

ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING
SPECIAL SESSION - AUGUST 19, 2003

The Board of Island County Commissioners met in Special Session on Tuesday, August 19, 2003, beginning at 2:40 p.m. at the Island County Camano Multipurpose Center, 141 N. East Camano Drive, Camano Island, WA. Wm. L. McDowell, Chairman, William J. Byrd, Member, and Mike Shelton, Member, were present. Approximately 45+ members of the public were present, and County Staff attending were: Bill Oakes, Public Works Director and Dick Snyder, County Engineer. The press was represented through Kelly Ruhoff, Stanwood/Camano News.

An attendance sheet was circulated and placed on file with the Clerk of the Board.

The purpose of the Special Session was called for the purpose of conducting public hearings on the following:

- **2:40 p.m. Resolution #C-72-03/R-29-03 – Proposed Vacation - Petitioners Dean & Dianne Pachosa, portion of County Road known as Shoreline Drive, Plat of Tyee Beach, Div. #2, Sec. 11, Twp 30N, R 3E.**
- **2:45 p.m. Resolution #C-70-03/R-28-03 – Proposed Vacation - Petitioners Frederick R. & Joanne Beich, et.al., portion of County Road known as Stillaguamish Avenue, Plat of Utsalady, Sec. 19, Twp 32N., R 3E.**
- **3:00 p.m. Resolution #C-64-03/R-25-03 – Proposed Vacation - Petitioners Richard & Julie Shallow, et.al.; portion of County Road known as Barnum Road, Sec 6, Twp 31N., R 3E.**

RESOLUTION #C-72-03/R-29-03 – PROPOSED VACATION BY - PETITIONERS DEAN & DIANNE PACHOSA, PORTION OF COUNTY ROAD KNOWN AS SHORELINE DRIVE

Public Hearing opened for the purpose of considering Resolution #C-72-03/R-29-03, vacation as petitioned by Dean & Dianne Pachosa for a portion of County Road known as Shoreline Drive in the Plat of Tyee Beach, Div. #2, Sec. 11, Twp 30N, R 3E. The petition by the Pachosas requesting vacation of a portion of Shoreline Drive that runs along the east side of their parcel, was referred to the County Engineer by the Board on May 19, 2003.

Bill Oakes, Island County Public Works Engineer, reported in accordance with R.C.W. 36.87 and ICC 12.03, indicating in this case that the County Engineer would not be recommending approval of the proposed vacation. The proposed vacation does not meet the test of vacation in that the general public will not benefit by the vacation and the right of way is of use, at least 16'. The original application for vacation of right of way was on the seaward side up to within two feet of the existing asphalt.

Ed Herring, 3085 Shoreline Drive, residing about two blocks past the area in question was amazed the matter was even being addressed because the proposal to vacate land on the seaward side and give back on the other side makes no sense; there is nothing to trade off and does not benefit others in the neighborhood. He has nothing against the petitioners but was not in favor of the proposed vacation when it would cost everyone that has to get in and out of there every day.

Dean Pachosa, Petitioner, advised that his initial proposal had been 2' vacation but in discussion with Dick Snyder 3' was recommended, and surprised he County Engineer's proposal today is denial. Mr. Pachosa described his proposal as a three-phase project: (1) obtain approval of the vacation; (2) opportunity to cut away the bank on the hill side of the property; and (3) build a house. His permit application shows the total plan and he believed it would benefit the community by getting rid of the bank and building a retaining wall. They have been issued a clearing and grading permit and the whole 100' will be opened to everyone down stream of the beach and would be better for the community.

Mr. Snyder indicated that Mr. Pachosa was correct about his comments on initial review that it looked like the idea of moving the right of way over made sense; however, after looking at it in the field, seeing the hill side coming down and that to move the right of way over would require a fairly high retaining wall to accomplish parking area, the County must consider future long term maintenance of a retaining

wall. In addition, there is no guarantee that a retaining wall would be stable for 15 to 20 years. Last Friday, Mr. Snyder amended the County Engineer's report, and unfortunately was not able to get in touch with Mr. Pachosa. The amended report was submitted for the record:

Amendment to Engineer's Report
R/W Vacation on Shoreline Drive
August 15, 2003

Requested vacation of R/W by Dean & Dianne Pachosa was reviewed in the field twice. Shoreline Drive in this area was built adjacent to the tow of the steep hillside, and at the southern end of the Pachosa's ownership actually lies partly outside the R/W. The road is a 10 ft. wide paved road and has a 16 ft. total width R/W. At the Pachosa property, the road lies within the R/W at the north end, albeit on the west side of the 16 ft. wide strip; on the southern end, the west side of the road is off R/W by about 4 ft. The petition was for the county to vacate some R/W on the east side to allow the Pachosa's to reduce the setback distance for construction. The original Engineer's Report recommended that a portion of the R/W on the east side of the pavement could be vacated in exchange for a like amount of R/W on the west side from the property owner. Upon the second field review, it became more obvious that the hillside adjacent to the R/W on the west side was not stable by itself. If the R/W is widened to the west in exchange for vacating R/W to the petitioner on the east side, a substantial retaining structure would need to be built, at no expense to Island County. The wall would have to be set back at least 4 feet from the edge of any new R/W. to allow for shy distance of vehicles passing by. There is no long term guarantee that the retaining wall would be maintenance free for the future. After due consideration of all facts and the liability and risk of a wall, I now recommend that the request for vacating a portion of the road R/W be disapproved.

John Moore 3081 Shoreline Drive, spoke against vacating the road as requested. He submitted for the record 4 photographs dated 8/17/03 showing the area in question and the problems said vacation would create, the height behind the properties, noting it would be a road for parking. Sixteen feet of right of way, even two feet either side would still give only 20 feet total and two cars cannot pass. Residents want to see a 16 foot paved street. What is proposed for a future road he could not see that potential especially since it would affect 40 people should there be a slide – those folks to the north would be stranded. *[photographs placed on file with the Clerk of the Board].*

Dean Pachosa addressed the Board and audience again to note that he wanted 16' like everyone else. The whole roadway along the back is full of driveways and retaining walls, hard to get through during peak traffic times anyway. The Pachosas are trying to get the right of way of the road aligned with the road itself. The road is in wrong spot and they feel that they are being penalized for it.

No others indicated a desire to speak either for or against the proposed vacation and the Chairman closed public testimony on the issue.

Commissioner Shelton commented that throughout Island County there are a multitude of places where the roadway does not fit in the right of way. If the road is not in the right of way, because of public use, the County has gained prescriptive rights where the road is located. At the same time, the County does not lose its right to the right of way it owns. In this case there is a small portion of the road that does get out of the right of way and toward the hillside. Many have written concerning this road and inadequacy of it. The pictures submitted clearly show height of the bank behind the beach property at this point it seems to me obvious we need to support the Engineer's recommendation.

Commissioner Byrd expressed much the same thoughts, and noted the areas staff and the Board looked at. The County is governed by specific laws that must be followed and the first issue to deal with is that while the road may not be exactly where it is supposed to be, in every case the road favors the hill. That gives a greater problem because there have been slides in that area as the photos Mr. Moore submitted indicate. There is a serious problem there with sloughing. He told the group that the Public Works Department was in the process now of taking a look at trying to restore all 16' along that area. Although there is no firm time line, he provided assurance it would take place shortly.

Chairman McDowell provided an informational note that if a road is built outside the right of way, over time county government owns that land and has the right to use it as well. What he is concerned with in any vacation is that everyone be treated the same, and in that vein, the Board asked Public Works to come up with a proposed policy in that respect. The County Engineer today provided that in draft form for the Board's review and consideration at a subsequent meeting. One of the things the policy will do is provide that if any right of way is ever moved, it will not be moved into unstable areas. In the case at hand, the proposal was to move the right of way closer to the hill in a land slide-prone area, and he commented that regardless of retaining walls, which require maintenance, if the hill is going to come down it will come down.

By unanimous motion, the Board approved Resolution #C-72-01/R-29-03 denying vacation of a county road known as Shoreline Drive in the plat of Tyee Beach, located in Sec. 11, Twp 30N, Rge. 3E, W.M. in that the public will not be benefited by this vacation; said road right of way is a component part of existing county road; and it will be advisable to

preserve this right of way as part of the general road system.

**In the Matter of the Petition of
Dean and Dianne Pachosa et.al**

**Resolution No. C- 72 -03
R- 29 -03**

Final Order of Vacation

For the Vacation of a County Road
known as Shoreline Drive
situated in the Plat of Tyee Beach,
located in Section 11, Township 30N Range 3E, W.M.

The Board having on the 19th day of August, 2003, denied the order of vacation of said road right of way.

It is Ordered by the Board, all the members concurring, that the county road right of way petitioned to be vacated by Dean and Dianne Pachosa and others, not be vacated as follows:

- The public will not be benefited by this vacation.
- Said road right-of-way is a component part of existing County Road.
- It will be advisable to preserve this right of way as part of the general road system.

Done this 19th day of August, 2003.

**BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON
WM. L. MCDOWELL, Chairman
WILLIAM J. BYRD, Member
MIKE SHELTON, Member**

ATTEST: By: Ellen Meyer, Deputy
Elaine Marlow, Clerk of the Board

**RESOLUTION #70-03/R-28-03 – PROPOSED VACATION BY PETITIONERS
FREDERICK R. & JOANNE BEICH, ET.AL., PORTION OF COUNTY ROAD
KNOWN AS STILLAGUAMISH AVENUE**

The next hearing dealt with Resolution #C-70-03/R-28-03 a proposed vacation by Petitioners Frederick R. & Joanne Beich, et.al., a portion of County Road known as Stillaguamish Avenue, Plat of Utsalady, Sec. 19, Twp 32N., R 3E. For very much the same reasons as previous proposed vacation, Mr. Oakes reported that the County Engineer recommended against the vacation based on the following:

- The public will not be benefited by this vacation;
- It will be advisable to preserve this road as a part of the general road system
- The section of unopened Stillaguamish Avenue for which the petitioners have requested vacation, does provide access to Lots 11 and 12 of the plat of Buena Vista, Division 4 and Parcel R33219-475-2560 even though owners of these two lots and parcel currently have access;
- Other property owners also have protested the vacation proposal but it does not appear that access to their lots would be affected.

Hi Bronson, 90 Vista Del Mar Street, President, Buena Vista Community Club, referenced his letter faxed to the Board yesterday dated August 18, 2003 protesting the proposed vacation on behalf of the Buena Vista Community Club, a Camano Island community of 165 homes, some abutting the portion of Stillaguamish proposed for vacation. The neighborhood is concerned because the right of way is used by the community, and for the reasons outlined in the letter support the recommendation of the County Engineer to not approve the vacation.

David Brose, owning the last remaining vacant lot along that street, adjacent to the property requested for vacation, spoke in opposition to the vacation and expressed his concerns. The well servicing Utsalady has a ring of protection around it that enters his property about half-way through and that is the area he has access to. Although it is not the portion being

proposed for vacation, because of the well location he cannot depend on using that for access. If he puts a road in he would have to do so above or further in closer to Ms. McGill's place. The property is fairly steep and because of having been disabled for a few years it would be difficult for him to carry things from up above or down below. He is planning to retire and move here in the next few years and this is a real issue for him. This is also the only alternate access for the community.

Agrypina Mlynarceyk, 184 E. Belvedere Street, also owning a four-plex, stated that Stillaguamish had been open and maintained by her since August 2, 1989. She needs it in order to have her three septic pumped every two to three years, and it is the only access in to mow her lawn. Her house is off Stillaguamish facing North Camano Drive and she needs the road open. The road is public and she asked that the County keep it as a county road even though she has maintained it for so many years. Tenants in the four-plex have boats and kayaks, and some have extra cars.

Glen Jones, 175, E. Sky Vista, agreed with what had been stated by others opposing the vacation and emphasized this is their only egress. Up above where their driveways are is a private road; the property under discussion is a County road and should remain open.

Walt Huehnerhoff, 163 Sky Vista, told the Commissioners that the street behind his property is Stillaguamish and he had no access to that street except the property line. He mentioned too, as noted in the letter from the community association, the need to access by utilities, cable and gas. Should this be vacated his environment that should be serene probably would be used as a thoroughfare and he did not want that to happen.

Michele McGill, 191 Sky Vista Place, mentioned that her septic location is where the property is proposed for vacation, and is also the only way she can get to the front of her property in order to have the septic pumped, or have anything hauled in.

No others indicated a desire to speak either for or against the proposed vacation, and the Chair closed public testimony.

Commissioner Shelton, after listening to the testimony, believed it very clear that Stillaguamish was an important access for a good number of folks for access, roadway and utilities; Commissioners Byrd and McDowell agreed.

By unanimous motion the Board approved Resolution #C-70-03/R-28-03 denying approval of said vacation for the reasons so stated by the County Engineer.

**In the Matter of the Petition of
Frederick R. and Joanne C. Beich et.Al.**

**Resolution No. C- 70 -03
R- 28 -03**

Final Order of Vacation

**For the Vacation of a County Road
known as Stillaguamish Avenue
located in Section 19, Township 32N, Range 3E, W.M.**

The Board having on the 19th day of August, 2003, denied the order of vacation of said road.

It is Ordered by the Board, all the members concurring, that the county road petitioned to be vacated by Frederick R. and Joanne C. Beich and others, not be vacated as follows:

- The public will not be benefited by this vacation.
- It will be advisable to preserve this road as part of the general road system.
- The section of unopened Stillaguamish Avenue for which the petitioners have requested vacation, does provide access to Lots 11 and 12 of the Plat of Buena Vista, Division 4 and parcel R33219-475-2560 even though owners of these two lots and parcel currently have access.
- Other property owners also have protested the vacation but it does not appear that access to their lots would be affected.

Done this 19th day of August, 2003.

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

WM. L. MCDOWELL, Chairman
WILLIAM J. BYRD, Member
MIKE SHELTON, Member

ATTEST: By: Ellen Meyer, Deputy
Elaine Marlow, Clerk of the Board

RESOLUTION #C-64-03/R-25-03 – PROPOSED VACATION BY PETITIONERS RICHARD & JULIE SHALLOW, ET.AL., PORTION OF COUNTY ROAD KNOWN AS BARNUM ROAD

Public Hearing on Resolution #C-64-03/R-25-03 proposed vacation by Petitioners Richard & Julie Shallow, et.al.; portion of county road known as Barnum Road; Sec 6, Twp 31N., R 3E. was opened by the Chairman. Mr. Oakes reported that in this case, the recommendation of the County Engineer was denial, based on the following:

- The public will not be benefited by this vacation;
- Said road is now in use as a County Road;
- It will be advisable to preserve this road as part of the general road system;
- There is overwhelming support from citizens on Camano Island to keep the road open;
- In addition, the road abuts a body of water and RCW 36.87 prohibits vacation unless the road will be used for specific purpose by a public authority which isn't the case in this matter.

Jenny Baker, Snohomish Conservation District, Habitat Restoration Coordinator, has been working with the Shallows, involved from a stream restoration perspective. The concern is Barnum Road and Kristoferson Creek has been identified as a problem in: (1) Limiting Facilities Report for Island County; and (2) Draft WIRA 6 Salmon Strategy. She noted a letter from Lew Legat, then County Enigneer, dated May 20, 1999, to Barnum Road property owners, indicating that the County was interested in vacating the road at the suggestion of then County Commissioner Bill Thorn. The opening paragraph indicates that the road has a gravel surface and parallels Russell Road that has a paved surface, and that this portion of Barnum Road has a low traffic count and gets minimal attention by the Public Works

Department. Two options were outlined in that 1999 letter: Option 1 – Road Closure; Option 2 – Road Vacation. From her perspective it is a good opportunity for stream restoration. If the road can be vacated

there are dollars that can be provided from Fish and Wildlife Service to assist in improving the habitat. If it is an issue that the public uses the road, that issue can be addressed other ways, i.e. Russell and Shumway. Roads. From the description on the deed and county maps indicating that the property extends to the south side of Barnum Road, she requested clarification on the issue that it abutts a body of water.

Mr. Oakes pointed out that R.C.W. 36.87.130 states that no county shall vacate a county road or part thereof which abuts on a body of salt or fresh water unless the purpose of the vacation is to enable any public authority to acquire the vacated property for port purposes, boat moorage or launching sites, or for park, viewpoint, recreational, educational or other public purposes, or unless the property is zoned for industrial uses. He believes the spirit within which this is written is to give people access to waters of the state. This road would abut waters of the state.

Lawrence Baum, Lil' Cat Boat Co., Consulting Geologist, submitted a letter dated August 14, 2003 on behalf of the Kristoferson Creek Commercial Landowners Association, signed by all of the business members of the Association, objecting to vacation of a portion of Barnum Road for the following reasons:

- Little or no attempt on the part of petitioners to embrace within the decision making process the larger community of the Kristoferson Creek watershed. Petition for rejection of the proposal was previously forwarded to the Board
- Removal of the culverts would render this portion of Barnum Road impassable by car and private ownership of this land could result in the fencing-off of the land prohibiting or restricting public access to this portion of Triangle Cove.
- While applaud the efforts to save and re-establish endangered fish populations, simply removing culverts is a premature and costly expense which may or may not even have a desired outcome
- The move is premature because an overall program an overall program of watershed management for this creek and its drainage is not yet in place

- Have already seen with issues dealing with beavers flooding local drainfields at a cost of many thousands of dollars to the county and the potential for economic loss to landowners through increased buffer zones along the Creek, how piece-meal attempts to encourage fish invariably lead to unforeseen and undesirable consequences.

[complete letter on file with the Clerk of the Board]

Ron Wells, 175 Triangle Cove Lane, in response to the letter read above, confirmed that there is no public access that he is aware of to Triangle Cove.

Vicky Eisenberg, 231 Barnum Road, representing herself as well as Dennis Perrino, Peter Maurer, Joyce Sutton, and D. Yarwood, stated that they still use that as a trail and if vacated and can no longer use it, they all would be opposed to the vacation.

Lister Carroll, 253 Barnum Road, pointed out that the turn off from Russell Road is peculiarly shaped and emergency vehicles he did not think could make it. Tractor-trailers come on the gravel road now, otherwise could not make the turn; it is a big safety issue. The other concern is for commerce/deliveries.

Rick Shallow, Petitioner, 148 Russell Road, explained that in taking the petition around for signatures, he did as instructed which was to go around to people who live in the area, not up stream or along the highway. He wanted the road closed because it goes through his property on both sides. He is not opposed to a trail through, just against cars going through and using his property as a personal dumping ground. As far as high tide and being able to get to the Cove from his property, he said that once in a blue moon he could go across and get in.

Gordon Messier, 321 Barnum Road, was also concerned about access and the dirt portion of the road and how larger vehicles need to use that. As far as the situation with the road crossing Mr. Shallow's property, he noted they all had that problem on Barnum Road and the public coming and leaving debris.

John Dwyer, 273 Barnum Road, commented that there are 18 houses on the remaining portion of Barnum Road, the road all single lane, nicely blacktopped but very narrow and no room for two trucks to pass. The residents manage it very well because when any trucks, trailers, low boys, etc. need to go along that road, the trailers are parked down on the gravel portion which is two lane. His opinion was there had to be on the east end some parking left for those trailers, low boys etc.; if not, there is no room on the entire two miles to get out of the way, and it would make it very difficult because of the dead end road.

Andy Bostrom, 275 S. Barnum Road, stated that he and his wife were against the proposed vacation, noting that folks on the Barnum side of the road like to take walks around the Cove and Driftwood Shore side and would miss having that access along the bay.

No others indicated a desire to speak either for or against the proposed vacation and the Chairman closed the public testimony portion.

Commissioner Shelton understood from the Applicant's point of view how discouraging it is when the public dumps on their property; unfortunately it is not a reason to vacate a road. The majority of testimony today from residents along Barnum Road has been that the public roadway has a public benefit and therefore, in his opinion, inappropriate to vacate a portion of it.

Commissioner Byrd recalled that several folks came to his Camano Annex office to discuss the matter with him recently, everyone opposed to the vacation and in favor of keeping the road open for recreational purposes, public use and access, other than Jenny Baker. The RCW was very clear with regard to not vacating a portion of a county road which abuts a body of salt or fresh water.

Chairman McDowell, aside from the water issue, was concerned that the road was obviously used for delivery of packages, some cars and certainly walkers and no one in good conscience could say this section is useless when it is still used by the public.

The Board, by unanimous motion, approved Resolution #C-64-03/R-25-03 denying vacation of a portion of county road known as Barnum Road in Sec 6, Twp 31N., R 3E, for reasons stated:

- The public will not be benefited by this vacation;
- Said road is now in use as a County Road;
- It will be advisable to preserve this road as part of the general road system;
- There is overwhelming support from citizens on Camano Island to keep the road open;
- In addition, the road abuts a body of water and RCW 36.87 prohibits vacation unless the road will be used for specific purpose by a public authority which isn't the case in this matter.

**In the Matter of the Petition of
Richard and Julie Shallow et.Al.**

**Resolution No. C- 64 -03
R- 25 -03**

Final Order of Vacation

**For the Vacation of a County Road
known as Barnum Road
located in Section 6, Township 31N, Range 3E**

The Board having on the 19th day of August, 2003, denied the order of vacation of said road.

It is Ordered by the Board, all the members concurring, that the county road petitioned to be vacated by **Richard and Julie Shallow** and others, not be vacated as follows:

- The public will not be benefited by this vacation.
- Said road is now in use as a County Road.
- It will be advisable to preserve this road as part of the general road system.
- There is overwhelming support from citizens on Camano Island to keep the road open.
- In addition, the road abuts a body of water and RCW 36.87 prohibits vacation unless the road will be used for specific purpose by a public authority which isn't the case in this matter.

Done this 19th day of August, 2003.

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

WM. L. MCDOWELL, Chairman
WILLIAM J. BYRD, Member
MIKE SHELTON, Member

ATTEST: By: Ellen Meyer, Deputy
Elaine Marlow, Clerk of the Board

Answering questions from audience members about when the road would be oiled and graveled, Dick Snyder confirmed that the Department was looking at trying to work it into next year's road program.

There being no further business to come before the Board at this time, the meeting adjourned at 3:45 p.m. The Board will meet next in Regular Session August 25, 2003 beginning at 1:30 p.m. [the 11:30 a.m. Elected Officials Roundtable canceled].

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

Wm. L. McDowell, Chairman

William J. Byrd, Member

Mike Shelton, Member

ATTEST:

Elaine Marlow, Clerk of the Board