

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on November 17, 2008, beginning at 10:00 a.m. in the Board of County Commissioners Hearing Room (Room # 102B), Annex Building, 1 N.E. 6th Street, Coupeville, Washington. John Dean, Chairman, Phillip Bakke, Member, and William L. McDowell, Member were present. The meeting began with the Pledge of Allegiance.

PUBLIC INPUT OR COMMENTS

Elizabeth Derrig spoke on behalf of her clients, numerous homeowners in the Sunlight Beach area, who are concerned about a contract the County entered into with Diking District No. 1 and Useless Bay Golf and Country Club. She said questions remain unanswered by the diking district and Board of Commissioners surrounding the pump, where the money is coming from to pay for the pump, and concern exists about the drainage of wetlands and golf course run-off into both the wetlands and Deer Lagoon. Ms. Derrig said her clients do not want the pump delivered.

At this point Chairman Dean reminded Ms. Derrig that public testimony will be allowed during the public hearing scheduled at 10:15 a.m. concerning whether to suspend operations of Diking District 1.

Ms. Derrig disagreed saying a public meeting is open to any public comment the public wishes to make at that time. She said her clients do not want the pump, they do not want the pump to start pumping 6,000 gallons per minute into Deer Lagoon, they do not believe they should pay for the pump, and it is unknown where the money is coming from for that expense. As a party to the contract Ms. Derrig believes those questions are appropriately addressed to the Board of Commissioners, including Commissioner McDowell who signed off on the contract and Commissioner Bakke who approved the permit.

Dave Crawford, 5974 Campbell Lake Road, Anacortes [*hand-out provided and on file with the Clerk of the Board*]. Mr. Crawford said the North Whidbey Access Feasibility Study for a second bridge off Whidbey Island cost about \$400,000 and was completed in May 2001. The Study was to be revisited in five to eight years which has not yet happened. He believes the bridge will eventually be required to benefit the common good, regardless of the negative environmental impacts claimed. Mr. Crawford understands the bridge will be expensive but could be paid for with federal stimulant money as well as reasonable tools and will create many jobs in the near term. To put the issue off anymore after spending money on the initial study seems irresponsible. He remarked that Senator Haugen has said in the past that she will not work for a bridge until the County asks for it. Mr. Crawford, therefore, asked the Board to make a resolution for and to Island County, the State Department of Transportation, and the U.S. Congress for a second bridge from Whidbey to Exit 215 on I-5. The resolution should stipulate that the bridge would be paid for primarily with federal stimulant money and not by use of County tax dollars as the private sector is already burdened enough. The completion of the project would also be of benefit to Fidalgo Island as well as Whidbey because Fidalgo currently is taking the bulk of the traffic.

Bill Lewis, 2556 Sunlight Beach Road, Clinton. Concerning again the issue of Diking District 1, Mr. Lewis asked the Board what the charter and mission is of the diking commission; who should be paying for any improvements associated with the work; has the environment been considered in terms of permitting; should the diking commissioners be appointed or elected; have the residents received proper notice; and, he expressed concern about significant financial agreements in place without the knowledge of homeowners. Of most concern to Mr. Lewis is the lack of

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

communication with the diking commissioners; the homeowners in the district do not know what is going on.

Chairman Dean again informed the assembly that public testimony concerning Diking District 1 will take place at the public hearing scheduled for later in the morning.

Steve Erickson, Whidbey Environmental Action Network, commented upon the suggested new bridge. Mr. Erickson, in looking through the materials provided by Mr. Crawford, said that the estimate of 5 million cars saving 30 miles each year does not take into account several factors. The direct link to Whidbey and Camano from I-5 would be upgraded to freeway status resulting in the cost of construction; carbon emissions from constructing the freeway; and carbon emissions from the vast increase in traffic. He said the proposed analysis is shallow and short-sided.

MONTHLY FINANCIAL REPORTS

Auditor

Anne LaCour, Chief Deputy Auditor, submitted the Auditor’s written financial report for the period ending October 31, 2008, reporting no change.

Treasurer

Linda Riffe, Treasurer, submitted the Treasurer’s written financial report for the period ending October 31, 2008, reporting no change.

CONSENT AGENDA

By unanimous motion the Board approved the Consent Agenda as follows with the exception of Item No. 6, *Amendment No. 1 to Christensen Building Lease Agreement with County (Lessee)*, pulled from the agenda:

ELECTRONIC FUND TRANSFERS, PAYROLL, VOUCHERS, PAYMENT OF BILLS

Vouchers (War) #s 299830-300023	\$390,002.15
Electronic Fund Transfers.....	\$230,698.44
Payroll	November 14, 2008

APPOINTMENTS/RE-APPOINTMENTS TO BOARDS AND COMMITTEES

Sno-Isle Library Board

Reappointment of Jacquelyn DeFazio to the Sno-Isle Library Board representing Camano Island. The seven year term shall expire January 1, 2016

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

GSA PROPERTY MANAGEMENT

Purchase and Sale Agreement to the Heib Trust for Parcels R23115-410-4730 and R23115-362-4290 located on Camano Island; Amount: \$885,100.00 (RM-GSA-08-0240)

HUMAN SERVICES

Service Agreement with O’Keeffe & Associates to provide technical and professional consultation to Coupeville School District Special Education Life Skills Program. Developmental Disabilities; Amount: \$3,000 (RM-HS-08-0212)

Amendment 2 to Contract with Washington Vocational Services for Developmental Disabilities, Supported Employment Services. Amendment Amount: \$-2,582; Contract Amount: \$354,313 (RM-HLTH-07-0127A)

PUBLIC WORKS

Solid Waste

Contract with Waste Management of Washington, Inc. for Recycle Services. Amount: \$150,000/year; January 1, 2009 through December 31, 2013 (RM-SW-08-0163A)

LIQUOR LICENSES

Application for Special Occasion Liquor License No. 091224 by the Camano Island Yacht Club for a special occasion to be held December 20, 2008 from 5:30 p.m. to 9:00 p.m. at the Camano Island Yacht Club, 129 N. Sunset Dr., Camano Island, WA

Application for New Liquor License No. 350141-3D by Robert Wayne Ronhaar, Tradename: Soundview Shopper, 39757 Hwy. 20 N., Oak Harbor, WA 98277

REGULAR AGENDA

Planning & Community Development

**ORDINANCE C-122-08 (PLG-015-08) IN THE MATTER OF ADOPTING AMENDMENTS
TO THE IMPLEMENTATION STRATEGIES OF THE HOUSING ELEMENT OF THE
COMPREHENSIVE PLAN**

Ordinance C-122-08 (PLG-015-08) In the Matter of Adopting Amendments to the Implementation Strategies of the Housing Element of the Comprehensive Plan, as described by Mr. Tate, Planning Director, is comprised of several chapters or elements of the comprehensive plan, one of which is the Housing Element. The ordinance proposes to modify the implementation strategies section of that element. Mr. Tate explained that implementation strategies are guidance statements to the County on how to move forward the goals and policies that are within each element of the comprehensive plan. The strategies within Ordinance C-122-08 deal primarily with affordable and low income housing and are an effort to establish a more proactive approach when talking about affordability issues in Island County. The set of amendments before the Board were originally proposed earlier in the year by Planning Commissioner Bill Massey, who submitted the amendments for review and consideration on the

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

County's annual review docket. Each year a docket is established that includes a number of items that go through the Planning Commission process. Under state law the Planning Commission has the ability, once a year, to consider amendments to the comprehensive plan and development regulations irrespective of what the package of issues are. The purpose of the statute is to make sure that all items are addressed for their cumulative impact or effect.

Mr. Tate said that Ordinance C-122-08 went through the Planning Commission's 2008 annual review process, public hearings were held on affordable housing and implementation strategies in May and June, and the Planning Commission deliberated on the implementation strategies and forwarded its recommendation to the Board.

Mr. Tate reminded the Board that the proposed ordinance is a narrower version of some additional work that still needs to be done. He said there was much discussion in 2008 about affordable housing. Convened was a broad cross-section of non-profits and government agencies in June that held an affordable housing summit with conversation about affordability in Island County and what the County can do to promote affordable housing. From discussions with the Council of Governments there have been a number of other ideas talked about so staff intends in 2009 to be including in the Planning Commission's docket again a broader review of the Housing Element. Currently, the work is not done. It is necessary to go back through the Housing Element to expand it, provide definition for what affordable housing and low income housing is, and begin to work more proactively with other jurisdictions on creating a plan that is consistent for all of Island County.

Chairman Dean said the few comments he has received on the subject indicate a sense of fear that the proposals may push added density in the rural areas. A letter received from CTED said much the same thing and recommended findings of fact and more specification of the plan. Concerns were also expressed about expediting any affordable housing permits or applications. The Chairman asked Mr. Tate to explain how staff plans to address the concerns.

Mr. Tate said the Housing Element cannot trump other elements of the comprehensive plan; they must work with each other and be consistent with growth management. The Growth Management Act sets out the broad framework for land use in any County and requires that all comprehensive plan elements and development regulations be consistent with each other. To stress an important point, Mr. Tate said that these strategies do not trump other land use regulations. The ordinance will cause staff to look at density, rural character, location, and zoning. It will also set the County up to consider those issues and begin developing strategies that again will go back for public review and consideration. Public sentiment is unclear at this point and work is needed with state agency partners to determine how to make sure nothing is done that would be in conflict with the Growth Management Act. Different opinions have been heard through the Planning Commission process about the appropriateness of having density bonuses in Rural Areas of Intensive Development (RAIDs) or not. Those are questions to be asked, ideas developed and discussed. The implementation strategies, according to Mr. Tate, put the wheels in motion to begin the conversation.

Commissioner McDowell asked if the two cities and town are on board with the idea of developing regulations that somehow can promote more affordable housing, i.e., land use.

The implementation strategies, as described by Mr. Tate, apply only to Island County, not to the two cities and town, so the cities and town have not yet taken a position about the language

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

before the Board. There has been some general sentiment that Mr. Tate has taken as an agreement that a more collaborative approach is a good idea. A strategy mentioned that begins to apply is the issue surrounding a center staff person who helps coordinate between the agencies and is working for perhaps the Council of Governments and not just the County. There is also a strategy speaking to what can be done in urban growth areas and that strategy will trigger a discussion with the municipalities. There is nothing, however, that establishes what those policies will be.

Chairman Dean thought it a good idea to bring the strategies to the Council of Governments.

Commissioner Bakke recognized and thanked Donna Keeler and Bill Massey, both of whom for the last 15 years have been soldiers in the fight for affordable housing. In his opinion keeping the team together and working with the Council of Governments in pursuing the affordable housing needs assessment is critical to maintaining momentum and critical to the County's rural character.

By unanimous motion the Board approved Ordinance C-122-08 (PLG-015-08) In the Matter of Adopting Amendments to the Implementation Strategies of the Housing Element of the Comprehensive Plan. (*GMA No. 10058*)

**RESOLUTION C-123-08 IN THE MATTER OF RELEASE OF LIEN AND OF THE
JUDGMENT DEBT OWED BY STEVEN DOLLARHIDE**

According to Andrew Hicks, Enforcement Officer with Planning & Community Development, Resolution C-123-08 proposes to release a lien against property formerly owned by Steven Dollarhide in the amount of \$307,500. The resolution also proposes to authorize the satisfaction of a default judgment in the same amount. The Prosecutor's office requested a slight change to the findings to reflect a junior judgment lien against the property rather than a senior judgment lien.

By unanimous motion the Board approved Resolution C-123-08 In the Matter of Release of Lien and of the Judgment Debt Owed by Steven Dollarhide.

Veteran's Assistance Fund

By unanimous motion of the Board Claim #V8-14 is denied in its entirety and Claim #V8-15 in the amount of \$3,124.06 is approved, both as recommended by the Veterans' Assistance Review Committee [*emergency financial assistance to eligible veterans; names and specific circumstances are confidential*].

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

PUBLIC HEARINGS

Planning & Community Development

**HEARING HELD: CONSIDERATION OF AN OPEN SPACE TIMBER LAND
CURRENT USE PROGRAM APPLICATION – OPS 508/07**

(10/6/08 - Scheduled for Public Hearing 10/27/08)

(10/20/08 – Rescheduled for Public Hearing 11/10/08)

(11/10/08 – Continued Public Hearing to 11/17/08)

At 10:46 a.m. Chairman Dean opened a public hearing, continued from November 10, 2008, to consider Open Space Timber Land Current Use Program Application OPS 508/07 by Applicant Whidbey Island Farm, LLC.

Brandon Sweezea, Planning & Community Development, requested that the Board continue once again the public hearing to allow staff the necessary time to work with the Applicant to determine boundaries and acreage. Initially Applicants applied for a Geologic Hazard Area Buffer Resource but in working with Mr. Kwarsick, who represents Whidbey Island Farms, a mutual agreement was reached that the Geologic Hazard Area Buffer Resource is not relevant to the property because the property includes buffers and not the steep slope itself. Instead Applicants will look at increasing the Marine Fish and Wildlife Habitat Buffer to the top of the bluff which will provide protection from any type of development, clearing, grading, or any type of activities within the area. The participants are attempting to determine whether that action would meet the five-acre minimum threshold as required for the Public Benefit Rating System.

Chairman Dean opened the public hearing to comment and there being none, public comment was closed.

By unanimous motion the Board approved continuing the public hearing concerning Open Space Timber Land Current Use Program Application OPS 508/07 by Applicant Whidbey Island Farm, LLC to December 8, 2008 at 10:20 a.m.

**HEARING HELD: PETITION FOR SUSPENSION OF OPERATIONS
OF DIKING DISTRICT NO. 1**

At 10:50 a.m. the Chairman opened a public hearing to consider the Petition for Suspension of Operations of Diking District No. 1, filed with the Board of County Commissioners on October 3, 2008. The petition requests that the Board of Commissioners, pursuant to RCW 85.38.220, inquire into whether suspension of operations of Diking District No. 1 is in the public interest. Chairman Dean indicated the alleged reasons for the request:

1. Unelected commissioners entered into unauthorized contracts encumbering homeowners for over a half-million dollars to drain wetlands which will in no way benefit the assessed homeowners.
2. Diking Commissioner allegedly obtained unassessed private benefit and private easements at the expense of the diking district.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

3. Making deals to transfer public property to private individuals and block others from using dike paths to the beach.

Chairman Dean clarified that the intent of the hearing and state law narrowly focuses the Board of Commissioners to determine whether suspension of operations of the diking district is in the public interest. Other issues raised in the petition: 1) stop all work on district projects; 2) freeze district assets; 3) call for resignation of diking district commissioners; and 4) call for a new election, are all beyond the scope of the Board of Commissioners to address. The Board of Commissioners is empowered solely by law to decide whether it is in the public interest to suspend operations and assume responsibility of the diking district.

Chairman Dean remarked about an e-mail the Board of Commissioners received asking that Commissioners Bakke and McDowell recuse themselves for conflict of interest and that the hearing be continued. In that case he said that he, as well, would need to recuse himself because both Commissioner McDowell and Chairman Dean appointed Commissioner Bakke. By necessity the Board of Commissioners needs to hear the matter now to remain a quorum or instead, the public hearing could wait until January. There is a cure in state law that allows potentially disqualified commissioners to still participate as long as they disclose on the record any potential or perceived reasons the board members may have for disqualifying themselves. Chairman Dean does not believe there to be any conflict of interest on his part by appointing Commissioner Bakke and he wishes to remain on the Board to consider the matter.

Commissioner McDowell does not perceive there to be a conflict of interest in his appointing a successor to Commissioner Shelton or by signing the contract, both issues raised as conflicts by Ms. Derrig. He agreed publicly he did both but does not believe that doing one's duty as a commissioner is somehow a conflict.

Commissioner Bakke said the permit went through the office of Planning & Community Development, of which he was the director at the time. He was also the SEPA responsible official under the state SEPA statutes. The permit process was a public process, a decision was made and not appealed though it could have been, and was properly within the duty and scope of his responsibilities. He, as well, does not believe there to be any conflict of interest in his current capacity to review the issue.

Chairman Dean opened the floor to public comment.

Elizabeth Derrig represents numerous homeowners who live in the Sunlight Beach area. In addition to those homeowners, there are other community members who have joined with those homeowners to form a group calling itself "Citizens in Support of Sunlight Beach Community, LLC."

As background Ms. Derrig said a petition was filed with the Board of Commissioners and on October 6, 2008 Ms. Derrig and community members appeared before the Board of Commissioners at its Regular meeting. The petition was filed because community members learned of and were concerned about a contract to install a 6,000 gallon per minute pump that would pump into Deer Lagoon, the wetlands, Puget Sound, and beach area around Ms. Derrig's clients' homes. Her clients are also very concerned about the project's financing and want to stop the drainage before the pump arrives. The information available leads Ms. Derrig and her clients to believe that if the pump begins pumping the wetland area would quickly be drained. Whether

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

the pump was properly permitted was looked into and it was discovered that Commissioner Bakke had signed off on the permit, with a DNS, so there was deemed no significant impact on the shoreline. Since that time Ms. Derrig said the Department of Ecology visited the site, took water samples, and is concerned and investigating the fact that perhaps DOE was not given adequate information about the nature of the project. Ms. Derrig's clients are concerned about what representations were made to the federal agencies.

Ms. Derrig then talked about the Board of Commissioners' staff session meeting that she and her clients attended. She said that Mr. Gabelein also attended and spoke about the benefits of the project saying the pump is necessary because it drains storm and surface water. He also commented, according to Ms. Derrig, that he believes the problem lies with the homes that are being remodeled in the area. Ms. Derrig and her clients object to that being the cause of the problem as the homes he references are replacing the same square footage as was there before; the new homes are not causing the surface and storm water run-off that is being pumped into Deer Lagoon. Ms. Derrig's clients have noticed a decline in crabs and small fish throughout the Useless Bay Area. In fact, she said, the representative from DOE strongly recommended that no one eat any sea life from the bay. The permit did not indicate a Heron habitat when it should have. The issue of other permits being needed remains a question.

Ms. Derrig said it is not the County Commissioners' job to put the stamp of approval on who benefits from pumping storm and surface water into Useless Bay. The Diking District is a statutory creation that is governed by somewhat archaic statutes, in her opinion, but at the same time also has the opportunity to operate under more updated statutes.

Ms. Derrig's clients have attempted to obtain information from the diking commissioners by filing Public Disclosure Act requests to no avail. It is unknown what has been done with the money collected and there is a refusal to provide minutes or tax assessment rolls or benefits that apply. She said her clients have been left in the dark. In the meantime Public Disclosure Act requests were filed with the County. Ms. Derrig said it was learned when reviewing County documents that the County has been highly involved in the project, particularly Planning and Public Works in terms of design and approval of the pump. Yet, there is nothing in the record that speaks to what the purpose of the pump is, how the pump will benefit marine life or improve the value of the unfarmed wetlands, or anything to indicate the location of Mr. Gabelein's or Mr. Kohlwes' property. Ms. Derrig took the information she received from Public Works and Planning, including the contract, and provided that information to a pump dealer asking if the dealer would provide her with an estimate on the pump. The pump dealer said he could not provide an estimate based on the information provided.

Ms. Derrig said she is in the process of reviewing documents provided by the County. She said the Board of Commissioners withheld numerous documents based on purported confidential government documents and attorney/client privilege. She said the Prosecuting Attorney, when providing his documents, did not provide her with a similar exemption list. In her opinion if there is communication between an attorney and client the communication should be reflected on both sides. She asked Mr. Banks to look into the discrepancy.

Ms. Derrig said she phoned the office of the Board of Commissioners to ask for a continuance of the matter for various reasons, primarily because her clients perceived the Board to be biased. Commissioners McDowell and Bakke were asked to recuse themselves because of their involvement in the project and to Ms. Derrig, that has become more apparent as the investigation

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

has gone on. She said Commissioner Bakke has visited the site and Mr. Gabelein, in the purported role of diking district commissioner, has been to the project site with a large Bakke sign on his truck during the election. Her clients feel that Mr. Gabelein was keeping track of who was supporting whom during the election. Additionally, she said, there was a significant amount of public funds approved through the County, with the County a partner in a conservation easement, in order to somehow turn Mr. Gabelein's property into a one-lot development as opposed to a potential six-lot development. Mr. Gabelein, along with the conservation easement, also obtained easements back to the property that did not exist.

Ms. Derrig understands that Mr. Kohlwes has similar rights, obtained in the past and which no longer exist because those rights were obtained under a prior program, but regardless show intent of development. Diking district fees have been incurred as a result.

At this point Ms. Derrig said her clients are concerned about receiving a fair hearing and given the extreme public unease, she wants first to make sure she has all of the information available for the public hearing which she is currently gathering and reviewing. Continuous pumping has begun, the water smells and is brown, and she is anxious to see the results from the DOE water tests. Ms. Derrig believes it is in her clients' best interest to continue the hearing until there is an unbiased Board of County Commissioners to hear the matter. Additionally, she said that she will most likely need to file a Public Disclosure Act complaint against the diking district commissioners in order to obtain the district's records in terms of the budgets and information as to where the money has gone.

From what she has learned thus far Ms. Derrig said the purported diking district commissioners attempted last year to put through a \$300,000 assessment on all parties located within the diking district, not just the benefited parties. She also said that the diking district commissioners have been telling residents that they, the diking district commissioners, should be voted for because the diking commissioners will not impose a tax when in fact the attempt was made to do so.

Under RCW 85.38.220 Ms. Derrig wants the public hearing continued until after the new Board of Commissioners is certified.

Chairman Dean said much of the underlying problem, in his opinion, has been a lack of communication. He would therefore like the opportunity to first hear from the other side.

Ms. Derrig remarked that the only authority the Board of Commissioners has in hearing the petition she filed is to determine whether to suspend the diking district pursuant to RCW 85.38.220. She said if the Board of Commissioners will not grant the requested continuance then she will withdraw the petition and re-file it once the new Board is in place.

Chairman Dean asked if he understood Ms. Derrig to say that she withdraws the petition.

Ms. Derrig said she would like for her clients and anyone else in the assembly to have the opportunity for public comment. As she already indicated, however, she does not think it fair for the petition to be heard today before the existing Board. The public hearing was requested some time ago so the pumping could be stopped but the pumping has not stopped. Ms. Derrig does not believe the Board of Commissioners will consider this issue in a full and fair manner and, she said, her clients do not have and have not reviewed all the information that is currently available. Ms. Derrig reminded the Board that the hearing is solely on her petition on behalf of her clients

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

and if the Board will not continue the hearing then she asks that the petition be withdrawn. She said public comment should, nevertheless, be allowed.

Chairman Dean said the Board of Commissioners must, by law, respect any junior taxing district. Although the diking district is somewhat different he said the Board is loathe to stepping into the district's business just as the Board would not step into a fire district or a school district when people are unhappy. The Board's role in the public hearing, as believed by the Chairman, is to provide a forum in an attempt to gain information. He is happy to consider a continuance but even with a new Board, Chairman Dean believes, the issue will be the same: Is suspending the diking district in the best interest of the public and all of Island County. He defines public interest and the need for the County to step in and take over the district by asking the question, is an individual or personal property in danger. The Chairman does not believe Ms. Derrig will receive a different answer to that narrow question, is it in the public interest, and he believes any Board would need to weigh that question carefully. It is not a political decision, he said, it is a decision of good government and what is best for all of Island County as well as what is good for Ms. Derrig and her clients if they are in danger. Chairman Dean is comfortable with continuing the public hearing if Commissioners McDowell and Bakke are in agreement.

Ms. Derrig went on to say that the County is in a contract and is providing public funds to the diking district commissioners. She said the County Treasurer must first approve the loan; the County Prosecutor signed off on the contract. The County is all involved yet does not want to take any responsibility. Ms. Derrig submits that everyone will see what happens upon the return of the DOE water tests as to whether people's lives are in danger. She also submits there to be a constitutional issue in terms of taxation without representation. The diking district commissioners are not functioning as a municipal board, there is potential malfeasance, and the diking district commissioners are being investigated for possible violation of Open Public Meetings laws by the state. She is of the firm opinion that the Board and County officials, in the best interest of the people of the County, should look carefully at being involved in the contract and using public funds to support the operation when it appears it may not be healthy for people to have fertilizer pumped into their backyards. The chemicals are apparent in the air. She wants a fair hearing and answers to questions.

Upon the Chairman's statement that he will allow Mr. Gabelein to speak and allow his fellow Commissioners the opportunity to decide whether they are comfortable continuing the public hearing, Ms. Derrig withdrew the petition. She said she is willing to allow any part of the assembly to use her time to make public comment.

Commissioner McDowell commented that the matter at hand is a public hearing and while he respects Ms. Derrig's enthusiasm, he said it is not up to her to tell the Board what it can and cannot do. The Commissioner would like to hear public comments and then decide if the Board will or will not take action.

Ms. Derrig argued that the petition is hers and the only authority the Board has to hear the petition is the petition itself under RCW 85.38.220. She said as a lawyer and for the record, the petition is withdrawn. Therefore, she continued, the Board has no other authority. The Board can listen to public comment but there cannot be a public hearing on her petition.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

Ray Gabelein, 5785 S. Bayview Road. Mr. Gabelein first commented on Ms. Derrig's statement about her intent to withdraw the petition. He said while he is not an attorney it seems that an entire petition, from a group of people, cannot be effectively withdrawn by one party.

Mr. Gabelein, in an effort to provide insight, said from the first day a dike is built drainage is necessary, otherwise there is a lake on the freshwater side of the dike. The dike in district 1 was originally built in 1914. For many years the focus and money spent in Diking District No. 1 was for maintaining and repairing the dike. The sand now building up in Useless Bay is good for protecting the dike, yet at the same time it creates problems for the gravity tidegates. Mr. Gabelein commented that even though the district is not spending as much presently repairing the dike because of the way the beach has built up, the beach has created another problem that is getting worse each year. Dredging the channel out into Useless Bay from the gravity tidegates to a lower elevation is not feasible, cost effective, and very likely would fill back in with sand in a short amount of time.

Beyond the sand problem, he said, is also an increase in the amount of run-off or storm water that enters the drainage basin both from the benefited area and the entire watershed. Development that has occurred in the area, residential; commercial; state highway; County roads; driveways; parking lots; etc. are a large factor in the inability of the gravity tidegates to keep up during the wet season.

Mr. Gabelein remarked that pumps have been discussed several times over the years. The nature of the benefited area has changed as well over the years. He said that 30 years ago or so there were mostly small fishing cabins along Sunlight Beach Road and many vacant lots. Most of the cabins were used only in the summer and occasional weekends. Now, however, there exist large residences that are used more often than just on a few weeks of the year. Each of the homes is served by an on-site septic system and keeping the water level down in the area is an important factor for the septic systems to function properly. A high water table is not conducive to operating a proper on-site septic system.

Mr. Gabelein went on to say that homes are directly benefited from the drainage but at the same time contribute to water run-off as a result of the impervious surfaces that have been created. There are pipes at the base of the hill on Sunlight Beach Road that have water running from them year around, flowing into the main drainage ditch out to the gravity tidegates and now to the pumps. If there existed a logical, less-expensive option to manage the water in the drainage basin, the diking district commissioners past and present would have chosen that option. To do nothing, or wait until major damage occurs, may have resulted in Sunlight Beach Road becoming impassable. The district commissioners would not be acting in the best interest of the district's landowners.

The pump project was properly permitted, advertised, engineered, and the contractor did an excellent job of construction in Mr. Gabelein's opinion. The goal is to return the water levels back to what used to be normal. The basin has lost its storage capacity in the main drainage ditch and adjacent areas. The pump project will allow the drainage basin to again have storage capacity so that during a storm event the water will have a place to go and then drain into the gravity tidegates and pump pond. Without that capability each rainfall event overflows the main ditch and causes flooding; the pipes and the side ditches that drain into the main ditch go under water and cannot drain properly. The pump improvement may handle the run-off water for many years, depending on how much development occurs both in the basin and the surrounding

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

watershed. With five, ten, and 20 acre zoning in place in Island County, development may not be as large a factor in the future. In other words, the dense development seen in areas in the watershed under the current zoning would not be taking place in the future. Also, new development in the area is now required to manage the storm water on-site as much as possible.

Mr. Gabelein is not advocating for or against such a tax but, if a storm water utility tax is ever implemented in Island County, he would ask that the money collected in the entire watershed be used to manage the water that comes into the drainage basin. The money would help pay for projects similar to this and the operation expenses of the district in the future.

One area in which the diking district commissioners need to improve, he agreed, is communication to the members of the district. The diking district commissioners took action at its regular November meeting regarding scheduling a special annual meeting in June, with the hope of a good turn-out at this time of the year. This is in addition to the district's regular monthly meetings. The diking district commissioners are also taking steps to put together an e-mail list. Available is an updated list of the district's landowners, including current mailing addresses. With a mailer, the diking district commissioners can put together an e-mail list if the landowners wish to be included.

About the public records requests, Mr. Gabelein said the diking district commissioners are in the process of obtaining a separate office space or hire a secretarial service so the diking district actually has its own home and space for files. This will ensure that public records requests can be handled more efficiently. The district does not own a computer, printer; most all of the things done in the district have been done by volunteers since 1914 at very little or no cost to the taxpayers. He suspects changes will occur in the near future with some changes already taking place.

Mr. Gabelein then addressed some of the questions that have been raised. He first made it clear, however, that the diking district is not represented at the public hearing by legal counsel. If there are legal questions to be answered those will need to be answered at another time by counsel.

The Pump

The pump that is presently running has been running since the 60s at the same location with nothing changed as far as the outfall. The gravity tidegates that have been emptying into Useless Bay are in the same place they have been since the 40s. No new water was created in the project. But now in a storm event or high water event the larger pump will kick on and put the water into Deer Lagoon which empties into Useless Bay. The water is ending up in the same place it has been since the day the dike was built.

Legal Notice

Mr. Gabelein, prior to the public hearing, provided the Board with a copy of a legal notice that the County Auditor sent out for election notices. Despite comment, the elections were in fact noticed. There are also letters available from the Auditor verifying the elections. To the district's knowledge, the elections were done properly.

Chairman Dean asked about the current condition of the tidegates.

Mr. Gabelein said the first observation was in August when claims were made about the pump, when it was out of service while the contractor was doing the work and during that time, the

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

water level was up. When the pump was re-installed the water level went back down. Shortly thereafter there was a significant rainfall event. So, those looking at the situation probably saw the water fluctuating; that is, up in August because the pump was not running at all and then with the re-installation of the pump the water level dropped. Then the rainfall event occurred and the gravity tidegates could not keep up. Both the existing pump and the larger pump are set so they automatically shut off. The off-elevation is approximately 5 inches higher than the existing gravity tidegate. If the goal was to potentially damage the wetlands, the pump would be pumping beyond what has historically been drained out through the gravity tidegates. As the engineer's report states, the intent is to keep the gravity tidegates functioning; there is no intent to abandon the gravity tidegates.

As far as the condition of the tidegates, Mr. Gabelein said the gates were inspected in August or September and replacements were made where needed. The gates are functioning as well as they can function at this time. The problem continues to be, as mentioned earlier, the sand that is building up in Useless Bay.

The Chairman then asked what would have happened if the old pump remained.

Mr. Gabelein said the pump was not a diking district pump, it belonged to the Useless Bay Golf and Country Club. Back in the 60s, when the pump was installed, the builder of the golf course had a connecting culvert that allowed diking district water from the main ditch to flow into that pump. The connecting channel was blocked off, in Mr. Gabelein's opinion, approximately in the 80s. The district then re-connected the connecting culvert through the weir system so once again the district's main drainage ditch could enter the existing pump pond. The small pump would not keep up and the engineer could provide information as to how fast the pump would fall behind depending upon how many inches of rainfall occurred. The second larger pump was therefore necessary. It is the district's intent to continue to use the gravity tidegates as much as possible.

Unauthorized Contracts

Mr. Gabelein said proper legal notices were sent out concerning the bid and for permitting. He does not agree with the claim that the contract was unauthorized.

Private Gain from Easement

Mr. Gabelein stated the Board received a letter from Pat Powell from the Whidbey Camano Land Trust clarifying that concern. He said there was also an exchange of easements between Mr. Gabelein's mother's estate and the diking district. If the property were to change hands the family wanted to make sure the diking district had access out to the main drainage ditch. There were also easements for the pump project itself granted to the diking district from Mr. Gabelein's mother's estate. He does not believe there was any private gain as alleged.

Transferring of Property

Beyond the easements, Mr. Gabelein has no knowledge in his 52 years of living here of any diking district land being transferred to anyone. If that were the case, he would need to see the documentation. He knows that H&H Properties sold land to the Useless Bay Golf and Country Club and that the transaction specifically excludes any land owned by Diking District No. 1. He would be interested as anyone else would be if diking district land was ever transferred to another party. To his knowledge, none has.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

Staff Session

Mr. Gabelein said that at the Board of Commissioners' staff session he attended he does not believe he ever stated that the problem in the benefited area was caused by the houses on Sunlight Beach. He trusts they contributed but they are certainly not the entire problem. The problem is additional water coming into the basin than the gravity gates can handle, from the entire watershed and the sand that has built up. He clarified there are several Kohlwes families on the Island and over the years they have owned property in the area. There may be some confusion as to which Kohlwes family did what with their property.

Assessment

It was claimed that an assessment was attempted last year for the entire district. Again, Mr. Gabelein does not know where that information came from. That in fact is not true. To his knowledge the benefited area historically is the only area that has been assessed for special benefit. If there is information to the contrary Mr. Gabelein would like to see it. He did say about 15 years ago the assessment roll was not looked at carefully enough and an incorrect statement was sent out, including some properties not in the benefited area. That has since been corrected and those property owners were refunded the money. The diking district commissioners have never attempted to assess anyone outside of the benefited area.

Diking District Accounts

There is incorrect information floating around about the amount of money in the diking district accounts. The County's Treasurer can supply the current amount in the accounts and any past amounts. The diking district does not handle any money that does not go through the Treasurer's office.

Water Samples

The County has done an extensive amount of work in water quality monitoring. There is a large number of wildlife, waterfowl included, in the area. If the DOE sample indicates a problem with the water then Mr. Gabelein hopes the problem is source-traced. Peat bogs exist in the area and if the water had been backed up into a peat bog for a while and then released, there likely could be a brown color to the water. Mr. Gabelein said that Deer Lagoon has long had an odor with the exact cause unknown. The gravity pipes since the 40s have been running into Useless Bay and not into Deer Lagoon.

Sharon Vanderslice, 2526 Sunlight Beach Road. Ms. Vanderslice lives on property in the area that has been owned by her family since 1940. She has personally owned the property since 1978 and it has been her permanent home for the last 11 years. In all the time she has lived at her property she has never received notice of any election, notice of any Diking District No. 1 meeting, or notice that there was a possibility to appeal a plan that the Planning Department was approving for a pump. She had no knowledge of the pump project. Ms. Vanderslice did attend the November 4 meeting, the first meeting she ever saw a notice for. She said according to the assessment estimate that Mr. Gabelein provided of the cost per thousand dollars per homeowner, her taxes would be just under \$3,000 a year for the next five years. She is outraged that she has not had an opportunity to elect the commissioners, to be informed of their plans, to provide input, to appeal the decision. She does not read the little legal notices in the newspaper and does not believe that to be an efficient way to inform citizens of issues in their community.

Coyla Shepard, 2620 Sunlight Beach Road. Ms. Shepard asked why the Board would choose to believe Mr. Gabelein and not suspend the diking district when there are competent people willing

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

to replace them. Why should the residents commence a legal suit against the County and the Board when the Board could disband the diking district commissioners and put in replacements who know what they are doing? She said that residents have been kept in the dark and kept in the dark purposely. Mr. Arnold is a builder on Whidbey and he knows about signs when working on a project; there is no reason why signs could not have been placed. Mr. Kohlwes, whom residents see often, never once mentioned the contract. Mr. Gabelein has served on numerous committees and he knows about informing people about issues and required votes. Ms. Shepard believes the lack of information to be a purposeful cover-up and the Board should be aware of it. She said the truth will be told legally. Ms. Shepard is not willing to pay money for the district's project unless she knows that it benefits her and unless she has a chance to vote on it. The people who plotted the project, whose lands benefited the most, including the golf course and H & H Properties, are probably paying zero, maybe 5%. When adding up 500 acres in the area, and if assessed at \$1100 per acre, that amount adds up to \$550,000, less than one empty lot. All of H & H Properties, about 37, total up to about one-half million dollars which is less than one lot. Her lot is estimated at \$1.3 million, empty. In October when there was no rain for quite a while the golf course pump ran 24-7. It pumped the wetland pond by Sunlight Beach to a mud puddle, lower than anyone had ever seen it before. When residents asked Mr. Gabelein why the pumping he said the district was trying to adjust the level of the pump. The pump has been in the hands of the golf course and the same maintenance man, who has known the exact level, for many years. Ms. Shepard is also concerned about golf course signs that warn people about swimming in the pond and spray on the ground. The foam now coming from the pump off of the golf course is thick. Residents have never seen foam like that in the past come from the pipe. Ms. Shepard said there are legal issues the Board is not considering.

Ginny Mayer, 2385 Sunlight Beach Road. Ms. Mayer said she is not in the diking district as far as those who must pay for it, however, her home is on the lagoon and she is concerned about the quality of the water coming into the lagoon. The pump is pumping, there is a lot of brownish foam, and she is concerned about any chemicals in the pond.

Leo Cruise, 2538 Sunlight Beach Road. He has lived on Sunlight Beach Road his entire life, 66 years. He has always seen the sand on the front of his beach come and go. 15-20 years ago the water would come up to the dike, go out again, and the dike would start to sink. That was when the problem existed with trying to maintain the dike. There is now too much sand. He believes the sand comes and goes all the time. He is opposed to the pump, he does not think it is needed, and he would like to wait a couple of months or longer before moving forward.

Tom Hanify, 2682 Sunlight Beach Road. Mr. Hanify said it pains him to appear before the Board because what started off as a neighborhood squabble has now gone beyond that. His concern is the manner in which the diking district is operating. He was aware of the pump when it was a much smaller project, a meeting was held about a month and a half ago, and he knew about the \$80,000 the County put in and the \$10,000 the golf club had contributed. So he presented the question to the district commissioners: how is the \$90,000 already contributed to the project used? Mr. Hanify was told to put his question in writing and it would be responded to. Mr. Hanify did that and also asked at the same time who paid for the engineering and the permitting. He received a response that said that the County had paid for the permitting and the engineering and the \$90,000 had been used for the pump project. Mr. Hanify then wrote another letter saying given that, and given the fact that the project cost is \$440,000, why is the assessment \$440,000 instead of being \$350,000. He said that Ms. Shepard received an answer to that question to the effect "we think we have answered Hanify's question and will put this on for review." Mr.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

Hanify's point is that the district is not answering questions. He wants to know why the district is raising \$530,000 for a \$440,000 project. He believes there is a hidden agenda and the residents do not know what that agenda is. The open meeting laws, he said, are designed so people stop operating in the shadows. The residents have no understanding of what the money is being used for. Mr. Hanify asked the Board, due to the fact that the district has destroyed any trust with the community, that the assessment be stopped until it is determined whether the process for the assessment has been done properly. He is not opposed to a pump, but he does not understand why a pump is necessary that within a 24-hour period will pump 8,640,000 gallons of water. He wants the Board to force the district to bring in an uninvolved engineer to review the engineering; he believes the district commissioners should be reconstituted; and 90 residents on Sunlight Beach Road must pay to get rid of all the water that is coming down from a 4,000 acre watershed which is patently unfair.

Chuck Edwards is on the Board of Directors of the Useless Bay Golf and Country Club. His responsibility at the club is chairman of the Greens Committee, the area responsible for drainage among other things, and maintenance of the golf course property. As he understands the facts, Ms. Shepard's statement that the club does not pay for anything is false. As part of the project, the club in the contract gave the existing pump, the facility, and easement to the diking district for the new existing facility. The golf club, according to the contract, is paying for approximately 11% of the total project and has donated significant value besides the \$10,000 to the diking district. Currently the watershed which he referred to as the west basin, the pump that is running now is pumping the same water from the golf course that it did since 1975. Concerns of the homeowners that things have changed regarding the water from the golf course, the west side, has not changed in 33 years. The west basin is still being pumped through the same pump to the same dike pond. The only thing that has changed is that the culvert that was blocked, and he believes according to the old superintendent about 1975, has now been opened through the existing weir put in by the contractor. Water is now coming from the east basin into the dike pond, going through the small pond, and out into Deer Lagoon. If there is something going into Deer Lagoon that was not before it is water that used to go out through the tidegates that is now running through the pond. Concerning the statements that the golf course is not a responsible, environmentally sensitive or concerned area, Mr. Edwards said the golf course has been certified by Audubon International by going through the process of learning to be responsible when applying chemicals and fertilizers. Signs are posted when fungicides and chemicals are applied to the golf course so members who are playing the course, who may be sensitive to the products, are aware. DOE visited the club and took samples of the water.

Jean Wilcox, 2437 Sunlight Beach Road, has had property for nearly 50 years on the Sunlight Beach hill. She has had family property near the end of the beach road itself since 1947 and now has lived on the beach property for 6 years. Her son owns property in the front built-up dike protected beach. She lives beyond the "benefited" area, her son lives in the "benefited" area. She therefore believes she represents all of the issues. She knows that those on the diking district board over the years have watched over and tended to the cleaning and workings of the entire system. Many times she said, in the pouring rain and worst of weather, all without being asked to do so or for payment. She said that shifting sand on the front beach is always a challenge to any permanent outlet. Looking ahead, foreseeing problems, and improving the water situation is, she believes, a very proper function of the dike commissioners. She suspects that those who are most vocal and upset now would likely be vocal and demanding if there were a problem with backup, flood, or the like. Precisely the job of the district commissioners is to anticipate problems, seek

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

remedies, and secure a solution. If they did not do just that, the same people would most likely be asking why the district commissioners did not act.

Steve Erickson, on behalf of Whidbey Environmental Action Network, said that Audubon International is a private organization funded almost entirely by the golf course industry with no relationship to any local Audubon chapter in the United States, any state Audubon organization, or National Audubon Society. He previously asked of the golf course if he could see any management plans, integrated pest managements plans, integrated vegetation management plans, fertilization plans and sampling records regarding its use of herbicides and pesticides, dating back to the 1980s, but the golf course has never been willing to make that information available. He does not know what sort of plan the golf course has or does not have developed by Audubon International. He does not know what the golf course's efficacy is, what it uses, what its goals are, what trigger points there are for fertilization or application of chemicals. He also does not know whether it meets standard criteria for development of integrated pest management plans or integrated vegetation management plans. Mr. Erickson said it seems clear and is historically accurate to say golf courses tend to be very high users of fertilizers and pesticides in an effort to maintain the greens. He suspects the golf course to be the primary source of chemicals and nutrient loading run-off into the lagoon, and probably the primary source in the entire watershed.

Linda Riffe, Island County Treasurer, addressed a comment by Ms. Derrig regarding the Treasurer's role in the loan process. She clarified that the Treasurer has no legal authority and has no involvement in approving any loan for anyone. She quoted from an e-mail statement that said "is just an attempt to fund a capital purchase of the pump with the loan with the assistance of the Treasurer's office ... with the Treasurer's approval of the loan." Ms. Riffe said those are incorrect statements as the Treasurer does not approve loans. The diking district did apply for a loan with Whidbey Island Bank; Whidbey Island Bank would be the one to approve the loan. Whidbey Island Bank did phone the Treasurer to request public information and the Treasurer provided that information the same as the Treasurer provided Ms. Derrig information under the public information laws. Under the statutes the Treasurer's function is strictly regulated and controlled. The diking district commissioners provided the Treasurer with its resolution operating under RCW 85.18. The Treasurer was also provided with the benefited area tax roll and simple budget. The Assessor's office was provided with the tax role and the amount that the district put value on the property. Under the statute the junior taxing district commissioners provide the Assessor with that value. The Assessor's sole role is to calculate that, not to make a judgment or determination. The Treasurer then bills based on the information that the Assessor provides. The process is statutory and the Treasurer cannot operate outside of that statute. There are no caveats, there are no escape clauses, the role is clear. Ms. Riffe said that what happens beyond that is strictly between the diking district commissioners and their constituents. She welcomes any questions or comments.

Ms. Derrig said she is glad to hear the Treasurer will not approve the loan; she obtained the incorrect information when reading through documents in the Commissioners' office. The information to her, from what she read, said that the Treasurer needed to approve or participate in the formation of the loan account. She is pleased to have the information corrected.

Doug Mullavay has had a family cabin for 40 plus years on Sunlight Beach. He said the lagoon smell as far as he knows and the pump at the end of the dike have been there ever since he can remember. Mr. Malavy said that Messrs. Kohlwes and Gabelein have always taken care of the beach, taken care of the rockeries, the pumps, the flood gates, and they have done a great job

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

cleaning out the drainage tubes. He sees Mr. Gabelein on a regular basis cleaning the tubes and taking care of maintenance. When Mr. Mullavay lived on Sunlight Beach Road he did see the road flood more than one time. He does believe that eventually the County will need to come to some type of drainage basin assessment in order to take care of the fees, pumps, and dikes; things that are necessary to take care of the flood water. The pump contract was roughly \$400,000 to \$425,000. He believes, therefore, with little over 200 people in the benefited area that roughly works out to about \$2,000 per person, per cabin, per property, not taking into consideration interest. That amount seems to be a little different than the \$10,000, \$15,000, \$50,000 figure that he is hearing.

Bill Lewis, who spoke earlier, thanked everyone for listening. He is sure that everyone in the assembly has good intent and there is a general consensus with all that there has been poor communication. He believes the diking district commissioners under their own authority could fix the situation. For the assembly, he said, to assume that that will happen would be irresponsible and inappropriate. He asked the Board to take appropriate action.

A gentleman in the audience spoke up to say the situation is not fair, the expenses must be equalized.

Chairman Dean closed the public comment portion of the hearing thanking everyone for their remarks.

In his opinion whether the Board suspends the diking district or not, everyone has a lot of work to do whether it be the County or diking district. The Chairman proposed a continuance of the hearing until after Commissioner-Elect Helen Price Johnson is seated. In the meantime Chairman Dean suggested that Ms. Price Johnson and he hold a diking district community meeting in an effort to brainstorm some solutions. There is misinformation on both sides, the diking district admits there has been poor communication in the past, and the County has been accused of the same as well. It is understood that someone will need to pay for the pump in the ground and certainly, Island County is not the one to pay for it because the County cannot pay for its staff in 2009 let alone bail out the district. He believes the best thing that can be done at this point is to sit down at a community meeting in Clinton or Freeland and repeat much of what was heard today, work together as a community, stop the lawyer talk, and do not treat this as a courtroom. As a group everyone will attempt to arrive at some solutions to protect homes and farmlands and somehow figure out how to pay for the pump.

Commissioner McDowell is interested in finishing off what the Board is tasked to do. He believes the community meetings should be held by the diking district commissioners, not the Board of Commissioners for the County. The Board's task is to determine if the operations of the district should be suspended, that is the purpose of the public hearing. If the decision is to suspend the district then the district becomes the responsibility of the County. Commissioner McDowell has not heard anything that leads him to believe that this is anything beyond a diking district issue. People may be dissatisfied with their diking district commissioners and maybe not enough attention has been paid to the issue of public notice. Everyone over the years, however, has been aware of the diking district and the fact that the district commissioners have been out in the weather taking care of the diking district. Commissioner McDowell would not jump into a school board's background anymore than he would jump into the diking district's background, other than to determine the limited scope the Board has as County Commissioners to decide whether the diking district should be suspended for the good of the public. The Commissioner

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

has not heard any comments that lead him to believe the district should be suspended. Chairman Dean he held, as a single County Commissioner, could become involved in the diking district issue but in Commissioner McDowell's opinion, the Board does not belong there.

Commissioner Bakke said at the beginning of the hearing that the points of the petition, the issue to be considered by the Board, were made clear to the assembly. He did not hear any testimony, in his opinion, that met the standard for suspension of operation and suggested that possibly there may be other available avenues to homeowners. When reviewing RCW 85.38 Commissioner Bakke determined that it spoke to not only suspending operations but also addressed recall provisions which seems to be the common theme after listening to public comment, removal of the elected officials. Commissioner Bakke said if the Board were to suspend operations of the diking district that action would have widespread implications for the County as a whole whereas, if the residents instead elected to look at recalling elected officials, that seems to be a more diking district specific process. He agrees with his colleague, Chairman Dean, with having the community join together, that was Commissioner Bakke's original intent when he invited the diking district and Ms. Derrig to the staff session to discuss the issues. Ms. Derrig told Commissioner Bakke at the staff session that she wanted to move forward with the suspension of operation procedures so that witnesses could be called, that she was not interested in having a discussion at that time. He is hopeful the parties will get together. He believes that Commissioner-Elect Price Johnson would have a tremendous opportunity to help the district in facilitating a discussion and proceeding forward in a manner that is reflective of the public process. Commissioner Bakke does not believe that the proponents have met the standard for RCW 85.38.220 for suspension of the diking district.

Chairman Dean said his intent in recommending a continuance is more for the comfort level of the community. If he had a crystal ball and looked forward he would agree with both of his colleagues that the standards for suspension have not been met. He feels, however, that there is much angst, discomfort, and mistrust in the community and while he disagrees, he takes to heart the comment very seriously that if the Board steps away something may not be done. He believes if the Board steps away something will be done, but the Board needs to remain a player in the situation for the comfort level of the community. Nonetheless, if the Board does not suspend operations, the Chairman underscores his commitment to help work the issue out with the community. He believes Commissioner-Elect Price Johnson would agree. Whether the district calls the meeting or the County calls the meeting, Chairman Dean is of the belief it can be done.

Concerning the comment by Ms. Derrig to withdraw "my" petition, Commissioner McDowell said the petition is not a single person's petition; it was signed by many so no one person, even an attorney, has the authority to withdraw it.

Ms. Derrig said she wanted it known that she represents everyone on the petition.

Commissioner McDowell moved to deny the petition for suspension of operations of Diking District No. 1, seconded by Commissioner Bakke with the caveat to address the Chairman's concern about a community meeting, motion carried by majority vote. Chairman Dean voted no.

Commissioner Bakke commented that he did not see anything in the suspension of operation procedures in the Revised Code of Washington that would prevent the residents or another group from submitting a second petition that perhaps is more refined and built on additional information. The petition before the Board, he believes, does not meet the standard. He said the

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

idea that somehow the Board's action today closes the door is inaccurate; the additional step can always be made. It did not appear to Commissioner Bakke that a lot of work went into the petition. If the issues are clarified they can become more specific and then address the code in a more precise manner with greater evidence being submitted to sustain the claims being made to support suspension of operations.

COMMISSIONERS COMMENTS & ANNOUNCEMENTS

By unanimous motion the Board approved Resolution C-124-08 Declaring Legal Holidays for the Year 2009 (*Resolution on file with the Clerk of the Board*)

The Board of County Commissioners recessed at 12:30 p.m., participating in the regular meeting of the Island County Board of Health at 1:15 p.m. The Board of County Commissioners reconvened in Regular Session at 3:00 p.m. for continued budget workshop.

2009 BUDGET WORKSHOP

Budget Workshop began as scheduled at 3:00 p.m. Budget workshop times are approximate and may be adjusted. Budget notebooks for Board members' use during budget workshops prepared by the Budget office are based on M&O and capital amounts at current levels. Department Heads and Elected Officials during budget workshops are to comment on requested increases and provide a brief explanation for the request. Budget narratives accompanied each department/office budget. Proposed budget and supplemental requests are taken under advisement by the Board with no final decisions expected as a result of budget workshops. Hand-outs are on file with the Clerk of the Board.

Staff Present

Elaine Marlow, Budget Director

Ms. Marlow reviewed for the Board what the preliminary budget is based on following her individual conversations with Chairman Dean and Commissioner McDowell.

Interest Revenue

While the Treasurer does a good job at investing Ms. Marlow remains concerned about the projected interest revenue. Budgeted was \$1.8 million, Ms. Marlow dropped the figure to \$1.7 million. When looking at interest rates in 2000 and 2001, compared to the money made on investments at that time, the figure was probably almost one-half million or more too high which does not bode well for 2010 if the trend continues. For example, when the state pool was at 1.8% the County made \$700,000 on interest; currently the state pool is at 2%. When interest rates were at 1.2% the Treasurer restructured and received one-half million; when at 1.3% she received \$700,000; at 3.2% the amount was \$1.2 million.

Sheriff's Fuel

Budgeted was \$230,000; dropped to \$215,000

Follow-up: Ms. Marlow will revisit fuel costs

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

Transfer from County Roads for Deputies

Increase by \$100,000 the transfer from County Roads for deputies to provide traffic safety. In previous years about \$700,000 has been spent; current budget is at \$416,000.

GSA

Reduce administrative staff by .5 FTE

Assessor

Reduce staff by approximately 2 FTEs. Added back the fact that one of the appraisers became an Appraiser I.

Auditor

Auditor would like to switch funding on some positions so she will not have to lay off as many people, by use of Auditor's O & M funds. The Board previously approved a .5 records management position which was to be funded by Auditor's O & M. The Auditor would like to revisit that position and then fund a .25 position from recording from Auditor's O & M funds. She is also considering restructuring an elections position. The result will be a total reduction of one full time staff member, probably on the public side, and another .25 position.

Clerk's Imaging Project

Switch to Auditor's O & M the remaining balance in the Clerk's imaging project.

Central Services

Reduce staff by 1.5 FTEs

Commissioners - Camano

Reduce staff by .25 FTE while still maintaining the extra help line

Commissioners – Auto Allowance

Reduce auto allowance by \$100 per month

Facilities

Reduce maintenance technician position that is currently vacant and also two custodian positions

Human Resources and Budget Director

Reduce a position between the two offices

Parks

Reduce seasonal position on Whidbey; Mr. Tate suggested reducing as well some clerical staff. Delay purchase of Parks one-ton.

Current Expense Transfer to Four Springs

General fund currently supports operations at Four Springs. It has long been a goal of past and present Boards that the facility become self-supporting without any help from current expense. Since that has not happened the proposal is to stop the transfer.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

Planning & Community Development

Mr. Tate has left positions open so that he can use attrition to help offset some of the Department's deficit. Four positions are currently vacant; two or three other positions will need to be laid off.

Prosecuting Attorney

Reduce staff by one attorney as recommended by Ms. Marlow based on reduced Planning revenue.

Public Works Transfer

Currently there is a transfer to Public Works Administration of \$20,000 a year. Vacant positions have allowed Public Works to build up fund balance so the Board could safely use that fund balance for the next couple of years.

Sheriff

Reduce deputies by two

Treasurer

Reduce staff by one

On-Site Program

Reduce funding but add educational component. The educational component is priced out at approximately \$30,000 and it is unclear where the education will be housed, currently it is housed in Planning.

Hydrogeology

With knowledge that the hydrogeologist position is vacant, proposal to reduce transfer. Reducing transfer will achieve savings by attrition as opposed to laying someone off.

WSU

Reduce transfer to WSU for agriculture program but leave some education dollars

Ebey's Historical Trust Board/Historical Society

Switch funding sources on the annual payment to Ebey's Historical Trust Board of \$10,000 and the Historical Society of \$2500

Senior Programs

Increase budget by 5% for all

Whidbey Island Animal Control/Camano Animal Control/WAIF/CASA

Increase budget by 2.5% for all

Banked Capacity

Other proposals discussed concerned banked capacity, the difference between the actual levy and what the highest levy available by law could have been, which is currently available. Banked capacity in the general fund is approximately \$65-66,000, an additional .95% in the current expense levy. Total levy increase would be 1.95%. Given the tough economic times that taxpayers are facing the Board is hesitant to take banked capacity. County Roads has approximately \$372,000 of banked capacity, equating to an additional 5.31%.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

Chairman Dean is reluctant at this time to consider banked capacity. Commissioner McDowell at this point does not suggest the amount be taken in one year but rather over a five-year period.

Supplemental Requests

Public Defender Contract with Tom Pacher

Mr. Pacher requested additional employees (two attorneys and one staff person) in addition to funding to help bring his salaries at least close to parity with the Prosecutor's office. Ms. Marlow informed the Board, as advised by Ms. Kemp and Mr. Mason, that if Mr. Pacher cannot meet his responsibilities as Public Defender the County will need to hire "a conflict attorney" or another outside attorney. Ms. Marlow said that the cost for other outside counsel is unclear at this point as there may be some state funding available to reduce the County's liability for funding dependency hearings. Mr. Pacher later prioritized his requests: (1) a new attorney; (2) increase to get salaries at the bottom level of the Prosecutor's office; (3) another attorney.

Follow-up: Ms. Kemp will be asked to brief the Board at staff

Planning & Community Development

Challenging for Mr. Tate with reduced staff are the long-range planning functions which do not have a direct revenue source. Typically funding occurred through permit fees because the programs related to some sort of development, regulation, and planning programs. Given that fees are reduced that means that the ability to do more long-range planning type projects is reduced as well. The long-range planning programs are: (1) affordable housing (optional); (2) agricultural best management practices (mandatory); (3) fish and wildlife outreach (mandatory); (4) permit tracking system; and (5) Freeland Sub-Area Planning.

One emerging issue, not initially submitted as a supplemental request, is the cost associated with updating the rules for Ebey's Historical Reserve.

In Mr. Tate's opinion the program first in order of priority would be the Freeland Sub-Area Planning. Second in order of priority is affordable housing. In lowest priority would be the revision to the rules for Ebey's Historical Reserve because those rules are fairly recent.

Ms. Marlow said that if dollars are not allocated now, at some point next year the questions will need to be answered by devoting staff resources which Planning will not have and providing dollars for independent contractors to get through the process. Not everything can be done in-house.

WSU Extension

Ms. Marlow suggested the Board consider Ms. Feldman's fuel request. A supplemental request for the Forest Stewardship Program to develop a partnership with Snohomish County was also submitted by Ms. Feldman.

Ms. Feldman spoke saying there are a number of people who are interested in taking care of their open space, agricultural lands, and forest lands, and that in turn provides a lot of ecosystem services to the County and region. She asked the Board to keep in mind those opportunities that will support the people who continue to provide service to the community.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

Auditor

The Auditor's office wishes to establish a reserve to replace elections equipment, if not this year then next year.

Miscellaneous

Public Health Pooling

Hydrogeology Program

Mr. Higman said that the reduction in funding by \$80,000 leaves \$48,000 in the fund but Mr. Higman cannot hire anyone for that amount. With the remaining money he can contract out for services which he is not opposed to doing. When talking about mandatory programs and the need to evaluate proposals, the Board of Health built a somewhat regulatory-based program around the hiring of a hydrogeologist in 1996 so there are conditions that cause the Board of Health to evaluate proposals from a groundwater impact perspective. There is no one currently on staff to do that. There is presently a staff member who works in the solid waste program, with a degree in hydrogeology, who will be asked to help in the interim. She will likely, however, lose her position the first of March. The hydrogeology program was also used to satisfy the critical areas requirement. The marketplace is where Mr. Higman will look if the fund remains at \$48,000.

On-Site Program – Operations and Maintenance

Knowing that the current expense fund would be challenged in 2009 Mr. Higman placed in his original draft budget a proposal to establish a nominal fee of \$25-\$30 for each inspection report (approximately 15,000 to 17,000 inspection reports per year with 100% compliance) the department would review to fund the program, absent any current expense contribution. It is estimated that houses in Island County turn over in ownership of one house about every five years. Through dialogue it was recommended that Mr. Higman remove the proposal from the options list which he did. It is now again the recommendation of Mr. Higman that the program be maintained through the established minimum fee.

If the O & M program is not funded in 2009 then there will not be any staff to process loan applications or respond to complaints. The on-site program staff on Whidbey will be at 1.8 and on Camano a one-half sanitarian position.

Mr. Higman wanted the Board to know the ramifications of not determining a way to fund the program.

Commissioner McDowell suggested in the short term instead that the objective be met through surface water testing. He is opposed to the fee. He also suggests that we advise the state that due to budget constraints the on-site program cannot currently be met.

Ms. Marlow confirmed Mr. Higman's desire to move 30 hours to the program; 10 for loans, 20 for complaints and investigation.

Ms. Marlow believes, concerning the educational program, that the County should charge some sort of fee for the classes to at least cover a portion of the cost of the handouts and DVDs.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
NOVEMBER 17, 2008 – REGULAR SESSION**

The Board is left to determine: (1) how to fund the hydrogeology program; (2) whether to charge a fee and if the Board does decide to charge a fee what type of fee would the Board support; and (3) how to deal with the septic system loan program and failing septic system/complaint program.

There being no further business to come before the Board the meeting adjourned at 4:53 p.m. The Board will meet next in Regular Session at 11:00 a.m. on November 24, 2008 for Roundtable followed by agenda items at 2:00 p.m.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

John Dean, Chairman

[Phillip Bakke, Member: Excused]

Wm. L. McDowell, Member

ATTEST:

Elaine Marlow, Clerk of the Board