

ISLAND COUNTY COMMISSIONERS – MINUTES OF MEETING**REGULAR SESSION - SEPTEMBER 27, 1999**

The Regular Meeting of the Board of Island County Commissioners was held on September 27, 1999, beginning at 11:30 a.m. for the monthly Roundtable with Elected Officials, following with other meeting items as listed on the Agenda at 1:30 p.m. The meeting was held in the Island County Courthouse Annex, Hearing Room, Coupeville, Wa., with Mike Shelton, Chairman; Wm. L. McDowell, Member; and William F. Thorn present.

Roundtable Meeting with Island County Elected Officials

Elected Officials: Tom Baenen; Greg Banks; Marilee Black, Maxine Sauter; Suzanne

Sinclair.

Others: Margaret Rosenkranz

Maxine Sauter reported that an updated computer program had not been installed as scheduled. The Central Services Director will discuss the matter with the programmer, and find out the status of Dike #1 billing as well. There are approximately 500 adjustments that need to be processed, i.e. property tax accounts to be readjusted and rebilled, including senior citizen exemptions [late filings]. Of concern is the possibility that accounts where payments have been made in excess of what the adjusted tax bill will be could be subject to interest by the County on the difference of adjusted amount. The Dike #1 billing has affected the district's cash flow. Mrs. Sauter will provide further details in a report and provide a copy to the Board this afternoon [received and copy on file].

Suzanne Sinclair discussed the updated computer program for recording in the Auditor's Office, noting it has not been completed and seems to be in a "holding pattern" at this point. One of the problems in not being able to get the desired reports, i.e. lien reports; it works but does not work well. It is a windows appearing version of the mainframe program and there are some gaps.

Tom Baenen mentioned that with regard to the conversion to the overall new system, it is all happening at the same time and there can be only so much data dumped at the same time: the Assessor's Office is trying to get the data base; the Treasurer is trying to get statements out and the Auditor is trying to get recording done. He hoped that revalue notices would be printed by the end of this week, and if so, should be able to mail the following week.

Greg Banks reported that the Prosecutor's computer system was anticipated to be installed before the end of the year; it is moving ahead.

Commissioner Shelton commented on Initiative 695 to note that the Elway Poll showed 52% in favor. He has agreed to be a speaker opposing I-695 the evening of October 14th League of Women Voters at the Coupeville Recreation Hall.

Roundtable adjourned at 11:55 a.m. Next meeting scheduled for October 25 @ 11:30 a.m.

MINUTES APPROVED

The Board, by unanimous motion, approved and signed the Minutes from Regular Meeting August 23, 1999, as well as minutes from Special Sessions held on August 23 and 27, 1999.

VOUCHERS AND PAYMENT OF BILLS

The following vouchers/warrants were approved for payment by unanimous motion of the Board: **Voucher (War.) # 58771 – 59023..... \$ 652,209.34.**

Veterans Assistance Fund: [emergency financial assistance to certain eligible veterans; the names and specific circumstances are maintained confidential]. By unanimous motion, the Board accepted the majority recommendation of the Veterans Assistance Review Committee and denied Claim #V99-11 in total.

APPOINTMENT NAMED TO ISLAND COUNTY PARKS BOARD

By unanimous motion, the Board appointed Carol Tripplet, Camano Island, to serve on the Island County Parks Board refilling the vacancy left on resignation of Richard Craig; term of appointment runs until June 30, 2003.

RESIGNATIONS ACCEPTED: ADMIRAL'S COVE WATER DISTRICT

The Board by unanimous motion, accepted the letters resignations from Allen Boyes, Position #1, Admiral's Cove Water District; Jack Williams, Position #2; and Harry E. Lynam, Position #3 effective September 24, 1999.

NEW ADMIRAL'S COVE WATER DISTRICT COMMISSIONERS APPOINTED

RCW 42.12.070, incorporated to apply to water districts by reference in RCW 57.12.020, provides that when there are less than two members of a water district in office, the Board of County Commissioners appoints a qualified person until the water district board has two members; the two members of the water district board appoint a third person to fill out the water district board.

As a result of recent resignations of the three Admiral's Cove Water District Commissioners, there have been some news articles about the District, and Chairman Shelton has had conversations with various interested individuals seeking to serve as Commissioners of the District. Three individuals have come forward indicating a desire to be appointed and letters of interest have been submitted by: Lana Wallace, Kenneth Newsham, and Sid Iverson.

The three individuals were present in the audience, and each provided a brief statement:

Lana Wallace, 1302 S. King Drive, a resident of Admiral's Cove for three years, felt she could bring people in the District together during information and planning stages of the project facing Admiral's Cove. She has had much experience in bringing people together and ironing out problems. She is a candidate for the position and did win the primary election September 14, 1999, Position #3.

Kenneth Newsham, 1316 S. Farragut Drive, a 21 year resident of Admiral's Cove, and a

previous water commissioner in the past for the Admiral's Cove Water District, witnessed the District start from zero and built up to what it is today. He is anxious to heal some of the wounds within the district. He has knowledge and history of the water system.

Sid Iverson, 1198 Halsey Drive, lived in his house in Admiral's Cove since January after 2-1/2 years getting it ready, but participated in the community for the past ten years. He would bring his strengths to the position from his experience working with community groups, especially volunteer groups, and dealing with administrative parts of converting a system in Bellevue from septic well system to a sewer-water district system. Communication and cooperation between the District and its members is critical.

By unanimous motion, the Board appointed Lana Wallace to Position #3, term ending 12/31/99 and Kenneth Newsham to Position #2 with term ending 12/31/2001.

STAFF SESSION SCHEDULE APPROVED FOR OCTOBER, 1999

The Board approved for distribution the Staff Session schedule for October, 1999, October 13 and 20, 1999. In this case, the regular first Wednesday staff session has been canceled due to other meeting conflicts, and rescheduled for Wednesday, October 13, 1999 at 9:00 a.m. [special session].

Hiring Requests & Personnel Actions

The following, after presentation and description provided by Dick Toft, Human Resources Director, approved the following personnel action authorizations:

PAA # Description/Position No. Action Effec. Date

101/99 Plans Ex./Bldg. Inspec. 402.03 Replacement 9-27-99

102/99 Truck Driver I 2242.11 Replacement 9-27-99

103/99 Jr. Civil Engr. I Temp-3 mo. New Position

HEARING HELD: ORDINANCE #C-107-99 (R-32-99) RENAMING BELLS

LANE TO WANAMAKER ROAD

A Public Hearing was held as advertised and scheduled at 2:15 p.m., on Ordinance # C-107-99 (R-32-99) renaming Bells Lane to Wanamaker Road, that portion of Wanamaker Road right of way West of Fort Casey Road, NW & NE 15-31N-1E. This is for the purpose of correcting an error in Ordinance #C-72-98/R-22-98 which incorrectly renamed unnamed Wanamaker Road right of way as Bells Lane.

No members of the public indicated a desire to speak either for or against the proposed Ordinance.

By unanimous motion, the Board approved Ordinance #C-107-99 (R-32-99) renaming Bells Lane to Wanamaker Road.

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

IN THE MATTER OF CORRECTING)

ERROR IN ROAD NAME FROM BELLS LN) **ORDINANCE NO. C-107-99**

TO WANAMAKER ROAD, S15-T31N-R1E) **R-32-99**

WHEREAS, the Board of County Commissioners adopted Ordinance No. C-32-96,

(Interim 9-1-1 Addressing Policy) which allows the County to address the renaming of roads to avoid confusion; and

WHEREAS, the Board of Island County Commissioners has been requested by I-COM to rename the road listed on Attachment "A"; and

WHEREAS, on July 6, 1999, by Ordinance C-72-98/R-22-98 road listed in Attachment "A" was named in error to Bells Lane, and this error needs to be corrected; and

WHEREAS, the renaming of said road as shown would not be duplicating existing road names in Island County as it would be an extension of an existing road by that name; NOW, THEREFORE,

BE IT HEREBY ORDAINED by the Board of County Commissioners of Island County, Washington:

1. That the County road listed on Attachment "A" shall be named/renamed effective 45 days from the date of passage.
2. Island County Public Works shall fabricate and install a road sign to be posted on the effective date.
3. I-COM shall notify, by mail, owners of property abutting on the road of the public hearing date, and the name change, address number change, if any, and the effective date of this ordinance.
4. I-COM shall also notify appropriate agencies of the road/street name change, the effective date, and shall notify appropriate County departments so that County maps will show the changes.

REVIEWED this 13th day of September, 1999, and set for public hearing on the 27th day of September, 1999, at 2:15 P.M.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

Attest: Margaret Rosenkranz, Clerk of the Board BICC 99-502

ADOPTED this 27th day of September, 1999, after public hearing.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

Attest: Margaret Rosenkranz,

Clerk of the Board

ATTACHMENT "A"

<u>Existing Name</u>	<u>Road Log No. Mile Post</u>	<u>Description of Road Section</u>	<u>Proposed Name</u>
Bells Lane	RL #94460	Portion west of Fort Casey Rd. (NW & NE 15-31-1E)	Wanamaker Road (Corrects error in Ord. C-72-98/ R-22-98 naming this road Bells Lane)

CONTRACT WITH YALE ELECTRIC APPROVED

As presented with approval recommended by Larry Kwarsick, Public Works Director, discussed previously at staff session, the Board by unanimous motion, approved a Contract with Yale Electric under Work Order #287 to do the electrical work and hookup of an emergency generator to be located at the County's Bayview Road Shop.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION: TURNBACK AGREEMENT; RESOLUTION #C-115-99 [R-41-99]; AND QUITCLAIM DEED

Associated with the upcoming DOT improvements on SR 525 in the Freeland area, Mr. Kwarsick presented for Board action, a standard turn back agreement, #TB 1-0130, SR 525 – Intersections Fish Rd, E. Main Street, Freeland Avenue, Woodard Avenue, Cameron Road, Honeymoon Bay Road, and Bush Point Road; along with a Resolution to authorize the approval of a County Quitclaim Deed to WSDOT per the Turnback Agreement, and the actual approval of the Quitclaim Deed to WSDOT for above noted right of way. On conclusion of the project as is customary, the State will re-convey excess right of way back to the County.

By unanimous motion, the Board approved Turnback Agreement #TB 1-0130; approved Resolution #C-115-99 (R41-99) Approving County Road Quitclaim Deed to WSDOT per the Turnback Agreement, and approved and signed the actual Quitclaim Deed to WSDOT for above noted right of way.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF APPROVING)

COUNTY ROAD QUITCLAIM DEED TO)

WSDOT TO COMPLY WITH HIGHWAY) RESOLUTION NO. C-115-99

PROJECT AND BENEFITS DERIVED BY) R-41-99

TRANSFER FOR WIDENING AND)

CONSTRUCTION OF ADMIRAL DRIVE)

WHEREAS, the Washington State Department of Transportation (WSDOT) has been coordinating with Island County for/in the widening of SR 525 with various improvements thereto, all for the benefit of the motoring public, and in particular for the residents of Island County; AND, a Quitclaim Deed to WSDOT is required to clear title to portions of Honeymoon Bay Road, Bush Point Road, Cameron Road, Fish Road, East Main Street, Freeland Avenue, and Woodard Avenue located within the highway project limits of SR 525, Fish Road Vicinity, SR 525, Freeland Ave. to Cameron Rd. and SR 525, Cameron Rd. to Mutiny Bay Rd. Vic.; with a portions of said streets and avenues to be turned backed by WSDOT to said Island County after completion of said project.

WHEREAS, Island County holds title to those portions of said streets and avenues needed by WSDOT and to be transferred to WSDOT for the widening and construction of said highway project. And, after construction, WSDOT will be responsible for any and all maintenance of said portion needed for the project. NOW THEREFORE,

BE IT HEREBY RESOLVED that the Quitclaim Deed for transfer of a portion of said streets and avenues is approved and that the undersigned County Commissioners are authorized to sign, have notarized, and return said Quitclaim Deed to WSDOT, together with a signed copy of this Resolution.

ADOPTED this 27th day of September, 1999.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

By: Mike Shelton, Chairman

By: Wm. L. McDowell, Member

By: William F. Thorn, Member

ATTEST: Margaret Rosenkranz,

Clerk of the Board

BICC 99-539

Resolution #C-116-99 (R-42-99) – Initiating CRP 99-01, W.O. 103,

Wilkinson Road Closure

The Board, by unanimous motion approved Resolution #C-116-99 (R-42-99) to initiate County Road Project #99-01, under Work Order #103, Wilkinson Road Closure. The total appropriation is \$62,000 and is included in the officially adopted annual road program as Item #13. This is a FEMA funded project.

Resolution #C-117-99 (R-43-99) – Approving PLANS & SPECIFICATIONS & AUTHORIZING call for bids for Wilkinson Road Closure project

By unanimous motion, the Board approved Resolution #C-117-99 [R-43-99] approving plans and specifications authorizing call for bids for Wilkinson Road Closure project with bid opening October 27, 1999 at 1:00 p.m.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF APPROVING PLANS &)

SPECIFICATIONS AND AUTHORIZING) RESOLUTION NO. **C-117-99**

CALL FOR BIDS FOR WILKINSON ROAD) **R-43-99**

CLOSURE CONSTRUCTION, CRP 99-01,)

WORK ORDER NO. 103)

WHEREAS, sufficient funds are available in the Island County Road Fund for construction of Wilkinson Road Closure; NOW THEREFORE,

BE IT HEREBY RESOLVED that the Plans and Specifications are approved and the County Engineer is authorized and directed to call for bids for furnishing said construction. **Bid Opening is to be the 27th day of October, 1999 at 1:00 P.M. in**

Meeting Room 2, Courthouse Annex, Coupeville.

ADOPTED this 27th day of September, 1999.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

ATTEST:

Margaret Rosenkranz,

Clerk of the Board

BICC 99-542

Amendment No. 1 to Agreement PW-972050 – Bryan G. Young, Architects & Planners-Courthouse Expansion AND Improvement Project

Mr. Kwarsick next presented Amendment No. 1 to Agreement PW-972050 with Bryan G. Young; Architects & Planners, an amendment to the contract amounts that are part and parcel to the original contract in that the original contract contains escalators based on CPI Seattle index.

The Board, on unanimous motion, approved Amendment No. 1 to Agreement PW-972050 with Bryan G. Young; Architects & Planners as presented.

Decision – Appeal of Denial of BLA #264/99 – Gary & Ruth Lewis

The Board of Island County Commissioners held a Public Hearing on September 13, 1999 for the purpose of conducting an open record appeal hearing on the denial of Boundary Line Adjustment BLA#264/99. As indicated on September 13, 1999, according to the procedure to hear appeals, each Commissioner was to provide at public meeting this date, a statement as to the basis for having reached their individual decision on the appeal.

Commissioner District # 3, William F. Thorn: Statement of Decision

BACKGROUND

The staff denial of BLA 264/99 has been appealed by Mr. T. J. Roehl of T. J. Roehl & Associates. Mr. Roehl is acting on behalf of Gary and Ruth Lewis, the Applicants/Owners of the property under consideration. The

appeal was based on two points, namely:

1. The basis of denial is contrary to ICC 17.03.060C5, and
2. The process of appeal of the denial presented to the applicant is contrary to ICC 16.19.040A1.

The second point of the appeal is correct, however, it is now moot since the matter is being heard before the Island County Board of Commissioners.

In regard to the first point, the denial is based on failure to meet the criteria for approval of Boundary Line Adjustments contained in ICC 16.06.070A3 and A8 and that the relief afforded by ICC 17.03.060C5 is not applicable.

The aforementioned subsection A3 states that:

"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".

The aforementioned subsection A8 states, in part,:

"Adjustment among existing Lots. For adjustments among two (2) or more Lots in which one (1) or more of the Lots involved in the adjustment is smaller than the current zoning classification, the adjustment would allow a Lot to more nearly conform to the Lot size or setback requirements of Chapter 17.03 ICC or create more buildable Lot configurations. -----"

ICC 17.03.060C5 states:

"For Lots legally created prior to or after effective date of this Chapter, variations of ten (10) percent in the five (5) acre Lot size may be allowed to account for special site features, unusual topography or similar factors that make strict adherence to the minimum lot size impractical".

In response to a Growth Management Hearings Board decision, the Board of Island County Commissioners passed an interim amendment to the County's Zoning Ordinance on July 12, 1999 increasing the minimum lot size in the Rural zone from 5 acres to 10 acres. Island County staff reviewed the proposal, accepted as complete on July 17, 1999, and issued their determination that a non-conforming lot would be created. This decision is dated July 30, 1999. A Directors clarification dated July 19, 1999 states that when lots involved in a Boundary Line Adjustment are all conforming prior to the adjustment, no lot can be made non-conforming through the adjustment.

The present size of the smaller lot in the application is 5.63 acres and is proposed to be reduced to 4.72 acres through the adjustment. Thus this lot, under the interim ordinance, is initially non-conforming and would be made more so by the adjustment if approved.

DECISION

The denial of the appeal is upheld.

1. The proposed adjustment does create a lot of insufficient dimension to meet the minimum Lot size required in the Zone in which the lots are located. The zoning is Rural with a minimum ten (10) acre Lot size.
2. The proposed adjustment does not create a more conforming or more buildable lot. On the contrary, the proposed adjustment creates a more non-conforming lot from an existing non-conforming lot. If viewed under the ICC prior to the July 12 amendment, the lot would have been initially conforming and made non-conforming by the proposed adjustment.
3. The relief afforded by ICC 17.03.060C5 is not restricted to subdivisions and could be applied if the applicant cited special site features, unusual topography or similar factors that would make the strict adherence to the minimum lot size impractical. The applicant has failed to do so.

WILLIAM F. THORN,
MEMBER

BOARD OF ISLAND
COUNTY
COMMISSIONERS

DATE: Sept. 27, 1999

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Commissioner District #2, Wm. L. McDowell Statement of Decision

Gary and Ruth Lewis (Appellant) through their agent Thomas J. Roehl filed an appeal of the denial of Boundary Line Adjustment BLA#264/99 by the Community Development Division denying a boundary line adjustment of two parcels R32934 -139-1980 and R 32934 -098-2010. The proposed BLA would result in two lots, one being 5.63 acres the other being 20.02 acres. The existing lots are 4.72 acres and 19.13 acres respectfully. The Board of Island County Commissioners (BOICC) held a Public Hearing on September 13, 1999 for the purpose of conducting an open record appeal hearing on the denial of Boundary Line Adjustment BLA#264/99.

The following two Island County Codes (ICC) are of particular interest in this appeal.

ICC 17.03.060 Rural (R) Zone C. Lot/Density #5.

ICC 16.06.070 Boundary Line Adjustments A. Criteria for Approval of a Boundary Line Adjustment, # 2., 3., and 4.

That which is before the Board is "Was the denial of BLA #264/99 correct and in accordance with Island County Code?" To answer the question one needs to determine if ICC 17.03.060 C. #5 is applicable to BLA 264/99 and if it is do the lots fall within the 10% size reductions requirements and do they meet the test for special factors requirements mentioned in ICC 17.03.060 C. 5.

ICC 16.06.070 A. 1., 2., and 3. all refer to Lots created by BLAs. Therefore by code parcels are created by BLAs. ICC 17.03.060 C. #'s 2, 3, and/or 4 specifically refer to Subdivisions, Short Subdivisions and/or PRDs. ICC 17.03.060 C. #5 is silent to applying to specific types of actions that create Lots. Therefore ICC 17.03.060 C.5. is applicable to all actions that create Lots including Unregulated Land Divisions, Long Subdivisions, Short Subdivisions, PRDs and BLAs.

The BOICC determines ICC 17.03.060 C. 5. is interpreted: for a sub division the 10 % rule (for discussion purposes the Rural Zone is a minimum 5 Acre lot Zone) allows for example a 10 Acre Lot or a Lot 10% smaller in area (9 Acres) to be sub divided into 2 lots. The BOICC determines for all Unregulated Subdivisions, Long Subdivisions, Short Subdivisions, PRDs, or BLAs either one, some, or all lots created may be 10% smaller than the minimum lot size of the Zone if there exist factors that make strict adherence to minimum lot size impractical. The BOICC also determines that the factors that make strict adherence to minimum lot size impractical are those factors that are determined by the applicant. The code gives general but no specific requirements for the factors. The code states that the factors only need be ones that make strict adherence impractical. Only the applicant is in a position to determine impracticability.

For BLA #264/99 the parcels to be created would be created after the effective date of Chapter 17 as required by ICC 17.03.060 #5. For BLA #264/99 the Base Density at the time of submission was 5 Acres. Therefore the 4.72 Acre Lot to be created is larger than the minimum size of 4.5 Acres allowed under the 10% reduction rule found in ICC 17.03.060 C. 5. The applicant stated a factor that in the applicant's opinion made strict adherence to Base Density impractical.

The BOICC finds the denial of BLA 264/99 was in error and directs the Community Development Division to provide Findings of Fact and Conclusions of Law implementing the determinations and decisions made by this appeal ruling. The BOICC also directs the Community Development Division to approve BLA #264/99.

Wm. L. McDowell

Island County Commissioner

September 26, 1999

Commissioner District #1, Mike Shelton: Statement of Concurrence

Commissioner Shelton provided his statement verbally. He recalled that the question debated between staff and appellant was lot creations and whether lots could be created under the boundary line adjustment process. That was a matter which in some ways was poorly defined in the Code because lots are created under the boundary line adjustment process. Mr. Kwarsick stated in one of the submittals that parcels are not created through the boundary line adjustment process, but he thought what Mr. Kwarsick was saying was if you have two parcels you cannot use the BLA process to create three parcels; however, you can use the BLA process to create parcels. One of the things he did was to ask the appropriate folks what happens to the new parcels after the BLA process occurs and the answer was that there are new parcel numbers issued for the adjusted parcels, so in fact parcels are created through the BLA process. Therefore, the question comes down to the 10% rule and whether it applies to parcels created through the BLA process. It was brought out in the testimony on the appeal that this was a short section and the Chairman knew historically the County had used short sections as a reason to invoke the 10% rule, and it seemed appropriate in this case to do so, which would allow the new parcel which was 4.72 acres, within 10% of the 5 acre parcel that was at the time of submittal the parcel size in the Rural zone. Even though the reasoning he used to reach his decision may have been different than Commissioner McDowell's, he reached the same conclusion as Commissioner McDowell and stated he would vote to uphold the appeal and ask staff to make the necessary corrections. He signed in concurrence with Commissioner McDowell's statement.

Commissioner McDowell moved that the Board approve his Statement of Decision finding the denial of BLA 264/99 in error, and directing Larry Kwarsick, Public Works/Community Development Director, prepare Findings of Fact and Conclusions of Law implementing the determination and decision made by this appeal ruling, and approve BLA #264/99. Motion, seconded by Commissioner Shelton, carried by majority vote; Commissioner Thorn voting in opposition.

HEARING SCHEDULED: ORDINANCE #C-118-99 [PLG-001-99]

On presentation by Vince Moore, Planning Director, and Phil Bakke, Comprehensive Plan Manager, the Board by unanimous motion scheduled Ordinance #C-118-99 [PLG-001-99] in the matter of amending chapter 17.03 Island County Code regarding Communication Towers, for public hearing on December 6, 1999, at 7:00 p.m., Special Session, Terry's Corner Fire Station, Camano Island; and on December 13, 1999 at 1:30 p.m., Island County Courthouse, Coupeville. [GMA doc. # 4858]

Mr. Bakke explained that the 60 day time period required prior to public hearing, was a requirement under the State Growth Management Act to allow state agencies and interested parties to comment prior to legislative action.

HEARING HELD: ORDINANCE #C-105-99 PLG-034-99- Planning Commission recommendation regarding Agricultural Lands of Long Term Commercial Significance

At 3:00 p.m. as scheduled and advertised, the Board opened a Public Hearing on Ordinance #C-105-99, PLG-034-99, continued from 9/13/99 & 9/20/99, to consider the recommendation of the Island County Planning Commission regarding Agricultural Lands of Long Term Commercial Significance.

As explained at the Special Session held on Camano Island September 20th, Ordinance #C-105-99 was presented to amend chapter 17.03 ICC to comply with the order of the Western Washington Growth Management Hearings Board Relating to the Rural Agriculture and Commercial Agriculture Zone. Amendments proposed respond to public testimony received at the joint Planning Commission and Board of County Commissioners September 13, 1999, public hearing on this matter, continued to September 20, 1999. The proposed amendments were e-mailed to AG Remand Committee members September 16, 1999; and mailed by regular mail to those who testified at the public hearing on September 13, 1999. The public will be invited to testify on the proposed amendments.

Hearing Attendance

Staff/Consultant: Keith Dearborn; Phil Bakke

Public: Robert Whitlow; Fred Frei, Jr.; Fred Frei, Sr.; Jeanne Hunsinger;

Dick Fakkema; John Graham [Attendance List GMA doc. #4861]

Mr.. Dearborn recalled that the Planning Commission deliberated at public meeting on September 14th, after the joint public hearing on September 13th. The meeting on September 14th was well attended and opportunities were provided for the public to respond to specific questions of the Planning Commission. Most who attended the Planning Commission meeting also attended the hearing on the 13th. The Planning Commission recommendation to the Board came under cover memo from Sheilah Crider, Chair, Island County Planning Commission, with amendments attached in response to public testimony [entered from the Special Session on Camano Island 9-20-99]

Today, the Board received an Amendment package representing the Planning Commission's recommended modification to the ordinance, broken into five amendments:[GMA doc. #4863]. Each amendment was prepared such as to have an amendment cover sheet, numbered, then with an explanation why the change has been suggested, and the text attachment shows in bold suggested revision to the ordinance.

Amendment #1 – Comprehensive Plan Amendments.

Exhibit A, page A-1, middle 2nd paragraph beginning with the word "although". The Planning Commission suggested the revision proposed [shown in bold] which responds fully to the concern raised in public testimony. The sentence would read after amendment: "The County encourages such micro-farming activities, therefore new entrants may select from the full range of rural parcels within the county, not simply from parcels currently in use for micro-farming". The old sentence pre-dates the revisions recommended by the AG Remand Committee, and the Committee recommended broadening the focus of agriculture in the County commercial agriculture to smaller parcels. This revision more accurately reflects intent.

Exhibit A, Page A-5. During the September 13th Public Hearing testimony indicated that there is a difference between a drainage district and a diking district and the proposed amendment would change that to drainage or diking districts to reflect there are two different types of entities in the county. Testimony was also received about properties that were protected by dikes but not within a district, privately maintained dikes, and this amendment would treat those properties the same as if in a district if they had that protection.

Exhibit A, Page A-6. Language shown in bold in B was proposed to be deleted and on questioning by the Coalition, Mr. Dearborn believed he had recommended the deletion in error. The language in bold restores the language there today and removing the deletion.

Amendment #2 – Zoning Code Amendments.

After listening to public testimony the Planning Commission decided that a certain type of recreational activity, labeled "recreational aerial activity" is a compatible use on farm land and with recommended conditions limiting its use, suggest it be an added use either conditional or in some cases classified as a temporary use. The Planning Commission recommends it also be a use in the Rural Forest category; however, that is not within the scope of this Ordinance.

B-2 - where an "X" has been placed in the Rural Forest column as conditional, must be deleted at this time.

B-6 - includes recreational aerial activities as a conditional use in the Rural AG zone.

B-9 - verification process suggested to be available for the Rural AG land owner as well as the Commercial AG land owner. Additionally, Mr. Dearborn suggested two changes:

1. Correction of a typo identified by John Graham and Dave Jamieson: where the last line refers to subsection D, it should be corrected to read subsection C
2. The first sentence the word "may" probably should more appropriately be "shall". Intent, Mr. Dearborn believes is that the

County shall do the reclassification to the rural zone if the farmer demonstrates what is required in this section.

B-11 - adds Recreational Aerial Activities to the Commercial AG zone.

B-12 and B-13 - reflect the same change in the Zoning Code as discussed for the Comp Plan

in Amendment #1, the drainage or diking district and lands otherwise protected by dikes.

B-14. The Planning Commission, after discussion of the subject and after comment from Tom Roehl that the opt out phraseology probably is now inappropriate, recommended that opt out

language wherever it occurs be replaced with different language. This is another section where that says "may" be converted to RA, and Mr. Dearborn suggested the Board may want to change that to "shall be converted".

B-17 (H) - a technical change, instead of "Farm/Forest Management Plan" it read: "Farm or Forest Management Plan" reflecting the fact that there are two types of plans.

B-19 Recreation Aerial activities are recommended, such as balloon rides, glider and parachute events in item "f" listed as a type of small scale recreation tourist use.

B-20 #7 – a new set of land use conditions for approval of that kind of use proposed at the top of the page. At the bottom of the page the recommendation from the Planning Commission is to list these activities in the temporary use category as well.

B-21 The Planning Commission recommends that traffic control issues be circulated as part of an application not only to the Sheriff's Department but to the State Patrol and WDOT as well.

Amendment #3 – Proposed Findings.

Findings were available in draft form for review at the September 13th hearing. The Planning Commission reviewed the Findings and made editing changes recommended now as the findings in support of action. Finding 147 used to end with the sentence "incorporated in ordinance C-105-99". Commissioner Thorn at public hearing identified three other changes that needed to be made: (1) conservation easement is in perpetuity; (2) percent increase conservation easement is 85%; and (3) additional limits created on the use of EDUs. The Planning Commission added each of those points, and added Finding #149 which was prepared based up the recommendation.

Amendment #4 Proposed Amendment from the Planning Commission.

Mrs. Crider referenced in her memorandum dated 9/14/99. Because it was not in response to public testimony but was recommended the Planning Commission felt was appropriate after considering the matter of the ordinance further, proposed as a separate amendment. If for some reason, for example 15 years' from now, some future Board decides to terminate the EDU program or some government agency takes an action that renders EDUs unusable in some way, the County would be required to undo this to the extent there are still unused and unusable EDUs. If a farmer has used part of the EDUs, created development units or converted them to non residential uses and utilized them, that farmer would have no right to removal of a conservation easement for those. However, if there are unused EDUs, the property owner basically would be returned to the condition they were in before the EDUs were issued.

Amendment #5 – Staff proposed amendment.

Adds a second sentence to Finding #146, a statistical sentence describing what has been done in the way of changes to the Rural AG zone to compliment what is used for statistics for the Commercial AG zone.

Change to Cover Ordinance #C-105-99.

Change suggested to cover Ordinance #C-105-99 a technical change, first paragraph on Page 2, the second sentence beginning "These amendments shall not take effect" is not technically correct. The portion of the ordinance that is directed at removing invalidity is the portion that addresses the rural agricultural zone. Mr. Dearborn recommended that after the words "These amendments" adding the following: "that pertain to the rural agriculture zone". The sentence would read: *These amendments that pertain to the rural agriculture zone shall not take effect until the Western Washington Growth Management Hearings Board determines that they do not substantially interfere with the goals of the GMA.*

Public Comments

John Graham, Citizens Growth Management Coalition, remembered that the AG Remand Committee reached a fine balance on the document before the Board. The Coalition supports that fine balance, and explained "fine" meant that any one card pulled out could ruin the whole thing. The amendments by the Planning Commission do not do that, and he agreed in many cases added to and strengthen the balance; he was in favor of them and urged the Board pass the amendments.

He referred to an e-mail sent to the Board from WEAN this date [4862] reminded that the Coalition is a Coalition and WEAN is a member of that Coalition, one of seven parties in the Coalition, and is a minority view. The Coalition agrees to the consensus of the AG Remand Committee. The ability of a land owner to be moved out of CA status because he cannot farm the land according to wetlands regulations, seems to the Coalition then and now, a good idea. Adding RA land to that is not a deal breaker for the Coalition, and the more Mr. Graham looked at it, agreed it was simply logic and just plain fair. Again, he indicated that the WEAN submission was not a Coalition submission. He did say, however, that many points in the WEAN message were valid, but in another arena, i.e. Critical Areas. The first point WEAN makes, that of building and enlarging roads to get to buildable sites, the Coalition and WEAN both feel strongly about and urge the Board look closely at those views as decisions are made on critical area regulations. The WEAN submission also talks about the functional isolated issue, another issue where the Coalition and WEAN agree and urge the Board look sharply at . WEAN notes that there could be some RA parcels that become R parcels but with wetlands, and that that's a problem; the Coalition believes that is a problem, but is no different than the existing problem of rural parcels with wetlands on them – CAR's must adequately protect those wetlands whether in R, RA, CA or wherever. The Coalition looks forward with anticipation to the BMP Manual and to decisions taken by the Board over the next month or so on critical area regulations and hope for flexibility.

Mr. Graham stated that if the Coalition agrees with the Planning Commission recommendation that a farmer in RA status can now opt out if he cannot farm the land because of critical area regulations, removes the last remaining justification for AG exemption for RA land [exemption from critical area regulation].

Going back to the AG process, Mr. Graham stated his agreement with Tom Roehl that it was a good process used from beginning to end in achieving this result and submitted it was not too late to see this as a precedent for the rural densities issue. For the AG Committee, from the very beginning the majority felt that it made no sense spending a lot of time trying to come up with a solution the Growth Board would reject. The Rural Densities Committee, on the other hand, spent most of its time trying to create a record there was no need for further down zoning when in his opinion it was abundantly clear the Growth Board ruling that some further down zoning was required. The AG committee had agreement that some pain was going to be inflicted and to grin and bear it; but he did not think on the Rural Densities Committee anybody quite got to that point. The Coalition made several attempts to try to achieve consensus. The attempt that came the closest concerned critical areas, proposing 1 in 10 zoning in or near streams and wetlands; in return for that, withdrawal of insisting on 1 in 10 zoning in or near resource lands, and suggested that the RF question be thrown in the hopper – i.e. with RF land leave it at 20 acres with no opt out, but with an EDU program parallel to that in CA land. The Coalition also offered a program called Rural EDUs.

There were no other members of the public who spoke for or against the proposal.

BOARD DELIBERATION/ACTION

For consistency, Commissioner McDowell noted that Amendment # 3, Finding #145, the term

"opt out" should be changed.

Consensus: in the second sentence strike the words "opt out"; in the last sentence the words "opt out" be replaced with "be removed from".

Commissioner McDowell discussed further recreational aerial activities and whether or not the proposal properly covered temporary use for such activities for a season and not just for 30 days.

Mr. Dearborn referred to page B-20 of Amendment No. 2 under Temporary Uses that adds glider flights, hot air balloon rides, and parachute events under that section. As written, use would be confined to dates specified, as well as hours and duration, in the temporary use permit. The 30 day provision refers to the time within which, after the event has occurred, all debris and temporary structures are to be cleared from the site. The period of time for the activity is something subject to negotiation or request. The second page of the cover sheet to Amendment #2, Item #10, differentiates the temporary use from the conditional use in terms of staff intent. Typographical error to be corrected in item #10: "ari" should correctly read "air". It may be that a

temporary event will occur more than once in a season, but not every weekend for the whole summer. There would probably be increased concern on the part of staff depending on how much traffic would be generated, requirement for porta-potties, etc. For trial purposes to test such an event, it is recognized that that trial period may have to be done more than one weekend. This is not, however, intended to allow someone to create an airport on their property to carry on recreational aerial activities.

Commissioner McDowell wanted to make sure, as was brought up in testimony at the hearing held on Camano, that where a farmer has a cleared area adjacent to the road, that he could still carry on those farm activities and use that area for a glider take off location if using some type of mechanical means to shoot into the air.

In this case, Mr. Dearborn referred to B-20, #7C: lands cannot be removed from agricultural production or substantially interfere directly or indirectly with continued agricultural use of the parcel. Therefore, it would seem there would be a number of ways for the farmer to carry out the activities without doing either of those. He recalled that Linn Emrich was asked questions about that issue by members of the Planning Commission and responded that after he cuts his field he would use it for landing and take-off; and also has an access road he would be using for landing and take-off, and would not be using the field when in crops.

Proposed Amendment 4, item #10, Commissioner McDowell mentioned the question comes of process--how to determine which portion is to come out – his opinion is that it would be the

farmer's decision.

Mr. Dearborn presumed that would be the case, and could not conceive of a circumstance where the County would care what portion. There has to be some determination made as to the extent of the area and then the specific area itself.

Consensus: add at the end of the sentence "with the specific location of the proportioned area to be reconveyed determined by the property owner".

Commissioner McDowell commented on Amendment #2, B-9 item G, and B-14 item H; he supported the word "shall" in place of "may".

Additional Public Comment:

John Graham questioned the reason for "shall" instead of "may" on Amendment No. 2, B-9 item G, and B-14 item H; in this case "may" seemed more appropriate.

Commissioner Thorn thought that would be conditioned by the words "if the parcel is not farmable".

With regard to proposed Amendment 4, #10, the proposal to add at the end of the sentence "with the specific location of the proportioned area to be reconveyed determined by the property owner", Mr. Graham agreed with intent but wanted to make sure that the prime soils stay in conservation status if possible.

Responding to Mr. Graham's comment, Mr. Dearborn suggested the Board might want to consider adding a separate sentence to read: "Provided, to the extent feasible, prime soils shall be retained in the conservation easement."

Commissioner Thorn tended to agree with the added language. However, Chairman Shelton was concerned about adding that language, thinking no one would know what that meant at the end of the day, and who would determine "to the extent possible"? He preferred leaving that language out, and thought the farmer would preserve prime soils, specifically because the farmer's livelihood is dependent upon that, not because words are written in a code.

Another thing Mr. Dearborn pointed out was that it may be the productive portion of the farmer's property is not prime soils; there may be a portion specially cultivated and developed over time that does not show up as prime soils.

Commissioner McDowell suggested not adding that language.

Mr. Dearborn's concern had been about making an absolute statement because there may be an exception to the rule there where prime soils may not be the most valuable portion of the farm.

BOARD ACTION

Commissioner Thorn moved approval of Ordinance #C-105-99, PLG-034-99 in the matter of amending chapter 17.03 ICC to comply with the order of the Western Washington Growth Management Hearings Board relating to the rural Agriculture and

Commercial Agriculture zones, with amendments described as follows:

Cover Ordinance, the first paragraph on Page 2, beginning "Be it Further Ordained" change the second sentence to read: "These amendments that pertain to the rural

agriculture zone shall not take effect until the Western Washington Growth Management Hearings Board determines that they do not substantially interfere with

the goals of the GMA."

Amendment No. 1. Approved in its entirety without changes;

Amendment No. 2. Approved with the following changes:

Exhibit B-2 - rural forest section, delete the "X" mark opposite recreational aerial activities

Exhibit B-9 - Item G, the first sentence to read: "Parcels classified RA shall be converted" [instead of may be converted]; and at the end of Item G change subsection D to subsection C.

Exhibit B-14 – Item H, the first sentence to read "Parcels classified CA shall be converted to RA [instead of may be converted]; at the bottom of the section [last paragraph on the page] "to Opt out of" is crossed out so that the sentence reads: "For one hundred eighty (180) days after the effective date of this amendment, if a property owner files a request for a technical amendment to be removed from the CA classification..."

The second page of the cover sheet to Amendment #2, Item #10, differentiates the temporary use from the conditional use in terms of staff intent. Typographical error to be corrected in item #10: "ari" should correctly read "air"

Amendment No. 3 Approved as written with the following change on Finding #145:

Second sentence, delete "opt out". The last sentence be changed to read: "Therefore, the Committee recommended that property with less than 50% prime soils and no water right also be allowed to be removed from the CA Zone."

Amendment No. 4 Approved, with a change to item 10 continuing the sentence to say:

"...with the specific location of the proportioned area to be reconveyed to be determined by the property owner."

Amendment No. 5 Approved, with the correction of the typo in Finding #146, a period

after the word previously in the next to the last line ["2545 acres starts a new sentence].

Commissioner McDowell seconded the motion, and motion carried unanimously. [Ordinance #C-105-99, as Amended, GMA doc. #4857].

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

<p>IN THE MATTER OF AMENDING CHAPTER 17.03 ICC TO COMPLY WITH THE ORDER OF THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD RELATING TO THE RURAL AGRICULTURE AND COMMERCIAL AGRICULTURE ZONES</p>	<p>)) ORDINANCE C-105-99) PLG-034-99)))</p>
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WHEREAS, various parties filed petitions with the Western Washington Growth Management Hearings Board ("Board") to review Island County's adopted GMA Comprehensive Plan ("Comp Plan") and Development Regulations; and

WHEREAS, the Board entered its Final Decision and Order on June 2, 1999; and

WHEREAS, the Board found certain provisions of the Rural Agriculture Zone invalid and therefore replacement regulations are needed to govern land use in the Rural Agriculture Zone; and

WHEREAS, the Board directed the County to reconsider the designation of agricultural lands of long-term commercial significance avoiding the use of inappropriate and exclusionary criteria; and

WHEREAS, the Board directed the County to reconsider the provisions of the Earned Development Units (EDU) section which allows designated agricultural lands to be used as receiving properties and which fail to severely limit the amount of development that can occur on these lands; and

WHEREAS, in 1998, the County completed environmental review under Chapter 43.21C RCW, SEPA, on its Comp Plan and Development Regulations including the Commercial and Rural Agriculture Zones as well as the EDU Program; and

WHEREAS, pursuant to WAC 197-11-600, the County SEPA official has determined that the proposed changes to the Comp Plan, Chapter 17.03 ICC to comply with the Order of the Growth Board, relating to Rural Agriculture, Commercial Agriculture and the EDU Program are not likely to have significant adverse environmental impacts that were not considered in the environmental documents prepared for the Comp Plan and Development Regulations.

NOW, THEREFORE,

BE IT HEREBY ORDAINED, in order to comply with the June 2, 1999 Final Decision and Order of the Western Washington Growth Management Hearings Board, the Board of Island County Commissioners hereby adopts the amendments to the Island County Comp Plan (Exhibit A); the Zoning Code, Chapter 17.03 ICC (Exhibit B); Zoning Atlas (Exhibit C); and Findings and Legislative Intent (Exhibit D) all attached hereto, relating to Lands classified Rural Agriculture and Commercial Agriculture. Material stricken through is deleted and material underlined is added.

BE IT FURTHER ORDAINED, that the amendments to the Rural Agriculture Zone replace the interim regulations contained in Ordinance C-76-99 and Ordinance C-76-99 is hereby repealed. These amendments that pertain to the Rural Agriculture zone shall not take effect until the Western Washington Growth Management Hearings Board determines that they do not substantially interfere with the goals of the GMA.

BE IT FURTHER ORDAINED, that the Board of Island County Commissioners hereby designates pursuant to RCW 36.70A.170 those lands included in the Commercial Agriculture Zone as agricultural lands of long term commercial significance. Further, Chapter 16.25, Chapter 17.03 ICC, and the Zoning Atlas are hereby adopted as GMA development regulations pursuant to RCW 36.70A.060.

Reviewed this 27th day of August, 1999 and set for public hearing at 1:30 p.m. on the 13th day of September, 1999. Hearing held and continued to September 20, 1999. Hearing held and continued to September 27, 1999.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

ATTEST: By Ellen K. Meyer, Deputy

Margaret Rosenkranz, Clerk of the Board

BICC 99-493

APPROVED AND ADOPTED this 27th day of September, 1999.

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

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

ATTEST: Margaret Rosenkranz

Clerk of the Board

APPROVED AS TO FORM:

David L. Jamieson, Jr. Sept. 10, 1999

Deputy Prosecuting Attorney

& Island County Code Reviser (attached pages approved as to form initialed "DJ")

[Secretary's note: exhibits as referenced, and amended 9/27/99, are attached to Ordinance #C-105-99 on file with the Clerk of the Board]

HEARING HELD: Ordinance #C-98-99, PLG-025-99, continued from 8/23/99 & 9/13/99 Amending Chapter 17.03 ICC regarding the Rural Forest and Commercial Agriculture Zones

A Public Hearing was held as scheduled and advertised, for the purpose of considering Ordinance #C-98-99, PLG-025-99, Amending Chapter 17.03 ICC regarding the Rural Forest and Commercial Agriculture Zones continued from 8/23/99 and 9/13/99. At the September 13th hearing, the Board continued the Public Hearing until this date and time, to allow Larry Kwarsick to provide in writing his opinion on a proposed change to make sure there are no unintended consequences.

Attendance:

Consultant/Staff: Keith Dearborn; Phil Bakke

Public: Six present [Attendance List-GMA doc. 4861]

As far as the Board was aware, it was a matter still unresolved. There was an e-mail from Mr. Kwarsick dated 9-16-99:

"I have been asked to comment on a proposed amendment to the following language which I believe adds the word 'existing' but don't know the insertion point or whether the word existing is proposed to be capitalized. Please advise.

IN THE MATTER OF AMENDING)

CHAPTER 17.03 ICC REGARDING THE)

RURAL FOREST AND COMMERCIAL) ORDINANCE C- -99

AGRICULTURE ZONES) PLG-025-99

1. The Lot size limitations set forth above shall not apply when the new Lot is proposed to be modified through a boundary line adjustment pursuant to Chapter 16.06 ICC."

Mr. Dearborn confirmed he had shown Mr. Kwarsick the insertion point of the word a week ago, but since then had had no

response.

PUBLIC INPUT

John Graham, Citizens Growth Management Coalition, referred to his letter of August 19, 1999 to Mr. Dearborn on this subject [also having addressed PLG-015-99]. Whatever decision reached here for consistency's sake he thought also had to be applied to PLG-015-99 dealing with the same issue in another zone. He struggled with a second point reading it over and did not see a way to fix the ordinance and suggested the ideal solution would be to drop that paragraph. The concern is that in the extreme case these could be ratcheted up to gain new lots, and even including the phrase "between existing lots" did not satisfy that concern. If the paragraph is not dropped, he suggested it ready something like: between existing lots such adjustment not to be used in combination with unregulated subdivision of lots such that new lots are created.

Commissioner McDowell believed the sentence could be made clearer to explain that a person cannot have a second boundary line adjustment. Mr. Graham thought that would be appropriate, as long as something says this cannot be used as a mechanism for gaining more lots.

Mr. Dearborn pointed out that one concern to think about was that the provision as originally written was to allow a farmer or forester to do a short plat creating a lot that is less than 20 acres in size and then making a further modification of it by transferring it to an adjacent property owner through a boundary line adjustment. The thought was it would continue to be used for that purpose.

The Board agreed on intent there be a limited provision to allow a property owner once to use a boundary line adjustment; there is no piggy-backing.

Mr. Dearborn agreed to redraft #5 with (A) to retain the provision there now; and add (B) with the limitations described. His redraft will be reviewed with Larry Kwarsick prior to sending it out on e-mail to the Board and Mr. Graham.

By unanimous motion, the Board continued the public hearing until October 4, 1999 at 10:45 a.m.

EXECUTIVE SESSION

At 4:30 p.m. the Board met in Executive Session as allowed under RCW 42.30.110(1)(i) to discuss pending litigation with Special Legal Counsel. The Chairman anticipated that the session would last at least several hours, and did not expect an announcement to be made on conclusion of the Executive Session.

There being no further business to come before the Board , the meeting
adjourned at 7:30 p.m. on conclusion of the Executive Session.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

ATTEST: _____

Margaret Rosenkranz, Clerk of the Board