

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
MAY 22, 2007 – SPECIAL SESSION**

The Board of Island County Commissioners reconvened in Special Session on Tuesday, May 22, 2007 beginning at 6:00 p.m. at the Utsalady Elementary Gym, 608 Arrowhead Road, Camano Island, Washington. Mike Shelton, Chairman, Wm. L. McDowell, Member, and John Dean, Member were present.

Staff Present: Bill Oakes, Public Works Director
Randy Brackett, Assistant County Engineer
Jeff Tate, Assistant Planning Director

Chris Wilson
Sandy Sandritter
Sue Engstrom
Justin Craven

Press Present: Rick Wood
Stanwood/Camano News

Public Present: Approximately 99 members of the public were in attendance including the applicant, David Platter. *[Attendance sheet on file with the Clerk of the Board]*

**HEARING HELD: FRANCHISE # 144/PW-0620-109 – TR CAMANO, INC. – SEWER
TRANSPORT SYSTEM**

As scheduled and advertised the Special Session was called for the purpose of continuing the Public Hearing held on May 7, 2007, public input having been closed, to consider Franchise # 144 (PW-0620-109) between Island County and TR Camano, Inc. for a sewage transport system to be located in North Camano Drive, Camano Island, Washington, Sections 19/20, Twp. 30N, R 3E.

Chairman Shelton began by reminding the audience that this Public Hearing is a continuation of several Public Hearings. The reason that the Board did not make a decision at the last Public Hearing held on Camano on February 6, 2007, was because the Board felt it important that the necessary permitting on both ends of the project be completed prior to the time of issuing the Franchise agreement for the laying of the force main in the County road right-of-way.

The Chairman went on to say that as it concerns the drainfield end of the project, the County Engineer made a determination that because of the amount of property cleared and the amount of soil moved, it was sufficient enough to trigger a clearing and grading permit which in turn required that the County conduct a SEPA review. The SEPA review is now complete, the County-designated SEPA official has issued a SEPA determination, and that determination is a public document and available for public inspection upon request. The SEPA-responsible official is the Director of the Island County Department of Planning and Community Development and the SEPA process is outside of the venue of the Board. He explained if there are issues surrounding the SEPA determination, those issues are not for this Board to review and it is not appropriate for this Board to address any public input on the SEPA process. If there are questions surrounding the SEPA process, the audience was advised that County staff is available to answer any questions. The purpose of this Public Hearing is solely to consider a Franchise for a transport pipe to run the effluent from the end of a pipe placed in the State right-of-way and down the County road right-of-way to the drainfield site, and not to discuss the development of future buildings or the drainfield.

Jeff Tate, Assistant Director of Planning and Community Development, confirmed the Chairman's statements as being accurate, that SEPA is an administrative process with its own rules and procedures.

Commissioner Dean mentioned that as a Camano Islander, he has for about 1-1/2 years watched this project and mutually shares his concerns about how the project was handled from each standpoint. He

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believes it is the responsibility of the Board and County staff to not let this type of process proceed without better overall management. He believes, however, there is no legal basis for denying the Franchise at this point so at the appropriate time will make a motion to approve it, further saying it is the only legal thing the Board can do.

Commissioner McDowell agreed saying that this is a Public Hearing on the Franchise and nothing else. The question before the Board is whether the road is suitable to contain the sewage transport line on North Camano Drive. He explained that the road right-of-way is there not only for transportation, but also for transportation of infrastructure. He plans to second a motion that Commissioner Dean proposes to approve the Franchise.

Numerous unidentified members of the audience expressed concerns about what they believe to be a flawed SEPA determination/Mitigated Determination of Non-Significance, to which they plan to appeal. They repeatedly indicated they want the Board to not approve the Franchise until there is a determination of the SEPA appeal. They asked about the appeal process.

Mr. Tate responded by saying the SEPA threshold determination/Mitigated Determination of Nonsignificance was issued on May 21, 2007 with mitigating conditions in order to address any impacts. As is the case with any SEPA threshold determination, Mr. Tate said that pursuant to Island County Code Chapter 16.19, those threshold determinations may be appealed. There is a 14-day appeal period process and it is appealed to the Island County Hearing Examiner. If there is in fact an appeal, it automatically stays any decision and the appeal process goes forward. The Franchise would be contingent on the results of the appeal.

Commissioner Dean asked if the Board would be agreeable to making the Franchise contingent upon the results of an appeal.

Mr. Tate explained that if the decision is stayed, in effect, it stops the project applicant from moving forward with development until the issue is resolved.

The audience voiced additional concerns about possible contamination of the neighboring wells, daylighting effluent, and erosion surrounding the drainfield.

Chairman Shelton responded by saying that the people who are charged with permitting the drainfield, the State Department of Health and State Department of Ecology, have both reviewed and approved the septic design and permit. He further remarked that this Board is not in any way going to allow a septic system that may contaminate local aquifers to be approved without review first by the State's best. The Franchise gives the project applicant the ability to put a line in the County road right-of-way and that line will be installed according to the plans submitted by the applicant's engineer and approved by the County's engineer.

Another audience member asked about the criteria for obtaining a Franchise agreement. Is there a due diligence clause, certain criteria for managing the Franchise, language that would ensure the County that the pipes are installed properly?

Bill Oakes, Public Works Director, explained that a Franchise requires the operator to properly operate and maintain its own facilities. As an example, cable television companies, power companies, and liquefied natural gas companies are all responsible to properly maintain and operate its own facilities. The same conditions are placed on this Franchise. If the facility fails, it is the responsibility of the Franchise Holder to fix it. If there exists a problem not immediately addressed by the Franchise Holder

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the County will fix the problem and bill the Holder for the County's work. Mr. Oakes expressed his confidence in the Franchise language concerning any default.

Chairman Shelton read from the Franchise, *Section Nine –Default and Revocation*:

Any breach of any of the conditions and requirements herein made, or failure on the part of the Holder of this franchise to proceed with due diligence and in good faith after its acceptance, with construction work hereunder, shall subject this franchise to cancellation after a hearing before the County Commissioners, of which said hearing the Holder shall be given at least ten days written notice, if at that time the Holder is a resident and doing business in the State of Washington.

Chairman Shelton continued by saying that if the Franchise Holder does not live up to expected requirements the Franchise can be cancelled according to the terms of the Franchise agreement. The applicant's designed and yet-to-be project is in agreement with the County's comprehensive plan and zoning regulations, and also meets the State regulations for a large on-site system (LOSS). The Chairman made it clear that if the project did not meet the County's criteria, it would have been turned down. If the project did not meet the State's regulations for the drainfield, the State would have turned it down. Again, he said, the issue before the Board now is the pipe that connects the two together. The Board must act according to law and there is no basis to turn down the request for a Franchise. Under the SEPA determination the Board requires the applicant to test the water if in fact it surfaces to ensure that it has been properly treated and offers no contamination to surface water. If for any reason there is untreated effluent being dumped into a County road ditch, it then becomes a public health issue and not allowed to happen.

To continuing questions from the audience concerning water rights, Chairman Shelton advised that the issue of water rights is reserved for the State Department of Ecology. In this case, the State Department of Ecology determined that the water rights for this project are sufficient.

Dan Millard approached the podium to ask if further comments surrounding SEPA would be allowed, to which Chairman Shelton replied yes. To further clarify, Mr. Tate explained that the Open Record Appeal hearing allows for someone to appeal and provide testimony to items outside of those already in the record.

Mr. Millard further asked about the status of the sewer line in the State's right-of-way.

Randy Brackett, Assistant County Engineer, said the State has not yet approved the permit as completed as the developer must first complete some repair work on the line.

Mr. Millard wondered if the report he has from the developer's hydrogeologist is part of the SEPA review record.

Mr. Tate explained that the mentioned document was submitted by the applicant and is a document that was used by the State Department of Health, State Department of Ecology, and the Island County Health Department in evaluating the proposal. The Island County Health Department reviewed the proposal and added an additional condition to the proposal beyond what was required by the State in order to do some of the pretreatment. The State then incorporated into its approval the County's additional condition. Mr. Tate went on to say that the document is part of the SEPA review process, it was considered along with other documents, and is part of the remaining ongoing SEPA issues. He reiterated again, that the SEPA determination is not part of tonight's hearing on the Franchise.

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Kim Brook said that tonight's decision will affect her 20 years of hard labor. She asked that the Board look first at the developer's quality of work, the studies, and understand the consequences to property owners now and in the future when making a decision.

Chairman Shelton commented in answer to an additional concern of the audience that yes, an engineer must certify that a system is installed according to the approved design.

An unidentified gentleman mentioned that there should be a valve every 1000 feet along with a standpipe so the system can be tested. If neither exists, there is no way to isolate the problem until it surfaces. To that Chairman Shelton responded that the State is in the process of clarifying any deficiencies in the line.

Jim Jennings suggested that the Board make its motion to include a contingency that the permit is approved based upon the SEPA process being completed and approved contingent upon all County and State permits. He believes the Board should delay its decision and not approve the Franchise as it stands because the developer cannot be trusted. He wants the County to maintain control of the project and remain in the "driver's seat." He asked if the Board will consider such language.

Chairman Shelton answered by saying whether the language is in the motion or not, if SEPA is appealed, the SEPA determination is stayed until it runs through the appeal process. He said that CARE's hydrogeologist and the County's hydrogeologist have agreed there is a possibility that there could be surfacing of effluent, but if that happened, it would be treated and could be handled as groundwater. The SEPA determination will ensure that it is acceptable as surface water and that it does not represent any untreated water. He assured the audience that testing will immediately be done on any surfacing water in the drainfield area.

Mr. Tate explained that the water quality monitoring program minimum standards are an "insurance policy" and then he reviewed the standards and procedure. He assured the audience that the County is mobilized and equipped to go into areas beyond County ditches if need be, that the County will go where it thinks the contamination is coming from. Once it is found, there is a compliance and/or enforcement procedure to put the County in a position to say there is an issue with the property. It is currently spelled out in the Code and is an active procedure that tells the County what to do.

Commissioner Dean said he will make the motion as presented in an effort to gain some control. While he believes it may be redundant, he has no problem with such a contingency.

In response to Mr. Platter's statement about a contingency on the franchise and the fact that the State will not lift the stop work order until the County's franchise is approved, Chairman Shelton responded that the State permits are already issued, there is no further permitting process required. However, final approval on the State Franchise for SR 532 has not yet been signed off because the State believes there are certain issues that should be corrected first.

To ongoing questions about SEPA, Chairman Shelton again replied that SEPA has nothing to do with the Franchise. SEPA concerns only the clearing and grading permit required for the drainfield area. Mr. Tate added that the SEPA determination concerns an environmental review and that the Franchise approval is not an environmental review issue that can be raised during the SEPA appeal process.

Commissioner Dean moved for conditional approval of Franchise # 144, PW-0620-109 with TR Camano, Inc. contingent on the results of any SEPA appeal and pending final State approval along SR 532.

Commissioner McDowell asked first if the wording contradicts the County Code.

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Mr. Oakes said there is nothing in the County Code that would tie the approval of the Franchise to the project in the State's right-of-way.

Commissioner McDowell said he would second the motion with "subject to the SEPA process being completed."

Commissioner Dean amended his motion to delete "the pending final state approval on SR 532."

By unanimous motion the Board approved Franchise # 144 (PW-0620-109) between Island County and TR Camano, Inc. for a sewage transport system contingent on the SEPA process being completed.

There being no further business to come before the Board at this time, the meeting adjourned at 7:26 p.m. The next regular meeting of the Board will be on June 4, 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