

## ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING

### REGULAR SESSION - November 16, 1998

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on November 16, 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.

#### VOUCHERS AND PAYMENT OF BILLS

The following vouchers/warrants were approved for payment by unanimous motion of the Board: **Voucher (War.)**  
#38216 – 38437..... \$ 419,103.42.

#### PERSONNEL ACTION AUTHORIZATION

PAA #098/98, Juvenile Court Services, Probation Aide under the BECCA Bill, position #1406.00, replacement, was approved by unanimous motion of the Board, effective this date, as presented and proposed by Dick Toft, Human Resource Director.

#### Signature on Sale of Surplus Property, Lot 29, Block 5,

#### Plat of Rolling Hills

As outlined in Memorandum dated November 10, 1998, from Lee McFarland, GSA/Property Management, the Board by unanimous motion authorized the sale of surplus property, Lot 29, Block 5, Plat of Rolling Hills, for \$5,000, and signed the necessary paperwork to complete the sale, including Deed and Real Estate Excise Tax Affidavit.

#### Assumption of Liquor License #352941-4I, Freeland Café

Having received favorable recommendations from the Office of the Sheriff and the Health Department, the Board by unanimous motion approved forwarding recommendation of approval to the State Liquor Control Board for assumption of Liquor License #352941-4I, Freeland Café.

#### HEARING SCHEDULED: ORDINANCE #C-150-98 INCREASING TAX DISTRICT'S PRIOR YEAR'S LEVY AMOUNT FOR FISCAL YEAR 1999 FOR THE COUNTY CURRENT

#### EXPENSE LEVY

Commissioner Shelton moved that the Board schedule for public hearing on December 7, 1998 at 11:00 a.m. proposed Ordinance #C-150-98 in the matter of increasing the Tax District's prior year's levy amount for fiscal year 1999 for the County Current Expense Fund Levy. The motion was seconded by the Chairman, and motion carried by majority vote; Commissioner Shaughnessy voting in opposition.

#### HEARING SCHEDULED: ORDINANCE #C-151-98 INCREASING THE TAXING DISTRICT'S PRIOR YEAR'S LEVY AMOUNT FOR FISCAL YEAR 1999

#### FOR THE COUNTY ROAD LEVY

Commissioner Shelton moved that the Board schedule for public hearing on December 7, 1998 at 11:00 a.m. proposed Ordinance #C-151-98 in the matter of increasing the Tax District's prior year's levy amount for fiscal year 1999 for the County Road Levy. Motion, seconded by Commissioner Shaughnessy, carried by unanimous vote.

#### HEARING SCHEDULED: RESOLUTION #C-152-98 FIXING AND ADOPTING THE FINAL BUDGETS

**FOR ISLAND COUNTY FOR FISCAL YEAR 1999**

By unanimous motion the Board scheduled a Public Hearing to consider Resolution #C-152-98 Fixing and Adopting the Final Budgets for Island County for Fiscal Year 1999, for

December 7, 1998 at 11:15 a.m.

**Claim for Damages, Karen Fiechtl, #R-98-038CD**

Betty Kemp, Director, GSA/Risk Management, presented the recommendation in the matter of Claim for Damages by Karen Fiechtl #R-98-038CD. Incident occurred in September, with claim filed on October 9, 1998. Investigation verifies Fiechtl filed a collision report, advising vehicle struck from behind while stopped at a stop sign by Island County employee in an Island County vehicle. Risk Manager recommends payment of the claim in the amount of \$822.30.

Based on Ms. Kemp's report and recommendation, the Board by unanimous motion, approved Claim for Damages R-98-038CD in the amount of \$822.30.

**hearing held, CONTINUED from november 2, 1998: resolution #C-131-98 (R-55-98) – STATING INTENT OF A STIPULATION CONTAINED IN FINAL ORDER OF**

**VACATION OF A PORTION OF BEACH DRIVE ADJACENT TO LOT 120,**

**TYEE BEACH #1**

At 10:15 a.m., as scheduled, advertised, and continued from November 2, 1998, the Board conducted a public hearing on the matter of Resolution C-131-98 (R-55-98) – Stating the Intent of a 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 seven interested citizens attended. Public Works staff included: Larry Kwarsick, Public Works Director; Roy L. Allen, County Engineer; Lew Legat, Assistant County Engineer. 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.

During the course of the hearing held on November 2<sup>nd</sup>, staff clarified its intention by the words "subject to" on the final order of vacation as being subject to intent to disclose an encumbrance on the property that was vacated because of the occupation and use of a portion of that property by two adjoining owners. Staff had suggested that the two owners work together to resolve the boundary line problems that could exist through a boundary line agreement. At the close of the November 2<sup>nd</sup> hearing, the Board suggested the two property owners who appeared to have an interest in working together to actually seek some sort of a boundary line agreement. There are other issues relating to the right-of-way such as emergency access to the Tyee Beach community, that although important, not part of today's public hearing.

Jerri Sutherland, property owner of Lot 11 adjoining the property, stated that Leo Hall built illegally on county right of way. In 1984 a vacation order was issued for the property along with a life estate permit to Leo Hall and spouse. Why and how this occurred was a mystery to her. That order has a stipulation that remains unfinished, therefore, the vacation null and void, in her opinion. She proposed honoring the life estate permit to Mrs. Kathy Hall, but upon her demise, that the house removed at no expense or obligation to the County or the taxpayers.

Robert Long , 3057 S. Shoreline Drive, Tyee Beach, referred to a letter dated June 4, 1984 from the Island County Engineer's Office stating: " Since abutting property owner is Lot 10, it is our position that the vacation of right of way should revert to you as fee title holder of Lot 10. The vacation would be subject to yourself and Lot 11 arriving at a boundary line agreement". That has never been done. In 1984 the report from the Island County Engineer signed by Roy Allen stated: "I would also recommend that this vacation be subject to lots 10 and 11 executing a boundary line agreement". Resolution 125-84, Final Order of Vacation, stated that the vacation was subject to the owners of Lot 10 and 11 executing a boundary line agreement.

Mr. Long took the document to one of the six attorneys with property on Tyee Beach, David E. Duskin, who advised:

"At your request I reviewed documents related to the vacation of a portion of Beach Way abutting Lots 10 and 11. This letter is to relate my opinion. It is my opinion that the Final Order of Vacation was conditional upon the owners of Lots 10 and 11 executing a boundary line agreement. If this has not been done, the street most likely not vacated. However, I believe the County Commissioners have authority to adopt Resolution C-131-98. Arguably, the final vacation of the county road will not occur until adoption of the proposed resolution. this would have significant impact on property rights. One cannot establish title by adverse possession against a county. Once the county has vacated the property, then the ten year statute of limitation starts running as to those persons who could claim ownership but are not in actual possession. Since both parcels 10 and 11 abut the area in question both could make a claim to some portion of the vacated street. I can understand why the county commissioners made a boundary line agreement a condition precedent to the earlier vacation. It would not make sense in my opinion for them to pass a resolution without there being a boundary line agreement in place."

Out of 105 lot owners well over 50 to 60 signatures have been received asking that the county declare the vacation null and void. Mr. Long stressed he was not here to see Kathy Hall removed from her house, but to get a corner widened. A small portion of Lot 10 which is now a licensed piece of property could be taken out and the turn access would be adequate. After the corner is done then a vacation of the property would not be contested by the lot owners of the beach. He attended the Fire Commissioners Meeting and the Fire Commissioners wrote short letter but could not provide minutes until approved. The letter from the Camano Island Fire & Rescue recommended the County take a look at this corner. Three fire fighters stated that in the last fire it took backing the truck up threetimes to get to the fire at that intersection; two others had noted problems getting safety rigs in and out at that corner.

Frederick R. Hall, Lot 10, expressed some frustration with the process, and insisted the County purchase the Hall property for \$400,000. Mr. Hall is on disability, and his mother 73 years old and he stated neither needed this kind. Everything has been in place for the last 40 years. His father purchased the property. That property was the property where the real estate office had been situated on when the beach lots were first made available for sale. He insisted that he be presented with evidence of a "life estate" – and demanded to see such document referenced.

Larry Kwarsick explained that prior to setting this matter for public hearing, at the Board's request, he and Mr. Allen met with the Deputy Prosecuting Attorney. The Board is in a unique situation of clarifying the intent of the Board by insertion of the words "subject to a boundary line agreement". The County and the Board are familiar in vacation processes that with conditioning vacations; note the words "failure to meet conditions" were not used and it was the intention of the Board at that time was to notify the property owners that because of this occupation of the right of way and the adjacency of the two lots to the right of way that those two individuals should work out an agreement between the two. He confirmed that the lot which contains the Hall home is not subject to a life estate agreement. The license is not subject a life estate agreement, but there are specific conditions on the license that deal with those areas that were used by the Hall family historically. The County in the license agreement maintains the ability to reclaim those areas for public use for right of way purposes. Mr. Kwarsick recommended the Board approve the resolution to clarify the intent as stated.

Ms. Sutherland confirmed no agreement with the Halls on a boundary line agreement. Mr. Hall

said he had made an offer for Ms. Sutherland to meet and discuss the matter but had declined to do either.

Commissioner Shelton recalled that one of the things that had been discussed in staff session was the possibility of talking to the Halls about placing their drainfield on the upper part of Lot 10 thereby freeing up that part of the County right-of-way and enable trucks and other emergency vehicles a better access. He believed this was an issue to be that should continue to be worked on, and encouraged that the two individuals work out the boundary line dispute.

Commissioner Shaughnessy saw no reason to try to clarify anything, rather for anything to be clarified would take

action by a court of law. He asked what had brought this matter before the Board.

Mr. Kwarsick indicated that what had brought this action to the Board was that the adjoining property owner was looking into potential legal action which would have involved the County. Staff reviewed that matter with the Deputy Prosecuting Attorney who believed that in view of what appeared to be the intent of the prior Board's action that the County could set aside the public involvement of what had become a private boundary line dispute by clarifying the intention of the vacation.

In reviewing the matter and listening to comments, Commissioner Shaughnessy believed that even if the Board adopted the resolution to try to clarify intent it would not help anything.

However, the Chairman believed it did help to the extent that it puts on public record what the

Board's intent was and is after review of the facts. The facts to him were quite clear when looking at the words "subject to" as opposed to "conditioned upon". Comments heard from other members of the public have to do more with turn-around and no one has suggested that the Hall house be taken down for purpose of bulldozing a road. While the issues about turn-around are very important to the community but have nothing to do with the matter before the Board at this time. The letter from Mr. Duskin clearly stated as well that the Board has the ability to adopt this resolution.

Commissioner Shaughnessy did not see where in this arena anything would be settled or satisfied and saw no reason for the Board to take any action.

Commissioner Shelton moved that the Board approve Resolution #C-131-98 [R-55-98] in the matter of stating intent of the stipulation contained in the Final Order of Vacation of a portion of Beach Drive adjacent to Lot 10, Division #1, Plat of Tyee Beach, Camano Island.

In absence of Commissioner Shaughnessy's second, the Chairman seconded the motion. Motion carried by majority vote, Commissioner Shaughnessy voting in opposition.

The Board agreed with Commissioner Shelton that the Public Works Director continue to try to find resolution to the problem brought to the Board's attention, although not a part of this public hearing, the issue of the turn-around.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF ISLAND COUNTY, WASHINGTON**

<p>IN THE MATTER OF STATING THE INTENT OF A STIPULATION CONTAINED IN THE FINAL ORDER OF VACATION OF A PORTION OF BEACH DRIVE ADJACENT TO LOT 10, DIVISION 1, PLAT OF TYEE BEACH, CAMANO ISLAND</p>	<p>RESOLUTION NO. C-131-98 <u>R-55-98</u></p>
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WHEREAS, Resolution R-125-84, for the final order of vacation of a portion of Beach Drive right of way fronting Lot 10, Plat of Tyee Beach, Division 1 stipulated that ...."This vacation is subject to the owners of Lots 10 and 11 executing a boundary line adjustment....."; and

WHEREAS, the owners of Lots 10 and 11 never executed a boundary line agreement; and

WHEREAS, a question exists whether the lack of a boundary line agreement by the owners of Lots 10 and

11 would render the vacation null and void; NOW, THEREFORE,

BE IT HEREBY RESOLVED, that the intent was not that the right of way vacation would fail or be null and void if the property owners did not enter into a boundary line agreement, but that the sentence was included to put the property owners on notice that they would have to enter into a property line agreement to resolve any conflicting claims that each had about use of the vacated right of way. The County does not administratively adjudicate who owns right of way vacated by the county. That is a matter which competing property owners would have to take to court to resolve between themselves.

REVIEWED this 12<sup>th</sup> day of October, 1998, and set for public hearing on the 2<sup>nd</sup> day of November 1998, at 10:15 a.m. Public Hearing held and continued to November 16, 1998 @ 10:15 a.m.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

*Wm. L. McDowell*, Chairman

*Mike Shelton*, Member

*Tom Shaughnessy*, Member

Attest: *Margaret Rosenkranz*, Clerk of the Board

Approved this 16<sup>th</sup> day of November, 1998, following public hearing.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

*Wm. L. McDowell*, Chairman

*Mike Shelton*, Member

[Voted "No" - Tom Shaughnessy, Member]

**Attest:** *Margaret Rosenkranz*, Clerk of the Board

**HEARING HELD: FRANCHISE #306, MILLENNIUM DIGITAL MEDIA SYSTEMS —TRANSFERS  
CABLE FRANCHISES #289 & 297 FROM SUMMIT COMMUNICATIONS**

A Public Hearing was held as scheduled and advertised to consider Franchise #306, Millennium Digital Media Systems, a transfer of Cable Franchises #289 & 297 from Summit Communications, for an area covering portions of North, Central and & South Whidbey.

The Assistant County Engineer, Lew Legat, by way of a November 5, 1998 memo to the Board, reported his recommendation that the Board grant approval of the franchise from Summit Communications, Inc., to Millennium Digital Media Systems, L.L.S.

Commissioner Shelton recalled he seemed to receive a fair number of complaints about Summit Communications and their ability to deliver reliable service to those they serve. By granting a franchise for work in the County Road right of way, the County does not guarantee the people a level of service.

Steve Snyder, local manager, Summit Communications, advised he had no communication with the County on customer complaints or service issues, and offered to talk with the Commissioner, and he would act pro-actively and

was more than happy to resolve same. Summit Communications is based out of Bellevue, Wa., and currently has about 43,000 customers in three states. Millennium Digital Media Systems, based out of St. Louis, acquired 100% of Summit Communications. The management staff will remain in place as Millennium's Northwest Regional Office. The CEO has a long history of building successful cellular businesses. Chief Operating Officer is a cable veteran.

No other comments were made by any members of the public, either for or against granting said franchise.

The Board by unanimous motion, approved Franchise #306 as recommended.

**Adopt-A-Road Litter Control Program Agreements**

By unanimous motion, the Board approved and signed Adopt-A-Road Litter Control Program Agreements with the following:

- Genuine CedarFlex; Ewing Road from Sills Road to Maxwellton Road
- Whidbey Audubon Society; West Beach Road from 1 mile north

of Hastie Lake Road intersection to 1 mile south

**Amendment No. 1 to Island/Snohomish Counties Interlocal Agreement - Concerning Solid Waste Disposal Site Designation**

Mr. Kwarsick reviewed Amendment No. 1 to existing agreement between Island/Snohomish Counties Interlocal Agreement concerning Solid Waste Disposal Site designation, with the request to extend the agreement time 7 years, to December 31, 2005. In 1992 Island County entered into the agreement for the purposes of providing an emergency disposal site for solid waste generated on Camano Island, by providing access to Snohomish County's Arlington transfer station.

The Board, by unanimous motion, approved Amendment No. 1 to extend the agreement between Island/Snohomish Interlocal Agreement to December 31, 2005.

**Resolution #C-153-98 – Amending Island County's Six-Year Capital Improvement Program for the Years 1998-2003 to include**

**Camano Animal Shelter Improvements**

Mr. Kwarsick introduced proposed Resolution #C-153-98 to amend the existing Island County Six-Year Capital Improvement Program for the Years 1998-2003 to include the Camano Animal Shelter Improvements to the list of projects and provide funding for that. During a staff session, the Board asked that the Camano Animal Shelter improvements come in two increments: first, sewage disposal system; second, follow-on improvements to the building. The Board had asked for an estimate of the remaining costs and that needs to be brought back to the Board in staff session and a plan developed in terms of how to accommodate funding needs.

By unanimous motion, the Board adopted Resolution #C-153-98 in the matter of amending Island County Six-Year Capital Improvement Program for the Years 1998-2003 to include the Camano Animal Shelter Improvements.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS**

**OF ISLAND COUNTY, WASHINGTON**

**IN THE MATTER OF AMENDING ISLAND )**

**COUNTY'S SIX-YEAR CAPITAL )  
IMPROVEMENT**

PROGRAM FOR THE YEARS 1998-2003 TO ) RESOLUTION NO. C-153-98

INCLUDE CAMANO ANIMAL SHELTER )  
IMPROVEMENTS

**WHEREAS**, the Public Works Director, in accordance with RCW 36.70A.070(3) and WAC 365-195-315, submitted his recommended plan for capital expenditures for 1998 through 2003; and

**WHEREAS**, the Island County Board of County Commissioners adopted the 1998-2003 Capital Improvement Program (CIP) on June 23, 1997 by way of Resolution R-43-97; and

**WHEREAS**, the Camano Animal Shelter Improvements Project could not be foreseen at the time the CIP was adopted; and

**WHEREAS**, per ICC 3.04A.040 real estate excise tax funds can be used for financing capital projects specified in the capital facilities plan element of the Island County Comprehensive Plan; and

**WHEREAS**, it has become necessary to replace the septic system at the Camano Animal Shelter,

**NOW THEREFORE BE IT HEREBY RESOLVED** that the 1998-2003 Capital Improvement Program is amended to include Camano Animal Shelter Improvements to include payment for the replacement of the septic system to be funded out of REET 1 in the amount of \$24,000.

**ADOPTED** this 16<sup>th</sup> 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

### **CONTRACT AMENDMENT APPROVAL - EARTH TECH, INC.**

As presented by Vince Moore, Planning Director, the Board by unanimous motion, approved Addendum #1 to Agreement for Professional Services between Island County and Earth Tech, Inc., Mark Personius, Bellevue, Wa., to update Island County Shoreline Management Master Program (SMMP), with the work to be completed by December 31, 1998, amendment in the amount of \$7,000, for a total adjusted amount of \$33,000.

### **Financial Reports and General Comments**

#### **Treasurer: Current & YTD Cash Report; County Investment Report & Status**

The Treasurer's Report was provided by Maxine Sauter, Island County Treasurer, by letter dated November 6, 1998. In reviewing the report with the Board, she mentioned that the budget percentage at October should be 83.3%; actual turned out to be 87.0% Revenue; 91.5% disbursements/warrants. Revenues compared to budget estimates are up, with an increase in revenues over last year by \$927,709, and an increase in disbursements by \$1,552,749.

Auditor: Monthly Review of Revenues and Expenditures

Suzanne Sinclair, Island County Auditor, submitted at this time a written report on October revenues and expenditures for Current Expense, as well as other funds, with Memorandum summarizing. She reported that departments in the Current Expense Fund were running even approximately with the prior year relative to amount budgeted. Expenditures in the current year were ahead of revenue collections. The Commissioners are over-budget, mostly due to GMA expenditures. Other Fund revenues and expenditures are significantly behind the prior year relative to the amount budgeted which can be attributed to the lack of activity in the Courthouse Expansion accounts.

There being no further business to come before the Board at this time, the Chairman adjourned the meeting at 11:45 a.m. to meet next in Regular Session on November 23, 1998 beginning at 11:30 a.m. with the Elected Official Roundtable.

**BOARD OF COUNTY  
COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

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Wm. L. McDowell, Chairman

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Tom Shaughnessy, Member

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Mike Shelton, Member

**Attest:**

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Margaret Rosenkranz,

Clerk of the Board