consideration to how this particular spit of land was developed over the years, it is Mr. Ingram's contention that the Hearing Examiner's view was too narrow a view -- and in fact, an unreasonable view. Mr. Ingram asked that the Board consider the testimony of Mr. Ken Maxwell (present in the audience today) i.e., page 25 of the transcript who characterizes what he perceives to be the character of the neighborhood, i.e., sub-culture which has grown up on the spit with the natural instinct for those who live on the beaches with residences to want to orient their living towards the open water -- in this case, towards Port Susan. The "sub-culture" is divided into two portions -- those who have lots affording the right to place a dwelling on the baech and those who do not. Mr. Ingram's argument is that the Siegel's are in a situation now that does not permit them to use their property orienting their house towards the water, but rather when built in 1981 oriented towards the road; he does not feel it was fair that the Hearing Examiner narrowed her view in that regard. There is no right of view, but Mr. Ingram referenced a letter he had cited to the Hearing Examiner, from Alan Hancock, Assistant Prosecuting Attorney, commenting on the legality, and the extrapolation of view in the Hearing Examiner's judgment which resulted in her comments on the issue at Paragraph #7, comes from ah interpretation of the State Environmental Protection Act (SEPA), with Mr. Ingram being unable to draw the same conclusion.

Summarizing, Mr. Ingram advised it was his belief that he had shown thus far:

1. Safety regarding the roadway/attitude of the Engineering Office, noting no safety problems shown or testified to, and the decision in that regard by the Hearing Examiner is in error.

2. View matter is in error.

3. Narrowing the perception to just the easterly extremity of the spit is in error and unfair.

Turning to whether or not the applicant is enduring an unnecessary hardship in the literal application of the Ordinance, it was Mr. Ingram's request that the Board consider that in 1981 the couple obtained a permit to build; the basic argument he believes on which the Hearing Examiner based her decision was that the Siegel's built their home in 1981 on a portion of the Plat of Driftwood Shores (northerly portion facing Triangle Cove) received a building permit, accessing the property by a private road, and should have known what the setback requirements were at the time. Mr. Ingram pointed out, however, at that time they could not build out on the front, but in 1982/83 during the windstorm a large part of the area had been eroded, resulting in the buidling of a bulkhead, and the bulkhead resulted in being able to reclaim 11' to 12' of property. However, the Hearing Examiner took a very narrow view, i.e., since the Siegel's had their house on the northerly portion of the property that there was no unusual circumstances confronting them that is different from anyone else in the Plat. Mr. Ingram reviewed with the Board the provisions in the Ordinance providing for special conditions and circumstances. There is no other piece of property along Driftwood Shores spit from the westerly to easterly end that is of exactly this size and configuration, that has an existing house -- a very nice, well-built house, well-maintained, with the applicant's desire to move the house so as to orient it on Port Susan Bay -- these are circumstances that do not necessarily result from action of the Siegel's, and they ask that the Board relieve them from the strict application of the setback requirement. The literal application of the front yard setback would deprive the applicant of rights which are commonly enjoyed by others in the neighborhood. Mr. Ingram referenced Exhibit #6 from David F. Thiele, regarding "Variance Application No. V-1284/Harold and Darlene Siegel", letter dated 10/2/84 from the Hearing Examiner's file, addressed to Len Madsen, Island County Planning Director (and Exhibit #7); he asked that the Board review these exhibits in connection with the transcript on pages 21 and 22, talking of structures being built under the permit process of the county that violate the setback requirements. He does not believe the Ordinance states that applicant cannot point out that there are others in the Driftwood Shores neighborhood on this beach that are enjoying their houses on the beach portion of the lot, even though they violate the buffer area from the front yard setback. The applicant should not be discriminated against with respect to what others on the spit are doing.

Tom Roehl explained that he had become involved earlier in the process primarily because the Siegels were located on Camano Island and needed liaison in the application process. He noted that he had experienced, with variance applications, errors of omission on the part of

the Hearing Examiner, relating to whether the proposed setback variance still allows the intent of having setbacks in the code to be met in a particular neighborhood. The intent of having setbacks, according to his interpretation, is the intent of allowing for roads to be widened in the future, minimizing the potential for impacts of cars running off the road and hitting residences, and open space. It appears to Mr. Roehl that the issue should have been further addressed by the Hearing Examiner. This is important inasmuch as the road is not really a street but rather a privately owned parcel, and the situation is such that there have been houses in that plat constructed as close as 6' to 8' to the road -- which would make it improbable if not impossible to widen that road. The speed bumps and speed limit on the particular road suggests no high probability of vehicles travelling too fast. Mr. Roehl feels that the question of open space in this community is moot, people not being concerned about open space bewtween the house and road, rather, the open space is provided by the water. Mr. Roehl understands that much of the opposition to the variance consists of a "mixing of the issues" -- the opposition being to the construction of a structure on that side of the beach, for which, as would apply to this application, is not a relevant issue; rather the issue is how close the house can be built to the road and whether that would create an impact with potential damage to the public health, safety and welfare; not whether the building of the house on that side of the road creates impacts.

Harold Seigel, Applicant, pointed out from the photographs posted on the wall (photographs are those listed as exhibits from the Hearing Examiner's file) where the Rhodes' house sits with respect to the Siegel property and the other three or four; the Rhodes' home being about 4' from the edge of the roadway. Mr. Siegel is asking for a 6' variance from the right-of-way, and pointed out that the house next to the Rhodes' is built with a zero clearance right at the edge of the right-of-way.

Mr. Zylstra took issue with Mr. Siegel's testimony at this point as providing testimony again on the issues as was taken before the Hearing Examiner, and suggested his testimony therefore at this point is not proper. Chairman Dunlop concurred pointing out that he had previously indicated the Board's desire to not repeat any evidence. To the contrary, however, Mr. Siegel indicated his testimony at this time was to correct statements within the Hearing Examiner's report (and Dan Farber) stating that the closest home is 200' away.

Another point of clarification to Mr. Farber's report noted by Mr. Siegel related to the statement Mr. Farber made that the Siegel's had been told that if they reapply that all the information in the 1983 application would be brought forward to this hearing. Mr. Siegel reported that the 1983 application was heard by the Board of Adjustment, Chaired by Maxine Giesel, and at that time, Rob Harbour of the Planning Department was questioned by Ms. Geisel about whether or not Mr. Siegel could withdraw his application. Mr. Siegel told the Board that the reason he had withdrawn his application at that time was because of letters from staff entered into the process as testimony dated the same date of hearing, and Mr. Siegel had not had an opportunity to respond to the planner's comments. Mr. Harbour in response to the question from Ms. Giesel at that hearing of the Board of Adjustment indicated that Mr. Siegel would have to reapply with a new application and new fees. He related difficulties which he encountered in making this application and the process involved, i.e., at the time of requesting the permit to move his house in 1983, he received a note from the Building Department, "he was aware we were coming in and was instructed to not issue permit - check with Len Madsen and Bruce Smith". Mr. Siegel takes issue with the Hearing Examiner's interpretation of the Shoreline Development Act with regard to open space as it refers to his particular property. With regard to the issue of view as noted in a letter from the Prosecuting Attorney's Office, Mr. Siegel stated his belief that in fact the Hearing Examiner had not been aware of that opinion. However, Chairman Dunlop pointed out to Mr. Siegel that this opinion was very apparent in the record.

Mr. Siegel concluded by indicating that the County's tolerance of new recent violations in this same area calls to question the process, noting that treatment should be equal for everyone involved.

Ted Zylstra presented opposition to the request for variance on behalf of those he represents who are owners of property in the immediate area of the property owned by Harold Siegel, having been opposed to the variance as requested in 1983 as well as the application filed in 1984, the subject of a hearing before the Hearing Examiner; they are also opposed to the appeal being heard by the Board at this time. He indicated his difficulty in recognizing the neighborhood from the comments made today. He asked that the Board recognize that what Mr. Siegel wants to do, even