

**ISLAND COUNTY COMMISSIONERS - NOVEMBER 25, 2002
Special Session and Regular Meeting Minutes**

The Board met in Special Session on November 25, 2002 beginning at 9:30 a.m., Law & Justice Facility, 101 NE 6th Street, Dept. 3 (Courtroom 3), Coupeville, Wa., with Regular Meeting at 1:30 p.m. canceled, as outlined the Board's Agenda/Notice of Special Session distributed November 20th. The regularly-scheduled Elected Officials Roundtable was held as usual at 11:30 a.m. The November 25th schedule change was made in order to accommodate those who wish to attend the memorial service for Maxine Sauter, former Island County Treasurer, at the Methodist Church in Oak Harbor at 1:00 p.m.

SPECIAL SESSION

The Board of Island County Commissioners (including Diking Improvement District #4) met in Special Session beginning at 9:30 a.m. in the Law & Justice Facility, Department III (Courtroom 3), 101 N.E. 6th Street, Coupeville, Wa. Mike Shelton, Chairman; Wm. L. McDowell, Member, and William F. Thorn, Member, were present. By unanimous motion, the Board approved and signed the minutes from regular meeting held on November 18, 2002.

VOUCHERS AND PAYMENT OF BILLS

The following vouchers/warrants were approved for payment by unanimous motion of the Board:

Voucher (War.) #154313-154602.....\$352,158.93.

HIRING REQUESTS & PERSONNEL ACTIONS

As presented by Dick Toft, Human Resource Director, the Board by unanimous motion, approved the following personnel action authorization:

Dept.	PAA #	Description/Position #	Action	Eff. Date
Public Works	090/02	Working Foreman I, OHRS, # 2235.03	Replacement	11/25/02

**RESOLUTION #C-101-02 ESTABLISHING A STEERING COMMITTEE TO
MANAGE COMPLIANCE WITH HEALTH INSURANCE PORTABILITY
& ACCOUNTABILITY ACT**

Resolution #C-101-02 in the matter of Establishing a Steering Committee to Manage Compliance with the Health Insurance Portability and Accountability Act was adopted by unanimous motion of the Board.

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

IN THE MATTER OF ESTABLISHING A STEERING)	
COMMITTEE TO MANAGE COMPLIANCE WITH)	
THE HEALTH INSURANCE PORTABILITY AND)	RESOLUTION C-101-02
ACCOUNTABILITY ACT)	

WHEREAS, the Health Insurance Portability and Accountability Act, Public Law 104-191, (hereinafter referred to as HIPAA) was enacted on August 21, 1996 by Congress. HIPAA provides for improved efficiency and effectiveness of the health care system by standardizing the format, content, and data elements in electronic health care transactions; streamlines processes and lowers overall administrative costs of health care in the United States; and provides for control over the disclosure of health care information that identifies an individual; and

WHEREAS, HIPAA affects policies, procedures, contracts, technology, record retention, and employee training relating to the collection and dissemination of individual health care information gathered during the course of

County business; and

WHEREAS, the Board of County Commissioners finds that the most effective means of implementing the requirements of the Health Insurance/Information Portability and Accountability Act is to establish a Steering Committee; and

NOW, THEREFORE, the Board of County Commissioners of Island County does resolve as follows:

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Section I. Individuals in the following positions are hereby appointed to the Steering Committee:

- a) Health Services Director or designee
- b) Risk Manager or designee
- c) Central Services Director or designee
- d) Prosecuting Attorney or designee
- e) Coroner or designee
- f) Sheriff or designee
- g) Juvenile Court Services Director or designee
- h) Human Resources or designee
- i) Records and Information Services Manager (Committee Coordinator)

Section II. The HIPAA Steering Committee is responsible for managing the process of planning, implementing, arranging for training concerning, and evaluating compliance with the Health Insurance/Information Portability and Accountability Act for Island County Government.

Section III. Objectives of the Steering Committee:

A. Gather information about HIPAA, evaluate applicability, and disseminate this information to appropriate individuals, agencies within Island County and, after identifying them, any "business associates" as defined in the Act.

B. Conduct a survey of all Island County government offices and departments to identify affected records and offices under HIPAA determine risks, needs, gaps and compliance issues.

C. Make a recommendation to the Board of County Commissioners regarding Covered Entity Status of Island County government offices and departments and any "business associates" as defined under the Act.

D. Select Sub-committee members from offices and departments as appropriate to the process of compliance with HIPAA.

E. Lead implementation of necessary changes in policies, procedures, contracts, technology hardware, software and networks, records and information storage, retention, transfer and destruction, and employee training to gain compliance with HIPAA.

F. Create an initial and ongoing HIPAA audit plan for Island County.

ADOPTED this 25 day of November, 2002.

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

Mike Shelton, Chairman
Wm. L. McDowell, Member
William F. Thorn, Member

ATTEST:
Elaine Marlow,
Clerk of the Board

STAFF SESSION SCHEDULE – DECEMBER, 2002

The Board, on unanimous motion, approved the Staff Session Schedule for December, 2002. Important to note that the regular first Wednesday staff session on December 4, 2002 has been canceled, and a special staff session scheduled for December 11th. The regularly-scheduled third Wednesday staff session, December 18, 2002, will be held as usual. Both sessions begin at 9:00 a.m. and are held in Conference Room #116, Courthouse Administration Building, 1 N.E. 7th Street, Coupeville, Wa.

CLAIM FOR DAMAGES #R02-038CD – DANE H. PENERY

Based on review and recommendation by Betty Kemp, Director, GSA/Risk Management, the Board by unanimous motion denied Claim for Damages #R02-038CD by Dane H. Penery in the amount of \$10,000 alleging breach of contract and additional settlement terms.

**HEARING SCHEDULED: ORDINANCE #C-102-02 AMENDING ICC,
SECTIONS 6.08.090 AND 9.40.280 – ADD AUTHORIZED DOG OFF
LEASH AREAS ON NORTH WHIDBEY ISLAND**

On presentation and overview provided by Lee McFarland, Assistant Director, GSA, the Board by unanimous motion, scheduled a public hearing to be held on January 6, 2003 at 9:55 a.m. to consider Ordinance #C-102-02 In the Matter of Amending Island County Code sections 6.08.090

and 9.40.280 to add Authorized Dog Off Leash Areas on North Whidbey Island. As noted, the two dog off-leash areas are: Oak Harbor Off Leash Area, a designated area at the East end of Technical Road in Oak Harbor and Clover Valley Off Leash Area, a designated area adjacent to North Whidbey Parks and Recreation Ballfield complex.

**SUBSTANCE ABUSE TREATMENT – CATHOLIC COMMUNITY
SERVICES CONTRACT #HS-11-01, AMENDMENT 4**

The Board by unanimous motion, approved Amendment 4 to Contract #HS-11-10 with Catholic Community Services for substance abuse treatment, the amendment in the amount of \$6,371.26 for a new total contract amount \$558,795.26. The amendment reallocates current funds, increases the dollar amount and extends the period of performance through the end of the 2001-2003 biennium for drug court [RM-HLTH-99-0073].

**RESOLUTION #C-103-02/R-38-02 – EMERGENCY LOAD LIMITATIONS
ON COUNTY ROADS DURING WINTER MONTHS**

As presented by Bill Oakes, Public Works Director, the Board by unanimous motion approved Resolution #C-103-02/R-38-02 Governing Emergency Load Limitations on County Roads, the Issuance of Special Motor Vehicle Permits to Use on Weight-Restricted County Roads, and Fixing Penalties for Violations Thereof.

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

A RESOLUTION GOVERNING EMERGENCY)	
LOAD LIMITATIONS ON COUNTY ROADS,)	
THE ISSUANCE OF SPECIAL MOTOR)	C-103-02
VEHICLE PERMITS TO USE ON WEIGHT)	R- 38 -02
RESTRICTED COUNTY ROADS, AND FIXING)	
PENALTIES FOR VIOLATIONS THEREOF)	

WHEREAS, pursuant to RCW 46.44.080, Island County may prohibit or restrict vehicle operations or vehicle weight whenever any county road, by reason of rain, snow, climatic, or other conditions, will be seriously damaged or destroyed unless the operation of vehicles thereon is prohibited or restricted or their permissible weights reduced (such periods hereafter referred to as “load sensitive periods”);

WHEREAS, Island County roads are constructed over relatively thin sub-bases, and sometimes directly over natural soil and roads constructed under aforesaid conditions are very vulnerable to rapid breakup during freezing and thawing periods; and

WHEREAS, reduced weights and speed help prevent the early breakup of roads from conditions as cited above; and

WHEREAS, the Board of County Commissioners of Island County, Washington, upon recommendation of the County Engineer, has deemed it advisable to place certain restrictions on various county roads during load sensitive periods to protect such roadways from extensive damage;

NOW, THEREFORE, pursuant to RCW 46.44.080, **BE IT HEREBY ORDERED** by the Board of County Commissioners of Island County, Washington, THAT the following notice be published once in a newspaper of general circulation in the County; THAT the wording and intent of same is a part of this Resolution; and THAT the Island County Engineer is hereby duly instructed and ordered to execute the action implied therein.

NOTICE IS HEREBY DULY GIVEN, that, under the authority of Chapter 36.75.270 and 46.44.080, Revised Code of Washington, all Island County roads subject to damage during periods when inclement natural forces are at work, will be closed to all vehicles exceeding the gross weight indicated for each tire size shown in the following tables (when said roads are posted in accordance with Item 5 below), **WITH THE EXCLUSION** of passenger vehicles including sedans, station wagons and pickup vehicles not licensed for tonnage, school buses, emergency vehicles, garbage trucks, and trucks transporting perishable commodities, home heating oil, propane, other fuel and buses other than school buses necessary to the health and welfare of local

residents. (However, under the provision of this notice, in no case shall the gross load exceed the gross loads as set forth in R.C.W. 46.44

WINTER LOAD RESTRICTIONS

(Same as Washington State Department of Transportation Emergency Load Restrictions, WAC 468-38-080)

<u>Conventional Tires</u>		<u>Tubeless or Special Tires with .5 Marking</u>	
<u>Tire Size</u>	<u>Gross Load Each Tire</u>	<u>Tire Size</u>	<u>Gross Load Each Tire</u>
-			
7.00	1800 lbs.	8-22.5	2250 lbs.
7.50	2250 lbs.	9-22.5	2800 lbs.
8.25	2800 lbs.	10-22.5	3400 lbs.
9.00	3400 lbs.	11-22.5	4000 lbs.
10.00	4000 lbs.	11-24.5	4000 lbs.
11.00	4500 lbs.	12-22.5	4500 lbs.
12.00 or over	4500 lbs.	12-24.5 or over	4500 lbs.

EMERGENCY LOAD RESTRICTIONS

(Same as Washington State Department of Transportation Emergency Load Restrictions, WAC 468-38-080)

When a rapid surface thawing over a fully frozen road base occurs (i.e., warm rain over frozen ground, or rapidly melting snow), the Emergency Load Restrictions as cited below shall be immediately imposed as directed by the Island County Engineer.

<u>Conventional Tires</u>		<u>Tubeless or Special Tires with .5 Marking</u>	
<u>Tire Size</u>	<u>Gross Load Each Tire</u>	<u>Tire Size</u>	<u>Gross Load Each Tire</u>
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7.00	1800 lbs.	8-22.5	1800 lbs.
7.50	1800 lbs.	9-22.5	1900 lbs.
8.25	1900 lbs.	10-22.5	2250 lbs.
9.00	2250 lbs.	11-22.5	2750 lbs.
10.00	2750 lbs.	11-24.5	2750 lbs.
11.00 or over	3000 lbs.	12-22.5 or over	3000 lbs.

- 1) High pressure pneumatic tires shall have the same rating as set forth in the above tables.
- 2) No allowance shall be made for any second rear axle that is suspended from the frame of a vehicle independent of the regular driving axle, and commonly known as a "Rigid Trail Axle".
- 3) The load distribution on any vehicle shall be such that it will not load the tires on said axle in excess of the prescribed load set forth in this order; provided that a truck, truck tractor, passenger bus or school bus having conventional 10.00 x 20 tires, or larger, may carry a maximum load of 10,000 lbs. on the front axle over any county highway placed under Regular Winter Load Restrictions.
- 4) Should there be evidence that any truck supplying motive power for any type of trailer is inadequate to handle with safety the specific maximum load for such trailer, the load on the trailer shall be reduced sufficiently to allow said truck and trailer to operate with safety. Any loading in excess of the specified maximum load will be considered a violation of this order.
- 5) Island County roads shall be subject to closure during the effective dates stated below; said closure to be identified by continuous or intermittent posting at such locations upon each road as may be necessary by the Island County Engineer, as conditions require, to protect and maintain the same during each period.
- 6) Speed limit is 30 miles per hour for all trucks or buses except emergency vehicles, school buses, and passenger carrying vehicles as described above.

SPECIAL PERMITS

Special permits may be issued by the County Engineer, or his representative, for loads in excess of allowable loads stated above, by the following method:

- 1) Any application shall apply in person to the County Engineer's office or

Road Shop Supervisor's office for the applicable district during normal business hours. The applicant must be the vehicle operator, owner, or other responsible party.
- 2) A permit will be issued only when the applicant has provided all necessary Information.
- 3) The following will be considered in evaluating the permit application:
 - a. number and frequency of trips requested,
 - b. other permits granted for the same route,
 - c. availability of alternate routes,
 - d. climatic conditions,
 - e. degree of overload over restricted load limits, and
 - f. current road surface condition.
- 4) If a permit is issued, it must be carried in the vehicle while traveling a County road on which weight restrictions have been imposed.

PENALTY

Any person violating any emergency load limitation on a County road during a load sensitive period shall be in

violation of this Resolution. A violation of this Resolution shall constitute a traffic infraction under the provisions of RCW 46.44.105, and RCW 46.44.080, subjecting the violator to the monetary penalties provided in RCW 46.44 and RCW 46.61.

ACTION FOR DAMAGES

Any person operating a motor vehicle upon, across, over any County road in violation of any provision of this Resolution shall be liable under RCW 46.44.110 and RCW 46.44.120 for any damage caused to such County road as the result of such violation.

SEVERABILITY

If any provision of this Resolution or its application to any person or circumstance is held invalid, the remainder of the Resolution or the application of the provision to other persons or circumstances shall not be affected.

THIS ORDER SHALL BECOME effective and be in full force on or after the date of adoption through the 30th day of April 2003, and the foregoing regulations will be rigidly enforced.

ADOPTED this 25 day of November, 2002.

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

Mike Shelton, Chairman
Wm. L. McDowell, Member
William F. Thorn, Member

ATTEST:

Elaine Marlow
Clerk of the Board

**RESOLUTION #C-104-02/R-39-02 – ANNUAL ROAD CONSTRUCTION
PROGRAM FOR YEAR 2003 AND PROPOSED ER&R FUND
EQUIPMENT PURCHASES 2003**

Resolution #C-104-02/R-39-02 In The Matter of Approving Annual Road Construction Program for year 2003 and proposed ER&R Fund Equipment Purchases 2003, was approved by unanimous motion of the Board, as presented by Bill Oakes, having been a topic of discussion at a previous staff session.

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

**IN THE MATTER OF ADOPTION OF)
THE ANNUAL ROAD CONSTRUCTION) RESOLUTION C-104-02
PROGRAM FOR THE YEAR 2003) R-39-02**

WHEREAS, it is required by RCW 36.81.130 that the Annual Road Construction Program be adopted prior to the Annual Budget; and

WHEREAS, the Six-Year Transportation Improvement Program was adopted at public hearing as required by law on June 24, 2002; and

WHEREAS, the Board of County Commissioners has reviewed the work accomplished under the current Six-Year Program to determine current needs in order to revise and extend the comprehensive road program; **NOW**,

THEREFORE,

BE IT HEREBY RESOLVED that the attached list of projects as selected from the aforementioned Six-year Transportation Improvement Program with 2003 Proposed Equipment Purchases by ER&R Fund be adopted.

PASSED BY UNANIMOUS VOTE AND ADOPTED this 25th day of **November, 2002.**
BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman
Wm. L. McDowell, Member
William F. Thorn, Member

ATTEST:

Elaine Marlow,
Clerk of the Board

LEASE AGREEMENT #PW0220-78 - WASHINGTON STATE DEPARTMENT OF TRANSPORTATION AND ISLAND COUNTY FOR OPERATION AND MAINTENANCE OF KETTLES TRAIL

The Board approved by unanimous motion Lease Agreement #PW0220-78 [State Numbers AA1-11238/IC 1-15-06040] between Island County and the State of Washington Department of Transportation, for leasing State right-of-way to operate and maintain a trail segment as part of the Ebey's Landing National Historic Reserve Trail system/Island County Community Trails Project (Kettle's Trail). As indicated by Mr. Oakes, this is a 10 year lease, and upon expiration of the initial term, may be renewed for two additional ten year periods.

ANNEX REMODEL PROJECT BID AWARD: PUBLIC WORKS RECOMMENDS AWARD TO SECOND LOWEST BIDDER, HANSON BROTHERS, INC., AND REJECTING LOW BID BY EBENAL GENERAL, INC.

The recommendation of Public Works Department for the Courthouse Annex Remodel Project Bid Award to be made to the second lowest bidder, Hanson Brothers, Inc., and rejection of the low bid from Ebenal General, Inc., was presented by Mr. Oakes.

Chairman Shelton first advised that the Board had been handed a document a few minutes before the meeting began, a Temporary Restraining Order, signed by Superior Court in Skagit County indicating that the Board could not sign a contract, and the Chairman asked for comments from the County's Chief Civil Deputy Prosecuting Attorney, in that regard.

David L. Jamieson, Jr., Chief Civil Deputy Prosecuting Attorney, reported that he had been on the phone earlier this morning with Attorney Frank Chmelik, Bellingham, who represents Ebenal General, Inc. and some others. From his conversation and from reading the Temporary Restraining Order, it does not restrict the Board from determining who to award the bid to for the Courthouse remodel project, but Ebenal will take issue if the Board awards a contract to anyone other than Ebenal, and in that case, the Board is enjoined, at least temporarily, from entering into a contract with anyone other than Ebenal.

Bill Oakes handed out for the Board's review and proposed action, a Resolution in the matter of awarding the bid for the Courthouse Annex Remodel Project, with Findings of Fact outlining the basis on which Public Works' made its recommendation to award bid to the second lowest bidder. Based on background reference check, he confirmed recommendation that the bid not be awarded to the lowest bidder, Ebenal General, Inc., but instead be made to the second lowest bidder, Hanson Brothers, for the base bid and alternates 1, 2, 3c, 4, 7, 9, 10a, 10b and 10c, and trench safety systems, including sales tax, in the total amount of \$2,968,503.00.

Scott Maresh, Attorney, Chmelik Sitkin & Davis, P.S., Attorneys, Bellingham, Wa., representing Ebenal General, Inc., Blyth Heating & Plumbing, and Sound Electric and a taxpayer in Island County, identified himself as the person

who delivered this morning the Temporary Restraining Order. He advised that bids were opened on October 31, 2002, and in the subsequent weeks his client and the two subcontractors he represents sought information from the Public Works Department and the Architect on the status of the contract award. None of his clients received any information, although in the contracting community, rumors were rampant the bid would go

to Hanson Brothers instead of Ebenal General. His concern was that Ebenal General did not get an opportunity to respond to any potential concerns there might be. His clients were not aware of this meeting until they contacted Public Works Friday afternoon, and it was not until over the weekend through an Internet search they saw an agenda for today's meeting which indicated that the Public Works' recommendation was that Ebenal not be given the award. A period of 14 days is requested in order to sort this out, and that if there are any issues, they have an opportunity to respond to those issues. Sound Electric as a taxpayer in Island County has concern that instead of the award being made to the low bidder, that it will go to a higher bidder without at least some consideration.

Mr. Oakes was out of the County last week, but was aware that the Assistant Public Works Director talked to Ebenal last week. Mr. Oakes had not received any calls from any of these companies.

Commissioner Thorn moved that the Board approve Resolution #C-105-02 in the matter of Awarding the bid for the Courthouse Annex Remodel Project to Hanson Brothers, Inc. the lowest responsible bidder, for the base bid and alternates 1, 2, 3c, 4, 7, 9, 10a, 10b and 10c, and trench safety systems, including sales tax, in the total amount of \$2,968,503.00. Motion, seconded by Commissioner McDowell, carried unanimously.

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

IN THE MATTER OF AWARDING THE
BID FOR THE COURTHOUSE ANNEX
REMODEL PROJECT

RESOLUTION NO. C- 105 -02

WHEREAS, Island County called for bids for the Island County Courthouse Expansion and Improvement Project, Phase 3: Annex Remodel; and

WHEREAS, four bids were received and the total for the base bid and alternates 1, 2, 3c, 4, 7, 9, 10a, 10b, 10c, and Trench Safety Systems including sales tax are as follows:

1. Ebenal General, Inc. - \$2,880,238.50;
2. Hanson Brothers, Construction - \$2,968,503.00;
3. Colacurcio Brothers - \$2,979,122.67; and
4. Columbia Rim Corporation - \$3,316,387.50;

WHEREAS, RCW 36.32.250 provides that "The contract for public work shall be awarded to the lowest responsible bidder. Any and all bids may be rejected for good cause"; and

WHEREAS, following receipt of the bids, the County's architect received Ebenal General, Inc.'s (Ebenal) Contractor's Qualification Statement that contained representations, under oath in subsection 3.2 which denied that there are any claims or lawsuits pending or outstanding against Ebenal and also denied that Ebenal had filed any lawsuits with regard to construction contracts within the last five years; and

WHEREAS, an independent investigation of Ebenal's qualifications by the Public Works Department as well as the County's architect, disclosed that Ebenal is currently involved in two lawsuits Ebenal filed within the past two years in the Skagit County Superior Court regarding construction contracts and that an additional lawsuit was filed against Ebenal in Skagit County in 2001 by an Ebenal subcontractor claiming not to have been paid by Ebenal;

WHEREAS, the owners who are defending the Skagit County lawsuits brought by Ebenal, the City of Mount Vernon and Skagit Housing Solutions, both in counterclaims allege that Ebenal failed to complete the construction work in accordance with the specifications and Skagit Housing Solutions also claims that Ebenal failed to complete the construction work within the required contract completion time;

WHEREAS, the County's architect also checked with the LaConner School District that had a construction contract with Ebenal that began in 1999 but was not timely completed by Ebenal and when final completion was finally issued it had to be rescinded for corrections until Ebenal remedied construction defects; and

WHEREAS, during the City of Mount Vernon public works construction project that resulted in the above described lawsuit by Ebenal, Ebenal was cited by the Washington State Department of Labor and Industries for a serious workplace safety violations regarding asbestos abatement; and

WHEREAS, the Board in determining the "lowest responsible bidder" may take the following elements into consideration, in addition to the bid amount:

- (a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- (b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (c) Whether the bidder can perform the contract within the time specified;
- (d) The quality of performance of previous contracts or services;
- (e) The previous and existing compliance by the bidder with laws relating to the contract or services; and
- (f) Such other information as may be secured having a bearing on the decision to award the contract; and

WHEREAS, the second lowest bidder, Hanson Brothers, Inc.'s qualifications have been investigated by the County's architect and the Public Works Department and no questions regarding Hanson Brothers' qualifications or performance have been raised; and

WHEREAS, the Public Works Director has recommended that the Board reject the Ebenal bid as not being the lowest responsible bid and that the Board award the bid to the second lowest bidder, Hanson Brothers, Inc.; NOW, THEREFORE, the Board makes the following

FINDINGS OF FACT

1. The bid submitted by Ebenal General, Inc., (Ebenal) while the lowest monetary amount, is not the lowest responsible bid.
2. The character, integrity and credibility of Ebenal is in serious question because it gave an apparently untrue answer to subsection 3.2 of the Contractor's Qualification Statement that there are no claims or lawsuits outstanding against it, and, further, Ebenal gave an apparently untrue answer to the question whether it had filed any lawsuits with regard to construction contracts within the last five years.
3. There is serious question regarding the quality of the work in Ebenal's recent public works project for the City of Mount Vernon as the City, in currently pending litigation, contends in its counterclaim that Ebenal did not complete all the work in accordance with the contract and is in breach of the contract and failed to negotiate in good faith.
4. There is serious question regarding the quality and timely completion of Ebenal's recent construction project work for Skagit Housing Solutions as Skagit Housing Solutions, in currently pending litigation, contends in its counterclaim that Ebenal failed to perform the work in accordance with the contract schedule and specifications.
5. There is serious concern whether Ebenal would timely complete this public works project due to its untimely completion of the LaConner School District public works project.
6. There is serious concern about whether Ebenal would safely complete this public works project due to its non-compliance and citation for a serious safety violation by the Washington State Department of Labor & Industries.
7. The background and qualifications of the second lowest bidder, Hanson Brothers, Inc., has been investigated and no negative information whatsoever has been raised.
8. This Board has an obligation to the taxpayers and citizens of Island County to contract for

the best public work at the lowest price practicable to the public, and, in doing so, this Board using its best judgment and discretion determines that the lowest bid of Ebenal General, Inc. should be rejected for cause as not being the lowest "responsible" bid and the bid of Hanson Brothers, Inc. should be accepted as the lowest responsible bid.

BASED UPON THE FOREGOING FINDINGS,

The Board of Island County Commissioners hereby awards the bid for the Island County Courthouse Expansion and Improvement Project, Phase 3: Annex Remodel to Hanson Brothers, Inc. as the lowest responsible bidder in the total amount of the base bid and alternates 1, 2, 3c, 4, 7, 9, 10a, 10b, 10c, and Trench Safety Systems, including sales tax, in the amount of \$2,968,503.00. The Board waives Hanson Brothers, Inc.'s failure to state bid amounts in words as well as figures as non-material irregularities. The Board rejects the bid of Ebenal General, Inc. for cause based upon the above Findings and supporting recitals.

DATED this 25 day of November, 2002.

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

*Mike Shelton, Chairman
Wm. L. McDowell, Member
William F. Thorn, Member*

ATTEST:

Elaine Marlow
Clerk of the Board

QUITCLAIM DEED – WSDOT LAND EXCHANGE

As presented and recommended for approval by Mr. Oakes, along with Dave Bonvouloir, Solid Waste Manager, the Board by unanimous motion, approved and authorized the Chairman's signature on Quitclaim Deed from the State of Washington Department of Transportation (WSDOT) for Land Exchange under Island County Work Order #367 for a total of \$289,968.80. This Quitclaim Deed conveys to Island County rights to the land associated with the Patmore Pit exchange [IC#1-15-00009].

**HEARING SCHEDULED: RESOLUTION #C- 106-02/PLG-024-02 AMENDING
PLANNING & COMMUNITY DEVELOPMENT BUILDING PERMIT
FEE SCHEDULE**

As presented by Phil Bakke, Planning & Community Development Director, and previously discussed with the Board at Staff Session, the Board by unanimous motion scheduled a Public Hearing for December 16, 2002 at 10:30 a.m. to consider Resolution #C-106-02/PLG-024-02 Amending the Planning & Community development Building Permit Fee Schedule.

PUBLIC COMMENTS

No Public Comments at 10:00 a.m. Special Session adjourned at 10:01 a.m.

REGULAR SESSION

The Board reconvened at 11:30 a.m. in Regular Session, in Conference Room #116, County Administration Building, 1 NE 7th Street, Coupeville, WA. with Mike Shelton, Chairman; Wm. L. McDowell, Member, and William F. Thorn, Member, present.

**RESOLUTION #C-100-02 REGARDING AUTHORIZING LEGAL ACTION TO COLLECT REIMBURSEMENT
FOR SUPERIOR COURT JUDGES' FRINGE BENEFIT
PAYMENTS TO THE STATE**

Chairman Shelton noted that as a result of Executive Session during November 20, 2002 Staff Session, as allowed under R.C.W. 42.30.110(1)(i) to discuss with legal counsel issues related to litigation and/or potential litigation, the Board at that meeting adopted by unanimous motion Resolution #C-100-02, authorizing legal action to collect reimbursement for Superior Court Judges' Fringe Benefit payments to the State.

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

RESOLUTION AUTHORIZING LEGAL
ACTION TO COLLECT
REIMBURSEMENT FOR SUPERIOR
COURT JUDGES' FRINGE BENEFIT
PAYMENTS TO THE STATE

RESOLUTION NO. C-100-02

WHEREAS, the Island County Auditor advised the Board that Island County paid the State of Washington, upon demand and billing of the State Administrative Office of the Courts, \$31,825.82 within the last three years, as fifty percent of the costs of fringe benefits paid to the Island & San Juan County Superior Court judges; and

WHEREAS, the Thurston County Superior Court in *Thurston County, et al. v. The State of Washington, et al.*, Cause No. 01-2-01723-1, by Final Order and Judgment dated September 12, 2002, determined that counties are not required to pay any portion of "fringe benefits" of superior court judges as they are not part of the salary of the superior court judges and the court entered judgment against the State of Washington requiring it to reimburse the nine named counties and Island County was not one of the Plaintiffs in that lawsuit; and

WHEREAS, this Board filed a claim for reimbursement with the State on September 19, 2002, more than 60 days have elapsed, and the State has not responded to the County's claim; and

WHEREAS, Island County should recover the payment of the fringe benefits to the State as such payments were found to have not been lawfully required by the State and upon recovery of funds the funds should be split between Island County and San Juan County, which originally reimbursed Island County after full payment was made to the State, in proportion to the amounts paid by each county; NOW, THEREFORE,

IT IS HEREBY RESOLVED that the Island County Prosecuting Attorney, with the aid and assistance of the Island County Auditor and any other county departments, is authorized and directed to commence legal action to collect the \$31,825.82 paid to the State for the Island & San Juan Judicial District Superior Court judges' fringe benefits.

DATED this 20th day of November, 2002.

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

ATTEST:

Ellen K. Meyer, Deputy
Elaine Marlow
Clerk of the Board

Mike Shelton, Chairman
Wm. L. McDowell, Member
William F. Thorn, Member

AMEND DECLARATION OF TRUST – JAMES SCRIVEN

As submitted, with recommendation of approval from the Planning Director, the Board by unanimous motion approved amendment of original Declaration of Trust as submitted, to change the name on the document from Whidbey Topsoil to James Scriven, with regard to CUP 31/84 – Peat Bog, Parcel R22901-070-2260.

ROUNDTABLE MEETING WITH ISLAND COUNTY ELECTED OFFICIALS

- In addition to the three County Commissioners, the following also attended the roundtable:

- Elected Officials: Tom Baenen; Greg Banks; Sharon Franzen, Mike Hawley,
Linda Riffe, Suzanne Sinclair
Others: Elaine Marlow, Dick Toft

Mr. Banks welcomed the two new elected officials, Linda Riffe and Sharon Franzen, and gave a brief background on the regular fourth Monday meetings between the Elected Officials and County Commissioners. He invited both Ms. Riffe and Ms. Franzen to spend some time with each Elected Official to talk about County operations. Following-up on his comments from October 28 concerning the Supreme Court felony murder statute decision, he noted that it would affect three murder cases in Island County; one, going back to 1988, and two others tried last year. King County has filed a motion to reconsider.

Sheriff Hawley commented about what was being proposed as a means to fund law enforcement at the State level, noting it appeared the Governor would support the local option portion. The National Sheriff's Association will be held June, 2004, in King County, with some 5,000+ anticipated.

Ms. Sinclair shared information with regard to some consideration by the State Department of Licensing about instituting two-year licensing renewals. This would directly affect licensing revenue in Island County, a loss of about \$268,000. The election to be held in February will be

for Sno-Isle Regional Library, and because it covers Island County and most of Snohomish County, the Snohomish County Auditor is proposing to place touch screen machines in Island County's polling places. Island County would run absentees as usual using punch cards. Newly Elected Officials and those who were re-elected will be sworn in on January 2, 2003, at 9:00 a.m. by Judge Churchill.

Mr. Baenen reviewed some personnel changes he was aware of that are taking place within the State Department of Revenue, and provided a few Island County statistics on valuation and tax. He noted that today was the final day of the 30-day period for citizens to submit appeals to the Board of Equalization. At last count, 150 petitions were submitted, anticipating 250.

Ms. Riffe announced that staff and the Treasurer now all have voice mail and e-mail. Interest rates as of this morning are between 1.2 and 1.6%, down even from last week. Two banks no longer are accepting money for investments: Whidbey Island Bank and Washington Federal. The Tax Foreclosure sale held on Friday took in \$36,250.00, almost double minimum bids.

Chairman Shelton encouraged the new officials' attendance at "New Officials' Orientation" scheduled for December 10-12 in Olympia.

There being no further business to come before the Board at this time, the meeting adjourned at Noon. County Offices will be closed for Thanksgiving Holiday Thursday November 28 and Friday November 29. The next Regular Board meeting to be held on Monday, December 2, 2002, beginning at 9:30 a.m.

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

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

ATTEST:

Elaine Marlow, Clerk of the Board

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