

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on May 16, 2005 at 9:30 a.m. in the Island County Courthouse Annex, Hearing Room, 1 N. E. 6th Street, Coupeville, Wa. Mike Shelton, Chairman, Wm. L. McDowell, Member, and William J. Byrd, Member, were present. The meeting began with the Pledge of Allegiance. By unanimous motion, the Board approved the minutes from the meeting of May 9, 2005.

VOUCHERS AND PAYMENT OF BILLS

By unanimous motion, the Board approved the payroll dated May 13, 2005, and the following Vouchers /warrants for payment: Voucher (War.) # 213125-213441..... \$502,657.84.

HIRING REQUESTS & PERSONNEL ACTIONS

The Board, by unanimous motion, approved the following Personnel Action Authorization:

Dept.	PAA #	Description/Position #	Action	Eff. Date
Health	037/05	Dept. Asst. .63 fte #2423.03	Replacement	7-11-05

CONTRACT BETWEEN ISLAND COUNTY AND AQUATECHNEX

By unanimous motion, the Board approved a Contract between Island County and Aquatechnex #RM-EXT-05-0057 for application of herbicide to the waters of Lone Lake in an effort to eradicate the Class B Noxious Weed, *Egeria densa* commonly known as Brazilian elodea in an amount not to exceed \$59,400, including sales tax, funded through the grant agreement between Island County and Ecology's Aquatic Weed Management Fund.

RESOLUTION #C-55-05 SALE OR DISPOSAL OF SURPLUS 2000 FORD RANGER PICK-UP

Resolution #C-55-05 In the Matter of the Sale or Disposal of Surplus 2000 Ford Ranger Pick-up was approved by unanimous motion of the Board, noting the item shall be sold or disposed of in accordance with Island County Code Chapter 2.31. *[Resolution #C-55-05 on file with the Clerk of the Board]*

CONTRACT AMENDMENT MODIFYING SCOPE OF SERVICES PROVIDED FOR BY THE AGREEMENT FOR LEGAL AND CONSULTING SERVICES - DEARBORN & MOSS PLLC

Contract Amendment (RM-PLAN-05-003) modifying scope of services provided for by the Agreement for Legal and Consulting Services executed on January 24, 2005 between Dearborn & Moss PLLC and Island County, representing no dollar amount change to the contract, was approved by unanimous motion of the Board.

LIQUOR LICENSE APPLICATION #087833-3C - CASEY'S COVE INN

Liquor License Application #087833-3C by applicants Mary E. Gill and David N. Gill for Casey's Cove Inn, located at 12981 SR 20, Coupeville, WA, as recommended by the appropriate County Departments after review, subject to conditions stipulated by Planning and Community Development, was approved by unanimous motion of the Board.

CONTRACT WITH STRATEGIC LEARNING RESOURCES FOR PLANNING ACTIVITIES AND CONSULTING SERVICES TO DEVELOP A PHYSICAL ACTIVITY AND NUTRITION PLAN FOR ISLAND COUNTY

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

Contract #HD-05-05 with Strategic Learning Resources for planning activities and consulting services to develop a physical activity and nutrition plan for Island County (RM-HLTH-05-0039) in the amount of \$18,998, was approved by unanimous motion of the Board.

**AGREEMENT FOR REIMBURSEMENT FOR SERVICES PROVIDED BY ISLAND COUNTY
EXTENSION DEPARTMENT TO THE ISLAND COUNTY HEALTH DEPARTMENT**

Contract #HD-06-05 (RM-HLTH-05-0055), Agreement for Reimbursement for Services provided by Island County Extension Department to the Island County Health Department for County Litter and Dumping Assessments and Reports, in the amount of \$9,765 was approved by unanimous motion of the Board.

MONTHLY FINANCIAL REPORTS

Auditor

Suzanne Sinclair, Island County Auditor, submitted the Auditor's written financial report for the period Ending April 30, 2005. Percent to budget shows 35% in revenue to budget; current expense at 32% overall expenditures versus 33% historic. Special revenue funds are at 34% with spending at 18%. Revenue as shown on the report for Juvenile Detention Center excludes \$3,623,000 from beginning fund balance; if that were included revenue would reflect 41% of the total budget. Auditor fees are a little behind, a reflection of recording fees as a result of the rise in interest rates Current Expense miscellaneous line 133 reflects a high percentage because items have been paid 100% at the beginning of the year. WSU Extension and Juvenile Court revenues are down, a result of decreasing grant dollars from previous year.

Treasurer

Linda Riffe, Island County Auditor, submitted the Treasurer's April 30, 2005 statement of cash operations, revenue/Current Expense, with some explanatory comments:

Line 27 - well ahead of last year for investment interest

Line 29 - a portion of the service fees shown should have been coded to investment fees which would bring that amount back where it should be [NSF checks and copy fees]

Line 37 - drop in Sales & Use Tax reflects economy as a whole.

Compensating Tax - figure reflects changes because of the new tax program [dollars generated but previously had not been calculated and distributed properly, now since fixed]

[reports on file with the Clerk of the Board]

QUIT CLAIM DEED - BAYVIEW ROAD IMPROVEMENTS

Quit Claim Deed between Island County and Bayview Corner, LLC, Bayview Road Improvements; CRP 98-17, Work Order #229 in the amount of \$2,400.00 (\$1,800.00/land, \$300.00/contribution value walk, \$300.00/damages), Parcel 458-0680, Sec. 17, Twp 29N, R 3E., was approved by unanimous motion of the Board.

STORMWATER MITIGATION AGREEMENTS

As presented by Mr. Oakes, the Board by unanimous motion approved the following Stormwater Mitigation Agreements:

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

PW-0420-122 Island County and Chris Heggenes Construction, Inc.; Lot 20 Block 4, Division No. 6; Plat of Holmes Harbor Golf & Yacht Club; Sec. 3, Twp 29N, R 2E.

PW-0420-123; Island County and Chris Heggenes Construction, Inc.; Lot 21, Block 4, Division No. 6; Plat of Holmes Harbor Golf & Yacht Club; Sec. 3, Twp 29N, R 2E.

Pw-0520-209; Island County and Gerald A. Wood; Lot 4, Block 2, Division No. 5; Plat of Holmes Harbor Golf & Yacht Club; Sec. 3, Twp 29N, R 2E.

RESOLUTION #C-56-05/SW-02-05 – EMPLOYING ATTORNEYS TO SERVE AS SPECIAL COUNSEL FOR 2005-2006 SOLID WASTE CONTRACT ISSUES

The Board, by unanimous motion, approved Resolution #C-56-05/SW-02-05 In the Matter of the Board of Island County Commissioners Employing Attorneys to Serve as Special Counsel for 2005-2006 Solid Waste Contract Issues. *[Resolution #C-56-05/SW-02-05 on file with the Clerk of the Board]*

RESOLUTION #C-57-05/SW-03-05 – AUTHORIZING RECYCLE SYSTEMS, INC. TO SUPPLY AND INSTALL A NEDLAND NC-200 STATIONARY COMPACTOR W/30 CUBIC YARD OCTA-GO CONTAINER

By unanimous motion, the Board approved Resolution #C-5705/SW-03-05 In the Matter of Authorizing Recycle Systems, Inc. to supply and install a Nedland NC-200 Stationary Compactor with 30 cubic yard OCTA-GO container at the Bayview Transfer Station, including all setup and training, without competitive bidding per waiver for public works purchases involving special facilities as authorized under Island County Code and RCW.

PURCHASE ORDER #7409 - RECYCLE SYSTEMS, LLC; NEDLAND NC-200 STATIONARY COMPACTOR

Purchase Order #7409 (PW-05-0051) in the amount of \$21,162.03 including freight and tax, was approved by unanimous motion of the Board to Recycle Systems, LLC, for the purchase of the Nedland NC-200 Stationary Compactor.

POTENTIAL PLANNING COMMISSION EXECUTIVE SESSION DISCUSSED

Earlier during the public comment portion of the meeting, Eric Berto, Reporter, Whidbey News Times, expressed his understanding that the Island County Planning Commission planned to conduct an executive session to discuss pending litigation during tomorrow evening's meeting, and questioned their ability to do so. Although discussion of pending litigation is allowed under the RCW, he said it was only when public knowledge regarding the discussion is likely to result in adverse legal or financial consequences to an agency. In this case, he felt that the public was aware of the litigation being discussed and that it is of great interest to the public. The Open Public Meetings Act is to ensure that all public agencies take action in public; legal precedence states that the purpose of the Act is to allow the public to view the decision making process at all levels. As such, he asked that the Board vote today on whether the Planning Commission has the authority under RCW to enter into this executive session discussion.

Josh Choate, Deputy Prosecuting Attorney, was asked to respond to Mr. Berto's comment. He indicated that the Open Public Meetings Act governs executive sessions, and indicates that nothing in the chapter shall limit a governing body from holding an executive session, and Mr. Choate reviewed the definition of governing body:

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

The multi-member board, commission, committee, council or other policy or rule making body of a public agency or any committee thereof or when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment”.

The Planning Commission has been appointed by the Board to take testimony and public comment about code changes, in this case, on behalf of the Commissioners and then make a recommendation to the Commissioners; therefore, the Planning Commission fits the definition of governing body and are permitted to hold executive sessions if it meets the other requirements for having an executive session.

Mr. Berto clarified his concern was that the matter was of great public interest, and reiterated that the RCW states also that: “...only when public knowledge regarding the discussion is likely to result in adverse legal or financial consequences to an agency”. In the case of the Planning Commission, he did not believe there was adverse legal or financial consequence to them. In order to keep the public informed and aware of their government, the spirit of the Open Public Meeting Act should be followed.

Mr. Choate agreed that the Open Public Meetings Act was put in place so that citizens of the county could be fully informed about actions that local government is taking. If there is not good reason for having an executive session in this case then there will not be one; that has been the way it has been in his experience with the County.

HEARING HELD: ORDINANCE #C-42-05 (PLG-008-05) AMENDING CHAPTER 17.02 ICC RELATING TO TYPE 5 STREAM BUFFERS

Chairman Shelton opened a Public Hearing at 10:30 a.m., having been scheduled at the April 18, 2005 meeting, and advertised for this date and time, to consider Ordinance #C-42-05 (PLG-008-05) Amending Chapter 17.02 ICC relating to Type 5 Stream Buffers. Public comments received by letter, fax or e-mail in advance of this public hearing are included as a part of this record and can be found in the GMA record database.

ATTENDANCE [ATTENDANCE SHEET GMA RECORD #7927]

Staff:

Phil Bakke, Planning and Community Development Director
Josh Choate, Deputy Prosecuting Attorney

Audience:

Public – approximately 48+
 2 – via video conference from Camano Island
Press: Eric Berto, Whidbey News Times

As explained by Mr. Bakke, the County recently received word from the Washington State Supreme Court that two of the remaining issues – AG BMPs [agricultural best management practices] and type 5 streams, would not be reviewed by the State’s high court, leaving the decision of the Washington State Court of Appeals standing who ruled that type 5 stream buffers in Island County must be a minimum width of 50’ measured from each side of the type 5 stream. The County acted in 2000 as a result of the Growth Management Hearings Board [GMHB] case to customize type 5 stream buffers to meet local circumstances. Based on recommendations of the Island County Planning Commission, the Board changed the buffer width from 25’ to 50’ for type 5 streams when those features feed into other regulated bodies, such as a wetland or a larger stream, or in cases where those type 5 streams had presence of fish. Unfortunately, that action did not go far enough according to the Court of appeals and the GMHB. The proposal before the Board today is to change the buffer for **all** type 5 streams.

The Planning Department continues to review this issue as a part of the critical areas update, working

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

with Dr. Paul Adamus, the State Department of Natural Resources and others to look at how to determine what constitutes a type 5 or 4 stream, what the standards are to see whether or not it might make sense to adopt a set of standards for classifying these streams and make it easier to understand what buffer makes the most sense for those features. At this point, Mr. Bakke recommended the Board act on the matter before them as the appeal route has been exhausted on this issue at this time. Part of the reason for the AG BMPs is that standards were developed for type 5 streams that allowed people to go down to 25' on each side of a type 5 stream, and allowed crossing points. This change for agriculture on Commercial AG or Rural AG may not have much of an impact because of eligibility for AG BMPs. The Legislature requires that the County update the Critical Areas ordinance this year, and will look at the criteria for type 5 streams and see what makes sense. The code allows for a farm ditch to be cleaned out, but now needs to be fenced off. Definition of type 5 stream:

A Type 5 stream is a stream that is less than two feet in width but has water running in it. It is not used necessarily by fish but it could be, and needs to have been put in a place that had some sort of natural wetland or a stream previously. The streams may only run two or three weeks out of the year. A type 4 stream is two feet or wider.

PUBLIC COMMENTS

Amy Richards, Torpedo Road, Oak Harbor, an organic farmer, mentioned that the farm has such good practices, WEAN members are some of her customers. The mailing sent by the County was too little too late; the alarm sounded but she thought should have come earlier. She told the Commissioners that the proposed regulation if put in place would shut down her farm, and the farm might have to be sold for development or light industrial. With regard to the legal manner in which the regulations are written, she suggested translation into basic common English line by line. A questionnaire from the County sent to property owners she anticipated would result in a very low response because folks want a guarantee from the County that the information given on the questionnaire will not be used against them.

Chairman Shelton advised that although the County could guarantee the information would not be used against the property owners, once the County accepts a document it becomes a public record and there is no guarantee others would not use it against them.

Commissioner McDowell observed that due to manpower, County staff did not go out and look for problems; however, must respond to complaints. Although the questionnaire becomes a public record, he told the audience that if the County does not have a record, the County would be unable to defend property owners ability to continue farming. The County sent out individual mailers because this issue was so important.

Gary Fisher, Bridle Trail Lane, Oak Harbor, echoed Ms. Richards comments and made the point that rumors were running rampant that drainage ditches and the like are being considered as type 5 streams and wanted some definition in plain language. Mr. Fisher raises colonial livestock and gives tours from the national level down to the local level, and has a 4-H group *Colonial Critters*. If he is shut down because of this regulation it was his view it would deny the nation and local community the ability to tour an historic farm.

Virginia Elam, Monkey Hill Road, North Whidbey, said she had just purchased a ten acre farm with the thought that her children could further themselves in 4H. She too thought there had been too little information too late to the property owners and was also interested in seeing regulations written in plain language. She does have a drainage ditch going through her property, and believed that the new regulations would highly impact her.

Margaret Hurd, on behalf of Rebecca Lebret Spritzar, State Route 20, Oak Harbor, read a letter into the record [GMA #7925]:

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

My name is Rebecca LeBret Spraitzar. I have been an Island County resident since 1957 and property owner since 1975. My property (two tax lots) is a portion of an old (prior to 1925) farm situated on the north slope of Dugualla Bay Flats (south of State Route 20) located on the north end of Whidbey Island. My objective has always been to restore this property (both buildings and land) to a self sustaining condition. Historically this farm has been stream fed until Highway 20 cut off the stream causing what would become wetland (due to oozing and pooling) and necessitated alternate water source via drilled well. Being located on a fairly steep slope with nearby spring the existing (original) driveway could easily be classified a class 5 stream using the current proposed definition. Additionally, under the current proposed land use requirements, by law I would be unable to access my home and/or the tax lot (5 plus acres) it sits on. Ultimately, I stand to lose access and/or use of all but 3 or 16 plus acres, my home, my way of life, and source of income if the current requirements are strictly adhered to. This is even before the DOT installs the storm water treatment area they have required me to surrender a portion of my property at the top of the slope! Yet the county insists that I have 17 taxable acres of buildable land. I am protesting the Island County land use requirements as it causes me unreasonable, undue hardship and lacks any consideration for private land ownership and/or stewardship.

Gayle Cerullo, N. Cerullo Drive, North Whidbey Island, Sunny-C ranch, expressed her understanding that if the type 5 regulation were enacted her ranch would lose about 10 acres of productive land on the main part of the ranch and 20 acres from the hay fields, a tremendous impact on raising cattle and horses. It would put them in a position from where they are now barely operating in the black to a huge negative red that would destroy them. This property has been family-owned and working since the mid-Forties, now at a point where they have 4-Hers, and people from all over the U.S. come to look at the type of animals raised; that would all be lost. Frustration, as with others who spoke, brought her to the point of considering the necessity to divide the property up and build houses, because that is an option.

Rufus Rose, Clinton, likened the potential impact on the rural character as almost as significant as if NAS Whidbey were to close. He did not know if the Board or Planning Department had been given any evidence of damage caused by the existing code. He did understand that the Board was going through this procedure having been required to do so by the Appeals Court, and the Board believes the evidence available in the past had been inadequate to justify the position taken, and was reversed by the Appeals Court. Also he understood the Board's intent to bring the public out to understand the significance of the court order and how it would change Island County. He reiterated what some folks had indicated should the regulation stand: the character of Island County will accelerate into the gentrification, loss of farm and agriculture lands, possibly silvaculture and timberlands, into five or ten acre parcels. He mentioned that Island County is participating in the Scenic Highways Program intended to induce people to come and see pretty places; the pretty places in Island County are frequently pastures and farmland, and the regulation could well turn those areas into unattended alder groves and blackberry patches. As a director of the Island County property Rights Alliance, formed because of the GMA back in early Nineties to fight this kind of thing, he encouraged anyone interested to look up the Alliance on the web. He has been and continues to be troubled that State law supersedes the authority of this local legislative body in this case by an appointed group that answers to no one; that seems a violation of constitutionality.

David Keller, Boon Hollow Lane, Oak Harbor, reiterated what Mr. Rose stated, agreeing strongly with every point. Mr. Keller has six acres; if the wet meadow provision is enacted he will lose about 50% of the property, and would require getting rid of the horses they have. His daughter is in Pony Club, and they have girls who board horses with them, all the while learning valuable things about society, morality and hard work. They raise ostriches for their own consumption; that will be gone at a financial impact as well. He was here in 1993, and attended the meetings in 1998, and went away with the thought that they would be provided exemptions. He blames the legislature for putting the GMA in place giving organizations like WEAN the ability to do this, which to him, is a flagrant taking of property; a taking away of his livelihood.

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

He is writing letters to the State and Federal levels, and circulating a petition absolutely against the requirements and will take whatever action necessary to fight it.

Erwin Dugin, Misty Lane, Oak Harbor, supported previous speakers, believing the same way. He raises different varieties of Brahma's, providing an animal for breeding, contributing to the cattle industry for beef animals. The regulation would put him out of business for raising animals and render better than half his land useless. One of the things he brought out was that the County puts in drainage ditches, which drops the ground level where the black top is giving away [Boon Road as an example].

William Simon, Moran Road, Oak Harbor, has three parcels comprising a 12.5 acre mini ranch, lives about 400 yards above the shoreline on the northwest corner of the Island. He wanted to know if his drainage ditches were type 5 streams. He pointed out that the entire northwest corner drains downhill into the Cranberry Lake wetland area. A system of drainage ditches put in by the County run half the year, and he questioned if those were type 5 streams; if so, would that not make all those roads "illegal". To say the definition is less than two feet and running two weeks a year is ridiculous on Whidbey Island.

Robert Nelson, Powell Road, Oak Harbor, suggested the matter should have been adequately handled from the beginning and thought perhaps the Board had given up. The people are trying to take things back in their own hands. He recalled being in the hearing room before when Mr. McDowell issued a statement contrary to his vote and others had done the same thing. He wanted to know what the County was going to do for them because the wetland and stream issues are ridiculous, so much that the County may have to fence off roads.

Andy Anderson, Busby Road, Oak Harbor, came to the Island in the late Sixties with the Navy, and has farmed part time for 30 years, as much as up to 600 acres and down to 30. He observed very little farmland on the Island that would not run water somewhere on the property two weeks out of the year. If the farmer does not get a finishing furrow filled in before the next rain, water will run down that finishing furrow. His questions: is that classified as a type 5 stream; is the setback from the bar ditch on the inside of the road 50'? If so, what happens with the noxious weeds in that 50' area? Anyone that appreciates wildlife sees wildlife in areas where everyone can enjoy, after haying or cultivation. He also has horses and mules and told the Commissioners he would a lot rather feed a horse or mule than a drug dealer.

Dena Royal, N. Ebey Road, Coupeville, lives on a five acre rural property with Class A wetland. Her children have alpacas but board them on the South end of the Island. If the regulations are adopted they will be forced to find another place for the alpacas because the farm where they are boarded will be impacted. Ms. Royal has chickens on her own property and potentially a class 5 stream because there is some drainage into the wetland. One of her questions was: are buffer zones going to have to be replanted as they require in King County in the stream area setbacks? Mr. Bakke advised that current code does not require replanting. Ms. Royal realized that taxpayer money was what the County had to use for legal resources, which is limited. On the other hand, looking on the Internet she said that WEAN used Earth Justice.Org. and had gone to major environmental organizations for pro bono legal work. Looking at WEAN's non-profit tax returns on the Internet shows \$30,000 to \$40,000 worth of legal fees plus pro bono each year. As far as the questionnaire, she did not want to submit the form knowing it is public record, having heard comments before about WEAN going on to private property looking for wild iris, etc. Steve Erickson and Marianne Edain own a private company Frosty Hollow Ecological Restoration, and are listed in King County as one of the companies that replant buffer zones, charging \$100 to \$200 a pound for seed plus consulting fees. The e-mail address used for their private business and WEAN is: WEAN@Whidbey.net. Her concern is what kind of business will WEAN get if the regulations go through? She said that WEAN received money from Washington State Department of Transportation to build a greenhouse for the Zylstra Road project; the greenhouse

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

was never built and DOT is suing WEAN to get that money back, and she thought Frosty Hollow Ecological Restoration's private greenhouses were being written off on WEAN tax returns.

Maggie Raymond, Henni Road, South Whidbey, was not sure if the type 5 stream regulation would affect her property, but if so, she could stand to lose almost all. In addition, if Ms. Cerullo goes out of business that will affect her as well inasmuch as she buys hay from Ms. Cerullo. She disagrees with having to pay taxes on property that she cannot use. She moved to this property to raise animals and has restored the property and ridded it of all the noxious weeds, which would end up coming back.

Bill Thorn, Camano Island, recognized that the County was compelled to act at least in the interim by the Court. He suggested the following information was missing:

- lacking an inventory of where all type 5 streams are, who and how many are affected
- adoption of the new State stream typing guidelines should be worked into this regulation so as not to be working on 15 year old guidelines that have already been changed at the State level.

He recommended the Board ask the court for a stay in order to have time to gather data, or at least not enforce anything until there is opportunity to gather the information and see what the real world looks like. Several folks brought up the question of County ditches. The County does mow and pave well within 50'; to start putting ditches 50' off the road or stick strictly to the definition making the roads technically illegal would be a silly thing to do. Mr. Thorn pointed out that the Washington State Department of Fish & Wildlife created an agreement with the Tribes concerning their salmonids policy and he thought it worthwhile for the County to look at that. The agreement states very clearly that a buffer on a type 5 stream should be 50', but at the same time the same policy states:

Type 4 and 5 streams with low stream gradient and relatively flat slope topography may not need the full buffer width specified and the buffer width may be reduced to that necessary to protect the stream from upslope sedimentation and significant changes in stream temperature. The actual buffer width in compensation should be based on site specific conditions.

Steve Erickson, Langley, first spoke for himself and his business Frosty Hollow Ecological Restoration, stating that they do no work in King County, almost no paid work in Island County. Their work tends to be with landowners, i.e. restoration work for wildlife purposes purely voluntarily, not replanting required buffers. As for the expense of the seed, they supply wild collected native plant seed. He stated that they had never been served with a lawsuit by DOT. They did receive money from DOT for restoration at Zylstra Road, and part of the initial proposal included possibly a greenhouse, which turned out not to be necessary and are using that funding to do restoration within the prairie itself and can account for every penny. As far as any co-mingling between Frosty Hollow and WEAN, they share a DSL service and an e-mail address. Speaking for WEAN, Mr. Erickson pointed out in the proposed ordinance, the third and sixth WHEREAS paragraphs stating "responding to WEAN's arguments" and "after listening to WEAN's continuing objections" those arguments and objections were also made on behalf of the Island County Citizens Growth Management Coalition. He reminded that from 1984 to 1998 all stream buffers in Island County were 100' including type 5 streams; exemption for agriculture applied in the agricultural zone and not the rural zone; zones have changed, properties have been moved back and forth. The County's emphasis on water quality is only half the story and that streams provide other functions. WEAN's position since 1998 has been that property owners with small acreage down to five acres should be able to opt into the AG Zone if doing serious agriculture to the extent they can qualify for the open space tax classification. With cases like the Cerullos he thought it unclear why they were not included in rural AG or commercial AG in 1998, and for Amy Richards that classification of Rural AG down to five acres seemed appropriate. On type 5 streams he thought Mr. Thorn pointed out quite well that the science in the record was

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

overwhelming: 25' buffers are not effective in most real world situations and is the reason for the increase to 50'.

Reece Rose, Four Sisters Lane, Clinton, is a member of South Whidbey Tilth. She grows a few vegetables, is a dahlia grower, and has a few chickens on the property and will be impacted by the regulation, and thought everyone in Island County would be impacted. She pointed out that most folks came to Island County because they enjoy the views, scenery and rural lifestyle, which will cease to be under the regulation. The Tilth Farmers Market opened three weeks' ago, and there has been a drop in the number of vendors. A phone call from a person who had been a vendor a year before indicated she could not let it be known because she has wetlands; she has to provide produce for her own family and if she could not do that, would suffer greatly.

Dick Caldwell, Ledgewood Beach, Coupeville, observed the problems with the situation had been well-stated by many speakers, and there seemed to be a total absence of common sense in the County's ordinances, and the seed of the problem sown many years ago in two definitions:

1. Definition of what is a stream. Water running down the side of a hill for a couple of weeks a year should not be defined as a stream in any rational world. Go back and look at the definition of streams and apply common sense and some science, if there is any.
2. Inflexible rules on what can happen in a buffer once a buffer has been set. The way the Ordinances read today the only thing that can happen in a buffer is to grow noxious weeds. Common sense says if there is a water feature that needs to be protected, the activities that can happen or be prohibited in the buffer need to be related to what it is we are trying to protect about the water feature.

Jean Wilcox, Sunlight Beach, Clinton, agreed with the concerns of all the property owners who previously spoke concerned about the impacts the regulations have on their property.

Jeanne Hunsinger, Saratoga Road, Langley, read from a prepared statement for the record [GMA record #7928]:

I want to have it go on the record that I am adamantly opposed to changing the buffer widths as put forth in this legislation before you. I am opposed for several reasons among which are the following:

First, the process that has brought this legislation into being is a system which allows the opinions of the duly elected local advocates of the people to be overshadowed by the impetus of what I believe to be an eccentric couple of people. Such a system is flawed and needs revision.

Second, this legislation ties up more land – though title shows that it belongs to the landowner, in reality it no longer does. Productive capacity of the land is being diminished.

Third, I believe that in at least some circumstances this legislation is counter-productive to the purpose supposedly to be accomplished – i.e. increase in the wildlife habitat function.

Jim Adsley, Saratoga Road, Langley, had seen what happened to the farm land in King County; thought it ironic that there is a state organization that is supposed to protect things like that, yet it appears the regulation as it has come through the court system does exactly the opposite. He believed things should be done that will preserve agriculture already here. Many people came to the Island because of the pastoral nature, and opportunities for families. He served for 8 years on the South Whidbey School Board and came here today to represent some of those folks who could not attend. He has had his own grandchildren and a lot of other students and families involved in 4-H; the stock that generally provides the resource for that opportunity is largely in areas that are zoned rural, or in some cases forest land that has been partially cleared. He personally believes that some of the trauma experienced now with loss of students and families moving out of the area is somewhat indirectly tied to growth management policies. He thought that the type 5 stream issue could push more and more farmland into the alternative [i.e. Whatcom County – Lynden] to cows. He realizes that water quality around Puget Sound is an issue, but noted he had seen research suggesting some of the killer whales at the top of the

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

food chain have 149 parts per million of PCBs – something that does not come from cows and horses. An observation he made: he had not seen very many kids involved in 4-H that are social problems in the system, because it is a family endeavor, a great opportunity available in this County no longer available in the urban counties.

Donna Mitchell, Hunt Road, Oak Harbor, was amazed that a legislative body would rule to take a right so ancient away from a small group of landowners. Uses should be grandfathered in, some of the uses having gone on for over one hundred years. She was not willing to accept that there is nothing more the County Commissioners can do. The economic impact of all these dollars circulating back into the county economy is a huge impact. She was not sure the regulations would apply to her land, but if so, did know it would have an impact on the value of her land in the future, which is not only a financial concern but a way of life.

Joseph O'Malley, Country Lane, Oak Harbor, an affected property owner by the regulation as are others in the room. For the record, he read from a prepared letter he and his wife sent to Representative Rick Larsen dated May 5, 2005, relating to a proposal for type 5 streams as well as GMA as a whole. His letter in summary [full copy included in the GMA record as #7920]:

- An initial proposal intended to be dynamic and changeable as long as the general idea of restitution to affected landowners is kept at the forefront of these considerations. Not an argument of whether or not the Growth Management Board (GMB) acted in good conscience for the environment, this is an argument as to whether the GMB was sensitive and knowledgeable to the consideration for land use under the rights of private property ownership.
- U. S. Constitution provides fundamental rights for private ownership of land. Methods and procedures are in place for Federal, State and Local jurisdictional governmental agencies to acquire private property under Eminent Domain for the sake of the greater good; and for land acquisition for the creation of parks/sanctuaries. The Growth Management Board has bypassed those methods and procedures.
- Legislation fails to facilitate monetary restitution for land values lost through the authoring and passing of GMA legislation. There are certain tangible, calculable values associated with a piece of fertile farmable property. Once the land transitions from useable to unusable, the land value depletes. The matter is further complicated by tax value/liability. Private land has been rendered unusable for no other reason except the GMA regulated and labeled it unusable. Proposal: GMA be amended to include reimbursable damages to property value for all those property owners within the State of Washington who are adversely affected by GMA legislation.
- Washington State Department of Ecology can calculate loss of economic value for rural and agricultural land owners/users. The farm plan aimed at optimizing efficient use of land for the sake of productivity while minimizing the impact on the environment – allows for an assessment of the land's ability to support livestock quantities as a reasonable and sensible measure to the economic loss the landowner is experiencing with respect to the GMA. Planning and Community Development is also capable of assisting in calculating the differentiation of values for economic impact of lost land use resulting from the GMA.
- Conclusion: Washington State needs to entertain a request for amendment to GMA to include:

Restitution for lost land value, as an unusable parcel has no value.

Relief from the cost of restoration to a natural state, those lands which were legally farmed.

Release the privately owned lands from taxation by zeroing the taxable land value of unusable lands.

Ownership – the owner reserves the right to maintain ownership of affected lands

Mr. O'Malley believed that the Board had stood up on behalf of the property owners and acted well as mediators. He understood that the County was required to follow the laws of the land, but thought

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

perhaps it time to effect a change in the law so that it is not economically feasible for the State of Washington to go on with this land grab if held economically accountable.

Jason Haveman, Cerullo Drive, Oak Harbor, was not sure whether or not he had a type 5 stream on his property, but commented that he had been grazing horses on the property for 34 years. If he has a type 5 stream he stood to lose about 8 of his 10 acres, and he cannot afford to do that. There has to be some sort of compensation for the loss.

Scott Richards, Torpedo Road, Oak Harbor, who owns 7-1/2 acres, pointed out that the 25' setback cost him already 27,000 sq. ft. of property; nothing there but grass, hedgerow and a drainage ditch created to prevent water from developments above from flooding his property. He told the Commissioners that if he has to move the fence back yet another 25' it would cost 54,000 sq. ft. of his property. Mr. Richards as not seen any scientific data that tells him what the importance of that 25' is from his property to the ditch. He runs a couple cows during the summer, mows to keep thistles down and grass fresh; uses no pesticides or chemicals. The only thing that grows in it are mosquitoes. Power lines are located via easement for PUD; if he has to move the fence back, at a cost of \$1,000 in materials and his sweat, he asked whose problem was it when the PUD came to maintain the power lines or cut back that protected buffer so as not to interfere with power lines? He also suggested that the regulation should be applied on a case by case basis.

Suzette Keller, Boon Hollow Lane, Oak Harbor, is a district commissioner for the Whidbey Island Pony Club. There are two pony clubs: one on South Whidbey and one on North Whidbey. Two kids keep horses on her property at no charge because they cannot afford to board elsewhere. Her daughter teaches them riding and how to care for the horses. Out of the 22 families in the pony club, each of those families are doing that type of thing. The proposed setback will devastate what is being done for the kids. The regulation would take half of her property, not to mention the loss for the other families. Although she does not agree with the BMPs because she does not believe anyone has the right to tell her what to do with her land, the BMPs were working and need to be continued for the rural area. In an effort to try and get people to fill out and return the County's questionnaire, she found that people did not want to because they are afraid of what will happen with that information. She told the Commissioners that supporters were out there for them to fight with them to not let this happen. She stated that she would rather lose her land fighting than to just roll over and have someone take it away.

Roberta Dugin, Misty Lane [Waterloo], Oak Harbor, on the property 22 years, which includes a man-made ditch put in years ago to drain the land so it could be used. They raise cattle, take care of the land and have improved it; to have someone say they now cannot use it she thought was ridiculous. The ditch has no fish and she questioned how it could be classed as a type 5 stream. If they are required to have a buffer of 50' either side, she asked if that meant they were not to clean the ditches or mow; if so, that would mean noxious plants would come back and definitely curtail where the cattle graze. Another aspect for them is that for two of their children who live on the Island they provide them with beef, what happens if they cannot do that anymore.

Lisa Boyer, Hastie Lake Road, Oak Harbor, asked about the potential for variances to the proposed regulation. After going through an environmental study, going before the Planning Commission and Board, was allowed to put her house next to a man-made pond [no water in the pond unless pumped in].

Chairman Shelton addressed some of the unfairness issues. Those who have larger acreage pieces had they put a golf course instead of raising cows, no one would be asking them to move the golf course – prime example, a golf course on South Whidbey built in, around and over wetlands. What is wrong with the whole concept is that at the state level when the GMA was adopted agriculture was not

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

exempted from the critical areas ordinance even though it was existing and on going, and he thought that a travesty. In hind sight, he thought that the same type questionnaire should have been sent 8 or 10 years' ago to property owners, because most people decided it did not affect them. The Commissioners tried hard to protect their rights, and went through the court system all the way as far as possible; the Washington State Court of Appeals required 50' buffers on type 5 streams, and the Washington State Supreme Court will not hear the case, so there is no other legal remedy for this Board to take. The Board is required to hold a public hearing when changing the County code; and the public hearing today is for the purpose of changing the County code

Commissioner McDowell acknowledged that it is a public hearing for this code change, but also becomes a record for the critical areas update which is ongoing, and public comments very are important.

Bill Simon, Moran Road, Oak Harbor, commented again about ditches. In the event ditches are classified as type 5 streams, he thought that would include all of the drainage ditches at least in his section of the County. As such, he asked if the County was going to hard conduit those ditches to cover up the streams or allow the streams to run? If so, it will take two of his septic systems out, plus fences. It is a large investment, about \$30,000, a double septic field, two with selector because of the amount of water coming down the hill.

Amy Richards, Torpedo Road, Oak Harbor, mentioned something else she hoped the Board would take into account. She talked to a wetland specialist in Tacoma who said the one thing that was very unusual about Island County's regulation was that almost all of the GMA rules and regulations have a clause to grandfather existing situations. She thought there should be a way for the Board to grandfather existing agricultural uses and enact the regulation for all new uses. Mr. Erickson mentioned the five acre exemption and seems to her something that would not be proper, but suggested the Board look to see if there are any other counties in Washington State that have that five acre exemption.

Camano Island hearing participants:

One audience member had no comments. The other gentleman, identified as the Mosquito Control Chairman on Camano Island, commented that he had not heard much until recently when he received the County's letter in the mail about land use. He was aware of the meeting tomorrow on Camano at the Utsalady School before the Planning Commission and was hopeful some answers could be found. Though he would like to give his name, he was hesitant because the WEAN people always call and harass him afterwards.

Robert Nelson, made additional comments to relay his understanding that Oregon [referendum 57] had the same situation and inquired if there was a chance the Board could go to the legislature and get a referendum exempting small farmers.

Rufus Rose provided added comments to note that shortly after the GMA was enacted Mary Margaret Haugen's direct quote about compensation was: "it would bankrupt the State of Washington if the people were compensated for what the GMA does". In response to people who expressed concern about anonymity, he stated that the Island County Property Rights Alliance can guarantee their anonymity if they communicate with them. He was interested to hear from the Commissioners what would happen if the ordinance were not passed today.

Gary Fisher clarified what he is supposed to do: maintain his property, monitor proposed laws that would affect his maintaining his property, and take care of his livestock. The people give the Board of County Commissioners unconditional respect, and they expect that in return.

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

Steve Erickson also had an opportunity to comment further. He suggested the Board make it possible for parcels as small as five acres that can qualify for the open space tax status to get into Rural AG thereby take advantage of the exemption from the CAO and reliance on the BMPs; also to be able to take advantage of the County's protection from nuisance lawsuits and from adjacent development. If WEAN wants to run around and bust everybody they were aware of who had a pasture that looked wet, he suggested it would be a simple thing since they have aerial infrared photos and a National Wetlands Inventory, but stated that WEAN was not going out after individual people. Many of the people who spoke today should be in the Rural AG zone, and WEAN had been suggesting that for six years.

Joseph O'Malley commented again, stating that the primary concern is that GMA is a law the Commissioners are required to follow by the State of Washington, as are Judges. The only other option is to tailor the law that gives proper restitution to those who will be affected. He noticed that no one from the City of Oak Harbor was present at today's hearing, and thought they should be represented because there is a large undeveloped area west of Highway 20, north of Oak Harbor Road behind Office Max, that used to be cut and hayed. It provides an opportunity with the canopy of grass opened up so that rats and vermin may be preyed upon by raptors.

Ken Petry, Bakken Road, Greenbank, raises a lot of hay on the Island, 340 acres farming; plowed up a lot of ground. Most of the Island is full of clay and hard pan, resulting in water standing no matter where you go. It makes no sense to him to define a type 5 stream on the basis of a two week period for water running when this area can receive rains for a month. That period needs to be extended to six or nine months. He has put a lot of cow manure and horse manure on a lot of gardens and has not seen problems with that. He recalled that about two years' ago King 5 News had a story about Canada dumping cow manure in the rivers to feed the fish; obviously a few cows and horses cannot devastate the fish as badly as that. If all the livestock goes, his haying will be put out of business.

No one else indicated a desire to speak and the public comment portion of the hearing was closed.

Commissioner Byrd felt everyone understood the state mandate issue and there really was not a whole lot of choice since the County is an agent of the State and must deal with the Growth Management Hearings Board. He asked everyone to recognize that the Growth Management Hearings Board is appointed by the Governor; the County is being forced to do this.

Commissioner McDowell agreed with everyone in the room with the exception of one. What he was about to vote on he did not agree with, acknowledged that at the end of the day the Board of County Commissioners is a body of law. That said, should folks stop commenting on the issue at this point, absolutely not. As expressed today, this has a huge impact, in most cases a very negative impact, financial and lifestyle. The issue is the effective date and he supported an effective date as far down the road as possible in order to give folks needed time to deal with the regulation. He provided some history:

In 1993 the County was just beginning the process of GMA and during that time he thought the County came to an agreement with several environmental groups and the rest of the public striking a deal; unfortunately WEAN broke away from that coalition, and even though the Coalition supported and spoke in favor of the County's plan, WEAN challenged it. The County won some issues, but lost several at the Hearings Board level; both parties appealed. At the Appeals Court the County lost the two issues, this being one.

Commissioner McDowell noted that Mr. Erickson today spoke about a letter in the paper; that article was entitled "WEAN Does Too Support Farming" [Whidbey News Times – Sound Off, May 14, 2005, GMA record #7929]. The article states that "rural ag and commercial ag zones are not affected by the Court's decision at all". That is true. However, today Mr. Erickson encouraged everyone here to put

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

their property into those designations. The Commissioner showed a copy of a letter dated April 23, 2005, from Mr. Erickson to the Hearings Board [GMA record #7926], second page, states: "...petitioner requests leave from the Board to file a formal motion and supporting memorandum for invalidity of the existing ordinance provisions exempting existing and ongoing agricultural activities in all zones from the CAO."

Commissioner McDowell was aware that he had been blamed 8 of his 12 years for spending too much money on this issue. He spent the last 14 years fighting Base closure, off the table now, and he will fight the fight for at least the next 3-1/2 years for farming in Island County; those who farm and others like him who enjoy the fact that the farmers are out there providing the open vista. Everyone says they want the rural lifestyle; the rural lifestyle includes farming on all properties, whether zoned commercial AG or zoned rural. 4-H kids would never qualify for commercial AG; 50' on either side of a stream that runs less than two weeks out of a year is absolutely wrong. He supports grandfathering existing AG uses.

Chairman Shelton observed that one of the goals of GMA is to protect AG land. Historically Island County has been very agriculturally oriented, and over time with the influx of people, as recently as 1987, had 15 or 17 commercial dairy farms in Island County, now only about two left. The type of agriculture that is important varies from owner to owner, from 5 acre parcels to those with 100+ acres. If folks have AG practices on their property it is important to preserve that. From a cultural and social standpoint in Island County, it is absolutely ultimately important to all those present as well as the vast majority of people in the County to preserve that way of life, and by doing that, preserve the culture folks moved here to try to protect. With regard to the grandfathering issue and other counties, Growth Management is unique in that each county is required to develop a comprehensive plan and associated regulations to go with that plan. Assuming Island County and an adjoining county had developed exactly the same plan, the ultimate outcome can be very different because if someone appeals this County's plan and is successful, as in the case of the type 5 stream issue here, Island County ends up with a different regulation than the adjoining county if no one appeals. He could not agree more with the comments about taking a common sense approach. One of the things that is happening in the State of Washington has apparently happened in Oregon – the environmental pendulum is getting pushed past the common sense level. In Oregon there has been the initiative process and much of their very restrictive land use issues, many around agricultural issues, has been rolled back. The land use environmental pendulum needs to be in the right spot; clearly in his opinion it is way too far towards the environmental side at the expense of the property owners.

Responding to questions from the Commissioners, Mr. Choate indicated that the County had not yet received the signed mandate from the Court of Appeals. Once received, which he thought could be within 90 or 120 days, the County then refers back to the Growth Board order in 1999 requiring the County increase the buffer width to 50'. The date of the mandate is the date that the Court of Appeals decision goes into effect; until that date, it was his belief that the Superior Court case is still the law. Determining an appropriate date is for the Board to consider, but he thought it worthwhile to remember that GMA review and update is ongoing, and this is an issue that will be looked at again, as well as the rest of the critical area ordinances in general. There is a possibility that if the law were changed today it could be changed back or differently towards the end of this year when that review gets done. If the Board does not act in a timely manner, likely the County would be challenged before the Growth Board, and the Growth Board asked to recommend that the County be sanctioned and fined for not complying with the order.

Commissioner McDowell suggested the Board not adopt the Ordinance today; once the mandate is received there is no question but what the County will have to adopt the ordinance, but at this point, suggested adding to Ordinance #C-42-05 another WHEREAS paragraph as follows: "Be it further ordained, that these amendments do not apply to any existing uses as of the date of the Hearings

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING - MAY 16, 2005

Board decision, and shall apply to all future uses.” and table action on the ordinance. He realized that this was a significant change and would require holding another public hearing. He was interested in gaining time for the people that still have crops to mow and livestock to attend for this year’s planning at least.

Mr. Bakke concurred with Mr. Choate on the fact that the update process is ongoing currently. The Commissioners heard from a number of folks who expressed concern about having to spend money to change fencing, etc. It is uncomfortable for him as a regulator to ask folks to make changes knowing full well that those changes might not be what happens at the end of the process.

Commissioner Byrd was interested in at least giving folks a chance to bring their crops in before making this effective. The Chair suggested extending the date out through the growing season, at least to September 30, 2005. Commissioner McDowell suggested the date of May 15, 2006.

Commissioner McDowell moved to modify Ordinance #C-42-05 adding a paragraph “BE IT FURTHER ORDAINED that these amendments do not apply to any existing uses as of the date of the Hearings Board decision, and shall apply to all future uses”, and that the Board schedule a new public hearing on June 13, 2005 at 10:30 a.m. Motion, seconded by Commissioner Byrd, carried unanimously.

There being no further business to come before the Board at this time, the meeting adjourned at 1:15 p.m. The next regular meeting of the Board will be held on May 23, 2005 beginning at 11:00 a.m. for a roundtable discussion with Elected Officials and Department Heads, followed at 1:30 p.m. with regular agenda items.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

William J. Byrd, Member

ATTEST: _____
Elaine Marlow, Clerk of the Board