SUMMARY OF APPEAL AND DECISION

APPEAL: Curtis Pierce has appealed the decision by Island County Planning & Community Development denying a Site Plan Review Proposal, SPR 477/06, requesting Site Plan Approval for fifty-one thousand square foot personal storage facility and two single family residences to be located on Assessor’s parcel number R13220-334-2900. The appellant has proposed sub-dividing an approximately sixteen acre parcel into three parcels to facilitate the size of the proposed personal storage facility.

DECISION: The decision of the Director of Island County Planning & Community Development is upheld and the appeal is denied.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing on December 6, 2007.

I. PRELIMINARY INFORMATION

Appellant: Curtis & Kelly Pierce

Property Location: The subject site is located along SR20 approximately 600 feet south of the intersection of SR20 and Sidney Street on Whidbey Island, WA 98277 in the NE 1/4 of Section 20, Township 32N, Range 1E, W.M.

Publication: November 21, 2007

Mailing of Notice to Appellant: August 6, 2007

Mailing of Staff Report: November 21, 2007

Date of Appeal: August 2, 2007
Date of Comprehensive Statement: August 20, 2007

Hearing Date: December 6, 2007

Exhibit Log:
APP 350/07

1. Staff Report
2. Pre-Application Conference Application dated 3/30/06
3. Notice of Pre-Application Conference dated 4/3/06 from Monica Felici to Bob Jones
4. Quarter Section Map
5. Account Summary Snapshot
6. Account Apr Summary Snapshot
7. Account Permits Snapshot
8. Land Use Permits Screen-print R13220-334-2900 replaced R13220-534-2900
9. Land Use Permits Screen-print R13220-534-2900
10. Parcel Data Sheet
11. Critical Areas Map
12. Request for Comment dated 4/7/06
13. Letter from John Bertrand Island County Public Works to Andrew Hicks dated 4/26/06
14. 4/27/06 Pre-Application Meeting Sign In Sheet
15. Letter from Elaine Graham Island County Health Dept. to Bob Jones dated 4/27/06
16. Pre-Application #913/06 Planning Department Comments from Andrew Hicks to Robert Jones dated 4/27/06
17. Land Development Permit Application received 11/13/06
18. Environmental Checklist received 11/13/06
19. Request for Comment dated 11/17/06
20. Notice of Complete Application dated 11/17/06 from Monica Felici to Bob Jones
21. Notice of Application with SEPA dated 11/29/06
22. Notice of Application Republication dated 12/5/06
23. Notice of Application with SEPA dated 12/20/06
24. Affidavit of Publication dated 11/29/06
25. Letter dated 12/5/06 from Aneta Hupfauer, Island County Public Health to Andrew Hicks
26. Affidavit of Posting the Public Notice dated 12/20/06
27. Letter dated 12/20/06 from Aneta Hupfauer, Island County Public Health to Andrew Hicks
28. Memorandum dated 12/27/06 from Andrew Hicks to Ebey’s National Historic Preservation Historical District
29. Affidavit of Publication dated 12/20/06
30. Letter to Andrew Hicks dated 1/5/07 from John Bertrand, Island County Public Works Roads Division
31. Public comments email from Marianne Edain, WEAN to Andrew Hicks
32. Written comment from Central Whidbey Island Historical Preservation District Review Committee
33. Email from Andrew Hicks 1/3/07 to Phil Bakke
Email response from Phil Bakke dated 1/4/07 to Andrew Hicks
Letter from Andrew Hicks dated 1/9/07 to Bob Jones
Memorandum from Justin Craven dated 1/10/07 to Andrew Hicks
Email from Rob Harbour dated 1/12/07 to Andrew Hicks
Email from Jan Pickard dated 1/30/07 to Andrew Hicks
Email response from Andrew Hicks dated 1/30/07 to Jan Pickard
Memorandum from Island County Planning & Community Development to Dept. of Arch. & Hist. Preservation
Email from Andrew Hicks dated 2/1/07 to Phil Bakke; Jeff Tate with attached staff memo
Email reply with additional input from Jan Pickard dated 2/1/07 to Andrew Hicks
Email from Andrew Hicks dated 2/7/07 to Phil Bakke; Jeff Tate
Email from Phil Bakke dated 2/7/07 to Andrew Hicks; Jeff Tate with attached staff memo
Letter from Andrew Hicks dated 2/7/07 to Bob Jones
Letter from Aneta Hupfauer, Island County Public Health dated 3/2/07 to Andrew Hicks
Email from kelly kay dated 3/12/07 to Andrew Hicks
Email from Curtis Pierce dated 3/12/07 to Andrew Hicks
Email response from Andrew Hicks dated 3/13/07 to Curtis Pierce
Letter from Andrew Hicks dated 3/19/07 to Bob Jones with attached photos & map
Letter from John Bertrand, Island County Public Works Roads Division dated 3/23/07 to Andrew Hicks
Email from Andrew Hicks dated 3/27/07 to Curtis Pierce, cc Bob Jones
Email response from Curtis Pierce dated 3/28/07 to Andrew Hicks
Email from Andrew Hicks dated 3/29/07 to Curtis Pierce
Email from Andrew Hicks dated 4/3/07 to Phil Bakke
Email response from Phil Bakke dated 4/3/07 to Andrew Hicks; Ryan Morrison; Jeff Tate
Email from Curtis Pierce date 4/3/07 to Andrew Hicks
Email from Curtis Pierce date 4/3/07 to Andrew Hicks
Email from Andrew Hicks dated 4/4/07 to Phil Bakke with sample illustration
Letter from Aneta Hupfauer, Island County Public Health dated 4/4/07 to Andrew Hicks
Email from Andrew Hicks dated 4/5/07 to Phil Bakke
Email from Andrew Hicks dated 4/5/07 to Phil Bakke with attached staff memo
Email from Andrew Hicks dated 4/5/07 to Curtis Pierce, cc Phil Bakke
Letter from Andrew Hicks dated 3/19/07 to Bob Jones, received 4/6/07 by Island County Planning & Community Development with items checked
Memo from Curtis Pierce to Island County Planning Department received 4/7/07
Email from Andrew Hicks dated 4/11/07 to Phil Bakke
Email from Andrew Hicks dated 4/11/07 to Phil Bakke
Email from Curtis Pierce dated 4/12/07 to Andrew Hicks
Email from Andrew Hicks dated 4/12/07 to Curtis Pierce, cc Phil Bakke
Email response from Andrew Hicks dated 4/13/07 to Curtis Pierce
Email response from Curtis Pierce dated 4/13/07 to Andrew Hicks
Email response from Andrew Hicks dated 4/17/07 to Curtis Pierce
Email from Andrew Hicks dated 4/17/07 to Curtis Pierce
Email from Andrew Hicks dated 4/17/07 to Phil Bakke
Email from Andrew Hicks dated 4/18/07 to Phil Bakke
Letter from Phil Bakke dated 4/18/07 to Mr. & Mrs. Curtis Pierce
Email from Andrew Hicks dated 4/18/07 to Curtis Pierce with attached letter
Email from Phil Bakke dated 4/24/07 to Andrew Hicks
Email response from Andrew Hicks dated 4/24/07 to Phil Bakke
Email from Andrew Hicks dated 4/26/07 to Curtis Pierce, cc Phil Bakke
Email response from Curtis Pierce dated 4/26/07 to Andrew Hicks, Cc Phil Bakke
Email response from Phil Bakke dated 4/27/07 to Curtis Pierce; Andrew Hicks
Email from Curtis Pierce sent 5/9/07, illegible text
Email from Andrew Hicks dated 5/14/07 to Curtis Pierce, cc Phil Bakke
Email from Andrew Hicks dated 5/14/07 to Phil Bakke
Email from Andrew Hicks dated 5/14/07 to Mike Shelton, Cc Phil Bakke
Email response from Curtis Pierce dated 5/17/07 to Andrew Hicks
Email from Andrew Hicks dated 5/17/07 to Curtis Pierce, cc Phil Bakke
Email from Andrew Hicks dated 5/25/07 to Phil Bakke
Email from Andrew Hicks dated 5/29/07 to Phil Bakke
Email from Curtis Pierce dated 5/29/07 to Andrew Hicks
Letter from Curtis Pierce to Andrew Hicks and Phil Bakke, received 5/29/07
Email response from Andrew Hicks dated 5/30/07 to Curtis Pierce, cc Phil Bakke
Letter from Curtis Pierce dated 6/21/07 to Island County Planning Department
Second letter from Curtis Pierce dated 6/21/07 to Island County Planning Department
Email from Andrew Hicks dated 6/21/07 to Phil Bakke, Cc Jeff Tate
Letter from John Bertrand, Island County Public Works Roads Division dated 7/5/07 to Andrew Hicks
Email from Andrew Hicks dated 7/9/07 to Phil Bakke
Letter from Aneta Hupfauer, Island County Public Health dated 7/9/07 to Andrew Hicks
Email from Justin Craven dated 7/17/07 to Andrew Hicks
Staff Decision and Final SEPA Threshold Determination Site Plan Review – Type II Decision – SPR 477/06, dated 7/19/07, with exhibits A through M
Map – Short Plat for Curtis Pierce, dated 10/3/06, received 11/13/06
Map – Curtis Pierce Mini Storage Existing Grades & Prop Clearing Limits, dated 10/3/06, received 11/13/06
Map – Grading, Drainage and Erosion Plan for Pierce Mini-Storage, dated 10/3/06 1 of 2, received 11/13/06
Detention Pond Design Notes & Details, dated 10/12/06 2 of 2, received 11/13/06
Landscape Plan for Pierce Mini-Storage, dated 10/3/06, received 11/13/06
Landscape Plan for Pierce Mini-Storage, dated 10/3/06, received 2/28/07
Clearing Grading & Erosion Control Plan for Pierce Mini-Storage Facility, dated 2/7/07, received 2/28/07
Grading Sections Pierce Mini-Storage Facility, dated 2/16/07, received 2/28/07
Drainage Structure & Detention Plan Pierce Mini-Storage Facility, dated 2/23/07, received 2/28/07
Landscape Plan for Pierce Mini-Storage, dated 10/3/06, received 4/6/07
Landscape Plan for Pierce Mini-Storage, dated 7/17/07, receive stamped 6/21/07
Notice of Appeal dated 8/1/07, received 8/2/07
Email from Andrew Hicks dated 8/2/07
Acknowledgment letter of appeal from Michael Bobbink, Hearing Examiner dated 8/6/07 to Curtis & Kelly Pierce
Email from Paula Bradshaw, Hearing Examiner’s Office to Curtis & Kelly Pierce regarding due date of Comprehensive Statement of Appeal due date, dated 8/14/07
Fax from Christina Farnham, attorney for Pierce, with letter requesting continuance of hearing date.
Comprehensive Statement of Appeal, received 8/20/07
Letter from Paula Bradshaw, Hearing Examiner’s Office to Christina Farnham, resetting hearing date to November 1, 2007
Email from Christina Farnham, to Hearing Examiner’s office requesting second reset of hearing to December 6, 2007
Letter from Paula Bradshaw, Hearing Examiner’s Office to Christina Farnham, resetting hearing date to December 6, 2007
Letter from Paula Bradshaw, Hearing Examiner’s Office to Christina Farnham with attached the staff report
Affidavit of mailing of staff report, dated 11/21/07
Affidavit of Publication in the Whidbey News Times/ Record, dated 11/27/07
Large compilation map, modified by all parties at the hearing to reference the area in question, marked as exhibit 125 at the hearing.
Appellant’s Brief, handed forward & marked as exhibit 126 at the hearing.
Letter, marked as exhibit 127 at the hearing, referred to as testimony of Mr. Pierce.
5 pages from Arborday.org, Tree Guide, marked at the hearing as exhibit 128
Email from Phil Bakke to Andrew Hicks, marked as exhibit 129 at the hearing.

HEARING TESTIMONY

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II.

The appellant is the owner of a 16.16 acre parcel, zoned Rural, and abutting SR20. The site is currently open pasture land.

The property is located adjacent to the east side of SR20 and abuts, on its’ eastern property boundary, a residential subdivision known as Rolling Hills. The property is abutted on the south side by large open pasture parcels. It is abutted on the west side of SR20 by scattered residential development with significant amounts of pasture-like open space.

The property is surrounded on three sides by the Ebey Landing Natural Historic Area but is not a part of the area itself.

Topographically the property lies in a depression with a rapid rise of sixty feet to the west, up to one hundred feet to the northwest, and up to sixty feet in the Rolling Hills subdivision.

III.

The appellant has proposed a subdivision of this parcel into three lots, each containing five or more acres, thus meeting the minimum lots size for the Rural Zone. The appellant has proposed single family homes on two of the parcels to be created and personal storage facilities on each of the three parcels. The personal storage facilities would contain 17,000 square feet of building footprint on each of the three parcels, for a total of 51,000 square feet on the existing 16.16 acre pasture parcel. With the two proposed residences the building coverage on the existing parcel would rise to 56,000 square feet, totaling twelve storage buildings and two homes. The existing parcel would be developed with 11,400 square feet of asphalt and 180,000 square feet of gravel surface. The proposed development would be located in an area zoned Rural and which contains a mixture of suburban density residential development, scattered rural residential development and open fields. Generally this is a rural area with some residential sprawl.

IV.

In order to comply with both specific and general requirements of the Island County Code and to make the proposal compatible with the Island County Comprehensive Plan goals for the Rural area the appellant has proposed the planting of significant landscape buffers, generally consisting of native vegetation, which would eventually screen the twelve proposed storage buildings, each of which would contain approximately 4,250 square feet, from SR20 and from all adjacent parcels in approximately ten years. Due to the topography in the area even mature vegetative screening would be inadequate to screen the 51,000 square feet of storage buildings from the general area, including roadways other than SR20.
The appellant was given Notice of a Complete Application on November 17, 2006. Proper notices were given by the Planning Department and written comments from members of the public and from The Central Whidbey Island Historical Preservation District Review Committee were received by staff. All of these comments opposed the proposal and expressed concern about its compatibility with the rural character of the area and with the adjacent Historic Preservation District. Staff communicated these concerns to the appellant and the appellant submitted changes to the proposal aimed at addressing staffs’ concerns as well as the publics’ concerns. These changes basically consisted of changes to the landscape plan in order to make the project more visually compatible with the area.

After further staff review the Director of Island County Planning & Community Development concluded that this proposal could not be approved at this location and issued a formal decision denying the application on July 19, 2007. This appeal followed.

The Planning Director concluded that this development could not meet the requirements for compatibility with the Island County Comprehensive Plan nor with the requirements of the Site Plan Review Ordinance and the Island County Zoning Ordinance. The Director concluded that the proposal was not consistent with requirements to maintain the rural character of the area.

The appellant argues that the Island County Code only requires complete screening from adjacent parcels and does not protect the general community from the visual impacts of the proposal. The appellant argues that the proposal meets all of the specific requirements for approval and that the Director erred in denying the proposal.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

**CONCLUSIONS OF LAW**

I.

Personal storage facilities can be approved in the Rural Zone as a conditional use. In order to approve this proposed non-residential use on each of the three parcels which will be created out of the existing sixteen acre parcel the proposal must be consistent with the Island County Comprehensive Plan, consistent with the criteria for Site Plan Approval, and consistent with all of the applicable provisions of the Island County Zoning Ordinance. The proposal is a Type II use pursuant to ICC 16.19 thus subjecting it to the administrative review. During the administrative review the Planning Director determined that the proposal could not meet the requirements for protection of the rural character of the area and therefore must be denied. A timely appeal to the Island County Hearing Examiner followed.
The appellants' position is that the project need only be fully screened from adjacent properties in order to meet the requirements for visual compatibility. In support of this position the appellant cites ICC 17.03.180.P which reads in relevant part as follows:

P. **Non-Residential Design, Landscape and Screening Guidelines.** The guidelines set forth in this section apply to all Non-Residential Buildings, including Institutional Uses and Essential Public Facilities in the R, RR, RA, RF, CA, RC, RV and RS zones. Unless otherwise specified, the standards are intended as general guidelines to ensure that a proposal is visually Compatible with adjacent uses. The purpose of these guidelines is to protect and enhance Rural Character. Visual compatibility shall be achieved by building or structural design, landscaping, site modifications such as berms or any combination thereof. In the R, RR, RA, RF, and CA zones, the applicant has the option of complying fully with building design standards or totally screening the development from the view of adjacent properties and shoreline and roadway vistas.

The appellant relies on the last sentence of the above cited section which indicates “… the applicant has the option of complying fully with building design standards or totally screening the development from the view of adjacent properties and shoreline and roadway vistas.” Emphasizing the word adjacent the appellant points out that adjacent is defined in the Island County Zoning Ordinance in ICC 17.03.040, as follows:

*Adjacent property:* properties which share all or part of a common lot line.

The appellant also points out that the definition of “buffer” in ICC 17.03.040 also includes the words “adjacent properties”. Based on this the appellant argues that they are not required to screen the proposed non-residential development from surrounding parcels which do not abut the appellants parcel. The Hearing Examiner disagrees with this interpretation and concludes that the interpretation of the Planning Director was correct.

The stated goal for Rural Lands in the Policy Plan/ Land Use Element of the Island County Comprehensive Plan reads as follows:

*Goal: Maintain low residential densities to preserve rural character …*

The Site Plan Review Ordinance, ICC 16.15.010 indicates that one of the purposes of Site Plan Review is to “**to implement the County Comprehensive Plan goals and policies**…” It also indicates that one of the purposes of the Site Plan Review Ordinance is to protect rural character by “**assuring visual compatibility of non-residential development with the surrounding rural area.**”

The Island County Zoning Ordinance also indicates as one of its’ purposes, in ICC 17.03.020, as being the implementation of the Comprehensive Plan of Island County by permitting developments which are consistent with the rural character of Island County.

In the same vein ICC 17.03.180, set forth in full above, indicates “**the purpose of these guidelines is to protect and enhance Rural Character.**” And again, ICC17.03.180(P)(3) in
discussing landscaping buffering and screening in the rural area indicates in 3(a)(i) states as follows: "To preserve and enhance the natural environment and aesthetic qualities of the County;". And again 3(a)(ii) "To preserve and enhance the appearance, character and value of surrounding properties;...". It should be noted here that the Code uses the words "surrounding properties" instead of "adjacent properties".

Again in ICC 17.03.180P(3)(b) in reference to landscaping and screening in the rural area the code states "A project must be screened with native vegetation, landforms, natural features, and undisturbed Open Space to ensure that the proposed non-residential structures and activity are compatible with the character of surrounding Permitted Uses."

All of these above references indicate intent within the Comprehensive Plan, Site Plan Review Ordinance, and Island County Zoning Ordinance to require that non-residential development in the rural area be visually compatible with the whole of the surrounding area and not just with parcels which abut the development site.

Since this development cannot be made visually compatible with the entire surrounding area and since the proposed development would significantly alter the current rural character of the area, which consists of large open fields and scattered residential development (with the exception of the suburban density residential development discussed above) the proposed development would not be compatible with the rural character of this area and therefore would be inconsistent with the Island County Comprehensive Plan, the Site Plan Review Ordinance, and the Island County Zoning Ordinance.

Arguably this general interpretation is inconsistent with the specific language pointed out by the appellant requiring complete screening from adjacent parcels. However ICC 17.03.030(B) states in part as follows:

"Under state law, the Zoning Code must be consistent with, and implement the Comprehensive Plan. Therefore, if a conflict between the Plan and the Zoning Code arises, the Plan will control. Any other conflict will be resolved by applying the more stringent code standard."

The Comprehensive Plan requires that rural character be maintained for the benefit of the community as a whole and not for just adjacent land owners. Furthermore the Site Plan Review Ordinance and Zoning Ordinance contain requirements which protect the general neighborhood from visual incompatibility in the Rural Zone.

Since these general area protections are more stringent than the requirement that a non-residential development in the Rural Zone be screened completely from adjacent properties these general protections would apply.

III.

ICC 16.15.060 indicates the criteria which must be met by proposed non-residential uses in the Rural Zone. This proposal is not consistent with either paragraph D, E, or F of these criteria.
As discussed above the proposal does not comply with all of the applicable provisions of the Zoning Ordinance and other applicable regulations in the Site Plan Review Ordinance.

The subject site is not physically suitable for the density of the use being proposed since the use cannot be screened from the neighboring community and since the use does not fulfill the definition of rural character. Rural character is defined in the Zoning Ordinance in ICC 17.03.040. This definition includes an element in which open space and the natural landscape are to predominate over the built environment.

The Zoning Ordinance would permit three homes and appropriate accessory outbuildings on this site. Six homes could be allowed if they are appropriately clustered and leave most of the site open space. The appellant has proposed twelve 4,500 square foot storage buildings surrounded by gravel or asphalt surfaces plus two homes. The proposal requests approval of a high density non-residential development which cannot be screened from the entire neighboring community on an existing sixteen acre parcel of pasture land. This proposal would result in the built environment predominating over open space and the natural environment and does not meet the definition of rural character.

It should be noted that the maximum size of a personal storage facility in the Rural area is 17,000 square feet for parcels less than ten acres in size and 25,000 square feet for parcels greater than ten acres. The appellant currently owns a sixteen acre parcel and has proposed 51,000 square feet of personal storage development. This is to be accomplished by subdividing the existing ten acre plus parcel into three parcels. While this may appear to be technically justifiable under the code, this proposal concentrates a large area of built environment in a small area thus increasing its negative impact on rural character.

IV.

Based on the above Findings of Fact and Conclusions of Law the Hearing Examiner should issue a decision upholding the Planning Director and denying the appeal.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

The decision of the Island County Planning Director denying SPR 477/06 is upheld. Appeal APP 350/07 is denied.

Entered this 21st day of December, 2007, pursuant to authority granted under the laws of the State of Washington and Island County.

[Signature]

MICHAEL BOBBINK
Island County Hearing Examiner
APPEAL PROCESS:

APP (Administrative Decision)

Appeal Process: This land use decision is a final determination which may be appealed by filing a land use petition in Island County Superior Court within twenty-one (21) days of its issuance. Specific requirements for the petitions contents, time and service of process, and payment of the cost of the transcription of the record of the hearing may be found in Chapter 70C of Title 36 RCW