

The Board of Island County Commissioners convened in Regular Session at 11:00 a.m. on July 25, 2005 for a roundtable with Elected Officials and Appointed Department Heads, held in the Board of County Commissioners Hearing Room (Room #102B), Island County Annex, 1 NE 6<sup>th</sup> Street, Coupeville, Wa. Other topics for the regular session followed at 1:30 p.m. as outlined on the agenda. Mike Shelton, Chairman, Wm. L. McDowell, Member, and William J. Byrd, Member, attended.

### **Roundtable Meeting with Island County Elected Officials AND APPOINTED DEPARTMENT HEADS**

Elected Officials and Appointed Department Heads Attending:

Tom Baenen Phil Bakke Greg Banks Bill Byrd Sharon Franzen

Mike Hawley Betty Kemp Elaine Marlow Tim McDonald Wm. L. McDowell

Linda Riffe Mike Shelton Dan Sherk Suzanne Sinclair

### **Limits of Workplace Enhancements**

Elected Officials and Appointed Department Heads received a Memorandum dated June 2, 2005 from the Board with regard to the policy on bottled water for County guests and employees.

### **Per Diem v. Direct Reimbursements**

Chairman Shelton recalled that the issue had been discussed briefly at a prior meeting about going to a per diem kind of reimbursement rather current reimbursement process, and concern seems to stem from the fact that a per diem method would cost the County additional dollars. However, Ms. Sinclair pointed out that would depend. Part of the conversation about this issue is also the time departments spend now putting together the reimbursement reports /vouchers, and how much that costs putting those together. Rather than a bigger expense, perhaps it is more of a shifting from one line to another.

Follow-on: worthy of some future continued discussion when all players are available.

### **Roundtable Items**

**Assessor.** Picking up new construction information; have most completed on Camano and North Whidbey, now in the City of Oak Harbor. Plan to mail re-val notices between September 15 and October 1. Investment property exchanges fueled by #1031 to save capital gains tax: overall out of the residential investment type exchanges that occur on the West Coast, 23% occur in Washington and 25% occur in Oregon. It is an outside influence affecting the market; the field of assessment is getting more involved in economics.

**Auditor.** Obtaining a new voter registration system and vote tabulation system – will see that in use beginning 2006. Recording fees are going up, which she opposed but the Legislature passed. For the first page of a document to be recorded, more than half of the fee goes to support affordable housing and ending homelessness in Washington.

**Commissioners.** Chairman Shelton commented that the Commissioners recently met with

Representative Larsen, Mayor Cohen and Naval officials, including Vice Adm. Zortman about the decision to locate the F/A-18F plane at NAS Whidbey to replace the EA-6B Prowler. One of the things that Commissioner McDowell and Mayor Cohen have consistently done, which is now paying huge dividends in relation to the preservation of NAS Whidbey, is an annual trip back to Washington D.C. to speak to Navy brass. It came forward loud and clear at the meeting just how important it had been in making the Navy aware of the support NAS Whidbey has from not only the City of Oak Harbor but from Island County as well.

Commissioner McDowell noted there had been a lot of talk for the last four years about the replacement for the EA-6B, a real concern locally. The community for some time tried to make sure the Pentagon understood what they had here with NAS Whidbey and its unencroached air space. Admiral Zortman was here Monday to make the official announcement to the local paper and leadership about the F/A-18F plane, and clearly he said the reason Whidbey was chosen was because (1) lack of encroachment; and (2) mission. Next the P-3 is on its way out and that will be a 737 replacement and the question is where will that base be on the East Coast; hopefully, it will end up being here and that is the next effort. Important to note that there are 10,000 jobs associated with NAS Whidbey [compare that to 800 jobs associated with all the refineries in Anacortes]. A study done by the State shows that 88% of all economic activity in the County is a result of the Base being here, and the North Whidbey school district is made up of 60% military students.

**County Clerk.** Effective today filing fees went up in the Clerk’s Office, representing an increase in some fees already being collected at the County level, as well as new filing fees.

**Prosecuting Attorney.** Seems to be a rash of serious crimes pending: 3 or 4 serious rape cases and a couple of murder cases pending – different than the usual array of cases. Public records training last week went well and seemed fairly well received by those attending.

**Sheriff.** New successful program in the jail: knitting, using balsam wood needles. All the products are donated to CADA.

**Treasurer.** Real estate excise tax fees have gone up from \$2 to \$15.

*Adjourned: 11:35 a.m. Next Roundtable August 22, 2005 @ 11:00 a.m.*

Other topics for the Regular Board session followed at 1:30 p.m. as outlined on the agenda, along with Diking Improvement District #4. This portion of the meeting opened with the Pledge of Allegiance. By unanimous motion, the Board approved the Special Session and Regular Session Minutes from July 18, 2005.

**VOUCHERS AND PAYMENT OF BILLS**

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

Warrants # 218377-218618 .....\$354,072.42.

**PERSONNEL ACTION AUTHORIZATIONS**

Terry Chevront, Assistant Director, Human Resources, presented the following personnel

action

authorizations, approved by unanimous motion of the Board:

| <b>Dept. PAA #</b> | <b>Description/Position #</b> | <b>Action</b> | <b>Eff. Date</b> |
|--------------------|-------------------------------|---------------|------------------|
|--------------------|-------------------------------|---------------|------------------|

|                   |                              |              |         |
|-------------------|------------------------------|--------------|---------|
| Facilities 064/05 | Custodian/Wrk. Sup. . 903.00 | New Position | 7/25/05 |
|-------------------|------------------------------|--------------|---------|

|                 |                        |                  |         |
|-----------------|------------------------|------------------|---------|
| Planning 063/05 | Asst. Director 1715.00 | Personnel Action | 7/25/05 |
|-----------------|------------------------|------------------|---------|

**Agreement - Steve Wirth, Wildlands Management, Burlington – Relating to Eradication of Spartina**

By unanimous motion, the Board approved Agreement [RM-EXT-05-0080] between Island County and Steve Wirth, Wildlands Management, Burlington, relating to eradication of Spartina, a contract period of July 1, 2005 - June 30, 2007, in the amount of \$93,000.

**Agreement - Lighthouse Environmental Programs - Community Litter Cleanup Program**

The Board by unanimous motion approved Agreement [RM-EXT-05-0066] between Island County and the Lighthouse Environmental Programs for the Community Litter Cleanup Program for a contract period of July 1, 2005 – June 30, 2007, in the amount of \$59,000.

**Services Agreement Amendment #2 (2004 to 2005) between Island County, through its Marine Resources Committee, and Gary Wood, dba Intertidal Consulting**

By unanimous motion, the Board approved Services Agreement Amendment #2 (2004 to 2005) between Island County, through its Marine Resources Committee, and Gary Wood, dba Intertidal Consulting.

**REAPPOINTMENT - CAMANO MOSQUITO ABATEMENT DISTRICT**

By unanimous motion, the Board reappointed Grant Lawrence, Camano Island, to another term as a member of the Board of Trustees for the Camano Island Mosquito Abatement District for a two year term ending January 1, 2007.

**Staff session Schedule for august, 2005**

The Board by unanimous motion approved the August Staff Session schedule, outlining regular staff sessions to be held on August 3 and August 17, beginning at 9:00 a.m., held in the Annex Building, 1 NE 6<sup>th</sup> Street, Coupeville, WA.

**Resolution #C- 81-05 Cancellation of Warrants**

Resolution #C- 81-05 Cancellation of Warrants not presented within one year of the issue date as provided for in RCW 39.56.040 was approved by unanimous motion of the Board. [*#C-81-05 on file with the Clerk of the Board*]

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**AWARD OF BID FOR VOTER TABULATION SYSTEM**

Suzanne Sinclair, Island County Auditor, presented to the Board her recommendation for award of bid for a Voter Tabulation System to Hart InterCivic in the amount of \$276,659.12. The County issued a request for proposals June 9 for a new vote tabulation system, and received two proposals: one from Election Systems & Software and one from Hart InterCivic. Auditor and staff examined both proposals

in detail, considering a variety of factors including workflow process, ease of use, reliability, other experience in Washington, price and technical specifications. Hart InterCivic uses a SQL database which is preferred by the Central Services Department.

By unanimous motion, the Board awarded bid as recommended to Hart InterCivic in the amount of \$276,659.12.

**Contract #E03-319 with Snohomish County DEPARTMENT of Emergency Management - Homeland Security FFY2003 Grant**

Contract #E03-319 with Snohomish County Department of Emergency Management to extend the completion date for the Department of Homeland Security FFY2003 Grant, with new completion date August 31, 2005 (RM-DES-05-0068) was approved by unanimous motion of the Board.

**LIQUOR LICENSE APPLICATIONS**

The Board, by unanimous motion, approved the following liquor license applications:

- Liquor License Application for Special Occasion #091224 by Camano Island Yacht Club for a special occasion to be held August 20, 2005 from 5:30 p.m. to 9:00 p.m. at the Camano Yacht Club, located at 129 N. Sunset Drive, Camano Island, WA
- Special Occasion Liquor License #091651 by Orca Network to be held at the San de Fuca Schoolhouse August 8, 2005 from 5:00 p.m. to 8:30 p.m. subject to an approved Temporary Use Permit from Island

County Planning & Community Development Department, signed by Health, Sheriff and Engineering

[Section 17.03.060 Rural Zone and 17.03.180.V Temporary Uses]

**Public Input or Comments**

The audience at the time of Public Input scheduled at 2:00 p.m. consisted of Approximately 20+, the majority attending with regard to an issue surrounding Rhododendron Park.

**Rhododendron Park**

Terri Arnold, apologized to the Commissioners commenting that the issue came about as a result of her action, a matter of the "cart before the horse". It began with her concerns about the area between the campground and the ball fields, and why a lot of the understory was being lost, and wanted to explore at the same time, the possibility of providing a couple soccer fields to help carry the burden between the various athletic uses. She recognizes that 20 acres was a huge amount of land to clear and as of today pulled the permit, and will "fall back and regroup", and come back to the Commissioners with a more concise and better-informed plan.

Marian Attwood, Coupeville, commented that residents worked for years to get 160 acres of Rhododendron Park given to Island County via the land transfer program through DNR and felt such a proposal could put future land transfers in jeopardy. Rhododendron Park is a rare patch of low elevation ancient forest, with 80 acres of old growth trees up to 350 years old and spectacular native Rhododendrons over 10' tall. Ecologists consider it a globally threatened G2 plant community and contains habitat for endangered Marbled Merlet. The State Natural Heritage program ranks this forest as high quality terrestrial ecosystem. She encouraged that Parks work with other groups, such as the Coupeville School District who is involved in building a large recreational facility, in order not to avoid cutting 20 acres for ball fields.

Gary Piazzon, Coupeville, reiterated Ms. Attwood's comments and complimented Ms. Arnold for reconsidering the wisdom of the proposal.

Diane Piazzon, Coupeville, suggested Rhododendron Park was too precious to fool with, having old growth forest and rhododendrons, while athletic fields probably best located in fields.

Marianne Edain, WEAN, Langley, was pleased Ms. Arnold chose to reconsider. She saw an opportunity for serious research using expertise at the Washington Natural Heritage Program and others in the field of ecological restoration to look at Rhododendron Park, as well as other sites on the Island to characterize them in the field and prescribe long term maintenance and management programs.

Steve Erickson, WEAN, believed this illustrated the need for comprehensive planning for developed recreation in Island County, coordinated with all of the various other agencies. Further, it illustrates the

need for comprehensive planning as far as what will happen to the trust lands that Island County has acquired. It is necessary to recognize and conserve the preeminent factors that make those properties desirable and a determination made whether they should be used for development or not.

Kristi O'Donnell, Greenbank, Executive Director, Meerkerk Rhododendron Gardens, was happy about the withdrawal of the permit, and volunteered to be a part of a team from a professional standpoint. She drove through the Park today and saw a need for some restorative and horticulture. This could become a model of sustainable forestry, an educational opportunity. With the expansion going on in Coupeville, and with great facilities already in the County at Fort Casey and South Whidbey Parks, she suggested there were ample sports fields. She shared a few pertinent points from the Island County Comprehensive Plan, Parks Plan:

Vision Statement, page 3 under Integration. Of particular importance will be consistency with land use critical areas and Natural lands elements of the plan

Page 4 of 31. Island County goals for Parks and Recreation

Goal 1 - Planning.

Goal 2 – Maintaining rural character

Goal 3 – Environmental stewardship

Goal 4 – Shoreline access

Goal 5 – Open space corridors and greenbelts

Goal 6 – Coordination; Public Involvement

Policies

1. The availability of Parks and open spaces enhances our quality of life, etc.
2. Parks and open spaces can help to preserve our heritage.
3. Parks and open spaces make economic sense.

Val Jones, Coupeville, thought there may be a need for more fields, but not anything that would rival 20 acres. She had deep concern that a such a decision could be made with regard to a clear cut of County land, and agreed with others who believe it needs to be a decision that is made by not just one person or the Parks Department.

Captain Kelly Sweeney, Greenbank, suggested that during the planning stage there be some consideration for a trail system. He agreed there are a lot of ball fields already and did not know how

many more were needed, but if a ball field goes forward, he hoped that solicitations would be made to local businesses, such as was accomplished at the South end with the park there. In the future he hoped there was a plan for public comment, with experts who know something about forestry.

Cheryl Bradkin, Coupeville, is a member of Whidbey Audubon and participates in the Christmas bird count every year with her area of responsibility including Rhododendron Park. The park is shelter and food for more than just people; it is a very rich bird resource also.

Ed Youdarian, Coupeville, expressed concern about a plan to take the trees out of Rhododendron Park. When something is logged off it will be an eyesore from now on and asked that the County not ruin something that has been there a lifetime.

Chairman Shelton clarified for all present that the Board of County Commissioners did not authorize the application for the cutting permit; the Board recognizes the importance of Rhododendron Park to everyone and no action would be taken in a vacuum.

**Short Plat SHP 127/04**

W. B. Bierbower, Silver Lake Road, Oak Harbor, asked for a response to his mail, and handed a copy of his June 13, 2005 correspondence to the Commissioners with regard to Short Plat SHP 127/04 Engineer's requirements.

**Real Property Voucher – Authorization for Property Acquisition**

As presented with a recommendation of approval by Dick Snyder, Island County Engineer, the Board by unanimous motion approved Real Property Voucher to Irving D. Smith, Jr. per Real Property Acquisition & Right-of-Way Procedures (C-46-03/R-16-03) in the amount of \$17,525.20, Bayview Road Project CRP 98-17, Work Order 229.

**Declaration of Trust/Bond – Mike Hayes (Camwood Construction, Inc.) - Bonding for Maintenance/Roadway Improvements-extension of Bartl Drive**

Based on the recommendation of Mr. Snyder, the Board by unanimous motion approved Declaration of Trust/Bond in the amount of \$25,000 between Island County and Mike Hayes (Camwood Construction, Inc.) to bond for maintenance and roadway Improvements related to the extension of Bartl Drive [PLP 119/03 Plat of Elger Glen] located in Sec. 30, Twp 31N., R 3E.

**Agreement for Reimbursement – Rolling Hills-Glencairn Community Service, Inc., elimination of flooding on Riepma Avenue**

Agreement for Reimbursement #PW-0520-280 between Island County and Rolling Hills-Glencairn Community Service, Inc., for elimination of flooding on Riepma Avenue, was approved by unanimous motion of the Board as presented and recommended for approval by Gwenn Maxfield, Assistant Public Works Director.

**Resolution #C-82-05/R-35-05 – Initiating County Drainage Project CDP 05-03, Work Order 127 - Riepma Avenue, Plat of Rolling Hills**

The Board by unanimous motion approved Resolution #C-82-05/R-35-05 In the Matter of Initiating a County Drainage Project designated as CDP 05-03, Work Order 127, for Riepma Avenue in the Plat of Rolling Hills, Sec. 20, Twp 32N., R 1E. for a total appropriation of \$25,000. [*Resolution #C-82-05 on file with the Clerk of the Board*]

**DECISION ANNOUNCED Closed Record Appeal 195/05 - Victor Hanzeli,**

On conclusion of the Closed Record Appeal held on July 11, 2005, Appeal 195/05 - Victor Hanzeli, Appellant, according to the Closed Record Procedures, this date and time was scheduled for the Board's decision, to include the vote of individual Commissioners and a brief statement as to the basis for the decision.

**William J. Byrd Statement – Basis for Decision**

At 10:30 a.m., on July 11, 2005, as scheduled and advertised, a closed record appeal was held on Appeal #195/05 by Victor Hanzeli. Mr. Hanzeli was appealing the Hearing Examiner's Decision on PLP 334/04 of John Robinett, West Coast Inc., for preliminary long subdivision approval by the Hearing Examiner on May 2, 2005, for the proposed subdivision of an approximately 17.72 acre parcel into 21 lots, at 690 Camano View Drive, Camano Island. Jeff S. Weber of Buck & Gordon LLP, represented John Robinett, West Coast Inc., and Mr. Hanzeli represented himself.

The Board received previously a complete copy of the Hearing Examiner's Record and Exhibit Log [BOCC Exhibit #1]. The Appeal was filed by Victor and Julia Hanzeli by letter dated May 15, 2005, received at the Island County Camano Annex on May 16, 2005 [BOCC Exhibit #2].

The Appeal dated May 15, 2005, provided the basis for the appeal and outlined three errors purportedly committed by the Hearing Examiner, and requested relief.

**1. The applicability for the Court Case Halverson v. City of Bellevue.**

Mr. Hanzeli contends that the Hearing Examiner erred by relying only on the *Halverson v. City of Bellevue* and RCW 58.17.255.

Response: Both *Halverson v. City of Bellevue* and RCW 58.17.255 are applicable to this case. The Halverson decision does not expressly prevent a local jurisdiction to require settlement of ownership disputes prior to preliminary plat approval.

Regarding RCW 58.17.255, it does emphasize resolving ownership issues before final, rather than preliminary plat approval. However, neither Halverson, nor RCW 58.17.255, say that a jurisdiction cannot condition preliminary approval on the resolution of ownership issue.

## 2. **The true configuration of the Boundary Line in question.**

Apparently, there is a discrepancy on the boundary line. Mr. Hanzeli has two recorded surveys (2001 and 1987) that show a property line configuration that has existed since at least 1987. In an opposing view, West Coast has an unrecorded survey and a Surveyor's testimony (in writing) indicating a different boundary line configuration.

Response: Additional action, possibly Court, must be taken to resolve the dispute, and determine the true configuration of that boundary line.

## 3. **Burden of Proof.**

The Hearing Examiner made his decision based on the understanding that both Mr. Hanzeli and West Coast could settle the boundary line discrepancy. However, the two parties could not resolve the issue, thus leaving the only option for Mr. Hanzeli to take legal action against West Coast. The question now posed is whether the condition that was based on the finding is still appropriate, or should it be retooled.

Response: RCW 58.17.110 directs local government to inquire and determine "whether the public interest will be served by the subdivision and dedication." Apparently all parties and the Hearing Examiner agree that a legitimate dispute exists regarding whether the proposed development encroaches across Hanzeli's property line. Both the Halverson case and RCW 58.17.255 clearly tell us that this ownership dispute must be resolved prior to final plat approval. However, by allowing construction to proceed upon 30 days notice, the Examiner has placed the obligation to resolve the ownership dispute squarely on Mr. Hanzeli.

Shifting of the burden to establish ownership is not in the "public interest" with regard to purposes of RCW 58.17.110. In my opinion, the Hearing Examiner committed an error of law when he imposed a condition requiring the affected property owner to "defend" his land from building of a detention pond or any other improvement particularly when West Coast has failed to conclusively establish that it has the right to use that land, and no documents are recorded in West Coast's favor.

**Decision:** The appeal is **Denied**. Finding no fault with any of the Hearing Examiner's Findings of Fact or conclusions of law, I affirm his decision to grant preliminary plat approval subject to conditions. Accordingly, General Condition 1.c should read:

- a. The record indicates a boundary discrepancy in a portion of Tract A in the area of the proposed detention/sedimentation pond. The applicant is to resolve this discrepancy, either by agreement of the affected parties or by legal action, prior to commencement of any clearing, grading, or construction activities in the area of the discrepancy.

For the record, this case should not be used to set precedence. In my opinion, cases of this nature should be decided on a case-by-case basis.

### **Statement by Wm. L. McDowell Regarding the Closed Record Appeal**

Appellants Victor & Julia Hanzeli, filed an appeal seeking to overturn the Island County Hearing Examiner's decision of approval in the case of Preliminary Plat Application (PLP) 334/04 by applicant John Robinett, West Coast, Inc. The appeal dated May 15, 2005 was received by the Board of Island

County Commissioners on May 16, 2005 at the Camano Island Courthouse Annex. The Board of Island County Commissioners held a closed record appeal on APP 334/04 on July 11, 2005.

The applicant is seeking preliminary long plat approval for a proposed long subdivision to be located on an approximately 17.72 acre parcel, located at 690 Camano View Drive, Camano Island, Washington. The proposal is to plat 21 lots ranging in size from 23,027 square feet to 44,943 square feet. This property is situated within the Camano Island Rural Area of more Intensive Development and is zoned rural residential, with a maximum density of 2 dwelling units per acre or 35 lots allowed. The number of lots proposed is well below the maximum allowable density for this property.

The appeal letter dated May 15, 2005 addressed four issues with a summary request for the Board of Island County Commissioners to not allow preliminary plat approval or allow any earthwork or construction to begin until the boundary line dispute between the applicant and the appellant had been fully resolved. The appellant also submitted additional written documentation during the closed record appeal hearing. By way of letter dated July 14, 2005, the applicant's agent, Jeff Weber of Buck & Gordon, LLP stated they had no objection to the additional documentation submitted. At the hearing held on July 11, 2005, the appellant submitted pictures of the property which were given to the Planning

Director but not the Board of County Commissioners. I consider these pictures to be new information that was not available to the Hearing Examiner and therefore will not be reviewed or considered as a part of my closed record deliberation.

The four issues addressed by the appellant in brief summary are:

1. There is an unresolved boundary dispute between the properties of the appellant and the applicant. The disputed property is a portion of the property proposed for the location for a sedimentation and detention pond, and the appellant disagrees with the claim that controlling case law is *Halverson v. City of Bellevue*.
2. The second issue is the appellants concern that the neighbor to the north of the proposed plat has not been notified.
3. The third issue is that water drainage from the proposed plat could have significant impact and desires assurance from the county that any potential drainage impacts are fully resolved prior to construction.
4. The last item relates to the first issue. The appellant states in item four that there are two pre-existing surveys and a statutory warranty deed supporting his claim.

With regard to items 2 & 3 concerning the issues of notice to neighbors and water drainage, I find nothing in the record to support the appeal. Appeal denied on items 2 & 3.

On issues 1 & 4 regarding the existence of a boundary line dispute between the appellant and applicant, there are issues to which I take exception concerning the conditions placed by the Hearing Examiner. The Hearing Examiner is correct as to the Findings of Fact & Conclusions of Law and therefore I agree with Preliminary Plat (PLP 334/04) approval, however, subject to a revision to the condition allowing the

installation of a sedimentation and detention pond on the disputed property.

RCW 58.17.110 requires local government to determine if the public interest will be served by the subdivision and dedication. While public interest is served by allowing for the subdivision, I do not believe in this particular case with these facts that the public interest will be served by putting the obligation onto the appellant Hanzeli to prove ownership of the disputed property prior commencing construction. A revised condition for Preliminary Plat approval should include the applicant may either resolve the disputed boundary line in his favor or the applicant may commence construction so long as that construction takes place outside of the disputed property as defined by the overlapping surveys. The applicant has the choice to relocate either temporarily or permanently the sedimentation and detention pond to a site outside the disputed area, subject to engineering approval. The detention pond if constructed temporarily may be sized smaller than the permanent pond to account for the shorter time it will be a temporary detention pond. It will need to be reconstructed to permanent size at the time the boundary line dispute is resolved.

This condition is not meant to be a precedent as to which party, if any, is required to settle boundary line disputes prior to preliminary plat approval or if the boundary line dispute even needs to be resolved prior to final plat approval. Each case will depend on the facts particular to that case.

The ownership of the disputed property will need to be resolved prior to final plat approval.

I find the Hearing Examiner's Findings of Fact & Conclusions of Law are correct, and the decision to allow preliminary plat approval is correct. I also find the portion of the conditions for Preliminary Plat to be in error that allows construction to begin on the disputed property prior to resolution of the ownership of the disputed property. The revised condition is stated above. The Community Development division is directed to approve the preliminary plat application PLP 334/04 subject to the revised condition.

#### **Mike Shelton Statement as to the Basis for Decision in the Matter of the Closed Record**

Victor Hanzeli appealed [APP #195/05] the decision of the Hearing Examiner in relation to PLP 334/04 by John Robinett, West Coast, Inc., a preliminary long subdivision of an approximately 17.72 acre parcel into 21 lots at 690 Camano View Drive, Camano Island.

The issue of the appeal is a disputed piece of property. At least two prior surveys show the property under the ownership of Mr. Hanzeli. As a result of the proposed subdivision West Coast, Inc. resurveyed the property showing a different property line than the previous two surveys had shown. The disputed area is the location, at least in part, of the stormwater detention pond.

Under normal circumstances the developer is able to commence construction on the plat after preliminary approval. Because the stormwater facility will be essential during the construction process, my assumption is that construction of the detention facility would occur early on in the construction phase. If the County allows West Coast, Inc. to move forward with construction, then we are a party to a future complaint on the part of Mr. Hanzeli. The Hearing Examiner had reason to believe Mr. Hanzeli and West Coast, Inc. would come to an amicable settlement in relation to the property line; that has not occurred. If West Coast, Inc. wants to proceed with construction of the property then a redesign of the stormwater facility off of the disputed property will have to occur first.

My decision is based on RCW 58.17.110 which directs local governments to inquire and determine "whether the public interest will be served by the subdivision and dedication". Given the existence of two previous surveys, it is my opinion that the burden of the change of property line according to the new survey should be born by West Coast, Inc. and that construction should not be allowed on the subdivision until the property line issue has been resolved, unless West Coast, Inc. redesigns the stormwater drainage system so it does not involve the disputed property. West Coast, Inc. has argued that they will take the risk; however, it will be impossible to restore the disputed area to its previous condition if Hanzeli prevails in the dispute.

Based upon the vote of individual Commissioners, the Planning Director was directed to prepare a written decision/Findings of Fact for signature by the Board on August 1, 2005. A copy of the

decision will be provided to the Appellant and Project Applicant by the Planning Department.

**HEARING CONTINUED FROM JULY 18, 2005: ORDINANCE #C-42-05 (PLG-008-05)  
Amending Chapter 17.02 ICC Relating to Type 5 Stream Buffers**

Continued from July 18, 2005, Chairman Shelton opened a public hearing at 2:30 p.m. on Ordinance #C-42-05 (PLG-008-05) Amending Chapter 17.02 ICC relating to Type 5 Stream Buffers, to continue Board action, the public input portion of the hearing having been closed at the last hearing.

Staff: Phil Bakke, Planning & Community Development Director

Jeff Tate, Planning & Community Development Assistant Director

Public: Several members of the public attended, including Steve Erickson, Marianne

Edain, Jeanne Hunsinger and Nathan Whalen, Reporter, Whidbey News Times

**Motion on the floor: In the matter of Amending Chapter 17.02 ICC relating to Type 5 Stream Buffers, Commissioner Byrd moved adoption of Ordinance #C-42-05/PLG-008-05 with an effective date of July 18, 2005. Motion was seconded by Commissioner McDowell.**

As far as clarification whether or not the motion incorporated the proposed amended language on existing uses, Commissioner McDowell at the previous hearing had asked for some additional time to review the code closer and make a determination on what has been recommended as far as including: "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."

Commissioner Byrd, moved to amend the motion on the floor in the matter of amending Chapter 17.02 ICC relating to Type 5 Stream Buffers, Ordinance #C-42-05/PLG-008-05, by striking on the second page the first BE IT FURTHER ORDAINED paragraph reading "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 change the effective date in the next BE IT FURTHER ORDAINED

paragraph from July 18, 2005 to July 25, 2005. Amendment to the motion, seconded and carried unanimously.

Voting on approval of Ordinance #C-42-05/PLG-008-05 as amended, the motion, as seconded, carried by unanimous vote. [*Ordinance #C-42-05/PLG-008-05 on file with the Clerk of the Board*]

[GMA #8181]

**Public Meetings: Ordinance #C-83-05/PLG-011-05; Ordinance #C- 84 -05/PLG-017-04;  
Ordinance #C-85-05/PLG-018-04; Ordinance #C-86-05/PLG-019-04**

Phil Bakke commented that the next four ordinances had been previously reviewed with the Board at various staff sessions, each coming to the Board with a recommendation of approval from the Island County Planning Commission. Each ordinance was reviewed as to form by the Deputy Prosecuting Attorney and signed, and have been through the State agency 60-day review. The Board's options are: (1) adopt; (2) set for public hearing in order to make substantive

changes; or (3) remand back to the Planning Commission for further consideration.

The audience, with respect to the four ordinances, consisted of approximately 9 members of the public, including Steve Erickson, Marianne Edain, Jeanne Hunsinger and Nathan Whalen, Reporter, Whidbey News Times. County staff was represented on the various ordinances by: Phil Bakke, Planning & Community Development Director; Jeff Tate, Planning & Community Development Assistant Director; and Keith Higman, Environmental Health Director.

**Ordinance #C-83-05/PLG-011-05 Amending the Land Use Element of the Comprehensive Plan, the Water Resource Element of the comprehensive plan**

**and the Critical Areas Ordinance as they pertain to Critical Aquifer Recharge Areas**

A Public Meeting was held on Ordinance #C-83-05/PLG-011-05 in the matter of Amending the Land Use Element of the Comprehensive Plan, the Water Resource Element of the Comprehensive Plan and the Critical Areas Ordinance as they pertain to Critical Aquifer Recharge Areas. The recommendation of the Planning Commission is for approval of the proposed amendments to the County's Comprehensive Plan and Development Regulations regarding Aquifer Recharge Areas including

amendments to: Land Use Element of the Comprehensive Plan; Water Resource Element of the Comprehensive Planning Community Development Critical Areas Ordinance (17.02); Potable Water Supply and Source Ordinance (8.09) adopted by the Board of Health June 20, 2005 (Ord. C-59-05); Planning Commission's adopted Findings of Fact.

Mr. Higman presented the Ordinance as the outcome of a watershed planning process the Health Department had worked on with WRAC members for over five years. The Island County Board of Health on June 20, 2005 approved amendments to Title 8 of the Island County Code, the implementation code for both the seawater intrusion protection areas and ground water protection areas. The changes represent the best available science, and state of the art programs, well ahead of almost all jurisdictions in the State in terms of the science developed to identify and predict seawater intrusion. Groundwater protection standards were developed using the DOE guidance manual and have even a more accurate outcome than what the manual prescribes. From a Health Department perspective, he encouraged the Board's acceptance of the changes, meeting the requirements of growth management.

Commissioner Byrd moved to accept the Planning Commission recommendation and approve Ordinance #C-83-05/PLG-011-05 in the matter of Amending the Land Use Element of the Comprehensive Plan, the Water Resource Element of the Comprehensive Plan and the Critical Areas Ordinance as they pertain to Critical Aquifer Recharge Areas; motion seconded and carried unanimously. [*Ordinance #C-83-05/PLG-011-05 on file with the Clerk of the Board*] [GMA Record #8183]

**Ordinance #C-84-05 (PLG-017-04) Ebey's Landing National Historical Reserve Amendments to County Zoning Ordinance, Ebey's Landing National Historical**

**Reserve, ICC 17.04, ICC 17.03.260, and ICC 16.18A.**

A Public Meeting was held on Ordinance #C-84-05 (PLG-017-04) Ebey's Landing National Historical Reserve Amendments to County Zoning Ordinance, Ebey's Landing National

Historical Reserve, ICC 17.04, ICC 17.03.260, and ICC 16.18A.

Mr. Bakke presented the ordinance for approval, forwarded to the Board with a unanimous recommendation of approval from the Planning Commission. The ordinance was reviewed at staff session, with invitation to members of the Historic Advisory Committee [HAC] to participate in that discussion. Standards in most cases are refinements of standards that the HAC used for a number of years, an accurate reflection of the standards currently being applied, put into a new section of code Title 17.04. The amendments make clear the enforcement line for each section and address some of the historic issues. Mr. Bakke commended the volunteer members of the HAC, who were invaluable in the update process, spending many hours above and beyond to call to help the Planning Department develop the information.

By unanimous motion, the Board accepted the Planning Commission recommendation and approve Ordinance #C-84-05 (PLG-017-04) Ebey's Landing National Historical Reserve Amendments to County Zoning Ordinance, Ebey's Landing National Historical Reserve, ICC 17.04, ICC 17.03.260, and ICC 16.18A. [*Ordinance #C-84-05/PLG-017-04 on file with the Clerk of the Board*] [GMA Record #8185]

### **Ordinance #C-85-05/PLG-018-04 - Amending Chapter 17.03 ICC**

#### **Incorporating Standards for Composting and Grinding**

A Public Meeting was held on Ordinance #C-85-05/PLG-018-04 - Composting & Grinding In the matter of amending Chapter 17.03 ICC Incorporating Standards for Composting and Grinding.

Mr. Tate presented the ordinance, which creates siting standards for what is allowed with regard to composting and grinding. The ordinance is set up such that it establishes a long list of activities that

would be exempt from the ordinance, ranging from back yard home composting to composting and grinding associated with reclamation surfacing mining, agriculture activities and golf courses, etc. The second level establishes permit procedure for use of the material, uses on site, processing and marketing the material, and composting facilities, etc. There is a section on grinding itself. The Planning Commission voted unanimously to recommend approval.

Commissioner McDowell asked about controls of odors, using the example in Whatcom County that became a huge issue associated with composting of mushrooms. Mr. Tate acknowledged there had been a lot of concern about that. Although Island County has not had to deal with that issue, this ordinance would prohibit that.

Commissioner Byrd moved that the Board accept the Planning Commission recommendation and approve Ordinance #C-85-05/PLG-018-04 - Composting & Grinding In the matter of amending Chapter 17.03 ICC Incorporating Standards for Composting and Grinding. Motion seconded and carried unanimously. [*Ordinance #C-85-05/PLG-018-04 on file with the Clerk of the Board*] [GMA Record #8187]

### **Ordinance #C-86-05 (PLG-019-04) Changes to the GMA In the matter of**

**amending Chapter 16.26 ICC and Chapter 17.03 ICC in response to changes  
to the Growth Management Act**

A Public Meeting was held on Ordinance #C-86-05 (PLG-019-04) Changes to the GMA In the matter of amending Chapter 16.26 ICC and Chapter 17.03 ICC in response to changes to the Growth Management Act.

Mr. Tate outlined the proposal to amend Chapter 16.26 of the ICC and Chapter 17.03 of the zoning ordinance. The matter was brought before the Planning Commission in an effort to do some house cleaning on reviewing amendments been made to the Growth Management Act since the last time the County adopted comprehensive plan updates. Staff and Prosecuting Attorney's Office reviewed

amendments made to the GMA to make sure the Island County Comprehensive Plan and Development Regulations were consistent with those State amendments. Exhibit A provides changes in 16.26.090 from 5 to 7 years in accordance with legislative amendment requiring now a 7 year review. Exhibit B makes the changes necessary to comply with state law stipulating that local jurisdictions cannot prohibit group homes from being located in residential zones, with group homes defined such that could have potentially up to 12 individuals.

By unanimous motion the Board accepted the recommendation of the Island County Planning Commission and adopted Ordinance #C-86-05 (PLG-019-04) Changes to the GMA In the matter of amending Chapter 16.26 ICC and Chapter 17.03 ICC in response to changes to the Growth Management Act. [*Ordinance #C-86-05 (PLG-019-04) on file with the Clerk of the Board*] (GMA Record #8189)

There being no further business to come before the Board at this time, the meeting adjourned at 3:12 p.m. The next regular meeting of the Board will

be on August 1, 2005 at 9:30 a.m.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

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Mike Shelton, Chairman

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Wm. L. McDowell, Member

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William J. Byrd, Member

ATTEST:

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Elaine Marlow

Clerk of the Board