

**SUMMARY OF THE MINUTES
SAN JUAN COUNTY (SJC), WASHINGTON
COUNTY COUNCIL
August 6 and 7, 2007**

Monday, August 6, 2007 - Council Conference Room

CALL TO ORDER

Council Chair Myhr called the special meeting to order at 10:00 a.m. Council members Ranker, Peterson, Rosenfeld, Knapp, and Lichter; County Administrator, Pete Rose; Prosecuting Attorney, Randall Gaylord; Clerk to the Council, Laura Tuttle; and interested members of the public were present.

PUBLIC MEETINGS/WORK SESSIONS

10:00 a.m. – The Council held a staff meeting and no action was taken.

EXECUTIVE SESSION

11:30 a.m. - Council Chair Myhr announced that the Council would be holding an **executive session** estimated to last approximately 20 minutes, to discuss litigation pursuant to the provisions of RCW 42.30.110(1)(i). Participants: Full Council; Mr. Gaylord, Prosecuting Attorney; Laura Tuttle, Clerk to the Council. The session ended at 11:50 p.m. for an actual session time of 20 minutes. No action was taken.

RECESS - At 12:30 p.m., Council Chair Myhr recessed the meeting until 10:00 a.m., Tuesday, August 7, 2007.

Tuesday, August 7, 2007 – Key Bank Meeting Room

CALL TO ORDER

Council Chair Myhr called the meeting to order at 10:00 a.m.

CITIZEN ACCESS TIME

Richard Durhack cautioned the Council regarding the DNR Aquatic Reserve Program, reminding them of the meeting when the Board of County Commissioners signed on to the GMA. He also shared his distress about the Council's majority opinion on stormwater, and then addressed his issue regarding the ruling on aliquot property measure and the possible appeal by Ms. Vedder, SJC Deputy Prosecuting Attorney. He implored the Council to accept the judge's ruling and not allow the appeal.

Mr. Jim Francis, who owns 40 acres in an aliquot legal description, also asked the Council to let what the judge decided stand and asked the Council what a 10 acre building site was worth on San Juan Island. He added that if the ruling was overturned, he would be pressed to sue the county in the "taking" of his property rights.

Gordy Petersen expressed his disgust regarding the stormwater lawsuit. He also asked to have documents, that he requested, released to him. Mr. Lichter stated that he had recently acquired new information regarding the referendum that he would be placing in a motion before the Council.

Dr. Clarke spoke regarding the stormwater tax, understanding the necessity to address stormwater under the GMA. He concluded by stating that just because an argument can be made doesn't mean it should be made.

Ginger Norgaard, who also has an interest in the aliquot ruling, pointed out that they had selected an outside, unbiased agency in Bellingham to make the decision based on law and the briefs presented by the land-owners and the County PA. She pointed out that the issue was so clear, the judge's decision was made from the bench. Mr. Myhr stated that he would not comment until the judge's written decision was received. Mr. Ranker stated that he wanted to add this as a discussion item to the agenda.

ANNOUNCEMENTS/SCHEDULE CHANGES

The posted Council Agenda and Discussion/Other Action Agenda were revised.

APPROVAL OF MINUTES

Moved by Lichter, seconded by Ranker, to approve the Minutes of **July 30 and 31, 2007**. Motion carried.

CONSENT AGENDA

Moved by Ranker, seconded by Lichter, to approve the **Final Consent Agenda of August 8, 2007**, as follows:

A. Resolutions/Ordinances:

1. Resolution 28 – 2007, adopting policy protecting individuals engaged in nonviolent civil rights demonstrations (for signature only).
2. Resolution 32 – 2007, adopting the comprehensive Six-Year Transportation Improvement Program for 2008 – 2013

B. Contracts/Agreements:

1. Department of Health Consolidated Contract Amendment #3, 2007-2011 Washington State Department of Health Consolidated Contract No. C14960 Amendment No. 3, between Washington State Department of Health and San Juan County Health and Community Services, SJC Agreement No. 07HC03C.

C. Budget Items:

D. Personnel:

E. Appointments:

1. Approve the reappointment of Candace VerBruggen as a Representative of the Community Theatre category, to the San Juan County Lodging Tax Advisory Committee, for a one-year term, effective immediately, and to expire on August 30, 2008.
2. Approve the reappointment of Jim Nelson as a Representative at Large, to the Juan County Lodging Tax Advisory Committee, for a one-year term, effective immediately, and to expire August 30, 2008.
3. Approve the reappointment of John Messinger, to the San Juan Island County Lodging Tax Advisory Committee, as Lodging Representative, effective immediately, and to expire on August 30, 2008.
4. Approve the reappointment of David Loyd, as a Representative in Position #1, to the Marine Resources Committee, for a four-year term, effective immediately, and to expire June 30, 2011.
5. Approve the appointment of Lynn Weber-Roochvarg to Position #3 of the San Juan Island Library Board of Trustees, (in order to complete the unexpired term of Richard Cville), effective immediately, and to expire on December 30, 2009.

Motion carried.

ACTION AND DISCUSSION ITEMS

ORDINANCES/RESOLUTIONS:

ORD. NO. 29 -2007 - (Refer to PUBLIC HEARINGS / MEETINGS, 10:30 a.m., for details of action taken.)

PUBLIC HEARINGS/MEETINGS/WORK SESSIONS

COUNCIL DISCUSSION/UPDATES/OTHER ACTION ITEMS:

1. **Stormwater Referendum (added agenda item)** – In light of new information received, and to open discussion, Mr. Lichter made the following motion:

Moved by Lichter, seconded by Peterson, to reverse the decision of the Council and allow the stormwater citizen referendum to move directly to ballot without interference of legal challenge. Under

discussion, Mr. Lichter shared research he had done, concluding that it was not a “virtual certainty” that a decision would come from a court decision in time for a ballot measure. Further, if the decision came late and favored the referendum, a grievous injury to citizens of this county would have occurred. He also noted that he had read an analogous court case from another venue which tested the limits of citizen initiative and referendum, and which had gone through several court appeals before being resolved. He felt that the prospect of compelling a citizen to go through lengthy and costly litigation was “absolutely repugnant.” He added that he would much prefer to stand on solid ground with our citizens rather than continue down the path of uncertain legal maneuvers. Other Council members expressed their support of the motion. Mr. Myhr, expressing a desire to meet terms of the GMA and have appropriate careful use of land in the County, continues to question the legality of the referendum. **Motion carried with Myhr opposed.**

Mr. Gaylord, Prosecuting Attorney, who arrived after the vote on the motion, was asked to comment. Mr. Gaylord stated that he understood the motion was to discontinue the lawsuit against Alex Gavora, concerning the pre-election challenge to the referendum. The outcome of that action is that the referendum under the terms of the County Charter will proceed to election in the next general election, which is the 2007 general election. In answer to Mr. Knapp’s concern, regarding advising citizens of potential problems at the onset of proposed referendums and initiatives, he pointed out that the Council procedures regarding referendums had not been updated yet, and language addressing notice to the referendum sponsor could be worked into the process, but questioned how that would be done without impacting the gathering of signatures.

2. Aliquot System Appeal (added agenda item) - Mr. Ranker asked for an update in executive session on the aliquot system appeal. Mr. Myhr scheduled this to take place after the 3:30 agenda item.

3. Economic Development Council (EDC) Annual Report, Fourth Quarter Report, and the Ferry Study Executive Summary – Also present: Ralph Hahn, EDC President; Bill Watson, EDC Executive Director; and interested members of the public. Mr. Hahn presented the EDC reports, noting that the EDC, an Associate Development Organization (ADO) under RCW 43.330.010, with its new coordinator, Phyllis Cole, filed quarterly reports with the state Community, Trade, and Economic Development (CTED) agency, along with the annual report for final reimbursement. He reported that due to support from SJC, the Town, and Port of Friday Harbor, this was the first time the EDC had operating reserves to meet its expenses in the first six months of the year. He stated that additional reporting to the state was being required as the State Legislature is paying more attention to what CTED is doing to provide support for businesses. Regarding the EDC Ferry Study, Mr. Hahn provided an overview, stating that the full text was available on their website at islandway.org. Their goal was to provide an economic picture of the impact the ferry system has on SJC. He stated that although some data is unavailable, they were able to take monthly data and extrapolate annual numbers on full-time resident, part-time resident, and visitor categories. He also expressed the need to track the cost of living for future studies. Mr. Hahn and Mr. Watson answered questions from the Council. Discussions regarding the cost of living and lack of cost of living adjustments (COLA) for federal employees on the island ensued. Mr. Lichter expressed concern regarding duplication of efforts of the EDC and Ferry Advisory Committee (FAC) and possible criticism of the FAC. He suggested the EDC coordinate with Alex McLeod, FAC Chair. Mr. Hahn stated that he tested the EDC presumptions with Mr. McLeod and would not have brought the study forward if it showed criticism, in any way, of the FAC. The dilemma of reduced rider-ship, fare-box recovery, and the idea of looking at SJC ferries under tourism instead of transportation was discussed. Mr. Myhr stated that the ferry system would be on the Council’s list of priorities. Mr. Peterson suggested adding this as a discussion item when the Council meets with the town on August 21, 2007. Mr. Ranker also asked that the EDC Ferry Study be placed on the next agenda with staff review and recommendation for acceptance by the County. Mr. Hahn noted that there is also money available for SJC at the Regional Transportation Planning Organization (RTPO) level. Councilman Lichter requested that the next ferry discussion before the Council involve both the FAC and EDC representatives.

4. State Legislative Priorities (this item pre-empted Budget Priorities) - Mr. Myhr opened the discussion by requesting the issue of ferries for SJC be a top legislative priority and asked the other Council members to share their priorities. Mr. Ranker pointed out that the ferry budget and fare box had been set for the biennium until 2009. Mr. Myhr stated his interest was in looking at the ferry system in terms of long-term financial planning. Mr. Rosenfeld suggested special funding to implement the intermodal plan be considered, specifically money for the acquisition of property that won’t wait until 2009. Mr. Ranker cautioned about asking for funds prior to designation of property and a lead agency. Mr. Peterson suggested including a definition of affordable housing, adding that there are nebulous additional costs that could be dealt with through legislation

in determining eligibility for affordable housing. Mr. Ranker presented the likelihood of the Washington State Association of Counties (WSAC) consulting the Coastal Counties Caucus to include ferries as a WSAC priority, and the possibility of WSAC hiring a full-time staff person to deal with coastal counties issues. Mr. Ranker suggested going in with 5-7 priorities, which proved successful for SJC last year. He expressed interest in pursuing the remainder of the request from last year's Puget Sound Salmon Recovery Plan, one million dollars more for infrastructure and projects on shorelines that SJC would be required to undertake, federal or state legislature and DNR assistance regarding Mitchell Hill, and to address a COLA for federal employees in SJC with pressure from the state legislature. Mr. Myhr stated he wanted to include asking to allow Neighborhood Electric Vehicles (NEV) to travel on roads with 45 mile per hour speed limits, without changing our limits.

5. Budget Priorities – Mr. Myhr advised the Council that this would be re-visited after the County Administrator briefing, time permitting.

COUNTY ADMINISTRATOR COUNCIL BRIEFING

1. Rural Sales and Use Tax - Also present: Milene Henley, SJC Auditor; and interested members of the public. Ms. Henley referenced her Staff Report, stating that this rural sales and use tax passed in 1997 for distressed rural counties and with this new legislation, written for small counties, SJC and Island County will qualify for this tax in perpetuity. She explained that it is in place to encourage economic development. The increased amount is from .08 to .09 percent, which amounts to approximately \$43,000. The Council would need to pass an ordinance approving this to collect the additional tax, with no impact to the consumer. Mr. Myhr stated that this was scheduled for public hearing next week and thanked Ms. Henley for her presentation.

2. Agricultural Resources Committee (ARC) Report – Also present: Ron Zee, ARC Chair; Eliza Buck, ARC Coordinator; Todd Goldsmith, ARC Vice Chair; Tom Schultz, WSU Extension Agent; and interested members of the public. Mr. Rose introduced the panel and explained that funding for the Coordinator, Eliza Buck was in place through September, and that continued funding would be brought back for discussion in two weeks. He added that through the budget process, the Council had decided that staffing for ARC would come through the Conservation District. Mr. Zee gave a PowerPoint presentation. Ms. Buck gave a progress report and Mr. Goldsmith also reported on the ARC mission, membership, and the importance of maintaining the staffing of a Coordinator. The panel answered questions from the Council and discussion followed regarding land leases along with the idea of using the protected location of our islands to produce organic seed. Mr. Lichter inquired about the current full-time equivalent (FTE) of the coordinator, Ms. Buck. Mr. Rose explained that it was currently funded through the Conservation District at .6. Mr. Ranker suggested funding it at full-time and making it a priority for future years. Mr. Myhr thanked the panel for their report.

3. Legislative Priorities – Mr. Rose suggested continuing the discussion from the morning session, and began with the ferries. He commented that our situation is unique in that our economy is dependent on ferries, where the others are commuter ferries. Mr. Myhr added that it may take the County working together with FAC to educate the legislature on this and suggested that sometime between this session and next, the County invite legislators here to discuss ideas that will work in Olympia. After discussion, the issues that rose to the top were: 1) Affordable housing, with a specific focus on addressing issues relating to the definition of moderate income and the possibility of related loan programs, 2) Mitchell Hill and keeping options open at the state level. 3) COLA for federal employees in SJC, 4) Allowing neighborhood electric vehicles to operate on roads up to 45 mph to provide greater options for inexpensive motor vehicle operations and sensitivity to climate change issues, 5) Oil spill legislation, 6) County wide policy working together with the FAC regarding ferry and transport issues, and 7) Public and Mental Health issues.

PUBLIC HEARINGS / MEETINGS

10:30 a.m. (Commenced at 11:28 due to time constraints.) A public hearing was held to consider adoption of an emergency ordinance for Lopez Village. Present: Full Council; Pete Rose, SJC Administrator; Colin Maycock, Community Development and Planning Department (CDPD) Senior Planner; Ron Henrickson, CDPD Director; Laura Tuttle, Clerk to the Council; Lisa Brown, Deputy Clerk; Maureen See, Office Assistant; and interested members of the public. Mr. Myhr introduced those present and opened the public hearing. Mr. Maycock referenced his Staff Report, explaining that the proposed ordinance was an extension of an existing

ordinance. Public testimony was opened, none submitted, and closed. Deliberations were held and the following action was taken:

Moved by Peterson, seconded by Lichter, to adopt the proposed extension to the ordinance. Motion carried.

2:30 p.m. - A public hearing was held to consider proposed applications for projects funded by the San Juan County Public Facilities Financing Assistance Program for 2007. Present: Full Council; Pete Rose, SJC Administrator; Jon Shannon, Public Works Director; Ed Hale, Utilities Manager; Milene Henley, SJC Auditor; Laura Tuttle, Clerk to the Council; Lisa Brown, Deputy Clerk; Maureen See, Office Assistant; and interested members of the public. Mr. Myhr introduced those present and opened the public hearing. Mr. Rose referenced his Staff Report and gave his recommendation to the Council. Public testimony was opened, none submitted and closed. Deliberations were held and the following action was taken:

Moved by Lichter, seconded by Peterson, to approve the award of \$50,000 to the Town of Friday Harbor (TFH) to use for Phase IV of the Guard Street construction project and \$123,000 to SJC Public Works for site design of the future SJI Solid Waste Transfer Station. Motion carried.

3:00 p.m. - A public meeting was held to discuss the proposed Orca Whale protection ordinance. Present: Full Council; Pete Rose, SJC Administrator; Randall Gaylord, Prosecuting Attorney; Bill Cumming, SJC Sheriff; Amy Trainer, Friends' of the San Juans Staff Attorney; Laura Tuttle, Clerk to the Council; Lisa Brown, Deputy Clerk; Maureen See, Office Assistant; and interested members of the public. Mr. Gaylord referenced the proposed ordinance and stated that he met with Coast Guard officials to discuss issues regarding treaties, patrolling border areas, straits, and passageways, and vessel management systems with Canada. The official response from the Coast Guard identified recommendations and changes to the ordinance, as outlined in his report. Mr. Gaylord and Sheriff Cumming answered questions from the Council regarding the ordinance and its enforcement. The importance to seriously consider a budget proviso associated with this for next year was also discussed. The Council expressed urgency in moving on this before the season is over to make the public that is present aware for next year. Ms. Trainer thanked the Council for their efforts on moving this ordinance forward. After discussion, the following action took place:

Moved by Ranker, seconded by Rosenfeld, to move to publication with the changes suggested by the Prosecuting Attorney. Motion carried.

3:30 p.m. (Commenced at 3:48 due to time constraints.) - A public hearing was held to consider a Timber Open Space application for approximately 26 acres of land for Condor Crag North, LLC, Dolphin Bay Road, Orcas Island – File No. 07TOS001 – Present: Full Council; Pete Rose, SJC Administrator; Lee McEnergy, Associate Planner; Randall Gaylord, Prosecuting Attorney; Karen Vedder, Deputy Prosecuting Attorney; Laura Tuttle, Clerk to the Council; Lisa Brown, Deputy Clerk; Maureen See, Office Assistant; and interested members of the public. Ms. McEnergy referenced her Staff Report and recommendation and answered questions from the Council. Public testimony was opened, none submitted, and closed. Deliberations were held and the following action was taken:

Moved by Ranker, seconded by Knapp, to approve the application for Condor Crag North, LLC, Dolphin Bay Road, Orcas Island (File No. 07TOS001). Motion carried with Lichter opposed.

EXECUTIVE/CLOSED SESSIONS

4:00 p.m. – Council Chair Myhr announced that the Council would be holding an **executive session**, estimated to last approximately 20 minutes, to discuss litigation pursuant to the provisions of RCW 42.30.110(1)(i). Participants: Full Council; Mr. Gaylord, Prosecuting Attorney; Laura Tuttle, Clerk to the Council. The session ended at 4:17 p.m. for an actual session time of 17 minutes. No action was taken.

ADJOURNMENT - Council Chair Myhr adjourned the meeting at 4:21 p.m. A Special Meeting was scheduled for Monday, August 13, 2007, and the next regular meeting was scheduled for Tuesday, August 14, 2007.

These minutes were approved and signed on Tuesday, August 14, 2007. The original document is retained in the Council's permanent proceedings file dated August 7, 2007. Attest: Lisa J. Brown, Deputy Clerk.