

**ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING**  
**REGULAR SESSION - NOVEMBER 27, 2000**

The Regular Meeting of the Board of Island County Commissioners was held on November 27, 2000, beginning at 11:00 a.m. with an executive session; 11:30 a.m. Roundtable with Elected Officials, followed by other meeting items as listed on the Agenda scheduled for 1:30 p.m., including Diking Improvement District #4. The meeting was held in the Island County Courthouse Annex, Hearing Room, Coupeville, Wa., with Wm. L. McDowell, Chairman; William F. Thorn, Member; and Mike Shelton, Member, present.

**EXECUTIVE SESSION**

The Board met in Executive Session beginning at 11:00 a.m. to meet with the County's legal counsel to discuss pending litigation, as allowed under R.C.W. 42.30.110 (1) (i). The meeting lasted approximately 25 minutes, with no announcement made on return to open public session at 11:30 a.m.

**ROUNDTABLE MEETING WITH ISLAND COUNTY ELECTED OFFICIALS**

**Attendance**

Elected Officials: Tom Baenen; Robert Bishop; Marilee Black; Mike Hawley; Suzanne Sinclair; Maxine Sauter

Others: Margaret Rosenkranz

**UPDATE: REVALUATION AND I-722**

Status report provided by Mr. Baenen regarding the effect of I-722 as relates to valuation. Some 20,000 valuation notices have been printed out of 60,000 to be mailed Thursday. The notices comply with I-722 and are consistent with Referendum 47. At this point, he understands that the challenge to I-722 scheduled to be heard tomorrow has been rescheduled for December 1<sup>st</sup>. According to the Department of Revenue, if by December 7<sup>th</sup> the Judge has not ruled counties must implement I-722. The total valuation \$7,676,134,539.00; with limited assessed valuation that figure would drop by \$500,000,000.00 in valuation because of the limit of 2%. New construction this year is \$150 million and by limiting that it would come out to about \$146 million. Senior citizen exemptions will be taxed one of three ways [whichever is the lesser amount]; qualifications relate to age and income.

**ELECTION UPDATE**

Ms. Sinclair indicated that there would be a machine re-count Wednesday for the U. S. Senate race and the Secretary of State race.

Roundtable adjourned 11:55 a.m. [because of December holidays, the next Roundtable will be held on January 22, 2001 at 11:30 a.m.]

**VOUCHERS AND PAYMENT OF BILLS**

The following vouchers/warrants were approved for payment by unanimous motion of the Board: **Voucher (War.) #**  
[\_\_\_\_\_]

**Veterans Assistance Fund:** [emergency financial assistance to certain eligible veterans; the names and specific circumstances are maintained confidential]. By unanimous motion, the Board approved Claim #V2K-18 in its entirety in the additional amount of \$264.20 for a total of \$3174.20 as recommended by the Veterans Assistance Review Committee [claim approved for payment previously \$2,910.00].

**STAFF SESSION SCHEDULE FOR DECEMBER, 2000**

The Board approved for distribution the Staff Session schedule for December, 2000, outlining agendas for regular sessions scheduled on December 6 and 20, 2000, beginning at 9:00 a.m.

**AMENDMENT 1-INTERLOCAL AGREEMENT WITH I-COM RM-BOCC-00-0067-1**

As a follow-on action to having approved a contract amendment to the contract between the County and the Washington State Military Department, EM-19041-A on 8/28/00, changing eligible item dollar amounts within various categories [total remains the same] the Board at this time by unanimous motion approved and signed Amendment #1 to Interlocal Agreement with I-COM mirroring the change in State Contract [E-1-1 operating contract].

**HEARING SCHEDULED: ORDINANCE #C-119-00 RE-ESTABLISHING FEES FOR JUVENILE DIVERSION SERVICES**

The Board, by unanimous motion, scheduled a public hearing for December 11, 2000 at 9:55 a.m. to consider proposed Ordinance #C-119-00 in the matter of re-establishing fees for Juvenile Diversion Services.

**RFP WAIVER FOR SUBSTANCE ABUSE TREATMENT SERVICES**

By unanimous motion, the Board waived request for proposals under ICC 2.29.03 (B) (12) for Substance Abuse Treatment Services for the balance of the biennium from January 1, 2001 to June 30, 2001, necessitated because of the change in providers mid-contract.

**WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND LOAN. AUTHORIZATION TO WHIDBEY ISLAND BANK TO ACCEPT PAYMENTS**

Tim McDonald, Health Services Director, presented for approval of the Board authorization for Whidbey Island Bank to accept payments tendered under Promissory Note and Deed of Trust related to the On-Site Repair Financial Assistance Program (Water Quality Assistance Fund). The loan, in the amount of \$9,610.50, is in connection to a sewage system failure, and loan recipient Kirsten Moore meets eligibility criteria.

The Board by unanimous motion approved and authorized the Chairman's Signature on Washington State Water Pollution Control Revolving Fund Loan to authorize Whidbey Island Bank to accept payments tendered under Promissory Note and Deed of Trust from Kirsten Moore.

**HEARING SCHEDULED: ORDINANCE #C-120-00 RE-ENACTMENT OF ADDITIONAL 2% SPECIAL EXCISE TAX ON LODGING FOR TOURISM PROMOTION**

The Board by unanimous motion scheduled a Public Hearing to consider proposed Ordinance #C-120-00 Re-enactment of Additional 2% Special Excise Tax on Lodging for Tourism Promotion for December 11, 2000 @ 9:55 a.m.

**RESOLUTION #C-121 -00 PROCLAIMING WORLD AIDS DAY DECEMBER 1, 2000**

Lea Kouba, AIDS Case Manager, Island County Health Department, spoke on behalf of the Board's proclamation December 1, 2000 as World AIDS Day, which is an opportunity to remind the public of the AIDS epidemic in a meaningful way.

By unanimous motion, the Board adopted Resolution #C-121-00 proclaiming World AIDS Day December 1, 2000.

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

**IN THE MATTER OF PROCLAIMING ]  
WORLD AIDS DAY DECEMBER 1, 2000 ]**

**P R O C L A M A T I O N  
RESOLUTION #C-121-**

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**WHEREAS**, the global epidemic of HIV infection and AIDS requires a worldwide effort to increase communication, education and action to stop the spread of HIV/AIDS; and,

**WHEREAS**, the joint United Nations Program on HIV/AIDS (*UNAIDS*) observes December 1 of each year as *WORLD AIDS DAY*, a day to expand and strengthen the worldwide effort to stop the spread of HIV/AIDS; and

**WHEREAS**, *UNAIDS* estimates that 34 million people are currently living with HIV/AIDS, with young people under the age of 25 accounting for at more than half of all new infections; and

**WHEREAS**, the American Association for World Health is encouraging better understanding of the challenge of HIV/AIDS nationally as it , recognizes that the number of people diagnosed with HIV and AIDS in the United States continues to increase, with 850,000 people in the U.S. now infected; and

**WHEREAS**, World AIDS Day provides an opportunity to focus local, national and international attention on HIV infection and AIDS and to disseminate information on how to prevent the spread of HIV; and

**WHEREAS**, because men represent the majority of people living with HIV/AIDS, the World AIDS Day 2000 theme, AIDS: All Men—Make a Difference!, urges all men to increase their awareness of the risk of HIV/AIDS for themselves,

their partners and their children and to use their influence in their families amount their friends and in their communities to help stem the tide of the HIV/AIDS epidemic. **NOW, THEREFORE,** .

**BE IT HEREBY PROCLAIMED** that the Board of Island County Commissioners do hereby declare **December 1, 2000** as **WORLD AIDS DAY**, and encourage Island County citizens to take part in activities and observances designed to increase awareness and understanding of HIV/AIDS as a global challenge, and to join in the global effort to prevent the further spread of HIV/AIDS.

**ADOPTED** this 27<sup>th</sup> day of November, 2000.

**BOARD OF COUNTY COMMISSIONERS  
ISLAND COUNTY, WASHINGTON**  
Wm. L. "Mac" McDowell, Chairman  
William F. Thorn, Member  
Mike Shelton, Member

**ATTEST:** Margaret Rosenkranz, Clerk of the Board  
BICC 00-686

**HEARING HELD: ORDINANCE #C-108-00 ESTABLISH SURCHARGE ON DOMESTIC COURT FILING FEES AND MARRIAGE LICENSE FEES TO FUND A COURT FACILITATOR PROGRAM**

A Public Hearing was held as scheduled and advertised to consider proposed Ordinance #C-108-00 Establishing a Surcharge on Domestic Court Filing Fees and Marriage License Fees to Fund a Court Facilitator Program.

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Delilah George, Superior Court Administrator, presented the ordinance and spoke in support of the Board's adoption of the proposal. The ordinance would add a \$10.00 surcharge to the filing fee in Superior Court for all domestic relations cases and other cases filed under Title 26 RCW, and add a \$15.00 surcharge to the marriage license fee in Island County. Those fees would be used to establish a Superior Court Facilitator Program to assist unrepresented litigants accessing the court system in domestic relations cases and other cases filed under Title 26 RCW. Based on ability to pay, the Court could impose a user fee of up to \$50 per visit with the court facilitator. This program in the State began with a pilot site in 1993 with 7 counties participating. Now 29 counties in Washington State have a Court Facilitator Program. This year through October 31<sup>st</sup>, 370 dissolutions have been filed in Island County; of that number 213 have been unrepresented, pro se' litigants. Marriage licenses to date through October 31<sup>st</sup> total 451. The State has been involved with Project 2001 and made some 40 recommendations to the courts about how to make courts more accessible and user- friendly; this project is one that has been recommended for all counties in the State.

Vickie Churchill, Superior Court Judge, further explained this proposal was an attempt to provide equal access to justice for all people. Many people are unable to access the court system because they do not understand it. The facilitator program would help alleviate that problem. It is envisioned that the facilitator would work one day a week, and the County's budget for 2001 includes funding for that amount. Plans are to duplicate the self-help center on Camano Island for availability of forms.

No one else was present in the audience to speak either for or against the proposed Ordinance.

The Board by unanimous motion, adopted Ordinance #C-108-00 Establishing a Surcharge on Domestic Court Filing Fees and Marriage License Fees to Fund a Court Facilitator Program.

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

ORDINANCE ESTABLISHING A SURCHARGE ON )  
DOMESTIC COURT FILING FEES AND MARRIAGE ) ORDINANCE NO. C-108-00  
LICENSE FEES TO FUND A COURT FACILITATOR )  
PROGRAM )

**WHEREAS**, issues of domestic litigation are extremely stressful to the involved litigants and can be truly traumatic for children and families; and

**WHEREAS**, dissolutions, domestic case modifications, domestic violence issues, adoption and paternity cases are all areas where the public's experience with the judicial system can be made more pleasant by improving on the manner in which services are delivered and litigants prepare for the presentation of their cases in court; and

**WHEREAS**, preparation for court appearances is particularly difficult for the growing number of litigants who elect

self-representation, or pro-se appearances, causing a marked increase in the time spent by court staff in assisting the public with a variety of service needs; and

**WHEREAS**, a courthouse facilitator program, the function of which is to assist unrepresented litigants accessing superior court domestic relations cases or other filings under the provision of Title 26 RCW, has proven to be a successful tool in alleviating the burden of service delivery on court employees by simplifying and streamlining the court process for litigants; and

**WHEREAS**, in 1991 this Board adopted Resolution C-166-91 increasing the marriage license fee by eight dollars, pursuant to the authority of RCW 26.12.220, for the purpose of funding family court or family court services; and

**WHEREAS**, in 1993 the Washington State Legislature enacted RCW 26.12.240 which authorizes the legislative authority of any county to impose user fees or a surcharge of up to ten dollars, or both, on those superior court cases filed under Title 26 RCW and the Legislature amended RCW 26.04.160 to authorize the county legislative authority to impose an additional fee of up to fifteen dollars on a marriage license for the purpose of funding family services; and

**WHEREAS**, the Island County Office of the Superior Court has requested that the Island County Board of Commissioners consider the adoption of an ordinance which would establish a Courthouse Facilitator Program and authorize the collection of domestic filing surcharges and additional marriage license fees to defray the cost of the program; **NOW, THEREFORE**,

**BE IT ORDAINED** by the Board of Commissioners of Island County that a surcharge is hereby imposed upon the filing of all domestic relations cases and other cases under Title 26 RCW in Superior Court and that an additional fee of fifteen dollars is hereby imposed on a marriage license to establish and operate an Island County Superior Court Courthouse Facilitator Program in accordance with the provisions set forth on Exhibit "A" attached hereto. The additional marriage license fee imposed by Resolution C-166-91 is reaffirmed by adoption of this ordinance and those provisions are codified in section 3.48.020 as set forth on Exhibit "A" attached hereto. This ordinance shall take effect on January 1, 2001.

Reviewed this 6<sup>th</sup> day of November, 2000, and set for public hearing on the 27<sup>th</sup> day of November, 2000 at 1:50 p. m. in the Commissioners' Hearing Room.

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

Wm. L. McDowell, Chairman  
William F. Thorn, Member  
Mike Shelton, Member

**ATTEST:** Margaret Rosenkranz  
Clerk of the Board BICC 00-645

Ordinance C-108-00 is adopted this 27<sup>th</sup> day of November, 2000, following public hearing.

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

Wm. L. McDowell, Chairman  
William F. Thorn, Member  
Mike Shelton, Member

**ATTEST:** Margaret Rosenkranz  
Clerk of the Board

**APPROVED AS TO FORM:**

David L. Jamieson, Jr.  
Deputy Prosecuting Attorney and  
Island County Code Reviser

**EXHIBIT "A"**

**CHAPTER 3.48**

**SUPERIOR COURT COURTHOUSE FACILITATOR PROGRAM**

**3.48.010 Domestic Relations Filing Fee Surcharge - \$10**

A surcharge in the amount of ten dollars (\$10.00) is hereby imposed upon the initial filing of all Island County Superior Court cases filed under Title 26 RCW, which fee shall be collected by the Island County Clerk, remitted to the Island County Treasurer and shall be maintained in a separate account as provided in RCW 26.12.240.

**3.48.020 Additional Marriage License Fee - \$8**

There is hereby imposed upon the issuance of marriage licenses by Island County a fee of eight dollars (\$8.00) in excess of the fees prescribed in RCW 36.18.010 and which shall be collected by the Island County Auditor, remitted to the Island County Treasurer and maintained in a separate account as provided in RCW 26.12.220.

**3.48.030 Additional Marriage License Fee - \$15**

There is hereby imposed upon the issuance of marriage licenses by Island County an additional fee in the sum of fifteen dollars (\$15.00) in excess of the fees prescribed in RCW 36.18.010 and which shall be collected by the Island County Auditor, remitted to the Island County Treasurer and maintained in the separate account created by section 3.48.020 above.

**3.48.040 Use of Surcharge Funds.**

The funds collected by the surcharges and additional fees imposed by sections 3.48.010, 3.48.020 and 3.48.030 shall be used by the Island County Superior Court to establish and operate a Courthouse Facilitator Program for the purpose of assisting unrepresented litigants accessing the Island County Superior Court in domestic relations cases or other filings under the provisions of Title 26 RCW.

**3.48.050 Fee for use of family court facilitator.**

According to the litigant's ability to pay, the superior court may impose a user fee not to exceed \$50.00 per visit for use of the family court facilitator. Such fee shall be collected and remitted to the treasurer to be maintained in the separate account established under section 3.48.010 above.

**RESOLUTION #C-122-00/R-52-00 – ANNUAL ROAD CONSTRUCTION PROGRAM YEAR 2001 AND PROPOSED ER&R FUND EQUIPMENT PURCHASES 2001**

The Board reviewed Resolution #C-122-00 (R-52-00), Annual Road Construction Program for year 2001 and proposed ER&R Fund Equipment Purchases for 2001, as presented by Larry Kwarsick, Public Works Director, and Lew Legat, County Engineer. Mr. Legat handed out a revised Exhibit showing item #11, East Camano Drive/Cross Island signalization project for an additional \$220,000 approved through STP funding; and item #22, Doeskin Court project adding \$230,000. As explained by Dick Snyder, Construction Engineer, the previous attachment had been sent in error from a 1997 document.

By unanimous motion, the Board adopted Resolution #C-122-00 [R-52-00). However, as a follow-on this is to be discussed at staff session with Public Works staff specifically about deletion of Arrowhead Road/North Camano Drive intersection.

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

**IN THE MATTER OF ADOPTION OF )  
THE ANNUAL ROAD CONSTRUCTION ) RESOLUTION NO. C-122-00  
PROGRAM FOR THE YEAR 2001 ) R-52-00**

**WHEREAS**, it is required by RCW 36.81.130 that the Annual Road Construction Program be adopted prior to the Annual Budget; and

**WHEREAS**, the Six-Year Transportation Improvement Program was adopted at public hearing as required by law on June 26, 2000; and

**WHEREAS**, the Board of County Commissioners has reviewed the work accomplished under the current Six-Year Program to determine current needs in order to revise and extend the comprehensive road program; **NOW, THEREFORE,**

**BE IT HEREBY RESOLVED** that the attached list of projects as selected from the aforementioned Six-year Transportation Improvement Program with 2001 Proposed Equipment Purchases by ER&R Fund be adopted.

**PASSED BY UNANIMOUS VOTE AND ADOPTED** this 27<sup>th</sup> day of November, 2000.

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

Wm. L. McDowell, Chairman  
William F. Thorn, Member  
Mike Shelton, Member

**ATTEST:** Margaret Rosenkranz, Clerk of the Board

BICC 00-692

*[Attachment on file with the Clerk of the Board and Office of the County Engineer]*

**STANDARD CONSULTANT AGREEMENT PW0020-53 – GEOENGINEERS, INC.; PERFORM ON-CALL GEOTECHNICAL & MISCELLANEOUS PROFESSIONAL ENGINEERING SERVICES**

As presented and recommended by the Public Works Director and staff, the Board by unanimous motion approved Standard Consultant Agreement PW0020-53 with GeoEngineers, Inc. to perform on-call geotechnical and miscellaneous professional engineering services, for a maximum amount payable of \$55,000.00.

**EASEMENT & COVENANT AND EXTINGUISHMENT OF PRIOR EASEMENT AND DRAINAGE & ACCESS EASEMENT AND COVENANTS – LAWRENCE J. GOGENOLA; WEST CAMANO DRIVE DRAINAGE**

On recommendation of the Public Works Director the Board by unanimous motion approved Easement and Covenant and Extinguishment of Prior Easement and Drainage & Access Easement and Covenants with Lawrence J. Gogenola, West Camano Drive drainage, Parcel S7715-00-00044, Plat of Pebble Beach, Camano Island. The new easement would reduce construction costs, reduce requirements for tree removal, and is located within a natural ravine.

**PUBLIC HEARINGS HELD**

**ORDINANCE #C-94 -00 (PLG-018-00) AMENDING CHAPTERS 17.03.260 & 17.02 ICC PENALTIES AND ENFORCEMENT AND ORDINANCE #C-95-00 (PLG-019-00) AMENDING CHAPTER 16.26.090 ICC REGARDING 5-YEAR REVIEW PROCEDURES**

A Public Hearing was held beginning at 2:45 p.m. on Ordinance #C-94 -00 (PLG-018-00) Amending Chapters 17.03.260 & 17.02 ICC Penalties and Enforcement [GMA doc. #5972], and Ordinance #C-95-00 (PLG-019-00) Amending Chapter 16.26.090 ICC regarding 5-Year Review Procedures [GMA doc. #5973].

**Attendance:** [Attendance Sheet GMA doc. #6038]

**Staff:** Phil Bakke, Planning Director; Jeff Tate, Planning Manager

**Public:** John Graham, President, Citizens for Sensible Development (CSD), Langley  
Chris Douthitt, Reporter, Whidbey News Times, Oak Harbor

Mr. Bakke provided an introduction and opening comments, the two ordinances having come about as a result of the 2000 annual review docket, and reviewed the 2000 annual review docket's 6 applications demonstrating the progress made this year; all but the two ordinances which are the subject of this hearing have been taken care of. The County began the process about three years' ago to consolidate all land use enforcement procedures under one section, ICC 17.03.260, primarily to enhance predictability in enforcement, streamline enforcement regulations, focus time and energy on one set of enforcement standards, and to aid the public and staff in learning the standards. At the time 17.03 was adopted enforcement standards for critical area standards in Chapter 17.02 were overlooked, and 17.02 was retained in its entirety in order to make it easier and facilitate review of applications which were vested under 17.02. Critical area enforcement is now handled under the old enforcement standards in 17.02.

**Ordinance #C-94-00 PLG-018-00 Penalties and Enforcement**

Mr. Bakke summarized the three major items of the proposed Ordinance:

- Move enforcement authority of 17.02 into 17.03.260. Page A-7-(1) is identical language now found in 17.02, shown in underline because only because it is new to Chapter 17.03.260. When reviewing this proposal initially, the Planning Commission, Prosecuting Attorney and Planning staff and Prosecuting Attorney, had no proposed modifications to section (1).
- Page A-9, 17.02.110 [overlay zones] is the standardized language used in other sections.
- Page A-3 (E) (1) (d) Assessment of civil penalty in the amount up to \$5,000 for any critical areas or shoreline violations; and up to \$1,000 for any other violations which occurs prior to the issuance of the order. This does not reflect a change in current code. A \$5,000 fine is current code under Chapter 17.02. When 17.03 was adopted modification was made to the civil penalty section to set that at \$1,000, but that did not get changed in 17.02, therefore it is recommended that language here.

Mr. Bakke went over each page of the exhibit to note any proposed change and briefly explain the reason for said change.

Page A-1

First paragraph add "Chapter 17.02"

**A. Inspections**

When the Prosecutor re-reviewed this language, his suggestion was to add the word "criminal" on A-2 and A-3.

A-4 is all new language: Island County Superior Court and District Court shall have jurisdiction to issue inspection warrants under Island County Land Use Codes.

The Planning Commission spent a good deal of time on Section A and recommended striking language "that creates an imminent and irreparable hazard ". The question that came up with leaving that language was the difficulty with the Planning Director being able to determine what kind of a violation would constitute imminent and irreparable hazard.

**Page A-2**

C. Added sentence: Continued violation of the provisions of an issued enforcement order issued pursuant to Subsection E shall constitute notice.

Mr. Bakke explained that in order to do a criminal prosecution, the individual would have had to have been given notice as of the violation; and the notice is defined as an issued enforcement order. Further, in order to take criminal action, the Planning Director has to go to the Board of County Commissioners and obtain authority for reference of the matter to the Prosecuting Attorney. The Prosecuting Attorney will have to accept the referral and take on the case. Enforcement orders are appealable to the Hearing Examiner.

D. Compromise with Planning Commission and John Graham to modify language to read that "Where a violation can be remedied or abated through a permit process specified for the Use in question, up to 45 days may be allowed to make application for any required permit before an Enforcement Order is issued".

Current language allows 30 days and uses the word shall instead of may. Concern was that in those instances where an individual may have a violation that has a permit process associated with it makes an application but no intent to follow through yet the application gets caught up in the system for up to 90 days potentially. "Shall" gives the Planning Director the opportunity to evaluate whether or not that application is being followed through in a good-faith manner, and if not, the Director would have the flexibility to continue on with the enforcement action.

**Page A-4. 2. Withdrawal**

Compromise language that the Planning Commission agreed on: "...the Director may withdraw an order if the applicable permit processes are commenced within 30 days of the posting or service".

This gives the Director some authority to apply some common sense to a situation.

**Pages A-5 and A-6** are typographical corrections.

**PUBLIC COMMENTS – ORDINANCE #C-94-00 Penalties and Enforcement**

John Graham, President, CSD, addressed the Board to relay comments on the proposal from CSD, having been the original author of the proposed amendment. Mr. Graham first took this opportunity to first express congratulations to the County in that, all in all, the GMA remand went pretty well and the Coalition was happy that it did.

On enforcement, CSD still had some problems with the suggested language although appreciate the fact that it had moved some in CDS's direction. Mr. Graham referred to some of CSD's comments provided in a letter sent on September 22, 2000 [GMA doc #. 6039] and the proposed Ordinance and attachment.

Page A-2 Section C. The perspective on enforcement is different now than last year because a Comprehensive Plan and implementing regulations are basically in place, a Plan that many are very proud of and supported by a great majority of the

people of the County.

In many ways, it is even more important that the enforcement provisions for the Comprehensive Plan and implementing regulations be good. He emphasized that CSD is not for hammering people with rules and understands that a violation 19 out of 20 times is because of an honest mistake, but they also know that a small percent it is someone who really is a scofflaw and in those cases there needs to be tough provisions and assurance to citizens of the county that the rules will be enforced. He cited a case on South Whidbey where he suggested the 1 in 20 violation occurred, and one where he felt there should have been swift and sure enforcement.

CSD's concern has always been with the phrase "willfully and knowingly" and just do not believe anyone would ever admit they willfully and knowingly violated a wetland, etc. so in effect this is a huge hole. He appreciated the new sentence as proposed but suggested it read:

"Continued violation of the provisions of an issued enforcement order issued pursuant to Subsection E shall constitute proof of the willfulness and knowledge of a violation".

There is concern on behalf of CSD in Section D page A-2, and continue to argue that the entire last sentence beginning "Where a violation can be remedied..." should be deleted. There should be no allowance for an extra 45 days, rather the enforcement order should be implemented at once; the discretion provided in the previous sentence is all that is needed. - "When appropriate the Planning Director is authorized to waive the permit and/or ...". . The use of 45 days in the Code gives someone who is trying to circumvent the rules 45 days to do more damage. Where the language has been moved a step in CSD's direction is changing the shall to may.

Commissioner McDowell brought up the point, however, the case where to correct the problem requires a permit - the violation can be abated by obtaining a permit and the violate corrected.

Mr. Graham referred to page A-4 item 2 related to withdrawal, noting CSD suggests again that the second sentence is unnecessary "The Director may withdraw an order if the applicable permit processes are commenced within 30 days of the posting or service.". CSD believes an order should not be lifted until compliance is achieved and validated, specifically because of that 1 in 20 trying to take advantage of the leniency.

Responding to the Chairman's question that if the shovels and dirt are turning and moving the Director should remove the enforcement order, Mr. Graham referred to the sentence stating that the Planning Director shall withdraw an order if compliance is achieved within 10 days.

The 10 days could be made longer, but CSD's concern is that applying for a permit means just about nothing in terms of intent.

Chairman McDowell was aware that at least according to a number of people in the county, permits take more than ten days to obtain and he thought the Director should be required to remove the enforcement order if the permit was moving forward.

For clarification of that point, Commissioner Thorn suggested adding language to that sentence after "posting or service thereof" to clarify the point: "and the Planning Director determines compliance is well under way". Mr. Graham agreed that was intent of CSD and agreed with that type of language.

Regarding page A-6, item H, relating to liens, Mr. Graham reported that the recommendation of CSD is to add at the end of that clause after the word performed, the following: "and against any other real property owned by any person in violation". The concern here is that just the lien against the property in question in many cases will not be sufficient incentive for the violator to correct action and the only serious threat is for the county to have the power to enforce a lien against all real property owned by the person in violation. The Findings of the Island County Planning Commission, attached to the proposed ordinance, indicates in Finding No. 5 that the Commission was split on the proposed provision to allow the County to file a lien on any other real property to collect for accrued civil penalties and cost of cleanup. CSD urges the Board to consider broader application of the lien.

On that issue, Chairman McDowell asked if there had been in the past a legal opinion whether in fact the County could legally tie other pieces of property to something that had nothing to do with the violation. Mr. Bakke recalled that that language came from the Prosecuting Attorney's office a few years' ago when the enforcement code was reviewed. However, the Director is able to ask the Prosecutor to file lawsuits against individuals who are in violation for not paying civil penalties, and if the amount of the civil penalties is in excess of the asset they own the Prosecutor is able to sue that individual and ask Superior Court essentially seize other real property.

The persuading argument for Commissioner Thorn was that if a property owner is in such violation and wants to walk away from it and has other valuable property and if not attached then the taxpayers in the county have to pay which he sees as wrong.

No further comments from any members of the audience. Public comment portion of the hearing closed.

### **Board Discussion and Comments**

With regard to language Mr. Graham suggested on Page A-2 item C “shall be considered proof of knowledge and/or willfulness” Commissioner Shelton thought it was clear that the notice should take care of it. With regard to the language saying that a violation can be remedied or abated through a permit process for the use in question of up to 45 days, the reasoning used to delete that sentence seems to be a bit precarious, insofar as if someone is in that 45 day period and not going through the permitting process and instead creating more problems on the ground, would expose themselves to a criminal violation. The permitting process is a period which takes some time. The whole idea of criminalizing things he tends to agree with the Chairman in having a problem with, but in this situation, it would not become criminal until someone refuses to abide by the civil process involved and it would only be those severe cases would escalate into a criminal situation. The fact that a search warrant has to be issued by the court for this type of code as it would for the criminal code and provides checks and balances, therefore overall the way written he could live with.

Commissioner Thorn agreed with the language change proposed on Page A-2 to section C, so that the added sentence now would read: Continued violation of the provisions of an issued enforcement order issued pursuant to Subsection E shall be considered proof of the knowledge and/or willfulness and notice of same. In Paragraph D.1 the 45-day issue, he agreed with. On Page A-4, item 2., Withdrawal section, clarify with language such that the second sentence would read: “The Director may withdraw an order if the applicable permit processes are commenced within 30 days of the posting or service, and the Planning Director determines satisfactory progress is being made toward compliance”. Based on some of the more egregious enforcement needs the Planning Director needs to have that hammer and the ability to keep it in force, a discretionary call.

Regarding Page A-6, item H regarding liens, Commissioner Thorn acknowledged the advice from John Graham, CSD, as well as John E. Edison, Attorney, and a member of the Island County Planning Commission [John E. Edison letter dated August 9, 2000 GMA No. 6040] there needs to be the ability to attach properties other than the one where the violation occurs. If there is a legal process that is pre-determined he would be willing to leave the wording out of this section. It is the Prosecutor’s call and a step in the process.

Chairman McDowell’s comments included:

**Page A-1.A** – Inspections – section 2 and 3, retain the words “that creates an imminent and irreparable hazard” to provide protection to an individual who may have erred and is in some kind of violation that is not visible – in those cases there should not be a criminal search warrant, i.e. there is no reason to start a process that could put an individual in jail if they are not creating some major problem. For those that are imminent and irreparable there may be a reason to start some criminal process which could result in jail.

Mr. Bakke clarified here that there has to be probable cause in order to get a search warrant.

**Page A.2 – D** The language should stay as shall be allowed to make application. Changing shall to may, in his opinion, if a person is doing something in arrears because of not having originally obtained a permit but now applied and paid for the permit and are moving forward, if within 45 days the County has not issued the permit, should not be a reason that individual hands are tied – rather it should be non-discretionary that the Director “shall”.

**Page A.4.2** If the individual is complying with what the Director wants done the Director should be obliged to complete the action, in this case withdraw the order. Leaving it as “may” is too discretionary. His desire is to protect the 19 out of 20 who have made an honest mistake. Language as proposed is too huge of a hammer.

Commissioner Shelton stated that if the violator has indicated no interest in going through the permit process, he saw no reason why would the County give 45 days.

Commissioner Thorn’s proposal was to replace the 45 days with 10 days, and then use the word shall instead of may.

The problem Commissioner Shelton saw there was that in many cases the person who committed the violation will have a permit requirement and will hire someone to help fill it out; he thought 45 days was fine. Enforcement in Island County has

always been directed at getting the person permitted and legal. By the same token, there is a requirement that they agree at the beginning of the 45 days.

The Chairman believed the County needs to continue to guarantee those 19 out of 20 cases who innocently came into violation can get the permit and correct the problem, and recommended the Board change "may" to "shall". Commissioners Shelton and Thorn did not concur and no motion was passed in that regard.

**On Page A-1, paragraphs 2 and 3**, Chairman McDowell recommended that the Board not delete the words "that creates an imminent and irreparable hazard". The concern is someone having a violation on the property, something that someone cannot even see and on that basis obtaining a search warrant. He is not interesting in putting someone in jail for a violation, or have county people walk through the house and property, for example, simply if some trees have died that were required under a site plan.

While Commissioner Shelton shared the concern, he was concerned about defining those words. The search warrant is not determined by the Planning Director; it is Superior or District Court. Commissioners Shelton and Thorn did not want to criminalize something that should not be. Commissioner Thorn pointed out too that the criminal violation is a very distinct term.

Mr. Bakke made the point that it had to be a criminal violation in order to obtain an inspection warrant; section C on the next page outlines what is criminal.

Because of this conversation, Commissioner Shelton wanted to sort out how to ensure that there is the ability to obtain the search warrant for the kinds of things that are needed without violating those things the Chairman is concerned about. Leaving in the words "imminent and irreparable" may allow situations where the County should be able to get a search warrant but cannot; on the other hand, if those words are not included, the County may be extending the criminal code further than what he wants to do and he needs time to talk to the County's attorney before making a decision.

Commissioner Thorn expressed trust in the courts, and noted that probable cause has to be shown and that it is a criminal violation. These checks and balances seem adequate.

Commissioners Shelton and Thorn did not concur with the Chairman's suggested language change and no motion was adopted in that regard.

Chairman McDowell referred to Page A-4, paragraph 2, noting this to be the case where the person has been granted the permit yet the Director is not required to withdraw the enforcement order; the word "may" should be changed to "shall". Somewhere the regulations need to state that the enforcement order will be withdrawn if the permit is obtained and the individual follows through on the conditions of the permit.

Commissioners Thorn and Shelton agreed that once an enforcement order is issued, that order should not be withdrawn until everything has been completed and once the situation is rectified only then is the enforcement order forgiven.

Commissioner Shelton proposed the language that would read something such as: "...Director shall withdraw an order when the applicable permit processes are completed along with whatever is required under the permit".

Commissioner Thorn suggested instead that a sentence be added at the end that would state: "When full compliance is achieved and any outstanding penalties or fines are paid, the enforcement order shall become null and void."

Neither Commissioner Shelton nor Commissioner Thorn were willing to say that the Director shall withdraw.

The only unresolved issue for Commissioner Shelton at this point was the Inspection language page A-1, item A (2) and (3), which he wanted to review with the Deputy Prosecuting Attorney.

### **Board Action and Hearing Continuance**

Commissioner Thorn moved that on **Page A-4, #2**, second sentence, after the words "posting or service" add the words: "and the Planning Director determines satisfactory progress is being made toward compliance". Motion was seconded by Commissioner Shelton.

Chairman McDowell asked for an amendment to that motion. If satisfactory compliance is being made, then the "Director shall withdraw...". Commissioners Shelton and Thorn did not agree and no amendment to the motion came forth.

Motion as made and seconded, carried by majority vote; Chairman McDowell opposed.

Commissioner Shelton moved to continue Ordinance #C-94-00, PLG-018-00, to December 4, 2000 at 10:45 a.m. Motion, seconded by Commissioner Thorn, carried unanimously.  
[Notice of Continuance, GMA doc. #6041].

### **Ordinance #C-95-00 PLG-0190-00 - Five Year Review**

As explained by Mr. Bakke, this concerns the addition of language to the reserved section of ICC Chapter 16.26.090 regarding five year review procedures. The proposed procedures are consistent with RCW 36.70A. Comments were received from CSD in the same letter mentioned when discussing Ordinance #C-94-00, and Mr. Bakke confirmed that many of concerns of CSD were issues discussed at some length with the Planning Commission. In light of comments from CSD, Planning Commission and the Board of Commissioners at staff session, the proposal is submitted to the Board, including Amendment #1 Exhibit A [proposed to replace Exhibit A in the document as introduced and set for hearing] dated 11/22/00 [GMA doc. #6043].

Mr. Bakke pointed out that the proposed amendments do not represent substantive change from the original proposal, rather clarify the process for determining if an item may be considered on a five year review docket, and changes criteria from substantive to major for making that decision.

Comments have been worked into this proposal made in an October 11, 2000 letter received from the State of Washington, Office of Community Development letter signed by Patrick Babineau [GMA doc. #6042].

A Notebook labeled *2000 Annual Review Docket, Island County Planning Commission*, including supporting documentation for all of the annual review dockets, will be entered into the County's GMA record by Mr. Bakke on conclusion of the hearing on Ordinance #C-94-00.

### **Public Comments – Ordinance C-95-00**

John Graham again spoke on behalf of CSD. He observed that the environmental community was pretty well split on this issue. Mr. Graham basically favored what Mr. Bakke proposed because the environmental community and the County have more to lose now that there is a good Comp Plan in place. The people he represents want to see the flexibility not so great now because so many things in the Plan represent hard-fought compromises that are sensible.

As far as the Plan and Regulations, it has to be recognized that everything could not have been done right, that there will be unintended consequences that come up. As the Plan is implemented, enforced and monitored those unintended consequences will be discovered and there be some kind of a one-time option just to deal with unintended consequences. What Mr. Bakke suggests about dealing with as less significant or non-major changes may be sufficient.

By and large CSD and Mr. Graham, as well as the Coalition, agree with the general intent that this Plan should respect the fact that three years were spent working on the Plan and it is not something that it up for grabs every couple of months or every year.

There were two specific changes Mr. Graham proposed:

1. As written the first paragraph reads:

“A comprehensive review to provide for a cumulative analysis of the 20 year plan based upon official population growth forecasts and other relevant data in order to consider substantive changes to Planning policies and changes to the Urban Growth Areas.”

It really is to look at the entire thing, not just UGAs, and the language he suggested was:

“A comprehensive review to provide for a cumulative analysis of the 20 year plan and its implementing regulations based upon official population growth forecasts and other relevant data.”

2. Under A.3, the words in the second line “as evidenced by” are not appropriate [neutral and doesn't indicate anything]; the thought was that if the official growth forecast proved to be wildly low or wildly high the Plan may need to be adjusted quickly. Therefore he recommended the language read:

“If the Board of County Commissioners determines that the purposes of the Comprehensive Plan are not being achieved because of significant changes in official population growth forecasts, major changes to the Plan may be considered on even calendar years.”.

There were no further members of the public to comment on the proposed Ordinance and public comments closed.

**Board Comments and Discussion**

The Commissioners reviewed with Mr. Graham the language in the first paragraph, thinking it did read correctly but agreed to consider making it clearer by placing a comma after the word language so it would read: "...policies language, and changes to the Urban Growth Areas.”.

Commissioner Shelton commented that any time a plan and regulations are developed there will be things happen that were not intended. On the other hand, he believed it important there be stability in the Comp Plan and Regulations. Before making any major changes, he suggested the Plan and Regulations be given an opportunity to work.

Mr. Bakke confirmed for the Chairman that official population forecasts are provided to the County by the State on an annual basis.

**Board Action**

Commissioner Shelton moved adoption of Ordinance #C-95-00, PLG-019-00, in the matter of amending Chapter 16.26.090 ICC regarding the five year review procedures, with the following changes:

1. Set aside Exhibit A attached to Ordinance #C-95-00 [one page dated 7/11/00] and substitute with Amendment #1 Exhibit A dated 11/22/00
2. Change Amendment #1, Exhibit A as follows:

Under A.1, the first line to read: “A comprehensive review to provide for a cumulative analysis of the Twenty-Year Plan and its implementing regulations based upon official population growth forecasts and other relevant data in order to consider substantive changes to Planning policies language, and changes to the Urban Growth Areas.”.

A.3 is to read as follows:

“If the Board of County Commissioners determines that the purposes of the Comprehensive Plan are not being achieved because of significant changes in official population growth forecasts, major changes to the Plan may be considered on even calendar years.”.

Motion, seconded by Commissioner Thorn, carried unanimously.

*[adopted Ord. C-95-00 as amended entered as GMA doc. #6044]*

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

IN THE MATTER OF AMENDING	)	
CHAPTER 16.26.090 ICC REGARDING THE	)	ORDINANCE C-95-00
FIVE YEAR REVIEW PROCEDURES	)	PLG-019-00
	)	

**WHEREAS**, on September 28 and 29, 1998, the Board adopted the County’s GMA Comprehensive Plan and Development Regulations; and

**WHEREAS**, the Island County Planning Department submitted application ZAA 718/00 Five Year GMA Review in accordance with Chapter 16.26 ICC; and

**WHEREAS**, the 2000 Annual Review Docket, including ZAA 718/00, was presented to the Island County Planning

Commission on May 9, 2000 pursuant to Chapter 16.26 ICC; and

**WHEREAS**, the Planning Commission held Public Hearings on June 7, 2000 on Camano Island and June 20, 2000 at Coupeville to discuss the application concerning the Five Year Review Procedures; and

**WHEREAS**, the Planning Commission reviewed the Findings and Recommendations in a Public Meeting on July 11, 2000 and recommended approval of the revised language to Chapter 16.26.090 ICC, Five Year Review Procedures, as shown in Exhibit A; and

**WHEREAS**, pursuant to WAC 197-11-600, the County SEPA Official has determined that the proposed changes to Chapter 16.26 ICC relating to the Five Year Review Procedures are not likely to have significant adverse environmental impacts that were not considered in the environmental documents prepared for the Comprehensive Plan and Development Regulations; and

**WHEREAS**, the Board of Island County Commissioners considered the Planning Commission recommendations in a Public Meeting; **NOW, THEREFORE**,

**IT IS HEREBY ORDAINED** that the Board of Island County Commissioners hereby adopts Ordinance C-95-00 (PLG-019-00) amending Chapter 16.26.090 ICC, Five Year Review Procedures, attached hereto as Exhibit A. Material stricken through is deleted and material underlined is added.

Reviewed this 25<sup>th</sup> day of September, 2000 and set for public hearing at 2:45 p.m. on the 27<sup>th</sup> day of November, 2000.

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

Wm. L. McDowell, Chairman  
William F. Thorn, Member  
Mike Shelton, Member

**ATTEST:** Margaret Rosenkranz  
Clerk of the Board BIOCC 00-576

**APPROVED AND ADOPTED** this 27<sup>th</sup> day of November, 2000.

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

Wm. L. McDowell, Chairman  
William F. Thorn, Member  
Mike Shelton, Member

**ATTEST:** Margaret Rosenkranz  
Clerk of the Board

**APPROVED AS TO FORM:**

Linda B. Kipling, for  
David L. Jamieson, Jr.  
Deputy Prosecuting Attorney  
& Island County Code Reviser

*[Amendment #1 Exhibit A, dated 11/22/00 adopted as amended 11/27/00 is on file with the Clerk of the Board]*

There being no further business to come before the Board at this time, the meeting adjourned at 5:30 p.m. The next regular meeting of the Board is scheduled for December 4, 2000 at 2:00 p.m.

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

\_\_\_\_\_  
Wm. L. McDowell, Chairman

\_\_\_\_\_  
William F. Thorn, Member

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Mike Shelton, Member

**ATTEST:** \_\_\_\_\_  
Margaret Rosenkranz, Clerk of the Board

