaffirm its denial for reduction of service area for Point Allen Water

Association .

Ms. Jarvill interjected to note that this matter had not had a public hearing, nor did it in 1995, and therefore requested same in view of the fact that Mr. Garrison's testimony was permitted where he raised a number of factual issues: water right, capacity of the water system, studies, etc.

Commissioner Shelton assumed if a public hearing had been required for the reduction of the service area when it was considered previously, that public hearing would have been held. And Commissioner Shaughnessy noted the issue of water rights was not to his knowledge an issue the Board needs to hear, the issue before the Board only the request for reduction in service area.

Motion as made by Commissioner Shelton was seconded by Commissioner Shaughnessy.

The Chair felt it unfortunate that personalities on both sides seemed to have gotten involved in the matter for whatever reason and encouraged those folks try to work as neighbors and work out their own problems. To him, it did not make sense to expect 50 additional individual wells on the south end of Camano.

Motion as made and seconded carried unanimously, to reaffirm the Board's denial for reduction of service area for Point Allen Water Association .

HEARING HELD: ORDINANCE #C-105-98 IN THE MATTER OF AUTHORIZING IMPOUNDMENT OF VEHICLES DRIVEN BY SUSPENDED OR REVOKED DRIVERS AND MAKING TECHNICAL AMENDMENTS TO

CHAPTER 10.06 ICC, TRAFFIC REGULATIONS

A Public Hearing was held, as scheduled and advertised, for the purpose of considering proposed Ordinance #C-105-98, authorizing impoundment of vehicles driven by suspended or revoked drivers and making technical amendments to Chapter 10.06, ICC, Traffic Regulations.

Mike Hawley, Island County Sheriff, advised that a Washington Traffic Safety Commission study discovered nearly one-quarter million Washington State drivers are suspended or revoked at any given time in this State, and an estimated 75% of suspended/revoked drivers continue to drive despite criminal penalties. Statistically, suspended/revoked drivers are three times more likely to kill or injure someone; more likely to commit traffic felony offenses; suspended drivers also lack liability insurance. In Island County for the first nine months of 1998, the Island County Sheriff's Department received 1,501 traffic related complaints [not including 618 traffic accidents responded to]. Vehicle accidents are the number one cause of accidental death and injury within the County. Already this year, the Department has arrested 175 suspended drivers, 20% of which were DUI. The State Legislature has provided the ability for counties to implement another tool in the effort to control this problem. Sheriff Hawley strongly urged the Board's adoption of this ordinance.

No others in the audience spoke either for or against adoption of the Ordinance.

By unanimous motion, the Board adopted Ordinance #C-105-98 in the matter of authorizing impoundment of vehicles driven by suspended or revoked drivers and making technical amendments to Chapter 10.06 ICC, Traffic Regulations.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING)

IMPOUNDMENT OF VEHICLES DRIVEN)

BY SUSPENDED OR REVOKED) ORDINANCE NO. C-105-98

DRIVERS AND MAKING TECHNICAL)

AMENDMENTS TO CHAPTER 10.06 ICC,)

TRAFFIC REGULATIONS)

_____)

WHEREAS, the State Legislature in Engrossed Substitute House Bill 1221, chapter 203 of the 1998 Laws, made legislative findings that:

1. It is estimated that at any given time more than 260,000 Washington drivers' licenses are suspended or revoked;
2. An estimated 195,000 of those suspended/revoked drivers (75%) continue to drive anyway despite the existence of criminal penalties;
3. Suspended drivers are three times more likely to kill or seriously injure others in the commission of traffic felony offenses than are validly licensed drivers;
4. Suspended drivers lack required liability insurance increasing the financial burden upon other citizens through uninsured losses and higher insurance costs for validly licensed drivers;
5. All registered owners of motor vehicles have a duty to not allow their vehicles to be driven by a suspended driver;
6. Existing sanctions are not sufficient to deter or prevent persons with a suspended or revoked license from driving and it is common for suspended drivers to resume driving immediately after being stopped, cited, and released by a police officer and to continue to drive while a criminal prosecution for suspended driving is pending;
7. More than half of all suspended drivers charged with the crime of driving while suspended or revoked fail to appear for court hearings;
8. Vehicle impoundment will provide an immediate consequence which will increase deterrence and reduce unlawful driving by preventing a suspended driver access to that vehicle and vehicle impoundment will also provide an appropriate measure of accountability for registered owners who permit suspended drivers to drive their vehicles;
9. Impoundment of vehicles driven by suspended drivers has been shown to reduce future driving while suspended or revoked offenses for up to two years afterwards and the recidivism rate for drivers whose cars were not impounded was 100% higher than for drivers whose cars were impounded;
10. In order to adequately protect public safety and to enforce the state's driver licensing laws, it is necessary to authorize the impoundment of any vehicle when it is found to be operated by a driver with a suspended or revoked license in violation of RCW 46.20.342 and 46.20.420; and
11. Impoundment of a vehicle is intended to be a civil in rem action against the vehicle in order to remove it from the public highways and reduce the risk posed to traffic safety by a vehicle accessible to a driver who is reasonably believed to have violated these laws;

WHEREAS, the State Legislature has authorized local governments to adopt ordinances providing for the impoundment of vehicles operated by drivers whose licenses have been suspended or revoked;

WHEREAS, technical amendments to Island County Code chapter 10.06, Traffic Regulations (Model Traffic Ordinance), are necessary to reference applicable Washington Administrative Code provisions rather than the Revised Code of Washington due to a change in RCW 46.90.010;

WHEREAS, this ordinance is necessary to protect the health, safety and welfare of the citizens of Island County; **NOW, THEREFORE**,

IT IS HEREBY ORDAINED that Island County Code chapter 10.06 and Ord. CC-82-02 adopted March 22, 1982 are hereby amended as provided on Exhibit "A" attached hereto. Material lined through is deleted and material underlined is added. There shall be on file in the Island County Auditor's Office one copy of chapter 308-333 Washington Administrative Code, Washington Model Traffic Ordinance.

Reviewed this 10th day of August, 1998, and set for public hearing on the 14th day of September, 1998 at 1:00 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-105-98 is adopted this 14th day of September, 1998 following public hearing.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Mike Shelton, Member

Tom Shaughnessy, Member

ATTEST:

Ellen K. Meyer, Deputy

Clerk of the Board

APPROVED AS TO FORM:

David L. Jamieson, Jr.

Deputy Prosecuting Attorney and

Island County Code Reviser

[note: Exhibit A referenced in Ordinance #C-105-98

is on file with the Clerk of the Board]

HEARING HELD: ORDINANCE #C-106-98 - ESTABLISHMENT AND OPERATION OF JUVENILE DETENTION FACILITY WITH ONE-TENTH OF ONE PERCENT INCREASE IN SALES AND USE TAX

A Public Hearing was held as scheduled and advertised, for purposes of considering proposed Ordinance #C-106-98, establishment and operation of juvenile detention facility with one-tenth of one percent increase in sales and use tax. If adopted, a proposition would be submitted to the voters of Island County to establish and operate an Island County Juvenile Detention Facility by increasing the sales and use tax in Island County by one-tenth of one percent, which funds could be used solely for the juvenile detention facility. After approval by a majority of voters at an election, the tax increase would be effective. Approximately 26 people were in the audience at the time of hearing.

Sheriff Hawley went on record in supporting adoption of the Ordinance. There has been some talk about the lack of prevention and what can be done to fund a juvenile detention facility, and one idea he had was in the Current Expense budget now for Juvenile is \$40,000 to \$50,000 spent now for juvenile housing if and when there is a facility in Island County that money would be freed up and he strongly urged the Board's use of that for providing prevention types of programs within a juvenile detention center.

Page Gilbert-Baenen, Greenbank, described herself as being someplace in the "middle" on this issue. She expressed sadness that the only solution often times to the issues that young people struggle with are bricks and mortar. Throughout her years of working in substance abuse prevention she is struck by the number of solutions young people and adults together come up with for the problems of young people, and struck by the number of adults who want those young people in trouble out of sight and out of mind, which she sees as a double indemnity – because those young people are lost ultimately, and keeping them locked up is another cost. Should the Board go ahead with the Ordinance, she urged to put some prevention in with treatment and not totally ignore why kids get in trouble in the first place and look carefully how such a facility is utilized.

Dr. Gary Berner, Oak Harbor, a concerned parent, who previously addressed the Board on this issue [3/16/98] from the standpoint of a parent of a 17 year old youth in trouble, advising he and his family to be strongly in favor of providing a juvenile detention facility in Island County. In his son's case, it has taken as long as 40 days in detention to get his attention; jail is the only consequence that matters. Kids think the system is an absolute joke, no teeth to any laws or consequence to their behavior and counsel each other how to get out of trouble. Currently, his son is waiting for a space in order to serve jail time for violation of probation. He agreed, the solution is not just to lock kids up; there are services Island County can provide that not happening now because juveniles are detained in another county. Other services should be provided, such as mental health, substance abuse, counseling, clergy, visiting with family. As a parent it is very difficult when there is no consequence he can take that matters when his son knows that while jail may be a consequence, that cannot be applied. His son currently is living on the streets and there are no services to help him. His conclusion is that citizens have identified through the Law & Justice Committee that a juvenile detention facility is a big need in the County; state law requires for a county with this size population to have a facility; law enforcement supports it and juvenile offenders certainly have earned it.

No others in the audience spoke either for or against the proposed Ordinance. Calling for a show of hands of those present opposed to the Board's adoption of this Ordinance, none so indicated.

As a member of the Law & Justice Committee for a number of years, Commissioner Shelton juvenile detention has always been an issue. At the end of the process he thought one of the things agreed on by the law and Justice Committee was not to move forward necessarily with a detention facility but it was going to be a broader-based approach – deliver some of the other services. This country seems to be prone to building more and more detention

facilities and his fear is that some of the other programs always seem to be replaced by the detention facility because the detention facility uses up all the available funds. While he will support this ordinance, but still believed in the need for a more proactive approach and hopefully find some way to institute programs that will cause kids not to put themselves into a situation where they advance right to the end which is detention. He did, however, understand the frustration of law enforcement agencies, and understand what the law says. It is appropriate that our juvenile justice Code in this County be not a mockery but something very real but hoped everyone involved recognizes that such a detention facility is not the answer to all the problems. and will be used as a tool to provide part of the answer.

One of the things Commissioner Shaughnessy brought up was the fact that this matter had been discussed for some time and he thought it was time for the issue to be placed before the voters of the County.

By unanimous motion, the Board adopted Ordinance #C-106-98, Establishment and Operation of Juvenile Detention Facility with One-Tenth of One Percent Increase in Sales and Use Tax.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

ESTABLISHMENT AND OPERATION)

OF JUVENILE DETENTION FACILITY)

WITH ONE- TENTH OF ONE PERCENT) ORDINANCE NO. C- 106-98

INCREASE IN SALES AND USE TAX)

)

WHEREAS, RCW 13.04.135 provides that counties containing more than 50,000 inhabitants shall provide and maintain at public expense a detention room or house of detention for juveniles, separated or removed from any jail, and the estimated total number of inhabitants of Island County now exceeds 70,000; and

WHEREAS, in 1993 the State Legislature enacted RCW 72.09.300, mandating that all counties in Washington State establish Law and Justice Councils, and that the charge of the councils was to develop a local law and justice plan for the county; and

WHEREAS, on March 31, 1994, Island County formed a Law and Justice Council, whose mission is "to develop a comprehensive community plan that attempts to maintain and improve law and justice services at an acceptable level with adequate funding in Island County;" the Law and Justice Council consists of representatives of every law and justice agency in Island County, as well as three citizens at large residing in each of the three commissioner districts, appointed by the Board of Island County Commissioners; and

WHEREAS, the executive summary of the comprehensive plan adopted by the Law and Justice Council in May 1995 identified that one of the recognized needs in Island County was a juvenile detention facility for juvenile offenders and crisis residential bed space for at-risk youth and of child crisis respite housing; and

WHEREAS, in September of 1995 the Law and Justice Council presented its plan to the Island County Board of Commissioners, including the conclusion that perhaps the most important need to be addressed was the lack of juvenile detention space for juvenile offenders; in response, the Board of Island County Commissioners requested that the Law and Justice Council conduct a series of public meetings to solicit public input; and

WHEREAS, at the direction of the Board of Island County Commissioners, a series of 5 public meetings were held by the Law and Justice Council, following which the Law and Justice Council made a second presentation to the Board of Island County Commissioners in July of 1996, including a report of the input from the citizen meetings; that report reflected the fact that, at the public meetings held on South Whidbey, on Camano Island, on North Whidbey, and in Coupeville, public input focused on issues of juvenile justice, including the need for a juvenile detention facility; and

WHEREAS, in its July 1996 presentation to the Board of Island County Commissioners, the Law and Justice Council again recognized the lack of a juvenile detention facility as a major issue facing Island County; and

WHEREAS, following that presentation the Board of Island County Commissioners requested that the Law and Justice Council, after study, make a recommendation to the Board of Island County Commissioners as to how large the juvenile detention facility should be and develop a budget for the facility. The Law and Justice Council formed a Juvenile Detention Committee which studied those issues and prepared a report which was presented to the Law and Justice Council; and

WHEREAS, in March of 1997 the Law and Justice Council made a third presentation to the Board of Island County Commissioners regarding the appropriate size and budget for a juvenile detention facility which the Public Works Director had indicated was in the long range plan for Island County; and

WHEREAS, the demand for juvenile detention bed space greatly exceeds capacity available for Island County juvenile offenders for both pretrial confinement and post-adjudication confinement for sentences up to 30 days detention; and

WHEREAS, the state of affairs has existed for many years, the Washington State Legislature having declared in 1945 that the absence of juvenile detention facilities in the various counties of the state constituted an emergency, and the Legislature having at that time declared that the construction, acquisition and maintenance of juvenile detention facilities for dependent, wayward and delinquent children, separate and apart from the detention facilities for adults, was a mandatory function of the several counties of the state, and having authorized the counties to acquire facilities and employ adequate staffs, RCW 13.16.020, .030, .040, and 19 of the 39 counties in the state currently have juvenile detention centers; and

WHEREAS, as a result of inadequate capacity juvenile offenders are not being held accountable for the offenses that they commit, and the public is not being protected from the high levels of recidivist behavior by juvenile offenders; and

WHEREAS, a study of juvenile felony-level offenders conducted by the Washington State Institute for Public Policy, at the request of the Washington State Legislature, having found that 9% of juvenile offenders sentenced under the Special Sex Offender Disposition Alternative, 10% of juvenile offenders granted a diversion, 26% of juvenile offenders sentenced pursuant to Option B and 27% of juvenile offenders granted probation re-offended within 18 months of placement on community supervision, which figures correspond to a study conducted in Island County; and

WHEREAS, in 1997 the Washington State Legislature passed into law Engrossed Third Substitute House Bill 3900 implementing a major reform of the juvenile sentencing laws which, effective July 1, 1998, places increasing demand on local juvenile detention space for Island County and the 38 remaining counties; and

WHEREAS, it is inefficient and wasteful to transport juvenile offenders between the courthouse in

Coupeville and detention facilities in other counties at the time of the initial detention and to attend court hearings the following day and after 72 hours, in addition to other pretrial hearings and trial; and

WHEREAS, alternatives to detention have been and continue to be developed and utilized in Island County whenever appropriate as an alternative to detention which remains the most appropriate and sometimes the only alternative in cases of serious crime, violent crime, and where other alternatives have failed; and

WHEREAS, in 1995 the Legislature adopted RCW 82.14.350 authorizing the county legislative authority in a county with a population of less than one million to submit an authorizing proposition to the county voters, which if approved by a majority of persons voting, would fix and impose a sales and use tax, providing that monies received from such a tax shall be used solely for the purpose of providing funds for costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, re-equipping, and improvement of juvenile detention facilities and jails; **NOW, THEREFORE**,

BE IT HEREBY ORDAINED that:

1. A proposition be submitted to the voters of Island County to fix and impose a one-tenth of one percent sales and use tax to be used solely for the purpose of providing funds associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, re-equipping, and improvement of an Island County Juvenile Detention Facility as set forth in detail on Exhibit "A" attached hereto; and
2. That the Island County Auditor schedule a special election at the next available date pursuant to RCW 29.13.010(2) for a vote on this proposition; and
3. That the ballot title for this proposition shall be:

ISLAND COUNTY JUVENILE DETENTION FACILITY

For the sole purpose of funding the establishment and operation of an Island County Juvenile Detention Facility as allowed under RCW 82.14.350, shall the sales and use tax in Island County be increased by one-tenth of one percent (0.1%) as provided in Island County Ordinance No. C- -98?

YES..... §

NO..... §

Reviewed this 10th day of August, 1998, and set for public hearing on the 14th day of September, 1998 at 11:30 a.m. in the Commissioners' Hearing Room.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST:

Margaret Rosenkranz

Clerk of the Board

Ordinance C-106 -98 is adopted this 14th day of September, 1998 following public hearing.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST:

Ellen K. Meyer, Deputy

Clerk of the Board

APPROVED AS TO FORM:

David L. Jamieson, Jr.

Deputy Prosecuting Attorney and

Island County Code Reviser

[note: Exhibit A referenced in Ordinance #C-106-98 is on file

with the Clerk of the Board attached to the Ordinance]

EXECUTIVE SESSION

The Chairman announced an Executive Session of the Board at Noon, for purposes as allowed under RCW 42.30.110(1)(i) to discuss with legal counsel representing the agency, potential litigation. He anticipated that the session would last approximately fifteen minutes. No public announcement came about as a result of the Executive Session.

BUDGET WORKSHOP

The Board met in budget workshop 1:30 to 3:30 p .m. Notes from budget workshops, as with staff session notes, are placed on file in the Office of the Commissioners.

GMA PUBLIC HEARING HELD BEGINNING AT 4:00 P.M.

ORDINANCE #C-62-98 [PLG-014-98 IN THE MATTER OF AN ORDINANCE CONCERNING FISH AND WILDLIFE HABITAT CONSERVATION AREA CRITICAL AREA REGULATIONS AND AMENDMENTS TO CRITICAL AREA REGULATIONS FOR WETLANDS ALL ADOPTED UNDER CHAPTER 36.70A. RCW

A Public Hearing was held beginning at 4:00 p.m., continued from August 24, 1998; July 27, 1998; and June 8, 1998,

on Ordinance #C-62-98 (PLG-014-98) in the matter of an Ordinance concerning Fish and Wildlife Habitat Conservation Area Critical Area Regulations and Amendments to Critical Area Regulations for Wetlands all adopted under Chapter 36.70A RCW. Public testimony taken previously and that portion of the hearing closed. The purpose of the continuation to this date and time was for the Board's deliberation.

In addition to all Board members being present, others present included:

Public: Marianne Edain, WEAN; Steve Erickson, WEAN; Chris Kelly, Coupeville; Rich Melaas, NAS Whidbey; Dorothy Bartholomew, Langley

Staff/Consultants: Larry Kwarsick; Matt Nash; Keith Dearborn, Alison Moss

Documents

1. 8/24/98 Proposed Changes to 17.02

2. 9-14-98 Recommended FWHFCA Amendments Responding to 9/3/98 Meeting with Department of Ecology

3. Technical Amendments – Consistency with Other Titles [8/24/98]

4. Critical Areas – Additional Board Findings [9-13-98, [proposed findings explaining changes made to the Planning Commission Recommendation]

1. Copy of current definition from 17.02.030 "Reasonable Use"

Additional Correspondence

8/31/98 Letter from Thomas TG. Campbell, President, Whidbey Audubon Society

9/2/98 Letter from Scott Boettcher, Coordinator, Growth Management, DOE

9/8/98 Letter from Richard E. Johnson, Habitat Biologist, Dept. Fish & Wildlife

9/14/98 Letter from Mark Goldsmith, Habitat Biologist, Dept. Fish & Wildlife

The Board took tentative action on August 24th but deferred final action until this date, after a meeting was held with the Department of Ecology, which was held in Bellevue on September 3. At that time, DOE narrowed their concerns action until a meeting could be held with DOE which was done in Bellevue on September 3. The DOE narrowed down to a few issues with the ordinance.

Recommended FWHFCA Amendments

1. Amend definitions of "existing building" and "existing use" to refer to the definition of "existing".

Responds to DOE's concern that each of the definitions that addresses an existing building, use or lot refer to the definition of existing so it is clear that it incorporated the date October 1, 1998. So long as the building, use or lot complied with whatever regulations applied at the time, if there were none, then there were none, and it would be a lawful use if constructed before 1984. Checked Title 17.03 and this is consistent with that; it is the same definition as in the 1984 Code for existing.

2. Add definitions of aquifer recharge areas and frequently flooded areas.

These are the two kinds of critical areas not defined in 17.02. The definitions have been taken from the State minimum guidelines, and the definition of frequently flooded areas is consistent with Title 14.02, and means the 100 year flood plain.

3. Amend 17.02.107.D to remove subsection 7.

DOE in a number of comment letters asked that this section specifically require avoidance, then minimization and then mitigation for any impacts. DOE has seen that those provisions have been incorporated in subsection D.2, as an example, and as a consequence, subsection 7 is repetitive and should be removed.

4. Amend 17.02.107.E.4 to clarify that the exemption for maintenance of drainage facilities

does not allow repair of an abandoned tidegate if that repair would effectively drain a re-established wetland.

A number of people expressed concern about what the term serviceable means. DOE's particular concern was if someone failed to maintain a tidegate over a long period of time and the tidegate when it had been maintained drained farmland and allowed it to be farmed, and when the tidegate ceased to be maintained the farmland became wetland. DOE wanted to make sure if that had happened, to be consistent with the Clean Water Act that the reconstruction of that tidegate was not an exempt activity. Ms. Moss reviewed the Clean Water Act and the regulations and guidance under it, looked at the time periods that pertain, and drafted an amendment to provide that if the tidegate was not maintained for five years and that caused a wetland to become reestablished, that someone could not go back and repair the tidegate and drain the wetland – rather, would have to go through the regulations, obtain an alteration permit.

1. Amend 17.02.110.A.3 to remove an obsolete reference and make clear that invasion by spartina does not cause a Category A wetland to become Category B.

DOE commented a number of times that wetlands and estuaries should be designated as Category A. DOE had been reading the designation criteria to require both protected species and a predominance of native wetland species and when it was pointed out that it is one or the other, that resolved part of DOE's concerns. DOE's remaining concern was that if some of the estuary area had become invaded by spartina that could cause them to fall out of Category A and become Category B. Island County has been engaged in a spartina eradication program for some time and the amendment makes the designation criteria consistent with that goal. By striking the word "introduced" in 3.a) (ii) it is clear that spartina would not be a reason for dropping an estuary from a Category A to a Category B, and the result will be that virtually all estuarian wetlands will be in Category A.

Answering a question from Chairman McDowell about other introduced non-native wetland species, Ms. Moss indicated that a list of non-native wetland species is contained in the Code and that would be the species to review to determine whether there is a predominance of native versus non-native. If the vegetation of concern were included in the list, it would be a Category B wetland.

If spartina is the concern the Chair suggested leaving the word "introduced" and add language to note that spartina is not included as an introduced species. Ms. Moss felt that would accomplish the goal and the amendment could read: "predominance of native wetland species over introduced or non-native wetland species, not including spartina; and". Matt Nash agreed that would clarify that particular point. Ms. Moss pointed out on Page 40 of the ordinance the list of non-native species, and that spartina is not listed.

Consensus: "Predominance of native wetland species over non-native wetland species; and".

6. Correct inaccuracy in Title 17.02.110.A.4.d

This is a housekeeping change. Under the Wetlands Overlay zone the section "General Provisions" - amendment makes clear the general provision section applies to wetlands as well as their buffers and the heading amended to reflect that fact. [also typos to be corrected "follwing" and "spply" to correctly reflect "following" and "apply"]

7. Remove inaccurate reference

The water resources overlay is reserved and has been reserved since 1984 and this never should have referred to Chapter 8.09 and there reference needs to be stricken.

Recommended FWHCA Amendments – Consistency with Other Titles

1. Chapter 17.02 now contains steep unstable slope overlay; this amendment would change the term unstable slope to geologically hazardous area or slope to be consistent with Title 11 and changing the definition of "steep slopes" to be consistent with Title 11. The change of the definitions is consistent with the Minimum Guidelines for Geologically Hazardous Areas.
2. Restore references to Zones in Chapter 17.02 Another housekeeping amendment for consistency. At the time that the amendments to 17.02.040 all of the new zones were going to be in chapter 17.02, but are not any longer, and will be moved into 17.03. Therefore, these need to be deleted from 17.02 and restored the existing zones to 17.02 for any projects submitted before October 1st. [also correct typo "nested" to "vested"]

Format Corrections

Page 2 of the Ordinance, two section "O's" and that needs to be re-numbered

Page 21 of the Ordinance, the first I is to be indented under H, and the J would then become I.

Critical Areas – Additional Board Findings

Findings explain the changes the Board made to the Planning Commission recommendation, which by and large pick up the rationale on every one of the amendments according to the extensive discussion the Board had on these issues at the last meeting, which Ms. Moss summarized to be:

- Refer in Best Management Practices to all critical areas; the need to monitor the use of BMPs to see if doing what is intended; make clear all references to existing uses or buildings or structures is to a use that was legally established under whatever rules applied at the time it was established.
- A number of clarifications on exemptions as discussed extensively on August 24th.
- The single family reasonable use was discussed on August 24th as well. Also buffers and marine habitats and protected species.
- All the findings on the geologically hazardous areas are explaining the consistency with the minimum guidelines and with other titles.
- Findings on page 4 on estuarine wetlands pertain to prior discussion today about spartina and the value of category A wetlands.
- The last finding makes clear that one cannot go out and subdivide property, create an unbuildable lot, then ask for a reasonable use exception. Those provisions for reasonable use exception apply to circumstances the owner did not create in order to be able to apply for reasonable use.

Commissioner Shaughnessy make the point that for clarification it needs to be made clear so as not to confuse buildable area here with how it might be used in some other area of the Code.

Ms. Moss indicated that the provision referenced is on Page 20 of the Ordinance: "No new lot shall be created that is wholly comprised of wetlands or that would require alteration of a regulated wetland or its buffer to provide a buildable area".

Species of Local Importance

The Board previously agreed to add to the list of species of local importance the great blue heron and the osprey, but those would not be effective until Matt Nash prepared a standard habitat management model plan the Board had reviewed and approved. The Board confirmed that agreement, and also that a finding be added to the Additional 1

Board findings to that effect.

BOARD REVIEW, COMMENTS AND CHANGES

Commissioner Shelton, on Page 3, reviewed the definition of Alteration of a Wetland, a Deepwater Habitat or a Fish and Wildlife Habitat Conservation Area, and suggested striking "or other vegetation" . He used as an example, Shore Avenue where some mowing had taken place – this would seem to eliminate the ability to mow. There are houses on both sides of Shore Avenue with saltwater wetland on the back side and in terms of normal maintenance it has been an issue in the past.

Ms. Moss confirmed the definition as written , the removal or harvesting of other vegetation, would include mowing. Mowing would constitute an alteration unless it were an exempt activity. This definition has been in the Code since 1984 and is being expanded to include Fish and Wildlife, although it has always applied to wetlands.

Matt Nash recalled that the issue at Shore Avenue was not the wetland buffer but the wildlife, inasmuch as the activity proposed would have occurred in the middle of duck nesting season. Two things under the exemptions probably already address the concern: (1) on-going agricultural activities or haying; or (2) exemption for existing residential landscaping. He noted too that controlling noxious weeds is an exemption [page 11, exemption #15].

Consensus: No change; leave as proposed.

On Page 4, Restoration, Commissioner Shelton wondered if there was a case to be made to indicate here that restoration would be required when natural regeneration processes were found to be inadequate to restore the functions.

The major way Ms. Moss remembered the Code addressing restoration was when there had been a violation; in those circumstances the typical correction action is to do some physical restoration. There are circumstances where it has been determined the best thing to do is leave it alone, but that has to be a determination made depending on the specific circumstance.

Chairman McDowell suggested adding language to describe what Ms. Moss explained. And Commissioner Shaughnessy agreed that there really needed to be some flexibility provided for here. Commissioner Shelton was aware that in some cases restoration measures occur naturally perhaps better than they would from other means.

The Chairman suggested adding the word "unauthorized" before "alteration", but Ms. Moss commented that there could be circumstances in which for an authorized alteration mitigation needs to be done, so that opportunity needs to be there to do restoration as mitigation for authorized as well as violations.

Consensus: Add to the definition to provide "restoration will be required when natural regeneration processes are found to be inadequate to restore the functions". The Board agreed that the word "unauthorized" not be included.

On Page 5, Wetlands, Commissioner Shelton read the language "groups of two or more wetlands which are hydrologically connected through surface or shallow ground water are considered to be associated with each other", and expressed some concern about the definition of shallow ground water. Shallow ground water needs to be defined.

Ms. Moss explained generally what would be looked for would be saturation within 12 to 18" of the surface depending on type of soil in determining whether an area is a wetland or not. And Matt Nash added to note that in making a wetland determination, it is 12" of the surface and it is also a finding of "evidence" of that water. He agreed 12" would be consistent with adopted manual used.

Consensus: after the words "ground water" add "(within 12" of the surface)".

Commissioner Shelton asked for clarification on Page, item 4.d) with regard to the database mentioned and whether or not the County had the maps.

Ms. Moss the County has maps of much of what is in the database; the database is more than maps, however, and the Department refers to it as "database". This is information for people to consult and no matter what the database indicates what is one the ground will control.

Discussing Page 8, Permitted Uses, Commissioner Shelton suggested under #1, adding "proportionate to the impacts" after "and mitigation".

Ms. Moss thought that concept was implicit here.

Consensus of the Board was that addition be made: "proportionate to the impacts".

Under #2, the Chair did not understand when talking about underground utilities and mitigation, why it mattered whether that occurred in the outer 33% or anywhere in the buffer. Ms. Moss's understanding was the closer to the critical area the more impact it will have and should try to keep the activity in the outer portion of the buffer. For a Type I and II stream that will be a 30'+ wide area and gets small percentages as that goes down because the buffers are smaller. If that is not adequate, provision #1 is still available.

In regard to Item D, Commissioner Shelton raised the example of Ernest & Patricia Dire where the situation was their only access to a particular lot was across a wetland.

In that case, Mr. Nash recalled that the property owners were told they could probably meet the criteria for use approval under the wetland standards under the reasonable use provision, but there was a provision under the Shoreline Ordinance on filling of shoreline associated wetlands which was the reason staff recommended denial. That provision in the Shoreline Ordinance includes a proposal to change that.

Chairman McDowell noted several places where it is stated "the Director may waive if he/ she finds that the applicant has demonstrated", and wondered if it mattered who demonstrated it? It may not be the applicant at all and could be someone either supporting or not supporting it and would have nothing to do with what the applicant demonstrates.

Ms. Moss indicated that generally, it is the duty of the applicant to do that; it needs to be clear

that it is the applicant who has to make their case, and there needs to be care taken not to put the applicant in a catch 22 situation.

Commissioner Shelton noted #3 of that same section, " proposal does not degrade the functions of the wetlands" and suggested "does not permanently degrade the functions of the wetlands" because anything done would temporarily degrade the functions of the wetland.

As originally written Ms. Moss indicated this required preservation of the functions to the maximum extent possible, which created a concern that those were words very subjective. She believed there would be situations where there would be some loss of area of a wetland and this language has been drafted to make clear that that will happen in some circumstances.

Commissioner Shelton agreed; if fill is placed that has degraded the wetland.

Ms. Moss confirmed again that inherent in this whole section is "proportional to impacts". Intent in looking at all of these is that mitigation of the impacts be proportionate.

In item #6 , Commissioner Shelton questioned the word "immediately", because there could be times when it might be smarter not to restore the buffer immediately.

Ms. Moss said that certain kinds of plants in the middle of summer would not be the best, but the difficulty faced in removing the word "immediately" would raise concerns that terms such as "as soon as possible" or "as soon as practicable" would be too subjective and/or evasive.

Consensus here was that what this means is restored consistent with good restoration practices.

On Page 9, #8, Commissioner Shelton noted this action would not allow wetlands or fish and wildlife habitat conservation areas or their buffers be converted to lawn or residential landscaping, which means to him that any house on the shoreline could not have a lawn.

As explained by Ms. Moss, fish and wildlife habitat means the listed species in the code, so if there is a specific habitat feature protected for one of those, a tree [i.e. with nesting species] could not be removed to put in lawn or landscaping. There is a 75' buffer, and a provision for reducing it based on homes on either side; otherwise, this would not allow taking something out of a protected habitat to put in landscaping. The features that would come up that would cause this problem would be a wetland or one of the marine habitats. Provisions for reducing the setback are on page 27 which allow reduction of the setback to the average of the setback on the adjacent residences. There are provisions for interrupted buffers too.

Matt Nash commented that inland, an Eagle's nest has 300' protection radius – it is a management buffer not a "no touch" buffer.

Page 10, Section E.5.d. the Chairman suggested deletion of "county road" so it would read: "...in improved rights-of-way". There are roads other than public; the key word is "improved" and this should read: "improved rights of way".

Commissioner Shaughnessy thought that had already been included in the Interim Ordinance and Ms. Moss confirmed it was in the Wetlands Overlay Zone in the Emergency Ordinance; this is moving it to a section that applies to all critical areas and is removing some provisions that seemed redundant and raised questions about what agencies could approve these various activities.

In the case of Useless Bay Golf Course development, for example, Commissioner Shelton pointed out that none of those roads are public.

The concern, as explained by Ms. Moss, was that this be road location which was actually approved through some process, i.e. actually improved with a road, not a paper right of way. The theory is that these areas are already disturbed so installation of utilities will not have a significant impact.

Consensus: The Board verified intent that improved means functional and not an not abandoned serviceable road, and agreed to delete the word "public" as recommended.

Regarding No. 7 on Page 10, Chairman McDowell was curious how someone could do the site in-

vestigative work for soil logs and perc tests without using a backhoe, and suggested crossing out the words "use of heavy equipment".

Here, Ms. Moss pointed out that the key is no use of heavy equipment in the critical area or its buffer.

Commissioner Shelton agreed the key words are "critical area" and it should be limited to streams and wetlands and their buffers, so that surveys, soil logs and perc tests could be done so long as someone does not use heavy equipment in a wetland, stream or their buffers.

Consensus: strike "critical area" and insert "wetland, stream or their buffers" and prepare a finding that states this does not allow someone to go in and cut down nest trees.

On #10, "Drainage and Flood Control" the Chairman asked why the word "Drainage" was proposed to be deleted since drainage is very much tied to flood control. Ms. Moss explained that drainage is dealt with under #4 on page 9.

Commissioner Shelton referring to No. 13, the term "critical areas" being used again. Ms. Moss agreed the proper term here should be "wetland, fish and wildlife habitat conservation area, geologically hazardous area".

Consensus: Board agreed to make the change suggested by Ms. Moss.

Commissioner Shelton referred to No. 14, storm drainage facilities. As noted by Ms. Moss this section is being moved from the Wetlands Overlay Zone and is the language since 1984 and true of everything else in this section except for wildlife nesting structures.

In answer to a question from the Chairman on Page 12, item .F, Ms. Moss clarified that reasonable use is defined in 17.02 and not repeated here because it is not being changed. Alteration standards here address wetlands and fish & wildlife.

In the case on Page 13 under Review Process, where the Chair felt that reasonable use for single family residences should be a Type I decision, Ms. Moss explained this section applied to all the permitted uses to the single family reasonable use section and to reasonable use exception. Right now this would make them Type II decision. As to the suggestion, she thought the only question would be lack of public notice. This would allow the Director to modify any of the standards of the chapter, including the mitigation. There are two different kinds of reasonable use provisions. One is a reasonable use provision completely administrative for single family home on an existing lot; the second provision is for anything else that has a reasonable use problem other than an existing lot with a single family residence on it.

Consensus: Agree, reasonable use for single family resident would be a Type I decision; the other kind of reasonable use would be Type II decision. Make that paragraph one; drop permitted uses down to paragraph two; then renumber the rest and remove reference to single family .Paragraph #2 would read: "permitted uses and reasonable use exceptions shall be reviewed under the process set forth for type II decisions in Chapter 16.19 ICC.

Page 12 I.3. "...for proposal located on property which may contain a critical area, the applicable critical areas regulations shall be applied to the underlying permit through the review process applicable to that permit", Commissioner Shelton suggested adding the words "instead of use approval".

Alison Moss stated this was an attempt to say if you are able to comply with all the regulations you do not have to get a separate critical areas permit.

As a point of clarification, Mr. Nash noted that if the change were made for reasonable use single family residences, leave that out of #1. Ms. Moss agreed noting that "permit" would be the building permit, which is a Type I. There will be no more use approval after this chapter is adopted and 17.03 – it will be called alteration.

Consensus: Paragraph #1 take out any reference to single family and it will then be picked up in paragraph #3. Needs to be very clear.

Page 16 – c) delete "by the applicant" was suggested by Chairman McDowell and the section would say "...on a positive showing through documentation, photographs...".

The reason noted by Ms. Moss for the inclusion here was so the applicant understood the County would not go out and do the work for the applicant.

Page 18, d) general provisions, (ii), the Chair suggested insertion of "unmitigated". Here, Ms. Moss explained referred to some sort of a land division that is creating a lot that does not have a buildable area and that that cannot be done – when creating a new lot it has to have a sufficient buildable area. This change had to be made to make the road crossing section effective. She gave assurance that the issue discussed could happen – use both halves of the lot.

Page 21 d) – Analysis of Impacts – the Chair suggested adding the word "significant".

Ms. Moss observed that issue was addressed by the last sentence before a) that says "The level of detail in a BSA should be proportionate to size and impacts the project proposal" . The term significant is one that has a specific meaning under SEPA. She suggested the word "potential" be deleted instead.

Consensus: Second sentence to begin: "A discussion of impacts..." [which would include noise].

Page 21 c) – Description of proposed project. Here the Chair suggested leaving it at that and deleting the remainder of the language. Ms. Moss noted this is basic information and would help the applicant and gives staff some guidance. She agreed the language in parenthesis after the word "structure" were not needed..

Consensus: cross out "(footprint area, height, and exterior material and finish)".

Page 22. g) Best Management Practices. The Chairman's suggestion was the following replacement language to this section:

"Identification of Best Management Practices that should be required to be employed in the execution of the project and followed thereafter on the site or affected area. If post development monitoring is deemed important, then a description including criteria, methods and schedule should be included in the BSA."

Ms. Moss agreed that the last sentence of the section could be re-written to say "If monitoring is required, this section shall include a description of proposed monitoring criteria and methods and schedule".

Consensus: agree.

With regard to the Penalties and Enforcement section on page 37, the Chairman recalled having received testimony from both sides that when there have been problem that when you have some problems with a piece of property this enforcement is not a penalty, rather to give time for the property to heal and be restored. He suggested the language be reworded such that:

"For property which contains a Category A or Category B wetland, deep-water habitat, or a fish and wildlife conservation area or their buffers which has been disturbed, or a steep or unstable slope on which a structure has been built or located in violation of this Chapter, habitat restoration shall be required. Where natural restoration is not feasible the Planning Director may impose up to three years' moratorium for all county permits and approvals on that portion of their parcel of property affected by the unauthorized alteration, subject to an approved restoration plan." and then use the remainder of the paragraph as written.

Consensus: change not made

The Chairman also suggested a definition for "Reasonable Use". However, Ms. Moss pointed out there is a definition for reasonable use today in 17.02.030, page 743 1996, and provided a copy of that to the Board:

"The logical or rational use of a specific parcel of land which a person can be expected to conduct or maintain fairly and appropriately under the specific circumstances."

General Agreement of the Board was to stay with the definition now contained in 17.02.030.

With that, all suggestions and considerations proposed by the Commissioners were concluded.

EXECUTIVE SESSION ANNOUNCED

At this point, approximately 6:15 p.m., the Board recessed into Executive Session for approximately 10 minutes, as allowed under RCW 41.30.110(1)(I) to discuss with legal counsel potential litigation. On return back into open public session, the Chairman indicated there was no announcement on conclusion of the Executive Session.

Hearing Continued on Ordinance #C-62-98

Ms. Moss reviewed with the Board comments in a letter received today at approximately 3:03 p.m. faxed from the Department of Fish and Wildlife.

1. Any species of habitats of local importance should automatically be designated if it meets the criteria and should

not be subject to discretionary decision.

Ms. Moss thought inherently there is some judgment involved in whether it is a habitat or species of local importance. The way the ordinance is set up requires a Planning Commission and Board approval and does not happen automatically.

2. Protection of salmonid fish species (salmon and trout).

They have been making these comments all along and the Board has debated the issue.

3. Wetland classification –

This is a matter where Fish and Wildlife seem to be misreading what has been done. The County’s ordinance is written to say that if a wetland has distinct components that for purposes of the buffer you can give it two different ratings. It does not mean dropping pieces of the wetland out of protection, it is just that it gets a different buffer.

4. Permitted Uses – utility provisions in outer portion of the buffer be subject to the same standards as the crossings.

Ms. Moss discussed both sections at length with Andy Castelle who is comfortable as written and feels same scientifically supportable.

5. Wetland Protection – re-think size limits for regulated wetlands.

Ms. Moss advised that the Hearings Board had already advised that the Board took the right steps in 1992 to use the wetland overlay zones; therefore this is not an area the Board need revisit.

6. Functionally isolated buffer areas – the buffer area may be part of another well-functioning habitat.

The way Island County’s provision is written requires the Director to determine that the buffer on the other side of whatever is isolating it is protecting it.

7. Shoreline building setbacks – domino effect on marine setbacks.

Shoreline setbacks is written so as to require homes on either side to allow limited infill at a closer setback but not a domino all the way down the beach.

BOARD ACTION:

Commissioner Shelton moved that the Board give final approval of Ordinance #C-62-98, PLG-014-98, in the matter of an ordinance concerning fish and wildlife habitat conservation area critical area regulations and amendments to critical area regulations for wetlands, all adopted under Chapter 36.70A RCW, as amended today and including: Recommended FWHCA Amendments Responding to 9/3/98 Meeting with Department of Ecology; the Recommended FWHCA Amendments – Consistency with Other Titles; and Exhibit C, the Additional Board Findings, including in Finding #14 an additional sentence regarding the effectiveness of the heron and osprey designations being dependent upon the management plans; and a Finding that mitigation is intended to be proportionate and process is intended to be proportionate, the Ordinance effective October 1, 1998.

Motion, seconded by Commissioner Shaughnessy, carried unanimously.

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

IN THE MATTER OF AN ORDINANCE)

CONCERNING FISH AND WILDLIFE
HABITAT CONSERVATION AREA
CRITICAL AREA REGULATIONS AND
AMENDMENTS TO CRITICAL AREA
REGULATIONS FOR WETLANDS ALL
ADOPTED UNDER CHAPTER 36.70A RCW

)
)
) ORDINANCE C-62-98
) PLG-014-98
)
)
)

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

WHEREAS, in 1998 Island County completed workshops and public meetings to review critical area issues; and then prepared amendments to its wetlands regulations as well as critical area regulations that would designate and protect fish and wildlife habitat conservation areas; and

WHEREAS, after completing four public hearings on March 16, 18, 24 and 26 and a thirty (30) day public comment period which ended on April 9, 1998, the Planning Commission considered public comment and testimony and has recommended that the Board consider implementing immediately the proposed wetlands amendments and new fish and wildlife habitat conservation area critical area regulations; and

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

WHEREAS, to avoid delays in construction of public projects scheduled to be constructed in the Spring; uncertainty regarding permissible Springtime farming practices; and uncertainty regarding residential construction on Island County's shorelines, the County took action on April 27, 1998, on an emergency basis, on certain wetland amendments; and

WHEREAS, a SEPA determination on the proposed action, amendments to the fish and wildlife habitat conservation area critical area regulations and critical area regulations for wetlands, was published in the Whidbey News Times on May 2, 1998, providing for a fifteen (15) day comment period ending on May 16, 1998, and a fifteen (15) day appeal period ending May 31, 1998.

NOW, THEREFORE, BE IT HEREBY ORDAINED, that the Board of Island County Commissioners hereby adopts the amendments to ICC 17.02.020-040, ICC 17.02.107, ICC 17.02.110, ICC 17.02.150, ICC 17.02.170-180 and ICC 17.02.250-260 recommended by the Planning Commission as fish and wildlife habitat conservation area critical area designation and regulations and modifications to the County's GMA critical area regulations for wetlands, attached hereto as Exhibit A. The Board also hereby adopts the Planning Commission Findings No. 85-142 attached as Exhibit B and re-numbered 1-58.

Reviewed this 18th day of May, 1998 and set for Public Hearing on June 8, 1998, at 1:30 P.M.; continued to 7-27-98 @ 9:30 a.m.; continued to 8-24-98 @ 9:30 a.m.; and continued to 9-14-98 at 4:00 p.m., item A.

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

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST:

Margaret Rosenkranz

Clerk of the Board

APPROVED AND ADOPTED this 14th day of September, 1998, attached hereto as Exhibit "A" as amended by the Board. The Board also hereby adopts the Planning Commission Findings No. 85-142 attached as Exhibit :B: and renumbered 1-58 and the Supplemental Board findings Attached as Exhibit "C: and renumbered 59-82.

Effective Date: October 1, 1998.

**BOARD OF COUNTY COMMISSIONERS
OF**

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST: Ellen K. Meyer,

Deputy Clerk of the Board

David L. Jamieson

Deputy Prosecuting Attorney

& Island County Code Reviser

[Note: Exhibits to Ordinance placed on file with Clerk of the Board]

ORDINANCE #C-91-98 – STORMWATER, CHAPTER 11.03 ICC

Public Hearing opened to consider Ordinance #C-91-98, PLG-024-98, in the matter of adopting a new ordinance, chapter 11.03 ICC, establishing additional development standards relating to stormwater management, continued from 8/24/98; public input portion closed.

Documents:

1. Version of the storm and surface water ordinance [noted at the bottom left hand corner "Final 8/28/98]
2. Draft – Introduction – Island County Stormwater Design Manual

Larry Kwarsick advised the Board that the version of the ordinance provided reflected the

direction the Board gave at the close of the hearing on August 24th. In addition, he received some recommendations from counsel regarding additional modifications, most pertain to the declaration of purpose section and the deletion of definitions unnecessary in this ordinance or were not used in the ordinance, and to make sure definitions are consistent with other definitions throughout the body of the implementing regulations. The Board had elected to remove certain standards from the body of the ordinance and placed those standards in a drainage manual. At the same time the Board formed a committee of local engineers to provide guidance to the Board in development of that manual. Document #2 reflects the work to date of the committee. It is the intent of the committee to recommend that the County adopt the Department of Ecology manual with certain changes and modifications.

As part of the 8/28/98 version, Mr. Kwarsick reflected the recommendation of the Committee dealing with section 11.03.210, **Additional Drainage System Requirements for Major Development Activities in UGAs and RAIDS**, to reflect that the standards for UGAs mimic the standards of the urban areas themselves or the County's whichever are more stringent, and that there not be any greater standards in RAIDS unless those RAIDS have also been designated critical drainage areas.

Mr. Kwarsick recommended Section 11.03.250 be revised to reflect counsel's advice in Paragraph B.4 to say that "... and mitigation is provided for loss of all wetland values and functions as provided in ICC 17.02". Mitigation for loss of "all" is not a duty that occurs in 17.02.

The Board agreed with that change. Also, the Board agreed with the suggestion of the Chairman to delete "values and ", with Ms. Moss' concurrence that would be fine to do so. B.4 would now read:

"The overall impacts on critical areas within the watershed are beneficial, impacts on the wetland will be minimized, and mitigation is provided for loss of wetland functions as provided in ICC 17.02."

Mr. Kwarsick confirmed his review of the Chairman's suggestions and believed same reflected in this 8/28/98 version. He was able to devise proper language [page 24, Section 11.03.240.A] with regard to redevelopment section. The Chairman, and the other Commissioners, agreed that the issue was covered with the language proposed in the 8/28/98 version.

With regard to the Chairman's concern about provisions for UGAs, [example – Goldie Road which is in the UGA but until the City annexes, a portion is still in the County] it is not so much the storm detention requirements as it is the fact that this would not somehow require providing from a remote area out in the UGA back to the City's storm sewer. Mr. Kwarsick the issue adequately covered in the Ordinance, but agreed with the need to make sure in the work of the Committee that concern is well expressed and Mr. Kwarsick will forward same to the Committee.

The Chairman turned to page 7, definition of Impervious Surface, and suggested language added to make it absolutely clear that " a gravel road is not an impervious area".

Consensus: Agreed.

On Page 30, Section .340, Security and Insurance, the Chairman's recommendation was to just state: "The County Engineer is authorized and has the discretion to require all applicants constructing detention/retention facilities or other drainage facilities for major development activities to post surety and cash bonds in critical drainage areas."

Mr. Kwarsick agreed intent was not to be limited to those, just to set the priority if in fact discretion was going to be exercised, it was to be exercised first and foremost in critical drainage areas. He had no objection to limiting the discretion to critical drainage areas in that what is to be accomplished is to assure the function of those devices installed.

Consensus:

"The County Engineer is authorized and has the discretion to require all applicants constructing detention/retention facilities or other drainage facilities for major development activities to post surety and cash bonds in those areas designated as critical drainage areas." and delete "Such guarantees are of highest priority in those areas that have been designated critical drainage areas".

BOARD ACTION:

Commissioner Shelton moved for forwarding for final approval on September 28, 1998, at public hearing at 2:45 p.m., Ordinance #C-91-98, Chapter 11.03 Stormwater and Surface Water Ordinance, as amended today.

Drainage Manual. Mr. Kwarsick commented that along with an action recommending that the Board adopt a design manual, is one other follow-on duty, that being to designate critical drainage areas under the ordinance. In line with that, he had provided last week a copy of a proposed [internal draft only] resolution for the Board's review at this time; it will need to be in place before the effective date of the ordinance. The Committee has recommended, and the manual indicates, that as part of the resolution adopting a critical drainage area there be no burden on the part of the Board to have a one-size fits all criteria for every critical drainage area, rather establish specific needs for specific areas that needed to be addressed through the permit review process. The proposal Mr. Kwarsick forwarded does not include all the RAIDs, only those RAIDs that were designated as having a high or medium problem. The critical area designation is a mechanism to deal with pre-existing problems.

Keith Dearborn recalled that the record showed certain areas of certain RAIDs that have drainage problems, and the recommendation was to leave those areas in the RAIDs but deal with the problem. The way this issue has been dealt with for Holmes Harbor in the zoning code seems to have not caused anyone a problem.

Mr. Kwarsick agreed that the general concept would be brought up for discussion at the next staff session.

ORDINANCE #C-85-98 - ADOPTING A NEW ORDINANCE, CHAPTER 16.06 ICC

GOVERNING LAND DIVISION IN ISLAND COUNTY

The final hearing held this date was to consider Ordinance #C-85-98 adopting a new ordinance, Chapter 16.06 ICC, governing land division in Island County, continued from August 10, 1998. The Board on August 10th continued its deliberations on Ordinance #C-85-98, Chapter 16.06 until this date and time, and in the interim Planning staff was to provide the Board at Staff Session on September 9 discussion regarding concerns and/or proposed changes to 16.06.

Documents:

1. 7/27/98 Board Hearing Draft - Chapter 16.06 Land Divisions and Dedications
2. 7/27/98 Board Hearing Draft with hand-written changes the Board tentatively incorporated, after close of hearing on 7/27/98
3. Staff Recommended Changes [7/27/98 draft Staff Draft recommended changes – revised September 8, 1998
4. Memo dated 9/3/98 from Debra Little regarding Staff Comments on Proposed Land Division Ordinance 16.06

Mr. Dearborn noted that staff went through and in addition to suggested revisions of substantive nature, caught a number of corrections. Those have been marked by hand in a copy Mr. Dearborn has and went through and noted the corrections:

Page 2, .020, Purpose, the word "Subdivision" in the middle of the first line should say "division" .

AGREED

Page 2, .030.B, BLAs – "A division made for the purpose of Alteration" strike "for the purpose of alteration" .

AGREED

Page 2, .030.C, second line "Subdivision" should be "land division"

With this suggested change, the Chairman had concern in that the term being referenced is a surveying term and he had not heard that from a professional standpoint as a sectional land division. Mr. Dearborn stated that the way this originally read was standard sectional division, and the concern about referencing subdivision is that it does not mean short subdivision. After Debra Little read the RCW, consensus was to strike the term "by standard sectional subdivision" .

Page 3, F, last line stating "...including zoning in effect on the date of a complete Application" staff pointed out the real concern is when the will is probated.

Debra Little pointed out that a person does not apply for a testamentary division so there is no application.

Consensus: strike "in effect on the date of a complete Application". [intent is in effect on the date of death]

Page 3. .040 Definition of Alteration, 3rd line, strike "the addition to or removal of and from such plat"

AGREED

Page 3. .040, Alteration of a Critical Area, stating "Chapter 17.04 ICC" should say 17.02".

AGREED

Page 3. .040, Applicant, correct typo "or" to "of" so it reads "owner of property".

AGREED

Page 4. Critical Areas – change 17.04 to 17.02

AGREED

Page 5. Definitions of Short Subdivision and Subdivision – references to parcels, sites or divisions should be struck, with an "or" between the words "Lots" and "Tracts"

AGREED

Page 9 .- top of the page after L. Staff pointed out that with BLAs applications it is

not required that the applicant provide a legal description for each new lot or parcel being created. After "L" add new # 3 which would read: "legal description for each new lot or parcel".

AGREED

Staff Recommended Changes [7/27/98 draft Staff Draft recommended changes – revised September 8, 1998 (prior dated 9/2/98)

Keith Dearborn viewed Staff Recommendations, all within the scope of prior hearings. Staff presented the issues of concern several times during the review process. At the last hearing Mr. Dearborn identified five issues staff was concerned about. One concern was the difference between a boundary line adjustment and a lot combination. Another issue was difference between an alteration and a revision and how those worked.

Consensus: The Board agreed to the changes proposed by staff in this document with the following exceptions:

Page 2. Item C "Any Boundary Line Adjustment or division of land"

Page 3. H. "Existing Illegal Lots. Any division of land, created prior to August 10, 1970, in violation of county requirements."

Page 3. Alteration. To read as earlier agreed to as suggested by Keith Dearborn.

Page 4. Boundary Line Adjustment. Language reads:

"The adjustment of boundary lines between platted or unplatted lots or both which creates no additional lot or which creates no additional lot that contains insufficient area and dimension to meet minimum requirements for width and area for a building site. The combination of two or more lots where no public dedication is modified is a lot combination and not a boundary line adjustment".

Page 4. Boundary Line Correction definition is not necessary.

Page 4. Building Site definition not necessary.

Intent: building site determination is the Applicant's responsibility, and the County's obligation is to make it clear to the applicant they have to comply with all applicable codes when they develop.

Page 5. Definition of Lot – leave as is - no change.

Page 5. Lot Combination. "The combination of two or more Lots where no public Dedication is modified."

Page 5. Parcel. As already corrected.

Page 5. Revision. Do not define [is not used in the statute] Delete reference to revision on page 22, in Section .170 .A.

Page 7. E. [a policy decision] Leave language as in original 7/27/98 draft

Page 10. #4 no change

Page 10. New #C and #D proposed – do not include

Page 11. .070 A. – combine #2 and #3 to read: "The proposed adjustment would not create any additional Lot, tract or parcel or will not create a split-zoned parcel.". Delete #4 and #5. New #3 would read: "Except as provided in subsection 8 below, the proposed adjustment would not create a Lot of insufficient width or dimension to meet the minimum Lot size required in the Zone in which the Lot(s) is/are located."

Page 12. 8.a) – delete

Page 12. 8.b) – add at the end of the paragraph "; or"

Page 13. c) Begin the sentence with "For an approved..." and cross out "Unless otherwise approved through" and change "would not" to "may provide "

Page 22. Delete references in .170 to "revision"

7/27/98 Board Hearing Draft

Page 11 – Item C – list titles rather than having the description

Page 12 – Item C – same as above

Page 18 - .170 Cross out "revision" throughout the section and clarify that alteration of a long plat is Type III; alteration of short plat is Type II.

BOARD ACTION:

Commissioner Shelton moved approval of Chapter 16.06 ICC, Land Division and Dedications as amended, with approval of Ordinance #C-85-98 continued for final approval at public hearing on September 28, 1998 at 2:45 p.m.

There being no further business to come before the Board at this time, the Chairman adjourned the meeting at 9:15 p.m., to meet in Regular Session next on September 21, 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