

**BOARD OF ISLAND COUNTY COMMISSIONERS, MINUTES OF MEETING
SPECIAL SESSION, DECEMBER 19, 2006**

The Board of Island County Commissioners met in Special Session on December 19, 2006, beginning at 6:00 p.m. at Elger Bay Elementary School, 1810 Elger Bay Road, Camano Island, WA. Wm. L. McDowell, Chairman, William J. Byrd, Member, and Mike Shelton, Member, were present. The Special Session called for the purpose of conducting a Public Hearing to consider Franchise #144.

**HEARING HELD: APPLICATION FOR FRANCHISE BY TR CAMANO INC. -
SANITARY SEWER TRANSPORT SYSTEM TO BE LOCATED ALONG A PORTION OF
NORTH CAMANO DRIVE SITUATED IN SECTIONS 19 AND 20, TOWNSHIP 32 N, RANGE
3 E, W.M., ISLAND COUNTY, WA.**

As scheduled and advertised, the Special Session was called for the purpose of conducting a Public Hearing to consider Franchise #144 (PW-0620-109) between Island County and TR Camano, Inc. for a Sewer Transport System to be located in North Camano Drive, Camano Island, Sections 19 and 20, Twp 30 N., Range 3E.

Attendance:

Staff:

Bill Oakes, Island County Public Works Director
Jeff Tate, Assistant Planning Director

Applicant

David Platter, TR Camano, Inc.

Press and Public

Rick Wood, Stanwood/Camano News

John Dean, Commissioner-elect

Approximately 115 citizens

[Attendance/sign up sheet on file with the Clerk of the Board].

For the record:

- List of telephone calls received from citizens at the Camano Annex December 19, 2006, expressing opposition to granting the franchise: *[on file with Clerk of the Board]*
- Correspondence received via e-mail and Fax in opposition of granting the franchise: *[on file with Clerk of the Board]*

Bill Oakes, Public Works Director, summarized with respect to the franchise, a 25-year lease of the use of the right-of-way to operate utilities in a public right-of-way. Proposed Franchise #144 is for a sanitary sewer transport line along North Camano Drive as it leaves SR 532 as indicated on the map. It would transport effluent to an off-site disposal system with distribution trenches located in the Terry Heights development.

Chairman McDowell pointed out to the audience that the Hearing was with regard to the Board's approval or disapproval of the Franchise for the septic line in the right-of-way, not about the project at either end.

David Platter commented that the Supreme Court ruled that on compliance with the ordinance, the permit must be issued as a matter of right.

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Pat Finn, Arrowhead Drive, submitted a December 14, 2006 memo from Michael W. Gendler, Gendler & Mann, LLP, Attorneys-at-Law, Seattle, providing legal advice and representation for CARE (Camano Action for a Rural Environment). The memo explains legally why the County is not compelled to grant a franchise to use right of way to anyone, and that the Board has broad discretion to deny the franchise when the request does not serve the public interest or is not consistent with the Comprehensive Plan. The request by TR Camano is to use County land for private benefit. There is no State regulation that compels the County to grant a franchise simply because a State permit for a LOSS system has been granted. He referenced other court cases supporting that point of view. *[memo on file with Clerk of the Board]*

Jane Cassady, Terry Heights Lane, living immediately adjacent to the proposed drainfield, noted over 100 concerned residents gathered last June to hear from State and County officials about TR Camano's intent to pipe effluent 2½ miles from the Bayside Development to Terry Heights Lane. Because the approval process on this massive system was based exclusively on information submitted by the developer, many people in attendance at that meeting donated money to hire HWA GeoSciences, Inc. to review the application and permit. HWA concluded that the 13,592 gallons of effluent per day pumped into the drainfield would likely "daylight". *[report dated July 5, 2006 HWA Project No. 2006 055 on file with the Clerk of the Board]*. Ms. Cassady recalled a meeting a few weeks back, attended by Commissioner Shelton, when Doug Kelly, Island County Hydrogeologist agreed with the findings. Her concern was that a tremendous amount of this water would move laterally and surface in the County ditch. Having a County ditch serve as receptacle for TR Camano's sewer water is neither in the County nor public interest. The HWA report highlights other concerns not to be ignored: uncertain quality of the water regarding nitrates; no wet season review; no clearly defined monitoring program to ensure nitrate levels are within acceptable levels prior to being pumped into the drainfield; and no monitoring regime to track contaminants leaving the site. She suggested the County would be negligent to grant the Franchise prior to a thorough review and additional safeguards in place. Additional studies are needed to determine how much effluent will daylight and where, what the water quality will be, and evaluate existing drainage problems and the impact of additional water flowing off the proposed drainfield.

Allison Warner, Dove Drive, submitted a letter dated December 19, 2006, with attached exhibits, on behalf of CARE *[on file with Clerk of the Board]*. CARE is concerned about drainage issues because the drainfield and the Franchise cannot be separated as an environmental impact. Approving the Franchise to pump effluent to the septic drainfield would cause impacts with respect to the public benefit. CARE attempted to comment during Bay View Park's permitting process, but at that time were told the County was not responsible for the drainfield decisions. Issuance of a Franchise would have environmental affects, such as treatment of nitrate by a drainfield that intends to use twenty-three acres including wetland down-slope from the property for further treatment resulting in day lighting discharge from effluent traveling horizontally on glacial till *[see Robinson and Noble report dated March 17, 2005 provided as an exhibit to the letter]*. Pointed out by Ms. Warner was that a required grading permit for the drainfield had not been applied for or issued. Another concern has to do with water day-lighting in the bank along the County road ditch, thereby increasing flow, volume of water, and decreasing the storm water capacity to the County drainage facility. An increase in the storm water as a result of franchise issuance would not be in the public interest. It would reduce storm water capacity of the existing facility, which currently is already at capacity during winter months *[refer to photo exhibits North Camano Drive just downstream of the property]*. The County must consider drainage impacts to the day-lighting discharge in issuance of development permits for the Bay View development. ICC 11.03.090 states that all "major development activities" must undergo drainage review. She encouraged the Board to wait until the drainage review of the drainfield was completed with accompanying environmental review before approval of the Franchise.

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Joan Shrammeck, Scenic Avenue, explained CARE's position that the application is not in the public interest. TR Camano has a poor track record relating to the Bay View Park project, a source of the effluent under discussion, noting at least four times when officials required that work be stopped, or cases of Mr. Platter going ahead with items not yet permitted. A Stop Work Order was issued December 20, 2005 by the State Department of Health until the site use was determined, a condition of LOSS permit. The Fall of 2005, Mr. Platter installed the septic transport line along State Highway 532 and there was some concern whether or not the septic transport line had been pressure-tested and certified as require. The State Department of Transportation requires that during the process of preparing the site for construction, local drainage areas need to be protected from storm water runoff, yet the Summer of 2005, Platter & Cole began clearing, grading, and preparing the Bay View Park site without necessary protections, not in compliance with State Department of Ecology rules. Mr. Platter took over the Terry Heights water system several years ago and allowed the system to fall into disrepair, and individual land owners were forced to dig their own wells. Because of Mr. Platter's poor track record supplying water, local residents were very concerned about his commitment to properly install and maintain this septic line. For all of these reasons, CARE believe the Franchise is not in the public interest and should be denied.

Tammy Finn, Arrowhead Road, on behalf of CARE, believed that approving the Franchise would set a dangerous precedent for Island County. Folks arriving at the hearing signed a petition in opposition to granting the Franchise and she submitted the petition into the record *[on file with Clerk of the Board]*. CARE handed out numbers on red cards to folks attending this evening, numbering 104 – so the Board could get a visual of the number of people opposed to approving the franchise, 90% against.

Victor Leshner, Lake Drive, expressed concern about the proposed commercial center, with effluent piped two miles away. He questioned why there weren't more reasonable alternatives considered, such as purchasing additional property adjacent to the proposed site for the septic system. Another option would be to utilize the eight acres TR Camano owns across the road for a septic system. He concluded that TR Camano's plan was to use all the commercial property for revenue and dump the sewage where most folks live on the Island.

Carolyn Ehret, High Road, had concerns that the hearing was being held a few days before Christmas when many local residents are gone for the Holidays, scheduled at a time when those who commute out of the area could not arrive by 6:00 p.m. She believed that the proposed septic system would have a long term affect on the integrity of Camano Island and the Board must be able to determine it is in the best interest of the community. The definition of the word "public" is: "Of the people as a whole, for the use and benefit of all."

Myron (Jay) Leque, owns a 100 acre farm below Terry's Corner at 704 State Highway 532, and is a Drainage District No. 5 Commissioner, which drains the entire basin from Utsalady Road to the north, Hanstead Road to the west and all the way to the Utsalady School, drain about 2,000 acres down through their ditches and their pump system which goes into Livingston Bay. The Drainage District was established in 1934. Mr. Leque read a letter dated December 19, 2006 on behalf of the Drainage District, summarized as follows:

The District recently received engineering stating a potential for the proposed drainfield at Terry Heights to fail and overflow and that the State received incomplete and inaccurate data as part of their approval of the proposed drainfield. In the event of any such overflow or

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failure, the effluent would flow into the County ditch along N. Camano Drive and directly into District facilities. The District requests that the Developer and successive owners be required to submit perpetual bi-annual water testing reports from water immediately downstream in the N. Camano Drive ditch to ensure no overflow/failure has occurred at the LOSS. The District also requests permanent bi-annual inspections/testing of the tight line which serves the LOSS. The District wishes to go on record that if Island County approves this permit, the District will hold the County, any other approving agency, and the developer liable for any damages resulting from any system failure. *[on file with Clerk of the Board]*

John Edison, Wayne's Ridge Circle, thought if the Franchise were to be granted, folks must be able to trust that the applicant will do an acceptable job of installing the sewage pipe, and he did not believe this applicant had earned that trust. Should the pipe fail, effluent would flow ultimately to Port Susan Bay and it is not a risk worth taking. He urged denial of the franchise.

Pat Churchill, E. North Camano Dr., was not happy the developer had not followed the rules. She saw the mess the developer made and did not want a mess in her yard, which she felt would happen if this goes through.

Ida Bearden, Granite Lane, commutes to Seattle everyday and has watched it turn into a sewer because of people with money bypassing the laws which is what she believes is happening in this case. The request is clearly not viable, not in the public interest and she is concerned about precedence.

Karl Neue-Lawson, E. North Camano Dr., was interested in what passes through the septic line as it is a concern, noting that his property is surrounded by the proposed drainfield. He inquired what the "receiving lot" indicated on the plan meant.

Briggs Ekrem, Terry Heights Lane, stated that his property was two properties away from the proposed drainfield and commented that County right-of-ways should be for the needs of all residents. He felt the County would be opening itself to more lawsuits should the Board approve the request, and urged the Board vote "no" to those who use it for private interests.

David Gladstone, S. Camano Dr., noted that most of the comments expressed the belief that the project is not in the public interest and had not heard anything from the Commissioners that would counter that position. He suggested Commissioner Byrd excuse himself from voting tonight, or the Board defer voting until after the first of the year when Camano Island will be represented by a Commissioner who resides on Camano Island.

Bobbie Miller, Vista Del Mar, understood the Franchise would be for 25 years to operate a utility in a public right-of-way, and that it must serve the public use and be for the public good, and typically, public utilities are run by a public entity such as a sewer district and available for the public for all who live in the area. This is a private utility for private use; residents in the area could not use this franchise utility line, and approval would set a bad precedence. The right-of-way needs to be reserved for public use. In the Buena Vista development water lines are in private easements even though there are public roads in the plat itself.

Carl Neue, Ridge Lawn Place, stated that his son unfortunately is one being surrounded by Mr. Platter's drainfield. His son is building a new house and does not want the effluent from the drainfield going through his yard. When the water makes its way into Livingston Bay and on into Port Susan, someone will be to blame for lack of fish. He wondered if the County and State had taken Mr.

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Platter's information at face value to grant this permit for the drainfield realizing the liabilities they may incur. The City of Sultan just ruled that homes with septic systems cannot be built on city-sized lots. Mr. Neue believes that granting the Franchise would be a stop-gap measure, putting off the inevitable, opening the door to lawsuits from the State and Federal government as well as the Tulalip Tribe. He was concerned about the County's liability should the franchise be granted.

Mary Bellue, James Way, member of CARE but speaking as an individual, believed this an important long term decision that needs further consideration and information, and asked that a decision be made after January 2, 2007, when the new Commissioner is in office. She questioned if granting the franchise would cause Island County to pay increased costs if the road were to be widened or repaired, or sewer system needed, and if so, who would pay those increased costs. She urged denial of the Franchise.

Chairman McDowell explained that if the County road needed to be widened, the franchise holders would have to pay to have the line moved.

Brett Ekrem, Terry Heights Lane, suggested the Board taste water from the Terry Height Water System, commenting that the taste and smell is awful. He was unhappy that Dave Platter owned the water system for several years and had not improved it. Since Mr. Platter had not been responsible for the water system, he wondered why anyone would think he would be responsible for the proposed drainfield.

Susan Urich, Terry Heights Lane, recently bought her house from her father, and recalled a situation when her father had asked Mr. Platter to fix the water over 6 years ago, but nothing happened.

Louise Key, Skagit Avenue, believed unanswered questions and issues must be resolved before the franchise is approved, and a decision to be made after the new Commissioner takes office.

Tammi Leroy, Terry Heights Lane, was distressed about the information since it was not disclosed when the house was purchased. She lives downstream from the proposed drainfield and would like to have more information before a decision was made and favored postponing a decision.

Mark Key, Spruce Ridge Drive, was interested in discussing engineering, concerned about the septic pipe itself. Procedures and engineering studies must be done and satisfied before proceeding in order to protect public safety. He thought that safety reinforcement tests for concrete had been bypassed which resulted in extensive damage to property and life and was concerned whether the sewer pipe was properly installed and pressure tested to avoid any problems.

The public input portion of the hearing was closed at 7:30 p.m., concluding with Commissioner comments.

Commissioner Shelton noted Island County's long history of allowing people to use the County road right-of-way for different purposes. Many people who have off-site drainfields utilize the County road right-of-way to pump effluent to their drainfield. The County generally does not, without good reason, deny the public use of the public road right-of-way, whether by many people or one. The State Department of Health, who has the permitting authority for this size LOSS, approved this drainfield; the State Department of Ecology also reviewed this permit. Commissioner Shelton asked Mr. Oakes whether a clearing and grading permit was required for the drainfield area, and if so, whether it would

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trigger SEPA for the drainfield site. He inquired whether the Island County SEPA responsible official would be the controlling person, or would it be the State Department of Health.

Mr. Oakes confirmed that a clearing and grading permit was required since it would exceed two acres.

Jeff Tate explained that the State Environmental Policy Act (SEPA) relates to environmental review and its thresholds not based on acreage, but other factors may apply. If the applicant meets one of the exemptions, it is exempt. When the project was submitted a couple years ago, the project went through a SEPA process. The Planning Department will look at that SEPA review to determine whether it covers all the factors relevant in that project. Mr. Platter's SEPA review makes reference to an off-site drainfield and a LOSS system. The County follows the State Department of Health and State Department of Ecology established regulations for reviewing and permitting those types of systems. The SEPA responsible official for local projects is the local County Planning Department. There is the ability within SEPA regulations to spread that responsibility to other agencies if another agency is the primary reviewing body.

Ms. Cassady stated that the State Department of Health placed two conditions on the permit: a County conducted SEPA and a County granted Franchise along the right-of-way, neither were done when the original permit was issued. SEPA signage may have been posted on the construction site, but never on the proposed drainfield site. The community was unaware of the proposal to transport effluent 2½ miles to their neighborhood. There has been no environmental review and no understanding of the quality of water leaving the hillside (including pathogens, nitrates) going into the ditch and ultimately into Livingston Bay. It is a non-point pollution problem and the County has an opportunity to stop it.

Commissioner Shelton explained the County follows the law and the Department Ecology has stated they would approve this system if it fell under their authority. He explained pressure testing for the entire septic line that has been installed will need to be done before the system can be used.

Since the County was not responsible for inspecting the septic line installed on State right of way, the Chairman asked that the Public Works Department contact the State to determine whether proper pressure testing and certification was done. The Chairman believed the Board needed that answer before moving ahead, as well the requirement for a Clearing and Grading permit.

Commissioner Byrd commented that if a clearing and grading permit were required it should be in place before approving the Franchise.

Commissioner Shelton stated the County needed to ensure for everyone's benefit that SEPA requirements for the drainfield area were met; the clearing and grading permit needed to be approved by Public Works as well.

Mr. Tate explained if it were determined that additional SEPA review is required, the two issues become married because the clearing and grading process would require SEPA along with it. The Planning Department would review the environmental checklist; the Department of Health SEPA review that was done for creation of those regulations, and the proposal itself. A clearing and grading permit without SEPA would require a minimum of thirty days to process; a clearing and grading permit with SEPA could take up to 60 days, suggesting 90 days to allow sufficient time.

Mr. Oakes indicated the SEPA process has a time frame for certain requirements and the clearing and grading permit required 30 days for the public notice for the Public Hearing.

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Mr. Platter asked the Board to make a decision on the Franchise subject to these future permits and SEPA.

By unanimous motion, the Board continued the Public Hearing on Franchise #144 between Island County and TR Camano, Inc. for a Sanitary Sewer Transport System to be located in North Camano Drive, Camano Island, Section 19 & 20, Township 32 N., Range 3 E. to Tuesday, February 6, 2007, at 7:00 p.m. to Utsalady School, (if available).

There being no further business to come before the Board of Commissioners at this time, the Chairman adjourned the meeting at 7:53 p.m. The Board will meet next in Regular Session on Monday, January 8, 2007 at 9:30 a.m. in the Commissioners Hearing Room, Coupeville, WA,

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

William J. Byrd, Member

Mike Shelton, Member

ATTEST:

Elaine Marlow,
Clerk of the Board