

**ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING
SPECIAL SESSION - NOVEMBER 12, 2003**

The Board of Island County Commissioners met in Special Session on Wednesday, November 12, 2003, at 6:00 p.m. at the Camano Country Club (Clubhouse), 1243 S. Beach Dr., Camano Island, WA. Wm. L. McDowell, Chairman, William J. Byrd, Member, and Mike Shelton, Member, were present. The purpose of the special session was to conduct a public hearing, having been continued from October 7, 2003, to consider Ordinance #C-84-03/PLG-019-03 in the matter of adopting an Interim Official Control that designates Division 1 and Division 2 of the Plat of Thunder Ridge as a Critical Drainage Area.

Approximately 45+ members of the public were present. County Staff attending were: Bill Oakes, Public Works Director, Gwen Maxfield, Assistant Public Works Director, and Phil Bakke, Planning & Community Development Director. Jeff Tate, Planning & Community Development Assistant Director, Phil Cohen, Island County Engineer Surface Water Manager. Press was represented by Kelly Ruhoff, [Stanwood/Camano News](#) . An attendance sheet was circulated [placed on file with the Clerk of the Board].

Chairman McDowell opened the public hearing, and requested a progress report from Public Works concerning the drainage issues.

Mr. Oakes reported having met on site with the larger lot holders in Thunder Ridge to discuss items to be completed to control drainage from the lots and road network. Builders have been working on the improvements. Public Works Department held two open houses to receive additional input. The list of outstanding items to be completed was read for the record:

**Repair or Improvements Outstanding as of 11/11/03 per ICPW
Thunder Ridge**

Division I

Lucky Lane

- install 4 catch basins in Lucky Lane to capture run-off
- install 200 feet of 12 in. dia. pipe under Lucky Lane to connect catch basins
- install 140 feet of 12 in. dia. pipe in side lot line from Lucky Lane to Thunder Road
- install 240 feet of asphalt curbing to keep water on roadway to reach new catch basins
- repair 60 feet of asphalt curb at Shamrock, & Lucky Lane (asphalt is crumbling)

Shamrock Lane

- clean 100 feet of ditch just downstream of the water system on west side
- install 200 feet of asphalt curbing on east side to get water to Lucky Lane

Fisher King

- clear 120 feet of ditch on west side of Fisher King

Thunder Road

- install 220 feet of riprap of along north side of Thunder Road between Fisher King & Shamrock

Division II

- build conveyance to reverse flow within Division II
- resolve conveyance to carry flow to East Camano

Commissioner Shelton inquired about the plans in the meantime for Division II proposed conveyance system through adjoining property while waiting for agreements, easements, and surveys, etc. to be completed.

Mr. Oakes outlined two options being considered: a temporary pipe on the surface of the ground, or waiting until the new subdivision was built to place the pipe. There is no formal agreement between the County and property owners at this time, but the property owners seem agreeable to enter into such an agreement. He was in favor of continuing to work with the landowners and securing a plan for conveying water safely before removing the Critical Area Designation. The issues could be resolved in the near future, including the letter of agreement from the downstream owners for Division II and proposed to present the completed package at the December 3, 2003 Staff Session.

The Chairman asked for clarification on the repair list with regard to "resolve conveyance to carry flow to East Camano". Mr.

Oakes explained it meant a commitment from the downstream property owners to accept the water at a given location coming from Division II. Negotiations have not been resolved regarding installation and cost of the improvements.

Barbara Kitchens, Association of Realtors, 525 W. College Way, Mr. Vernon, representing both the Whidbey Island Association of Realtors and the North Puget Sound Association of Realtors, submitted a CD into the record [filed with the Clerk of the Board]. She referenced two documents on the CD: "Critical Areas", and "Duty to Accommodate Growth". She requested that the Critical Area Designation be lifted that evening and was concerned about procedures, protocol, and compliance with Washington Administrative Codes (WAC) 365195905, 365195915, 365195925. She was unable to locate or identify "Best Available Science" as required by the WAC for this process. There are concerns about the liability of the distinction based on Western Washington Growth Management Hearings Board Case 96-2-0025, Friends of Skagit County v. Skagit County. WWGMHB Case 95-2-0071 [Whatcom Environmental Council v. Whatcom County] documented and verified that local municipalities must include "Best Available Science" documentation when adopting procedures to do distinctions for critical areas. WWGMHB Case 95-2-0073, March, 2000, John Diehl et al v. Mason County, had the same conclusion. She asked the Board to review the documentation provided and remove the Critical Area Designation.

Brenda Guthrie, 1006 Lightning Way, wife of David Platter, developer of Thunder Ridge, mentioned that they were asked to post a bond on Friday, assuming it was the last part of finishing what the County had asked them to do in Thunder Ridge. They spent thousands of dollars and many builders were waiting for the Critical Drainage Area Designation to be lifted, and are now concerned that more improvements are being required and that they have to wait for the developers of Cavalero Hills for the agreements to be completed before the designation is lifted.

Dennis Sakowski, 1010 Shamrock Lane (Lot 15, Div. 1) was interested in whether the moratorium had been lifted, and was in favor of setting a time limit when the drainage requirements needed to be finished and allow the builders to continue to work under supervision by county code. If the improvements are not finished, the County could establish a moratorium at that time.

The Chairman clarified there was no official moratorium, rather a Critical Drainage Area designation which requires drainage stay on the individual's lot. The designation does make building more restrictive and expensive because the drainage issue must be addressed with each building permit.

Commissioner Shelton noted the Board was trying to determine what improvements had been done and if enough progress had been made to lift the Critical Drainage Area designation. He asked the property owner to the west of Division II to come forward and address whether a delay of 30 to 90 days to secure the necessary easements from the downstream property owners to receive the drainage water would be a significant issue.

Kyle Geiger, 1263 Lawson Rd., indicated it would not significantly impact him because he was more concerned about the long term solution. He asked for clarification what building a conveyance to reverse the flow within Division II meant, and also about how much it would cost and who would pay for it.

Mr. Oakes explained the grade of the pipes flowing toward Mr. Geiger's property would have to be reversed and directed through downstream properties.

Sean Guarrity, 1014 Fisher King Way (lot 29), asked if a berm was proposed for Lightning Way. He requested clarification whether there was a plan to transport the drainage water to Thunder Road, and if so, he was in favor of it.

As pointed out by Mr. Oakes, there had been discussion among the builders to install a drainage pipe on the downhill side of lots on Lightning Way. They were working to get easements from the lot owners and that was acceptable to the County.

John Washo, builder, indicated that all but one lot owner had signed easements. A letter had been mailed to the one remaining lot owner requesting the easement be signed, but had not heard back yet.

Miki Katcher, 1051 Coho Lane (Lot 88), noted at the last meeting the displayed map indicated lot 88 had identified drainage problems, yet they have had no drainage problems and was interested in seeing a correction to that map. Mr. Oakes confirmed that the Department did not see any significant drainage problems there.

Mr. Washo asked about the Outstanding Repair List and noted from a meeting a week ago, understood there were only four major issues. He felt the major issue was getting the water conveyed across down to East Camano Drive. Although there had been a big rain on Monday he did not see any drainage water out of control. He was concerned that the builders were waiting on easements or

someone else to comply, and he was anxious to get it resolved.

Ms. Guthrie walked through the whole plat with three people from Public Works and identified the things that needed to be done. She pointed out they had done the work they were asked to do and posted a bond for any additional work that still needed to be done. She wanted to know why they didn't receive the repair list a month ago and was concerned what it would take to get the Critical Drainage Area designation lifted.

Responding to Kim Nesje, builder, about where the 120 feet of ditch on Fisher King Way was located that needed cleaning, Mr. Cohen stated he did not have the exact lot numbers, but there were trees there and the ditch was almost level with the roadway. Since the roads were private, it was hard to tell where the right of way line was. The ditch needed to be cleared so the water could flow into the pipe before going downstream to a gravel area without catch basins.

Mr. Nesje walked through the plat last month, yet now there is a new list with more repairs or improvements needed. It takes time to complete all the improvements, and they still need to work on their own projects in addition to helping out. He noted during the heavy rain last week everything was flowing well. He felt the Platters had really improved the plat and were doing the best they could to complete the repairs.

Ms. Maxfield clarified the itemized list handed out that evening was not an additional list to the items that were discussed a month ago. In particular Lucky Lane and Division II were discussed in detail at that meeting. She noted the items under Shamrock Lane, Fisher King, and Thunder Road were clean up items that have not been finalized.

Dwight Nobles, 1060 Coho Lane, (Lots 81-83), did have a drainage problem that has been taken care of, but was concerned about property values. He was concerned about the whole situation, and felt it had the potential for adversely affecting his investment. He would like to see a significant bond posted to assure the project would be finished properly.

The public portion of the hearing was closed.

Chairman McDowell recalled from the last hearing that reversing the flow of the drainage in Division II was discussed and felt it was probably the most expensive item on the list. He asked if a recommended dollar amount for the bond had been discussed with TR Camano.

Ms. Maxfield suggested \$15,000 for a bond amount, but Mr. Platter felt it was excessive and provided a cashier's check for \$5,000. A rough engineer's estimate to do the project indicated between \$16,000 to \$20,000 was a more likely figure if the County were to do the project. It would cost the County more than private enterprise. The Chair noted it would cost government 30 percent more than the private sector because of the requirement to pay certified wages. He inquired as to how many feet would be required to reverse the flow of the water.

Mr. Cohen stated there were 250 feet of pipe that needed to be reversed and 200 feet of new pipe would need to be placed to get it off site. He clarified it would require 1,900 feet of pipe to get the drainage water to East Camano Drive. The County has been trying, without success, to get the downhill property owners (Cavalero Hills) together with Mr. Platter to enter into an agreement.

Ms. Guthrie explained Mr. Platter had been busy doing all the construction work himself, so he was having a hard time connecting with the Cavalero Hills representative.

Commissioner Byrd saw two major projects to be accomplished before proceeding: 1) Reversing the flow of Division II at the top; 2) conveyance of the water from Division II across Cavalero Hills properties. He felt if there was some assurance or a bond to support the completion of those two projects he would be in favor of going forward.

Mr. Oakes and staff reviewed the work done that day, and would have the dollar amount of the bond needed very soon.

Mr. Noble wanted assurance that the County would oversee completion and inspection of the projects, such as the inadequate berm on Shamrock Lane.

Commissioner Shelton wanted to make sure the work gets done, but was also concerned about the situation causing a hardship for the builder's livelihood.

Chairman McDowell was not in favor of keeping the Critical Drainage Area designation in force any longer than needed, but was

concerned the cost of placing the 250 feet of pipe would cost more than the \$5,000 cash in lieu of bond. A bond is only used if the work does not get done and the County would be required to pay full price, thus the bond needs to be sufficient to cover the full cost.

Commissioner Byrd suggested that perhaps each situation could be handled separately.

Mr. Oakes noted that the downhill property owners (Cavalero Hills) were not objecting to receiving the drainage water.

Mr. Cohen spoke with the property owner's representative who indicated they would prefer their own firm to install the pipes, but the cost still needed to be negotiated, salvage rights, etc. for a temporary drainage system to be used later in their development. First system would be temporary for the next six months, after that a permanent drainage system installed by the Plat of Cavalero Hills.

The Chair noted that as a downhill property developer they have the responsibility to accept water from above them and move it across their own property, therefore why would they think TR Camano should pay for that. In response, Mr. Cohen stated it would be a "point discharge" where none had existed before, or a sheet discharge, which would be an unnatural discharge to the property.

Commissioner Shelton questioned whether it was reasonable to require TR Camano to post a \$15,000 - \$20,000 cash bond, or based upon their performance to date, would it be reasonable on the basis of a signed agreement without bonding to complete the projects in a timely matter. He understood that government normally required bonding to cover the cost if they had to complete it. A cash bond would be the only way to proceed since there were no signed agreements and TR Camano did not own all the property.

With regard to one comment from a citizen about an oversight, Mr. Oakes stated they are inspecting to insure the drainage work is getting done.

Chairman McDowell noted the downhill property owner (Cavalero Hills) would be benefiting since the County would be taking responsibility for the water downstream of them, so they should be willing to negotiate for the problems uphill from them. He questioned if the County should wait until a signed easement was in place before lifting the designation.

Commissioner Byrd was concerned whether that would be a fair thing to do since they would have to work based on someone else's time schedule.

Commissioner Shelton noted that Mr. Geiger indicated he would not be impacted by a 60 to 90 day delay. He was interested to hear whether all agreed that the \$5,000 cash in lieu of bond that was submitted would cover the issues in Division I. He suggested for Division II, the County secure a signed agreement with TR Camano including everything that was agreed upon in their letter. He understood that it was contrary to what government considered to be good government, but because of the impact it was having on the builders, and the good faith effort that has been put forth to date by TR Camano, he was willing to take that chance.

The Chair asked if TR Camano had agreed in his letter to the same conditions as outlined in the Repair List dated 11/12/03. Commissioner Shelton noted in the Lucky Lane issue TR Camano's letter states "Install a drainage culvert at the east end of Lucky Lane and carry water across the west corner of lot 6 to Thunder Road drainage ditch", while Public Works has a list of things such as 4 catch basins, 200 feet of 12 in. diameter pipe, etc. He felt the \$5,000 cash bond would cover the issues.

Commissioner Byrd saw different approaches to correct the problem and asked Mr. Cohen's opinion. Mr. Cohen's instructions were to solve flooding problems and build this to the standards of a 1969 plat. In his opinion, the amount of pipe and catch basins were the amount necessary to pick up water on Lucky Lane to keep it from coming down people's driveways.

Commissioner Byrd asked if the method proposed was adequate. Ms. Guthrie interjected the method proposed came about as a result of the walk-through in Division I and II. They did not have this list and she didn't believe every catch basin was discussed. If that was what needed to be done, then she stated that was what they will do. Mr. Platter's letter was based upon the walk-through meeting last month, and that does not mean he is ignoring what is in today's list.

Commissioner Byrd asked for Mr. Cohen's recommendation. Mr. Cohen recommended following the latest list. Commissioner Byrd was sympathetic with the builders, but wanted something in writing that would take care of the Division II problem. Chairman McDowell agreed that the \$5,000 in lieu of the bond would be sufficient for Division I and a signed agreement for Division II for the work to be done.

The Board unanimously moved to lift an Interim Official Control designating Division 1 and Division 2 of the Plat of Thunder Ridge

as a Critical Drainage Area with conditions: dedicate the current \$5,000 cash bond to final completion of issues in Division I of Thunder Ridge; In Division II establish a signed agreement with TR Camano in terms of reversing the flow from the west to the east; TR Camano to be responsible for reversing the existing pipe and agree to work with the downhill property owners to get it completed [a conveyance system from Thunder Ridge to East Camano Drive] in a reasonable amount of time [*time in agreement was set for February 12, 2004*].

Commissioner Shelton commented the cost of the improvements would be between two private companies. The Chairman noted on the new plat the developer would be required to build to today's standards and to accept a certain amount of water from the plat uphill from them.

A citizen in the audience raised concerns about the drainage on Lightning Way and the Board clarified that the issues had been addressed by the builders. Commissioner Shelton asked whether the builders would be agreeable to providing an easement and a plan for those lots prior to issuance of building permits on those lots, and Mr. Washo explained all except one lot had signed and recorded easements. He stated the owner of Lot 41 was the only one who had not responded to his letter.

The Chairman asked Mr. Oakes to prepare a letter on county stationery and ask for a response. If no response then, they would have to pursue working with the downhill property owner.

A citizen asked what would the consequences be if the improvements were not completed by the agreement date. Another audience member inquired if it would be possible to see the agreement, once it had been signed, and Commissioner Shelton noted that a copy would be on file at the Camano Annex.

There being no further business to come before the Board at this time, the meeting adjourned at 7:20 p.m. The next regular meeting of the Board is scheduled for November 17, 2003, at 9:30 a.m.

**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