

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on September 14, 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, and Angie Homola, Member were present. The meeting began with the Pledge of Allegiance.

**EMPLOYEE PRESENTATIONS**

**WELCOME TO NEW EMPLOYEES**

<u>Department</u>	<u>Employee</u>
Court Clerk	Vicky Carter
Facilities	Preston (Craig) Olsen
Human Services	Kathy Hein

**EMPLOYEE SERVICE AWARDS**

<u>Department</u>	<u>Employee</u>	<u>No Years</u>
Auditor	Lorene Norris	5
Central Services	Diana Vaughn	30
District Court	Linda Bass	25
Health	Kate Lebaron	20

**EMPLOYEE OF THE MONTH FOR AUGUST**

**MARY ENGLE – ASSESSOR’S OFFICE**

A citizen called the Assessor’s Office to seek information regarding an evaluation of property. They were transferred to Ms. Engle (the Appraiser) in order to have any questions answered that they might ask. She was able to answer all the questions in a very courteous and professional manner. It was clear to the person who called that Ms. Engle takes great pride in her work and interaction with the public. This conversation took about ten (10) minutes, but left the caller very pleased that Ms. Engle was able to answer her question in such a professional manner.

At another time, Ms. Engle was called upon to answer questions at the front desk. The people who had come in had a number of questions regarding their property and the information contained in various reports. Ms. Engle spent a good deal of time going over the information and explaining the different goods to the couple. By the end of the meeting, the couple understood the information that they were viewing. Ms. Engle had spent the time needed to explain the information and to patiently answer all questions posed of her.

**CONSENT AGENDA**

By unanimous motion the Board approved the Consent Agenda as follows with the exception of item 30, *Agreement with Steve Wirth d/b/a Wildlands Management for the Eradication of Spartina*, moved to the Regular Agenda for consideration:

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

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

Vouchers (War) #s 318196-318682 ..... \$1,070,088.96  
 Electronic Fund Transfers..... \$ 252,317.63  
 Payroll dated..... August 31, 2009

**MINUTES FROM PREVIOUS MEETINGS:**

Work Sessions: 6/3 and 6/17/09  
 Regular Sessions: 7/6, 7/13, 7/20, 7/27, 8/3, 8/10, 8/17, 8/24/09  
 Special Session: 7/10/09

**CENTRAL SERVICES**

Purchase Order No. 7670 GovConnection for document scanners. Amount: \$12,474.19 (RM-CS-09-0373)

**ENHANCED 911**

Amendment B 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; Amendment Amount: Increase of \$4,254.56 (RM-BOCC-09-0385)

**HUMAN RESOURCES**

Personnel Action Authorizations

<u>Department</u>	<u>PAA #</u>	<u>Description</u>	<u>Position #</u>	<u>Action</u>	<u>Eff. Date</u>
Juvenile Court Services	086/09	Work Crew Supervisor .60 fte	1402.08	Replacement Position	09/14/09
Planning & Community Development	087/09	Assistant Office Mgr Out of Class Pay	1706.00	Personnel Action Out of Class Pay	09/01/09
Planning & Community Development	088/09	Office Manager	1704.00	Replacement Position	09/14/09

Resolution C-103-09 Continuing the Wellness Incentive Program/Plan for Island County Employees (*Resolution on file with the Clerk of the Board*)

**PROSECUTING ATTORNEY**

Cooperative Prisoner Transportation Agreement with U.S. Marshal. Amount: \$2,049.30 (RM-PA-09-0383) (Commissioner Approval on 9/2/09)

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

**PUBLIC HEALTH**

Contract Collection Agreement with Whidbey Island Bank for Island County On-Site Repair Financial Assistance Program (Steele)

Contract Collection Agreement with Whidbey Island Bank for Island County On-Site Repair Financial Assistance Program (Kinner)

**PUBLIC WORKS**

Diking Improvement District No. 4 – 2008 Special Purpose District Annual Audit Assessment.

County Roads

Adopt-A-Road Litter Agreement Friends of Camano Island Parks; Dry Lake Road to Mountain View Road on Elger Bay Road; Mountain View Road west form Elger Bay Road to West Camano Drive; Lowell Point Road from south end of Camano Island State Park to Mountain View Road; and West Camano Drive from Mountain View Road to Monticello Road

Quit Claim Deed Aaron M. Cooper; Frostad Road Improvements; CRP 96-06B, Work Order No. 209; \$9,893.00 (\$9,593.00/land, \$300.00/Improvements); Parcel 350-4160; Sec.18, Twp 33N, R 2E (RM-PW-09-0094) (PW-0920-29)

Local Agency Agreement Supplement No. 1 Washington State Department of Transportation; Ault Field Road/Oak Harbor Road Intersection Improvements; CRP 07-05, Work Order No 397; Reduction in County's funds. (RM-PW09-0377) (PW-0920-145)

Interagency Reimbursable Agreement Town of Coupeville; 2009 HMA Overlays, CRP 09-02, Work Order No. 461; \$15,000.00 (RM-PW-0258) (PW-0920-117)

Interagency Agreement Town of Coupeville; American Recovery & Reinvestment Act of 2009 (ARRA); CRP 09-04, Work Order No. 463. (RM-PW-09-0280) (PW-0920-120)

Resolution C-104-09/R-42-09 In the Matter of Initiating CRP 09-09, Work Order No. 94; Simonson Place - Phase 1 Improvements (*Resolution on file with the Clerk of the Board*)

Resolution C-105-09/R-43-09 In the Matter of Purchasing Hilfiker Company Steepened Slope Stabilization Construction Materials as Sole Source Items (*Resolution on file with the Clerk of the Board*)

Purchase Order No. 8458 Hilfiker Retaining Walls; Simonson Place Phase 1 Improvements; CRP 09-09, Work Order No. 94; \$46,038.83 (incl WSST), (RM-PW-09-0348) (PW-0920-148)

**Public Hearing Scheduled – October 12, 2009 – 10:20 a.m.**

Franchise #138(R) Honeymoon Lake Community Club; Renewal of existing water distribution system; Plat of Honeymoon Lake, Divisions No. 1 & 2; Secs. 27/28/33, Twp 33N, R 2E (RM-PW-0354) (PW-0920-139)

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

**Public Hearing Scheduled - October 12, 2009 – 10:20 a.m.**

Franchise #380 Transfer and renewal of existing water distribution system, Franchise #38A (Harold Land) to Lands Hill Community Association; Plat of Lands Hill Estates; Sec. 22, Twp 32N, R 3E. (RM-PW-09-0363) (PW-0920-140)

Drainage

Contract/Contract Bond C. Johnson Construction, Inc.; Sunset Drive Culvert Replacement Project; CDP 07-01, Work Order No. 399

Retainage Bond C. Johnson Construction, Inc.; Sunset Drive Culvert Replacement Project; CDP 07-01, Work Order No. 399

Solid Waste

Contract Northwest Liquid Transport, Inc; Biosolids Hauling & Application (RM-SW-0-0199) (SW-07-09)

Purchase Order No. 8528 Seattle Barrel Company; 152 reconditioned steel drums; \$5,902.38 (incl WSST). (RM-SW-09-0372)

**SHERIFF**

Memorandum of Understanding with Washington Traffic Safety Commission to secure Sergeant Norrie as LE Liaison. 10/1/09-9/30/2010; Amount: Up to \$5000 (RM-SHER-09-0380)

Amendment A to contract with Snohomish County for time extension to October 31, 2010 of FFY 08 State Homeland Security Program grant (RM-DEM-09-0174)

Amendment A to Interlocal Agreement with Island County Fire Protection District #1 to extend agreement to April 30, 2010. Contract E08-098 (RM-DEM-09-0376)

**LIQUOR LICENSES**

Application for Special Occasion Liquor License No. 092361 by Friends of Friends Medical Support Fund for a special occasion to be held on October 3, 2009 from 7:00 p.m. to 10:30 p.m. at Freeland Hall, 1515 Shoreview Dr., Freeland

Application for Special Occasion Liquor License No. 363790 by the Greenbank Farm Management Group for a special occasion to be held on October 10, 2009 from 2:00 p.m. to 11:00 p.m. at the Greenbank Farm, Main Barn, 765 Wonn Rd., Greenbank

New Application for Liquor License No. 405292-6E by Beverly Ann Heising, Steven James Heising, James Thomas Heising and Elizabeth Heising, d/b/a/ Whidbey Island Distillery, 3466 Craw Rd., Langley, WA 98260

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

Application for Special Occasion Liquor License No. 092239 by the Camano Senior Services Association for a special occasion to be held on September 19, 2009 from 7:00 p.m. to 10:00 p.m. at the Camano Senior and Community Center, 606 Arrowhead Rd., Camano Island

Application for Special Occasion Liquor License No. 092239 by the Camano Senior Services Association for a special occasion to be held on October 31, 2009 from 7:00 p.m. to 10:00 p.m. at the Camano Senior and Community Center, 606 Arrowhead Rd., Camano Island

Application for Special Occasion Liquor License No. 092239 by the Camano Senior Services Association for a special occasion to be held on December 31, 2009 from 7:00 p.m. to midnight at the Camano Senior and Community Center, 606 Arrowhead Rd., Camano Island

**REGULAR AGENDA**

**WSU Extension Services**

**AGREEMENT WITH STEVE WIRTH D/B/A WILDLANDS MANAGEMENT FOR THE  
ERADICATION OF SPARTINA**

Commissioner Homola questioned a possible conflict noted on page 2 (Scope of Work) and page 4 (Compensation) concerning the carry-over of funding.

Ms. Feldman explained that due to the issue of Spartina work, in the near shore, consideration must be given to tide schedules, weather, and any water quality issues. The money is used when needed and at the same time, there is assurance of a reserve amount to move forward with into the next treatment season (the following year). Since the grant is bi-ennial, three different seasons are touched upon: the last half of the season for this year, all of the season for next year, and the first half of the season for the third year.

By unanimous motion the Board approved the Agreement with Steve Wirth d/b/a Wildlands Management for the Eradication of Spartina, Contract Amount: \$95,000 (RM-WSU-09-0340)

**Public Works - Trails**

**RESOLUTION C-106-09/R-44-09 IN THE MATTER OF AMENDING THE ISLAND  
COUNTY 2006 NON-MOTORIZED TRAIL PLAN**

Mr. Oakes explained that the amendment includes a goal of a multi-use trail the entire length of the Island and grant funding to support segments of the trail. Staff is excited, he said, about recommending approval.

Commissioner Price Johnson moved to support the amendment for the Non-Motorized Trail Plan to include a toe-to-tip trail on Whidbey Island. She believes the effort is a great objective and having the idea included in the plan then allows the County to take advantage of funding and community opportunities as they become available. Commissioner Homola and Chairman Dean agreed with Commissioner Price Johnson and voted unanimously to adopt Resolution C-106-09/R-44-09 In the Matter of Amending the Island County 2006 Non-Motorized Trail Plan. *(Resolution on file with the Clerk of the Board)*

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

**Commissioners**

**ANNOUNCEMENT OF PUBLIC HEARINGS**

Chairman Dean announced that the following public hearings were scheduled at the Commissioners' September 2, 2009 Work Session:

**Public Hearing Scheduled – September 21, 2009 – 6:00 p.m.**

Location: Freeland Hall, 1515 Shoreview Drive, Freeland, WA  
Ordinance C-101-09 Restricting Discharge and Use of Firearms in the Vicinity of Deer Lagoon. The proposed ordinance restricts the discharge of firearms in the Deer Lagoon area due to a reasonable likelihood that humans, domestic animals or property will be jeopardized if the discharge of firearms is not restricted.

**Public Hearing Scheduled – September 22, 2009 – 6:00 p.m.**

Location: Camano Senior & Community Center, 606 Arrowhead Road, Camano Island, WA  
Ordinance C-102-09 Adopting a New Zoning Classification Called "The Camano Gateway Village Zone" Which Amends the Island County Comprehensive Plan and Development Regulations for Commercial Zoned Properties Adjacent to State Route 532. The proposed ordinance establishes the Camano Gateway Village Zone and related development regulations that govern aspects such as design, building size, landscaping, density, minimum lot size, setbacks, site coverage ratios, signage, and building height.

**PUBLIC HEARINGS SCHEDULED**

By unanimous motion of the Board the following public hearings were scheduled to consider collection of special assessments to finance Conservation District programs and activities:

**Public Hearing Scheduled – October 14, 2009 – 6:00 p.m.**

Location: Commissioners' Hearing Room, Coupeville, WA

**Public Hearing Scheduled – October 20, 2009 - 6:00 p.m.**

Location: Camano Senior & Community Center 606 Arrowhead, Camano Island, WA

**GSA CONSERVATION FUTURES  
2009 AWARDS OF CONSERVATION FUTURES FUNDING**

Ms. Kemp explained the timeline and process involved to arrive at the 2009 cycle project awards. She added that GSA works closely with the CAB and TAG and the thoroughness of both when meeting deadlines, and the hours spent year-after-year to adhere to the requirement of the Island County Code, is much appreciated. Acknowledged as well were the applicants for their hard work and effort to put together and bring forward their packages for consideration.

Chairman Dean, on behalf of the Board, echoed Ms. Kemp's appreciation to those involved in the process.

Commissioner Homola moved approval of the Conservation Futures 2009 Awards of Conservation Futures Funding, seconded by Commissioner Price Johnson.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

Commissioner Homola noted that she appreciated the vision of the citizens of Washington when they adopted the Conservation Futures Fund program. The Swan Lake property was purchased with Conservation Futures Funds over 10 years ago, she said, and never has there been a measure for maintenance and operations in those 10 years. This is a first step to obtain signage for the public in that area.

Chairman Dean called for the vote, motion passed unanimously to approve the awards as follows:

**Dugualla Flats M&O Project**

Award Amount: \$17,000

Project Sponsor: Whidbey Camano Land Trust

Purpose: Maintain control of invasive non-native plants and develop a detailed habitat restoration plan.

**Swan Lake M&O Project**

Award Amount: \$10,000

Project Sponsor: Swan Lake Watershed Preservation Group

Purpose: Raise public awareness and support for Swan Lake, which has been designated as a Habitat of Local Importance and is home to many species of birds and wildlife. The project will include public education and outreach, interpretive signage and clean up of noxious weeds.

**Skagit Near Shore Acquisition Project**

Award Amount: \$225,000

Project Sponsor: Whidbey Camano Land Trust

Purpose: Acquisition of 39 acres of low-lying land with over 3,400 feet of Skagit Bay frontage to protect near shore processes and habitat beneficial to juvenile salmon.

**GSA Risk Management**

**CLAIM FOR DAMAGES R09-12 CD**  
**KIRKPATRICK DBA BREVITA ESPRESSO**

The Claim for Damages was filed on July 21, 2009 in the amount of \$5,400. It was alleged that the business lost revenue due to limited access caused by County road construction. Ms. Kemp recommended denial of the claim since the County cannot accept liability for the loss of revenue.

Commissioner Price Johnson moved to deny Claim for Damages R09-12 CD, seconded by Commissioner Homola.

Commissioner Homola said the Board and GSA considered carefully the issue, apologizing for the inconvenience.

Chairman Dean added that he lives on Camano, had traveled through the construction zone, so he is aware of the inconvenience to motorists. The roadway was open but people most likely avoided the area to instead take alternate routes. The best one can do, he said, is work to keep the road open and hope people will use it.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

Commissioner Price Johnson hopes the improved roadway will help to now augment the business.

Chairman Deny restated the motion to deny the claim and called for a vote, unanimously carried.

**GSA Public Defense**

**AMENDMENT NO. 1 TO CONTRACT FOR PROVISION OF LEGAL PUBLIC  
DEFENSE SERVICES WITH THOMAS C. PACHER TO INCLUDE ADDITIONAL  
SERVICES AND 4-YEAR EXTENSION**

Ms. Kemp said that in November, 2006 the Board signed a contract with Mr. Pacher to commence work on January 1, 2007. In mid-year 2008 Public Defense Administrator Don Mason identified several evolving impacts to the Public Defense budget that were not covered under the existing contract: 1) District Court Monday calendar (created after the original contract was negotiated), 2) Juvenile Attorney Waiver Counseling (new court rule JuCR 7.15 requires Public Defense to counsel juveniles of consequences prior to any waiver), and 3) Adult Treatment Court (the court did not exist when Mr. Pacher's contract was negotiated). Mr. Mason then began working with Mr. Pacher to identify ways to cover the impacts at the lowest possible cost to the County. Based on the discussions, Mr. Pacher proposed an amendment to his contract that addressed each need. Staff reviewed several options for funding the impacts in the Public Defense budget, with the goal of minimizing cost. It was determined, Ms. Kemp said, that the amendment to Mr. Pacher's contract is the best option. The decision was based not only on the best budget choice, but also to maintain the high level of professionalism received from Mr. Pacher and his staff.

Ms. Kemp provided a detailed timeline of the actions leading up to the requested approval of Amendment 1 to the contract.

Commissioner Homola commented, concerning the timeline, that at the Work Session on August 19 during which the contract was discussed, the Board decided to forward on the Standards and also consider approval of the contract. At the September 9 Work Session the Board approved to place the contract amendment on the September 14 Monday agenda for action but she had submitted some questions for clarification and the answers to most of the questions were recently provided but some questions remained. Her hope was that she would have the opportunity to obtain the balance of the questions answered by the close of work Friday and that if she had the opportunity over the weekend to have all the questions answered to her satisfaction, that she could move forward with consideration of the contract. The Commissioner, therefore, has concerns about approving the contract. She is in agreement that the contract does not need to go to bid and she is happy with the work provided by the defense attorney, and staff are also happy, but there are a few items in the contract from her review with regard to the caseload and with regard to the time period for the contract being three years, and at the end of the three years being one year after that, that she would like more time to take a look at the contract. She suggested the contract be tabled another week.

Chairman Dean understood there to be a clause in the contract that says the Board has the ability to balance the contract should a situation arise that warrants change.

Ms. Kemp agreed, reading from the contract at page 5, line 24:

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

*In the event that the County determines the Contractor's caseload required to meet all duties, obligations and responsibilities under this contract reduced to a caseload that can be met with less than five attorneys plus the firm's director while complying with the Island County Standards for Public Defense Services as now or hereafter amended or required or proscribed by applicable case law, court rules, regulations or statute, the monthly compensation as listed above shall be reduced as follows:*

*The reduction in compensation shall be a monthly amount equal to Fifty Seven Thousand Dollars (\$57,000) annually, . . . .*

Commissioner Homola, in response, said that that very statement is one of her concerns. She reads it to mean that five attorneys will be hired, and those five attorneys will be hired based on a caseload approved in the standards. If the caseload falls short, services could then be diminished by \$57,000 annually, to be distributed in a monthly amount proportionate to that \$57,000. The Commissioner struggles with the fact that the contract would be approved for three years, with a yearly to be renewed after that. From the amendment she quoted:

*This contract will remain in force through December 31, 2013, and from year to year thereafter, unless terminated by either party. After December 31, 2013, either party may terminate the Contract with respect to the forthcoming calendar year by notice in writing prior to October 1, in the year preceding the renewal period.*

Commissioner Homola believes there should be a heads-up about the termination of the contract and how will the Board know if the Board has already put five people on staff and the workload is getting smaller than that, the Board is pretty well committed to those five. As she understands it the Board could visit the contract for an opportunity to take a look at how the Board will view the caseloads as they come and not after the fact. So the Board is already locked into the contract until the Board can look back and say, well, the Board had less caseloads then it thought it would have. It is too late. She struggles with how to re-word that portion of the contract. There is another section on the same page, page five, line items 1-19 that talk about the pay increase and *the percentage shall be used to calculate a change in the monthly payment for the first month of the applicable calendar year and in no instance shall the annual increase be as provided for by this amendment be less than 2%*. She understands that language will be changed to read *change to 80% of the CPI*. She therefore is not sure if the language will be changed to *not less than 2% of either 80% of the CPI*.

Ms. Kemp explained there does not exist the 2% due to the new language.

Commissioner Homola asked then if there was a chance that it could be in excess of 2%.

Ms. Marlow answered, depending on the CPI, yes it could.

Commissioner Homola is concerned about that as well. She feels she has not had a chance to sit down with those things in the contract that were concerning to her and it would therefore be her recommendation that the Board follow a recommendation that the Board revisit the proposed

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

contract using the same standards that would normally be utilized for scrutiny, and she is not sure that has been done. She would like more time.

Chairman Dean feels differently in that he is concerned about a further delay. Mr. Pacher and his staff do an excellent job he said, as do GSA and Don Mason. He thought the Board should move forward and approve the contract.

Commissioner Price Johnson moved approval of Amendment No. 1 to the Legal Public Defense Services Contract, seconded by Chairman Dean.

Commissioner Price Johnson also believes there good reason to move forward with the amendment, noting that it was the lack of an annual review of the contract that led to the situation. There was not a mechanism in the previous contract for the Board to timely address the issue and that is why it took more than year to take action. She commented that significant cuts were taken with staff this year and one issue under consideration was whether to continue, for instance, the Drug Court program. If Mr. Eyman's initiative passes, that question and others will come before the Board. The Court demands, on public defense, could significantly be changed. The Commissioner wanted to be sure that the Board reserved the right to an annual review of the contract should there be significant changes to the laws, data, or revenue which supports the agreement.

Ms. Marlow indicated the importance of the County providing adequate defense to citizens so between Ms. Kemp and Ms. Marlow they will ensure monitoring of the caseloads. Mr. Pacher, she said, has been forthcoming with his caseload information. At any given time the contract can be reviewed to make sure the County is adequately protected, especially if there is a significant change concerning Therapeutic Courts.

Commissioner Homola said if the original contract is compared with the proposed amendments then she is unsure about some of the areas that seem to be extras. It seems to her that they were covered, almost all of them. The increase is big, about 55.7% of an increase on the original contract and she thinks it deserves diligence to look closely to make sure that it is clear that where the Board was paying for conflict of interest attorneys because of either conflicts of interest not conflicts of scheduling, that with the added staff, that the Board will not have to hire outside attorneys, other than specifically for conflict of interest and she does not read in the contract that language. It is difficult for her to say if there were a set number of cases, and the number of those cases were exceeded, and we were unable to cover them, that we now had to go for outside defense attorney assistance and that costs a lot of money and now we are looking at increasing the contract so that will not be necessary any longer, she does not see that clearly in the contract that the Board will not wind up paying for additional defense attorneys for other than specifically conflict of interest.

Ms. Kemp explained that she does not have a crystal ball that says if there are not several, as an example, grocery robberies with multiple defendants that the conflict line will not go up, that is just not known. What will happen is if the County has the Standards and Mr. Pacher is over the Standards of the cases that he carries, the County cannot force him to go over the standards and the County would be having to go to an outside attorney. In addition, the County still has the risk of not knowing what kind of clients are coming forward. She wishes she could control that type of conflict budget line and she does the best she can because of how she makes appointments.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

Commissioner Homola said she understands what Ms. Kemp is talking about concerning conflicts of interest as opposed to conflicts of schedule. And there supposedly was a day that was added to the calendar and that was a problem for Mr. Pacher with the number of his staff. So now staff is being increased to be able to handle all those cases except those that are conflicts of interest. This is a big increase. She anticipates there would be very few situations where outside counsel would be needed. That is the math she not seeing. She wanted to know if there are five attorneys and the County is planning on a caseload and there are actually less than that, how is it that in the middle of the year or the specific time the County is not paying for five attorneys when only three were needed. As an example, July 2010, and less caseloads up to July were handled than anticipated, but staff on board through July were paid, and so a prediction is made based on what has been done so far for the balance of the year, now what can be done, will a couple of staff be removed or will the County be paid back for the caseloads that did not happen.

Ms. Marlow commented that the County does not have the ability to control the number of cases nor the type of cases that walk into the Public Defense office. She suggested that the Board ask Ms. Kemp to schedule quarterly reports on the Public Defense caseloads and budget so when going forward in the future the Board would have more information on how the contract is managed. The contract allows the Board, if it sees that the caseload has dropped, to change the amount of the contract (page 5, line 24). After a year of considering the amendment Ms. Marlow feels that it provides adequate protection to the County and truly is in the best interest of the Board to approve the amendment.

Chairman Dean added that the contract is a function of Law and Justice. Much like the Sheriff and Prosecuting Attorney, there are no guarantees that there will or will not be crime. He applauded Commissioner Homola's effort to look into the details of the contract and to obtain the best agreement possible for the County; however, Mr. Pacher does an excellent job he said and the Board has the ability to review the contract and to later make any necessary changes. The contract allows the Board to protect County assets and to protect the mandate to provide public defense.

Chairman Dean called for a vote on the amendment.

Commissioner Price Johnson reiterated her request that the Board reserve its right for an annual review should circumstances change.

Commissioner Homola believes there is a way to amend the language, as provided in the RCWs about how the County can take on a set amount and then have latitude for any cases above and beyond so the County is not locked in. She would like to see that revision.

Commissioner Price Johnson indicated that what the Board is approving today though is the contract as presented.

Chairman Dean and Commissioner Price Johnson voted to approve Amendment 1 to the Contract for Legal Public Defense Services with Thomas C. Pacher, Commissioner Homola opposed. Motion carried.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

**APPOINTMENTS/RE-APPOINTMENTS TO BOARDS AND COMMITTEES**

**Island County Water Conservancy Board**

**RESIGNATION OF BOB CRAY AS A MEMBER OF THE ISLAND COUNTY WATER  
CONSERVANCY BOARD**

By unanimous motion, with the Board's sincere appreciation, the resignation of Bob Cray was accepted.

**Marine Resources Committee**

**RESIGNATION OF LYNÆ SLINDEN AS A MEMBER OF THE MARINE  
RESOURCES COMMITTEE**

The Board, by unanimous motion, accepted the resignation of Lynae Slinden. Commissioner Price Johnson added that Ms. Slinden had stepped down from her position as Port of South Whidbey Commissioner, the Board wished her the best with thanks for her work.

**Island County Water Conservancy Board**

**RECOMMENDATION OF APPOINTMENT/RE-APPOINTMENT AS A MEMBER OF  
THE ISLAND COUNTY WATER CONSERVANCY BOARD  
THREE VACANT POSITIONS**

Commissioner Homola indicated that at a recent Work Session it was advised that it would be helpful if an alternate were placed on the Board. She recommended therefore the appointment of Sherwood Minckler and Tony Vivolo, the re-appointment of Larry Bach, and to place Robert Fuhrman as an alternate, assuming the By-laws can be changed to provide for such.

Commissioner Price Johnson seconded the motion but suggested that the motion be re-worded to say that the Water Conservancy Board must first amend its By-laws and, should the Conservancy Board see fit to do that, then the Board of Commissioners would put forward Robert Fuhrman as an alternate to fill that seat. Accordingly, the Commissioners' documents would be changed to reflect the same. She added that it would be helpful if the Conservancy Board had the ability to, when needed, call upon an alternate. Commissioner Homola seconded the clarifying motion.

By unanimous motion the Board approved the re-appointment of Larry Bach, the appointment of Sherwood Minckler, and the appointment of Tony Vivolo to the unexpired term left vacant by the mid-term resignation of Bill Attwater. The Board also recommended that Robert Fuhrman be appointed as an alternate member pending the revision of the Island County Water Conservancy Board By-laws.

**RECOMMENDATION OF APPOINTMENT/REAPPOINTMENT AS A MEMBER OF  
THE NORTHWEST SENIOR SERVICES BOARD  
THREE VACANT POSITIONS**

Commissioner Price Johnson moved approval of the reappointments of David Bell and Charles Schufreider and the appointment of Bob Monize, unanimously carried.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

**RESOLUTION C-110-09 TO ADD A SEAT FOR TRIBAL REPRESENTATION  
ON THE MARINE RESOURCES COMMITTEE**

By unanimous motion the Board approved Resolution C-110-09 to Add a Seat for Tribal Representation on the Marine Resources Committee. (*Resolution on file with the Clerk of the Board*)

**PUBLIC HEARINGS**

**ORDINANCE C-97-09 (PLG-014-09) IN THE MATTER OF COMPLIANCE WITH THE  
WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD CASE  
NO. 08-2-0032**

At 11:10 a.m. Chairman Dean opened a public hearing to consider Ordinance C-97-09 (PLG-014-09) in the Matter of Compliance with the Western Washington Growth Management Hearings Board Case No. 08-2-0032. The ordinance amends the Island County Comprehensive Plan and Zoning Ordinance striking right-of-way segregation provisions and land use density standards pursuant to the Western Washington Growth Board's final decision.

Mr. Sweeza briefly reviewed the history of the ordinance for the benefit of the assembly. In early 1990 there was road right-of-way segregation which basically exempted subdivisions if a road was bisecting a property from the applied subdivision standards, treated as an unregulated segregation as handled through the Assessor's office. In 2007 the Western Washington Growth Management Hearings Board invalidated the road right-of-way segregation provision. Following that the Island County Code was amended and in 2009 the code was once again invalidated. The ordinance would strike all provisions from the Island County Code as well as the Comprehensive Plan that allow for road right-of-way segregations, with the assurance that if there are any segregations that they go through the proper subdivision process.

Commissioner Homola indicated for the benefit of the audience that the adoption of Ordinance C-117-08 provided for the creation of separate parcels when a piece of property was split by a road. One could also consider building on those two parcels outside of the regulations for lot size and density requirements.

Mr. Sweeza agreed saying that any lots created prior to January 24, 2007, if applied for and received a building permit between November 10, 2008 and May 15, 2009, would be able to develop the property. If the building permit during the window was not received, or prior to December 1, 1998, then it would be required to meet space density requirements and lot size standards.

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

Commissioner Homola appreciated the work conducted by staff to determine the number of properties affected. Planning staff, she said, is available should any member of the public have questions.

Mr. Pederson added that staff continues to work with the assistance of the Assessor's office to narrow down more precisely the number of affected properties and conduct outreach accordingly.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

By unanimous motion the Board approved Ordinance C-97-09 (PLG-014-09) In the Matter of Compliance with the Western Washington Growth Management Hearings Board Case No. 08-2-0032. (*Ordinance on file with the Clerk of the Board*) (*GMA No. 10333*)

**COMMISSIONERS COMMENTS & ANNOUNCEMENTS**

**PROCLAMATION RESOLUTION C-107-09 – IN THE MATTER OF RECOGNIZING  
THE 25<sup>TH</sup> ANNIVERSARY OF WHIDBEY CAMANO LAND TRUST**

By unanimous motion the Board approved Proclamation Resolution C-107-09 In the Matter of Recognizing the 25<sup>th</sup> Anniversary of Whidbey Camano Land Trust, September 26 through October 3.

**PROCLAMATION RESOLUTION C-108-09 IN THE MATTER OF PROCLAIMING  
THE WEEK OF OCTOBER 18-24, 2009 FRIENDS OF THE LIBRARY WEEK IN  
ISLAND COUNTY**

By unanimous motion the Board approved Proclamation Resolution C-108-09 In the Matter of Proclaiming the Week of October 18-24, 2009 Friends of the Library Week in Island County.

**PROCLAMATION RESOLUTION C-109-09 IN THE MATTER OF  
CONGRATULATING THE SARATOGA CHAMBER ORCHESTRA ON THEIR 2009-  
2010 SEASON**

By unanimous motion the Board approved Proclamation Resolution C-109-09 In the Matter of Congratulating the Saratoga Chamber Orchestra on Their 2009-2010 Season.

*Commissioner Homola*

- The Commissioner attended the ribbon-cutting at the AJ Eisenberg airport. For now it is not about another airline coming in but rather about having a facility open to local pilots and perhaps in the future, expanding to create some additional hangers and a re-zone for an airport.
- Commissioner Homola attended an exercise over the weekend conducted by her husband, Commander Homola, that involved the Island County Sheriff's Department, North Whidbey Fire and Rescue, and the federal branch of fire and rescue on the Navy base. The exercise involved putting people in the water, simulating a bail-out from a P3 aircraft. The Sheriff's Department helped extensively in using Wave Runners to assist with the program.

Chairman Dean announced that budget workshops would occur for the remainder of the day and also announced the Board of Health public forum tonight at 6:30 at the Coupeville Rec Hall to talk about the On-Site Operations & Maintenance program in Island County.

**BUDGET WORKSHOP**

Budget Workshop began as scheduled at 11:00 a.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

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

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.

**District Court**

Presentation by: Honorable Peter Strow; Maggie Paczkowski, Court Administrator

Judge Strow commented that District Court is not requesting any dramatic changes to its 2010 budget, saying that he does believe Oak Harbor plans to withdraw at the end of next year. The withdrawal will not affect District Court as such, but would instead reduce revenue; the City's contribution was slightly above \$300,000. Additionally,

- The Court does not expect to meet the revenue projected for 2009 Traffic Infractions.
- Clerk's Records Services revenue is expected to be greater than that projected for 2009.
- The \$43 Criminal Conviction Fee is a fee in addition to the \$866 fine that the Judges assess on any criminal conviction Judgment and Sentence.
- The Trauma Care Surcharge is miscoded and the Auditor's office is working to correct the mistake. Ms. Paczkowski will contact and discuss the miscoding with Ms. LaCour.
- The Court is doing what it can in the area of energy efficiencies and those efforts are factored into the expected increase of \$1,000.

Judge Strow remarked that the Court did not fill this year the existing District Court vacancies, largely in anticipation of the expected change next year.

**Civil Service Commission**

Presentation by: Marie Taylor, Secretary-Chief Examiner

Ms. Taylor expressed a concern about the reduction in advertising expenses. If advertising is necessary, \$1,000 will not cover the cost. While advertising does occur on the County's web page, through the Washington Law Enforcement Digest, at colleges, and at the Academy, limiting advertising to those resources is ineffective.

Communication costs were reduced because Ms. Taylor, who works from home, bundled with high speed internet.

**Commissioner Discussion**

Commissioner Price Johnson was curious if the computer cost for the Prosecutor, budgeted for in 2008 but not delivered, could be rolled into 2010.

Ms. Marlow said that the Prosecutor's case management system was approved by the Board and partially funded by drug seizure funds with the remainder of the cost coming from current expense. There were performance issues with the installation of the system so the \$17,000 noted reflects the amount that remains on the contract; Mr. Banks will not pay on the contract until the performance issues are resolved. It is necessary, therefore, to amend the 2009 budget.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

If there is money allocated for a certain year's expenses but not spent in that given year, the funds may be carried forward; that is, money earmarked for larger capital items and projects, not day-to-day operations (the Board commits to a contract on larger capital items and projects).

Commissioner Price Johnson is hopeful that while it is not current practice to provide for carry-over funds she believes the idea is something the Board should entertain upon request. The Commissioners, as well, could use the flexibility to adjust to any changing needs each year.

The Board recessed at 12:04 p.m., reconvening for continued budget workshop at 1:00 p.m.

**Prosecuting Attorney**

Presentation by: Greg Banks, Prosecuting Attorney; Caroline Morse, Office Administrator

Mr. Banks reported that his office is holding steady due to 1) a slight dip in caseloads, and 2) federal money helped on an interim basis to retain staffing until next June. Discussion ensued about the graphs and diagrams submitted with Mr. Banks' narrative reflecting the general criminal case trends and office make-up and functions. He expects the caseload to pick back up again in 2010.

The *Arizona v. Gant* case was mentioned in which law enforcement can no longer lawfully search vehicles when pulling someone over and making an arrest of any occupant of the vehicle. Unless there is a reason to believe there will be evidence specifically related to the reason for the stop, searching a vehicle without a warrant is prohibited. That means for the Prosecutor and his staff that the number of drug cases will likely drop.

The grant funds covering the deputy prosecutor and legal assistant will go away in June of 2010; however, there is an effort to extend the funding to October. The temporary deputy prosecutor is handling appeals and creating re-usable legal briefs for the criminal side, the idea being to gain some efficiency long term. The legal assistant position would be the one to re-fill after the expiration of the grant. The position currently is partially funded by the one-year prosecution recovery grant that terminates the end of June. It is hopeful to keep the position intact with help from the Byrne grant; however, the hours for the position would be reduced.

Concerning the Prosecutor's capital facilities request (computers), Ms. Marlow indicated that she needs to follow-up with Central Services because she does not believe that the computer portion of the office equipment budget was reduced.

One unresolved issue, that could be significant Mr. Banks said, is the possibility of a reduction in the Child Support Enforcement budget under contract with DSHS. The Washington Department of Children's Services advised that the budget for the IV-D program will be cut by approximately 4.5% of the projected actual budgeted amount, about \$3,563. The fund pays for one full-time paralegal and about 25% of a deputy prosecutor's time. There is no real savings to cutting the deputy prosecutor so the only alternative would be to reduce the legal assistant's time which Mr. Banks would rather not do. The issue remains open and Mr. Banks has not offered where to make the cut. He is hopeful the County can absorb the loss.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

**Sheriff – Criminal/Jail/Emergency Management**

Presentation by:

Sheriff Mark Brown; Kelly Mauck, Undersheriff; Wylie Farr, Chief Civil Deputy

**Sheriff's Office**

- The Sheriff said he continues to struggle with and may not be able to reach the 24-hour minimum officer training requirement mandated each year.
- Last year he reported that the Department had a 7% growth in patrol and in the jail; this year, however, there is none.
- Sheriff Brown realizes that a request for more staffing is not a reality, understanding that the Department is forced to find new ways to make compromises when necessary to provide a base level of services to citizens.
- During 2009 the Sheriff's Office was asked to reduce its M&O budget by \$50,000. The only line item with any flexibility in this regard is patrol overtime/training, an area difficult to cut.
- The Department requests the Board approve funding for five vehicles.
- Savings were realized in the over-time budget relative to staffing community events in the amount of \$10,000.
- Colton Harris Moore has cost the County approximately \$15,000 just this year.

**Jail**

- Of concern is the needed increase of two Corrections Officers due to an aging workforce in the jail, a cost of approximately \$60,000 each including benefits.
- An increase in the amount allocated for projected over-time is requested. Currently 114% of the overtime has been used for this year, much of it not anticipated.
- Still no response on the grant request for the Corrections Officer.
- Sheriff Brown requested an additional \$600 for training.  
*Follow-up: The Sheriff will clarify the amount needed for training as it could be more than the stated \$600.*
- The transport of prisoners becomes a timing issue so for that reason, it is difficult to plan for multiple transports or transports in conjunction with the Skagit jail.
- It is anticipated that added resources will be needed in Jail staffing to cover for the HVAC system remodel.

Moving forward Sheriff Brown wanted the Board to know, with the current state of the Department, that added cuts would be costly to the County in terms of potential litigation and overtime costs. Should the economic condition recover, Sheriff Brown asked that the Board consider replacing what has been lost.

**Emergency Management**

The Department is spending less from the general fund and more received from grants. There is nothing unusual in the budget.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

**Clerk**

Presentation by: Sharon Franzen

Ms. Franzen indicated that continuing to operate with the reduction in staff hours is unrealistic, that any further reduction would cripple the Department. Additionally,

- At the end of September the Chief Deputy will retire and there is a restriction against replacing the position due to budget cuts until February 2010. Ms. Franzen will need to absorb many of the duties of the position and allocate some to other staff in the office on a temporary basis. Since the Chief Deputy position is the only non-represented staff member, many of the supervisory duties cannot be assigned to other represented staff. The office cannot function efficiently without a Chief Deputy.
- Due to budget cuts at the State level the imaging and preserving of older/historical court records which began in 2007, a four-year project, will stop after three years since the funds originally allocated for the fourth year are no longer available.

On a positive note, Ms. Franzen mentioned that:

- The Clerk's Office is expecting additional revenue in 2010 as a result of changes in the Clerk's fees during the past legislative session.
- The expected reduction in the annual State reimbursement for collections will not occur after all. The additional revenue will cover the cost of operating the collections program.
- The dependency publications expenditure may be less than that originally projected.

**Coroner**

Presentation by: Dr. Robert Bishop; Susan Higman, Deputy Coroner

Dr. Bishop reported nothing unusual in his budget other than an increase in revenue to be more realistic. Of note:

- The Board is receiving 24-hour coverage from the Coroner but not paying for that coverage, an issue to address in the future.
- The Deputy Coroner position is a union position when in fact it should not be.
- The Coroner suspects that the County is probably another decade away from considering a morgue facility. The County could not, Dr. Bishop said, maintain a morgue facility for what it pays on the current lease agreement with Burley.
- Dr. Bishop is not in favor of an MOU with Snohomish County for Coroner services but would consider one with Skagit. 95% of the Coroner's cases are on Whidbey so the effort of an MOU with Skagit may not be cost effective and not something, actually, he would consider a priority at this time. The money would be better spent locally.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
SEPTEMBER 14, 2009 – REGULAR SESSION**

There being no further business to come before the Board the meeting adjourned at 2:37 p.m. The Board will meet next in Regular Session on September 21, 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