

FILED

DEC 23 2016

WASHINGTON STATE
SUPREME COURT

93963.2

No. 74039-3-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MICHAEL DURLAND, KATHLEEN FENNEL, and DEER HARBOR BOATWORKS,

Appellants,

v.

SAN JUAN COUNTY, WESLEY HEINMILLER, ALAN STAMEISEN, and SUNSET COVE LLC,

Respondents.

PETITION FOR REVIEW TO THE SUPREME COURT

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2016 DEC 26 PM 4:25
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

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I. IDENTITY OF PETITIONERS

Petitioners are Michael Durland, Kathleen Fennell and Deer Harbor Boatworks (collectively “Petitioners”).

II. COURT OF APPEALS DECISION FOR WHICH REVIEW IS SOUGHT

The Petitioners seek review, pursuant to RAP 13.4, of an unpublished opinion of the Washington Court of Appeals, Division I, entered September 12, 2016 (“*Durland II*”). That decision is attached as **Appendix A-1**. The Court of Appeals denied Petitioners’ timely Motion for Reconsideration and Motion to Supplement, by order dated November 17, 2016. That order is attached as **Appendix A-2**.

III. ISSUES PRESENTED FOR REVIEW

A. Whether the Supreme Court should accept review of a decision of the Court of Appeals that is directly contrary to existing case law from the Supreme Court and the Court of Appeals concerning: (1) the Doctrine of Finality and (2) the law of contemporaneous public policy, which protect the public from the whims of local permit decision-making?

B. Whether the Supreme Court should accept review of a decision of the Court of Appeals that allows inconsistent and arbitrary decisions, contradicting long-standing government practices, and undermining the public’s confidence, all contrary to Growth Management Act policies,

RCW 36.70A.020(6) (permit processing should “ensure predictability”).

C. Whether the Supreme Court should exercise its constitutionally-required judicial role in imposing “checks and balances” to curb the powers of legislative officials who act in a way to achieve a politically-motivated result contrary to the facts and law?

D. Whether the Supreme Court should intervene to protect citizens from fluctuating policy and affirmative choices to ignore evidence in the record by the County’s legal officer in which he fails to defend the County’s Building Official’s position on a contested permit?

IV. INTRODUCTION

The role of the Washington Supreme Court is to set legal policy for the State. Here, the quasi-judicial process ventured far astray from fairness, predictability, due process and property rights protections because elected County officials felt political pressure to excuse violations of an ordinance when a barn was illegally built within a required 10-foot setback. They further excused violations of local regulations when the barn in question **was** converted from an uninhabited building to a dwelling unit. This is decision-making on the fly with no predictability.

When San Juan County (“the County”) learned of the code violations, it issued an order to demolish the barn. Respondent Heinmiller/Stameisen (“Heinmiller”) found building permit paperwork

and plans for the barn, and the County was convinced that a permit ***had been*** issued with a required 10-foot setback. The County located additional documents that confirmed a building permit was issued. The County issued a Notice of Correction in 2008 (AR 00012) and an Agreed Compliance Plan on April 25, 2008 (AR 00039). ***Had Heinmillers not located the permit, they would have been ordered to remove the barn.***

In a subsequent proceeding on the same barn, the Examiner ruled that he could not legally uphold the Compliance Plan. Then everything shifted, resulting in new holdings that: (1) a permit was not needed, (2) the 10-foot setback did not apply based upon a *sui generis* interpretation of a local law, and (3) there was not “sufficient proof” that a permit had issued, notwithstanding that Respondents consistently produced evidence to support a finding a permit was issued to avoid a tear down of the barn.

Without factual or legal basis, the Examiner concluded the barn was “legal” and could be converted as a “legal nonconforming use.” The decision is at odds with everything in the record and reverses decades of consistent administration of the law in question by County officials.

On review in *Durland II*, the Court of Appeals agreed with the Hearings Examiner, that, if the building permit was issued, then the law of finality prevails. Both the County and the Heinmillers had taken the position that a building permit ***had*** issued. The Deputy Prosecuting

Attorney, Jon Cain, also argued before the Court of Appeals in *Durland I*¹ that a building permit was issued.² But this time, the Court of Appeals ignored judicial admissions, accepted the speculative contention that a permit had not issued., and blessed the shenanigans of Respondents for disavowing their position on building permits to suit their present goal.

For the Examiner to cast aside all prior evidence concerning the building permit for the barn is “results-oriented jurisprudence” at its finest. This runs afoul of the Doctrine of Finality and sets a precedent whereby any jurisdiction can change its mind on whether a permit³ should have been granted – years later - and if so, add conditions of approval, delete others, and then, assert its decision is entitled to deference. Washington courts do not tolerate such arbitrary and capricious decision-making.

V. STATEMENT OF THE CASE

A. The Barn was Constructed Within a 10-Foot Setback.

In 1981, Heinmillers’ predecessor-in-interest William G. Smith

¹ *Durland v. San Juan County* (“*Durland I*”), 174 Wn.2d 1, 6, 298 P.3d 757 (2012) (“In 1981, the County issued a building permit for a storage barn to Smith. The permit approved a barn that was to be built 10 feet from the property line shared with the Durland property”).

² The extent to which a party may contradict his own testimony is discussed in E. Cleary, McCormick's Handbook of the Law of Evidence § 266 (2d ed. 1972). *Whitney v. State*, 24 Wn. App. 836, 840-41, 604 P.2d 990 (1979). In Washington, “a party’s testimony may be contradicted by other evidence *except when he testifies unequivocally to matters within his peculiar knowledge*” (emphasis added). The evidence must control over testimony to the contrary. *Bohnsack v. Kirkham*, 72 Wn.2d 183, 432 P.2d 554 (1967).

³ Applicants submit that such a precedent could undermine any number of government-issued permits: liquor licenses, marriage licenses, food handling permits, driver’s licenses, etc.

knowingly constructed a barn within a 10-foot yard setback on the property line shared with Durland. (AR 00013, 00138, 00139) This violated the San Juan County Code, which states: “No structure built pursuant to this article shall be located closer than 10 feet to any property line.” SJCC § 15.04.620; County Resolution No. 224.

Mr. Durland purchased his property in 1986. He discovered the setback violation during the permitting process for his business. (AR 00605-606) At the Shoreline/Conditional Use hearings in 1986/1987, the storage barn was considered a buffer between the light industrial boatyard use on Durland’s land and the residential use of Smith’s property. (AR 00607-611) Mr. Durland agreed to a 20-foot setback buffer that prohibited him from building any closer to the uninhabited Barn, thereby establishing sensible buffers for the two properties. (AR 00097, 00098-00107)⁴ As the Court recognized in *Durland I*, Durland “did not ... want the barn to be used for residential purposes for fear of conflicts with the industrial use of his property.” 174 Wn. App. at 7 n.2.

B. Heinmiller Converted the Barn to an ADU Without Permits.

Heinmiller purchased the Smith property in 1995 and proceeded to

⁴ The Examiner affirmatively ruled in Conclusion of Law 5 that the agreement did not correct the setback violation and there has been no revision or amendment to the building permit approved in 1981. (Decision, p.10). He concluded that a reduced setback (if one had been approved) should have been incorporated into a revised or amended building permit approval. There is no evidence of such approval in the record.

convert the Barn into an approximately 1,000 square foot ADU without permits. (AR 00012) Pursuant to the 2008 Compliance Plan, Heinmiller applied for an after-the-fact building permit, a change of use permit and an ADU permit. The Appellants appealed these approvals to the Hearing Examiner in 2010. (AR 00028-31) On July 23, 2010, the Examiner issued the “Original Decision”⁵ denying Appellants’ appeal. In this ruling, *he acknowledged the barn violated set-back requirements of Resolution No. 224*, but ruled it was “corrected” by the Compliance Plan which could not be “collaterally attacked.” (AR 00015-00016) (emphasis added).

C. The Court of Appeals Reversed and Remanded.

Durland appealed the Original Decision to the Court of Appeals, which reversed. *Durland I*. The proceedings established that San Juan County has required a 10-foot setback since 1981 when the barn was built. *See Durland I*, 174 Wn. App. at 6, n. 1, *citing* Resolution No. 224. *See also* SJC 58-1977. The Court ruled that the 1986/1987 agreement was expressly based on the fact the barn would remain uninhabited. *Id.* at 7, n.2. The Court directed the Examiner to hold a new hearing because the Compliance Plans were not determinative. *Id.* at 19, 26.

D. The County Did Not Authorize a Departure From the Setback.

The 2014 Pre-Remand Hearing Order presented the central question

⁵ The Original Decision is AR 00001-24. A copy is attached hereto as **Appendix A-3**.

whether the County authorized a departure from the 10-foot setback required by Resolution 224-1975?⁶ (AR 00413-416) The Examiner held a hearing on November 12, 2014 and left the record open until March 15, 2015 to allow the litigants time to present evidence on whether the County had allowed a “departure” from the setback.

A County Plans Checker then issued a “supplemental” Staff Report which argued the County had been in error in stating that a building permit had been issued for the barn and/or that a 10-foot setback was required.⁷ The County disavowed the supplemental Staff Report via Sam Gibboney, the Director of Community Development and Planning, opposing the contents of the report because it is “factually inaccurate and states conclusions that are at odds with the building permit records held by San Juan County” and “the report does not represent the position of San Juan County and was an unauthorized submittal...” (AR 00858) Ms. Gibboney further stated, consistent with *Durland I*, a building permit was issued for the barn and submitted additional exhibits to document the fact. (AR 00859) The Examiner refused to consider the evidence submitted by the County to refute the unauthorized supplemental Staff Report. (Decision,

⁶ A copy is attached hereto as **Appendix A-4**.

⁷ The assertion that no building permit had been issued was apparently withdrawn, although the Decision does not make any clear finding or conclusion that a building permit was, or was not issued, despite substantial evidence in the record that a permit was issued to Mr. Smith and the prior judicial admissions. (AR 00039, 00146-00149, 00186)

p.8) The submitted materials included:

- A 1981 payment receipt from William Smith for cost of the building permit issued for the Barn.
- A hand written ledger documenting building permits issued in 1981, showing a building permit for the Barn issued to Bill Smith.

(County's response to Applicant's motion to supplement).⁸ It is important to note the distinction between the determination of Department Heads and County Staff (who all agree a permit was issued) and the County Council that has been instructing its attorney to argue contrary to the Staff position. This is the very purpose of a system of checks and balances.

E. The Hearing Examiner Denied the Appeal and Granted Permits for the Barn's Conversion to an ADU.

The Hearing Examiner issued his decision on remand on March 15, 2015. The Decision, as noted, correctly recognized that the Compliance Plan "did not excuse compliance with the ten-foot side yard setback requirement." (Decision, p.7, Ln. 23). The record contains no evidence of any County decision approving a setback variance or other "departure" from the requirement. *See also* Conclusion of Law 5, Decision, p.10. This should have led to denial of the permits. But, the Examiner ruled: (1) no building permit was required for the barn in 1981; (2) the barn was exempt

⁸ The record includes the County's response to Heinmiller's motion to supplement (AR 858-861) but not the attachments to the response. Those attachments are included here as **Appendix A-5**.

from side-yard setback requirements as a “Class J” occupancy structure in 1981 under County Resolution No. 58-1977; and (3) even though no residential structure is permitted within a 10-foot side-yard setback, the conversion of the barn to an ADU in this location is allowed. (Decision, p.11, 13). The Examiner did not rule whether a building permit had issued for the barn, but did acknowledge that if the building permit was issued, then the law of finality prevails. Not one witness testified that no permit was issued, only that they could not “find” the permit (likely because of a fire that destroyed some County records), notwithstanding all other evidence that shows a permit was issued, and the prior judicial admissions of Heinmillers and the County when such a fact worked to their advantage (*i.e.*, to prevent an order requiring the barn to be demolished).

F. LUPA Appeal

Appellants appealed the Decision to the Superior Court. CP 1-109. In a summary decision, the Court denied the LUPA appeal. CP 1526-27. The lower court was impressed that the structure had been in place for a substantial period of time, and thus, according to the superior court judge, under the doctrine of finality, the mere passage of time had made the barn a legal building. (Oral Opinion, August 31, 2015 (Verbatim Report of Proceedings), p.6, lines 11-24). A timely appeal followed. CP 1528-33.

G. Court of Appeals Decision and Denial of Reconsideration.

The Court of Appeals also affirmed the decision, with a misplaced statement that the use of a Stamp on Smith permitting documents that affirmatively states a 10-foot setback is required and references Res. 58-1977 (the law on which the Examiner the Trial Court relied on as “deleting setback requirements”) is not relevant because Durland did not show “detrimental reliance” on the stamp. The stamp is evidence of the County’s long-term policy and its interpretation of the law, which is contrary to the holding of the Examiner. There is no need to show “reliance” as it is merely evidence of how the County interpreted and applied the law in 1981.

Appellants filed a motion to reconsider and requested the Court of Appeals to take judicial notice of San Juan County responses to public records act requests propounded by Mr. Durland to the County. The documents provided further demonstration that the County consistently and regularly required building permits for Class J agricultural buildings in 1981 at the same time and of the same type as the Smith Barn. The documents also show that the County had advised Durland that no copies of the building permit existed for the Heinmillers’ barn, even though the handwritten ledger and payment receipt were later discovered through Durland’s PRA request. The Court of Appeals denied both motions.⁹

⁹ Copies of these documents are attached hereto as **Appendix A-6**.

VI. GROUNDS FOR RELIEF AND LEGAL ARGUMENT

This appeal is not about Mr. Durland versus the Heinmillers or the County. Fundamentally, it is about the County Council failing to administer the San Juan County Home Rule Charter which obligates it to “Ensure that all actions of the County are compliant with all federal, Washington State, San Juan County codes, laws and procedures, and this Charter,....” Charter, § 2.31(3)(c). The issues require this Court to affirmatively rule that no land use permits can be challenged or reversed ad hoc by local government. It matters not how many years have passed, nor whether one believes there is “harm” in failing to enforce the terms of the permit issued. The character of the litigants has no legal bearing on the outcome of the matter.

A. Introduction.

The Supreme Court should accept review under RAP 13.4(b)(1) and (b)(2), because the decision of the Court of Appeals is in conflict with longstanding case law established by the Supreme Court and the Court of Appeals concerning the doctrine of finality and the law of contemporaneous public policy, as cited on pp.13-14, *infra*. The Supreme Court should accept review under RAP 13.4(b)(3) because the decision of the Court of Appeals raises significant issues regarding interpretation of a local law which is contrary to long-standing administrative practice.

A principle of land use law is that once an illegal building, always an illegal building. The County applied the setback requirement to the barn in 1981 and never waived or repealed it. The law of this case is that San Juan County imposed a 10-foot setback for an unoccupied barn constructed by William G. Smith: “In 1981, the County issued a building permit for a storage barn to Smith. The permit approved a barn that was to be built ten feet from the property line shared with the Durland property. The barn was constructed that year.”¹⁰

The Examiner had leave to consider a “departure” from the setback, but found none. There was no cross-appeal of this ruling. Heinmiller could not make the showing for a departure, because impacts on adjoining uses are one of the considerations when reviewing an application of a side-yard variance. *E.g.*, SJCC § 18.80.100.E.4 (requiring that “[t]he granting of the variance will not be materially detrimental to the public welfare or injurious to the right of other property owners in the vicinity.”). The Examiner permitted Heinmiller to evade these standards.

B. Substantial Evidence Supports Issuance of a Building Permit Imposing a 10-Foot Setback.

The record amply demonstrates that a building permit was issued and that such permit required compliance with the 10-foot setback. AR

¹⁰ *Durland I*, 174 Wn. App. at 6.

00039 (Compliance Plan), AR 000146 (Building Inspection Permit for Storage Barn), AR 00147 (Site Plan), AR 00149 (Building Plan, 1981), AR 00186 (Barn Building Plans- approved by San Juan County, 10-15-81), AR 00858 (R-22 San Juan County Response to Motion to Supplement). *See* the Building Inspection Report, Code Checklist, and stamped “Approved” Building Plan, and Texmo Building Plans; stamp stating: “All Structures shall be a minimum 10 feet from adjacent property lines. S.J. Co. 58-77.” (**Appendix A-6**). The Examiner’s ruling is unsupported by substantial evidence. To the extent required, this Court can also consider the attachments to the County’s response to Heinmiller’s motion to supplement (**Appendix A-5**). *See* Assignment of Error B.¹¹

C. The 10-Foot Setback Applied to the Parcel and Barn Structure May Not Be Collaterally Attacked Thirty Years Later.

The Examiner’s “reconsideration” of whether the 10-foot setback applied to the parcel and the Barn impermissibly contradicts the 1981 permit. The doctrine of finality prevents revisiting the terms of that permit now. *See Chelan County v. Nykreim*, 146 Wn.2d 904, 931, 52 P.3d 1 (2002). This is so even if a permit was issued in error. The building permit was issued and its requirements are determinative. The Examiner’s

¹¹ Conclusion of Law No. 2 of the Decision (p.8) shows the supplemental Staff Report influenced the Examiner’s decision. Failure to allow a proper rebuttal violates due process. *See Rabon v. City of Seattle (Rabon II)*, 107 Wn. App. 734, 743-44, 34 P.3d 821 (2001); *Nguyen v. Dep’t of Health Med. Quality Assurance Comm’n*, 144 Wn. 2d 516, 522-23, 29 P.3d 689 (2001).

Decision recognizes that building permits not timely challenged are “final” and cannot be collaterally attacked. Decision, Conclusion of Law 11 (p.12). However, he failed to rule that a structure built in violation of applicable regulations and the contrary to the terms of final, unchallenged building permits cannot be considered legal. *See Rhod-A-Zalea & 35th, Inc. v. Snohomish County*, 136 Wn.2d 1, 6, 959 P.2d 1024 (1998); SJCC §§ 18.80.120(A) and 18.40.310(D).

The County has never rescinded the building permit as “improperly approved.” Thus, the Examiner and lower courts erred in excusing the 10-foot setback, thereby creating a dangerous exception to the law that if the passage of time is long enough, or the applicants are the “right people,” or the appellant is the “wrong person,” everything is fine. This is a “stop the world, I want to get off” result. As the Washington Supreme Court recognized:

If this court allows local government to rescind a previous land use approval without concern of finality, ***innocent property owners relying on a county's land use decision will be subject to change in policy whenever a new County Planning Director disagrees with a decision of the predecessor director.*** [Amicus curiae] also assert that land use decisions from this court emphasize the need for property owners to rely on an agency's determinations with reasonable certainty.

Nykriem, 146 Wn.2d at 933 (footnotes omitted) (emphasis added).

Here, Durland (an innocent property owner) relied on the building

permit decision that has for decades been recognized as requiring compliance with a 10-foot setback. The parties all agreed this is the case, as demonstrated by the 2008 and 2009 compliance plans, and as set forth by the Court of Appeals in its decision in *Durland I*.

D. The Interpretation of Setback Requirements is Contrary to Law.

The Examiner's statutory construction of Res. 58-1977 is the cornerstone of his decision that the County deleted setback requirements for "Class J" structures such that the barn could be considered nonconforming. Although there is no legal basis for the Examiner to even reach the question based upon the remand instruction, his construction was erroneous. Mr. Smith's project was subject to County regulations in 1981 when it was constructed, which were not modified by Res. 58-1977.

Courts assess the plain meaning of a statutory enactment "viewing the words of a particular provision in the context of the statute in which they are found, together with related statutory provisions, and the statutory scheme as a whole." *Burns v. City of Seattle*, 161 Wn.2d 129, 140, 164 P.3d 475 (2007). The subject, nature, and purpose of the statute as well as the consequences of adopting one interpretation over another are also considered. *Id.* at 146.

Res. 58-1977 is entitled "***A Resolution Amending Resolution 224-1975, Providing for Changes in Application, Administration and Enforcement of the State Building Code in San Juan County.***" Not one

sentence changes, deletes or modifies in any manner the land use performance requirement of side yard setbacks. Deletion of any performance requirements was not the purpose of the Resolution.

Section 9.01 of Res. 58-1977, which applies to Class J structures such as the Barn, repeals only those provisions of Res. 224-1975 and the UBC that require persons to obtain a permit, pay a fee, or obtain an inspection because it is “unreasonable” to do so. As confirmed in *State ex rel. Graham v. San Juan County*, 102 Wn.2d 311, 313-14, 686 P.2d 1073 (1984), this was a cost-saving measure and does not address or delete any dimensional requirements – only UBC or building code requirements, not zoning requirements. Res. 58-1977 requires applicants to confirm they are aware of and will abide with setback requirements and gives Class J structure applicants the opportunity to have a building inspector also confirm compliance with regulations such as setbacks through a plans-check. *See* §§ 8.03 and 10 of Res. 58-1977.

Although the requirement for a building permit may have been removed under Resolution No. 58-1977, the Resolution did not include any exemptions from dimensional requirements in Res. 224-1975. Section 8.03 of Res. 58-1977 confirms the setback requirement remained: “The application shall also contain a statement of the setback requirements and the applicant’s agreement to comply therewith.”

The record shows the County's Dep't of Community Development in 1981 went to the trouble to manufacture a stamp confirming that Resolution 58-1977 still required a 10-foot setback from all property lines, which was the stamp used and appears on the approved Smith site plan for the Barn issued with the building permit. (**Appendix A-6**). This practice continued over time. The Examiner failed to consider the consequence of his *sui generis* interpretation on those property owners whose Class J plans were so stamped and relied upon. *See Port of Seattle v. Pollution Control Hearings Board*, 151 Wn.2d 569, 593, 90 P.3d 659 (2004) (great deference given to government entity's administration of its own laws).

If this Court accepts review and reverses, it will not only have the opportunity to opine on the policies of finality and predictability (correct the errors) but also the broad public purpose of requiring buildings to be setback from other properties, something the Examiner overlooked. Property line setbacks and yards are universally accepted as legitimate exercises of the police power. *E.g., Barrie v. Kitsap Cy.*, 93 Wash.2d 843, 850, 613 P.2d 1148 (1980); *Sherwood v. Grant Cy.*, 40 Wash.App. 496, 501, 699 P.2d 243 (1985). Zoning codes regulate setbacks, types of uses, height, parking requirements, design (for some types of projects) and similar concerns for the common good. *See Duckworth v. City of Bonney Lake*, 91 Wn.2d 19, 27-28, 586 P.2d 860 (1978). The Examiner's

Decision undermines the stability and consistency of these precepts and is contrary to law.

The County-created stamp that was placed on the permitting documents for the Smith Barn, which refers to both Resolution 58-77 and the required 10-foot setback, shows the error of the Examiner in ruling that no setback was required for the Barn in 1981. Such a conclusion is counter to everything in the record, other than an unauthorized staff report (which was subsequently withdrawn)¹² (CP 892) upon which the Examiner states he did not “rely” upon. There is no evidence to support the Examiner’s conclusion, but ample evidence to refute it.¹³

The only person who has questioned the existence of a building permit for the barn is the Hearing Examiner.¹⁴ Respondents have nothing

¹² As set forth in the Declaration of Michael Durland in Support of Reply on Motion for Reconsideration and Motion to Supplement (“Durland Decl.”), the attorney for the Heinmillers worked behind the scenes to procure the unauthorized staff report. Durland Decl. ¶8 and Ex. A. In light of this discovery, the County’s actions can only be viewed as improperly in collusion with the Heinmillers to the clear disadvantage and detriment of Durland. This submittal by John Geniuch to the Hearings Examiner when he and his attorneys knew that the record was closed resulted in Mr. Geniuch being placed on administrative leave. Durland Decl. ¶8.

¹³ All documents show that a building permit was issued for the Barn which required 10-foot setbacks from adjoining property lines. CP 1507 (Building Inspection Permit for Storage Barn), CP 147, 284-85 (Site Plan), CP 149 (Building Plan, 1981), CP 186 (Barn Building Plans- approved by San Juan County, 10-15-81), CP 858 (R-22 San Juan County Response to Motion to Supplement); CP 1505 (receipt for the permit); and CP 1508 (permit ledger); *see also* CP 176 (Compliance Plan affirming 10-foot setback for Barn); CP 949-51. *See* the Building Inspection Report, Code Checklist, and stamped “Approved” Building Plan, and Texmo Building Plans; stamp stating: “All Structures shall be a minimum 10 feet from adjacent property lines. S.J. Co. 58-77.

¹⁴ It was not until an unauthorized submittal by John Geniuch that there was any question that a building permit was required and was issued for the barn. Durland Decl. ¶8. After this unauthorized and inaccurate submittal by John Geniuch his boss, Sam Gibboney supplied more documentation of the existence of a building permit for the barn. *Id.*; CP

to say about the evidence that all points to the fact that a permit was issued; they merely complain that the permit cover sheet itself was not located¹⁵ even after taking the position numerous times that there was a permit. *See* Durland Decl. ¶7. This is not a matter of “speculation” where every County employee is in agreement that a permit was issued. When all evidence points to a building permit being issued, how can the mere opinion of the Examiner ignore this evidence? If a permit with the 10-foot setback was approved, the land use decision cannot be challenged. *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 410-11, 120 P.3d 56 (2005).

The County deflects and meekly stands behind the Examiner’s unsupportable determination that flies in the face of substantial evidence in the record. All County staff is in agreement that the Resolution did not remove setbacks requirements and a stamp was made in order to be *clear* that Res. 58-77 required 10-foot setbacks. Simply put, one cannot “connect the dots” between all of the evidence in the record concerning issuance of a building permit and the continued requirement of a 10-foot setback after adoption of Res. 58-77 to conclude that the Smith Barn was built legally. It was not. The Heinmillers may not convert an illegal structure to a new use.

950-51. After Sam’s Report, John Geniuch changed his statement and concurred that a building permit was issued for the barn. Durland Decl. ¶8; CP 892.

¹⁵ The lack of a copy of the cover sheet of the permit itself is not evidence it was not issued. Given that a fire occurred at a County document storage facility, many records were lost due to water damage. Durland Decl. ¶3.

The County states it must “defend” the Examiner at all costs. County Answer to Appellants’ Motion for Reconsideration at p.13. The Prosecuting Attorney’s duty is to seek justice, not blindly defend the indefensible. *See Young v. United States ex rel. Vuitton et fils*, 481 U.S. 787, 803 (1987). The Prosecuting Attorney must also follow the County Charter. By rejecting the vast documentation of the building permit and the stamp which confirms Res. 58-77 did not delete setback requirements, the County Attorney is neglecting her duty to uphold justice.

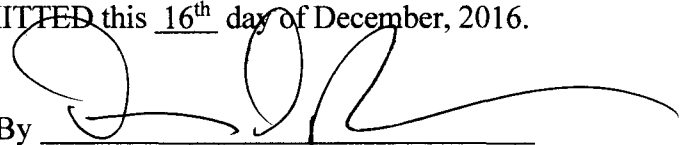
The Examiner cannot “judicially amend” Res. 58-77 to include language that Respondents wish was included. The Court’s duty is to “discern and implement” the legislature’s intent. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). The record is devoid of evidence of the County’s intent to do away with setbacks.

VII. CONCLUSION

The Supreme Court should grant the Petition for Review.

RESPECTFULLY SUBMITTED this 16th day of December, 2016.

By



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CERTIFICATE OF SERVICE AND MAILING

I, the undersigned, hereby certify under penalty of perjury under the laws of the State of Washington, that I am now, and have at all times material hereto been, a resident of the State of Washington, over the age of 18 years, not a party to, nor interested in, the above-entitled action, and competent to be a witness herein.

I further certify that the original of the foregoing Petition was timely filed on December 16, 2016 pursuant to RAP 18.6(c), as follows:

Washington State Court of Appeals, Division I
One Union Square
600 Union Street
Seattle, WA 98101-4170
Hand Delivered

I further certify that I caused a true and correct copy of the foregoing brief to be served this date, in the manner indicated, to the parties listed below:

Randall K. Gaylord, WSBA #16080, Prosecuting Attorney Amy S. Vira, WSBA #34197, Deputy Prosecuting Attorney San Juan County Prosecutor's Office 350 Court Street / P.O. Box 760 Friday Harbor, WA 98250 amyv@sanjuanco.com ; elizabethh@sanjuanco.com <i>Attorneys for Respondent San Juan County</i> <i>By Email*</i>	John H. Wiegenstein, WSBA #21201 Heller Wiegenstein PLLC 144 Railroad Avenue, #210 Edmonds, WA 98020-4121 Johnw@hellerwiegenstein.com ; MonicaR@hellerwiegenstein.com ; docket@hellerwiegenstein.com <i>Attorneys for Respondents Wesley Heinmiller, Alan Stameisen, and Sunset Cove LLC</i> <i>By Email*</i>
[*Per Parties' stipulation to electronic service by email; hard copies not served unless requested; documents too large for email (typically >10MB) may be served by Dropbox or similar to allow direct downloading]	

DATED at Bainbridge Island, Washington, this 16th day of December, 2016.


Jon Brenner, Paralegal

DURLAND: Petition for Review to Supreme Court

APPENDIX A-1

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

MICHAEL DURLAND, KATHLEEN)
FENNEL, and DEER HARBOR)
BOATWORKS,)
)
Appellants,)
)
v.)
)
SAN JUAN COUNTY, WESLEY)
HEINMILLER, ALAN STAMEISEN,)
and SUNSET COVE LLC,)
)
Respondents.)

No. 74039-3-1
DIVISION ONE
UNPUBLISHED OPINION
FILED: September 12, 2016

2016 SEP 12 AM 10:01
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

SPEARMAN, J. — Wesley Heinmiller and Alan Stameisen (collectively, Heinmiller) sought after-the-fact building permits for the conversion of a storage barn into an accessory dwelling unit (ADU). San Juan County (County) issued the permits. Heinmiller’s neighbors Michael Durland, Kathleen Fennell, and Deer Harbor Boatworks (collectively, Durland) challenged the permits, arguing they were improperly issued because the barn was built in violation of a setback requirement and was therefore an illegal structure. The hearing examiner determined that the barn was a legal nonconforming structure because no setback requirement applied when the barn was built and the permits were therefore properly issued. We find no error and affirm.

FACTS

Heinmiller's predecessor in interest, William Smith, built a storage barn on his Orcas Island property in 1981. Durland bought the adjacent property in 1986 and began developing it as a boatyard and marina. Durland and Smith disputed the boundary line between their properties and in 1990, they had the properties surveyed. The survey established the property line and revealed that Smith's barn was set back only seventeen inches from that line. Smith and Durland understood the County code to require a ten foot setback from the property line resulting in a minimum distance of 20 feet between structures on adjacent properties.

Durland and Smith entered into a boundary line agreement under which Durland consented to the location of the barn and agreed not to build within 20 feet of it. The agreement provides for termination of the easement if the barn is removed or destroyed. The agreement does not address the use of the barn. Durland stated that he entered into the agreement because he believed Smith's barn would be a good buffer between his boatyard and the nearby residences. He also thought the County would look more favorably on his boatyard if he allowed Smith's building to stay where it was.

Heinmiller purchased Smith's property in 1995 and converted part of the barn to an ADU shortly thereafter. Heinmiller did not obtain building permits for the conversion or obtain a permit to use the structure as an ADU. Until about

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2007, Heinmiller's parents lived in the main house on the property and Heinmiller used the ADU as his vacation home. After Heinmiller's father died and his mother moved to an assisted living facility, Heinmiller began to use the Orcas Island property as his primary residence.

Durland stated that, until about 2007, the barn was used mainly for storage and did not cause any problems. But then, according to Durland, the use of the barn became primarily residential. Durland stated that he received complaints about his boatyard after the barn began to be used as a residence.

The County became aware of the unpermitted conversion of the storage barn into an ADU and issued Heinmiller a notice of correction. In April 2008, Heinmiller and the County entered into an agreed compliance plan allowing Heinmiller to avoid immediate demolition. The plan required Heinmiller to remove additions to the exterior of the structure and submit applications for a shoreline substantial development permit and conditional use permit.

The compliance plan includes a statement of background information. It states that the county issued building permit No. 3276 for a storage barn in 1981. The compliance plan states that the County required the structure to be placed at least ten feet from the property line. The plan describes the barn's actual location, summarizes the Durland-Smith agreement, and states that the County recognizes the Durland-Smith agreement as a substitute for the property boundary setback.

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In April 2009, the County and Heinmiller amended their compliance plan and agreed that Heinmiller could avoid the need for a shoreline substantial development permit and conditional use permit by modifying the ADU. By reducing the height and living area, Heinmiller could bring the structure within the definition of a "normal appurtenance" to the main house under the San Juan County Code. Clerk's Papers (CP) at 218, 221-22. Normal appurtenances are exempt from shoreline and conditional use permits.

Heinmiller performed additional work on the barn, submitted plans to reduce the height and living area, and applied for a building permit, change of use permit, and an ADU permit. The County approved the permits in November 2009.

Durland filed an administrative appeal challenging the permits. He asserted, among other arguments, that the barn violated the setback requirement when it was built and county code prohibited issuing permits for an illegal structure. Durland argued that the setback was a condition of the permit that the County issued for the barn in 1981. Heinmiller and the County took the position that the Durland-Smith boundary agreement cured the setback violation.

As evidence, Durland submitted a building inspection card for the barn marked "No. 3276." CP at 282. Durland also submitted a building plan marked with a stamp reading "[a] structures shall be minimum 10 feet from adjacent property lines. S.J. CO. 58-77." CP at 284-85. Durland submitted a copy of the

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referenced code, San Juan County Resolution No. 58-1977, as well as a copy of the previous code, Resolution No. 224-1975.

The hearing examiner concluded that a ten foot setback applied to the barn when it was built in 1981 and that the barn violated that requirement. But the examiner dismissed Durland's claim concerning the setback as time barred. The examiner ruled that the relevant land use decision was made in the compliance plan and that Durland's objection to the decision was untimely.

On appeal to this court, Durland challenged the ruling that the setback claim was time barred. Durland v. San Juan County, 174 Wn. App. 1, 10, 298 P.3d 757 (2012) (Durland I). He also asked the court "to rule that (1) the barn was built illegally; (2) the illegality was not cured by the private restrictive covenant; and (3) therefore, permits could not be issued to modify the barn until the illegality was cured." Id. at 19 n.13. We reversed the ruling that the issue was time barred and remanded. Id. at 26. Durland's argument concerning the setback was identified as an issue for remand. Id. at 19 n.13.

The examiner held a hearing in November 2014 but left the record open for additional evidence on whether the County had authorized a departure from the setback. In January 2015, a county building official distributed a supplemental staff report to the parties and the examiner. The author of the report, John Geniuch, stated that he had investigated County records and concluded that the county did not issue a building permit for the storage barn in 1981. Geniuch

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stated that the lack of building permit was proper because the county repealed permit requirements for storage structures in 1977 under San Juan County Resolution No. 58-1977. He reasoned that the 1977 resolution exempted storage structures from all regulation, including the setback requirement, and the barn on Heinmiller's property was thus legal when constructed. He also noted that the 1977 resolution provided for optional plan-checking services, and the building plan and inspection card were consistent with these services.

The county disowned Geniuch's supplemental report and asked the examiner not to admit it into evidence. The County asserted that it issued building permit No. 3276 to Smith for the storage barn and submitted a permit receipt as evidence. The County did not produce the permit.

The hearing examiner excluded Geniuch's supplemental staff report but noted that the report raised an important legal argument. The examiner concluded, as Geniuch did, that Resolution No. 58-1977 exempted storage structures from all regulation including setbacks and the barn was thus legal when built. The examiner acknowledged that the parties did not have an opportunity to address this legal argument but noted that the relevant code provisions were in the record. Because the barn was legal when built, the examiner concluded that the barn was a legal nonconforming structure. The examiner also concluded that the barn qualified as a normal appurtenance and was thus exempt from shoreline and conditional use permits.

The examiner concluded that it was unclear whether the County issued a building permit for the barn in 1981, but held that the issue was not dispositive. He held that, in view of Resolution No. 58-1977, the barn was legal despite any lack of permit. Conversely, he held that if a building permit was approved for the barn in 1981, that approval was a land use decision that could not now be challenged. The Skagit County Superior Court upheld the ruling. Durland appeals.

DISCUSSION

The Land Use Petition Act (LUPA), chapter 36.70C RCW, governs judicial review of land use decisions in Washington. RCW 36.70C.030. When conducting judicial review under LUPA, this court sits in the same position as the superior court. Griffin v. Thurston County, 165 Wn.2d 50, 54–55, 196 P.3d 141 (2008) (citing Isla Verde International Holdings, Inc., v. City of Camas, 146 Wn.2d 740, 751, 49 P.3d 867 (2002)). We review the decision of the hearing examiner, the “local jurisdiction’s body or officer with the highest level of authority to make the determination. . . .” RCW 36.70C.020(2).

We give substantial deference to the examiner’s factual and legal determinations. Lanzce G. Douglass, Inc. v. City of Spokane Valley, 154 Wn. App. 408, 415–16, 225 P.3d 448 (2010) (citing City of Medina v. T-Mobile USA, Inc., 123 Wn. App. 19, 24, 95 P.3d 377 (2004)). LUPA provides limited grounds for reversing the examiner’s decision. RCW 36.70C.130(1). As relevant to this appeal, we may only disturb the hearing examiner’s decision if the examiner

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erred in entering a finding of fact not supported by substantial evidence, in interpreting the law, or in applying the law to the facts. RCW 36.70C.130(1)(b),(c),(d).

Durland first argues that the hearing examiner erred in considering whether a setback requirement applied when the barn was built. He notes that prior to the examiner's decision on remand, all parties agreed that a 10 foot setback applied to the barn when it was built. Durland argues that the issue was thus beyond the scope of remand. We disagree.

The scope of remand is determined by the appellate court's mandate. State v. Kilgore, 167 Wn.2d 28, 42, 216 P.3d 393 (2009). The primary issue in Durland I was whether the agreed compliance plans were land use decisions for the purposes of LUPA. Durland I, 174 Wn. App. at 12-19. This court held that the compliance plans were not final land use decisions and the hearing examiner erred in dismissing Durland's challenges as time barred. Id. at 19. The Durland I court expressly declined to reach the setback issue. Id. at 19 n.13. We identified for consideration on remand Durland's arguments that (1) the barn was illegal when built, (2) the boundary line agreement did not cure the illegality, and (3) the county could not legally issue permits to modify the illegal structure. Id.

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The setback issue, including the barn's legality when built, was expressly before the examiner on remand. The examiner did not exceed the scope of remand by considering the issue.¹

Durland next argues that the examiner erred in interpreting San Juan County Resolution No. 58-1977 as repealing the setback requirement of Resolution 224-1975. The interpretation of a county code is an issue of law that we review de novo. Griffin, 165 Wn.2d at 54–55. However, we must “allow[] for such deference as is due the construction of a law by a local jurisdiction with expertise.” RCW 36.70C.130(1)(b).

Ordinary principles of statutory construction apply to the interpretation of local ordinances. Griffin, 165 Wn.2d at 55 (citing Ford Motor Co. v. City of Seattle, Executive Servs. Dep't, 160 Wn.2d 32, 41, 156 P.3d 185 (2007)). In interpreting statutes, this court aims to discern the intent of the legislative body. Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283

¹ Durland makes two other arguments that the legality of the barn, when built was not properly before the hearing examiner. Neither has merit. First, he contends that the County issued Smith a permit in 1981 with a ten foot setback condition and that the doctrine of finality precludes revisiting the terms of the permit. But the hearing examiner was unable to conclude, based on the record before him, that a permit was ever issued for the barn. Durland disputes this finding, but it is supported by substantial evidence. As noted by the hearing examiner, no permit was ever produced and the circumstantial evidence suggesting that one was issued was equivocal at best. In the absence of a finding that a permit was issued for the barn, the doctrine of finality is inapplicable. Next, Durland argues that the ten foot setback is the law of the case. He contends that the hearing examiner decided the issue in his original decision and that the decision was binding on remand. An unchallenged conclusion of law generally becomes the law of the case. King Aircraft Sales, Inc. v. Lane, 68 Wn. App. 706, 716, 846 P.2d 550 (1993) (citing State v. Slanaker, 58 Wn. App. 161, 791 P.2d 575 (1990)). But in this case, Durland asked the appellate court to consider the legality of the barn. Durland I, 174 Wn. App. at 19 n.13. We expressly identified the setback issue, including the legality of the barn, as an issue to be decided on remand. Id. The hearing examiner's decision was not the law of the case.

No. 74039-3-1/10

(2010) (citing Arborwood Idaho, LLC v. City of Kennewick, 151 Wn.2d 359, 367, 89 P.3d 217 (2004)). We begin with the plain meaning of the statute. Griffin, 165 Wn.2d at 55 (citing Kilian v. Atkinson, 147 Wn.2d 16, 20-21, 50 P.3d 638 (2002)). We may discern the statute's plain meaning from its text, related provisions, and the statutory scheme as a whole. Id. (citing Tingey v. Haisch, 150 Wn.2d 652, 657, 152 P.3d 1020 (2007)).

Until San Juan County enacted Resolution No. 224-1975, the County had no building code. State ex rel. Graham v. San Juan County, 102 Wn.2d 311, 313, 686 P.2d 1073 (1984). In Resolution No. 224-1975, the County adopted Washington State's uniform building code (UBC) and other State codes. Resolutions No. 224-1975, §1.02. Section 4.01 addresses setbacks between adjacent properties and states:

No building in Group H and I occupancies and located in Fire Zone No. 3 shall be constructed within ten feet of the property line. No building in Fire Zone No. 3 may be located within ten feet of the property line unless any wall within such ten feet constitutes a one hour fire wall.

CP at 334. The barn was located in Fire Zone No. 3 when it was built in 1981. If Res. 224-75, §4.01 governed, it required the barn to be set back ten feet from the property line or be built with a firewall.

In 1977, the San Juan County commissioners repealed portions of Resolution No. 224-1975 by enacting Resolution No. 58-1977. Resolution No. 58-77 §8.01. Section 9 of the 1977 resolution concerns Class J structures, which included noncommercial storage buildings such as sheds and barns. Resolution

No. 74039-3-1/11

No. 58-77 §9.01. The resolution declares that, as regards Class J structures, the regulations imposed in 1975 are unreasonable:

The commissioners of San Juan County find that the regulation of Class J structures...provided for in Resolution No. 224-1975 and the UBC unreasonably restricts the freedom of residents of San Juan County to construct such structures as accessory buildings to private residences or for agricultural purposes, that there is no pressing governmental interest served by the regulation of structures in this category, and that it is unreasonable to require any person or corporation constructing Class J structures...to pay a permit fee as a condition of constructing such structures....No permit, fee or inspection shall be required for such structures.

Resolution No. 58-1977 §9.01. The section repeals those provisions of Resolution No. 224-1975 and the UBC "which are inconsistent with this section."
Resolution No. 58-1977 §9.02. Id.

Durland argues that Resolution No. 58-1977 only repealed permit, fee, and inspection requirements for Class J structures. He contends that the examiner erred in concluding that Resolution No. 58-1977 repealed all regulation of Class J structures, including the ten foot setback. We disagree.

Resolution No. 58-1977 describes the regulations imposed on Class J structures by Resolution No. 224-1975 as unreasonable and states that they restrict the freedom of the County's residents. It further declares that the government has no pressing need to regulate Class J structures. While the provision only specifically exempts storage structures from permits, fees, and inspections, the broad language indicates the intent to exempt Class J structures from all regulation.

No. 74039-3-I/12

The statutory scheme as a whole supports this conclusion. In the 1975 resolution, the County recognized that not all UBC provisions were “necessary or desirable” in a rural county. Res. 224-1975 §2.01. CP at 33. The 1975 resolution excluded single family dwellings and Class J structures from several UBC requirements.² Resolution No. 224-75 § 2.03, §2.09. In 1977, the County determined that, even with the exclusions and amendments, the code as adopted “regulated without sufficient justification” owner-built residences and storage structures. Resolution No. 58-1977 §8.01, 9.01. The County also determined that many structures had been built in violation of the code and the county did not have the resources to enforce code provisions. Resolution No. 58-1977 §8.01. CP 340-43.

A decision to exempt Class J structures from regulation is consistent with the County’s statements that many regulations were not necessary or desirable in a rural county, that the code adopted in 1975 unreasonably restricted the freedom of county residents, and that it did not have the resources to enforce the code as adopted in 1975.

Durland raises several arguments against this interpretation. In reliance on Graham, he first asserts that our Supreme Court has already determined that San Juan County’s intent in enacting the 1977 resolution was only to cut costs, not to eliminate requirements. But his reliance on that case is misplaced. In

² For example, the resolution exempted single-family residences from the requirement to have running water. Resolution No. 224-75 §2.09.

No. 74039-3-I/13

Graham, the court stated as part of its summary of background facts, that county commissioners enacted the 1977 resolution because they determined that the county “did not have the resources to enforce all the provisions of the Code.” Graham, 102 Wn.2d at 313. But the issue in Graham was whether the county could validly exempt owner-built residences in San Juan County from the requirements of the state building code. The Graham court did not rule on the purpose of the 1977 resolution or address the resolution’s section concerning Class J structures.

Next, Durland argues that related provisions in the 1977 resolution impose a setback requirement. He asserts that the resolution specifically requires “a statement of the setback requirements and the applicant’s agreement to comply therewith.” Brief of Appellant at 30. But the provision he relies on, Resolution No. 58-1977 §8.03, applies to owner-built residences, not to Class J structures.

Finally, Durland argues that the hearing examiner’s interpretation of Resolution 58-1977 is improper because the County has already taken the position that the setback applied and cannot now disavow that position. Durland relies on Silverstreak, Inc. v. Washington State Dep’t of Labor and Industries, 159 Wn.2d 868, 154 P.3d 891 (2007), in which the court held that the Department of Labor and Industry could not bring a claim contrary to its published interpretation of a labor regulation. The Silverstreak court applied the doctrine of equitable estoppel, under which a party may not take “a position inconsistent with a previous one where inequitable consequences would result to

No. 74039-3-1/14

a party who has justifiably and in good faith relied.” Id. at 887 (citing Kramarevcky v. Dep’t of Soc. & Health Servs., 122 Wn.2d 738 743, 863 P.2d 535 (1993)).

Durland asserts that the County stated its position by marking the building plan for the barn with a stamp reading “[a]ll structures shall be 10 feet from adjacent property line. S.J. CO. 58-77.” CP at 284. He argues that the county is estopped from changing that position.

We reject Durland’s argument because he fails to show the elements of equitable estoppel. Even if the County’s stamp on permit documents constitutes a previous inconsistent position, Durland has not shown that he acted in reliance on that statement or that the County’s current position is inequitable.

We conclude that the hearing examiner did not err in interpreting Resolution No. 58-1977 as repealing all regulation of Class J structures. The ten foot setback requirement in Resolution No. 224-1975 did not apply to the storage barn at the time it was built.

We next consider whether the examiner erred in concluding that San Juan County properly issued building, change of use, and ADU permits for the barn. Durland asserts that the County violated the San Juan County Code by issuing permits to an illegal structure. App. Br. at 31-32.

The San Juan County Code differentiates between a “nonconforming” structure and an “illegal” structure. SJCC §18.20.090, .140. An illegal structure is one that “was inconsistent with previous codes in effect when the ... structure was established.” SJCC §18.20.090. A nonconforming structure is one that

No. 74039-3-1/15

complied with applicable codes when built but no longer complies because of subsequent changes in code requirements. SJCC §18.20.140; §18.40.310. The barn's location does not comply with the setback provision of the current code. SJCC §15.04.620. But because Class J buildings were unregulated when the barn was constructed, the barn did not violate a setback requirement at that time. The barn is thus a legal nonconforming structure.

A nonconforming structure "may be modified or altered, provided the degree of nonconformity of the structure is not increased." SJCC §18.40.310(D). A shoreline structure that is nonconforming in regards to a setback may be "enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further ... extending into areas where construction ... would not be allowed for new development." WAC 173-27-080. Durland makes no argument that the modifications proposed by Heinmiller and approved by the County increase the extent of the barn's nonconformity. We conclude that the examiner did not err in ruling that the permits approving modifications to the barn were properly issued.

Finally, Durland argues that the examiner erred in concluding that the barn was exempt from shoreline permitting under the Shoreline Management Act (SMA), chapter 90.58 RCW, and the County's Shoreline Master Program (SMP), SJCC §18.50. He asserts that the examiner also erred in failing to rule that a formal shoreline exemption was required.

No. 74039-3-1/16

San Juan County's SMP mirrors the provisions of the State's SMA. SJCC §18.50.010(c). Under the SMA and SMP, construction on the shoreline generally requires a shoreline substantial development permit. SJCC §18.50.020(E)(2). "[N]ormal appurtenances" to a single-family residence are exempt from the shoreline substantial development permit. SJCC §18.50.330(A), (E)(2). One accessory dwelling unit is a normal appurtenance to a single-family home, provided that the ADU covers no more than 1,000 square feet of land area, is no taller than 16 feet, and is not used as a rental. SJCC §18.50.330(E)(2), (E)3.

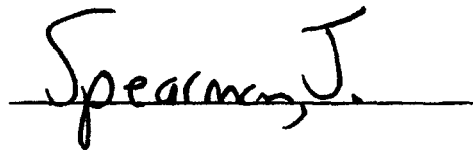
Durland briefly asserts that the barn is not a normal appurtenance. He argues that the barn violates the height and size requirements of SJCC §18.50.330(E)(2)(a), but he does not cite to the record for this assertion. Durland also asserts that the barn is not a normal appurtenance because it has been used for commercial purposes. Durland provides no support for this assertion. But in any case, the proper question under SJCC §18.50.330(E)(3) is not whether the structure has been used for commercial purposes but whether it will be used as a short or long term rental. The hearing examiner's decision upholding the permits is conditioned upon Heinmiller submitting a certificate, as required by SJCC §18.50.020(G), stating that the ADU is reserved for the use of his family. We conclude that the examiner did not err in finding that the converted barn is a normal appurtenance exempt from shoreline permitting.

Heinmiller requests attorneys' fees under RCW 4.84.370. The statute provides that, in a land use decision, reasonable attorneys' fees shall be

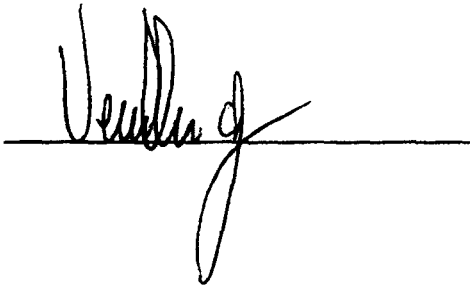
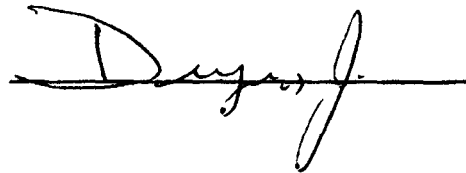
No. 74039-3-1/17

awarded “to party who prevails or substantially prevails at the local government level, the superior court level, and before the Court of Appeals or the Supreme Court.” Julian v. City of Vancouver, 161 Wn. App. 614, 631–32, 255 P.3d 763 (2011) (quoting Baker v. Tri-Mountain Res., Inc., 94 Wn. App. 849, 852 973 P.2d 1078 (1999)). Heinmiller prevailed before the hearing examiner and the superior court, and is thus entitled to fees here.

Affirmed.

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WE CONCUR:

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DURLAND: Petition for Review to Supreme Court

APPENDIX A-2

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

MICHAEL DURLAND, KATHLEEN FENNEL, and DEER HARBOR BOATWORKS,

Appellants,

v.

SAN JUAN COUNTY, WESLEY HEINMILLER, ALAN STAMEISEN, and SUNSET COVE LLC,

Respondents.

No. 74039-3-1

ORDER DENYING APPELLANTS' MOTION FOR RECONSIDERATION AND MOTION TO SUPPLEMENT THE RECORD

Appellants Michael Durland, Kathleen Fennell and Deer Harbor Boatworks (collectively Durland) filed motions to supplement the record on appeal and for reconsideration of the opinion filed in the above matter on September 12, 2016. The court called for answers to the motions, which respondents duly filed. Appellants also filed a reply to the answer to which respondent filed a response, neither of which was requested by the court as required by RAP 12.4(d). A majority of the panel has decided that both motions should be denied and declines to consider those pleadings not requested by the court.

Now therefore,

IT IS HEREBY ORDERED that appellants' motion to supplement the record and for reconsideration are denied.

DATED this 17th day of November, 2016.

FOR THE COURT:

Spencer, J.
Presiding Judge

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2016 NOV 17 AM 10:18

DURLAND: Petition for Review to Supreme Court

APPENDIX A-3

**SAN JUAN COUNTY
HEARING EXAMINER**

ADMINISTRATIVE APPEAL

Appellants: Michael Durland, Kathleen Fennell,
Deer Harbor Boatworks

Applicant/Property Owner: Wes Heinmiller and Alan Stameisen

File No.: PAPL00-09-0004

Request: Appeal of Building, Change of Use and Accessory
Dwelling Unit Permit

Parcel No: 260724011

Location: 117 Legend Lane, Deer Harbor, Orcas Island

Comprehensive Plan Designation: Deer Harbor Hamlet Residential

Shoreline Designation: Rural

Hearing: May 6, 2010

Decision: The appeal is denied.

S.J.C. COMMUNITY

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BOISE, IDAHO

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BEFORE THE HEARING EXAMINER FOR SAN JUAN COUNTY

RE: Michael Durland, Kathleen Fennell;
and Deer Harbor Boatworks

Administrative Appeal

PAPL00-09-0004

APPEAL OF BUILDING, CHANGE OF USE
AND ACCESSORY DWELLING UNIT
PERMIT

Summary

The Appellants appeal the after-the-fact issuance of a building, accessory dwelling unit ("ADU") and change of use permit for the partial conversion of a barn structure into an accessory dwelling unit. The appeal is denied. Most of Appellant's issues are time barred. Many of the issues raised by the Appellant were addressed and resolved in two code compliance plans, the appeal periods of which have long expired. Other issues dealt with the application of zoning restrictions adopted after the construction of the barn structure. Although the barn was constructed as an illegal use due to setback violations, the compliance plans (again not subject to challenge) recognized a Setback Easement as correcting the violation. Under these circumstances the barn structure is construed as a valid nonconforming use that is not subject to changes in zoning laws. The only issue raised by the Appellants that is not time barred is an ADU requirement pertaining to floor area. The Examiner concluded that staff correctly excluded garage and storage space in the computation of total floor area to find that the ADU complies with the applicable 1,000-square-foot maximum "living area" requirement.

Testimony

Dave Bricklin made an opening statement. He noted that the appellants have raised seven issues. He explained that the appeal is of an after-the-fact building permit and other permits for conversion of a barn into an ADU. Initially the County required that the ADU be torn down. The

1 County then negotiated a compliance plan that provided a potential avenue to leave the building
2 standing. The Compliance Plan calls out the possibility that the building permit will be rejected and
3 specifies that if the building permit application is rejected that the building will be torn down or
4 some alternative to achieve compliance. Mr. Bricklin noted that this provision is significant
5 because it defeats the applicant's argument that collateral estoppel precludes the issues raised by the
6 applicant. The applicant appears to argue that the compliance plan constitutes a County decision
7 that the applicant is entitled to a building permit. The provision at issue clearly shows that no
8 determination on compliance with building permit criteria had been made. Mr. Bricklin also noted
9 that there was no adjudication of building permit rights when the compliance plan was negotiated.
10 In fact, the Hearing Examiner made a determination (in the Eckland case, attached to the applicant's
11 brief) that he had no authority to hear a challenge to a compliance order (although it was based upon
12 grounds that the appeal was untimely). County staff had also advised that there was no right to
13 appeal a compliance plan (Ex. 20).

9 Mr. Bricklin noted that the root of the problems of this case arise from the fact that adjoining
10 properties are residential and industrial. When Mr. Durland tried to get permits to develop his
11 property, it was discovered that the barn on his neighbor's property was too close to the property
12 line. Mr. Durland agreed to let the barn stay in place because it was a great buffer to the boatyard.
13 He agreed to a setback buffer that prohibited him from building close to the barn. Mr. Durland is
14 not reneging on the setback buffer. The setback buffer is based on the premise that the barn is a
15 buffer, not a residential use.

14 Mr. Bricklin also noted that the building is not a legal nonconforming use, it is an illegal
15 building. He noted that under 18.100.070(D) that you cannot get a permit to change the use of an
16 illegal building. The definitions section, 18.20.040 defines nonconforming as a use, structure, site
17 or lot which conforms to the laws in effect on the date of its creation but no longer conforms to
18 current code requirements. According to 18.20.090, an illegal use is a use or structure that was not
19 legal the day it was established. The building was illegal because it was not within required
20 setbacks (10 feet) and it was not built consistent with the issued building permit. The building
21 permit showed that the barn would be built ten feet from the property line.

19 Mr. Bricklin stated that the applicant is arguing that even if illegal, the County has acquiesced
20 in the setback violation. Mr. Bricklin noted that acquiescence by the County in a violation does not
21 change it to a legal act. Mr. Bricklin referred to Youdes SHB 02-018, where San Juan County
22 issued permits for an illegal structure. The shoreline hearings board still found that the permit was
23 illegal. In *Longview Fiber* 89 Wn. App. 627 the court ruled that agency acquiescence does not
24 estop an agency for enforcing later on. *Mercer Island v. Thymin*, 9 Wn. App. 479 contains strong
25 language where Judge Callow the court goes at some length to explain that acquiescence does not
26 make an illegal act legal.

25 Mr. Durland, Appellant, testified that he purchased his property in 1986. He acquired a
26 shoreline conditional use at that time for a boat yard and marina. The property was zoned suburban
at the time but was recently rezoned industrial. Mr. Durland testified that in 1995 the Applicant's

1 property was composed of a barn, garage and modular home and that by 2007 the garage had been
2 attached into the modular home so that there were just two structures instead of three. Mr. Durland
3 discovered that the barn was too close to his property line when he was preparing a shoreline
4 application. During the permitting process it was suggested that the barn would serve as a good
5 buffer and so Mr. Durland agreed to a setback buffer. Use of the barn changed a few years ago
6 when the barn was changed to living space. Then Mr. Durland began to get complaints about his
7 industrial operations. Mr. Durland noted that he owns the property between the barn and the
8 shoreline (see Ex. 6-0).

9 Mr. Durland stated that the prosecuting attorney's office had told him he could not appeal the
10 Compliance Plans and that building permit issuance was the time to appeal. The CDPD director
11 also wrote Mr. Durland to tell him there was no right to appeal a Compliance Plan. See Ex. 6-20.
12 He testified that the building permit plans (Ex. 6-9a-c) showed that the barn would be ten feet from
13 the side property lines. The barn was actually 17 inches from the property line. See Ex. 6-0. No
14 variance was ever issued for the setback violation. The County prosecutor (Ex. 6-4) advised that no
15 land use decision recognized the barn as a legal nonconforming structure.

16 Carla Rieg has lived next to Mike Durland for almost 18 years. Mr. Smith was the prior
17 owner of the Applicants' property. She knows Mr. Smith very well. She noted that Mr. Smith
18 ignored the property line for the barn because he had assumed that he would eventually own the
19 Durland property as well. Mr. Smith used the barn for storage and a workshop only. Mr. Smith
20 never mentioned or intended that he would use the barn for residential use. Ms. Rieg is a friend of
21 Mr. Durland.

22 18.40.240(F)(5) provides that any additions to an existing building for an ADU shall not
23 exceed allowable lot coverage or encroach onto setbacks. Mr. Durland indicated that this standard
24 was violated due to the setback violation.

25 A regulation provides that the width of a building shall not exceed 50% of the shoreline
26 frontage. Using the building permit site plan for the last modular home application for Mr.
Heinmiller, Mr. Durland determined that the shoreline was 227 feet in width. He noted that the
modular home was 86 feet and the boat was 30 feet, totaling more than 50% of the shoreline
frontage. He did not count the boat ramp or walkway. When he applied for his permits he was told
that those type of structures counted towards shoreline width.

18.50.330(E)(1) prohibits accessory structures that are not water-dependent from being
seaward of the most landward extent of the residence. Mr. Durland testified that the ADU is
waterward of the residence.

18.50.020 prohibits substantial development on shorelines without shoreline substantial
development permit and conditional use permits for structures accessory to a residential structure.
Mr. Durland testified that no conditional use permit has been applied for. The Applicants' position
is that the ADU qualifies as an appurtenance because it is less than 16 feet high. Mr. Durland

1 disagrees, citing 18.50.330(E)(2)(a), which only allows either one garage or one accessory building
2 and not to exceed 1,000 square feet to qualify as an appurtenant structure. Mr. Durland noted that
3 there are three permitted structures on the property and the barn is over 1,000 square feet. Mr.
4 Durland showed three permits to support this, Exs. 6-8 (garage), 6-9 (storage barn) and 6-10
5 (modular home).

6 18.40.240(F)(1) provides that an ADU shall not exceed 1,000 square feet in living area. There
7 are no exclusions within the definition of living area for storage space, etc. Mr. Durland stated that
8 when he applied for an ADU he was told that everything within the walls counts as living space.
9 Based upon that definition he computed that the ADU contained over 1,308 square feet of living
10 space.

11 The Deer Harbor Hamlet Plan, Ex. 6-18, requires a minimum roof pitch of 4:12. Mr. Durland
12 testified that the applicant's attempt to comply with this by cutting off the top portion of the roof
13 and making it flat, which is not consistent with a 4:12 pitch requirement.

14 Mr. Durland testified that the height of the upper floor is six feet eight inches, which is
15 contrary to the IRC (2006 ed.), which requires a minimum seven-foot height. He testified that the
16 stairway width is 14 inches and the IRC requires 26 inches. The ceiling are 2 x 6, which also
17 violates the IRC.

18 The Examiner ruled that the appeal is limited to issues raised in the appellant's appeal notice.
19 The Examiner said he would take under advisements objections related to the relevance of
20 compliance with various building code requirements.

21 Lee McEnery testified that the Setback Easement is why the ADU is not considered in
22 noncompliance with setback requirements. Ms. McEnery stated that she did not see anything
23 inaccurate in the way that Mr. Durland determined that the width of the structures along the
24 shoreline are more than 50% of the width of the shoreline. Ms. McEnery stated that the code
25 requirement for the ADU having to be landward of the home was not in effect when the barn was
26 built. She acknowledged that the ADU is not compliant with all current code requirements. As to
compliance with SJCC 18.50.330(E)(2)(a), Ms. McEnery agreed that the barn footprint was more
than 1,000 square feet. Ms. McEnery also agreed that the applicants had to acquire a building
permit in order to comply with the Compliance Plans. Ms. McEnery was unable to comment on the
building permit history of the structures, because that is outside her department. Ms. McEnery
could not testify on the 1,000 square foot ADU requirement (1,000 square feet maximum of livable
space) because that was a building permit issue. Ms. McEnery acknowledged that the roof pitch
requirement could be interpreted in one of two ways. The alternative interpretation could be that
the pitch is measured to an imaginary roof peak extrapolated from the sloped side instead of the flat
area. Ms. McEnery testified that from a visual perspective one would not probably even see the flat
part of the roof and she felt her measuring method was most appropriate. She noted that the flat
portion of the roof was very inconsequential. No part of San Juan County regulations define pitch.
In cross Mr. Bricklin noted that Ex. 6-19 of the Eastside Subarea Plan addressed combination

1 flat/sloped roofs and that there's nothing similar applicable to the subject property. The Eastside
2 Subarea Plan does not apply to the subject property. On the 50% shoreline width requirement, Ms.
3 McEnery used the site plan for the change in use permit, page A-1. She stated that using that site
4 plan, it came in a little under the 50% requirement. Ms. McEnery did not include the wooden
5 sidewalk and boat ramp in her 50% calculation because they were on-grade and did not cast a
6 shadow. The department's practice has been to not include on-grade development, such as
7 sidewalks and boat ramps, in the 50% calculations. Ms. McEnery did not provide any examples of
8 this past practice or elaborate upon how often this practice has been implemented.

9
10 Renee Belaveau, San Juan County Community Development and Planning Department
11 director and chief building official, testified for the applicant. Mr. Belaveau determined that the
12 living area of the ADU was 955 square feet. He noted that the code is silent on sloped roof
13 situations. Consequently the staff looked to the building code, which defines floor area as that area
14 with a height of more than five feet. The SJCC 18.20.120 living area definition is also silent on
15 how to deal with low hanging ceilings. Mr. Belaveau stated that he believes this methodology has
16 been used before (using the building code definition of floor area), but the issue does not come up
17 very often. Mr. Belaveau also testified that the County currently uses the 2006 building codes as
18 mandated by state law even though the SJCC only references adoption of the 2003 codes. Both the
19 IRC and IBC define floor area to exclude areas with less than five-foot ceiling height. Mr.
20 Belaveau testified that only changes to the barn would need to comply with the current building
21 codes but that existing structural elements would not. Mr. Belaveau also testified that if the
22 nonconformity is the building and not the use that the building nonconformity would not have to
23 conform to current standards, if the building is a legal nonconforming structure.

24
25 Ms. Wagner testified for the applicant. She noted that Mr. Durland's parcel is zoned
26 industrial and that the lot adjoining to the south, her client's, is residential. Her client acquired
ownership in 1995. Her client had planned to convert the barn to an ADU for their parents. In
1997 the parents hired some local workmen to do the work. The parents were erroneously informed
they did not need building permits. They completed the work in eight months in 1997 and incurred
\$140,000 in expenses for the construction. The County issued a compliance order in 2008. A
Compliance Plan was subsequently issued that allowed the use to continue. The County determined
that no shoreline substantial development or conditional use permit was necessary if the height of
the ADU was reduced to 16 feet. A supplemental Compliance Plan was issued in 2009. Mr.
Durland appealed the supplemental plan but it was dismissed by the hearing examiner as untimely
and the Examiner never ruled on whether Mr. Durland had a right to appeal the supplemental
Compliance Plan. Mr. Durland is appealing the same issues he tried to appeal in his appeal to the
supplemental Compliance Plan. The Compliance Plan requires a building permit, but many issues
were agreed upon in the Compliance Plan and cannot be revisited for the building permit. Ms.
Wagner argued collateral estoppel under Tegland 14A Washington Practice 35:32. 14 Wn. Practice
35:34 provides that parties must have full and fair opportunity to argue the issues. Mr. Durland had
the opportunity but he was late. Nykreim also bars further relitigation of the Compliance Plan due
to the necessity for finality. Res judicata also applies because Mr. Durland failed to timely appeal
the Compliance Plans. Ms. Wagner noted that she had researched the old San Juan regulations and

1 there were no sideyard setback requirements in the Zoning Code in 1981. If there was a sideyard
2 setback requirement, it would have been from the fire code, which required a ten-foot side yard or
3 burn resistant law. The 2000 comp plan is the first time sideyard setbacks are referenced. The 1991
4 shoreline master program contained the ADU landward limitation and 50% requirements for the
5 first time. The property was surveyed in 1987. The Compliance Plan contains agreement that the
6 ADU is a legal nonconforming structure. Nobody in 1981 knew that the building was closer than
7 ten feet to the sideyard setback as depicted in the building plans for the 1981 permit application.
8 Nobody in the 1980's complained about the location or asserted a fire code violation. SJC
9 18.100.030 does not grant a private right of action; it is for code enforcement. Mr. Durland also has
10 no standing to enforce SJC 18.100.070. The 1981 fire code probably required a twenty-foot
11 separation or firewall.

12 Wesley Heinmiller bought the subject property (117 Legend Lane) in 1995. He bought the
13 property for his parents. His parents moved onto the property shortly after purchase. They lived
14 there about 12 years until his father passed away. His mother now needs to live in a group home.
15 He testified that the property contains a tool shed, a home with attached garage, the ADU and a pier
16 and dock. There is no wooden sidewalk. Shortly after purchase the Mr. Heinmiller commenced
17 plans to replace the mobile home with a two-story house with the intent of living with his partner on
18 the first floor and his parents living on the second floor. Upon reconsideration Mr. Heinmiller's
19 father began converting the barn into an ADU in order to provide for more privacy between parents
20 and son. His father had the help of general laborers to convert the building. The initial phase of the
21 conversion took about eight months. Mr. Heinmiller is a yacht captain. After Mr. Heinmiller's
22 father passed away, Mr. Heinmiller and his partner had planned to live in the ADU and rent out the
23 main home as a vacation residence. Then when he and his partner were required to move out of the
24 ADU, he and his partner moved into the main house.

25 Mr. Heinmiller's father rebuilt the interior of the ADU. As a barn it was just a shell of a
26 structure. Mr. Heinmiller's father constructed a living room, dining room, kitchen, panty and
bathroom on the first floor and a loft and bathroom on the second floor. They put in drywall,
carpeting and other amenities. A deck and carport had also been constructed, but was then removed
upon instruction from the County. The ADU improvements have cost at least \$175,000 in labor
and materials. Mr. Heinmiller explained that the fence shown in Ex. 15 is on the boundary line
between the Durland and Heinmiller properties.

On cross-examination, Mr. Bricklin inquired about the detached garage. Mr. Heinmiller
stated that originally the mobile home was connected to the garage by a breezeway. He then
acquired a permit to build a garage, which was added to the home. The garage is only three sided
and its fourth side is the home. The roofline of the garage is the same as the home. The boat ramp
is made of concrete. The pier extends onto land with a platform for a short distance ending at the
high tide line. Ex. 17 is plans for the barn. The bottom of the plans provide that the barn shall be
located a minimum of ten feet from the property line, referencing "S.J. Co. 58-77". Mr. Heinmiller
testified that he plans to remove the eaves of the ADU on the Durland side of the ADU.

1 Bonney Ward testified on behalf of Mr. Heinmiller. She acquired a bachelors in interior
2 design from Purdue University in 1969 and has been working as an interior designer since then.
3 She started out primarily as a commercial interior designed in Colorado for restaurants and the like.
4 In 1988 she moved to Orcas Island where she does 100% residential design. From her Orcas Island
5 office she primarily works in San Juan County, but also other areas as well. She has worked with
6 building codes in having to conform to setbacks, building heights, occupancy and other building
7 issues. Ms. Ward explained the design process, which is done in phases of consultant with the
8 client. Ms. Ward differentiated interior design from architecture, which is more engineering
9 oriented. She noted that an architect was not necessary for the Heinmiller ADU because there were
10 no structural issues involved. She has designed about 35 ADU's since 1993. She has done about
11 100 design projects since opening her Orcas Island office. Her work has been featured Seattle
12 Homes and Lifestyles twice and in Colorado she designed a home of the year in Colorado Homes
13 and Lifestyles and her work has been featured in other magazines as well.

9 Ms. Ward was hired to prepare as-built drawings for the ADU in 2007 for the work already
10 done. In June of 2009 she updated the plans to reflect ADU use. She used the CAD system to
11 determine the floor areas depicted in Exhibit 18. She physically measured the building herself by
12 measuring the exterior and interior walls and the height. The shaded areas in Ex. 18 are the
13 habitable areas. Mr. Ward noted that the San Juan County County Code requires a 4:12 roof pitch,
14 which is a rise of 4 over a run of 12. The 1981 plans (Ex. 17) show that the roof meets this
15 requirement. Ex. 20 shows a gable roof, which is a two-sided roof that forms a peak. Ms. Ward
16 explained that a hip roof (Ex. 22) has a pitched roof on four sides. She noted that the ADU roof is
17 still a 4:12 pitch roof even though there is a flat portion on top, because the flat portion is less than
18 10% of the roof and the flat portion is not noticeable from the exterior. The San Juan County Code
19 and Dear Harbor Hamlet regulations do not require a gable roof or any other type of roof. If the
20 roof has to be lowered to a 16-foot gable roof it would make the upper level uninhabitable. Ms.
21 Ward prepared Ex. 23, which is a survey of the Heinmiller lot and location of structures. She used
22 County documents for the survey and then verified all measurements with a measuring tape. For
23 Ex. 18, Ms. Ward clarified that she considered any area in the second floor that was greater than
24 five feet as closet space and those areas less than five feet as storage space. She noted that Ex. 18
25 does not identify the closet space as habitable, but that if it is counted as habitable the ADU would
26 still meet area requirements. She said that in the plans she submitted to the County that the closet
area was counted as living area.

21 On cross-examination Ms. Ward noted that the habitable area is the "living area" referenced in
22 ADU area restrictions. She agreed that the "boat barn/garage" area in Ex. 18 was within the
23 exterior walls of the ADU structure. She also agreed that the "boat barn/garage" area was not a
24 deck, unenclosed porch, overhang or stairwell. She noted that the stairwell is counted towards
25 living area in the first floor of the ADU even though it is not grey. Ms. Ward agreed that it was
26 possible to have a hip roof that does not have a flat area on top. She stated that would be
considered a dutch gable. Ms. Ward clarified that the "phase one" work she did with the as-builts,
the kitchen was excluded, because the intent was to modify the ADU to be a bunkhouse. She noted
that Ex. 18 would require some modifications to the existing structure, such as the firewall, which

1 currently does not exist. Ms. Ward confirmed that Ex. 19 is to scale.

2 After inquiry from the Examiner, the parties agreed to check into whether any prior Examiner
3 decisions had addressed how to measure living area.

4 In rebuttal, Mr. Durland testified that 9(b) of his exhibits has a notation that structures shall be 10
5 feet from the property line. The Texmo building plans also have this notation. Both notations
6 reference S.J. Co. 58-77. Section 4 of Resolution 224 (Ex. 24) provides that side, rear and front
7 yards shall be built within ten feet of a property line within Fire Zone No. 3. Section 4.04 defines
8 Fire Zone No. 3 as all of San Juan County outside an incorporated city, including the Heinmiller
9 and Durland properties. Mr. Durland stated that the walls of the barn are just studs with tin on the
10 outside. Ms. Wiggins objected on the basis that the appellants had not demonstrated that
11 Resolution No. 224 was in effect in 1981 when the barn was built. Mr. Durland testified that the
12 building plans for the new garage showed it as detached – in the same footprint as the prior garage.
13 Exhibits 11(a) and (b) showed that the building permit was approved on the basis that it would be in
14 the same footprint as the old. The photo of Ex. 6 shows that the garage at that time (1995) was
15 detached. Mr. Durland stated he did not appeal the first Compliance Plan because he was told by
16 the prosecuting attorney that he could not. Prior to the second Compliance Plan Mr. Durland
17 discovered that Mr. Heinmiller had requested a formal administrative determination in December.
18 Mr. Durland further found out that three months that the check for the administrative determination
19 was returned and that instead the second Compliance Plan resolved the questions raised in the
20 request for an administrative determination. Given these circumstances Mr. Durland was concerned
21 that the second Compliance Plan would be construed as an administrative determination so he
22 appealed it.

23 On cross, Mr. Durland testified that “at the time” H occupancies are hotels and apartment
24 houses, I occupancies are dwellings and lodging houses. J occupancies are now classified as a U
25 occupancy, which includes barns. Mr. Durland received this information from an email from Renee
26 Belaveau (Ex. 25). Ms. Wagner noted that Resolution No. 224 (Ex. 24) does not require a ten-foot
setback for J occupancies. Mr. Durland has not ever read SJ 58-77 and that the building department
was unable to locate that regulation for him.

27 In closing, Ms. Wagner emphasized that the Examiner review the Compliance Plans, which
28 recognize the ADU structure as nonconforming and this resolves the illegality issue. Even if not the
29 Appellants have not shown any evidence of illegality, except the last minute uniform fire code
30 provision, where it is not clear that these code provisions even applied to the ADU structure. SJ 58-
31 77 does not have any side-yard setback requirement. Ms. Wagner argued that it is meaningless to
32 conclude that a compliance plan cannot be appealed if the issues of the compliance plan can be
33 resurrected via a building permit appeal. Ms. Wagner concedes her client was not promised a
34 building permit, but her client was promised that the issues resolved in the Compliance Plan would
35 not be an issue. The Compliance Plan did not require a shoreline substantial development permit.
36 It is an absurd result to read the ADU area restrictions literally and conclude that all storage areas
are considered habitable areas. If the San Juan County Code wanted to limit 4:12 roofs to gabled

1 roofs it should have said so. The hearing examiner rules provide that the Appellant has the burden
2 of proof in the appeal. The setback issue was resolved by the Setback Easement.

3 In closing, Mr. Bricklin stated that the Compliance Plan does not determine whether the
4 applicant is entitled to permits. The issue of whether the applicant is entitled to permits has not
5 been litigated. The fact that Mr. Durland was late with his appeal does not make change the fact
6 that he did not have a right to challenge the Compliance Plan. The ADU building is illegal because
7 (1) it violates separation/setback requirements and (2) it is not consistent with the ten-foot setback
8 of the building plans of the building permit application. Private covenants do not alter code
9 requirements. There was no firewall installed as an alternative to the 10-foot setback requirements.
10 Resolution 224 clearly states that all buildings within Fire Zone 3 must conform to the ten-foot
11 setback, not just those within H and I occupancies. Mr. Belaveau, in his email construes Resolution
12 224 as applying the 10-foot setback to all occupancies and in the H and I occupancies a firewall
13 cannot substitute for the setback. Other than arguing that the issues cannot be relitigated, the
14 applicant has not explained how it can modify an illegal building, as prohibited by SJCC
15 18.100.030(F) and 18.100.070(D). On the 50% measurement issue, the applicant and staff ignored
16 the existence of the boat ramp and pier. They are structures that should have been included in the
17 calculation. The Zoning Code definition of "structure" is any piece of work built up, whether on,
18 above or below the surface. On the waterward issue, the applicant and county have not addressed it.
19 The County also cannot issue a building permit without a shoreline permit unless the structure
20 qualifies as a normal appurtenance and it does not. The garage is part of the house but it was not
21 permitted to be attached. On the living area definition, the storage area and boat/barn is clearly part
22 of the living area. On the roof issue, the East Sound plan shows that when the County wanted to
23 allow roofs with a flat portion, it did so.

16 Exhibits

- 17 1. Letter of appeal
- 18 2. Compliance Plan
- 19 3. Supplemental Agreed Compliance Plan
- 20 4. 5/3/10 emails regarding scheduling
- 21 5. Weissinger Memo 5/3/10
- 22 6. Durland Notebook
- 23 6-0 1990 Survey
- 24 6-1 7/22/09 09APL006 Staff Report
- 25 6-2 5/29/90 letter to John Thalacker
- 26 6-3 Affidavit of Carla Rieg
- 6-4 7/31/08 Email from Jon Cain to Michael Durland
- 6-5 Photos looking west
- 6-6 1995 Aerial Photo
- 6-7 2007(?) Aerial Photo
- 6-8 Building permit for garage
- 6-9(a) Site plan
- 6-9(b) Code checklist

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- 6-9(c) 1981 building plan
- 6-10 1998 Building permit
- 6-10(a) 1998 Modular permit application
- 6-10(b) 1998 Building and mechanical permit
- 6-10(c) 1998 Building permit, inspector copy
- 6-10(d) 1998 Water availability certificate
- 6-11 9/12/00 letter from Fay Chaffee
- 6-11(a) 2000 Building permit
- 6-11(b) 2000 Building permit application
- 6-11(c) 2000 Building permit – garage
- 6-11(d) 2000 Permit fee worksheet
- 6-12(a) 2008 Building permit
- 6-12(b) 2009 Building permit
- 6-12(c) 2009 Permit receipt
- 6-13 IRC R305 (2006)
- 6-14 IRC Section 1009 (2006)
- 6-15 Innovations for Living – Cathedral Ceiling insulation specifications
- 6-16 SJCC 18.40.240
- 6-17 SJCC 18.20.120 living area definition
- 6-18 Ordinance No. 26-2007
- 6-19 Eastsound Subarea Plan roof standards
- 6-20 6/8/09 Letter from Ron Hendrickson
- 6-21 Site plan for Heinmiller modular home permit application
- 6-22 Site plan for change of use permit
- 6-23 A-4, building plans for change of use permit dated 9/23/09
- 7. Email from Rosanna O'Donnell to Lee McEnery, 10/08/07
- 8. Aerial photo obtained by Heinmiller when home was purchased in 1995 (unknown date, but taken after 1981)
- 9. Photograph of deck and persons working on ADU (taken in late 1990's)
- 10. Photograph of inside of ADU (taken in late 1990's)
- 11. Photograph of kitchen and bathroom (taken in late 1990's)
- 12. Photograph of exterior of boat barn and adjoining Durland property
- 13. Photograph of exterior of boat barn (taken in late 1990's)
- 14. Photograph of boundary between Durland and Heinmiller properties
- 15. Photograph of boundary between Durland and Heinmiller properties
- 16. Photograph from boat launch ramp of ADU
- 17. Texmo building plans dated 10/8/81
- 18. ADU floor area plans
- 19. Cross Section of ADU
- 20. Gable Roof diagram
- 21. Shed Roof diagram
- 22. Hip Roof diagram
- 23. Site plan prepared by Bonnie Ward

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- 1 24. SJ Resolution 224
2 25. 6/18/08 Email from Renee Belaveau
3 26. SJ Resolution 58-1977

Findings of Fact

Procedural:

- 4
- 5
- 6 1. Appellant. The appellants are Michael Durland, Kathleen Fennell; and Deer Harbor
7 Boatworks, collectively referenced as "Appellants."
- 8 2. Property Owner. Wes Heinmiller and Alan Stameisen.
- 9 3. Hearing. The Examiner held a hearing on the application on May 6, 2010, in the San Juan
10 County Council meeting chambers in Friday Harbor. The record was left open through May 12,
11 2010, for any prior Hearing Examiner decisions on living space. The applicant had until May 17,
12 2010 to respond. The parties subsequently requested that the Examiner not issue a decision pending
13 an attempt at resolving the appeal. On June 17, 2010, they advised that they had not been able to
14 reach agreement and requested the Examiner to issue a decision.

Substantive:

- 15 4. Permitting History. The appeal concerns the conversion of a barn into an ADU. The barn
16 was built in 1981. The building plans for the barn structure depicted the barn as ten feet from the
17 side property line shared with the Durland property. In 1990 the Heinmiller and Durland
18 properties was surveyed and it was discovered that the barn was only 1.4 feet from the side
19 property line. As a result, the adjoining property owners executed a "Boundary Line Agreement
20 and Easement", Ex. 5, attached Ex. F, hereinafter referred to as the "Setback Easement". The
21 Setback Easement prevented the owner of the Durland property from building within twenty feet of
22 the barn.

23 Several years after the Setback Easement was executed, a portion of the barn was converted to an
24 ADU without any building permits. In 2008 Mr. Heinmiller applied for a conditional use permit to
25 use the ADU as a vacation rental. As a result the County was made aware that the ADU had been
26 constructed without required building plans or compliance with shoreline regulations. The County
27 issued a Notice of Correction in 2008. This resulted in an Agreed Compliance Plan dated April 25,
28 2008 ("Compliance Plan"). As discussed in the Conclusions of Law¹, the Compliance Plan was a
29 final determination by County staff as to what was necessary to bring the barn into compliance
30 with County shoreline and development regulations. The Compliance Plan required the

¹ As necessary throughout this decision, factual determinations are made in the Conclusions of Law and legal conclusions are made in the Findings of Fact.

1 acquisition of shoreline permits. The Compliance Plan also recognized the Setback Easement as
2 bringing the barn into conformance with the ten-foot side-yard setback that applied to the barn
3 when constructed in 1981. Subsequent to execution of the Compliance Plan, the County executed
4 a Supplemental Agreed Compliance Plan, which concluded that shoreline permits were not
5 necessary if the height of the barn was reduced to sixteen feet and other actions were taken. The
6 Compliance Plan and Supplemental Agreed Compliance Plan were both signed by Mr. Heinmiller
7 and Mr. Stameisen.

8 Mr. Durland filed an administrative appeal of the Supplemental Agreed Compliance Plan. The San
9 Juan County Hearing Examiner dismissed the appeal as untimely. As required by the Compliance
10 Plans, Heinmiller and Mr. Stameisen applied for an after-the-fact building permit, a change-of-use
11 permit, and an ADU permit for the ADU constructed several years earlier. San Juan County
12 approved the permits on November 23 and 24, 2009.

13 5. Appeal History and Basis. The Appellants filed the subject appeal on December 11, 2009.
14 The appeal challenges the validity of the permits identified as issued in November 23 and 24,
15 2009. The Appellants assert that the permits are invalid because the barn structure fails to comply
16 with numerous zoning and building code requirements. Each of the grounds of appeal are quoted
17 in the Conclusions of Law. Mr. Durland testified that he is injured by the code violations because
18 the ADU violates side-yard setback requirements and is too close to the boat manufacturing
19 activities on his property. He believes that the occupants of the ADU will complain about his
20 activities because of their proximity to them.

21 6. Pertinent Characteristics of ADU and barn. As depicted in Exhibit 18, the floor area for all
22 habitable portions of the ADU portion of the barn (defined as those portions of the ADU with a
23 ceiling height of five or more feet) is less than 1,000 square feet. In 1981 the barn did not include
24 any firewalls. The barn was constructed 1.4 feet from the sideyard boundary line shared with Mr.
25 Durland.

26 Conclusions of Law

Procedural:

1. Authority of Hearing Examiner. Appeals of building permits are reviewed by the Hearing
Examiner, after conducting an open-record public hearing, pursuant to SJCC18.80.140(B)(11).

Substantive:

2. Comprehensive Plan and Shoreline Designation. The subject property is designated Deer
Harbor Hamlet Residential in the San Juan County Comprehensive Plan and has a Shoreline
Master Program designation of Rural.

1 3. 1981 Sideyard Setback Requirement. San Juan County Resolution No. 224 applied to the
2 1981 building permit application for the barn. Section 4.01 of the resolution imposed a ten foot
3 sideyard setback upon all buildings within Fire Zone 3, unless the walls in the setback area are
4 firewalls. The barn did not include any firewalls. The barn is located in Fire Zone 3 because it is
5 (and was in 1981) not located in any incorporated area as contemplated in Section 4.04 of
6 Resolution No. 224. Consequently, the barn was constructed in violation of the Resolution No.
7 224 sideyard setback when constructed in 1981.

8 4. Compliance Plans are Final Land Use Decisions Subject to the Land Use Petition Act
9 ("LUPA"), Chapter 36.70C RCW. RCW 36.70C.020(1) defines a final land use decision in
10 relevant part as follows:

11 *"Land use decision" means a final determination made by a local*
12 *jurisdictions body or officer with the highest level of authority to make the*
13 *determination, including those with authority to hear appeals on,*

14 *(b) An interpretative or declaratory decision regarding the application*
15 *to a specific property of zoning or other ordinances or rules regulating the*
16 *improvement, development, modification, maintenance or use of real property...*

17 In applying the land use decision above, there are two issues that must be assessed: (1) whether a
18 compliance plan constitutes a decision regarding the application of zoning requirements; and (2)
19 whether a compliance plan is a final administrative determination.

20 As to the first issue, there is no question that the Compliance and Supplemental Agreed Compliance
21 Plans of this appeal apply zoning and other development regulations to the Heinmiller property.
22 The plans assess setback, shoreline and accessory dwelling unit requirements. By necessity, any
23 compliance plan has to apply development regulations in order to determine what is necessary for
24 compliance.

25 The fact that the agreement is not in the form of a formal interpretation is not of any significance.
26 SJCC 18.100.040(D) states that a compliance plan may be entered into by the administrator and
person in violation and that "no further action will be taken if the terms of the Compliance Plan are
met." In short, once a compliance plan has been executed, San Juan County is precluded from
applying a different interpretation to the activities covered by the code enforcement action. The
interpretations in a code enforcement action are as final and binding as any formal zoning
interpretation.

The consideration of a compliance plan as a final land use decision is consistent with *Heller
Building, LLC v. Bellevue*, 147 Wn. App. 46 (2008). In *Heller*, one of the issues was whether a stop
work order and a subsequent letter explaining why the stop work order had been issued constituted

1 final land use decisions under LUPA. The court ruled that the stop work order did not constitute a
2 final land use decision because it did not contain sufficient information identifying the basis for the
3 violation and what needed to be corrected as required by local regulations. The court determined
4 that a subsequent letter providing the missing information did constitute the final decision and that
5 stop work orders themselves can constitute final land use decisions if they contain mandated
6 information. Like a properly prepared stop work order, the compliance plans of this case identify
7 violations and what needs to be corrected. In substance, there is little to distinguish them from a
8 stop work order as it relates to LUPA appeals.

9 The second issue relating to whether the compliance plans are final land use decisions is whether
10 they are in fact final determinations. It is somewhat unclear whether the administrator is the highest
11 decision making authority because of SJCC 18.80.140(A)(2), which authorizes appeals to the
12 Hearing Examiner of administrative determinations and interpretations. SJCC 18.80.140(A)(2) is
13 similar to RCW 36.70C.020(1), where zoning interpretations qualify as appealable land use
14 decisions if they are final zoning interpretations. The analysis above that concludes that RCW
15 36.70C.020(1) applies to compliance plans can also be used to conclude that a Compliance Plan is a
16 zoning interpretation subject to administrative appeal under SJCC 18.80.140(A)(2). Despite these
17 similarities, the San Juan Prosecuting Attorney's Office has concluded that a compliance plan is not
18 subject to administrative appeal. See Ex. 6-1.

19 The Examiner will defer to the Prosecuting Attorney's interpretation that SJCC 18.80.140(A)(2)
20 does not provide an administrative appeal to compliance plans. It is noteworthy that no party to this
21 proceeding disputed the opinion of the Prosecuting Attorney on this issue. Beyond this, there is
22 good reason to distinguish San Juan County's administrative appeals process from LUPA. One
23 significant feature of a compliance plan is that it requires the agreement of the code enforcement
24 defendant. There is no discernable reason why a code enforcement defendant would want to appeal
25 a document that he or she agreed to sign. If the defendant disagrees with a County interpretation, he
26 or she can create an avenue of appeal by requesting an interpretation. Consequently, the most likely
appellant of a compliance plan would be by a third party. Third parties are not entitled to any notice
on the execution of compliance plans. The practical result would be few realistic opportunities for
appeal and the absence of notice to affected third would create due process issues on appeal
deadlines that administrative tribunals do not have the authority to address. The parties did not
submit into evidence the reasons why the Prosecuting Attorney concluded that Mr. Durland could
not appeal the Compliance Plans. Those reasons could have included standing issues (which are
related tangentially to the lack of notice to adjoining owners), which are also compelling reasons for
finding no appeal right. The Examiner concludes that a code enforcement agreement is a code
enforcement tool and not an administrative determination or interpretation triggering appeal rights
under SJCC 18.80.140(A)(2).

It should also be noted that the end result of this decision will remain the same whether or not the
approval of a compliance plan is a "final" land use decision. If the approval is subject to
administrative appeal, the appellant is barred from revisiting the issues resolved in the agreement

1 because he failed to exhaust his administrative remedies² by failing to timely appeal the
2 Compliance Plans. If the approval is not subject to administrative appeal, as shall be discussed, the
3 appellant is barred from revisiting the Compliance Plan issues because he failed to file a timely
judicial appeal to the Compliance Plans.

4 5. The Compliance Plans did not Defer Zoning Code Compliance Issues to Building Permit or
5 ADU Permit Review. The Appellant raises the compelling argument that zoning issues addressed
6 in the Compliance Plan can be revisited because the Compliance Plans require that applicant to
7 acquire a building permit. IRC R105.3.1 (2006 ed.) requires a building permit application to
8 conform “to the requirements of pertinent laws,” which would include zoning regulations. The
question for this appeal, therefore, is whether the compliance plans should be read as allowing
zoning issues to be revisited through the building permit review process. The Examiner concludes
that the compliance plans are final land use decisions on all zoning compliance.

9 In determining whether a land use determination is a final land use decision, the courts look to the
10 intent of the municipality in issuing the determination. *See, e.g., Heller Building, LLC v. Bellevue,*
11 *147 Wn. App. 46, 57 (2008).* The compliance plans do not expressly state that they constitute a
12 final determination on zoning compliance. However, there are numerous factors that establish that
the County intended the agreements to serve as a final decision on zoning code compliance:

13 A. Demolition Unnecessary. Although the County did not make any direct comments on
14 their intent regarding finality of the zoning determinations, there is some compelling language that
15 indirectly addresses the issue. The first paragraph of the Compliance Plan ends with “[t]he County
16 agrees that there are alternative methods of compliance that do not involve demolition of the 30’ by
17 50’ structure.” Most of the zoning compliance issues raised by the Appellant would require
demolition if violations were found to occur. The County would not have proclaimed that it had
concluded demolition was unnecessary if it intended to revisit zoning compliance in building permit
review.

18 B. Structure. The structure of the compliance issue shows that zoning code issues were
19 not deferred to building permit review. The compliance plans address two sets of regulations –
20 zoning and building. There are no specific building regulation violations identified, only that
21 permits haven’t been applied for or issued. This is addressed (not surprisingly) by requiring the
22 applicant to acquire building permits. The compliance plans address the zoning regulations in
23 greater detail and specific suggestions and requirements are imposed for ensuring compliance. This
24 segregation of code requirements is a logical way to handle compliance issues. Zoning code issues
affect whether or not the structure can continue to exist. They should be resolved up front so that
time is not wasted on building code issues that could otherwise be rendered moot. Zoning code
requirements are also more subjective and discretionary, lending themselves to the negotiation

25 ² There is a significant amount of case law addressing exhaustion of administrative remedies. For purposes of
26 brevity and because it’s fairly clear that the doctrine would apply here, the Examiner will not provide an
exhaustive analysis.

1 process involved in formulating the terms of the compliance plans. Building code requirements are
2 not subject to much debate and can be handled ministerially.

3 C. Finality. The courts recognize a strong public policy supporting administrative finality
4 in land use decisions. *See, Chelan County v. Nykreim*, 146 Wn.2d 904 (2002). The Applicants'
5 attorneys have represented that they spent considerable time negotiating and crafting the
6 Compliance Plans to assure compliance with zoning code regulations. The detail of the compliance
7 plans also shows that the County spent considerable time addressing and resolving zoning code
8 issues. Especially given the strong public policies favoring finality, it is unlikely that the County
9 intended to revisit zoning compliance during building permit review after having spent so much
10 time and effort in addressing zoning in the compliance plans.

11 In addition to the factors evidencing intent as outlined above, as mentioned previously SJCC
12 18.100.040(D) states that a compliance plan may be entered into by the administrator and person in
13 violation and that "no further action will be taken if the terms of the compliance plan are met."
14 This finality requirement would have little meaning if all compliance issues can be revisited during
15 building permit review. For the foregoing reasons, except as to ADU permit criteria, the Examiner
16 concludes that the compliance plans were intended to serve as final determinations on zoning code
17 compliance and, therefore, qualify as final land use decisions for purposes of LUPA. Given the
18 extensive efforts by the parties to address zoning issues up front in the compliance plans, the
19 Examiner concludes that the compliance plans are a final determination on compliance on all
20 zoning provisions, whether or not a zoning provision is expressly identified in the plans. One
21 notable exception is ADU requirements, discussed below. The Examiner also recognizes there is a
22 little ambiguity as to whether the Compliance Plans were intended to serve as a determination of
23 compliance with zoning provisions that are not specifically discussed. Consequently, for those
24 compliance issues, should a court find differently, the Examiner will also provide an independent
25 assessment of compliance.

26 The ADU permit is an exception to the Examiner's conclusion that the compliance plans resolve all
zoning code issues. The ADU permit is distinguishable because it constitutes a separate review
process mandated by the zoning code. *See* SJCC 18.40.240(G). As a zoning code permit, an ADU
permit is distinguishable from a building permit, which is ministerial and only indirectly involves
issues of zoning code compliance. *Quality Rock Products, Inc. v. Thurston County*, 139 Wn. App.
125 (2007) is instructive on how separate land use review processes interrelate for the same project.
At issue in *Quality Products* was whether the conclusions made in a SEPA determination were
binding upon an associated special use permit review. The Thurston County Board of
Commissioners had denied the special use permit application on the basis that the proposal would
have "significant adverse impacts on the surrounding environment" despite the fact that in issuing
an MDNS for the project the SEPA responsible official had concluded that the proposal "does not
have a probable significant adverse impact upon the environment." 139 Wn. App. at 140.

The *Quality Rock* court determined that the SEPA determination did not preclude a reconsideration
of environmental impacts in the special use permit review. The court found it significant that the

1 MDNS expressly provided that it did not constitute project approval and that compliance was still
2 expected with all County regulations. The court also noted that the MDNS required the applicant to
3 acquire a special use permit and that significantly more environmental information was available
4 for the special use permit review than for the SEPA determination.

4 As in the *Quality Rock* case, the compliance plans of this case expressly require the acquisition of a
5 zoning code permit. Unlike *Quality Rock*, there is no language suggesting any intent to reconsider
6 zoning code issues beyond those specifically applying to the required permits. To the contrary, the
7 purpose of a compliance plan is to resolve code compliance issues. The Examiner concludes that
8 the compliance plans do not substitute for ADU review and approval, but they do preclude
9 revisiting zoning code issues that are expressly and specifically addressed in the compliance plans.
10 Compliance with setback requirements has been specifically addressed in the Compliance Plans and
11 will not be reassessed for ADU permit review. The 1,000-square-foot requirement was referenced
12 in the Compliance Plans, but was not assessed for compliance. That issue will be addressed in this
13 appeal.

10 6. Zoning Determinations of Compliance Plan Can't be Collaterally Attacked in Building Permit
11 Appeal. The determinative case on the preclusive effect of the compliance plans is *Chelan County*
12 *v. Nykreim*, 146 Wn.2d 904 (2002). *Nykreim* stands for the principle that an improperly issued final
13 land use decision cannot be revoked and a judicial appeal of the decision is barred if a judicial
14 appeal is not filed within 21 days of issuance. The courts have expressly ruled that even illegal
15 decisions must be challenged in a timely manner. *Habitat Watch v. Skagit County*, 155 Wn.2d 397
16 (2005). Further, a land use decision time barred from appeal under LUPA's 21-day appeal deadline
17 cannot be collaterally attacked in the appeal of another land use decision. 155 Wn.2d at 410-411
18 (petitioners could not attack validity of special use permit whose LUPA appeal had expired through
19 appeal of subsequently issued grading permit); *Wenatchee Sportsmen Ass'n v. Chelan County*, 141
20 Wn.2d 169, 181 (2000) (petitioner could not collaterally challenge a time barred rezone decision by
21 its LUPA petition challenging a plat approval).

18 It is a little debatable whether Mr. Durland had standing to judicially appeal the compliance plans.
19 Even if Mr. Durland had no standing for a judicial appeal, this would not affect the finality of the
20 compliance plans. In the *Nykreim* decision itself, the Court ruled that adjoining property owners did
21 not have standing to challenge the boundary line adjustment decision at issue. Like Mr. Durland,
22 those neighboring property owners had no avenue to contest the land use decisions made by Chelan
23 County for neighboring property. The fact that Mr. Durland had an opportunity to appeal a related
24 building permit application did create an opportunity to revisit the determinations made in the
25 compliance plans, since as discussed in the previous paragraph a final determination cannot be
26 collaterally attacked in a subsequent permit review.

24 7. Appeal Limited to Grounds Identified in Appeal Statement. The Examiner will limit appeal
25 issues to those identified in the Appellants' Notice of Appeal. SJCC 18.80.140(E)(5)(d) require the
26 Notice of Appeal to identify the grounds of appeal. This requirement would be undermined if other
issues are allowed to be considered. The Appellants' grounds for appeal are quoted below in italics

1 and assessed with corresponding conclusions of law.

2 1.1 *SJCC 18.100.030 F and 18.100.070 D prohibit issuance of a building permit or other*
3 *development permit for any parcel of land that has been developed in violation of local regulations.*
4 *The subject parcel has been developed in violation of local regulations and, therefore, the County*
5 *erred in issuing permits for additional development on the parcel.*

6 8. SJCC 18.100.030(F) prohibits any land use approvals for the development of a parcel of land
7 in which there is a "final determination" of a state law or County ordinance pertinent to use or
8 development of the property. The Appellants have shown no "final determination" of any violation.
9 No final determination has been made by any decision making authority that the structures on the
10 property are in violation of state law or County ordinance. To the contrary, as previously discussed,
11 the Compliance Plans constitute a final determination that the property will be in compliance with
12 development standards if specified actions are taken.

13 SJCC 18.100.070(D) prohibits any development permits for property developed in violation of
14 shoreline or other development regulations. As to the violations identified by the Appellants, the
15 Examiner finds no violation and/or the Compliance Plan serves as a final determination that there is
16 no violation and this determination can no longer be challenged under *Nykreim*.

17 1.2 *The permits were issued for a change of use and physical modification to an existing,*
18 *but illegal, building.*

19 9. For the reasons discussed in the preceding Conclusion of Law, the barn is not illegal.

20 1.3 *The subject building was illegal from the day it was constructed. At the time of its*
21 *original construction, the County Code included a requirement that buildings be set back at least*
22 *ten feet from the property line. This building, though, was built less than two feet from the property*
23 *line. Because the building did not comply with the Code requirements in effect on the day it was*
24 *built, the building was illegal from the day it was built.*

25 10. The Compliance Plan determined that the side-yard setback is code compliant due to the
26 Setback Easement. Regardless of whether or not this is a valid determination, the Appellants are
barred from raising this issue again under *Nykreim*.

1 1.4 *The building was illegal from the day it was built for a second reason. The building*
2 *plans submitted to the County depicted a building to be constructed ten feet from the property line.*
3 *Those were the building plans approved by the County. The builder violated not just the County*
4 *Code, but the terms of the building permit when the building was constructed less than ten feet from*
5 *the property line.*

6 11. The courts have not yet addressed whether *Nykreim* would preclude a challenge to an illegal
7 permit where the finding of consistency with development standards was based upon inaccurate

1 information provided by the applicant. At the least, it is unlikely that a court would allow a permit
2 applicant to benefit in this manner from deliberate and material deception. However, this issue
3 need not be reached here because San Juan County was well aware of the actual side-yard setback
4 when it approved the Compliance Plans and was also aware at that time that the storage barn did not
5 conform to the setback depicted in the 1981 building plans. Page 1 of the Compliance Plan
6 acknowledges that the County was aware that the storage barn was not located ten feet from the
7 Durland property line as identified in the 1981 building plans. The setback issue was specifically
8 addressed in the compliance plans, both in terms of violation of any applicable setback standards
9 and nonconformity to building plans. *Nykreim* precludes the reconsideration of these issues in this
10 appeal.

11 1.5 *The County Code clearly distinguishes between illegal buildings and non-conforming*
12 *buildings. Illegal buildings are buildings that failed to comply with the Code requirements at the*
13 *time they were constructed. SJCC 18.20.090. Non-conforming buildings are buildings that met*
14 *Code requirements when they were constructed, but no longer meet Code requirements because the*
15 *Code changed subsequently. SJCC 18.20.140. Understandably, the code treats illegal buildings*
16 *differently than non-conforming buildings. Whereas, some modifications are allowed to a non-*
17 *conforming building or use (SJCC 18.40.310), no permit may be issued for a parcel on which an*
18 *illegal building sits (SJCC 18.100.030 F; 18.100.070 D).*

19 1.6 *Because the subject building was illegally built, and remains illegal today, the County*
20 *has no authority to issue any of the three permits that are challenged in this action. The permits*
21 *would allow the use of the building to be changed from a barn/storage facility to a residential*
22 *(ADU) facility. Because the Code unambiguously prohibits issuance of permits like these for an*
23 *illegal building, the Examiner should reverse the decision of the Department to issue the permits*
24 *and should vacate all of them.*

25 12. The compliance plans contain a series of determinations by the County that the proposed
26 ADU meets setback requirements and other zoning standards. These determinations of "legality"
may no longer be challenged under *Nykreim*. As discussed in other parts of this decision, the
Examiner concludes that none of the other issues raised by the Appellants constitute noncompliance
with County code requirements. Consequently, the structure is not illegal and the development
limitations on illegal buildings do not apply.

It is recognized that a structure qualifies as illegal if it was illegal when established³. The
Compliance Plan found compliance with setback requirements due to the Setback Easement (Ex. 5,
attached Ex. F), executed in 1990. The barn structure probably qualified as an illegal use until it
was brought into conformity with setback requirements in 1990. It also did not qualify as a
nonconforming use at the time of construction, because 18.40.310 defines nonconforming structures
as structures that conformed to applicable standards on the date of its "creation," but no longer

³ The Appellants quote SJCC 18.20.090 as defining an illegal structure as one illegal as "constructed". The
definition actually provides it as the time the use was "established".

1 complies due to subsequent changes in code requirements. There is apparently no case law that
2 addresses the vesting and nonconforming rights attaching to a project that did not vest due to
3 illegality, but where the illegality was subsequently corrected. This is a fairly common occurrence
4 where, for example, boundary line adjustments are used to fix setback violations and structural
5 modifications are made to correct noncompliant structural features. The most logical way to
6 address the situation would be to relate back the vested rights of the project to the filing of the
7 complete application. There is no public detriment to such an approach. By contrast, moving the
8 vesting point to another point in time, such as the date the project is made conforming, can lead to
9 serious unnecessary problems where an otherwise compliant and constructed building is suddenly
10 subject to newly enacted regulations. The Examiner concludes that upon execution of the Setback
11 Easement, the barn structure became conforming as of the date of its construction.

12 2.0 *SJCC 18.40.240 F.5, relating to Accessory Dwelling Units (ADUs), states, in part:*
13 *"Any additions to an existing building shall not exceed the allowable lot coverage or encroach onto*
14 *setbacks. The size and design of the ADU shall conform to applicable standards in the building,*
15 *plumbing, electrical, mechanical, fire, health, and any other applicable codes."* *Because the*
16 *building violates the Fire Code, Building Code, and Zoning Code requirements establishing a ten-*
17 *foot setback, the ADU permits were issued in violation of this Code section.*

18 13. As previously discussed, *Nykreim* precludes the reconsideration of the County's determination
19 in the Compliance Plans that the proposed ADU meets setback requirements.

20 3.0 *SJCC 18.50.330 B.13 limits the width of buildings in the shoreline to 50 percent of the*
21 *shoreline frontage. The width of the buildings on the subject property exceed this limitation. This*
22 *provides an independent reason for finding violation of SJCC 18.40.240 F.5, SJCC 18.100.030 F*
23 *and 18.100.070 D. The subject permits, issued in violation of these Code sections, should be*
24 *vacated.*

25 4.0 *SJCC 18.50.330 E.1 prohibits accessory structures which are not water-dependent*
26 *from being located seaward of the most landward extent of the residence. The challenged permits*
authorize construction on and use of an accessory building that violates this requirement, i.e., it is
located waterward of the residence.

14. SJCC 18.50.330(B)(13) and SJCC 18.50.330(E)(1) were adopted subsequent to the
construction of the barn structure in 1981. SJCC 18.40.310(G) requires application of WAC 173-
27-080 for nonconforming structures in shoreline areas. WAC 173-27-080(2) provides that
nonconforming structures may be maintained and repaired and may also be enlarged or expanded
provided the alterations don't increase the degree of nonconformity. Although not stated directly, it
is clear that nonconforming uses may remain in place even though development regulations may
change. Further, the interior alterations of the structure do not violate nonconforming use
requirements.

5.0 *SJCC 18.50.020 prohibits substantial development on shorelines without first*

1 obtaining a shoreline substantial development permit. SJCC 18.50.330 E.4 requires a shoreline
2 conditional use permit for structures accessory to a residential structure. The applicants have
3 failed to obtain the requisite shoreline conditional use permit for this accessory structure. (The
4 permittees apparently claim they are exempt from shoreline permit requirements per 18.50.300 E.2,
5 which exempts "normal appurtenances" from permit requirements. But exemptions are to be
6 construed narrowly (SJCC 18.50.020 F) and the development here does not meet the criteria for
7 "normal appurtenances" specified in that section and, therefore, the requirement for a permit
8 remains in effect.) The County should not have issued the other permits in the absence of the
9 required shoreline permit. Moreover, the applicant has not submitted the required certificate when
10 a shoreline exemption for a residential appurtenance is claimed, as required by SJCC 18.50.020 G.

11 15. The Supplemental Agreed Compliance Plan expressly concluded that no shoreline substantial
12 development or conditional use permit is necessary for the ADU proposal. Relitigation of this issue
13 is barred by *Nykreim*. The shoreline exemption certificate has been submitted, as identified in
14 Exhibit 9, page 5.

15 6.0 SJCC 18.40.240 F.1 provides that an ADU shall not exceed 1,000 square feet in living
16 area. The ADU at issue here is larger than 1,000 square feet. Therefore, the permits were issued
17 illegally and should be vacated.

18 16. The Appellants correctly note that SJCC 18.40.240(F)(1) limit ADU's to 1,000 square feet of
19 living area and that living area is defined as the interior space measured from the interior of the
20 exterior walls. The Examiner does not agree, however, that living area must include all of the
21 interior space of a structure. SJCC 18.20.010 provides that "[a]n ADU may be internal, attached or
22 detached" (emphasis added). Under the Appellant's construction of "living space," if an ADU is
23 integrated into a primary residence, all of the floor space of the primary residence would qualify
24 towards the 1,000-square-foot limitation because it is all located within the exterior walls of the
25 primary residence. Similarly, it is a common practice to add ADU's to garages or convert the
26 second stories of garages or other storage facilities. The Appellants' interpretation would make it
very difficult for most of these types of structures to meet the 1,000-square-foot requirement. On
judicial review, a court will interpret SJCC 18.40.240(F)(1) in a manner that leads to unlikely,
strained or absurd results. *Densley v. Dep't of Retirement Sys.*, 162 Wn.2d 210 (2007). Requiring
that the entire interior of a structure be limited to 1,000 square feet because an ADU is integrated
is unlikely, strained and absurd. The portions of the barn structure that are not within the walls
of the ADU (the boat barn/garage portion of the structure) do not qualify as living space.

The portions of the barn structure labeled "storage" in Exhibit 18 are not so easily excluded from
the 1,000-square-foot limitation. A literal application of the "living area" definition, even if limited
to the walls of the ADU portion of the structure, would include the areas marked "storage."
However, a literal application that ignores roof slope also leads to unlikely, strained and absurd
consequences. The SJCC 18.20.140 "living area" definition is not limited to floor area, but
"internal space" measured from the interior of exterior walls. Consequently, in circumstances
where the exterior walls just extend a nominal amount into the crawl space of an attic, the "living

1 space” of the ADU would include the crawl space. Given the 4:12 roof pitch requirements of the
2 Deer Harbor Hamlet Plan, the occurrence of this situation may not be that rare. As a consequence,
3 half of the 1,000-square-foot allotment for an ADU could be consumed by a crawl space only a few
4 feet high. While it may be easy to conclude that the crawl space issue can be avoided by designing
5 ADUs with no exterior walls extending into crawl spaces, this does not work very well with
6 conversions of existing structures to ADUs. Further, there is not much public value in limiting
7 design of new structures in this fashion to avoid a floor area requirement

8 The Heinmiller ADU exemplifies the crawl space problem, where its second story is essentially a
9 combination of living and crawl space. The staff use of room height to distinguish between living
10 and crawl space is a logical way to resolve the problem. As noted by staff, IRC 305.1, Exception 3
11 (2006)⁴ only recognizes space with room height over five feet as counting towards building code
12 minimum room area requirements. As testified by Ms. Ward and shown in Exhibit 18⁵, the spaces
13 of the ADU that are over five feet in height total less than 1,000 square feet in area.

14 7.0 *The permits are invalid because they were issued for a structure that has a roof too
15 flat to meet the minimum pitch requirements in the Deer Harbor Hamlet Plan.*

16 17. As noted in the current version of the Deer Harbor Hamlet Plan (adopted 2007), specific
17 regulations for the Deer Harbor area were only first put together in 1999, which was well after the
18 building was constructed in 1981. The pitch requirement referenced by the appellant in Ex. 6-18
19 was adopted in 2007. As a nonconforming use, the subsequently enacted Deer Harbor roof pitch
20 requirements do not apply.

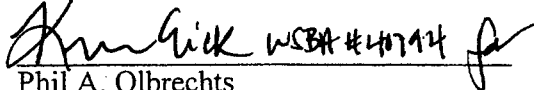
21 DECISION

22 The appeal is denied. The Examiner sustains the issuance of the building permit, change of use
23 permit and ADU permit for the Heinmiller/Stameisen applications.

24 ⁴ The International Residential Code is a part of the state building code that is mandated by state law to be “in
25 effect” in all counties and cities. See RCW 19.27.031. RCW 19.27.031 provides that the building codes shall be
26 adopted by the State Building Code Council. The 2006 edition of the IRC was in effect when the subject
applications vested sometime between the application date (3/10/08) and the issuance date (11/24/09). See Title
51 WAC.

⁵ Ex. 18 only contains computations for the shaded areas. There is an area on the second floor that contains space
with a height over five feet that is not included in the shading. Ms. Ward testified that even if this space is
included, the area of the ADU will not exceed 1,000 square feet. This testimony was not disputed, and the staff
included the aforementioned unshaded area in its computations to determine that the ADU meets the 1,000 square
foot requirement.

1 DATED this 23rd day of July, 2010.

2
3 
4 Phil A. Olbrechts
5 San Juan County Hearing Examiner

6 **Effective Date, Appeal Right, and Valuation Notices**

7 Hearing examiner decisions become effective when mailed or such later date in accordance with
8 the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170.
9 Before becoming effective, shoreline permits may be subject to review and approval by the
10 Washington Department of Ecology pursuant to RCW 90.58.140, WAC 173-27-130 and SJCC
11 18.80.110.

12 This land use decision is final and in accordance with Section 3.70 of the San Juan County Charter,
13 such decisions are not subject to administrative appeal to the San Juan County Council. See also,
14 SJCC 2.22.100

15 Depending on the subject matter, this decision may be appealable to the San Juan County Superior
16 Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines
17 and strict procedures for appeals and failure to timely comply with filing and service requirement
18 may result in dismissal of the appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file
19 an appeal are encouraged to promptly review appeal deadlines and procedural requirements and
20 consult with a private attorney.

21 Affected property owners may request a change in valuation for property tax purposes
22 notwithstanding any program of revaluation.
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DURLAND: Petition for Review to Supreme Court

APPENDIX A-4

24

RESOLUTION NO. ²²⁴ 1975

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A RESOLUTION PROVIDING FOR THE ADOPTION, ADMINISTRATION AND ENFORCEMENT OF THE STATE BUILDING CODE WITH CERTAIN AMENDMENTS AND EXCLUSIONS AS SET FORTH HEREIN, ESTABLISHING FEE SCHEDULES AND REPEALING RESOLUTION NOS. 69-1973 AND 74-1973.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SAN JUAN COUNTY AS FOLLOWS:

SECTION 1.01 PURPOSE. This ordinance adopts by reference the State Building Code but with certain amendments, modifications and exclusions authorized by sections 4 and 6 of the State Building Code Act and Chapter 8, Laws, 1975, 1st Ex. Sess. and set forth herein.

SECTION 1.02 ADOPTION OF STATE BUILDING CODE. There is hereby adopted by reference the State Building Code as set forth in the State Building Code Act, Ch 96, Laws 1974, 1st Ex. Sess, as amended by Chapters 8, 110 and 282 Laws 1975, 1st Ex. Sess and Ch. 19.27 RCW but with the amendments, modifications and exclusions set forth below or in future amendments to this ordinance. The code so adopted comprises the following codes:

A. Uniform Building Code and Related Standards, 1973 edition, published by the International Conference of Building Officials. (Hereinafter called Uniform Building Code or UBC.)

B. Uniform Mechanical Code, 1973 edition, published by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials. (Hereinafter called Uniform Mechanical Code.)

C. The Uniform Fire Code with appendices thereto, 1973 edition, published by the International Conference of Building Officials and the Western Fire Chief's Association. (Hereinafter called Uniform Fire Code).

D. The uniform Plumbing Code, 1973 edition, published by the International Association of Plumbing and Mechanical Officials (Hereinafter called Uniform Plumbing Code.): PROVIDED, that Chapter 11 of the Uniform Plumbing Code is not adopted; and PROVIDED, that notwithstanding any wording in that code, nothing in the Uniform Plumbing Code shall apply to the installation of any gas piping, water heaters, or vents for water heaters; and

E. The rules and regulations adopted by the State Building Code Advisory Council establishing standards for making buildings and facilities accessible to and usable by the physically handicapped or elderly persons as provided in sections 1 through 7 of Ch. 110, Laws 1975, 1st Ex. Sess.

In case of conflict among the codes enumerated in subsections A, B, C and D of this section, the first named code shall govern over those following.

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PAGE ONE

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24

SECTION 1.03 DEFINITIONS. As used in this ordinance: "State Building Code" means the codes set forth in subsections A,B,C, D and E of section 1.02 above as amended or modified by this ordinance or amendments to this ordinance and with the exclusions to such codes set forth in this ordinance or amendments to this ordinance;

"Building Department" means the Building Department of San Juan County; and

"Building Official" means the head of the Building Department and his duly authorized deputies.

"UBC" means Uniform Building Code as described in subsection A of Section 1.02 above.

SECTION 1.04. APPLICATION. From the Effective date of this ordinance, the provisions of the San Juan County Building Code shall be controlling within the areas of San Juan County lying outside the corporate limits of any city or town.

SECTION 1.05 ADMINISTRATION. The Washington State Building Code and the San Juan County Building Code shall be enforced by the Building Official in the unincorporated areas of San Juan County except as provided below with respect to the Uniform Fire Code. All permits shall be issued and all fees collected by the Building Department.

The Uniform Fire Code may be administered and enforced in whole or in part by a fire protection district within the county within its boundaries. The County and any fire protection district which can and will take over this responsibility shall enter into an agreement defining the responsibilities of the parties with respect to the administration and enforcement of the Uniform Fire Code.

SECTION 2.01 EXCLUSION OF SINGLE FAMILY DWELLINGS AND GROUP J OCCUPANCIES FROM CERTAIN PORTIONS OF UBC; FINDING.

The Board of County Commissioners finds that certain provisions of UBC, hereinafter set forth in sections 2.02 through 2.11 inclusive, are not necessary or desirable in an area almost entirely rural and in many instances place an undue hardship on owners and builders of single family dwellings and buildings in the Group J occupancy.

SECTION 2.02 UBC 103 AND 104 LIMITED. Any repair to a single family dwelling or a building or structure in Group J Occupancy, which is non-structural shall not require a permit or be subject to an inspection, unless the need for the repair is the result of fire or major earthquake, notwithstanding the provisions of sections 103 and 104, UBC.

SECTION 2.03 UBC 104 (h) LIMITED. The requirement in UBC Section 1.04, subsection (h) that buildings shall be maintained in a sanitary condition shall not apply to single family dwelling houses and buildings in Group J occupancy, provided that such buildings and structures comply with all applicable rules and regulations of the Washington State Department of Social and Health Services and of the San Juan County Health Board, which rules and regulations, if any, shall be enforced by the County Sanitarian and not by the Building Official. The requirement

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1 that buildings be maintained in a safe condition shall apply to
2 all buildings and structures.

3 SECTION 2.04. UBC 202 LIMITED. The refusal of the right
4 of entry set forth in sec. 2.02 (d) of the Uniform Build-
5 ing code shall not, in the case of single family dwellings,
6 constitute a misdemeanor but the building official shall
7 have recourse to any other remedy provided by law to se-
8 cure entry. In addition, if the Building Official is
9 refused entry at a reasonable time, he may order the work
10 stopped by notice in writing served on any persons engaged
11 in the doing or causing such work to be done, and any such
12 persons shall forthwith stop such work until authorized
13 by the Building Official, after inspection, to proceed
14 with the work.

15 SECTION 2.05 UBC 301 (a) and 304 LIMITED. No permit
16 shall be required for the demolition of any single family
17 dwelling or any building or structure in a Group J occup-
18 ancy, and UBC 301 (a) is so modified. UBC 304, Inspections,
19 shall not apply to the demolition of a single family dwelling
20 or any building or structure with a Group J occupancy.

21 SECTION 2.06. UBC 301 (c) NOT APPLICABLE.
22 The provisions of section 301 (c) authorizing the Building
23 Official to require plans and specifications to be prepared
24 and designed by an engineer or architect licensed by the
25 State of Washington to practice as such, shall not apply
26 to single family dwellings or buildings or structures in
27 Group J occupancy. UBC 301 (d) remains applicable to all
plans submitted to the Building Official.

SECTION 2.07. UBC 302 (d) MODIFIED.
The provisions of UBC section 302 (d), Expiration, shall
not apply to single family dwellings or buildings or
structures in the Group J occupancy. Instead, the permit
for single family dwellings and structures in the Group
J occupancy shall be valid for one year and may be renewed
from year to year upon payment of an additional renewal
fee, each year as provided in Section 19 of this ordinance.

SECTION 2.08. UBC 304 (d) ITEM 3 NOT APPLICABLE.
The requirement with respect to lath and/or wall board ins-
pection set forth in UBC section 304 (d) item 3 shall not
apply to single family dwellings and buildings and struc-
tures in Group J occupancy.

SECTION 2.09 UBC 1405 (b) MODIFIED.
The requirement in UBC section 1405 (b) that every dwell-
ing unit be provided with a kitchen equipped with a kitchen
sink and with bathroom facilities consisting of a water
closet, lavatory and either a bathtub or shower, and the
further requirement that plumbing fixtures shall be provided

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with running water necessary for their operation shall not apply to single family dwellings.

SECTION 2.10 UBC 1410 NOT APPLICABLE.
UBC section 1410 shall not apply to single family dwellings.

SECTION 2.11 UBC 203 LIMITED.
UBC section 203 shall apply only to Public Buildings.

SECTION 3.01 BOARD OF APPEALS, APPEALS RELATING TO FEES.
The valuation of a proposed building or structure by the Building Official for the purpose of fixing fees pursuant to section 3.03 (a) below may be appealed to the Board of Appeals.

SECTION 3.02 VIOLATION AND PENALTIES; UBC 205 MODIFIED.
Section 205 of the Uniform Building Code is amended to read as follows:

Sec. 2.05 It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure in San Juan County outside of the Corporate limits of any incorporated city or town, or cause the same to be done, contrary to or in violation of any of the provisions of this Code, as amended by this ordinance or any subsequent amendments. Any person, firm or corporation violating any of the provisions of this Code as amended shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Code is committed, continued or permitted, and upon conviction of any such violation, said person shall be punishable by a fine of not more than \$100 for a first offense and not more than \$300 for a subsequent offense or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

SECTION 3.03. BUILDING PERMIT FEES; SUBSTITUTION FOR UBC 303.
The following is substituted for UBC Section 303:

(a) A fee for each building permit shall be paid to the Building Official as set forth in the table of fees below.

The determination of value or valuation under the Uniform Building Code shall be made by the Building Official, subject to the right of appeal granted by section 17 of this ordinance. The valuation to be used in computing the permit and plan-check fees shall be the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any

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1 other permanent work or permanent equipment.

2 Where work for which a permit is required by this Code
3 is started or proceeded with prior to obtaining said per-
4 mit, the fees specified in the table of fees below shall
5 be doubled, but the payment for such double fee shall not
6 relieve any persons from fully complying with the require-
7 ments of this Code in the execution of the work nor from
8 any other penalties prescribed herein.

9	TOTAL VALUATION	FEE
10	\$1.00 to \$500.00	\$10.00
11	\$501.00 to \$2,000.00	\$10.00 for first \$500.00 plus \$0.65 for each additional \$100.00 or fraction there- of, to and including \$2,000.00.
12	\$2,001.00 to \$25,000.00	\$20.00 for the first \$2,000.00 plus \$4.00 for each additional \$1,000.00 or fraction thereof, to and including \$25,000.00
13	\$25,001.00 to \$50,000.00	\$112.00 for the first \$25,000.00 plus \$3.00 for each additional \$1,000.00 or fraction thereof, to and including \$50,000.00.
14	\$50,001.00 to \$100,000.00	\$187.00 for the first \$50,000.00 plus \$2.00 for each additional \$1,000.00 or fraction thereof, to and including \$100,000.00.
15	\$100,001.00 to \$500,000.00	\$287.00 for the first \$100,000.00 plus \$1.50 for each additional \$1,000.00 or fraction thereof, to and including \$500,000.00.
16	\$500,000.00 and up	\$887.00 for the first \$500,000.00 plus \$1.00 for each additional \$1,000.00 or fraction thereof.

17 The fee for a renewal of a building permit shall be one-half of
18 the original fee or \$30.00, whichever is the smaller, except that
19 the fee for a renewal of a permit for a single family dwelling
20 or a building or structure in Group J occupancy shall be only \$10.00.

21 (b) Plan-checking fees. No plan-checking fee shall be charg-
22 ed for buildings in Group I and J occupancy, except that when plans
23 are incomplete when submitted or are subsequently changed to
24 such an extent as to require additional plan checking, a plan check-
25 ing fee equal to ten percent of the amount of the building permit
26 fee shall be charged. This plan checking fee shall not be a credit
27

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1 against the building permit fee.

2 With respect to buildings and structures in other than
3 Group I and Group J occupancy, a plan-checking fee shall be
4 charged. When the valuation of the proposed construction ex-
5 ceeds \$1,000.00 and a plan is required to be submitted by
6 Subsection (c) of Section 301, a plan-checking fee shall be
7 paid to the Building Official at the time of submitting
8 plans and specifications for checking.

9 Plan checking fees for buildings other than those in
10 Group I and J occupancy shall be 65 per cent of the building
11 permit fees as set forth in the table of fees above.

12 The plan checking fee shall be a credit against the
13 building permit fee if one is issued. If no building permit
14 is issued, the plan checking fee shall be retained.

15 Where plans are incomplete, or changed so as to require
16 additional plan checking, an additional plan-check fee shall
17 be charged equal in amount to 10% of the building permit fee.
18 This additional fee shall not be a credit against the build-
19 ing permit fee.

20 (c) Expiration of Plan Check. Applications for which no
21 permit is issued with 180 days following the date of
22 application shall expire by limitation and plans submitted
23 for checking may thereafter be returned to the applicant
24 or destroyed by the Building Official. The Building Official
25 may extend the time for action by the applicant for
26 a period not exceeding 180 days upon written request by
27 the applicant showing that circumstances beyond the control
of the applicant have prevented action from being
taken. In order to renew action on an application after
expiration of the original 180 days and any extension, the
applicant shall resubmit plans and pay a new plan-check fee.

(d) Reinspection Fee. The fee for each reinspection shall
be \$10.00. A reinspection fee of ten dollars shall be
charged when the Building Official is unable to make an in-
spection at the time arranged because of inaccurate direc-
tions provided by applicant as to the location of the site,
or when applicant fails to keep an appointment for an
inspection.

28 SECTION 3.04. OTHER FEES.

29 Mobile Home Location and Foundation fee shall be \$25.00.
30 Modular Home Location and Foundation fee shall be \$25.00.
31 Plumbing permits shall be \$3.00 plus \$2.50 for each fixture
32 to be connected to the plumbing. Furnace permit fee shall
33 be as set forth in the Uniform Mechanical Code.

34 SECTION 4.01. SIDE, REAR AND FRONT YARDS. No building in
35 Group H and I occupancies and located in Fire Zone No. 3
36 shall be constructed within ten feet of the property line.
37 No building in Fire Zone No. 3 may be located within ten feet
of the property line unless any wall within such ten feet
constitutes a one hour fire wall.

1 SECTION 4.02. FIRE WARNING SYSTEM.

2 Section 1413 of the Uniform Building Code shall apply only to dwelling units constructed after January 1, 1975.

3 SECTION 4.03. GUARDRAILS; UBC 1716 AMENDED.

4 Section 1716 of the Uniform Building Code is amended to read as follows:

5 Section 1716. Guardrails. All unenclosed floor and roof openings; open and glazed sides of landings; open sides of stairs, balconies or porches which are more than 30 inches above grade; and roofs used for other than service of the building, shall be protected by a guardrail. Guardrails shall be not less than 42 inches in height except guardrails for exterior porches and decks may be not less than 36 inches in height. Open guardrails and stair railings shall have intermediate rails or an ornamental pattern such that no object 9 inches in diameter can pass through. The height of stair railings may be as specified in Section 3305 (1).

10 EXCEPTION:

- 11 1. Guardrails need not be provided on the landing side of loading docks.

13 SECTION 4.04. FIRE ZONE ESTABLISHED.

14 Until such time as San Juan County enacts a separate ordinance creating and establishing fire zones, all of the county outside of the corporate limits of any incorporated city or town is declared to be Fire Zone No. 3.

16 SECTION 4.05. MINIMUM DEPTH OF FOOTING.

17 The minimum depth of footing shall be 12 inches below the exterior grade unless the foundation rests on solid rock, in which case it may be required to be pinned to the rock at 6 foot minimum intervals with no. 4 R.F. Bars, minimum. This amends table 29A, following Section 2909 of the Uniform Building Code.

20 SECTION 4.06. EXCLUSION FOR SMALL BUILDINGS.

21 Small detached buildings, 80 square feet or less in size, shall not be required to comply with the provisions of the San Juan County Building Code. Such Buildings may not be used for human habitation.

23 SECTION 4.07. MODIFICATIONS RELATING TO ROOFS.

24 (a) Section 3202 (c) 7 is amended by adding the words "Owner hand split shakes subject to the inspection and approval of the Building Department". (b) Section 3203 (d) 8, Paragraph 4, Felt is not mandatory when roof pitch is over 5 in 12.

26 SECTION 4.08. AUTOMATIC FIRE EXTINGUISHING SYSTEM FOR CERTAIN COMMERCIAL BUILDINGS, NOT APPLICABLE TO EXISTING BUILDINGS.

27 In the Appendix to the Uniform Building Code, Chapter 15, Sec. 1509 (b) the words "and is provided with an approved automatic fire extinguishing system, conforming to UBC Standard No. 38-1"

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PAGE SEVEN

1 SECTION 5.01 UNIFORM FIRE CODE, STORAGE OF BALED FIBRES AND AGRICULTURAL PRODUCTS. Section 7.104 and 7.105 LIMITED.

2 Section 7.104 and 7.105 of the Uniform Fire Code shall not apply to any building existing prior to January 1, 1975 unless or until such building is used for commercial purposes.

3 SECTION 5.02. UNIFORM FIRE CODE. ENFORCEMENT. SECTION 1.205
4 Section 1.205 of the Uniform Fire Code is deleted.

5 SECTION 5.03 UNIFORM FIRE CODE. SECTION 15.109 LIMITED.

6 Section 15.109 of the Uniform Fire Code shall not apply to flammable liquids used solely for agricultural purposes and dispensed only by gravity flow.

7 SECTION 5.04. ELECTRIC WIRING ETC., FURNACES.

8 All electrical wiring, devices, appliances and equipment shall be installed in accordance with the Electrical Installation Laws of the State of Washington, Chapter 19.28 RCW.

9 SECTION 5.05. SEPTIC TANK AND DRAINFIELD APPROVALS.

10 San Juan County Health Department approval is required for all permits pertaining to buildings or additions to buildings, requiring domestic sewage facilities and not services by public sanitary sewers. When required, the individual sewage permit shall be approved prior to the issuance of a building permit.

11 SECTION 5.06. MOBILE HOMES.

12 Mobile homes shall comply with electrical, heating and structural requirements imposed by the State of Washington Department of Labor and Industries in compliance with RCW 43.22.230. All mobile homes shall bear the State Inspection Insignia as specified by Ch. 157, Session Laws, 1967, as amended, before issuance of a building permit. County building permits shall be obtained before mobile homes that are to be placed on lots, or modular homes, are occupied.

13 Mobile homes shall be fixed to a permanent foundation as specified in the Uniform Building Code, Section 29.05, when ever the supporting frame of the mobile home permits. Mobile home models which are not adapted to placement on a conventional perimeter foundation may be required to have additional support. All mobile homes shall have fire retardant skirting around the base.

14 SECTION 6.01 UNIFORM PLUMBING CODE. APPLICATION LIMITED.

15 The provisions of the Uniform Plumbing Code shall apply only to new construction, relocated buildings and to any major plumbing reconstruction in any building.

16 SECTION 6.02. UNIFORM PLUMBING CODE. PERMIT REQUIRED.

17 It shall be unlawful for any person to install any plumbing, drainage, piping work or any fixture or water heating or treating equipment in connection with any work to which the Uniform Plumbing Code applies as set forth in section 6.01 above without

18 RESOLUTION NO. -1975

19 PAGE EIGHT

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first obtaining a permit from the Building Official to do such work.

1 SECTION 6.03. AMENDMENT TO UNIFORM PLUMBING CODE. CONSTRUCTION
2 OF PERMIT.

3 The issuance or granting of a permit or approval of plans
4 and specifications shall not be deemed or construed to be
5 a permit for, or approval of, any violations of any of
6 the provisions of this code.

7 SECTION 6.04. AMENDMENT TO UNIFORM PLUMBING CODE. ELIGIBILITY
8 FOR PERMIT.

9 A permit may be issued only to a person holding a valid
10 unexpired Plumbing Contractors certificate of registra-
11 tion, provided that a permit may be issued to the owner
12 or lessee of the building in which the work is to be done
13 for work to be done only by him, with materials purchased
14 by him.

15 SECTION 7.01. VIOLATIONS - PENALTIES.

16 Codes other than UBC. The penalties for the violation
17 of any provision of the San Juan Building code shall be
18 as set forth in Section 3.02 above.

19 SECTION 7.02. CONSTRUCTION.

20 If any provision of this ordinance, or of the codes re-
21 ferred to herein, or its application to any person or
22 circumstance is held invalid, the remainder of the
23 Resolution, or the application of the provision to
24 other persons or circumstances is not affected.

25 SECTION 7.03. REPEAL.

26 Resolutions 69-1973 and 74-1973 are hereby repealed,
27 provided that any violation of the repealed Resolu-
28 tions prior to the effective date of this Resolution
29 may be prosecuted or other remedy pursued by San Juan
30 County as if said resolutions were still in effect.

31 SECTION 7.04. EFFECTIVE DATE.

32 This Resolution shall take effect on the date of its
33 adoption.

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ADOPTED this 15 day of December, 1975

ATTEST: HENRY R. BYERS BOARD OF COUNTY COMMISSIONERS
SAN JUAN COUNTY, WASHINGTON

Henry R. Byers
Don Skiff
Charles J. ...

San Juan County Auditor
and Clerk of the Board
of County Commissioners

Chairman

Linda J. Hurry

Member

Member

Form Approved:

John B. Nason (L)
Legal Advisor to the Board
of County Commissioners

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DURLAND: Petition for Review to Supreme Court

APPENDIX A-5

TEXMO

BUILDINGS

ALYDOR RICHARDSON
CONSTR. CO., INC.
P. O. BOX 172 BELLINGHAM, WA.
734-3480

301 X 50' TEXMO BLDG.

FOR: BILL SMITH
DEER HARBOR, WA

UNLASH BY KIA DATE 10-8-81 CHECKED

EXHIBIT A

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12

1/4" AIRSPANT B W 1" O.C.
2" X 6" TRUSS 6' 10" O.C.

BLITTER SA

4
SPICE

2" X 4" CROSSIES 4' O.C.

2" X 6" TRUSS

2" X 6" GIRTS @ 24" O.C.

6" X 6" PENTA-BRISLE TRUSS POLES

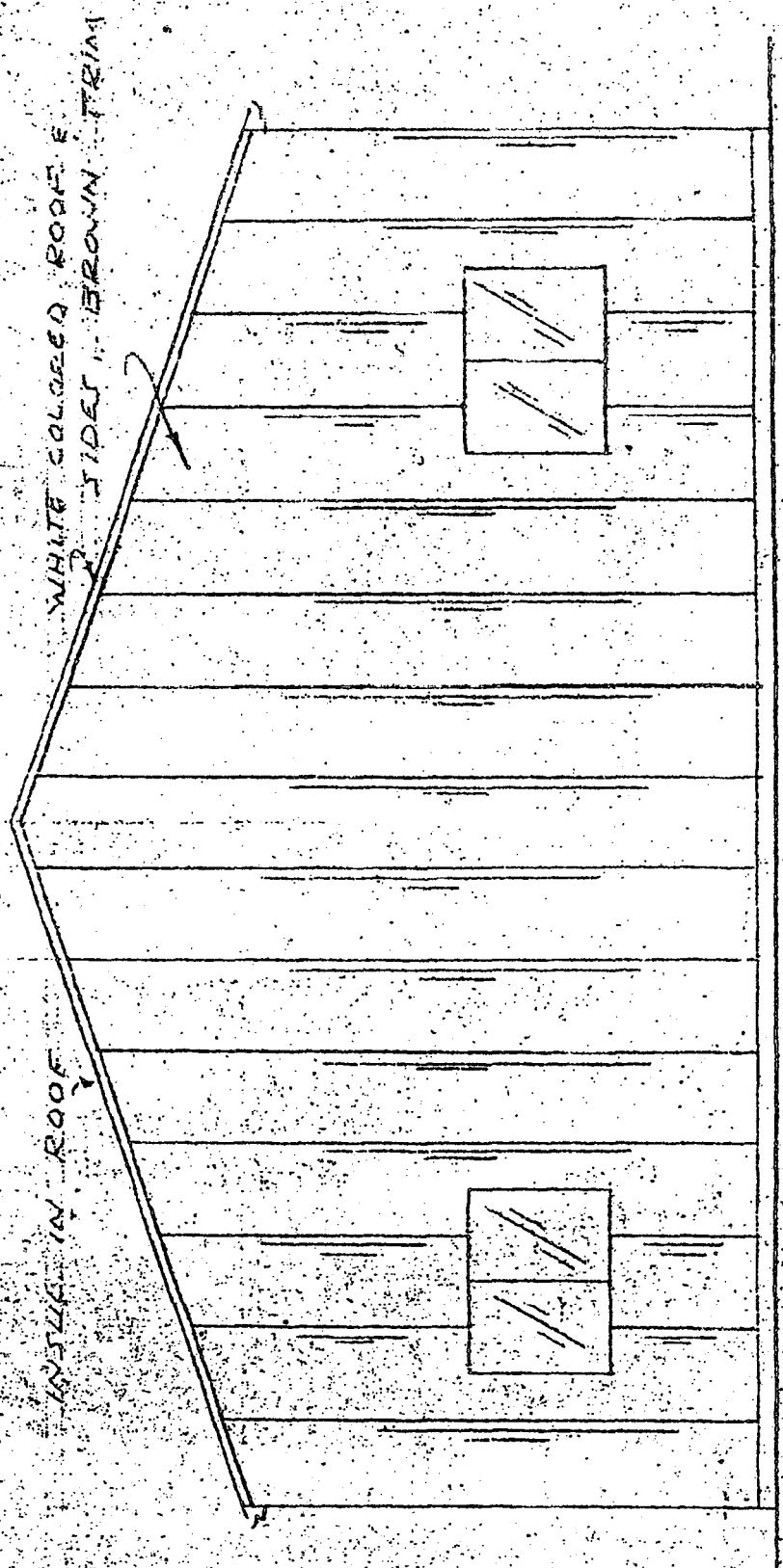
2" X 6" TRUSS BRISLES @ 24" O.C.
ALLOW FOR DIMENSIONAL CONC. TOLERANCE

30'-0"

SECTION VIEW

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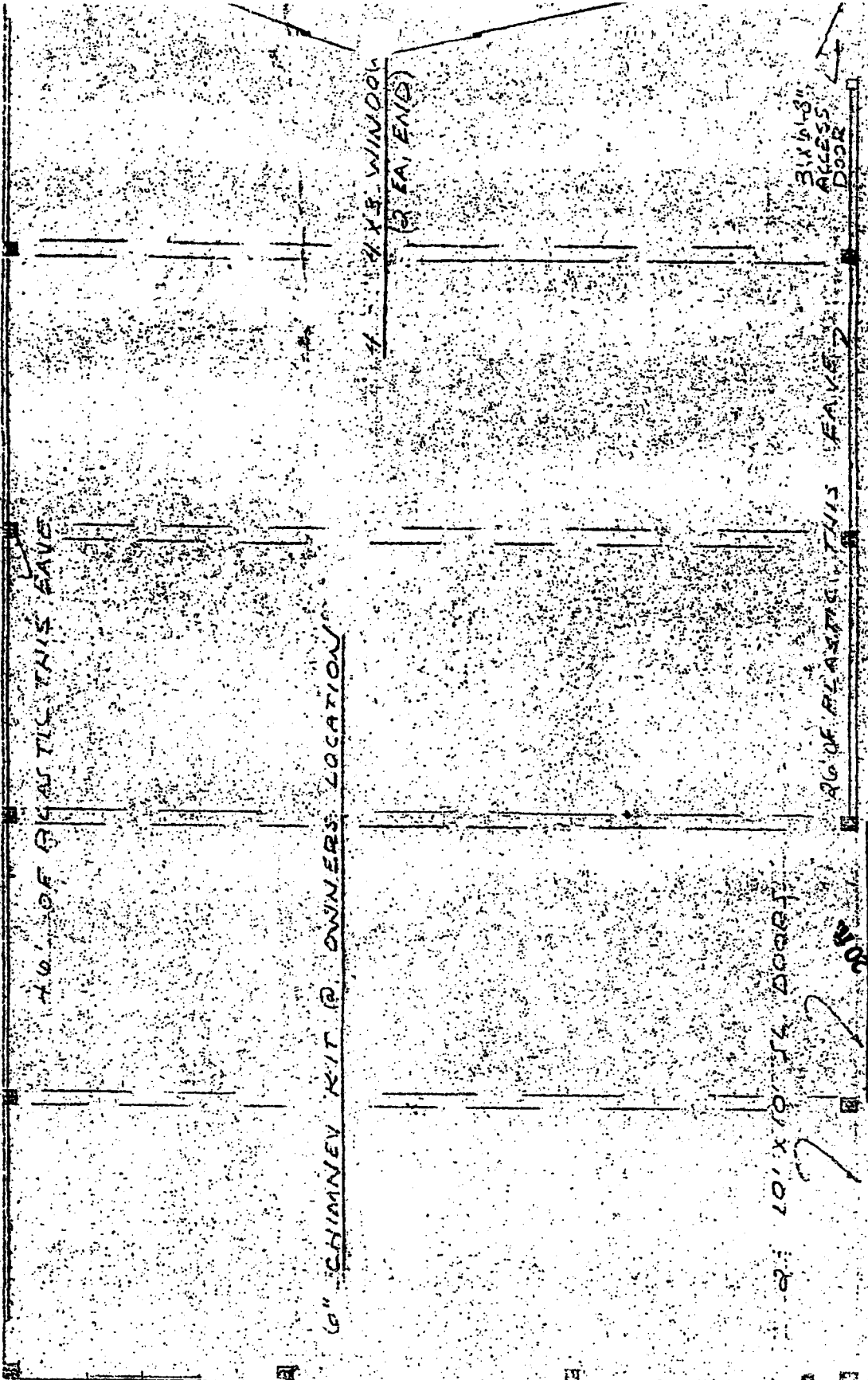


WHITE COLORED ROOF & SIDES & BROWN TRIM

INSIDE IN ROOF

EAVE

FRONT ELEVATION



H.W. OF PLASTIC THIS HAVE

6" CHIMNEY KIT @ OWNERS LOCATION

4' X 3' WINDOW
(FA, ENG)

3' X 4' 3"
ACCESS
DOOR

H.W. OF PLASTIC THIS FA, ENG

2: 10' X 10' 1/4 DOOR

APPROVED
 [Signature]
 Juan Co. Bldg. Dept.
 10-15-81

PROVED PLANS
 shall be kept on the
 building site until final
 inspection is approved
 by sect. 302 (b).
 structures shall be minimum 10 feet from ad-
 jacent property lines. S. J. CO. 58-77

Building Set Back
 from a residence shall be MIN. 20' per U.B.C. Chap. 5.
 CALL FOR INSPECTIONS.
 POST PINK PERMIT
 N O T I F Y
 50'-0"

NOTE: Home Owner's are advised to read and understand all provisions and site provisions.
 Second Inspection will be required to verify work complies with all provisions.
 10-15-81

EXHIBIT B

SAN JUAN COUNTY

TREASURER'S OFFICE

Friday Harbor, Washington

Devas

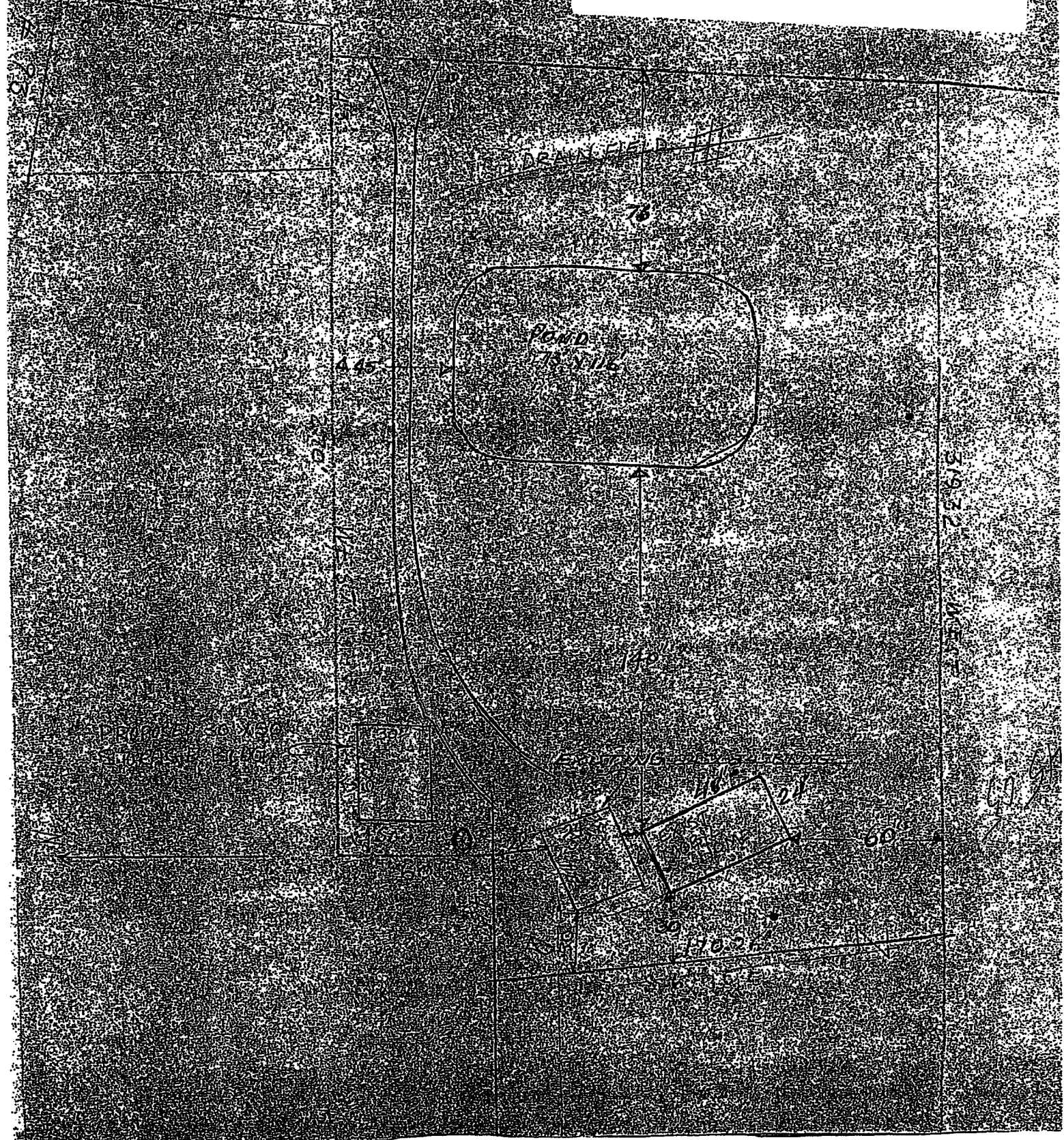
Date <u>10-20</u> 19 <u>81</u>	
Received From <u>WILLIAM G. SMITH</u>	
\$ _____ Dollars	
Owner <u>SAME</u>	
Address <u>Box 5 98243</u>	
Bldg. Address <u>26012 4010</u>	
Amt. Rec'd _____	FEEs FOR <u>327.6</u>
Fee _____	Checking Bldg. Plans _____
Change _____	Bldg. Permits <u>62 50</u>
	Plumbing Permits _____
	Furnace Permits _____
	Tank Permits _____
	Sale of Periodicals _____
	Mobile Home Permit _____
	Penalty _____

	TOTAL \$ <u>62 50</u>

Cash	
Money Order	
Check <u>554</u>	
No. <u>4783</u>	

SAN JUAN BUILDING DEPARTMENT	
By _____	<i>LuRobb</i>

EXHIBIT C



SAN JUAN COUNTY BUILDING INSPECTION PERMIT

STORAGE
BARN

NAME W. SMITH.

No. 3276

ALL STRUCTURES SHALL BE LOCATED A MINIMUM OF 10 FEET FROM THE PROPERTY LINE

CALL FOR INSPECTION 48 HOURS PRIOR TO FOUNDATION-FOOTING POUR

OBTAIN A PLUMBING PERMIT PRIOR TO INSTALLATION OF ANY PIPING

1st FORMS (PRIOR TO POUR)

THE APPROVED DRAWINGS SHALL BE KEPT ON THE PROJECT SITE

2nd FRAMING (PRIOR TO SHEETROCK)

San Juan County Building Dept.

378-2116

~~3rd SHEETROCK~~
(COMMERCIAL ONLY)

4th FINAL

This Permit Must Be Posted On or Near Building

EXHIBIT E

NO.	DATE	NAME	STATUS	TYPE	AMOUNT	REMARKS
3200	8-31	ETHEL SWITTON		RENT		
3201	9-31	ETHEL SWITTON		RENT		
3202	9-31	ETHEL SWITTON		RENT		
3203	9-31	ETHEL SWITTON		RENT		
3204	9-31	ETHEL SWITTON		RENT		
3205	9-31	ETHEL SWITTON		RENT		
3206	9-31	ETHEL SWITTON		RENT		
3207	9-31	ETHEL SWITTON		RENT		
3208	9-31	ETHEL SWITTON		RENT		
3209	9-31	ETHEL SWITTON		RENT		
3210	9-31	ETHEL SWITTON		RENT		
3211	9-31	ETHEL SWITTON		RENT		
3212	9-31	ETHEL SWITTON		RENT		
3213	9-31	ETHEL SWITTON		RENT		
3214	9-31	ETHEL SWITTON		RENT		
3215	9-31	ETHEL SWITTON		RENT		
3216	9-31	ETHEL SWITTON		RENT		
3217	9-31	ETHEL SWITTON		RENT		
3218	9-31	ETHEL SWITTON		RENT		
3219	9-31	ETHEL SWITTON		RENT		
3220	9-31	ETHEL SWITTON		RENT		
3221	9-31	ETHEL SWITTON		RENT		
3222	9-31	ETHEL SWITTON		RENT		
3223	9-31	ETHEL SWITTON		RENT		
3224	9-31	ETHEL SWITTON		RENT		
3225	9-31	ETHEL SWITTON		RENT		
3226	9-31	ETHEL SWITTON		RENT		
3227	9-31	ETHEL SWITTON		RENT		
3228	9-31	ETHEL SWITTON		RENT		
3229	9-31	ETHEL SWITTON		RENT		
3230	9-31	ETHEL SWITTON		RENT		
3231	9-31	ETHEL SWITTON		RENT		
3232	9-31	ETHEL SWITTON		RENT		
3233	9-31	ETHEL SWITTON		RENT		
3234	9-31	ETHEL SWITTON		RENT		
3235	9-31	ETHEL SWITTON		RENT		
3236	9-31	ETHEL SWITTON		RENT		
3237	9-31	ETHEL SWITTON		RENT		
3238	9-31	ETHEL SWITTON		RENT		
3239	9-31	ETHEL SWITTON		RENT		
3240	9-31	ETHEL SWITTON		RENT		
3241	9-31	ETHEL SWITTON		RENT		
3242	9-31	ETHEL SWITTON		RENT		
3243	9-31	ETHEL SWITTON		RENT		
3244	9-31	ETHEL SWITTON		RENT		
3245	9-31	ETHEL SWITTON		RENT		
3246	9-31	ETHEL SWITTON		RENT		
3247	9-31	ETHEL SWITTON		RENT		
3248	9-31	ETHEL SWITTON		RENT		
3249	9-31	ETHEL SWITTON		RENT		
3250	9-31	ETHEL SWITTON		RENT		
3251	9-31	ETHEL SWITTON		RENT		
3252	9-31	ETHEL SWITTON		RENT		
3253	9-31	ETHEL SWITTON		RENT		
3254	9-31	ETHEL SWITTON		RENT		
3255	9-31	ETHEL SWITTON		RENT		
3256	9-31	ETHEL SWITTON		RENT		
3257	9-31	ETHEL SWITTON		RENT		
3258	9-31	ETHEL SWITTON		RENT		
3259	9-31	ETHEL SWITTON		RENT		
3260	9-31	ETHEL SWITTON		RENT		
3261	9-31	ETHEL SWITTON		RENT		
3262	9-31	ETHEL SWITTON		RENT		
3263	9-31	ETHEL SWITTON		RENT		
3264	9-31	ETHEL SWITTON		RENT		
3265	9-31	ETHEL SWITTON		RENT		
3266	9-31	ETHEL SWITTON		RENT		
3267	9-31	ETHEL SWITTON		RENT		
3268	9-31	ETHEL SWITTON		RENT		
3269	9-31	ETHEL SWITTON		RENT		
3270	9-31	ETHEL SWITTON		RENT		
3271	9-31	ETHEL SWITTON		RENT		
3272	9-31	ETHEL SWITTON		RENT		
3273	9-31	ETHEL SWITTON		RENT		
3274	9-31	ETHEL SWITTON		RENT		
3275	9-31	ETHEL SWITTON		RENT		
3276	9-31	ETHEL SWITTON		RENT		
3277	9-31	ETHEL SWITTON		RENT		
3278	9-31	ETHEL SWITTON		RENT		
3279	9-31	ETHEL SWITTON		RENT		
3280	9-31	ETHEL SWITTON		RENT		
3281	9-31	ETHEL SWITTON		RENT		
3282	9-31	ETHEL SWITTON		RENT		
3283	9-31	ETHEL SWITTON		RENT		
3284	9-31	ETHEL SWITTON		RENT		
3285	9-31	ETHEL SWITTON		RENT		
3286	9-31	ETHEL SWITTON		RENT		
3287	9-31	ETHEL SWITTON		RENT		
3288	9-31	ETHEL SWITTON		RENT		
3289	9-31	ETHEL SWITTON		RENT		
3290	9-31	ETHEL SWITTON		RENT		
3291	9-31	ETHEL SWITTON		RENT		
3292	9-31	ETHEL SWITTON		RENT		
3293	9-31	ETHEL SWITTON		RENT		
3294	9-31	ETHEL SWITTON		RENT		
3295	9-31	ETHEL SWITTON		RENT		
3296	9-31	ETHEL SWITTON		RENT		
3297	9-31	ETHEL SWITTON		RENT		
3298	9-31	ETHEL SWITTON		RENT		
3299	9-31	ETHEL SWITTON		RENT		
3300	9-31	ETHEL SWITTON		RENT		

DURLAND: Petition for Review to Supreme Court

APPENDIX A-6

SAN JUAN COUNTY • BOX 729
FRIDAY HARBOR, WASHINGTON 98250 • 378-2116

BUILDING PERMIT

No. 3116

ADDRESS Box 400, Friday Harbor, Wa. 98250							SAN JUAN		BY	SEWER PERMIT No. NA	
OWNER ROBERTS, E. DARRELL							378-4640		CONTRACTOR'S LICENSE No. AL VO RR C3426N		
BUILDER Texas, 1414 Broadway, Bellingham							734-3480		NOTE: No plumbing will be approved prior to installation of permanent potable water to building as per Sec. 318(1)(H) U.P.C. as amended.		
WORK & USE Agricultural Barn											
LOCATION 140 Carter Beach Road											
ROAD	SEC.	TWP.	RANGE	LOT	BLOCK	ZONE	SUB DIVISION		LOT SIZE		
	35	3	9	251821008-9					.9 Acre		
<input type="checkbox"/> NEW RESIDENCE <input type="checkbox"/> BASEMENT <input type="checkbox"/> ACCESSORY BUILDING <input type="checkbox"/> GARAGE <input type="checkbox"/> CARPORT <input type="checkbox"/> ADDITION <input type="checkbox"/> REMODEL <input type="checkbox"/> PLUMBING PERMIT REQD. <input checked="" type="checkbox"/> OTHER Barn <input type="checkbox"/> NUMBER OF BEDROOMS <input type="checkbox"/> FURNACE PERMIT REQD.							MINIMUM REQUIRED SETBACKS FRONT 10'		UBC OCCUPANCY J		
							SIDE 10'		SEE REVERSE		
							REAR 10'		PLAN CHECK RECEIPT NO.		
MANDATORY INSPECTIONS				PLAN NO.							
FOUNDATION				Bldg. Dimensions		Gar.-Crpt. Dim.		Stories		Basemt.	
FRAMING				Sq. Ft. Main Floor		Sq. Ft. 2nd Floor		Sq. Ft. Basement		PLAN CHECKING FEES	
LATH AND/OR WALLBOARD				1200						BUILDING PERMIT FEE \$ 36.00	
FINAL <i>[Signature]</i>				I certify that I am exempted from the requirements of the state contractor's registration law, under Sec. 3, Chap. 126, laws of 1967.				VALUATION \$6,000		PENALTY FEE \$	
APPLICANT'S SIGNATURE App. /s/ E. Darrell Roberts								DATE 3-30-81		TOTAL FEE \$ 36.00	

THE BUILDING CONSTRUCTED UNDER THIS PERMIT MAY BE USED ONLY For the UBC occupancy set forth above unless a change in use is authorized by the Building Department. This Building Permit is pursuant to Chapter 129, Laws of 1965, State of Washington and resolution No. 224-1975 by Board of County Commissioners of San Juan County. Permission is hereby granted to do the work described hereon according to the approved plans and specifications pertaining hereto, subject to Compliances with any ordinances or zoning resolutions of San Juan County. Construction must start within 60 days and first inspection called for; otherwise permit becomes null and void. Building permit expires one year from date of issuance.

[Signature]

SAN JUAN COUNTY • BOX 729
FRIDAY HARBOR, WASHINGTON 98250 • 378-2116

BUILDING PERMIT

No. 3157

ADDRESS 802-230 98280							ORCAS		BY	SEWER PERMIT No. NA	
OWNER MUNICH, WILLIAM R.							376-4885		CONTRACTOR'S LICENSE No. Dexter		
BUILDER Owner							NOTE: No plumbing will be approved prior to installation of permanent potable water to building as per Sec. 318(1)(H) U.P.C. as amended.				
WORK & USE Storage Shed											
LOCATION Eastman Rd. To Top RH for 600'											
ROAD	SEC.	TWP.	RANGE	LOT	BLOCK	ZONE	SUB DIVISION		LOT SIZE		
NE1/4	10	36	2		26101100-2				20 A.		
<input type="checkbox"/> NEW RESIDENCE <input type="checkbox"/> BASEMENT <input type="checkbox"/> ACCESSORY BUILDING <input type="checkbox"/> GARAGE <input type="checkbox"/> CARPORT <input type="checkbox"/> ADDITION <input type="checkbox"/> REMODEL <input type="checkbox"/> PLUMBING PERMIT REQD. <input checked="" type="checkbox"/> OTHER Shed <input type="checkbox"/> NUMBER OF BEDROOMS <input type="checkbox"/> FURNACE PERMIT REQD.							MINIMUM REQUIRED SETBACKS FRONT 10'		UBC OCCUPANCY J		
							SIDE 10'		SEE REVERSE		
							REAR 10'		PLAN CHECK RECEIPT NO.		
MANDATORY INSPECTIONS				PLAN NO.							
FOUNDATION				Bldg. Dimensions		Gar.-Crpt. Dim.		Stories		Basemt.	
FRAMING				Sq. Ft. Main Floor		Sq. Ft. 2nd Floor		Sq. Ft. Basement		PLAN CHECKING FEES	
LATH AND/OR WALLBOARD				2400						BUILDING PERMIT FEE \$ 32.00	
FINAL <i>[Signature]</i>				I certify that I am exempted from the requirements of the state contractor's registration law, under Sec. 3, Chap. 126, laws of 1967.				VALUATION \$16,400		PENALTY FEE \$ 30.00	
APPLICANT'S SIGNATURE s/n William R. Munich								DATE 4/7/81		TOTAL FEE \$ 52.00	

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[Signature]

SAN JUAN COUNTY • BOX 729
FRIDAY HARBOR, WASHINGTON 98250 • 378-2116

BUILDING PERMIT

No. 3159

ADDRESS 4451 Sunnybree Drive Bellevue, Wn. 98004						BY LOPEZ		SEWER PERMIT No. BA	
OWNER ROUSE, NATALIE						CONTRACTOR'S LICENSE No. Owner			
BUILDER Owner 454-0748						NOTE: No plumbing will be approved prior to installation of permanent potable water to building as per Sec. 31811(H) U.P.C. as amended.			
WORK & USE Agricultural Barn - Farm									
LOCATION Vista Road - 2nd LH									
ROAD	SEC.	TWP.	RANGE	LOT	BLOCK	ZONE	SUB DIVISION	LOT SIZE	
	17	34	2W		241231001-4			200 Acres	
<input type="checkbox"/> NEW RESIDENCE <input type="checkbox"/> BASEMENT <input type="checkbox"/> ACCESSORY BUILDING <input type="checkbox"/> GARAGE <input type="checkbox"/> CARPORT <input type="checkbox"/> ADDITION <input type="checkbox"/> REMODEL <input type="checkbox"/> PLUMBING PERMIT REQD. <input checked="" type="checkbox"/> OTHER BARN <input type="checkbox"/> NUMBER OF BEDROOMS <input type="checkbox"/> FURNACE PERMIT REQD.						MINIMUM REQUIRED SETBACKS		UBC OCCUPANCY	
						FRONT 10'		J	
						SIDE 10'		SEE REVERSE	
						REAR 10'		PLAN CHECK RECEIPT NO.	
MANDATORY INSPECTIONS				PLAN NO.					
FOUNDATION 1-15-81				Bldg. Dimensions		Gar.-Crpt. Dim.		Stories Basemt.	
FRAMING 2-8-81				Sq. Ft. Main Floor		Sq. Ft. 2nd Floor		Sq. Ft. Basement	
LATH AND/OR WALLBOARD 7-8-82				6786		1602		PLAN CHECKING FEES	
APPLICANT'S SIGNATURE S/ Natalie Rouse				I certify that I am exempted from the requirements of the state contractor's registration law, under Sec. 3, Chap. 126, laws of 1967.		VALUATION 43,542		BUILDING PERMIT FEE \$ 169.00	
						DATE 5/26/81		PENALTY FEE \$	
								TOTAL FEE \$ 169.00	

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SAN JUAN COUNTY • BOX 729
FRIDAY HARBOR, WASHINGTON 98250 • 378-2116

BUILDING PERMIT

No. 3164

ADDRESS Box 1134 Friday Harbor, Wn. 98250						BY SAM JUAN		SEWER PERMIT No. BA	
OWNER WILKINSON, JOHN L. 378-4378						CONTRACTOR'S LICENSE No. C400-241-344			
BUILDER Bailey Construction						NOTE: No plumbing will be approved prior to installation of permanent potable water to building as per Sec. 31811(H) U.P.C. as amended.			
WORK & USE Agricultural Barn									
LOCATION Portland Fair									
ROAD	SEC.	TWP.	RANGE	LOT	BLOCK	ZONE	SUB DIVISION	LOT SIZE	
	35	35	3W				383532002-6	16.5 Acres	
<input type="checkbox"/> NEW RESIDENCE <input type="checkbox"/> BASEMENT <input type="checkbox"/> ACCESSORY BUILDING <input checked="" type="checkbox"/> GARAGE <input type="checkbox"/> CARPORT <input type="checkbox"/> ADDITION <input type="checkbox"/> REMODEL <input type="checkbox"/> PLUMBING PERMIT REQD. <input checked="" type="checkbox"/> OTHER BARN <input type="checkbox"/> NUMBER OF BEDROOMS <input type="checkbox"/> FURNACE PERMIT REQD.						MINIMUM REQUIRED SETBACKS		UBC OCCUPANCY	
						FRONT 10'		J	
						SIDE 10'		SEE REVERSE	
						REAR 10'		PLAN CHECK RECEIPT NO.	
MANDATORY INSPECTIONS				PLAN NO.					
FOUNDATION 10-24-81				Bldg. Dimensions		Gar.-Crpt. Dim.		Stories Basemt.	
FRAMING 1-25-81				Sq. Ft. Main Floor		Sq. Ft. 2nd Floor		Sq. Ft. Basement	
LATH AND/OR WALLBOARD				1990				PLAN CHECKING FEES	
APPLICANT'S SIGNATURE D. Wilkinson				I certify that I am exempted from the requirements of the state contractor's registration law, under Sec. 3, Chap. 126, laws of 1967.		VALUATION 9950		BUILDING PERMIT FEE \$ 52.00	
						DATE 6-2-81		PENALTY FEE \$	
								TOTAL FEE \$ 52.00	

THE BUILDING CONSTRUCTED UNDER THIS PERMIT MAY BE USED ONLY For the UBC occupancy set forth above unless a change in use is authorized by the Building Department. This Building Permit is pursuant to Chapter 129, Laws of 1955, State of Washington and resolution No. 224-1975 by Board of County Commissioners of San Juan County. Permission is hereby granted to do the work described hereon according to the approved plans and specifications pertaining hereto, subject to compliances with any ordinances or zoning resolutions of San Juan County. Construction must start within 60 days and first inspection called for; otherwise permit becomes null and void. Building permit expires one year from date of issuance.

SAN JUAN COUNTY • BOX 729
FRIDAY HARBOR, WASHINGTON 98250 • 378-2116

BUILDING PERMIT

No. 3203

ADDRESS 6345 - 52nd Ave. N.E. Seattle, Wa. 98115						SAN JUAN		BY	SEWER PERMIT No.	
OWNER VAN HORN, JOHN						523-9260		Existing		
BUILDER Hon. Louthan Const. Box 585						378-4828		CONTRACTOR'S LICENSE No.		
WORK & USE Garage, Shop & Guest Addition						ROM/OC12AAA		NOTE: No plumbing will be approved prior to installation of permanent potable water to building as per Sec. 318(1)(H) U.P.C. as amended.		
LOCATION RD to N.E. End @ sign										
ROAD	SEC.	TWP.	RANGE	LOT	BLOCK	ZONE	SUB DIVISION	LOT SIZE		
Cape San Juan						5		240551008		
<input type="checkbox"/> NEW RESIDENCE	<input type="checkbox"/> BASEMENT	<input type="checkbox"/> ACCESSORY BUILDING	<input type="checkbox"/> GARAGE	MINIMUM REQUIRED SETBACKS		FRONT		UBO OCCUPANCY		
<input type="checkbox"/> CARPORT	<input type="checkbox"/> ADDITION	<input type="checkbox"/> REMODEL	<input checked="" type="checkbox"/> PLUMBING PERMIT REQD.	SIDE		10'		3-5MI		
<input checked="" type="checkbox"/> OTHER Guest	<input type="checkbox"/> NUMBER OF BEDROOMS	<input type="checkbox"/> FURNACE PERMIT REQD.	REAR		10'		PLAN CHECK RECEIPT NO.			
MANDATORY INSPECTIONS			PLAN NO.							
FOUNDATION 8-14-81			Bldg. Dimensions		Gar.-Crpt. Dim.		Stories		Basemt.	
FRAMING 9-15-81			24 x 44				1			
LATH AND/OR WALLBOARD			Sq. Ft. Main Floor		Sq. Ft. 2nd Floor		Sq. Ft. Basement		PLAN CHECKING FEES	
			1056						BUILDING PERMIT FEE \$ 100.00	
APPLICANT'S SIGNATURE s/a			I certify that I am exempted from the requirements of the state contractor's registration law, under Sec. 3, Chap. 126, laws of 1967.			VALUATION		PENALTY FEE \$		
						21,120				
						DATE		TOTAL FEE \$ 100.00		
						7-7-81				

THE BUILDING CONSTRUCTED UNDER THIS PERMIT MAY BE USED ONLY For the UBC occupancy set forth above unless a change in use is authorized by the Building Department. This Building Permit is pursuant to Chapter 129, Laws of 1955, State of Washington and resolution No. 224-1975 by Board of County Commissioners of San Juan County. Permission is hereby granted to do the work described hereon according to the approved plans and specifications pertaining hereto, subject to Compliances with any ordinances or zoning resolutions of San Juan County. Construction must start within 60 days and first inspection called for; otherwise permit becomes null and void. Building permit expires one year from date of issuance.

SAN JUAN COUNTY • BOX 729
FRIDAY HARBOR, WASHINGTON 98250 • 378-2116

BUILDING PERMIT

No. 3253

ADDRESS Box 21 Eastsound, Washington 98245						ORCA		BY	SEWER PERMIT No.	
OWNER Harbor Lights Const. Co.						376-2111		Existing		
BUILDER owner								CONTRACTOR'S LICENSE No.		
WORK & USE Shop								NOTE: No plumbing will be approved prior to installation of permanent potable water to building as per Sec. 318(1)(H) U.P.C. as amended.		
LOCATION Airport										
ROAD	SEC.	TWP.	RANGE	LOT	BLOCK	ZONE	SUB DIVISION	LOT SIZE		
One (1) Hour Fire Separation						271142001				
<input type="checkbox"/> NEW RESIDENCE	<input type="checkbox"/> BASEMENT	<input type="checkbox"/> ACCESSORY BUILDING	<input type="checkbox"/> GARAGE	MINIMUM REQUIRED SETBACKS		FRONT		UBO OCCUPANCY		
<input type="checkbox"/> CARPORT	<input type="checkbox"/> ADDITION	<input checked="" type="checkbox"/> REMODEL	<input type="checkbox"/> PLUMBING PERMIT REQD.	SIDE		10'		H-D137-2		
<input type="checkbox"/> OTHER	<input type="checkbox"/> NUMBER OF BEDROOMS	<input type="checkbox"/> FURNACE PERMIT REQD.	REAR		10'		PLAN CHECK RECEIPT NO.			
MANDATORY INSPECTIONS			PLAN NO.			10'				
FOUNDATION 12-81			Bldg. Dimensions		Gar.-Crpt. Dim.		Stories		Basemt.	
FRAMING									PLAN CHECKING FEES	
LATH AND/OR WALLBOARD			Sq. Ft. Main Floor		Sq. Ft. 2nd Floor		Sq. Ft. Basement		BUILDING PERMIT FEE \$	
APPLICANT'S SIGNATURE			I certify that I am exempted from the requirements of the state contractor's registration law, under Sec. 3, Chap. 126, laws of 1967.			VALUATION		PENALTY FEE \$		
						DATE		TOTAL FEE \$ 35.00		
						7-8-81				

THE BUILDING CONSTRUCTED UNDER THIS PERMIT MAY BE USED ONLY For the UBC occupancy set forth above unless a change in use is authorized by the Building Department. This Building Permit is pursuant to Chapter 129, Laws of 1955, State of Washington and resolution No. 224-1975 by Board of County Commissioners of San Juan County. Permission is hereby granted to do the work described hereon according to the approved plans and specifications pertaining hereto, subject to Compliances with any ordinances or zoning resolutions of San Juan County. Construction must start within 60 days and first inspection called for; otherwise permit becomes null and void. Building permit expires one year from date of issuance.

SAN JUAN COUNTY • BOX 728
FRIDAY HARBOR, WASHINGTON 98250 • 378-2116

BUILDING PERMIT

No. **3267**

ADDRESS 315 Roche Harbor Road F.H. 98250 SAN JUAN						BY	SEWER PERMIT No.
OWNER MCINTYRE, CLAUDE & ATHENA							2562
BUILDER Steve Bobb Const.						CONTRACTOR'S LICENSE No.	
WORK & USE Barn						RLCC01921F	
LOCATION 400' West Duck Soup Inn Turnoff							
ROAD	SEC.	TWP.	RANGE	LOT	BLOCK	ZONE	LOT SIZE
	29	36	3				10 A.
<input type="checkbox"/> NEW RESIDENCE <input type="checkbox"/> BASEMENT <input checked="" type="checkbox"/> ACCESSORY BUILDING <input type="checkbox"/> GARAGE <input type="checkbox"/> CARPORT <input type="checkbox"/> ADDITION <input type="checkbox"/> REMODEL <input type="checkbox"/> PLUMBING PERMIT REQD. <input type="checkbox"/> OTHER <input type="checkbox"/> NUMBER OF BEDROOMS <input type="checkbox"/> FURNACE PERMIT REQD.						MINIMUM REQUIRED SETBACKS	
						FRONT	10'
						SIDE	10'
						REAR	10'
MANDATORY INSPECTIONS						PLAN NO. 10'	
FOUNDATION						Bldg. Dimensions	Gar.-Crpt. Dim.
FRAMING 12-81 A. Bobb						36 x 36	
LATH AND/OR WALLBOARD						Sq. Ft. Main Floor	Sq. Ft. 2nd Floor
FINAL 2-82 AM						1296	
APPLICANT'S SIGNATURE s/Claude McIntyre						VALUATION	PLAN CHECKING FEES
						2,072	BUILDING PERMIT FEE \$
						DATE 9-29-81	PENALTY FEE \$
						TOTAL FEE \$ 76.50	

NOTE: No plumbing will be approved prior to installation of permanent potable water to building as per Sec. 318(1)(H) U.P.C. as amended.

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[Signature]

SAN JUAN COUNTY • BOX 728
FRIDAY HARBOR, WASHINGTON 98250 • 378-2116

BUILDING PERMIT

No. **3279**

ADDRESS 1002A West Side Road F.H. 98250 SAN JUAN						BY	SEWER PERMIT No.
OWNER COOPER, JAMES P. & LINDA J.							2674
BUILDER Owner						CONTRACTOR'S LICENSE No.	
WORK & USE Barn - Shadow Mt. Lane						Owner	
LOCATION Kanaka Hwy 1/2 So. to Oak Ln. Dr. East							
ROAD	SEC.	TWP.	RANGE	LOT	BLOCK	ZONE	LOT SIZE
				9			5A
<input type="checkbox"/> NEW RESIDENCE <input type="checkbox"/> BASEMENT <input checked="" type="checkbox"/> ACCESSORY BUILDING <input type="checkbox"/> GARAGE <input type="checkbox"/> CARPORT <input type="checkbox"/> ADDITION <input type="checkbox"/> REMODEL <input type="checkbox"/> PLUMBING PERMIT REQD. <input type="checkbox"/> OTHER <input type="checkbox"/> NUMBER OF BEDROOMS <input type="checkbox"/> FURNACE PERMIT REQD.						MINIMUM REQUIRED SETBACKS	
						FRONT	10'
						SIDE	10'
						REAR	10'
MANDATORY INSPECTIONS						PLAN NO. 10'	
FOUNDATION						Bldg. Dimensions	Gar.-Crpt. Dim.
FRAMING 7-13-82 A. Bobb						36 x 36	
LATH AND/OR WALLBOARD						Sq. Ft. Main Floor	Sq. Ft. 2nd Floor
FINAL 7-13-82 AM						1368	400
APPLICANT'S SIGNATURE card 9/29/81						VALUATION	PLAN CHECKING FEES
						11,576	BUILDING PERMIT FEE \$
						DATE 10-5-81	PENALTY FEE \$
						TOTAL FEE \$ 36.50	

NOTE: No plumbing will be approved prior to installation of permanent potable water to building as per Sec. 318(1)(H) U.P.C. as amended.

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[Signature]

SAN JUAN COUNTY • BOX 729
FRIDAY HARBOR, WASHINGTON 98250 • 378-2116

BUILDING PERMIT

No. **3290**

ADDRESS 9155 Priscella Downey, Cal. 90204						ORCAS		BY	SEWER PERMIT No.
OWNER STEVENS, John R. & Lorraine								N.A.	
BUILDER Boomer & Minnie Rt. 1 Box 378 376-4455								CONTRACTOR'S LICENSE No.	
WORK & USE Gar								REMARK C29 LON	
LOCATION Roads Corner East 1/4 mile RR								NOTE: No plumbing will be approved prior to installation of permanent potable water to building as per Sec. 318(1)(H) U.P.C. as amended.	
ROAD	SEC.	TWP.	RANGE	LOT	BLOCK	ZONE	SUB DIVISION	LOT SIZE	
	10	36	2				261022001	3/4	
<input type="checkbox"/> NEW RESIDENCE	<input type="checkbox"/> BASEMENT	<input checked="" type="checkbox"/> ACCESSORY BUILDING	<input type="checkbox"/> GARAGE	MINIMUM REQUIRED SETBACKS			UBC OCCUPANCY		
<input type="checkbox"/> CARPORT	<input type="checkbox"/> ADDITION	<input type="checkbox"/> REMODEL	<input type="checkbox"/> PLUMBING PERMIT REQD.	FRONT			10'		
<input type="checkbox"/> OTHER	<input type="checkbox"/> NUMBER OF BEDROOMS	<input type="checkbox"/> FURNACE PERMIT REQD.		SIDE			10'		
MANDATORY INSPECTIONS			PLAN NO.	REAR			10'		
FOUNDATION			Bldg. Dimensions	Gar.-Crpt. Dim.	Stories	Basemt.	PLAN CHECKING FEES		
FRAMING			39 x 15		1		BUILDING PERMIT FEE \$		
LATH AND/OR WALLBOARD			Sq. Ft. Main Floor	Sq. Ft. 2nd Floor	Sq. Ft. Basement		PENALTY FEE \$		
FINAL 4-5-82			1131				TOTAL FEE \$ 30.50		
APPLICANT'S SIGNATURE s/Al Minnie			I certify that I am exempted from the requirements of the state contractor's registration law, under Sec. 3, Chap. 126, laws of 1967.			VALUATION 5000		DATE 10-16-81	

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SAN JUAN COUNTY • BOX 729
FRIDAY HARBOR, WASHINGTON 98250 • 378-2116

BUILDING PERMIT

No. **3298**

ADDRESS DEER HARBOR (CLYDE BOISE)						ORCAS		BY	SEWER PERMIT No.
OWNER SPRING POINT WATER SYSTEM								OK L.W. 12-7-81	
BUILDER Boomer & Minnie Const. Rt. 1, Box 378								CONTRACTOR'S LICENSE No.	
WORK & USE Pump House								REMARK C1966N	
LOCATION Spring Drive								NOTE: No plumbing will be approved prior to installation of permanent potable water to building as per Sec. 318(1)(H) U.P.C. as amended.	
ROAD	SEC.	TWP.	RANGE	LOT	BLOCK	ZONE	SUB DIVISION	LOT SIZE	
				3			361311002-36135004y-361351095		
<input type="checkbox"/> NEW RESIDENCE	<input type="checkbox"/> BASEMENT	<input checked="" type="checkbox"/> ACCESSORY BUILDING	<input type="checkbox"/> GARAGE	MINIMUM REQUIRED SETBACKS			UBC OCCUPANCY		
<input type="checkbox"/> CARPORT	<input type="checkbox"/> ADDITION	<input type="checkbox"/> REMODEL	<input checked="" type="checkbox"/> PLUMBING PERMIT REQD.	FRONT			10'		
<input type="checkbox"/> OTHER	<input type="checkbox"/> NUMBER OF BEDROOMS	<input type="checkbox"/> FURNACE PERMIT REQD.		SIDE			10'		
MANDATORY INSPECTIONS			PLAN NO.	REAR			10'		
FOUNDATION			Bldg. Dimensions	Gar.-Crpt. Dim.	Stories	Basemt.	PLAN CHECKING FEES		
FRAMING			20 x 24				BUILDING PERMIT FEE \$		
LATH AND/OR WALLBOARD			Sq. Ft. Main Floor	Sq. Ft. 2nd Floor	Sq. Ft. Basement		PENALTY FEE \$		
FINAL 4-5-82			480				TOTAL FEE \$ 74.50		
APPLICANT'S SIGNATURE s/Al Minnie			I certify that I am exempted from the requirements of the state contractor's registration law, under Sec. 3, Chap. 126, laws of 1967.			VALUATION 9600		DATE 11-1-81	

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SAN JUAN COUNTY • BOX 729
 FRIDAY HARBOR, WASHINGTON 98250 • 378-2116

BUILDING PERMIT

No. 3403

ADDRESS 8155 Priscilla - Denny, Cal. 90242						ORGAS	BY	SEWER PERMIT No.	
OWNER STEVENS, JOHN R.								12-8	
BUILDER <i>Owner</i>							CONTRACTOR'S LICENSE No.		
WORK & USE Relocated Mobile Home							<i>Owner</i>		
LOCATION Bodien Corner East on RR Side							NOTE: No plumbing will be approved prior to installation of permanent potable water to building as per Sec. 318(1)(H) U.P.C. as amended.		
ROAD	SEC.	TWP.	RANGE	LOT	BLOCK	ZONE	SUB DIVISION	LOT SIZE	
	10	36	2				261022001	4.88 A.	
<input type="checkbox"/> NEW RESIDENCE	<input type="checkbox"/> BASEMENT	<input type="checkbox"/> ACCESSORY BUILDING	<input type="checkbox"/> GARAGE	MINIMUM REQUIRED SETBACKS				UBC OCCUPANCY	
<input type="checkbox"/> CARPORT	<input type="checkbox"/> ADDITION	<input type="checkbox"/> REMODEL	<input type="checkbox"/> PLUMBING PERMIT REQD.	FRONT 10'				2-3	
<input checked="" type="checkbox"/> OTHER Mobile Home	<input type="checkbox"/> NUMBER OF BEDROOMS	<input type="checkbox"/> FURNACE PERMIT REQD.		SIDE 10'				SEE REVERSE	
MANDATORY INSPECTIONS			PLAN NO.			REAR 10'			
FOUNDATION			Bldg. Dimensions	Gar.-Crpt. Dim.	Stories	Basemt.	PLAN CHECKING FEES		
FRAMING			"Carin"	1981			BUILDING PERMIT FEE \$		
LATH AND/OR WALLBOARD			Sq. Ft. Main Floor	Sq. Ft. 2nd Floor	Sq. Ft. Basement		PENALTY FEE \$		
7-16-82 <i>John R. Stevens</i>			32 x 24	095652			TOTAL FEE \$ 25.00		
APPLICANT'S SIGNATURE			I certify that I am exempted from the requirements of the state contractor's registration law, under Sec. 3, Chap. 126, laws of 1967.			VALUATION		DATE	

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John R. Stevens

LEGAL DESCRIPTION OF PROPERTY

STEVENS, JOHN R. & LORRAINE

ORCAS

Boede Corner E ½ mi. RH **NAME**

S10 T36 R 2

8155 Priscella

261022001

Downey, Cal. 90204 **ADDRESS**

No PERMIT FOLDERS IN ARCHIVE.

BUILDING PERMIT No.	DATE	VALUATION	TYPE OF CONSTRUCTION
3292	10/16/81	5,655	Barn
3403	5/25/82		Relocated Mobile Home

SAN JUAN COUNTY BLD. DEPT.