

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING-JUNE 21, 2004**

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on June 21, 2004, at 9:30 a.m. in the Island County Courthouse Annex, Hearing Room, 1 N. E. 6<sup>th</sup> Street, Coupeville, Wa. William J. Byrd, Chairman, Mike Shelton, Member, and Wm. L. McDowell, Member, were present. The meeting began with the Pledge of Allegiance. By unanimous motion, the Board approved the minutes from the June 8 Special Session and June 14 Regular Session.

**VOUCHERS AND PAYMENT OF BILLS**

The following vouchers/warrants were approved for payment by unanimous motion of the Board, along with the payroll dated June 15, 2004: Voucher (War.) #192138 to 192411 . . . \$792,531.64.

**HIRING REQUESTS & PERSONNEL ACTIONS**

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

<b>Dept.</b>	<b>PAA #</b>	<b>Description/Position #</b>	<b>Action</b>	<b>Eff. Date</b>
Health	058/04	Proj. Asst. Drinking Water Prog 2421.00	Replacement	6/21/04
Health	059/04	Acct. Supervisor 2411.00	Personnel	6/21/04

**INTERLOCAL AGREEMENTS APPROVED WITH WASHINGTON STATE MILITARY DEPARTMENT,  
EMERGENCY MANAGEMENT DIVISION – E911 FY2005**

Interlocal Agreement #E05-021 between Island County and Washington State Military Department for State FY2005 Wireless Enhanced 911 funds in the amount of \$27,432 (RM-BOC-040062) and Interlocal Agreement #E05-041 between Island County and Washington State Military Department for State FY2005 Wireline Enhanced 911 in the amount of \$110,880 (RM-BOC-04-0063) were approved by unanimous motion of the Board.

In accordance with new section 6 in both contracts, there needs to be a Enhanced 911 Coordinator and MSAG Coordinator [Master Street Address Guide] designated to fulfill the duties specified in that section. Tom Shaughnessy, Executive Director, I-COM, has already been designated by the Board per letter dated 3/31/04 as the E911 Coordinator for Island County for contract period FY2005. By unanimous motion today, the Board designated Alice Johnson, Operations Supervisor, I-COM as MSAG Coordinator for Island County.

**MONTHLY FINANCIAL REPORTS FROM AUDITOR & TREASURER****Treasurer**

Mark Heistad, Chief Deputy Treasurer, provided the Treasurer's monthly financial report for the period ending May 31, 2004, described as a standard report, with nothing of particular concern or note. Revenues at this point of the year should be at 42% and are actually just under that, 41.67%. Revenues are down that slight amount because some revenues are received on a quarterly basis and will not be received until the end of June. Investment fees are down reflective of current economic climate, but close to budget forecast.

**Auditor**

Suzanne Sinclair, Island County Auditor, submitted the Auditor's financial report for the same period. Items of note with regard to expenditures for Current Expense were that WSU grant was paid in 2004 but belongs in 2003; Jail ahead of budget expenditures slightly.

The primary as it is going to be conducted this Fall looks to be fairly expensive. The County should be reimbursed for most of that from the State, but whether reimbursement will cover expenses remains to be seen. The State allocation is based on 90% of the estimates that were handed in by county auditors, with a contingency fund available. The plan for Island County is to do individual ballots [four separate ballots].

[financial reports on file with the Clerk of the Board]

**ON-SITE REPAIR FINANCIAL ASSISTANCE PROGRAM - AUTHORIZATION FOR WHIDBEY ISLAND BANK TO ACCEPT PAYMENTS UNDER PROMISSORY NOTE AND DEED OF TRUST - ISLAND COUNTY WATER QUALITY ASSISTANCE FUND LOAN RECIPIENT CLARENCE & LINDA WALLACE**

As transmitted by the Island County Health Services Director, the Board by unanimous motion approved On-Site Repair Financial Assistance Program-Washington State Water Pollution Control Revolving Fund Loan 2002 Authorization for Whidbey Island Bank to accept payments tendered under Promissory Note and Deed of Trust to the Island County Water Quality Assistance Fund for loan recipient Clarence & Linda Wallace.

**PUBLIC INPUT OR COMMENTS**

Hugh Jonson, representing a group from the Cornet Bay area, regarding the county dock at Cornet Bay, recalled some of the history involving the dock, acknowledging his rendition of the history may be somewhat at odds with staffs' rendition. The dock was built not just by the Lang family who donated the property. The Lang's were represented at today's meeting, and others whose families date back to the Twenties, now faced with County Parks & Recreation proposal to get rid of the dock/sell it.

In 1939 after the community built the dock on the Lang's property (or appurtenant to it) the Lang's granted the property to Island County on behalf of the public. The deed reads specifically: "This deed given on the express condition that the Grantee shall maintain the present float and dock thereon, in good repair, as long as the public necessity and convenience requires the same.". Payment was in the amount of \$1.00 "and other good and valuable consideration". If there were any questions about the duty of the County by accepting the property, then the County should not have taken the property. There is a duty imposed on the County by taking the property. John Meter, County Commissioner at the time, stated his opinion as to where the dock went should it not be needed, which was that it had to be sold back to the Langs for the same price. An Attorney General's opinion in September of 1964, referring to *King County v. Hanson Inv. Co., 34 Wn. 2d 112 at page 208*, says there were ways to dispose of the dock but was very clear "it would impose no duty on the county to continue maintenance of the dock if the county commissioners conclude that the dock is no longer a requirement of public convenience and necessity.". Having satisfied that condition the County could get rid of the dock.

As to necessity and convenience, the dock is being used. Ben Ure Island residents find it very necessary to have that dock; it is their approach to the main island. There is another dock down the road but it is for yachting folks not for the fisherman, nor is it convenient for the residents in the area.

If the Commissioners decide all the conditions can be met and get rid of the dock, consider what that action would do to those living next to or across the street from the dock if it is in private use. There would not be the safeguard of County control to make sure it is not an eyesore and that the dock was there for the use. If the Commissioners come to the conclusion there is no public need, he suggested the law would require some public hearings and determine some answers. He asked about his vested interests for the labor he put into the dock for the good of the public, noting should the County get rid of the dock he would need to be paid for his services. Others too have put a lot of materials and labor and dollars into that dock.

Rumors and comments have been circulating among the community, i.e.:

- *The dock was condemned.*

How can the county commissioners utilize eminent domain to condemn their own property?

- *Floats are already built and paid for but cannot install because a permit is required.*

Wherein does the law exist requiring a permit for repair and maintenance, and if so, how can the County unreasonably

withhold a permit from their own property? If there is a permit required for repair and maintenance Mr. Jonson's legal opinion was that the County Commissioners should do something quickly to get it removed. It is an issue of public safety; and the constitution of this State and the United States constitution absolutely forbids that kind of interference.

He asked that the Commissioners do the right thing for everyone concerned.

In reply to Commissioner McDowell about a breakdown of the number of boats, Mr. Jonson replied:

- for transport between Ben Ure and Whidbey Island – there are about 3
- number of boats split between pleasure/commercial about 50/50
- unusable boats unsafe to use as far as boating: there is one on the beach; one being remodeled.

Commissioner Shelton mentioned that boat moorage of \$200/year obviously favorable compared to other types of moorage around Puget Sound. An issue encountered on a regular basis is responsibility to upgrade the dock. The funding generated by use of the dock is not ample to keep the dock in good functional order.

Mr. Jonson felt that certainly, those who tie up to the dock are willing to pay additional sums. He pointed out that the floats needed to repair the dock are already built and paid for and there

is over \$30,000 in the account, and therefore not a drain on County assets.

Arnie Deckwa, Cornet Bay, recalled the families who pounded the nails and built the dock. More than happy to form, sit on a committee, help the county out, raise money, to get the dock in shape. The commercial fisherman and others including him would be more than willing pitch in and start not only work but also spend more money to tie up there. He understands that Bud Rodgers will be moving and commented that if someone else needed to take over in handling the affairs of the dock for the County, he would be more than happy to (and others) with the objective to get it in better shape. He confirmed the definite public need for the dock.

Commissioner Shelton commented that in most cases when working on salt water shoreline a permit is required by State law. Mr. Jonson advised that if the County did not have counsel to represent them against the State to get that fixed he would be happy to assist. However, as Commissioner McDowell pointed out, the fact that a permit is required does not mean the work cannot be done; only that a permit must be obtained. Mr. Jonson disagreed that replacing a float with an identical float for safety purposes would require a permit, especially for the County. Mr. Jonson was not opposed to going back and pounding nails – suggesting volunteer force to do that.

Chairman Byrd mentioned the two primary concerns: money and liability. At a staff session some months' ago one of the issues discussed was the cost to actually bring the dock up to a useable condition, and the cost at that time was astronomical.

Diana Dunn, Anacortes, the granddaughter of John Lang who donated the property, told the Board that for at least three here today this was their playground growing up. The county never repaired the dock; it was her Dad and the Rodgers who worked on the dock at their own expense and time. She called attention to a memo from prior County Auditor, Art Hyland, to the Board of County Commissioners [January 30, 1992] states: "...while the County may not have a legal obligation it certainly has a moral one..." ; "... frankly I'd like to see a study made of figuring out how to best upgrade the facility with the goal of becoming it a first-class marina or close to it..." and "The location is superb and the county should take advantage of it both as to its potential use by more of its residents and for its potential source as a revenue generator." Ms. Dunn stated that the dock was certainly one of the oldest docks and one of the first ferry docks at that end of the Island.

One of the lady's in the audience added to note that the dock before 1910 was the ferry landing going across to Fidelgo Island to get to the mainland. Mr. Lang took over in 1910, way before the bridge was built.

Betty Kemp, Director, GSA/Parks, addressed the issue of replacement floats constructed and ready to be installed.

The County decided to obtain an estimate and appraisal on what it would cost to bring the dock up to where it should be and safe, and learned it was a lot of money. In addition, told that the fix would last only 5 to 6 years and then would need to address it again.

The work did not go forward because the decision was made to surplus the property and the material along with it.

Commissioner McDowell learned from today's comment that: there is volunteer help as well as volunteers for the manager position should Bud Rodgers move, and that service provided to Ben Ure is an important consideration. In light of that, moved that the Board direct the Parks

Department not to solicit or accept offers at this time until the Board has a chance to look at the issue further. Motion, seconded by Commissioner Shelton, carried unanimously.

Names, addresses and phone numbers were taken from those attending so that next time the topic is discussed they can be invited to attend and participate.

Dean Enell, Langley, called the Board's attention to a Planning Commission meeting he attended about three weeks ago when population projections for the five-year review of the Comprehensive Plan were discussed. The Commission members at that meeting discussed taking the high population projection from the OFM projections, which they thought would cover for the "worst case scenario". Mr. Enell cautioned the Board that would be a bad approach. If the estimate used says that 50,000 people come in the next five years, by that projection, the County provides about half into the urban areas and about half into the rural areas; but if only 25,000 people come what seems to be happening is that most of those people would move in rural areas and Island County would get further away from the "ideal". He encouraged the Board come up with some sort of incentive or regulation to induce people to move to urban areas and keep the rural area open, and suggested making it more expensive for people to locate in rural areas as opposed to urban areas.

About the Cornet Bay situation, he thought it would be nice to have a Port District on North Whidbey.

Lori Hilleary, Langley, talked about the Saratoga Beach property she mentioned previously and that the folks she spoke of earlier would like to deed the beach and exclusive easement to the County before the end of the month.

**RESOLUTION #C-70-04/R-23-04 INITIATING PUBLIC WORKS PROJECT (PWP) 04-02 - SIMONSON PLACE OUTFALL PROJECT PHASE 1 & 2**

Resolution #C-70-04/R-23-04 In the matter of Initiating Public Works Project (PWP) 04-02, Work Order No. 92, Simonson Place Outfall Project Phase 1 and Phase 2, for total project cost County share \$325,000.00, and \$115,000 developer contribution, was approved by unanimous motion of the Board, as presented by Bill Oakes, Public Works Director.

*[Resolution #C-70-04 on file with the Clerk of the Board]*

**PETITION TO VACATE COUNTY ROAD RIGHT-OF-WAY – REQUEST TO VACATE A PORTION OF COUNTY ROAD RIGHT-OF-WAY KNOWN AS CULTUS BAY ROAD (AKA KNOWN AS BAILEY ROAD) #103**

Petition to vacate a portion of County Road right-of-way known as Cultus Bay Road (aka known as Bailey Road) #103, located in the NE ¼, Sec 14, Twp 28N. R 3E, was referred to the County Engineer for review and report by unanimous motion of the Board.

**CONTRACT/CONTRACT BOND – PW-0420-100 - LAKESIDE INDUSTRIES 2004 CAMANO ISLAND HMA OVERLAYS**

On Mr. Oakes' presentation and recommendation, the Board by unanimous motion approved Contract and Contract Bond #PW-0420-100 between Island County and Lakeside Industries, the successful bidder for 2004 Camano Island hot mix asphalt overlays under CRP 04-01, in the amount of \$263,804.00.

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**BID AWARD – FREELAND PARK OUTFALL & MYRTLE AVENUE TRAIL**

Based on the recommendation of Mr. Oakes, the Board by unanimous motion, awarded bid for Freeland Park Outfall and Myrtle Avenue Trail [PWP 04-01/WO 130] per bids opened on June 3, 2004, to the low bidder, SRV Construction, Inc., for Schedule A and B, in the amount of \$777,110.00 [not awarding alternate schedule].

**BID AWARD FOR 2004 HMA OVERLAYS, WHIDBEY ISLAND**

As recommended by Mr. Oakes, the Board by unanimous motion, awarded bid for the 2004 hot mix asphalt Overlays-Whidbey Island, under CRP 04-02, Work Order #358, to the low bidder, Kreig Construction, Inc., in the amount of \$691,213.85.

**SUPPLEMENTAL AGREEMENT 2 – #PW-0020-28(B) - CERTIFIED LAND SERVICES CORPORATION**

Pulled from today's agenda, to be rescheduled for June 28, 2004 in order to provide cost comparison data.

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**SUPPLEMENTAL AGREEMENT 1 – #PW-0320-31(A) - CHUMS OF MAXWELTON SALMON ADVENTURE**

Mr. Oakes presented Supplemental Agreement 1 #PW-0320-31(A) between Island County and Chums of Maxwelton Salmon Adventure, a pass-through grant from the State. The previous contract was not specific as far as exactly what Chums were to provide and the change in scope of work is very specific in that Chums are to recommend three projects to address restoration in the basin along a minimum of 1000 stream feet and provides design guidelines for restorations of the riparian planting and stream-bank protection requirements from the Department of Ecology.

As noted by Commissioner Shelton, on riparian areas that are going to be restored, one of the criteria involved in this grant is that there must be a willing property owner involved.

Lori Hilleary recalled from her grandfather that there used to be a few wandering salmon that would come up before the flood gate was installed years' ago. She read in the paper that the water is too warm for salmon to spawn, and suggested it would seem to be a futile project. She did not think the creek had ever been meant for salmon, and that salmon had been planted.

Commissioner Shelton thought it amazing that any salmon got through; however, from pass-down information going back in history, apparently Maxwelton Creek was a significant

salmon stream. If that tide gate is ever to be removed there will have to be some accommodations made on the shore side of the tide gate. Water temperature is an issue partly because the area around the creek does not have sufficient plantings to provide the shade to keep the water cool enough.

Ms. Hilleary brought up the issue of setbacks, noting right now setbacks for creeks is 100 feet on either side, her fear being that to continue with this project, the farms and people along there will lose their land little by little.

However, as Commissioner Shelton pointed out, that was not part of this grant. In this grant for agricultural areas, minimum buffer size for streams should have an average width of 35 feet on both sides of the stream and for streams which provide habitat for endangered or threatened aquatic species, the minimum buffer size should be an average of 50 feet. And Commissioner McDowell noted that the grant encourages enhancement; there is no law requiring enhancement.

As to Ms. Hilleary's question about animals in the buffers, Commissioner Shelton stated that one of the things the critical areas ordinance specifically addresses is animals in streams or wetlands. It is a difficult thing in this County to balance AG practices that are not necessarily, at least in totality, equated to their well-being in terms of making a living, though an important part of their life.

Critical areas will be addressed as part of the Comprehensive Plan update in 2005 and Ms. Hilleary was invited to participate.

By unanimous motion the Board approved Supplemental Agreement 1 #PW-0320-31(A) between Island County and Chums of Maxwellton Salmon Adventure.

With no further business to come before the Board at this time, the meeting adjourned at 11:00 a.m. The next regular meeting of the Board will be on June 28, 2004, beginning with a roundtable at 11:00 a.m., followed at 1:30 p.m. with regular agenda items.

BOARD OF COUNTY COMMISSIONERS  
ISLAND COUNTY, WASHINGTON

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William J. Byrd, Chairman

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Mike Shelton, Member

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Wm. L. McDowell, Member

ATTEST: \_\_\_\_\_  
Elaine Marlow, Clerk of the Board

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