

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
DECEMBER 8, 2008 – REGULAR SESSION**

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on December 8, 2008 beginning at 10:00 a.m. in the Board of County Commissioners Hearing Room (Room # 102B), Annex Building, 1 N.E. 6th Street, Coupeville, Washington. John Dean, Chairman, William L. McDowell, Member, and Helen Price Johnson, Member were present. The meeting began with the Pledge of Allegiance.

PUBLIC INPUT OR COMMENTS

Elizabeth Derrig said on October 3, 2008 she filed with the Board of Commissioners a petition for consideration of suspending Diking District No. 1 and also under that provision, the ability to re-activate the diking district with new diking district commissioners so the district would not fall under the responsibility of the County. At the public hearing on November 17 she asked for a continuance of the hearing and the request was denied. Ms. Derrig attended today in support and on behalf of the citizens of Useless Bay Community to ask that the hearing on the petition be rescheduled to sometime in January or the decision not to continue the hearing be reconsidered.

According to Ms. Derrig the diking district has continued to have meetings without proper notice. Objections were filed, attempts were made to resolve issues by informing the district what must be done, and County officials have worked with the diking district commissioners to advise how to properly assess property owners. Ms. Derrig provided documents to the Board for consideration:

- Written objections dated December 3, 2008 submitted during the “regular” diking district meeting that was not properly noticed for December 4;
- E-mail to Prosecutor Greg Banks dated December 5;
- Affidavits from numerous property owners;
- Lists from County Treasurer of homeowners in the diking district dated about 1995; and
- Documents from County Assessor relating to drainage pump assessment.

[Documents on file with the Clerk of the Board]

Chairman Dean said he understands Ms. Derrig’s request to be based upon Commissioner Bakke’s statement at the November 17 public hearing that the hearing could be continued. To clarify the Chairman believes what Commissioner Bakke suggested is that the petition process itself could be repeated; the petition initially submitted to the Board in October, however, was voted upon and decided at the November 17 hearing. Chairman Dean is unsure whether the Board at this point has the authority to re-open a closed hearing.

Elaine Marlow, Clerk of the Board, commented that the public hearing was held and the Board decided not to suspend the diking district’s operations. She said that Commissioner Bakke offered a couple of options for Ms. Derrig, one of which was indeed to go back and restructure the current petition and resubmit it to the Board. He also suggested a recall petition to recall the diking district commissioners.

Ms. Derrig believes it reasonable and most efficient to continue the hearing before the Board as opposed to trying to handle the matter in a different forum. In addition more evidence has been realized since the hearing. With respect to a new petition, Ms. Derrig does not believe one is required because there are another 40 signatures sitting on the petition that could be considered. Ms. Derrig’s position is that the Board of Commissioners did not deny the petition on the merits

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as no case was made at the hearing because she withdrew the petition at that time. The Board of Commissioners therefore, she said, could reconsider the denial of the continuance and simply continue the public hearing into January. Ms. Derrig remarked that the continuance is not something that needs to be on a public agenda, it is merely a continuance and treated similar to an adjournment.

Ms. Marlow commented that once a public hearing is closed the subject has ended and cannot be continued after-the-fact. She will follow-up with legal counsel, nevertheless, to see if the possibility is in fact something the Board can consider.

Commissioner McDowell attempted to explain why the additional signatures on the petition could not be considered for another public hearing.

Chairman Dean reiterated that the petition asked for a hearing, the hearing was held, and a vote was taken. The issue ended with that vote. The Board of Commissioners is not a court of law he said, the Board has the ability to step in when necessary and Chairman Dean would be happy to step in if there were a threat of loss of property or loss of life but that threat does not exist. He believes the proper venue to be instead a court of law because a repetitive process before this Board, of submitting a new petition, is not going to change the outcome.

Ms. Derrig argued that the petition itself is merely to request a public hearing to consider the matter and the matter cannot be fully considered until all documentation is in hand, which she is still obtaining through public records requests. She would like the opportunity to present evidence to the Board of Commissioners before going to court. She believes the diking district commissioners are using the County as a veil of legitimacy by claiming that the Board of Commissioners appointed the diking commissioners and therefore they are elected under the Board's authority. If the diking commissioners have not done what is properly necessary to be elected then the Board does not have diking commissioners in place. Ms. Derrig wants the Board of Commissioners to consider what the diking commissioners are doing, whether they are actually lawfully appointed, and to question what statutory authority there is for the diking commissioners to cause the County Treasurer to tax homeowners. County officials, she said, should not be aiding and abetting the situation. Ms. Derrig wants to avoid County involvement; she thinks the Board of Commissioners has an obligation to make sure the diking district commissioners are complying with appropriate regulations.

Chairman Dean disagreed saying that state law does not allow the Board to step into a diking district, a school district, or fire district and voice its opinion as to whether those districts are doing its job. Laws were written for the Board to step in, when necessary, for the public good, not in a situation of a political dispute or alleged mismanagement of a district.

Ms. Derrig agreed with that statement but said when a diking district on its face is behaving in a manner that is unconstitutional she believes the County cannot legitimize that behavior which is what happened at the public hearing. And, she said, passing along the general property taxes on its face was not done in compliance with the Open Public Meetings Act; therefore, that County action is legitimizing, authorizing, and approving diking district actions which are illegal. Ms. Derrig believes the Board of Commissioners does have the authority under RCW 85.35.220 to consider the new information. She is not asking the Board to consider the same evidence earlier presented, there is now new evidence to take into account.

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Commissioner Price Johnson remarked the Chairman is correct; the public hearing was held, a vote taken, and subject closed. The question about elections is a separate issue apart from whether the County has the public good in mind to step forward and take over the diking district, the subject of the public hearing.

Ms. Derrig answered the diking district must be suspended before it can be reactivated and she is not asking the County to take over the district. The Board can appoint three new diking district commissioners.

Commissioner Price Johnson asked Ms. Derrig to explain why that action would be preferable to a recall by local citizens to which Ms. Derrig replied that a recall would be expensive. Ms. Derrig and her clients prefer to have the issue resolved in the most efficient way that has the least amount of disruption. Statutorily, she said, that would be under RCW 85.38; hold a hearing before the Board of Commissioners, determine that the diking district commissioners are not acting in the public interest when not acting in compliance with the statutory authority under which they are obligated to act, and then appoint new diking commissioners which then would be required by law to operate under the special district statute as a new district under RCW 85.38. The new diking commissioners would then take over and be held accountable to run the district properly. Ms. Derrig mentioned bias with the previous Board and believes the new Board would be impartial.

If the issue does ultimately go to court Ms. Derrig knows who the parties would be and it is not her intent, at this point, to include the County.

Chairman Dean said the Board will consult with legal counsel about whether another hearing can take place.

Commissioner McDowell remarked that if Ms. Derrig's intent is to ask the Board to consider new information then the new information has nothing do to with the issues presented under the old petition.

Ms. Derrig said her request for a continuance of the hearing was denied so her petition was withdrawn; the new Board has every right to hold a hearing and consider new evidence.

Chairman Dean does not believe there are grounds to allow a new Board to reverse a decision of an earlier Board.

Commissioner McDowell said the petition could not be withdrawn by one individual hence the hearing took place. The letter from the County Auditor, not from Mr. Gabelein, said when only one person is running for a seat that one person automatically takes the position as provided by state law. That has been past practice for diking districts because such districts are not a popular office to run for. The Auditor, Commissioner McDowell submitted, provided a letter saying the diking commissioners were properly in place.

Ms. Derrig answered that she asked to withdraw the petition because she was denied the continuance so in her opinion chronology is important. She withdrew the petition on behalf of people who asked her to be their spokesperson; her clients want a petition and they want it before people who they do not think are biased against their cause.

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Commissioner McDowell remarked that notice was provided in the newspaper, a clipping from the newspaper she received, but Ms. Derrig claims that not to be sufficient notice. She said there is nothing in the record, no resolutions, to support any kind of taxation.

Commissioner McDowell asked Ms. Derrig what proper notice is in her opinion.

She responded that notice depends on what the diking commissioners want to do and is governed by statute; Ms. Derrig said the Board should refer to RCW 85.38.

Commissioner Price Johnson said the Board understands what Ms. Derrig is asking but cannot immediately respond without further information from legal counsel.

Ms. Derrig commented that if the Board comes to the conclusion that the diking commissioners are not lawfully in their positions, that conclusion would be a basis for a hearing in and of itself, aside from under RCW 85.38.220.

Coyla Shepard said it has been only since October that notices have been posted with the last notice posted after dark, one night before a meeting. For clarity and to describe why homeowners on the beach are upset she gave a “whiteboard” presentation. She believes the tax assessment is a lot of money on very few people.

Commissioner McDowell questioned if the homeowners have seen the assessment for the pump, by parcel.

Ms. Derrig replied that information was not received from the diking commissioners but copies of documents were received from the County.

Ms. Shepard remarked that minutes from the diking district meetings say property will be assessed at 1% per thousand.

Ron Ekrem, 320 Ridge Lawn Place, Camano. Since Mr. Ekrem wanted to talk about issues surrounding Island Transit Chairman Dean suggested that he and Mr. Ekrem meet Tuesday afternoon on Camano which they will do.

EMPLOYEE SERVICE AWARDS

<u>Department</u>	<u>Employee</u>	<u>No Years</u>
Central Services	Stan Bradshaw	10
District Court	Margaret Turner	15
Sheriff	Sheila Smith	15

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EMPLOYEE OF THE MONTH – NOVEMBER

**JOHNNA REYES
SUPERIOR COURT CLERK’S OFFICE**

Ms. Reyes was nominated by a member of the public. Mr. Ryan Dolan was very impressed with the wonderful customer service that Ms. Reyes demonstrated during a recent visit he made to the Clerk’s Office. He commented on her kindness and willingness to answer questions. She did all of this in a pleasant manner, putting Mr. Dolan at ease and assisting him with the business that he needed to complete.

CONSENT AGENDA

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

ELECTRONIC FUND TRANSFERS, VOUCHERS, PAYMENT OF BILLS

Vouchers (War) #s 301185-301459	\$496,201.98
Electronic Fund Transfers.....	\$ 3,341.71

MINUTES OF PREVIOUS MEETINGS

Regular Session..... November 10, 2008

APPOINTMENTS/RE-APPOINTMENTS TO BOARDS AND COMMITTEES

Marine Resources Committee

Correct appointment of Leal Dickson to the Marine Resources Committee with a term expiration of December 31, 2011 not December 31, 2012

AUDITOR

Resolution C-132-08 Establishing the Monetary Limit for Capital Outlay Purchases and Accountability (*Resolution on file with the Clerk of the Board*)

COMMISSIONERS

Interlocal Agreement with City of Oak Harbor and Island County District Court for Court Services and Notice of Intent to terminate Municipal Department and establish Municipal Court (*RM-BOCC-08-0266*)

EXTENSION SERVICES

Amendment No. 3 to Services Agreement with Dan Pedersen for communication and public relations services; Amendment Amount: \$2,000 (*RM-EXT-08-0248*)

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GSA EMERGENCY MANAGEMENT

Radio Frequency Use Agreement with Naval Air Station Whidbey Island to utilize certain radio frequencies for interoperability and mutual aid operations (*RM-DEM-08-0254*)

HUMAN RESOURCES

Personnel Action Authorizations

<u>Department</u>	<u>PAA #</u>	<u>Description</u>	<u>Position #</u>	<u>Action</u>	<u>Eff. Date</u>
Assessor	159/08	Segregation Assistant	111.01	Replacement Position	12/16/08
Juvenile Court Services	160/08	Juvenile Detention Officer	1407.05	Replacement Position	12/08/08
Sheriff (Jail)	161/08	Corrections Officer	4015.16	Replacement Position	12/08/08
Public Works	162/08	Bayview Road Shop Supervisor	2204.01	Replacement Position	12/08/08
Planning & Comm. Development	163/08	New Position	1501.01	Parks Superintendent .75fte	12/08/08
Public Works	164/08	Personnel Action	2204.06	Acting Road Shop Supervisor – Bayview	11/24/08

HUMAN SERVICES

Contract with Housing Authority of Island County to provide Project Home Base funds for transitional housing; Contract No.: HS-09-08; Amount: \$408,530 (*RM-HS-08-0191*)

PUBLIC WORKS

County Roads

Release of Plant Establishment/Maintenance Bond for Jenkins, Inc.; Terry's Corner Park 'n' Ride, CRP 01-03; \$115,000.00.

Temporary Construction Easement with William B. & Michelle E. Ward; Frostad Road Improvements; CRP 96-06B, Work Order No. 209; Parcel 298-1470, Sec. 18, Twp. 33N, R 2E (*PW-0820-115*)

Retaining Wall & Slope Easement with Russell J. & Rosalie R. Olson; Frostad Road Improvements; CRP 96-06B, Work Order NO. 209; Lot 4, Block 16, Division No. 19, Plat of Dugualla Bay Heights (*PW-0820-116*)

Retaining Wall & Slope Easement with Steven Joseph Welliver; Frostad Road Improvements; CRP 96-06B, Work Order No. 209; Lot 6, Block 16, Division No. 9, Plat of Dugualla Bay Heights (*PW-0820-118*)

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Temporary Construction Easement with Harold & Edith Goodman; Frostad Road Improvements; CRP 96-06B, Work Order No. 209; Parcel 304-2370, Sec. 18, Twp 33N, R 2E (PW-0820-127)

Temporary Construction Easement with Steven A. Lam & Honey Jones; Frostad Road Improvements; CRP 96-06B, Work Order No. 209; Parcel 306-2630, Sec. 18, Twp 33N, R 2E (PW-0820-130)

Temporary Construction Easement with Steven J. & Hazel C. Welliver; Frostad Road Improvements; CRP 96-006Bm, Work Order No. 209; Lot 2, Block 5, Division No. 1, Plat of Dugualla Bay Heights (PW-0820-137)

Public Works

Resolution C-133-08/R-51-08 In the Matter of Amending Island County's Six-Year Capital Improvement Program for the Years 2009-2014 (*Resolution on file with the Clerk of the Board*)

Solid Waste

Bad Debt Write Off Approval for 2008

SUPERIOR COURT

Resolution C-134-08 Amending Island County Courthouse Security Manual (*Resolution on file with the Clerk of the Board*)

Agreement to Provide Family Law Courthouse Facilitator Services with Volunteer Lawyer Program of Island County to provide basic services to pro se litigants in family law cases; Amount: \$34,000.08

Waiver of Solicitation under ICC 2.29.030(B)(12) - Agreement for Volunteer Lawyers Program to provide family law courthouse facilitator services

TREASURER

Electronic Transaction Processing Agreement with Official Payments Corporation. Amount: -0- (RM-TREAS-08-0259)

REGULAR AGENDA

(Item 22 pulled from the Regular Agenda, Interlocal Cooperative Agreement with Town of Coupeville for Storm Water Quality Monitoring Services to be provided by Island County)

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PUBLIC HEARINGS

Planning & Community Development

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

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

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

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

(11/17/08 – Continued Public Hearing to 12/8/08)

At 11:00 a.m. Chairman Dean opened a public hearing, continued from November 17, 2008, to consider Open Space Timber Land Current Use Program Application OPS 508/07 by Applicant Whidbey Island Farm, LLC.

Brandon Sweeza, Planning & Community Development, said he worked with applicant's agent, Larry Kwarsick, to finalize the application. This morning, however, Mr. Sweeza received correspondence from Mr. Kwarsick withdrawing the application. (*Letter dated December 8, 2008 on file with the Clerk of the Board*)

Mr. Sweeza said the withdrawal is based on the fact that applicant could not obtain the public access super bonus category. He did work with Mr. Kwarsick in an attempt to find solutions but the most Mr. Sweeza could find for the property amounted to a 30% tax reduction on 6.7 acres.

COMMISSIONER COMMENTS AND ANNOUNCEMENTS

Chairman Dean welcomed Commissioner Price Johnson.

Commissioner Price Johnson observed that the diking district issue is certainly a complex and difficult one, echoing her desire for the community to work through it the best way possible with the best result possible. It is unfortunate, she said, that so many missteps have occurred prior to the Board receiving the petition thereby making the situation more challenging. Commissioner Price Johnson did have a conversation with Mr. Gabelein and urged him to be as forthcoming as possible with his information, believing that full disclosure would be helpful for everyone to move forward. She will review the new documentation presented saying that the County does need to be held accountable for its piece of the process.

Commissioner McDowell also welcomed Commissioner Price Johnson to the Board.

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There being no further business to come before the Board the meeting adjourned at 11:07 a.m.
The Board will meet next in Regular Session on December 15, 2008 beginning at 10:00 a.m.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

John Dean, Chairman

[Wm. L. McDowell, Member: Absent when signed]

Helen Price Johnson, Member

ATTEST:

Elaine Marlow, Clerk of the Board