

ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING

REGULAR SESSION- NOVEMBER 2, 1998

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on November 2, 1998 beginning at 9:30 a.m. in the Island County Courthouse Annex, Hearing Room, Coupeville, Wa. Wm. L. McDowell, Chairman, Tom Shaughnessy, Member, and Mike Shelton, Member, were present. The Board approved and signed minutes from the meetings of August 24, Special Session, as well as August 24 Regular Session.

VOUCHERS AND PAYMENT OF BILLS

The following vouchers/warrants were approved for payment by unanimous motion of the Board: **Voucher (War.)** :
Warrants #37092-37305..... \$280,024.60.

Additionally, the Board approved the October payroll.

Hiring Requests & Personnel Actions

After a brief summary provided by Dick Toft, Human Resource Director, the Board by unanimous motion approved the following PAA's:

Dept. PAA # Position Position # Action Effec. Date

Juvenile 091/98 Prob.Parole Off. 1402.04 New Position 11/2/98

[Grant Funded]

Auditor 092/98 Index. Deputy 208.1 Personnel Action 11/2/98

Auditor 093/98 Index. Deputy 208.2 Personnel Action 11/2/98

Pub.Wks. 094/98 Plans Examiner/ 404.01 Replacement 11/3/98

Bldg Inspector

Change in Corporate Officers for Liquor License No. 350776-4I, Foodmart – The Family Grocer

Having received a favorable recommendation from the Sheriff, the Board unanimously voted to forward a recommendation of approval to the Washington State Liquor Control Board for Assumption of Liquor License #350776-4I by Foodmart, The Family Grocer, representing a change in corporate officers.

CLAIM FOR DAMAGES: ANDREA CAPIOLA R98-041CD AND

VIVIAN CAPIOLA R98-044CD

Betty Kemp, Director, GSA/Risk Management, presented the matter of Claims for Damages by Andrea Capiola and Vivian Capiola filed as a result of a prisoner's escape during transfer from Skagit County to Island County on October 24, 1998. Ms. Kemp's recommendation, as well as the Sheriff, was that the claims be approved. Damage to Andrea Capiola's Honda was inspected by an adjusting, with letter verifying settlement for totaled Honda is \$4,176.37. Vivian Capiola is the owner of the home the prisoner broke through the glass windows of the front door, and her claim represents only the insurance deductible in the amount of \$250.

The Board agreed with the recommendation and by unanimous motion, approved Claims for Damages R98-041CD and R98-044CD.

**Resolution #C-140-98 Reauthorizing and Increasing Certain Petty Cash, Change, and Revolving Funds within
Island County**

As periodically necessary, Margaret Rosenkranz, Budget Director, explained that petty cash funds need to be re-established and/or provide updated amounts necessary for the specific offices, and presented a Resolution for that purpose.

By unanimous motion, the Board approved Resolution #C-140-98 reauthorizing and increasing certain petty cash, change and revolving funds within Island County.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF REAUTHORIZING AND)

INCREASING CERTAIN PETTY CASH, CHANGE,) RESOLUTION C-140-98

AND REVOLVING FUNDS WITHIN ISLAND COUNTY)

WHEREAS, the Island County Board of County Commissioners has, by resolutions duly adopted, established petty cash funds, change funds, and revolving funds for Funds and Departments under its jurisdiction over a period of many years, and

WHEREAS, the adoption of C-111-91 by the Board of Commissioners on July 15, 1991 established Policies and Procedures with respect to Petty Cash Funds; and

WHEREAS, the Island County Auditor's Office has reviewed all authorized departmental Petty Cash, Change, and Revolving funds shown on Exhibit A and recommends each fund be reauthorized, increased or consolidated, NOW THEREFORE

BE IT HEREBY RESOLVED that this enabling resolution authorizing these actions replaces all the enabling resolutions creating the original funds, all as shown on the attached exhibit.

ADOPTED this 2nd day of November, 1998.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST:

Margaret Rosenkranz

Clerk of the Board

(Note: Exhibit A placed on file with the Clerk of the Board)

Resolution #C-141-98 Transferring Funds within the 1998 Budgets

for Conservation Futures Fund, Public Works Fund

and Solid Waste Fund

The need for the various amounts of transfer for Conservation Futures Fund, Public Works Fund and Solid Waste Fund had been reviewed with the Board during different staff sessions, and the Board by unanimous motion, approved Resolution #C-141-98 as presented.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF TRANSFERRING FUNDS WITHIN THE)

1998 BUDGETS FOR THE FOLLOWING ISLAND COUNTY)

FUNDS: CONSERVATION FUTURES FUND, PUBLIC) **RESOLUTION C-141-98** WORKS FUND,
SOLID WASTE FUND)

WHEREAS, all funds and department budgets are adopted and fixed by the Board of County Commissioners for each fiscal year, with expenditures listed in three general categories: Salary, Wages & Benefits, Maintenance & Operation and Capital Outlay, and

WHEREAS, it is permissible to transfer between these categories only by resolution the Board, and

WHEREAS, various departments have requested transfers of funds between portions of their budgets, and

WHEREAS, it is necessary to transfer between these categories in order to cover for unexpected or heretofore unknown expenditures in one category from other budget category excesses, or from budgeted reserves, **NOW THEREFORE**

BE IT RESOLVED, that funds will be transferred in the 1998 Fund Budgets per the attached Exhibit A.

ADOPTED this 2nd day of November, 1998.

Board of County Commissioners

Island County, Washington

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST:

Margaret Rosenkranz

Clerk of the Board

(Note: Exhibit A noted is on file with the Clerk of the Board)

HEARING SCHEDULED: Resolution #C-142-98 Supplemental Appropriation to the 1998 Solid Waste Fund budget

By unanimous motion, the Board scheduled a public hearing to be held on November 23rd at 1:45 p.m. to consider Resolution #C-142-98, supplemental appropriation to the 1998 Solid Waste Fund Budget, to recognize \$30,000 from

the State for Litter Control Funding.

HEARING SCHEDULED: Resolution #c-143-98 - Emergency Appropriation to the 1998 FUND Budgets: Capital Improvement REET 1, Capital Facilities REET 2, Public Works, Family Resource Center South Whidbey, Family Resource Center Camano Island, Construction & Acquisition and Equipment Rental & Revolving.

A Public Hearing was scheduled for November 23, 1998 at 1:45 p.m. by unanimous motion of the Board, to consider Resolution #C-143-98, emergency appropriation to various 1998 budgets

according to Exhibit A which breaks out the specific amount for each fund.

CORRECTION: FRANCHISE #303 BY MICHAEL AND ANNE TAFT

The Public Works Department by memorandum dated October 29, 1998 from George Anne Sherry, advised that Franchise #303 was approved and signed by the Board on August 24, 1998. Since that time, a discrepancy has been found on the first page of the Franchise: in paragraphs #1, #2 and #3, the division numbers of the Plat of Lighthouse Shores needs to be corrected to read Division #2 and #3 rather than #1 and #2.

The Board, by unanimous motion, approved and initialed the correction in paragraphs #1, #2 and #3 of Franchise #303 correcting the division numbers of the Plat of Lighthouse Shores to correct reflect Division #2 and #3 instead of #1 and #2.

HEARING HELD: PUBLIC HEARING – Resolution # C-131-98 (R-55-98)

A Public Hearing was held at 10:15 a.m. as scheduled and advertised to consider Resolution #C-131-98 (R-55-98) stating intent of stipulation contained in final order of vacation of a portion of Beach Drive adjacent to Lot 10, Tyee Beach #1, Camano Island. At the time of hearing, approximately eight interested citizens attended. Public Works staff included: Larry Kwarsick, Public Works Director; Roy L. Allen, County Engineer; Lew Legat, Assistant County Engineer.

Mr. Kwarsick explained the purpose of the hearing was to re-visit an action taken by the County regarding a vacation in the Plat of Tyee Beach in 1984. Tyee Beach developed along the shoreline; when the plats were laid out and subsequently occupied some things occurred in the form of development in terms of roadway construction and home location which was inconsistent with the lay out and development of the land. What is represented as Shoreline Promenade roadway that would occur upland and along the waterfront actually lies within Port Susan. When the County was considering making improvements to the roadways a survey was done that showed a number of problems in the area. This particular problem was resolved by the County's initiation of a vacation, and the subsequent approval by the Board of County Commissioners. There have been other vacations, 1993 and 1996, where the County similarly resolved occupation problems, homes, cabins, improvements within the right of way in this area.

In this particular case, the purpose of the resolution is to clarify the prior Resolution, specifically the language: "vacation is subject to the owners of Lots 10 and 11 executing a boundary line agreement". However, Mr. Kwarsick explained that it was not the County's intention at that time to negate the action the Board took, but to encourage the two property owners to work together to resolve any boundary line problems they might have. The vacated right of way in this case would go to the adjoining lot owner, but by virtue of the occupation and use of the land between the two lot owners, could have been and perhaps still is a boundary line problem. Again, he confirmed it was not the County's intention to void the vacation if those property owners could not reach an agreement. On advice of the Prosecuting Attorney, Mr. Kwarsick prepared current resolution to clarify the intent. Staff recommends the Board adopt the resolution.

Ms. Jerri Sutherland, property owner Lot 11, stated that with regard to her Deed of Trust, there is a question of the location of the new lot line, brought about by an Order of Vacation dated December 17, 1984. She believes that vacation to be null and void because of one of the stipulations of the vacation: "this vacation is subject to the owners of Lots 10 and 11 executing a boundary line agreement"; the agreement was never executed. She pays taxes on 80' and

knowing that property to be located between two concrete walls, one on the north side and one on the south side. According to a survey done in 1984, it includes a portion of that area on the north side. She wants to see this vacated in order to allow her clear title on her property and would like to retain the current 80' where the concrete walls are on each side of her property. On a copy of the map each Commissioner had, she showed them the concrete wall referred to, and noted same on a photograph. She bought the property by real estate contract and is now in the process of attempting to sell.

Frederick R. Hall, indicated his mother, Katherine Hall, is the owner of Lot 10. He understood Ms. Sutherland's concerns and difficulties with the sale of her property; though he was not clear as to how that impacted today's topic since the Resolution states that the County is not going to adjudicate anything and that any difficulties regarding boundaries are between the two owners, Lots 10 and 11 – which he totally concurs with. Mr. Hall confirmed he had not specifically met with Ms. Sutherland to negotiate or talk about a boundary line adjustment. Over the years when Lot 11 has changed hands it had been through a real estate contract. He had a picture of the boundary line in dispute to circulate to the Commissioners. According to the survey he had done, Ms. Sutherland's house is 1" over on his property, but he told the Board he did not care and that was perfectly fine with him, that he would not sue or become involved in any legal entanglements, noting he was not the type of person to insist anyone remove 1" of their house. As can be seen in the photograph, the property line is directly down the middle. Mr. Hall came up as Ms. Sutherland had to review with the Commissioners the map and photograph. Mr. Hall tends to agree that where the property should split – seems to be a logical request precisely in the middle and been that way for 40 years.

One of the things the Chairman pointed out was that these days banks are becoming a lot more concerned about encroachments and it appeared that is where Ms. Sutherland is having a problem, and noted the same type of problem could occur for the Halls should they want to sell their property. He thought it would be very beneficial for the two property owners to agree that the wall, wherever it is in relation to the property line, is the property line.

Mr. Hall stated that it is a 5" wall and that Ms. Sutherland requested the Halls remove 4" but he cannot quite imagine how that could be done. He did say he would like to come to some agreement and solve the whole matter and that he had no ax to grind with Ms. Sutherland at all.

Kim Kizer, lot owner at 3105 S. Shoreline Drive, submitted for the record a letter dated October 25, 1998, with attached signature pages signed by 42 out of 105 residents he was able to meet with just last week.

"Please be advised that it is extremely important to the Tyee Beach Property owners, as confirmed by signature below, that the Island County Commissioners do not vacate the portion of Beach Drive adjacent to Lot 10, Tyee Beach #1, Camano Island. The piece of property in question limits the only access in and out of Tyee Beach for the 105 lot owners. For more than 20 years, we have waited for the County to reclaim this property to improve the access to South Shoreline Drive.

Tyee Beach property owners have been both sympathetic and tolerate of the continuing situation involving this unauthorized use of county property. As taxpayers, we have financially supported this property and subsidized the county services provided to the residents at this location on County property.

County officials have previously advised Tyee Beach property owners that the property in question would be reclaimed and again be available to the taxpayers. In addition, we have been advised that this piece of property is vital to provide an adequate turning radius for vehicles traveling to and from Beach Drive and northbound on South Shoreline Drive. Currently, all extended vehicles such as commercial trucks, vehicles with trailers, and, most importantly, public safety and emergency vehicles have limited access. Specifically, we have been advised that Tyee Beach property owners are deprived of the use of the largest emergency service vehicles because they cannot navigate the existing roadway due to current constraints of limited turning radius.

Accordingly, this property should remain in the ownership of Island County. Once the life estate expired as originally devised, the county should reacquire this property and upgrade the service level to all Tyee Beach property owners.

If additional input is required we suggest a public meeting to meet with interested parties or an extension to the comment period."

As far as property owners being advised that the county will reclaim this at some future date, Mr. Kizer was not aware that was in writing.

Mr. Kwarsick noted that the drainfield for the home was actually in that area. The County did not vacate that triangular area in 1984, instead issued a license to the Halls to continue to use that area, with the condition that the County could remove the northerly 7' if it were to undertake a curve for access road modification.

Commissioner Shaughnessy commented that in reading through the 1984 minutes as far as the action taken by the then Board, he found it somewhat confusing when looking at the map; there appeared to be several pieces of property not vacated, but found references to Resolution 125 and 126, the permit, but was unable to find any follow-up action by the Board. He was interested in seeing on the map what it was the County did not vacate in 1984.

Roy Allen clarified that Resolution #R-53-90 granted a license to the Halls; there was never a permit issued. The license gave the Halls permission to use the area where the dock is and the steps to walk to the beach, and as long as they maintained the bulkhead that would go not only to the Halls but their heirs and assigns. The County in its stipulation agreed that if in the future the County needed the portion not vacated that that could be done. At that time, the County up-fronted over \$12,000 for an engineering study to improve the radius of the curve, and tried to form a road improvement district, but the issue was voted down by the people. The County built the seawall fronting north of Lot 10 and made the piles higher at that location to increase the radius of the curve a little.

Mr. Kwarsick indicated that issuance of the license was issued based on recommendation of the Prosecuting Attorney's Office, and licensed a drainfield that existed at the time. Although the County is willing to continue to talk to the Tye Community about options, the purpose of today's hearing only deals with the County's intent for the vacated right-of-way adjoining and immediately surrounding the Hall house.

Mr. Kizer was relieved to hear the County had not vacated the small triangular piece; it is important for public safety purposes – that piece needed to complete the radius of the turn for emergency vehicles to support the 105 residents.

It was pointed out by Mr. Kwarsick that the County had gone through much discussion in terms of different options during the course of trying to resolve the issue with Mr. Hall's father. In

terms of what Ms. Sutherland displayed as being an agreement related to a life estate permit, was a copy of a memo from Mr. Kwarsick to Mr. Hall talking about options for discussion only and there was no formal agreement.

Robert Long, 3057 Shoreline Drive, [also two other lots 3091 and 3089] stated that he and his neighbors knew where their boundary lines are. He was told by the fire department should there be a major fire it's possible to lose half the beach because of not being able to get tender trucks down there. He signed the petition submitted by Mr. Kizer, and he has written a letter to the Camano Island fire commissioners who will be addressing the matter November 9 about widening the corner for emergency vehicle access. As far as the license to the Halls previously mentioned, Mr. Long considered null and void now—the County has maintained the stairs and bulkhead within the last 12 months at County taxpayer expense. The prior resolution should be null and void and the issue re-addressed, including fire commissioners involvement, see if the corner can be developed in that where the stairway is and the small section of land off the corner would provide a large enough radius. He believed the prior resolution was clear that the vacation was subject to the two lot owners having made an agreement and that agreement was never made. Fire and public safety is of major concern and has to be addressed, as well as providing for commercial vehicles so they do not have to back around the corner or down the road. Mr. Long indicated that along with the Resolution, the minutes from the 1984 meeting state a recommendation: "be subject to the owners of Lot 10 and 11 executing a boundary line agreement". He showed the Commissioners on a map the stairs and bulkhead the County had been maintaining, and clarified he was not saying Ms. Sutherland had to move her house.

Mr. Hall stated that for the last 40 years at the same site he and his family maintained stairs for access down to the beach. The seawall along there was built by he and his father, and the County has not replaced the seawall in front of

Lot 10. The County placed some gravel where a portion was washed out along the seawall. Mr. Hall maintained the north end of the property [area referred to as the turning radius]. There is a waterfall and stream, and every year sand from the County's property comes down and block drains. The Hall's maintained a drain for the County's use going down to approximately the middle of the beach where he and his father dug a deep hole and put a culvert in for the County to deal with water coming from the County's waterfall. The drainfield extends over on County property; 7' of a retaining wall his father built so that dirt would not fall into the County's road is an issue of contention.

Mr. Kwarsick explained the use of the words "subject to" in the Board's vacation order. The County in a dedicated right-of-way situation in a plat does not own the fee title to the land. When the County vacated that portion of the dedicated right-of-way shown on the various exhibits – that area primarily has the Hall house on it, realized there could be a dispute between two owners and the County could not reconcile that dispute because the County did not own the property. The word "subject" was used the same as when referring to "subject to an easement" on a piece of property, a notice that even though the County vacated the property there is the "subject to" situation and were not able to reconcile who owned what. It was not the intent of the County to have the Board's action be reversed if the two parties did not reach agreement, only notifying parties involved the vacation was subject to this encroachment.

Commissioner Shelton observed that the issue involving Lots 10 and 11 and where the legal boundary line should be, and thought that issue could be resolved if the people would work out the matter and clear title for Ms. Sutherland. Another issue seems to be the license issued by the County. The issue brought up about access to the rest of Tyee Beach which in the opinion of some folks feel is hampered by the area covered by the license. He suggested that the problem which should be recognized is while the County is not talking about removing a residence, in effect if the license agreement is eliminated and there is no other place for the Hall's drainfield, that in essence would condemn the house. He was not prepared to make an assessment of this matter today, and wanted an opportunity to make a site visit.

Commissioner Shaughnessy agreed, and believed there were too many unanswered questions today, and again noted he would like further information from staff with regard to the license issued, the 1984 order of vacation and those properties excluded from the vacation.

In evaluation of the various options to resolve this particular problem, Mr. Kwarsick and Mr. Allen worked with the then Prosecuting Attorney who gave advice, and it was a fairly clear that the County needed to try and reach an agreement with the property owner to resolve the issue because the County would more than likely be estopped from removing anything [law of estoppel]. With this kind of long term occupation by a private party it is very difficult to actually cause an improvement to be removed from the right-of-way. The Prosecuting Attorney recommended devising some way of reaching agreement with the property owners; the license was the mechanism used to try to reach an agreement so that the County could reclaim a portion of that area where the bulkhead extends out into the roadway. That portion at that time was necessary to execute the plan that Mr. Allen mentioned regarding the improvements.

Commissioner Shelton believed it was generally acceptable case law that private properties do not gain permanent easement on public property. On one hand he is certainly not interested in creating significant problems for the Halls; on the other hand, he would not want to be responsible for a home burning to the ground at Tyee Beach in the event of a fire due to not the fire truck not being able to get to the scene. The County cannot resolve a property line dispute between two property owners, but there are other issues as a result of the vacation that seem to need some response.

Chairman McDowell saw the issue before the Board to be intent of the prior order of vacation as clarified by Mr. Kwarsick concerning the use of the words "subject to", and not the issue of the drainfield. . Mr. Hall has commented he felt that an acceptable boundary line would be the retaining wall; Ms. Sutherland has stated the same thing. Therefore, he encouraged the property owners to meet during the next two weeks to get the issue resolved and sign a proper agreement as to boundary line. He thought with regard to the fire situation, that it would be beneficial to the fire commissioners discussion would be information to the study done 15 years' ago and the fact that the community voted down a RID – and to find out whether the property owners now have a different opinion.

Commissioner Shaughnessy had not seen the engineering study/design to which Mr. Allen referred and wanted an

opportunity to review that study. He asked that the study be brought to the Board during this Wednesday's Staff Session.

Commissioner Shelton moved that the Board continue the public hearing on Resolution #C-131-98 [R-55-98] to November 16, 1998 at 10:15 a.m. Motion, seconded by Commissioner Shaughnessy, carried unanimously.

DRAINAGE EASEMENT and QUITCLAIM DEED – Madrona Way, WO 187; Bonnie Wells, Parcel 193-4850, Sec. 32, T32N, R1E

As presented and recommended for approval by Lew Legat, the Board by unanimous motion accepted and approved a Drainage Easement in the amount of \$600.00 and Quit Claim Deed from Bonnie Wells in the amount of \$2,500.00 for a portion of Parcel #193-4850 under Work Order #187, Madrona Way Road project, which is a part of the Federal Highway project repairs based on storm damage.

DRAINAGE EASEMENTS – Wilkes Gary Heights Drainage, CRP 98-14, WO 239: Claude M. & Dorothy F. Fowler, Lot 22, Wilkes Gary Heights Virginia Vanaja – Lot 23, Wilkes Gary Heights

On recommendation by Lew Legat, the Board by unanimous motion accepted and approved a Drainage Easement on Parcel #846023 from Virginia M. Vanaja, in the amount \$13,600, and Drainage Easement on Parcel #846022 from Claude M. and Dorothy F. Fowler, in the amount of \$14,900, associated with repair of Wilkes Gary Heights drainage under County Road Project #98-14, Work Order #239, FEMA project.

PURCHASE ORDER – Northwest Pump & Equipment Company, Seattle

The Board, by unanimous motion, approved Purchase Order to Northwest Pump & Equipment Company, Seattle; (2) each site new AST's and related hardware for Camano Annex and Coupeville Road Shop new fueling facilities; \$51,338.44 each site without sales tax (purchase is off state contract).

ESCROW AGREEMENT – Jenkins Inc., account for retainage -

Camano Family Resource Center, PWP-3-98

Per bid awarded previously to Jenkins, Inc., for the contract to do the Camano Family Resource Center under PWP-3-98, the Board by unanimous motion accepted Escrow Agreement with Jenkins Inc. representing escrow account for retainage #1711006526 Contract No. 97-039.

Note: The Board will meet in Special Sessions for the purpose of budget workshops as follows:

November 4 at 5:00 p.m. - Main Street Conference Room, Law & Justice Group

November 6 at 9:30 a.m. – Courthouse Annex Hearing Room

Budget Workshop/Review – Board and Budget Director

There being no further business to come before the Board at this time, the Chairman

adjourned the meeting at 11:25 a.m. The Board will meet in Regular Session on

November 9, 1998 at 9:30 a.m.

**BOARD OF COUNTY
COMMISSIONERS**

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Attest:

Mike Shelton, Member

Margaret Rosenkranz, Clerk of the Board