Franchise #32 by Wendy Frederick Smith for a new water distribution system, Maxwelton Road and Swede Hill Road, Whidbey Island; Sec. 5, Twp. 28N, Rge. 3E and Sec. 4, Twp. 28N, Rge. 3E.

By way of memorandum dated 3/14/02 for franchise renewal application Franchise #85(1)R, Patton's Hide-Away Water Co. Inc, Dick Snyder, County Engineer, recommended approval and reported that the application for renewal had been reviewed; there were no plans for expansion of current system; that all departments requested to comment had responded with no objection to the proposal; and that the Prosecuting Attorney's Office reviewed and approved the document as to form and also had been reviewed and approved by the Risk Manager. Memorandum dated 3/25/02 for franchise transfer and consolidation related to Harbor Hills Water Company, LLC, also recommended approval by the Engineer, reporting the application had been reviewed, there were no plans for expansion of current system; that all departments requested to comment had responded with no objection to the proposal; and that the Prosecuting Attorney's Office reviewed and approved the document as to form as had the Risk Manager. Memorandum dated 3/28/02 for a new franchise by Wendy Smith covering a new water distribution system was also recommended for approval by the Engineer, reporting that the application had been reviewed, all departments requested to comment had responded with no objection to the proposal; the Prosecuting Attorney's Office reviewed and approved the document as to form, and the Risk Manager had also approved the document.

At the time of hearing when the Chairman asked for comments from the public, no one spoke either for or against any of the franchise applications.

By unanimous motion, the Board approved Franchise #85(1)R, Patton's Hide-Away Water Co. Inc.; Franchise #182(2), Harbor Hills Water Company, LLC; and Franchise #32, Wendy Frederick Smith, new water distribution system.

DECISION ANNOUNCED: APPEAL #APP 083/02 BY GERALD STEEL FOR CAMERON-WOODARD HOMEOWNERS ASSOCIATION

On April 1, 2002, the Board heard Appeal #APP 083/02 by Gerald Steel for Cameron-Woodard Homeowners Association, appealing the Hearing Examiner decision regarding PLP 183/00, seeking to reverse the Hearing Examiner's decision and deny application PLP 183/00. As indicated by the Chairman at the end of the appeal hearing, the Board's decision was to be announced at public meeting within 14 days, April 15, 2002, based on the record of the Hearing Examiner's hearing and applicable laws and include the vote of individual Commissioners and a brief statement as to the basis for the decision. The Commissioners individually provided their decision and statement as follows:

Commissioner William F. Thorn - Decision and Statement:

#APP 083/02 by Gerald Steel for Cameron-Woodard Homeowners Association, appealing the Hearing Examiner decision regarding PLP 183/00, sought to reverse the Hearing Examiner's decision and deny application PLP 183/00.

1. The appeal before the Board of Island County Commissioners held on April 1, 2002 was based on a closed record.

2. The burden is on the appellant to show that either:
   a. The Hearing Examiners decision was not supported by substantial evidence, or
   b. The Hearing Examiner made an error of law

3. The issue is whether the Preliminary Long Subdivision Application (a Type III decision) was vested on June 27, 2000 when submitted.

4. Under RCW 58.17.033, an application shall be considered under the zoning and other land use regulations in effect at the time a fully completed application is submitted to the County. All applications since Sept. 29, 1998 such as the one at hand have been processed in accordance with this State law.

5. ICC 16.19.080B Notice of Complete Application states that, "except as provided in C below, within 14 days following receipt of a land use permit application, the Department (i.e., Planning and Community Development) shall mail a written notice to the applicant that the application is either complete or incomplete."

6. ICC 16.19.080F states that "The Department's signing a completed application at a scheduled application meeting or the Department's mailing of a notice of complete application as provided above, or the failure of the Department to mail such notice shall cause an application to be conclusively deemed to be complete and vested as provided in this chapter."

7. Thus the notice may be given at the time of the application submittal, based on the completion and signing of the Application Requirements Checklist, or it may be later determined and, in either case, notice provided within 14 days following receipt of the application.

8. The determination of completeness and the notice of same are two separate events and may be signified by signing the application followed by a mailed notice or simply by a timely mailed notice of completeness.

9. Acceptance of payment of the application fees is an additional testimony that an application is complete and accepted.

10. The application checklist was completed and signed, the applicant was advised the application was complete and accepted on June 27th, 2000 and payment of the fees was made on the same date.

11. The original ICC 16.19.110A in effect on June 27, 2000 stated that "Applications for Type I, II, and III decisions shall be considered under the zoning and other development regulations in effect on the date a notice of complete application is mailed or notice of completion is given at the application meeting scheduled pursuant to this chapter." Subsequent revision/clarification did not change this but added " Applications for subdivisions and short subdivisions shall be considered under Chapter 16.06 ICC and the zoning and other development regulations that are in effect at the time a fully completed application for preliminary plat approval or short plat approval is submitted to the Department. This regulation applies to all subdivision and short subdivision applications submitted to Island County on or after September 29, 1998, the effective date of this section."

12. The Hearing Examiner's decision is upheld and the appeal is denied based on the facts that 1. sufficient substantial evidence was in the record at the time of his decision and 2. no error of law was made.

13. I have had no communication with the parties to this appeal during the pendency of Cameron-Woodard's appeal of the Hearing Examiner's decision before the Board of Island County Commissioners.

William F. Thorn
Island County Commissioner
District #3
April 15, 2002

Commissioner Wm. L. McDowell – Decision and Statement

STATEMENT REGARDING APPEAL #083/02 BY CAMERON-WOODARD HOMEOWNERS ASSOCIATION, AN APPEAL OF THE HEARING EXAMINER'S DECISION DATED 2/15/02 HEARD BY THE BOARD ON 4/1/02

Cameron-Woodard Homeowners Association, through their agent Gerald Steel, filed an appeal seeking to overturn the Island County Hearing Examiner's decision to approve PLP 183/00. The appeal dated February 28, 2002 was received by the Board of Island County Commissioners on March 1, 2002 and was heard on April 1, 2002.

In his written statement of appeal, Mr. Steel offered reasons why this appeal should be approved. The first reason was that the Hearing Examiner relied upon an ordinance (Ordinance No. C-159-01) that Mr. Steel claims is an illegal ordinance. The second reason he states for reversing the Hearing Examiner's decision is that the Examiner wrongly states on Page 10, Paragraph D of the Hearing Examiner's decision that "No further analysis of the material submitted by Swan on June 27th was undertaken by Island County Planning and Community Development staff prior to the mailing of the Notice of Complete Application.". A third issue was that the Hearing Examiner erred by his statement on Page 14 of the decision that he has limited jurisdiction and is only allowed to "interpret and implement County ordinances".

As to the first issue regarding an illegal County Code, I find there is no evidence either in State Law, County law or on the record that would indicate there is anything illegal regarding County Ordinance No. C-159-01. As a County Commissioner I do not believe the County has the ability to take away a right given to its citizens by State law. Specifically, R.C.W. 58.17.033 indicates the date of vesting would be the submittal date which was June 27, 2000. Clearly, the Board of Island County Commissioners not only has the ability but in my opinion based upon my oath to uphold State law, the duty to correct any county code that violates State law.