

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 11, 2007 – REGULAR SESSION**

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on June 11, 2007 beginning at 9:30 a.m., in the Island County Courthouse Annex, Hearing Room, 1 N. E. 6th Street, Coupeville, Washington. Mike Shelton, Chairman, Wm. L. McDowell, Member, and John Dean, Member, were present. The meeting began with the Pledge of Allegiance.

ELECTRONIC FUND TRANSFERS, VOUCHERS, AND PAYMENT OF BILLS

By unanimous motion, the Board approved the Electronic Fund Transfers and the following vouchers/warrants:

Vouchers (War.) #'s 263802-263966	\$222,837.11
Electronic Fund Transfers:	\$ 7,208.51

Veterans Assistance Fund. Claim #V7-2 in the amount of \$2,800.00, Claim #V7-3 in the amount of \$3,750.00, and Claim #V7-4 in the amount of \$1,265.00 were approved by unanimous motion of the Board, as recommended by the Veterans Assistance Review Committee [*emergency financial assistance to eligible veterans; names and specific circumstances are confidential*].

HIRING REQUESTS & PERSONNEL ACTIONS

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

<u>Dept.</u>	<u>PAA #</u>	<u>Description</u>	<u>Position #</u>	<u>Action</u>	<u>Eff. Date</u>
Auditor	070/07	Auto License Manager Supervisor	205.00	Replacement	07/02/07
Auditor	071/07	Financial Accounting	216.00	Replacement	06/18/07
Coroner	074/07	Death Investigator	801.00	Replacement	06/11/07
Juvenile Court Svcs	072/07	Juvenile Detention Officer	1407.03	Replacement	06/11/07
Prosecuting Attorney	076/07	Paralegal/Legal Assistant II Victim-Witness	1811.00	Replacement	06/11/07
Public Wks	075/07	Solid Waste Attend. I, .6fte	2249.20	Replacement	06/11/07
Sheriff	073/07	Corrections Officer	4015.12	Replacement	7/02/07

EMPLOYEE AWARD PRESENTATIONS

EMPLOYEE SERVICE AWARDS

<u>DEPARTMENT</u>	<u>EMPLOYEE</u>	<u>NO YEARS</u>
Public Works	Gwenn L. Maxfield	5
Public Works	Lance Landquist	25

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EMPLOYEE OF THE MONTH

Chris Ellis, a Lieutenant with the Island County Sheriff's Office, Camano Annex, was selected as employee of the month for May, 2007. Lt. Ellis constantly gives of his free time by making himself available to staff; he will cover a shift, adjust a schedule, or just take time out of a busy day to sit down and talk. He looks for new ways to make the Camano Station work better and willingly shares his "reference book" knowledge of Camano with others. Lt. Ellis cares about the work he does, the people he works with, and the people he serves.

**ANNOUNCEMENT: APPLICATION PROCESS ISLAND COUNTY RURAL COUNTY
ECONOMIC DEVELOPMENT FUNDS**

The Board issued a Press Release announcing the Application Process for Island County Rural County Economic Development Funds. The Board issues a notice of "open period" to accept applications for use of the rural economic development funds. Applications will only be accepted from Island County, the Town of Coupeville, City of Oak Harbor, City of Langley, or a port district within Island County, on the approved form. For the current application cycle, applications will be accepted through 4:30 p.m., August 6, 2007 at the Commissioners Office, P.O. Box 5000 mailing or Room 214, Second Floor, County Administration Building, 1 NE 7th Street, Coupeville, WA.

**CLARIFICATION OF PURCHASE AND SALE AGREEMENT TERMS
BOYER PROPERTY PURCHASE**

Commissioner McDowell explained that the title company discovered some discrepancies when reviewing the Purchase and Sale Agreement between Mr. Boyer and the County. In an effort to address those discrepancies, the title company asked that a "Clarification of Purchase and Sale Terms" be signed which states:

The Purchaser shall pay the following:

- Real Estate Excise Tax
- Recording Fees
- Other fees that are customarily paid by Purchaser

The Seller shall pay the following:

- Title Insurance Premium for Standard Owner's Policy of Title Insurance
- Other fees that are customarily paid by Seller (excise tax excluded)

The title company will be issuing a Standard Owner's Policy, therefore, a "comprehensive Form 100 endorsement" is not required.

Commissioner McDowell spoke with Mr. Boyer and both he and the County are in agreement with the Clarification so the escrow company has clear instructions. Whether the City of Oak Harbor must sign the Clarification as the Assignee is a question that will be answered by the title company.

By unanimous motion the Board approved the Clarification of Purchase and Sale Agreement Terms concerning the Boyer Property Purchase.

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**APPROVAL FOR FUNDING FOR CONSERVATION FUTURES MAINTENANCE AND
OPERATIONS PROJECTS**

The Board, by unanimous motion, confirmed and approved for funding the following Conservation Futures maintenance and operations projects for the 2007 cycle:

1. Four Springs Lake Preserve, Trail Infrastructure Improvements, Camano Island. Project Sponsor is Island County Public Health. Amount: \$5,000.00
2. Maxwellton Nature Preserve Repair, Whidbey Island. Project Sponsor is South Whidbey School District #206. Amount: \$20,200.00
3. Freund Marsh & Trailhead Improvements, Whidbey Island. Project Sponsor is City of Oak Harbor. Amount: \$30,000.00.

**APPROVAL FOR FUNDING FOR CONSERVATION FUTURES APPLICATION FOR
USELESS BAY EAST – WHIDBEY ISLAND**

Chairman Shelton explained that the requested funding is for the preservation of 55 acres of farmland and freshwater wetlands on Whidbey Island.

The Board, by unanimous motion, confirmed and approved for funding the 2007 Conservation Futures application for Useless Bay East, Whidbey Island, in the amount of \$500,000.00 subject to the appraisal.

**AGREEMENT WITH WASHINGTON STATE DEPARTMENT OF LICENSING FOR
INTERNET VEHICLE/VESSEL INFORMATION PROCESSING SYSTEM (IVIPS)**

By unanimous motion the Board approved a reimbursable services Agreement with the Washington State Department of Licensing for an Internet Vehicle/Vessel Information Processing System (IVIPS). The system will allow GSA/Parks to efficiently locate owners of abandoned vehicles and derelict vessels on County property.

**MEMORANDUM OF UNDERSTANDING AND MEMBERSHIP AGREEMENT WITH
WASHINGTON STATE ASSOCIATION OF COUNTIES**

The Board, by unanimous motion, approved the Memorandum of Understanding and Membership Agreement with the Washington State Association of Counties for the Washington Counties Select Retrospective Rating Program for program year July 1, 2007 to June 30, 2008.

CLAIM FOR DAMAGES R07-010 CD – VERIZON

As recommended by Ms. Kemp in a memorandum dated June 7, 2007, the Board unanimously denied Claim for Damages R07-010 CD submitted by Verizon in the amount of \$1,205.21 for damage to its pedestal. It was determined that it is Verizon's responsibility to maintain a five foot perimeter clear of vegetation around the utility company's equipment.

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SPECIAL OCCASION LIQUOR LICENSE APPLICATION APPROVED

Having received recommendations of approval by the appropriate departments, the Board by unanimous motion approved forwarding a recommendation of approval to the Washington State Liquor Control Board for the following liquor license application:

Special Occasion Liquor License # 092151 by Camano Senior Center for a special occasion to be held June 16, 2007 from 3:00 p.m. to 6:00 p.m. at the Camano Senior Center, 606 Arrowhead Road, Camano Island, WA.

PUBLIC INPUT OR COMMENTS

Rita Peterson, 1917 Swantown Road, Oak Harbor, expressed her pleasure with the report she read about the mitigating conditions for the Oak Harbor GMA plan and she was curious about how those mitigating conditions were maintained as a result of public feedback. The Chairman suggested she meet with Jeff Tate in the Planning and Community Development Department as he would be able to answer her questions. She thanked the Board and said she would speak with Mr. Tate.

Via videoconferencing, a group of folks from Camano Island convened to request that the Commissioners address sooner than later a schedule of repair to the two tennis courts on Camano Island. Speaking on the group's behalf, Joseph R. Waskom, Jr., 1093 Malvern Hills Drive, Camano Island, said that along with repairs to the existing courts, he and the others would like an additional court and windscreen to accommodate the 42 people now on the roster to play tennis. With that number of people on the roster, some are always waiting to play. It was suggested that the new court be placed on a portion of the current parking lot since parking, in the group's opinion, would not be affected by doing so. The tennis group also asked that the groundskeepers maintain the area around the courts at times other than 8-11 when folks are playing tennis on Monday, Wednesday, and Friday.

Chairman Shelton said he and the other commissioners will do their best to accommodate the group's request, thanking them for letting their needs be known. The topic of tennis courts on Camano will be addressed at the next Staff Session on June 26 and the group is invited to attend via videoconferencing. *[Attendance sheet on file with the Clerk of the Board]*

RESOLUTION C-69-07/R-29-07 – APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING CALL FOR BIDS FOR 2007 WHIDBEY ISLAND HMA OVERLAYS

Resolution C-69-07/R-29-07 in the Matter of Approving Plans and Specifications and Authorizing Call for Bids for 2007 Whidbey Island HMA Overlays, CRP 07-04, Work Order No. 413, was approved by unanimous motion of the Board. *[Resolution C- 69 -07/R-29-07 on file with the Clerk of the Board]*

RESOLUTION C-70-07/R-30-07 – INITIATING A COUNTY ROAD PROJECT – AULT FIELD ROAD/OAK HARBOR ROAD INTERSECTION IMPROVEMENTS

The Board by unanimous motion approved Resolution C-70- 07/R-30-07 In the Matter of Initiating a County Road Project designated as Ault Field Road/Oak Harbor Road Intersection Improvements, CRP 07-05, Work Order 397 for a total appropriation in the amount of \$1,941,000.00. *[Resolution C-70 -07/R-30-07 on file with the Clerk of the Board]*

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**ADOPT-A-ROAD LITTER CONTROL PROGRAM RENEWAL – ADAMS ROAD
COMMUNITY ASSOCIATION**

By unanimous motion the Board approved the Adopt-A-Road Litter Control Program Renewal between Island County and Adams Road Community Association, by Kathleen W. Anderson, for Bush Point Road from Mutiny Bay Road to Shipping View Lane (north end).

APPROVAL OF PURCHASE ORDER WITH RAND MATERIAL EQUIPMENT HANDLING

The Board, by unanimous motion, approved Purchase Order No. 7295 with Rand Material Equipment Handling for forkliftable containers for the Bayview Recycle Facility and Coupeville Solid Waste Complex. Total amount of the Purchase Order is \$17,578.47 which includes freight and tax. [SW-07-0082]

APPROVAL OF PURCHASE ORDER WITH CAPITAL INDUSTRIES

By unanimous motion the Board approved Purchase Order No. 7296 with Capital Industries for roll-off containers for the Bayview Recycle Facility. Total amount of the Purchase Order is \$14,674.65, including freight and tax. [SW-07-0083]

ISLAND COUNTY FAIRGROUNDS AGREEMENT – APPROVAL OF EASEMENTS

Randy Brackett, Assistant County Engineer, presented for the Board's approval a Public Right-of-Way Easement and a Temporary Construction Easement to the Island County Fairgrounds Agreement between Island County and the City of Langley. Chairman Shelton indicated that before the Board's approval of the easements, clarification is needed concerning three remaining issues. Ryan Goodman, 919 Third Street, Langley, a Consultant City Engineer for the City of Langley, appeared before the Board to address those concerns.

First, Chairman Shelton indicated the need to obtain county concurrence on the truck access to the fair including turning radius and fence design. Mr. Goodman committed that the issue of turning radius and fence design can be worked out. He indicated that the City is still investigating the longer wheel based vehicle but feels that minor revisions to the plans can accommodate both northbound and southbound movements.

Secondly, the Chairman indicated that the latest set of plans did not show the City's modification concerning the issue of storm water drainage. To that statement Mr. Goodman answered that the plans have now been revised and the flat area is now free from that concern.

Mr. Ryan and Mr. Brackett approached the Commissioners bench and together they reviewed the plans. Questions were asked about fencing, cut and fill, and re-grading and Mr. Ryan and Mr. Brackett addressed those concerns to the Board's satisfaction.

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Chairman Shelton entered into the record a letter written by Sandey Brandon, Island County Fair Association Volunteer:

I request that this brief statement be read aloud and entered into the public record before the Commissioners make a declaration regarding Island County Fair property:

If the County Commissioners, with the consent of the Island County Fair Board, wish to accede to the City of Langley's demand for fairgrounds land to accommodate a city street to benefit a private development, that is their right.

However, declaring that land **SURPLUS** is yet one more lie in an ongoing tissue of lies which your constituents have been asked to swallow by tacit consent. The Island County fairgrounds has no **SURPLUS** land. What it has is irreplaceable land that someone else covets.

Be honest in this, please. Call it a **GIFT** from the County to the City, but don't call it **SURPLUS**. As County lawmakers, you have both the authority to make it so and the responsibility of such to future generations of fairgoers. *[Letter on file with the Clerk of the Board]*

The Chairman confirmed that the Board recognizes there is no excess fairgrounds land. State law says that before the County may grant an easement it must "surplus," but that in no way means to say there is excess property. It is simply a statement of law.

Commissioner McDowell agreed with the Chairman's comment concerning state law and "surplusing" for the purpose of granting an easement.

By unanimous motion the Board approved the Public Right-of-Way Easement and the Temporary Construction Easement with the City of Langley. *[Easements on file with the Clerk of the Board]*

**OPEN RECORD APPEAL HEARING: APPEAL SHP 206/06 BY IOAN AND MARIA
AITONEAN – APPEAL OF ADMINISTRATIVE DETERMINATION OF THE ASSISTANT
DIRECTOR OF PLANNING & COMMUNITY DEVELOPMENT**

At 10:30 a.m. as scheduled, advertised, and continued from May 22, 2007, the Board held an Open Record Appeal Hearing on Appeal SHP 206/06 by Ioan and Maria Aitonean, Appellants. Mr. and Mrs. Aitonean are appealing the March 21, 2007 Administrative Determination of the Assistant Director of Planning & Community Development who issued a determination that a fifth lot could not be created under ICC 16.06.030(D) and (E) because the lot would not meet the base density requirements of the Rural zone. The property is located at 116 Chase Way, Camano Island.

Attorney on behalf
of Ioan and Maria Aitonean: Loren Combs

County Staff: Phil Bakke, Planning & Community Development Director
Jeff Tate, Assistant Director, Planning & Community Development
Randy Brackett, Assistant County Engineer

Public: Steve Erickson, Whidbey Environmental Action Network

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For review prior to the hearing, the Board's packet included the following:

1. Administrative Decision letter dated March 21, 2007;
2. Statement of Appeal dated March 26, 2007;
3. Statement of Errors dated April 19, 2007;
4. WEAN letter dated May 14, 2007;
5. Staff Response to Appeal Statement dated May 15, 2007; and
6. Reply to Staff Response dated June 7, 2007.
(Collectively GMA # 9373)

Chairman Shelton reviewed the Procedure to Hear Open Record Appeals.

STAFF CONCISE STATEMENT

Phil Bakke, Director of Planning and Community Development, stated that on March 21, 2007 the Department of Planning and Community Development responded to a request by the Aitoneans by issuing a letter in which a determination was made that subdivision of a parcel based on a future county road right-of-way, to take a parcel below base density as prescribed in the Island County Comprehensive Plan, was in conflict with the Growth Board's decision regarding right-of-way segregation and therefore could not be incorporated into a pending short plat application.

Jeff Tate, Assistant Director of Planning and Community Development, clarified that the Planning Department had received a short plat application from the Appellants. While the Administrative Determination was issued during the short plat review process, which is the subject of appeal, the issues remain separate. Planning received the short plat application for a four-lot short plat of a 20-acre piece of property zoned rural. That short plat has received preliminary approval with no issue surrounding the short plat itself. The issue at hand is the creation of a fifth lot on the 20 acres. Mr. Tate continued by saying that in Appellants' April 19, 2007 letter setting forth the facts and reasons for the appeal, Appellants included an Exhibit A which is the map of the short plat itself. Referring the Board to the map, Mr. Tate explained that four lots are shown on the map as being a part of the short plat. He further detailed that Rocky Mountain High Road runs northeast/southwest in a diagonal direction; Camano Hill Road runs north/south; and Chase Way runs northeast/southwest and is the road on the south side of the property. All three are existing roads. There is a proposed right-of-way that would run through the middle of Lot 1. The question was asked: if Public Works shifted and realigned the road, would that shifting and realignment have an affect of bisecting Lot 1? Mr. Tate said there were questions about what that means, what could be done with the lot, which in turn prompted the administrative determination which is the subject of the appeal.

Mr. Tate continued by saying that the Administrative Determination is a letter he wrote dated March 21, 2007. That Determination stated that in essence, the bisected lot could not be segregated further and also could not have two houses on each side of the lot. The Administrative Determination was issued following the decision of the Western Washington Growth Management Hearings Board earlier in the year regarding right-of-way segregations. Mr. Tate reiterated that the Administrative Determination does not affect the short plat. The four lots is one decision, with one set of facts, and its own determination as a Type 2 process under Chapter 16.19 Island County Code. The Administrative Determination is a Type I decision, and Chapter 16.19 Island County Code allows for those types of determinations to be appealed by the applicants. The Aitoneans have properly filed an appeal of the determination.

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Mr. Tate went on to say that the reason the Planning Department rendered the determination was because Public Works staff had engaged in a conversation with the property owner about acquisition of the right-of-way. Options were discussed about how to compensate a landowner for acquisition of a right-of-way. That raised the question whether one can compensate the landowner by allowing the right-of-way segregation to occur and allow the fifth lot, or is compensation based on a different formula. Public Works staff asked if the Planning Department would get involved because it affected the negotiation of acquiring the right-of-way. Mr. Tate said there are other decisions to be made later, including issuance of building permits. The Planning Department decided to assist and provide some advance insight as to what it would do if a building permit were requested for a structure on the fifth lot.

Mr. Tate said that the March 21, 2007 Administrative Determination rendered by the Planning Department was something that Planning first routed to the Prosecuting Attorney's Office for an opinion. He concluded by saying that the arguments are outlined in the March 21, 2007 determination, the follow-on Statement of Appeal, the Response to the Appeal, and the Response to the Department's Response.

APPELLANT – BASIS OF APPEAL AND ACTION REQUESTED

Loren Combs, business address of 1102 Broadway, Tacoma, WA 98402, appeared on behalf of his clients, Mr. and Mrs. Aitonean. He first confirmed that the following exhibits are of record:

1. Statement of Appeal dated March 26, 2007;
2. Statement of Errors dated April 19, 2007;
3. Short Plat referred to by Mr. Tate;
4. Administrative Decision letter dated March 21, 2007;
5. Staff Response to Appeal Statement dated May 15, 2007;
6. Reply to Staff Response dated June 7, 2007; and
7. Judicial notice of the subdivision applicability code, ICC 16.06.030.

Mr. Combs began by thanking those County staff involved in the process. Specifically, Randy Brackett has been very helpful and considerate to his clients. He said it is an honor to work with him and he is a compliment to County staff. Also, Mr. Combs appreciated Jeff Tate's professionalism throughout this process.

Mr. Combs began his argument by stating that the County wants to put a road through the middle of his clients' five-acre lot. He claims this is not about a subdivision because the property has already been subdivided into four, five-acre lots. The County wants to put a 60-foot strip of land, belonging to the County, through one of the five-acre lots. Mr. Combs and his clients agree that it is a good idea due to Rocky Mountain Road and how it dangerously intersects with Camano Hill Road. Mr. Combs said the dispute is not about whether the road project should occur. He reminded the Board that it passed a Resolution last year authorizing condemnation of the right-of-way and he and his clients agree it needs to be done. Mr. Combs said that Sections 16.06.030(D) and (E) Island County Code are clear on the subject. The language says that subdivisions and short subdivisions do not apply when it comes to (quoting from section 16.06.030(D):

Division of land due to condemnation, or sale under threat thereof, by an agency or division of government vested with the power of condemnation.

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He further quoted from section 16.06.030(E):

Portions of tax lots physically separated by public rights-of-way and having frontage on a public right-of-way.

Mr. Combs said that the WEAN decision does not apply in this case. The WEAN decision said that the County amendment was invalid. The decision did not invalidate the cited language and that is the language that applies to this case. Under the underlying Code that the Growth Board did not invalidate, Appellants are entitled to two lots. Mr. Combs requested that the Board reverse the decision of the Planning Department and establish that the road creates two separate lots.

Mr. Combs went back to the first ground for appeal which was the premature decision of the Planning Department. He and his clients believe what they requested complies with the County Code that was in effect when the application was filed.

Commissioner McDowell asked Mr. Combs his meaning of “premature.”

Mr. Combs said that the two sections apply when the road gets created. He explained that the Board authorized the condemnation of the right-of-way but technically it has not been a take yet since it has not gone through the condemnation process and is therefore “a little bit premature.” He said this case is not about compensation but that issue helps to explain the reason for the appeal. Mr. Combs discussed the conversations with Engineering and Public Works about takings, compensation, and what is paid depends upon what is left, known as the “remainder” in condemnation law. He believes that what remains of the property is worth a lot more if there are two lots as opposed to one 2-1/2 acre lot and a chunk of ground with a front yard separated by a 60-foot right-of-way.

Commissioner McDowell asked Mr. Combs’s feeling of what a Judge might say if the Board’s decision is appealed.

Mr. Combs stated that if the Board determines the decision is premature, then it forces the County to file the condemnation lawsuit, establish the public use and necessity, then afterwards everyone would return to the Board on appeal because he believes that Mr. Tate will not change his opinion.

If the one parcel is split into two, Commissioner McDowell asked Mr. Combs if it is his opinion that one of the parcels is not buildable under the County Code.

Mr. Combs replied by saying that is the position of the Planning Department, it is not buildable. He believes if there are two lots created from the one, his clients are entitled to two building permits. He continued by saying that if the condemnation creates two lots, he and his clients represented to the Public Works Department that they will not consider that there is a diminution in value of the lots but will only talk about the value of the 60-foot right-of-way, they will not argue the reduction in the value of the land.

Chairman Shelton asked if Mr. Combs correctly stated that this is not about building permits.

Mr. Combs replied that statement is correct.

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The Chairman agreed with Mr. Combs that the division of the five-acre piece of property, according to County Code, can be divided. But can a building permit be issued on both sides of the road is the question.

Mr. Combs explained that his clients are immigrants; they moved here 19 years ago and became citizens. Through their 401K fund they purchased the property and the front acreage will ultimately be their retirement home. They currently operate an adult care facility for Alzheimer's patients and when they retire, they would like to build a home on the parcel, most likely 10 years from now. Mr. Combs said that the lot issue is prime right now because of the condemnation. The building permit issue is something not faced with for a decade. He is not sure what the laws will be concerning building permits 10 years from now.

Chairman Shelton said there is no law against creating a separate parcel. The problem comes when the application for a building permit is applied for. The question surrounds the value of the remaining parcel and whether that will be an issue in the negotiations over the value of the 60-foot right-of-way, and whether the County must buy the 60-foot right-of-way or the 60-foot right-of-way plus some diminished value of the remaining parcel because it cannot be built on. If the decision of a building permit is put off for 10 years, it seems to the Chairman that the County is holding the Aitoneans in some unknown territory for the amount of time it takes to apply for the building permits.

Mr. Combs argued that from the condemnation standpoint, the answer is no. He said if his clients get the extra lot, they will only seek compensation for the 60-foot right-of-way. He said arrangements have already been made with Mr. Brackett for compensation. Once the decision is made and the appeal period is done, the land will be conveyed to the County and compensation will be per square foot value of the take, no residual. Again, he said, the issue of building permits is not currently before the Board.

Commissioner McDowell asked Mr. Brackett if it is his understanding that the only thing the Aitoneans are asking compensation for at this time is the per square foot cost for the 60-foot right-of-way, and nothing about building permits on both lots.

Mr. Brackett said that is correct provided they can create two lots, no discussion about building permits.

OTHER MEMBERS OF PUBLIC

Steve Erickson, speaking on behalf of the Whidbey Environmental Action Network, said that WEAN has an obvious interest in this matter since WEAN's appeal to the Growth Management Hearings Board invalidated the exemption. Mr. Erickson believes that Mr. Combs is essentially attempting to create a loophole which would invalidate the decision of the Growth Board.

Mr. Erickson said that the appeal has nothing to do with the short plat that has occurred and received preliminary approval. The short plat is consistent with state law, county code, and the four lots meet the density requirements. WEAN claims that Mr. Combs's position that the Growth Board invalidated the ordinance that amended the code and therefore the previous regulation was revived and in effect is inaccurate. He said the Growth Board did not invalidate the ordinance. The Growth Board invalidated the regulation as amended by the ordinance and that was the regulation in effect. He quoted from the Growth Board's decision on page 22 at "F":

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The continuing validity of the exemption, codified as ICC 16.06.030(E), adopted by Ordinance C-61-06, substantially interferes with fulfillment of GMA goals ... as adopted in Ordinance C-61-06, is therefore invalid.

Mr. Erickson clarified that the Growth Board invalidated the regulation in the Code; it did not invalidate the ordinance. He goes on to say that when the ordinance became effective and amended the code, the previous regulation went away; there was no clause within the ordinance that would have revived the previous regulation if the regulation as amended was invalidated. The Growth Management Act specifically says that if a regulation is to be revived, the Board must review that also for invalidity. Mr. Erickson said that the Hearings Board did not do that for obvious reasons as there was nothing to suggest that the regulation would be revived. He claims there is no authority in the County Code or state statute that would automatically revive the previous regulation. Subsection (E) does not exist any longer either in the previous version or in the version amended by Ordinance C-61-06.

Mr. Erickson claims that the County cannot invent new subdivisions in the regulations, that there must be some authority for it and there is no authority in the County Code or state statute. Subdivision codes and state statutes, RCW 58.17, specifically require that all subdivisions be consistent with state and local ordinances. It does not meet the zoning density requirements.

Concerning section (D), the condemnation exemption, according to Mr. Erickson, again does not apply for two reasons. There is not yet a condemnation so a Judge will say it is premature. Secondly, while that exemption may say that the subdivision requirements do not apply, that does not overrule the state statute requirement that all divisions of land and subdivisions in the state statute are defined broadly to all divisions of land. It must be consistent with state and county codes. Mr. Erickson claims that this is not consistent with the code as it is above the maximum density for the zone.

Mr. Erickson further believes that the remedy is through the condemnation process. He said if Mr. Comb's clients believe that the condemnation process will not adequately compensate them and it is a taking, then the remedy is through challenging that. The remedy is not to grant them another parcel.

About the issue of whether the Board is giving the Aitoneans a new parcel and not making a decision at this time whether it is buildable, Mr. Erickson said the assumption is that if there is a legally vested parcel that it is buildable. If the law in the future allows the density that the appellants are trying to achieve, then the law in the future would also allow the subdivision. The subdivision in itself is not legal and the County has no authority to grant the subdivision. If the compensation is inadequate for putting the road through appellant's property then the remedy is through the condemnation process, negotiation of the value, the remedy is not through trading off increased density on the parcel. By granting the subdivision the Board is creating a loophole that would nullify the Hearings Board's invalidity determination that allowing such subdivisions violates the Growth Management Act goals.

Mr. Erickson concluded by saying that he does not believe the Board of Commissioners has the authority to grant the subdivision and if it does, the Board will violate not only the Growth Board's decision but will also violate the state subdivision statutes. He urged the Board not to grant the subdivision.

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FURTHER COMMENTS BY APPELLANT

Mr. Combs, in response to the issues presented by WEAN, thinks it important to remember that the WEAN case concerned Island County Code section 16.06.030(E) and nothing more. The WEAN case had nothing to do with Island County Code section 16.06.03(D).

Mr. Combs quoted from page 1 of the decision:

In this decision, the Board finds that the new exemption fails to comply with the Growth Management Act.

He said the Growth Board held that the new exemption the County tried to create was invalid. The issue of the pre-existing exemption was not before the Growth Board. Mr. Combs believes it is clear that Section (D) is not mentioned anywhere in the WEAN decision and Section (D) is clear that the condemnation or the conveyance under the threat of condemnation is exempt. He reminded the Board that it has already passed the condemnation ordinance so if it makes the decision based on Section (D), that there is a real case in controversy, the Court would use that as a standard and Mr. Combs will argue it. Mr. Combs believes that Section (D) was not part of the WEAN decision and he believes the Board could safely make a decision under that section if it chooses not to use Section (E).

Mr. Combs told the Board that if it looks at the appellants' briefs it will see citation of numerous cases that say counties and cities have the right to make other exemptions from the subdivision codes, disputing Mr. Erickson's claims that granting the subdivision violates the subdivision laws. He reiterated to the Board that the subdivision has already been granted, it is not under the subdivision code, it is under the exemptions to the subdivision code, so the subdivision is not before the Board.

To Mr. Erickson's argument about not complying with the zoning code, Mr. Combs remarked that noncompliance with the zoning code is not the issue before the Board. The question remains whether appellants are entitled to a building permit but again, the issue of the building permit is premature at this time.

Mr. Combs was not aware of WEAN's May 14, 2007 letter until today. After receiving a copy he asked for and was given Board approval to formally respond to WEAN's letter by Monday, June 18, 2007.

Chairman Shelton informed the parties that the Board will announce its decision in open public meeting on June 25, 2007 at 2:30 p.m.

**AGREEMENT WITH WASHINGTON DEPARTMENT OF ECOLOGY FOR 2007 PUGET
SOUND WATERSHED PROTECTION AND RESTORATION GRANT**

By unanimous motion the Board approved the Agreement with the Washington Department of Ecology for the 2007 Puget Sound Watershed Protection and Restoration Grant to provide funding for integration of Island County's marine, nearshore and freshwater activities. Contract No: G0700304; Amount: \$50,000.00 [RM-PLAN-07-0078]

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 11, 2007 – REGULAR SESSION**

EXECUTIVE SESSION ANNOUNCED

Chairman Shelton announced that the Board will recess then reconvene in Executive Session at 1:00 p.m. under the provision of RCW 42.30.110(1)(i) to discuss with legal counsel potential/pending litigation. He estimated the session would last approximately one hour, and did not expect an announcement afterwards in open public session. The Executive Session was held in the office of the Planning Director, Island County Annex Building, 1 NE 6th Street, Coupeville, WA.

There being no further business to come before the Board, the meeting adjourned at 2:00 p.m. on completion of the Executive Session. The next regular meeting of the Board will be on June 18, 2007 beginning at 9:30 a.m.

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

Mike Shelton, Chairman

Wm. L. McDowell, Member

John Dean, Member

ATTEST:

Elaine Marlow, Clerk of the Board