

**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 2:30 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

Approximately 16 members of the public were in attendance, including Petitioners William James and Robert Long.

**HEARING HELD: RESOLUTION C-125-07/R-47-07 IN THE MATTER OF THE PETITION OF  
WILLIAM JAMES AND ROBERT LONG FOR THE VACATION OF A PORTION OF  
COUNTY ROAD RIGHT-OF-WAY KNOWN AS SHORELINE DRIVE**

As scheduled and advertised the special session was called to order for the purpose of conducting a public hearing to consider Resolution C-125-07/R-47-07 in the Matter of the Petition of William James and Robert Long for the Vacation of a Portion of County Road Right-of-Way Known as Shoreline Drive.

Bill Oakes, Public Works Director, explained for the Board and assembly that a road vacation is a name used when the County either completely gives up public right-of-way or moves public right-of-way within a lot or plat through a process commonly known as "a vacation of right-of-way." In this case, there is approximately 16 feet of right-of-way shown on the platted drawings but there are places where that right-of-way does and does not agree with where the actual road is. The proposal before the Board is to allow a lot-by-lot voluntary vacation and dedication for the lot owners who are willing to relocate the right-of-way to the location of the existing road. To explain further, homeowners would dedicate 16 feet of right-of-way, currently existing, as shown on the preliminary topographic survey done for Island County Public Works. The County would then vacate the right-of-way as originally platted for the Plat of Tyee Beach.

Public Comments

Bill James, 3159 Shoreline Drive does not understand how people can build in a right-of-way when a 16-foot right-of-way is called for and should remain for emergency vehicles. When he built his home in 1992 the right-of-way was at the beach, the road behind it, and he had to make allowance for the 16 feet.

Bob Long, 3089 Shoreline Drive said at the outset of the vacation request he spoke with Commissioner Byrd and Engineer Dick Snyder, at the time, who told him a vacation of the right-of-way would correct the problem. Based on that information a petition was submitted and procedure followed. Mr. Long does not approve of vacation lot-by-lot saying lot-by-lot was not asked for in the petition; instead, it was requested that the County vacate a strip as Mr. Snyder said would be done. The County was originally petitioned in 1984 to correct the problem and again in 2002 and 2006 to no avail. It remains there is not a 16-foot clear usable roadway for emergency vehicles and others who cannot determine where the road

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is. Mr. Long requests the Board to instruct Planning and Engineering to meet and decide how to obtain a clear 16-foot right-of-way.

Commissioner McDowell commented that the right-of-way on paper that now exists extends through the middle of homes in the area. As a result, the County can only condemn property if the vacation is not voluntary not to mention the cost to buy waterfront lots and homes. The Board and the County's Engineer do not believe condemnation to be the appropriate decision; but rather, to establish a right-of-way where the road is by vacating on a voluntary basis. When title insurance is necessary the title companies become aware of homes located in the County's right-of-way, an obstacle for clear title. At that time, people will want something to be done for clear title and the County is establishing that something through lot-by-lot vacation.

Laurie Kaiser, 3107 Shoreline Drive thanked Commissioner McDowell for his comments. She said no one on Tye Beach was expecting the County to condemn property but rather is looking for continuous enforcement of the right-of-way. As an advocate of public safety, Ms. Kaiser views the situation more from the perspective that residents are not weekend homeowners, not wealthy, many elderly, and often times emergency vehicles travel the road. Those vehicles must move at an extremely slow pace to make sure they do not clip someone who is encroaching on the right-of-way; the matter at hand is a safety issue. The community is investing money in public safety, investing money in water conservation, and all agreed to a massive assessment to improve the water system, including fire hydrants, so property can be protected. The community is doing its part but the County is needed to do the rest. Ms. Kaiser understands budget issues, understands the challenge of the unclear right-of-way, but she said that the residents are willing to get it over with at last and have the right-of-way established. She would not want to be in the County's shoes when something tragic happens because emergency vehicles cannot get down the road fast enough. She would like to see some progress on the County's part.

Ed Herring, 3085 Shoreline Drive attended expecting good news and that has not happened; he does not understand the lot-by-lot idea. He is tired of the unsafe situation and the unfulfilled promises of help. He does not believe that properties must be condemned saying that the road has always been in the wrong place yet the County keeps handing out building permits that allow encroachment in the right-of-way.

Bud Alkire, 715 Madison Street, Everett attended to represent his family members who own lots on Shoreline Drive. All three properties have been in the family continuously for over 55 years so he is very aware of the issue. He would like to see the 16-feet of right-of-way established as he is also concerned about safety, adamantly opposing any widening of the pavement. His cabin is located in the middle of the right-of-way, as are many cabins where the road is between the cabins and the beach. Not only is safety an issue when talking about emergency vehicles but there is an equal concern with speeding vehicles. It is a beach way, not a major road, and people need to realize the right-of-way has never been where the road is on both sides. He is not opposed to voluntary lot-by-lot allocation saying he actually offered to correct his encroachment with the County 15 years ago but was never taken up on the idea so it may be appropriate now. Mr. Alkire said it is important to note that at various meetings of the community there has been as many opposed as those who support it.

As requested, Chairman Dean quoted in part from a letter received from Robert and Kristina Bennie: "Vacating for these two property owners will only create a snowball effect and other property owners will follow suit. . . . [W]idening this road will only increase the vehicular speeding, which is already excessive. Please enter our opposition vote at the hearing."

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Mr. Lang spoke again saying the vacation is not proposed to widen the asphalt but to increase the shoulders so children will not be on the road. He quoted from an RCW that said public highways worked and kept up at the expense of the public for a period of not less than seven years are County roads; Shoreline Drive is an established County road. He does not believe that the County must buy and condemn properties but rather, can claim the road as prescriptive. He quoted again from an RCW that speaks to the fact that “the Board of County Commissioners of each county in relationship to roads and bridges shall have the power and it shall be its duty to acquire land for county road purposes.” Mr. Lang said the public is entitled to a road width reasonably necessary for the public easement of travel. Concerning title insurance, he quoted from a statement contained in the title insurance documents: “Also exempt any portion thereof lying within the Island County road right-of-way known as Shoreline Drive as constructed.” He said there were no dimensions given, “it is just the portion that belongs. “

Mr. Herring asked what the minimum standard is for a County road to which Mr. Oakes replied 28 feet of pavement. Mr. Herring believes with 16 dedicated feet it is up the County, its duty, to at a minimum vacate the 16 feet that is dedicated.

The Chairman closed the public input portion of the hearing.

Board Comments:

Chairman Dean commented that in his early days as Commissioner to now he has spoken with petitioners about the problem at Tyee Beach in an effort to arrive at an amicable solution for all, to get things started. He agrees the goal is safety, that emergency vehicles and others must have proper access, and enforcement would solve some of the problems that exist. The idea being proposed is to encourage property owners to agree to open up at least portions of Shoreline Drive. The objective, he said, is to find some middle ground that at least moves everyone closer to solving the problem without the need to take away property or telling people they must move their homes. People say they want less government and more freedom but at the same time they want government to sometimes step in which makes it difficult for the Board to know when to get heavy handed and when to try to work with people to reach a solution everyone can be happy with. The Chairman believes the suggested proposal is a beginning.

Commissioner Bakke asked questions of Mr. Oakes.

If the County decided to survey the road and move the easement, electing not to do as suggested by a voluntary parcel-by-parcel, what are the rights of individual property owners?

- If the Board authorized the use of eminent domain the County could condemn the 16 feet with any challenge going to court but in general, it is limited to the amount which is paid for the right-of-way.

What is the process the County would need to go through if it decided to condemn and the property owners would not agree to a settlement?

- If a negotiated settlement could not be reached the County would use the process allowed by law for condemnation through superior court. Ultimately a judge or jury would decide the fair price of the right-of-way.

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It is not necessarily a matter of swapping the current dedicated right-of-way for the new right-of-way; it could be a situation where the County would have to pay for that portion of the ground or the wider shoulders where the existing right-of-way is?

- Correct

Is the County paying for the 10 feet of pavement it currently has or paying for the three feet on each side of the 10 feet currently in flowerbeds, sheds, lawns, and structures?

- The County has a prescriptive right for the existing roadway it maintains. In general, if the County moves the right-of-way from where it is the initial worth must be the difference in value of the right-of-way that is shown on the legal lot description and the new right-of-way. The County would then pay the difference to relocate the right-of-way.

Commissioner McDowell remarked that the County must offer by law the value of the land, the appraised amount, at times an expensive process.

Commissioner Bakke continued with his questions.

Is there a prescriptive right-of-way on the 10 feet of paved road?

- Yes

Does Public Works have the authority to enforce the 10 feet of road, that it remains clear, because it is a prescriptive right-of-way?

- The RCW for law enforcement states that the traveled way cannot be blocked. The County maintains the existing pavement and along side to prevent drainage so there are very limited rights on either side of the asphalt.

And that is the reason why the County is not taking enforcement action on the sheds and other structures that are being built along the side of the 10 feet of prescriptive right-of-way?

- It is either private property or it has not risen to the level that the County would consider it a public nuisance which is a criminal offense and something that can be enforced by law enforcement.

Commissioner McDowell said it is obvious to him why Boards over 25 years have not done anything; the subject is very controversial between those who want something done and those who do not. And if the consensus were mutual, what does one do about the right-of-way through homes? He personally does not want to condemn property and is hopeful as years go by that people who want clear title to their land will swap out the right-of-way on paper that goes through their homes to the paved 16 foot area, at least 10 feet of it. There is no proposal to widen the road. In the Commissioner's opinion there is not much of a choice but to encourage residents to swap out property for clear title.

Commissioner McDowell moved to approve Resolution C-125-07/R-47-07 in the Matter of the Petition of William James and Rober Long for the Vacation of a Portion of County Road Right-Of-Way Known as Shoreline Drive.

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Commissioner Bakke would second the motion but first wanted to discuss with Mr. Oakes the possibility of adding advisories to the motion, or at least have the discussion.

Commissioner Bakke commented there were a couple of people in the audience who remarked that over the years, from time-to-time, structures were permitted on the road or allowed to be built in places where there is an easement. He understands mistakes happen, especially since the County has not historically had a surveyed map showing all the structures in the existing road and right-of-way. Such a map is something County offices have not had the benefit of being able to review when looking at permit applications. He suspects that before now what offices have relied upon is information provided by a contractor or property owner about where the right-of-way is, or prescriptive easement, and issued permits on that basis. He believes if someone researched, that fact would be determined the likely case.

*First Advisory:* Maps will be reproduced, possibly posted digitally, so that all the permitting agencies at the County would have ready access to them when needed; it would be a requirement that such maps be reviewed prior to granting any regulatory permit for any action being requested by a landowner in the plat on the beach. Then, if there are improvements to homes, additions, remodels, new construction, or drain field permits there is a greater likelihood the problem will be captured and provide an incentive for people to come forward.

For the areas where the platted right-of-way appears to go through the middle of a buildable portion of the lot, Commissioner McDowell said with such information at hand a permit would not be issued unless the applicant opted to swap out the easement.

*Second Advisory:* Commissioner Bakke believes if title companies know a remedy exists perhaps they will raise the issue when preparing title insurance reports. If sufficient information is transmitted to title companies with a letter from the County's Engineer, along with a copy of the maps and the motion of the Board, it may increase the likelihood of resolution and perhaps put pressure on people who are not willingly moving forward.

*Third Advisory:* Public Works Department will provide copies of the maps to landowners who are contained on those maps. For example, property owners would receive a copy of the map along with a copy of the Board's motion and nudge from the County that it would suggest the property owner step up to the plate and resolve the problem. Each property owner along the beach would receive direct communication from the County Engineer so there is no miscommunication about the option created if adopted. Residents know precisely what the County knows about where the easement is and its impacts. The letter would also discuss public safety; the need to be able to provide adequate access to emergency vehicles and afford pedestrian safety for children who are walking on the street; and challenge folks at Tyee Beach to do the right thing and improve the community by teaming up with neighbors and try to resolve the problem.

Commissioner Bakke is sure such can be done and believes it would save a tremendous amount of hard earned tax dollars because the process Mr. Oakes described about condemning property and/or having to purchase the right-of-way, which would be a requirement under the law, would prove to be a protracted process, five to eight years by the time it concludes. Not to mention the likelihood that perhaps there is not the ability to pay for it at the end. With the aforementioned advisories and information to the landowners, title companies, and permitting agencies conceivably over that same course of five to eight years residents who are resisting making the change will be able to see why it would be in their best interest to do so.

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Mr. Oakes remarked that the Board needs to be aware of the term of the vacation. Typically vacations are in place for one year to complete conditions but this one was extended to two years. He believes the Board may want to extend it even further.

Commissioner Bakke mentioned having a two-year deadline is a good idea. This is an offer being made by the County to landowners to correct the problem in a fairly simple way. A deadline may prompt action.

To complete the vacation, according to Mr. Oakes, residents must provide to the County deeds for the new right-of-way, the Board would accept the deeds, the Final Order of Vacation vacates the other right-of-way. If residents wanted to go the additional step to convey lots, typically the property must be surveyed to set new corners but that is outside the scope of the dedication.

Chairman Dean thought it a good idea to consider an extension to the term of the vacation to allow time for the idea to gel for the residents. He suggested that an annual community meeting would be a good way to get the word out to people about a lot-by-lot voluntary vacation since there is a network of neighbors at such meetings and this is a topic much discussed over the years.

Commissioner McDowell moved to approve Resolution C-125-07/R-47-07 in the Matter of the Petition of William James and Robert Long for the Vacation of a Portion of County Road Right-of-Way Known as Shoreline Drive, and extending the time period to three years.

Commissioner Bakke seconded the motion, unanimously carried.

The following three advisories are not part of the motion but rather action requested by the Board:

- Proper information in the form of maps will be available to permitting agencies and any decision by those permitting agencies will be based on that information;
- Transmit the County's decision with sufficient information and maps to title companies;
- Public Works will provide documentation to affected property owners and those property owners will receive direct communication from the County's Engineer as to the option of lot-by-lot vacation and its benefits.

The meeting adjourned at 3:40 p.m.

BOARD OF COUNTY COMMISSIONERS  
ISLAND COUNTY, WASHINGTON

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John Dean, Chairman

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Phillip Bakke, Member

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Wm. L. McDowell, Member

ATTEST:

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Elaine Marlow  
Clerk of the Board