

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
AUGUST 21, 2006**

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on August 21, 2006 at 9:30 a.m. in the Island County Courthouse Annex, Hearing Room, 1 N. E. 6<sup>th</sup> Street, Coupeville, Wa. Wm. L. McDowell, Chairman; William J. Byrd, Member, and Mike Shelton, Member, were present. The meeting began with the Pledge of Allegiance. By unanimous motion, the Board approved the minutes from previous regular session held on August 14, 2006.

**COMBINED EXCISE TAX RETURN, PAYROLL, VOUCHERS AND PAYMENT OF BILLS**

By unanimous motion, the Board approved the Combined Excise Tax return for July, 2006, the payroll dated August 15, 2006, and the following vouchers/warrants: #244731-244958..... \$341,997.22.

**HIRING REQUESTS & PERSONNEL ACTIONS**

As presented by Larry Larson, 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>
Sup. Court	113/06	Official Court Reporter 2002.01	Replacement	9/5/06
Pub. Works	114/06	Acting Acctg. Supervisor 2209.01	New Position	8/21/06

**LABOR AGREEMENTS**

As presented for the Board's approval by Mr. Larson, the Board by unanimous motion approved the following Labor Agreements:

- Agreement with Local 1845-I of the WA State Council of County & City Employees, AFSCME, AFL-CIO January 1, 2006 – December 31, 2006
- Agreement with Local 1845-I of the WA State Council of County & City Employees, AFSCME, AFL-CIO January 1, 2007 – December 31, 2009.

**ISLAND COUNTY RETIREMENT HEALTH SAVINGS PLAN**

As presented by Mr. Larson, the Board by unanimous motion approved the following documents related to adoption of an Island County Retirement Health Savings Plan [RM-HR-06-0087]:

- Declaration of Trust of the Island County Integral Part Trust
- Island County Retiree Medical & Dental Expense Reimbursement Plan
- Resolution #C-92-06 In the Matter of the Adoption of the VantageCare Retirement Health Savings (RHS) Program [*Resolution #C-92-06 on file with the Clerk of the Board*]
- Employer VantageCare Retirement Health Savings (RHS) Plan Adoption Agreement.

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RESOLUTION #C-93-06 RETAINING COUNSEL TO REPRESENT SHERIFF HAWLEY IN  
ARBITRATION PROCEEDINGS**

Resolution #C-93-06 In the Matter of Retaining Counsel to Represent Sheriff Hawley in Arbitration Proceedings was adopted by unanimous motion of the Board as submitted by Betty Kemp, Director, GSA. [*Resolution #C-93-06 on file with the Clerk of the Board*]

**HEARING SCHEDULED: RESOLUTION #C- 94-06 AMENDING THE 2006 ISLAND  
COUNTY BUDGET**

As prepared and submitted by the Budget Director, Elaine Marlow, the Board by unanimous motion scheduled Resolution #C-94-06 Amending the 2006 Island County Budget for public hearing on September 18, 2006 at 9:55 a.m.

**CONTRACT AND CONTRACT BOND APPROVED - SUNDBERG HOMES, INC. - CAMANO  
ANNEX REMODEL**

The Board by unanimous motion approved the Contract and the Contract Bond with Sundberg Homes, Inc., for the Camano Annex remodel project in the amount of \$60,877.00 including tax [RT-06-FAC-03CA].

**CORRECTION OF BID DOLLAR AMOUNT- GOSS LAKE VAULT TOILET PURCHASE  
AND INSTALLATION**

As explained in a memorandum dated August 15, 2006 from Terri Arnold, Parks Superintendent, the Board by unanimous motion corrected the dollar amount for the Goss Lake vault toilet purchase and installation for bid awarded August 7, 2006 to CXT, the correct amount \$13,652.06 rather than \$13,651.22, a \$0.78 cent difference.

**CLOSING DOCUMENTS FOR SALE OF HENNI ROAD PROPERTY**

Closing Documents for the sale of property located at 31 W. Henni Road, Oak Harbor, as provided from Betty Kemp under cover memorandum dated August 15, 2006, were approved by unanimous motion of the Board including the following:

- Statutory Warranty Deed
- Real Estate Excise Affidavit
- Release of Judgment; Case No. 98-2-00593-3 Island County vs. Wilfred A. Wilson & Catherine Pasqua.

**AMENDMENT #1 TO CONTRACT #HS-18-05 - SHERWOOD COMMUNITY SERVICES**

Amendment #1 to Contract #HS-18-05 [RM-HLTH-03-0077] with Sherwood Community Services extending the contract period for Developmental Disabilities Birth to Three Program on Camano Island was approved by unanimous motion of the Board, the contract in the total amount of \$5,000 (Amendment Amount: \$ 0 ).

**LIQUOR LICENSE APPLICATIONS APPROVED**

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Having received favorable recommendations from the appropriate County departments, the Board by unanimous motion forwarded a recommendation of approval to the Washington State Liquor Control Board for issuance of the following liquor license applications:

- Liquor License Application #091224 by Camano Island Yacht Club for a special occasion to be held September 16, 2006 from 5:30 p.m. to 9:00 p.m. at the Yacht Club, 129 N. Sunset Drive, Camano Island, WA
- Change of Corporate Officers/Stockholders Application for Liquor License Application #074018 by David C. Kleffel and Loreene P. Kleffel, d/b/a West View Mart, Inc., for West View Mart, 971 W. Ault Field Road, Oak Harbor, WA.

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

**Island County Auditor**

Anne LaCour, Chief Deputy Auditor, submitted the written Island County Auditor's financial report for the period ending July, 2006, reflecting revenues and expenditures compared to budget, current year to date with last year, along with a 5-year average. Explanations were provided as far as any line items reflecting percentages significantly over what the average percent should be at this time in the year (58%).

**Island County Treasurer**

Linda Riffe, Island County Treasurer, submitted the written Treasurer's Statement of Cash Operations, Revenue/Current Expense for the same period, under cover memorandum dated August 21, 2006. Her memorandum likewise provided an explanation of line items above the benchmark 58%.

**HEARING HELD: FRANCHISE #343 – RGN CONSTRUCTION, LLC. FOR SEWER  
TRANSPORT LINE, PORTION OF NORTH CAMANO DRIVE, PLAT OF UTSALADY  
CAMANO ISLAND**

At 10:15 a.m. as advertised, a public hearing was held for the purpose of considering Franchise #343 [PW-052074] for RGN Construction, LLC., for a Sewer Transport Line to be located in a portion of North Camano Drive in the Plat of Utsalady, Sec. 19, Twp. 32N, Rge. 3E., Camano Island.

Randy Brackett, Assistant County Engineer, provided the report of the Public Works Director/County Engineer, Bill Oakes, under memorandum dated August 1, 2006, recommending approval of the franchise as submitted.

At the time comments were solicited from members of the public on Franchise #343, no one commented for or against said Franchise.

By unanimous motion, the Board approved Franchise #343, RGN Construction, LLC., for a Sewer Transport Line to be located in a portion of North Camano Drive in the Plat of Utsalady, Sec. 19, Twp. 32N, Rge. 3E., Camano Island.

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PETITION FOR VACATION OF A PORTION OF SHORE MEADOW ROAD BY NIEL  
MOELLER**

By unanimous motion, the Board referred Petition for Vacation of a Portion of Shore Meadow Road, located in Sec. 9, Twp. 29N, Rge. 2E. submitted by Niel Moeller to the County Engineer for review and processing.

**RESOLUTION #C-95-06/R-33-06 AMENDING ANNUAL ROAD CONSTRUCTION  
PROGRAM FOR THE YEAR 2006**

Resolution #C-95-06/R-33-06 In the Matter of Amending the Annual Road Construction Program for the Year 2006 was adopted by unanimous motion of the Board, as presented and recommended for approval by Mr. Brackett. [*Resolution #C-95-06 on file with the Clerk of the Board*]

**ADOPT –A-ROAD LITTER CONTROL PROGRAM – WHIDBEY PACIFIC REALTY**

The Board by unanimous motion approved Adopt-A-Road Litter Control Program with Whidbey Pacific Realty for Cultus Bay Road from Possession Road to Lovely Road.

**INTERLOCAL COOPERATIVE PURCHASING AGREEMENT AND PURCHASE ORDERS  
APPROVED - CITY OF SEATTLE CONTRACT**

By unanimous motion, the Board approved Interlocal Purchasing Agreement [PW-0620-61] between Island County and the City of Seattle, a cooperative governmental purchasing agreement for various supplies, materials, equipment and routine, expert and/or consultant services, using competitively awarded contracts.

After approval of the Interlocal Purchasing Agreement the Board by unanimous motion approved the following purchase orders for purchases from the City of Seattle's contract:

- Purchase Order #7145 - Backhoe \$70,773.48
- Purchase Order #7447 - Two Backhoes \$122,484.96.

**AGREEMENT – OTAK INC. - LOCAL AGENCY STANDARD CONSULTANT  
AGREEMENT FOR ON-CALL ENVIRONMENTAL SERVICES - OTAK, INC.**

The Board by unanimous motion, as presented and recommended for approval by Gwenn Maxfield, Assistant Public Works Director, approved Agreement #PW-062052 between Island County and Otak Inc., a Local Agency Standard Consultant Agreement for On-Call Environmental Services in the amount of \$250,000.00.

**CLOSED RECORD APPEAL HEARING - APPEAL 308/06 BY GERALD WOOD - APPEAL  
OF HEARING EXAMINER'S DECISION PLP 386/05**

At 10:30 a.m. as advertised and noticed, the Board held a Closed Record Appeal Hearing on Appeal #308/06 by Gerald Wood, appellant, appealing the Hearing Examiner's Decision dated July 13, 2006

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granting Preliminary Long Plat (PLP) #386/05, Chipshot Heights, with conditions, located in the Holmes Harbor Residential Area of More Intensive Development (RAID) north of Freeland, WA.

<u>Appellant:</u>	Gerald Wood
<u>Applicant:</u>	Mark Schuster, S.W.D.C., Inc. George Lenes, Applicant's Agent
<u>County Staff:</u>	Phil Bakke, Planning & Community Development Director Andrew Hicks, Assistant Planner, Planning & Community Dev.

A complete copy of the Hearing Examiner's Record and Exhibit Log was provided to the Board for review prior to the hearing [Exhibit 1]. The Appeal was filed by Gerald Wood by letter dated July 24, 2006 received July 25, 2006 [Exhibit 2].

Chairman McDowell reviewed the Procedure to Hear Closed Record Appeals [Exhibit 3]. He indicated that because of the intervening holiday September 4<sup>th</sup>, Labor Day, when there is no Board of County Commissioners meeting, the Board's decision will be announced at public meeting on September 11, 2006 at 10:30 a.m.

**STAFF CONCISE STATEMENT**

Mr. Hicks gave a quick review: the appeal is of Preliminary Long Plat #386/05 by Applicant S.W.D.C., Inc., reviewed as a type 3 process. The application was submitted on October 14, 2005, with public comment period November 2, 2005 through November 16, 2005. A SEPA determination of non-significance was issued on June 2, 2006. The recommendation for approval from the Planning Department was dated June 26, 2006, and the Hearing Examiner approved PLP #386/05 with conditions, on July 12, 2006.

1. *Appellant states that Tracts B4 and B6 were assessed by the Assessor's Office at \$179,000 but the two parcels sold from Holmes Harbor Community Partners to S.W.D.C., Inc. for approximately 1.5 million dollars.*

With regard to the relevance of this issue, it was the Hearing Examiner's decision this was not the County's jurisdiction to rule on and therefore irrelevant.

2. *The Appellant states that the two groups Holmes Harbor Community Partners and S.W.D.C., Inc. consist of different investors and as such, owners of Tract A, Holmes Harbor Community Partners, cannot send development rights to Tracts B4 and B6 in the form of base density or lot size averaging and therefore, Tracts B4 and B6 cannot borrow densities from Tract A. S.W.D.C., Inc., did not have the right to sign on behalf of Holmes Harbor Community Partners.*

There is nothing in the Code that prohibits two owners from partaking in the same long plat and the owner of one lot can send density from one lot to the other. Island County accepted the application on good faith being signed by Mark Schuster, the owner of both Holmes Harbor Community Partners and S.W.D.C., Inc. Upon final application ICC 16.06 requires that a certificate of title be provided that is

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as recent as 30 days and that an owners consent and acknowledgment of land division be signed by owners of the property. Therefore, the Hearing Examiner decided this was not an issue.

**APPELLANT - BASIS OF APPEAL AND ACTION REQUESTED**

Gerald Wood stated that it looked like the sale and purchase are one in the same group of people; if so, believed the transaction bogus and S.W.D.C., Inc. would not have the right to develop the property or go through this process with the County. If on the other hand Holmes Harbor Community Partners is made up of a group of investors, the County needs to find out who that group of investors are because of a paper profit of about \$1,150,000. It should not go unnoticed by the County having LLC's that are transferring quit claim deeds, selling to one another - there has to be some identity established of the selling entity. Who is Holmes Harbor Community Partners and who is S.W.D.C., Inc., and how can you sell something to yourself?

The Chairman observed that some people have more than one entity, either corporations or partnerships, and there is nothing illegal about having more than one entity owning different parcels of property. A LLC is a corporation and a corporation is a stand-alone entity that can transact between entities and a person; there is nothing illegal about that. He asked Mr. Wood how that would relate to a bogus relationship.

Mr. Wood stated it may not be, but if not, he assumed there would be some different ownership of those two. To have a legal sale, there has to be an offer and an acceptance which constitutes a contract. In this case, Mr. Schuster has set the price and made the purchase; there is no contract if you sell it to yourself, whether there are separate corporations or not. There was a tremendous profit and the group that constitutes Holmes Harbor Community Partners must be different than the group that constitutes S.W.D.C., Inc. How many people have the right then to utilize lot size averaging when it is not known exactly who owns the group that is lot size averaging.

Commissioner Shelton asked if Mr. Wood would agree that under the law a corporation becomes a legal entity to do business regardless of who owns it, and if set up as a corporation able to buy and sell regardless of who owns it. Mr. Wood agreed with that to a degree, but found LLC's different - not a stock corporation, and very private.

When Commissioner Shelton observed that a LLC is still a legal entity able to buy and sell and do what individuals could under the law, Mr. Wood agreed, but under a managing partner. If in fact there are two legal entities buying or selling real estate, regardless of the ownership, Commissioner Shelton pointed out that as staff indicated, County code does not say that one owner cannot use another owner's property for lot size averaging. Mr. Wood disagreed with that because of the fact they are managed by the same person.

Another condition reiterated by Commissioner Shelton was that a title report to come prior to final approval will show the ownership and title to the property in the correct names.

Mr. Wood indicated it would not show who Holmes Harbor Community Partners are. While he did not disagree it is a legal entity, he did think there was a possibility for a tremendous conflict of interest. As to how that is pertinent to approval or denial of a long plat, Mr. Wood explained there is a piece of

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land of four acres; prior to anything being approved there was a transaction selling that piece of land with an adjacent piece of land for 1.5 million dollars, when that land was originally purchased as a bundle for \$800,000, and later another group sold it for \$350,000. A value was established of \$350,000; assessed at \$190,000, and all of a sudden worth \$1.5 million prior to anything happening to it. He thought the whole thing a smoke screen. County taxes have not been paid on the full value, the timing perfect so that was avoided. He stated that maybe there was nothing under the code or any reason for the County to pursue this, but he felt where there is this much smoke and this many entities involved there has to be some fire.

**PROJECT APPLICANT OR DESIGNATED REPRESENTATIVE RESPONSE**

No comments.

**OTHER MEMBERS OF PUBLIC**

None.

**FURTHER COMMENTS BY STAFF OR APPELLANT**

None, the Appellant left the hearing once he completed his comments.

No further comments from Staff.

**BOARD COMMENTS**

Commissioner Shelton, based upon the nature of the appeal, the testimony, and the facts before the Hearing Examiner, moved that the Board deny the appeal. Commissioner Byrd seconded the motion based on what he heard and the record.

Under discussion, Commissioner Shelton noted that the Commissioners could propose findings of fact to support the denial, believing basically those things Mr. Wood presented were far outside what would be considered, and he saw no reason to wait to make a decision until September 11. The Chairman agreed, and noted that the Commissioners could provide to Mr. Bakke their reasons for denial, and Mr. Bakke prepare a written decision for signature by the Board next Monday, August 28.

Motion, as made and seconded, carried unanimously.

Inasmuch as the Chairman indicated earlier that the Board's decision would be announced at public meeting on September 11, 2006 at 10:30 a.m. Mr. Bakke was asked to contact Mr. Wood to relay the above.

**PUBLIC MEETING: ORDINANCE #C-96-06/PLG-006-06 - ORDINANCE CONCERNING  
MODIFYING THE APPEAL PROCEDURES FOR SEPA REVIEW AND THRESHOLD  
DETERMINATIONS ISSUED IN CONJUNCTION WITH PROPOSED GMA LEGISLATIVE  
ACTIONS**

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Ordinance #C-96-06/PLG-006-06 In the Matter of an Ordinance Concerning Modifying the Appeal Procedures for SEPA Review and Threshold Determinations issued in conjunction with proposed GMA Legislative Actions, was presented by Jeff Tate, Assistant Director, Planning & Community Development, coming to the Board with unanimous approval of the Planning Commission and recommendation of approval from Island County Planning & Community Development. The Planning Commission held public hearings to gather public input on the ordinance; the ordinance went through state agency review and SEPA review, and is properly before the Board. The ordinance proposes to clarify the SEPA appeal process in conjunction with non-project actions [GMA legislative actions]. When the Department issues a threshold determination there is a public comment period and an appeal period; the proposal will bring an appeal first to the Hearing Examiner before coming to the Board of Commissioners, ensuring a local appeal process for non-project actions, which the Department believes to be an important step. Once the Board of Commissioners makes a final decision the SEPA threshold determination may be appealed to the Growth Management Hearings Board. Options before the Board include:

- Accept the recommendation of the Planning Commission
- Remand the recommendation back to the Planning Commission
- Hold a public hearing before the Board of County Commissioners.

By unanimous motion, the Board approved Ordinance #C-96-06/PLG-006-06 In the matter of an ordinance concerning modifying the appeal Procedures for SEPA Review and Threshold Determinations issued in conjunction with proposed GMA Legislative Actions, accepting the recommendation of the Island County Planning Commission. [*Ordinance #C-96-06 on file with the Clerk of the Board/GMA #8848*]

**ORDINANCE #C-97-06/PLG-010-06 - AMENDING CHAPTER 17.03 ICC, THE ISLAND COUNTY ZONING ORDINANCE, AND THE ISLAND COUNTY COMPREHENSIVE PLAN TO INCORPORATE A DEFINITION AND STANDARDS FOR A PROCESS TO ENABLE AND DESIGNATE EXISTING MASTER PLANNED RESORTS**

Ordinance #C-97-06/PLG-010-06 In the matter of amending Chapter 17.03 ICC, the Island County Zoning Ordinance, and the Island County Comprehensive Plan to incorporate a definition and standards for a process to enable and designate Existing Master Planned Resorts, was presented by Mr. Tate. The proposal comes to the Board with unanimous approval of the Planning Commission and recommendation of approval from Island County Planning & Community Development. The Planning Commission held public hearings to gather public input on the ordinance; the ordinance went through state agency review and SEPA review, and is properly before the Board. Options before the Board include:

- Accept the recommendation of the Planning Commission
- Remand the recommendation back to the Planning Commission
- Hold a public hearing before the Board of County Commissioners.

This Ordinance relates to existing master planned resorts and sets up a process for a land owner to submit an application requesting County acknowledgment that their use qualifies under the definition of an existing master planned resort and that it existed prior to July 1, 1990. The Ordinance also

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includes provisions for what kind of materials need to be included in the application, and requires that a master plan be prepared for the site outlining additional specifics to that proposal.

By unanimous motion, the Board approved Ordinance #C-97-06/PLG-010-06 In the matter of amending Chapter 17.03 ICC, the Island County Zoning Ordinance, and the Island County Comprehensive Plan to incorporate a definition and standards for a process to enable and designate Existing Master Planned Resorts, accepting the recommendation of the Planning Commission. [Ordinance #C-97-06 on file with the Clerk of the Board/GMA #8849]

**EXECUTIVE SESSION**

Chairman McDowell announced that as allowed under RCW 42.30.110(1)(i) to discuss with legal counsel pending litigation, the Board would meet in Executive Session in the County Administration Building, 1 N. E. 7<sup>th</sup> Street, Coupeville, Wa., Office of the County Commissioners beginning at 3:00 p.m. No announcement is anticipated afterwards in open public session, and the Executive Session expected to last less than 30 minutes.

There being no further business to come before the Board, the meeting adjourned at 3:20 p.m. on conclusion of Executive Session. The next regular meeting of the Board will be on August 28, 2006 beginning at 11:00 a.m.

BOARD OF COUNTY COMMISSIONERS  
ISLAND COUNTY, WASHINGTON

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Wm. L. McDowell, Chairman

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William J. Byrd, Member

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Mike Shelton, Member

ATTEST:

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Elaine Marlow  
Clerk of the Board