

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
FEBRUARY 5, 2008 – SPECIAL SESSION**

The Board of Island County Commissioners met in Special Session on Tuesday, February 5, 2008 beginning at 3:45 p.m. at the Camano Multipurpose Room in the Camano Center, 141 NE Camano Drive, Camano Island, Washington. John Dean, Chairman, Phillip Bakke, Member, and Wm. L. McDowell, Member were present.

Staff Present: Bill Oakes, Public Works Director
George Anne Sherry, Office Manager, Public Works
Joyce Kasperson, Office Manager, Camano Commissioners' Office
Elaine Marlow, Clerk of the Board
Debbie Thompson, Administrative Assistant, Commissioners Office

Press: Rick Wood, Stanwood-Camano News

Petitioners Rich and Dick Nord were in attendance along with two members of the public.

**HEARING HELD: RESOLUTION C-126-07/R-48-07 IN THE MATTER OF THE PETITION OF
RGN CONSTRUCTION, LLC FOR THE VACATION OF A PORTION OF COUNTY ROAD
RIGHT-OF-WAY KNOWN AS AN UNNAMED ALLEY LOCATED IN UTSALADY**

As scheduled and advertised, the Special Session was called to order for the purpose of conducting a public hearing to consider Resolution C-126-07/R-48-07 in the Matter of the Petition of RGN Construction, LLC for the Vacation of a Portion of County Road Right-of-Way known as an Unnamed Alley Located in Utsalady.

Bill Oakes, Public Works Director, began by saying the vacation is a 16-foot section of right-of-way in the Utsalady area, North Camano Drive. The Petitioners' proposal is for vacating approximately 120 feet of the right-of-way where it abuts Essex Street. Comments in opposition to and in support of the vacation were received and staff contacted those in opposition to the right-of-way and discussed concerns. Letters in support of the vacation indicated approval of the proposal so long as it involved vacating only 120 feet. However, Mr. Oakes received a last minute fax from Mr. F.R. Beich who owns lots 11 and 12; he is opposed to the vacation because he wants to maintain access to the parcel in order to have the ability to remove noxious weeds and otherwise maintain his property. Mr. Beich has approximately 40-50 feet of frontage that abuts the alley way and he is the only remaining written comment that Public Works has had so far that remains in opposition.

Mr. Oakes reminded the Board that the RCWs covering a vacation are very restrictive. He said for the Board to approve a vacation of property, it must first find that specific piece of property useless to the public and of no public benefit through both written and oral testimony.

Commissioner McDowell asked if Mr. Beich has access to his property on the County road that is functioning, open, and abuts his property to which Mr. Oakes responded yes. There is no language on the plat that prohibits access to either the fronting road, the alley way, or the frontage road that Mr. Beich abuts called Commercial.

Commissioner McDowell pointed out an incident in 2001 similar to what is before the Board today. A vacation proposal of an alley way, within a plat, and the Board was advised at that time that if someone owned property in the plat or had a historical right to use it, the Board did not have the ability to vacate

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that person's access. He wondered if the Board's action today would vacate the right-of-way to the general public but reserve a right to use it by Mr. Beich.

Bill oriented the Board to the photographs and map. He then said Planning and Community Development issued the building permit based on a plot plan supplied by the owner that assumed the right-of-way was vacated.

Public Comments

Rich Nord, 423 Vanderlin Drive, North Camano Drive is the owner and contractor of the project. He purchased the property in 2005 and presented ideas to the County, with the help of certified engineers and architects, about how to better the project and its location. When that process began Mr. Nord said the existing store had a drain field along the edge of the property which raised a concern that it would ultimately affect the nearby wetland. And everyone believed the alley way was unnamed because it had never been opened; it was never an accessible alley. Mr. Nord said he owns the property and house next to the project. He then oriented the Board to where on the map his property is located, referring to the colored map that Mr. Oakes provided the Board, Exhibit A.

Mr. Nord said he was advised by the County that it discovered that the unnamed alley way had not been properly vacated. Mr. Nord said the situation is disturbing because he spent about \$2 million to date on the project basing most of his judgments on work with the County and the engineers. He does not believe this problem to be anyone's fault because when he recently spoke with a homeowner who lives on the open side of the alley currently used, the homeowner was told at one time that he could not access his garage because the alley was never opened. Mr. Nord said there is some oddness in what shows vacated and shows unopened on the County maps.

When Mr. Nord originally went to the County the plat map showed "wetland" hand-written on the map. He said come to find out it was not a wetland after all but owned by Diking District 7. He said when Commissioner Byrd was in office he told Mr. Nord there should be no problem in what he wants to do because there is no access, no avenue. The County wanted to see it as a dedicated wetland because it was felt it would be better enhanced, better maintained. Of the \$2 million he has spent, \$30,000 went to improving the wetland. Mr. Nord must now spend another \$9,000 for special inspections for the replanting and the logs that go into the area. He continues to improve the wetland.

Mr. Nord's setback from the center of the road is 10 feet so he is 2-1/2 feet off the alley. He said he has not had any personal opposition to the alley or to what he is bringing to the community. He said the project has taken a lot of time, a lot of effort, and a lot of money and resources to make it happen. He believes there to be case law which states that when an alley is unused by the public for a period of five years or more it automatically reverts back to the adjacent property owners. He does not want more property; he is helping to preserve the property for the local community. Mr. Nord said he is at the point of closing units in a few months so the issue must be resolved.

Mr. Nord then oriented the Board to where the wetland is on the map saying he received permission from the Drainage District to make improvements. He believes the Drainage District owns the lots and that is why they were pushing to get the "wetland" categorized as a true wetland by a specialist.

Gary Graves said he owns property at 31E next door to the project. He said there is much confusion about whether the alley was ever vacated and who owns what. Residents along the other side of lots 1-4

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suggested the alley was at one time vacated but to his recollection, that vacation has never been documented. Access from the alley was one of the reasons he purchased his property about 10 years ago. Mr. Graves said there currently is a garage and carport, there was access at one time, and he believes there should be continued access that runs with the land. He said there is encroachment on the alley by the people who own property on lots 1-3. Mr. Graves also oriented the Board to where on the map his lot is located.

Commissioner McDowell asked Mr. Graves to confirm he is talking about access from Utsalady to his property which he did. Mr. Graves then oriented the Board to where Utsalady Road is on the map saying the yellow marking has always been a wetland, there has never been access.

In conclusion, Mr. Graves has no qualms about the vacation so long as it does not affect his future access to the alley.

Commissioner Bakke asked if any portion of the alley is open now from Utsalady to Essex. Mr. Oakes replied yes, that the Utsalady side is open; there are about 3-4 homes that have potential access and three at least that have access there now. For the people on the Utsalady corner, the alley is their sole access.

Richard Nord, Sr., 107 South Third Street, La Conner said he and his son are both in the construction business, are builders, and he has an interest in this project. He provided most of the information to the County on numerous occasions. He said the property is owned by the Drainage District and everyone at the County felt that the road had been vacated which is one of the reasons the building was allowed to be moved back but still kept an appropriate distance away from the center line. He said the County also asked that they go beyond the center line point to improve the property on the other side of the roadway which they did. He said there would be a reasonable argument if all the other property owners did not have access from the Utsalady side but that is not the case, all have an opportunity for access from another location. Mr. Nord said they are attempting to rectify an issue that was made with improper information from the beginning.

Public comment having been closed, Mr. Oakes asked the Nord's if they would consider an easement for access to Beich's parcel if that is in fact what he is asking. The County would replace the public right-of-way with an easement though it is just a suggestion at this time because Mr. Oakes must first contact Mr. Beich to see exactly what his opposition is. With less than 24 hours upon receipt of the opposition Mr. Oakes and his staff could not reach Mr. Beich for clarification prior to the hearing.

Mr. Nord, Sr. said the dilemma is not being able to go out to the middle of the alley, that it creates a hardship for any kind of backyard usage, access, or privacy.

Mr. Nord, Jr. remarked that Mr. Oakes' question is hard to answer. He said their intention has never been to disrupt anybody's flow of access or usability of their property. He does not know how anyone would access, or why they would access, a wetland. He is open to the idea as long as it makes sense.

Mr. Oakes said typically if there are underlying private uses underneath the public right-of-way the County would reserve the right. For instance, if there were a storm water system or a semi-public water system in the right-of-way, the County could still vacate it for road purposes but then reserve a right for utilities. The County may be able to reserve the right of access as it exists now on paper which may remove the opposition. At this point Mr. Oakes recommends continuing the hearing and obtaining an opinion from the Prosecuting Attorney as to the rights of Mr. Beich.

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Chairman Dean said for the Nords' information, he believes Mr. Beich's letter is asking for access to the alley "to collect and haul away debris which may accumulate and cause a clog hazard at the wetland storm drain system or to haul non-native and noxious weeds." He said the letter does mention, however, that the alley way is the "only way to reach the southerly edge of the wetland from the Essex Street alley entrance with a service vehicle."

Mr. Oakes confirmed it is a Diking District 7 system with a large wetland and an outlet pipe running underneath Essex and out to the beach. Possibly Mr. Beich is talking about removing things that fall in the wetland and noxious weeds.

Commissioner McDowell remarked that one cannot drive through a wetland so he is not sure what vehicle access is necessary; Commissioner Bakke commented that one cannot remove vegetation from a wetland unless it is invasive.

Commissioner McDowell agreed the Board does not have sufficient information to make a decision. He supports continuing the hearing.

The Chairman re-opened the record to allow Mr. Nord, Sr. to speak.

Mr. Nord, Sr. said he understands the Board is trying to make an informed decision and understands the need to have legal counsel's review, but he urges the Board to move forward as quickly as possible because there are many decisions that are riding on the Board's determination.

Commissioner McDowell moved to continue the public hearing on Resolution C-126-07/R-48-07 in the Matter of the Petition of RGN Construction, LLC for the Vacation of a Portion of County Road Right-of-Way Known as an Unnamed Alley Located in Utsalady to Monday, February 11, 2008 at 10:15 a.m. Commissioner Bakke seconded the motion, unanimously carried. If the information from the Prosecuting Attorney is not received by Friday, February 8, Mr. Oakes will notify the Board and the Nords.

The meeting adjourned at 4:20 p.m.

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

John Dean, Chairman

Phillip Bakke, Member

Wm. L. McDowell, Member

ATTEST:

Elaine Marlow
Clerk of the Board