

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
JULY 6, 2009 – REGULAR SESSION**

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on July 6, 2009 beginning at 10:00 a.m. in the Board of County Commissioners Hearing Room (Room # 102B), Annex Building, 1 N.E. 6<sup>th</sup> Street, Coupeville, Washington. John Dean, Chairman, Helen Price Johnson, Member (*attending in part by teleconference*), and Angie Homola, Member were present. The meeting began with the Pledge of Allegiance.

**PUBLIC INPUT OR COMMENTS**

Marianne Edain, on behalf of Whidbey Environmental Action Network, said in talking with many people in the Clinton area about the Bierschenk application it became obvious that most believe that the only way that Clinton can have subarea planning is in the context of a Non-Municipal UGA. She pointed out that was not the case, that subarea planning can happen anywhere in the county. Clinton is in desperate need of subarea planning but people there have been resistant because it seemed to come only in the package of planning for a Non-Municipal UGA. The need is there in the context of the existing RAID rather than potential UGA.

At present, Ms. Edain said, every application is accepted on its face without a basic inquiry as to whether the permit requested relates to the action proposed. WEAN would like to see in the planning process that when an application is accepted that the first step is a review of whether the permit requested reasonably relates to the action proposed and if not, that the application be returned to the applicant with a recommendation for a pre-application meeting or for an alternative permit that would be more appropriate to the intent. She believes there to be an enormous amount of wasted time, energy and money on behalf of applicants and staff for applications that should not have been accepted.

Commissioner Homola responded that WEAN’s concern is also that of the Board. She is hopeful to take a look at project versus non-project action and the way those are handled so it is more understood about what the goal is at the end of the day, and not wait until something is established as non-project only to determine later there was a project intended.

**CONSENT AGENDA**

By unanimous motion the Board approved the Consent Agenda as follows:

**ELECTRONIC FUND TRANSFERS, PAYROLL, VOUCHERS, PAYMENT OF BILLS**

Vouchers (War) #s 314197-314474 .....	\$594,933.16
Electronic Fund Transfers.....	\$ 4,674.01
Payroll dated.....	June 30, 2009

**MINUTES FROM PREVIOUS MEETING**

Work Session - April 15, 2009

**CORRESPONDENCE**

Letter to USDA Rural Development in support of the Opportunity Council’s grant application for funding to be used to repair and rehabilitate homes in Island, San Juan and Whatcom Counties (signed at 07/01/09 Work Session)

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**CONSERVATION FUTURES**

Grant Deed of Agricultural Conservation Easement, with Whidbey Camano Land Trust, Eugene Kahn and Lisa Meserole for farmland protection located within Ebey's Prairie (RM-GSA-09-0273)

Conservation Easement Baseline Documentation Report with Whidbey Camano Land Trust, Eugene Kahn and Lisa Meserole, for accurate representation of property at the time of the conveyance of the conservation easement

WA State Recreation and Conservation Office Certification of Sponsor Match for Ebey's Reserve – Engle II with Whidbey Camano Land Trust

**ENHANCED 911**

Amendment A to Interlocal Agreement with WA State Military Dept. providing State Enhanced 911 funds for County FY09 Wireline and Wireless Operations at ICOM. Contract No. E09-034; Amount: Decrease of \$12,479 (RM-BOCC-09-0263)

**EXTENSION SERVICES**

Grant Agreement with WA State Dept. of Ecology for Coastal Zone Management funds for Northwest Straits Project – Marine Resources Committee Action and Administration; Contract No.: G1000001; Amount: \$240,000 (RM-WSU-09-0242)

**FACILITIES**

Purchase Order No. 7790 Siemens Building Technologies to modify HVAC system at Island County Juvenile Detention Center; Amount: \$6,330.56 (RM-FAC-09-0293)

**HUMAN SERVICES**

Request for Waiver of Section 2.29.03(B)(12) of Island County Code for Competitive Solicitation Procurement for Substance Abuse Treatment Services for the Methamphetamine program.

Contract with DSHS/Division of Developmental Disabilities to provide supported employment and birth to 3 programs in Island County. Contract #0963-67912. Amount: \$487,770 (RM-HS-09-0282)

**JUVENILE & FAMILY COURT SERVICES**

Program Agreement with WA State DSHS Juvenile Rehabilitation for consolidated, disposition alternatives and various services; DSHS Agreement No.: 0963-67927; Amount: fee for service  
Program Agreement with WA State DSHS Division of Treatment & Intergovt. Programs for Evidence Based Expansion Program; DSHS Agreement No.0963-66468; Amount: fee for service (RM-JUV-09-0271)

Amendment No. 2 to Food Services Operating Agreement with Consolidated Food Management, Inc., to provide food services at Island County Juvenile Detention Center renewal/extension

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**PUBLIC WORKS**

County Roads

Resolution C-84-09/R-34-09 – In the Matter of Amending CRP 09-03, Work Order No. 462; Ault Field Road Widening (*Resolution on file with the Clerk of the Board*)

Contract/Contract Bond/Escrow Agreement – Krieg Construction, Inc.; Ault Field Road Widening; CRP 09-03, Work Order No. 462

Adopt-A-Road Litter Agreement – Renewal; Dr. Craig Weinston – the Chiropractic Zone; Harbor Road from Highway 525 to Layton Road

Adopt-A-Road Litter Agreement – Renewal; Greater Freeland Chamber of Commerce; East Harbor Road from Main Street to one mile Northeast

Supplemental Agreement No. 1 – Local Agency Agreement – LA6835; Washington State Department of Transportation; De-obligation of excess ARRA funds; CRP 09-03, Ault Field Road Widening project. (RM-PW-09-2075) (PW-0920-119)

Retaining Wall & Slope Easement – David R. & Alberta L. Hall; Frostad Road Improvements; CRP 96-06B, Work Order No. 209; Lot 1, Division No. 9, Block 16; Plat of Dugualla Bay Heights; Sec. 17, Twp 33N, R 2E. (RM-PW-08-0208) (PW-0820-119)

Temporary Construction Easement – Mary A. Garza; Frostad Road Improvements; CRP 96-06B, Work Order No. 209; Parcel 296-1240; Sec. 18, Twp 33N, R 2E. (RM-PW-09-0091)(PW-0920-27)

Quit Claim Deed – Mary A. Garza; Frostad Road Improvements; CRP 96-06B, Work Order No. 209; \$2,813.00 (\$1,913.00/land, \$900.00/improvements); Parcel 296-1240; Sec. 18, Twp 33N, R 2E. (RM-PW-09-0092)(PW-0920-28)

**SHERIFF**

Memorandum of Understanding with WA Traffic Safety Commission DUI for special emphasis patrol funding; Amount: \$2,000 (RM-SHER-09-0264)

Intergovernmental Agreement with WA State Parks to provide federal US Coast Guard funds to assist with local marine law enforcement efforts; Agreement No.: 2009-37; Amount: \$35,171.00 (RM-SHER-09-0265)

Purchase Order No. 8367 Skagit Power Sports, Inc. for purchase of Wave Runners from MSU Funds; Amount: \$17,792.64 (RM-SHER-09-0270)

**LIQUOR LICENSES**

Application for Special Occasion Liquor License No. 091296 by the Whidbey Camano Land Trust for a special occasion to be held July 19, 2009 from 3:00 p.m. to 6:00 p.m. at Four Springs Preserve, 585 Lewis Lane, Camano Island

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Letter Request for 20-day Extension for Approval of Special Occasion Liquor License No. 091765 by Lighthouse Environmental Programs for an event to be held on August 7, 8 and 9, 2009 at Lavender Wind Farm (Enclosed Area), 2530 Darst Rd., Coupeville

New Application for Liquor License No. 405022-3D by Bayview Grocery Inc., Christine Hurley and Debbie Torget, d/b/a The Goose Community Grocery, 14485 SR 525, Ste. 7, Langley, WA 98260-8517

New Application for Liquor License No. 405005-3D by Greenbank Café LLC, Matthew C. McCoy, Kim M. Christianson and Rick Christianson, d/b/a Greenbank Café, 25189 SR 525, Greenbank, WA 98253-9801

Letter Request for 20 day Extension for Approval of Special Occasion Liquor License No. 363790 by the Greenbank Farm Management Group for an event to be held on July 25 & 26, 2009 at the Greenbank Farm (enclosed area), 765 Wonn Rd., Greenbank

**REGULAR AGENDA**

**Appointments and/or Re-Appointments to Boards and Committees**

**RECOMMENDATION OF AN APPOINTMENT TO THE ISLAND COUNTY  
AFFORDABLE HOUSING ADVISORY BOARD**

By unanimous motion of the Board Gary Wray was appointed to the Island County Affordable Housing Advisory Board as representative of the affordable housing construction industry. Mr. Wray's term will expire June 16, 2012.

**RECOMMENDATION OF APPOINTMENTS TO THE BOARD OF EQUALIZATION**

Chairman Dean noticed of the seven applicants who applied three appear to have former experience as appraisers working in Assessor offices, some worked on other Boards of Equalization, another worked as a hearings officer; all were well qualified. He recommended the appointment of John Coleman and re-appointment of Edward Otken whose membership is expiring.

Commissioner Price Johnson moved to appoint John Coleman and re-appoint Edward Otken for full three year terms to expire May 31, 2012, seconded by Chairman Dean, unanimously carried.

**RECOMMENDATION OF APPOINTMENT TO THE BOARD OF EQUALIZATION**

Chairman Dean moved to appoint Lynn Petersen who is a former hearings officer for the Board of Equalization in Jefferson County, Colorado to fill the unexpired term that will conclude on May 31, 2010, seconded by Commissioner Price Johnson.

Commissioner Homola moved instead to appoint Georgia Gardner based on her experience and the ranking by GSA staff. Chairman Dean reconsidered his motion, after hearing Commissioner Homola's comments, and asked that she present a new motion.

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Commissioner Homola moved to appoint Georgia Gardner based on the recommendation of the ranking from staff and her qualifications to fill the unexpired term to conclude on May 31, 2010, seconded and carried by Commissioner Price Johnson and Chairman Dean.

**Human Services**

Veterans Assistance Fund. Claim # V9-13 in the amount of \$291.89 approved by unanimous motion of the Board, as recommended by the Veterans Assistance Review Committee [*emergency financial assistance to eligible veterans; names and specific circumstances are confidential*].

**Planning & Community Development**

**ZAA 012/07 BIERSCHENK**

The application is a request to rezone a 12.63 acre parcel (R32924-045-3370) from Rural to Rural Center, located in Clinton, WA.

Mr. Hicks of Planning & Community Development, the planner assigned to review of the zoning amendment application, provided a brief chronology in terms of the application process. He provided the Board with the transmittal and report memorandum dated August 29, 2007 to the Planning Commission. (*Hand-out on file with the Clerk of the Board*).

Staff presented to the Board at its last Work Session three options to proceed with the application process: 1) adopt the recommendations of the Planning Commission, 2) if choose to arrive instead at a Board decision then the Board is required to schedule and hold a public hearing, or 3) remand the matter back to the Planning Commission with further direction.

Commissioner Homola indicated that the Board is proceeding today as an outcome of the recent Work Session and concern that the public was unaware of the pending discussion.

Ms. Marlow noted that she e-mailed on Tuesday the department agendas to all those on her agenda notification list and in that PDF document, was the detailed agenda for Planning & Community Development. Item 2 on that agenda was the noted discussion concerning the Bierschenk application.

Commissioner Homola's interpretation is that the re-zone application is moving forward but she believes instead of a re-zone, that the issue should have been considered as a comprehensive plan amendment from the outset which is a Type IV process requiring mailed public notification. She will move forward today for the purpose of obtaining additional information for the record but believes it important to acknowledge the scope and intent with regard to changing zoning. She was the one dissenting vote in the staff session as to moving forward to approve the Planning Commission's recommendation.

Mr. Hicks responded that the matter is going through the Type IV decision process now, it was on the docket for 2007, and he believes that to be the same procedure as the comprehensive plan amendment.

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Chairman Dean mentioned a concern voiced by someone about what the Growth Management Hearings Board response would be to this type of decision. He wondered if a legal review was conducted to which Mr. Banks, who was present in the audience, responded no. Mr. Banks said to date his office has not been asked to provide any legal advice and in fact, he has not seen the staff report. He believes the Board would be well-advised to seek a Prosecutor's opinion prior to approval because of the Growth Board litigation. His suggestion was if the issue did not need to be resolved today that the Board postpone the decision and have Planning submit a Legal Assistance Request to his office.

Mr. Higman said that staff review of an application is different than the legislative authority rendering a decision on an application. When staff reviews applications and there is a determination through the process that the analysis of the application requires input from the Prosecuting Attorney's office, then staff will request from the Board that staff be allowed to use legal counsel in terms of the analysis. The reason, he said, a request for a legal opinion was not requested is that the staff member processing the application felt comfortable in terms of the analysis portion of the equation. Staff communicated with the Board from the beginning that there is underlying the application a Growth Board order and decision and that the decision by the Commissioners carries with it some implication in terms of that process.

Chairman Dean opened the floor to public comment.

Larry Kwarsick, Sound Planning Services, POB 581, Langley. Given the Prosecuting Attorney's recommendation Mr. Kwarsick said that he will defer his presentation until a point in time when the Board is sitting to make a decision. He did say that the application was submitted as a comprehensive plan amendment and a zone change; it was not just a zone change. The application fulfilled both the comprehensive plan and land use review process for that submittal; it was not bifurcated into just a zone change. The applicant submitted, he said, an amended comprehensive plan and zoning map to solidify that purpose. The process began before the Planning Commission, the Planning Commission held a public hearing, and after due and proper notice forwarded a recommendation for approval to the Board of the requested comprehensive plan and zoning amendment.

Mr. Kwarsick continued to say that one primary factor surrounding the case is that the issue involves property that was originally zoned for commercial purposes. In fact the County continued on by including this specific piece of property in the logical outer boundary of the Clinton mixed use RAID. That decision was overturned in part as a result of the Growth Board's decision and the County's inability to fill some subarea planning and non-municipal urban growth area planning requirements. Eventually the Growth Board ordered the elimination of this property and some other properties from that RAID boundary. Mr. Kwarsick said that the Growth Management Act is not static; instead, the Act has changed numerous times over the years to include changes to critical area regulations and limited areas of more intense rural development. Growth Board decisions exist that have modified or interpreted the application of the Act over the years, helping to provide guidance and direction to local government. Clearly, in Mr. Kwarsick's opinion, local government is able through an update process or through a site specific application to re-visit the logical outer boundaries of a local area of more intense rural development. The County could include and make minor adjustments to a prior established logical out-of-boundary to comprise undeveloped property. The applicant's purpose in submitting the application was not to try to reverse the Growth Board decision; instead, the

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process was to update and reflect the decision based upon what the law is today and the guidance that the Growth Board provided with regard to logical out-of-boundaries.

Chairman Dean asked that Mr. Kwarsick be more specific about how the Growth Management Hearings Board might consider the changes proposed; that is, how he would interpret the amendments to mean that the Commissioners do not need to pay attention to the boundaries.

Mr. Kwarsick responded that as part of the initial staff and applicant presentation to the Planning Commission, provided for the record were Growth Board decisions and statutory changes that affect logical out-of-boundary designations and the fact that those boundaries can be changed or adjusted. The areas of rural development are to consist of infill development, redevelopment, existing commercial and industrial, residential, or mixed use areas whether characterized by shoreline development, villages, hamlets, rural activity centers, or cross-road developments. In a 2002 amendment the legislature in its findings specifically said *the legislature finds that to retain and enhance the job base and rural areas, rural counties must have flexibility to create opportunities for business development. Further the legislature finds that rural counties must have the flexibility to retain existing business and to allow them to expand.* Mr. Kwarsick added that there was some additional language to the statute on limited areas of more intense rural development that he believes help guide the logical out-of-boundary issue. With the use of a map he illustrated for the Board and assembly the property and area in question.

Commissioner Homola asked Mr. Kwarsick to cite the specific RCW reflecting the new law. She said that she reviewed the September 11 Planning Commission meeting minutes and also RCW 37.70.070 (comprehensive plan mandatory elements) wherein that section addresses RAIDs and economic development. The Commissioner did not interpret those in the same way as Mr. Kwarsick and wants to be careful that the Board consider the matter as an application, that it recognize that Mr. Kwarsick is a proponent for the applicant, and that he is not representing the Planning Department. Some interpretation is warranted from legal, that she does not believe that Mr. Kwarsick's comments should be considered as fact.

Mr. Kwarsick agreed that he is not representing the County or the Planning Department, he is representing the applicant. Included in the application were the statutory changes that were made, the specific bills themselves, not just how they were codified but also the legislative intent which speaks to how one interprets laws. The applicant, he said, embraces the idea of the County seeking its own legal opinion as to the interpretation and application of the Growth Management Act as it relates to this specific request and as it relates to the Growth Board's decision. Mr. Kwarsick's opinion is that from day one there was some hesitation on the part of the County in terms of how to deal with the application. He is hopeful with the assistance of the Prosecuting Attorney that the Board can consider whether there is some legal impediment that bars the Board from reconsideration of the application under the current law. It is a fair question to ask and is acceptable to the applicant.

Steve Erickson, WEAN, said it is not clear to him that as a zoning amendment just how the application was processed. He wanted the record clear that the parcel was not previously zoned for commercial development. Prior to the 1998 adoption of the GMA zoning ordinance, the County had what was referred to as a floating commercial zone; commercial uses could be located anywhere in the County based on that designation. The Growth Board invalidated that in 1997. Prior, commercial uses could be located anywhere; however, the parcel at issue was never zoned under the floating zone, it was zoned Rural. As such it had a small scale, low-grade, not

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very intensive commercial use on it and still does which is not A-typical in the Rural zone. Mr. Erickson said that does not mean that in every one of those instances it is appropriate to expand those greatly or that it serves justification for a huge increase in intensity, which is what the application would permit. At best, he feels, the use is very low intensity Rural commercial. It never was such that it went through the procedure of being designated as commercial under the old floating zone before the GMA adoption. Mr. Erickson explained the hand-outs provided to the Board (*hand-outs on file with the Clerk of the Board*) saying that the United States Geological Survey Aerial photo taken in July of 1990 was critical because that is the cut-off date under GMA for determining logical outer boundaries for a LAMID or a RAID as defined by the County.

Mr. Erickson said there were changes to the GMA since the decision but those changes do not address the underlying standard of basing the boundary for LAMIDs or RAIDs on the logical outer boundary of development existing as of July 1990.

After the County initially adopted its RAIDs in 1998, that issue was appealed. The Growth Board looked at Clinton and Freeland and determined that those areas looked less like RAIDs than they do like urban growth areas; The Growth Board believed the County should revisit the concern in those terms which the County did. In its decision the Growth Board specifically referred to the development that would be allowed on the periphery of the RAIDs. There might not be as much concern about the over-inclusive boundaries except for the great disparity between the current level of development on the periphery of the RAIDs and potential density and intensity allowed. In the case of Freeland and Clinton, Mr. Erickson said, the allowed residential density, three dwelling units per acre, is high for non-UGA development. The Act does allow for limited in-fill at the suburban or urban density if that is the pre-1990 development pattern in those specific RAIDs. Planning for expansion of development, however, at this density is not allowed by the Act. The same is true for the periphery of the oversized commercial RAIDs.

Mr. Erickson said that that is why the Growth Board asked the County to reconsider whether Freeland and Clinton should be UGAs. In the case of Freeland the County decided, with support from the community, that Freeland should be a UGA; after the County met with the citizens of Clinton, however, the community decided that it did not want to become a UGA. Clinton remained a RAID meaning staying within the logical outer boundaries from 1990. That does not mean, he said, for Clinton that the Board cannot engage in subarea planning but it is important to consider the infrastructure and other problems that exist in Clinton within the RAID boundaries.

Mr. Erickson concluded by commenting that the application should not have been submitted and processed as just a zoning code amendment, instead of a comprehensive plan and a general zoning amendment for a Clinton RAID, to either enlarge the area if that was possible or designate the area as a UGA. The County previously went through such an exercise and the issue was rejected.

Commissioner Homola asked Mr. Hicks to clarify whether the application was filed as a zoning or comprehensive plan amendment and was there provided the appropriate public notice and SEPA review.

Mr. Hicks responded that in 1998 when the County went through the adoption of its comprehensive plan and zoning atlas, issued at that time were both a draft Environmental Impact Statement and a Final Environmental Impact Statement that covered the parcel as zoned Rural Center. An Environmental Impact Statement was conducted and as far as he knows,

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Environmental Impact Statements do not expire. Mr. Hicks will review the record to determine if the issue was properly noticed.

Marianne Edain, WEAN, commented that she has seen the original application which states in one place that the application is a re-zone only but in another place on the application there is reference to re-zone and comprehensive plan amendment. She understands the reason for confusion. Implicit in the application is the assumption that RAID boundaries are amenable to expansion when they are not. GMA is clear and in spite of Mr. Kwarsick's comments, she said, the amendments he cites are not relevant to the question: no RAID boundaries or LAMIDs (RAIDs). The GMA intended that if the intent was to become an Urban Growth Area then it is necessary to go through the process, plan for urban services, and then discussion will occur. If it is decided to not go through the process then the boundaries remain. The application is to correct an error and only errors made by the County can be corrected by the County. The implication by the applicant is that the error is on the part of the Growth Management Hearings Board and that error is not one for the County to correct. Planning staff did recommend denial based on the Growth Board's order. Ms. Edain believes that if the Commissioners follow the Planning Commission's lead then the parties will end up back before the Growth Board wasting time, energy and money. She has not yet reviewed the EIS from 1998 but questions how site specific it was. SEPA is clear that original documents are to be general and then further documents are to be specific. Under SEPA, granting the request would set a major precedent. Ms. Edain encouraged review by the Prosecuting Attorney.

Christie Cheryl Bierschenk, 6701 Holst Road, Clinton, clarified the project. The question has been asked about how not only could the property benefit the family but also benefit the community of Clinton. She has explored issues of a small inn which would fit in with the current zoning and would potentially be a benefit to the community. The family held off on such an idea because they believe that they are invested in the community. Both she and her husband are involved with the Chamber and, in fact, part of what she has been trying to encourage through the Chamber is a visioning process since there is no legal structure for Clinton. The thought and idea has been to change the zoning and then manage what actually is built in the permitting process.

Ms. Bierschenk continued to say that one of the values of the property is that it cannot be a mall because of the wetlands. The property, therefore, provides an opportunity for a beneficial mixed-use area with restored wetlands for education. The proposal originally encouraged an in-perpetuity protection of a path from Dan Porter Park to the wetlands and something that creates wetlands that are protected and are then publicly accessible to the degree the buffers allow. Because it is a larger piece of property, because much of it is protected by wetlands, and because the buffers which protect the wetlands are greater for a commercial zoning designation than for a rural zoning designation, Ms. Bierschenk believes in the permitting process. Protections are in place for wetland management to guard the wetlands from any over-arching or over-reaching commercial development. She agrees with Ms. Edain that there is a conversation and planning process that is important for Clinton and she has been active in trying to help make that happen. Storage units are not what she has in mind for Clinton. She believes there is an opportunity to reach on a number of different levels both economically and environmentally a way to use the property for the benefit of the community. That has been the intent from the beginning. Chairman Dean closed the public comment portion of the meeting.

Commissioner Price Johnson remarked that she is committed to doing what makes sense for the future of the Clinton community, to balance economic development with environmental

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protection. The rezone and request made sense to her in the context presented because it would create an enhanced pedestrian and transit accessibility and help to preserve the rural character in Clinton. It seemed illogical to have a rural center zoning that created a donut in Clinton with the Bierschenk property in the hole of that donut.

Given the complexity of the issues raised Commissioner Price Johnson moved that the item be tabled, that the issues be reviewed at the next Work Session, and that legal counsel be sought, seconded by Chairman Dean.

Commissioner Homola agreed that legal counsel is necessary and recommended a public hearing. She believes there is a misconception about the property and its association with existing rural center zoning. The area is not a donut, there are defined boundaries that were established by the Growth Management Hearings Board following appeal. In 2000 when the Growth Board asked the County to correct its boundaries the County had an opportunity at that time to appeal the decision but did not. She remained concerned that the County follow the correct procedure and do the right thing for the people of Clinton. The goal of the Growth Management Act, she said, is that caution is necessary so as not to create blighted existing commercial areas and important to encourage economic development. When the Act was revised over the years it was to include acknowledgment of the existing urban pockets within unincorporated areas of the County, established as RAIDs, with very defined boundaries that simply cannot be changed.

Everything the Commissioner has read indicates to her that the application was not processed as an annual review docket item or as a seven-year comp plan amendment item, it was reviewed instead as a zoning change meaning the public process of the annual review was not adhered to or the SEPA process may not be site specific. One thought to protect the critical area, she said, would be to create a conservation easement or a lot segregation such that the forward piece of the property adjacent to the highway would more appropriately be the commercial portion. The idea of an owner turning their property over to the County as a park sets a precedent for properties around the County with critical areas and in turn creates a tax burden on everyone else. Commissioner Homola hopes to see in the application the thought of a trail system and an easement as suggested by the applicant. Mr. Tate suggested, when she spoke with him, that the application include a boundary line separation and conservation easement.

Chairman Dean added that two messages are being received: one that the State allows the Board some flexibility to adjust boundaries and the other that they are cast in concrete. As the Board seeks legal counsel that is the question he needs answered.

Chairman Dean called for a vote, motion passed unanimously to table the issue. The Prosecuting Attorney will respond with an opinion within two weeks.

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**Public Defense**

**RESOLUTION C-85-09 EMPLOYING SPECIAL COUNSEL FOR REVIEW OF A  
CONTRACT FOR PUBLIC DEFENSE SERVICES**

The proposed resolution authorizes the engagement of outside counsel to review a contract for public defense services.

By unanimous motion the Board approved Resolution C-85-09 Employing Special Counsel for Review of a Contract for Public Defense Services. *(Resolution on file with the Clerk of the Board)*

-- *At this point Commissioner Price Johnson left the meeting.*

**PUBLIC HEARINGS**

**Public Works – County Roads**

**FRANCHISE #188R – FOREST HILLS PARK WATER ASSOCIATION**

Chairman Dean opened a public hearing at 11:15 a.m. to consider Franchise #188R for Forest Hills Park Water Association.

Mr. Oakes, Public Works Director, said the franchise is a renewal of an existing water system on North Whidbey in the plat of Forest Hills Park and has been reviewed by all departments with no objection. Staff recommended approval.

The Chairman opened the floor to public comment and there being none public comment was closed.

By unanimous motion the Board approved Franchise #188R for Forest Hills Park Water Association, Division No 1, Sec. 32, Twp 33N, R 1E. (RM-PW-09-0208) *(PW-0920-94) (Passing 2-0 with Commissioner Price Johnson having left earlier)*

**FRANCHISE #368 – JOSEPH & DEBRA PEREZ**

Chairman Dean opened a public hearing to consider Franchise #368 for Joseph & Debra Perez.

Mr. Oakes commented that Franchise #368 is a transfer of an existing sewer distribution system, the ownership of the property changed so the franchise responsibilities were transferred in the County's right-of-way in the Plat of Saratoga Beach, Division 5 on South Whidbey. The franchise was reviewed by responsible departments and staff recommended approval.

The public comment portion of the hearing was opened by Chairman Dean and there being none, public comment was closed.

By unanimous motion the Board approved Franchise #368 for Joseph & Debra Perez, Holmes View Drive; Plat of Saratoga Beach, Division No. 5, Secs. 14/23, Twp 30N, R 2E. (RM-PW-09-0205) *(PW-0920-92) (Passing 2-0 with Commissioner Price Johnson having left earlier)*

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**FRANCHISE #373 – THOMAS A. PALLA**

The Chairman opened a public hearing to consider Franchise #373 with Thomas A. Palla.

Mr. Oakes remarked that the franchise is a transfer as the owner of the facility has changed. All departments reviewed the franchise with no objection and staff recommended approval.

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

By unanimous motion the Board approved Franchise #373 with Thomas A. Palla, Surf Paradise Drive, Plat of Surf Paradise and portion of North Bluff Road; Sec. 4, Twp 30N, R 2E. (RM-PW-09-0228) (PW-0920-104) (Passing 2-0 with Commissioner Price Johnson having left earlier)

**ORDINANCE C-72-09/R-30-09 IN THE MATTER OF AMENDMENT OF PUBLIC  
WORKS PROCUREMENT PROCEDURES, ISLAND COUNTY CODE SECTIONS  
2.30A.040 & 2.30A.050**

Chairman Dean opened a public hearing to consider Ordinance C-72-09/R-30-09 In the Matter of Amendment of Public Works Procurement Procedures, Island County Code Sections 2.30A.040 & 2.30A.050.

Mr. Oakes said the revisions are primarily to the small works roster process. The legislature passed two bills, Engrossed Substitute House Bill 1847 and House Bill 1186. The bills altered the number and dollar values in the existing small works roster process and increased the highest limit in the small works roster bidding process from \$200,000 to \$300,000; also increased was the lowest limit in the process from \$10,000 to \$40,000. Concerning contracts less than \$40,000, no formal competitive bidding is required; for contracts from \$40,000 to \$150,000 the County is required to solicit quotes from at least five contractors or all contractors on the small works roster list. For contracts between \$150,000 and \$300,000, Public Works will now be required to request formal quotes from all contractors who qualify on the list. The legislative intent, he believes, was to make some of the small works contracting more efficient. Staff recommended approval.

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

By unanimous motion the Board approved Ordinance C-72-09/R-30-09 in the Matter of Amendment of Public Works Procurement Procedures, Island County Code Sections 2.30A.040 & 2.30A.050. (Passing 2-0 with Commissioner Price Johnson having left earlier) (Ordinance on file with the Clerk of the Board)

**GSA – Property Management**

**ORDINANCE NO. C-77-09 AMENDMENT TO LEASING PROVISIONS OF THE  
ISLAND COUNTY COMPREHENSIVE PROCEDURES FOR SALE OR LEASE OF  
SURPLUS COUNTY PROPERTY**

Chairman Dean opened a public hearing to consider Ordinance C-77-09 Amendment to Leasing Provisions of the Island County Comprehensive Procedures for Sale or Lease of Surplus County Property.

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Ms. Kemp explained the code change will provide the County more flexibility when leasing out space. The proposed ordinance would revise the code to allow leases to governmental agencies through negotiation rather than only through a public auction process.

Chairman Dean opened the public comment portion of the hearing

Steve Erickson suggested some wordsmithing to Exhibit A to clarify the language. Under 2.31.160, terms for privately negotiated leases, he suggested changing the language to better understand the reference to the two different entities, a government agency and a non-governmental entity. He suggested under 160.A that the language, *the Board may enter into private negotiations with the service providers* be changed to *may enter into private negotiations with the non-governmental service provider*.

Ms. Marlow explained there could be instances where there would be a governmental service provider that the County would want to use section A for. In some leases, the County is allowed to lease to a governmental agency that is providing services. The new provision allows the County to lease to governmental agencies that are not providing services so there is a distinction between the two.

Mr. Erickson suggested then that the language be clarified *non-service providers*, for instance, leasing to another government agency for purposes other than provision of services.

Ms. Marlow commented that any change to the ordinance, prior to approval, would need to be returned to the Prosecutor for review as the code reviser.

Under those circumstances Mr. Erickson withdrew his request for clarification.

Bill Carruthers asked for a point of clarification as to whether Mr. Erickson was speaking on behalf of WEAN or speaking for himself.

Mr. Erickson answered that he spoke for himself and not on behalf of WEAN.

Commissioner Homola thanked Commissioner Price Johnson for her work toward this end and recognized the difficulty involved.

Ms. Kemp explained the struggles encountered with the clinic and the reason why the decision would help sister government agencies. Due to costs and maintenance, and the inability to fill the space, it is important to occupy the building with an anchor tenant.

By unanimous motion the Board approved Ordinance C-77-09 Amendment to Leasing Provisions of the Island County Comprehensive Procedures for Sale or Lease of Surplus County Property. *(Passing 2-0 with Commissioner Price Johnson having left earlier) (Ordinance on file with the Clerk of the Board)*

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**Planning & Community Development**

**RESOLUTION C-83-09 (PLG-010-09) IN THE MATTER OF AMENDING PLANNING &  
COMMUNITY DEVELOPMENT BUILDING PERMIT FEE SCHEDULE**

At 11:30 a.m. Chairman Dean called to order a public hearing to consider Resolution C-83-09 Amending Planning & Community Development Building Permit Fee Schedule. The proposed resolution would increase building permit fees approximately 1.5% to partially cover rising costs of operation.

Mr. Higman explained that as departments moved toward the development of their 2009 budgets there was Board direction to departments which utilized fee revenue as a source of income for supporting services provided through those departments. The Board wanted to identify a regular process that would be used in setting budgets, to annually review the increased cost of delivering services. The model used in the past in many County departments was to hold off fee increases over some length of time to the point that the increase, because it had been a five-year span without one, would be a significant increase and one that would catch the attention of the public. The past planning director, as part of his 2009 budget setting process, identified the increased cost of delivering services in the building division of Planning & Community Development to be about 1.5% over the year. As part of the 2009 budget the Board adopted for Planning & Community Development a 1.5% increase in building permit fees was identified but never acted on. Mr. Higman said he was tasked in March to move both the land use fee revision and the building fee revision forward.

When opening the fee schedule to amend it with a 1.5% fee increase, a multiple page schedule (table) based upon building valuation; staff identified a number of anomalies. There were areas in the fee schedule where an increase in valuation resulted in a decrease in the fee collected, which was not the design of the schedule. Also identified were gaps in valuation where there were multiple \$1,000 of valuation compressed down to one change in the fee schedule. Staff's task was two-fold in revising the schedule: 1) identify a process to collect through the fee schedule 1.5% more revenue; and 2) to correct the anomalies in the schedule.

Mr. Higman continued to say that the schedule is based upon the 1997 Uniform Building Code schedule, a calculation based upon valuation. Initially on lower valuations the fee was calculated by using a block value plus a multiplier for every additional \$100 of valuation, up to the next highest level. The blocks in the 1997 fee schedule are between \$500-\$2000, \$2000-\$25,000, \$25,000-\$50,000, etc. Initially the valuation multiplier increased from a low value up until \$25,000 then, beyond that, the multiplier decreased over the valuation table. Staff accomplished an overall increase of 1.5% in the fee schedule. If staff were to sell in 2009 one permit in each of the valuation categories the County would, over that year, collect 1.5% more revenue. Staff was unable to apply 1.5% across the board and correct the schedule at the same time. Mr. Higman went over the schedule (Exhibit A) with the Board noting that some fees are increasing compared to last year, some are decreasing, and some will remain the same. On average the increase is 1.5%.

Commissioner Homola said that the 1.5% based on the 1997 Uniform Building Code is, in her opinion, equitable. The logic is the fact that as the building increases the fee is not a straight line; but rather, tapers off because the more complex or the more expensive the building there is not necessarily more plan review or inspection.

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Mr. Higman pointed out the changes to Exhibit B. A significant change to the schedule is a doubled fee from the standard permit fee for a new proposed application, if work is conducted without a permit. The change is not proposed as a way to generate revenue; but rather, the change is proposed as a way of convincing people to obtain permits. There was no previous punitive penalty.

Concerning outreach and comparisons, Mr. Higman said he was in dialogue with the Skagit/Island Counties Builders Association concerning both the land use fee schedule and building permit fee schedule. Notices were posted in the lobby of the Annex Building in terms of the appending fee change and copies of the fee schedule were disseminated to those with whom the County does business. He also interacted last month with the South Whidbey Chapter of the Skagit/Island Counties Builders Association. Mr. Higman has not conducted or seen a comparison of building permit fees so does not know how the proposed changes compare. For comparison sake, however, Mr. Higman offered that the proposed fee schedule is slightly less than a 4% increase from the schedule presented in the 1997 Uniform Building Code, which is now 12 years old.

Commissioner Homola remarked that there was a long period of time when the County did not increase its fees. A small increase was implemented some time ago but now the objective is to correct the deficiency.

Chairman Dean opened the floor to public comment.

Gary Wray, 1153 N. American Lane, Coupeville. Mr. Wray was appointed to the Island County Affordable Housing Board. He expressed his concern for affordable housing and how any increase in permit fees would impact that effort. Since the land use fees were recently increased he asked if it was necessary, at this time, to also implement building permit fees. He wondered if the proposed increase could be put on hold to see how well the recently-increased land use fees fare. Mr. Wray also represents Habitat for Humanity of Island County saying that any increase would affect its ability to build houses. He does not believe an additional increase in fees is beneficial in the current economy. He asked if staff were top-heavy in the Planning Department thereby costing more money and that cost, then, passed along to consumers. The Building Inspectors, in Mr. Wray's opinion, are becoming too picky.

Commissioner Homola mentioned that it does help some that there are categories for average construction (ranked at \$75 per square foot) and good construction (ranked at \$95 per square foot), lower than most counties. The County is working on its affordable housing ordinance though it was tabled for this year due to workload. She said there are two areas to consider: 1) how does one get into a house affordably; and, 2) if the goal is to have an affordable house that it should remain affordable in perpetuity. The County needs to run a business, with a 1% budget increase it costs more than that to function in society. The goal is to be somewhat fee based, that the County serve those who visit the counter, and that people are, for the most part, paying for what they get. The Commissioner is confident that with a 1.5% increase the County is not taking advantage, particularly in light of the fact that the County went many years without raising fees. Concerning Mr. Wray's statement that the building permit fees may be subsidizing land use fees she added that that was occurring to some extent but was primarily due to rampant growth for a long period of time with new construction. She believes there should always be sufficient fees to maintain a program.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
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Mr. Higman commented that when creating a budget that uses fee revenue to pay for what one does the level of activity is estimated, a projection into the future of what the activities will be. He believes that 1.5% is actually an underestimate of the actual increased cost of delivering the service, but would partially compensate for the uncertainty about what is the combination of fee revenue, how is it split within the department, and if it is equitable. Mr. Higman added that he cut nearly \$400,000 of revenue from the Planning Department with a number of people losing their positions, including management personnel. There was an even split across the organization in an effort to do exactly what Mr. Wray suggested: deliver the most efficient services possible at the least cost. The affordable housing discussion the Board will have, he added, will need to be focused on incentives with fees one of the categories.

Chairman Dean closed the public comment portion of the hearing.

By unanimous motion the Board approved adoption of Resolution C-83-09 (PLG-010-09) In the Matter of Amending Planning & Community Development Building Permit Fee Schedule. *(Passing 2-0 with Commissioner Price Johnson having left earlier) (Resolution on file with the Clerk of the Board)*

**COMMISSIONERS COMMENTS & ANNOUNCEMENTS**

*Chairman Dean*

- *Planning Director*

Chairman Dean commented that the Board will vote in the next few days to appoint a Planning Director. He intended to make a motion today but would prefer to wait until the return of Commissioner Price Johnson. The four finalists were interviewed and a final report is expected concerning background checks. The tentative date for the vote is Friday, July 10.

- *Miscellaneous*

He participated last Wednesday in what was to be a groundbreaking ceremony for State Route 532, including a new Mark Clark Bridge between Stanwood and Camano Island at a cost of \$84 million for the bridge and the length of Highway 532. Rather than a groundbreaking ceremony, a tree was planted.

*Commissioner Homola*

- *Miscellaneous*

Commissioner Homola had the pleasure of supporting Island County in the Oak Harbor 4<sup>th</sup> of July Parade with Sheriff Brown and Representative Norma Smith.

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There being no further business to come before the Board the meeting adjourned at 12:04 p.m.  
The Board will meet next in Regular Session on July 10, 2009 beginning at 10:00 a.m.

BOARD OF COUNTY COMMISSIONERS  
ISLAND COUNTY, WASHINGTON

\_\_\_\_\_  
John Dean, Chairman

\_\_\_\_\_  
Helen Price Johnson, Member

\_\_\_\_\_  
Angie Homola, Member

ATTEST:

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Elaine Marlow, Clerk of the Board