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1 based on interpretation of the facts and an agreement of the parties to the appeal.

2
3 Caskey-Schreiber stated she needed to abstain because Western
4 Washington University is her employer.

5
6 ***Motion carried 5-0-1 with Caskey-Schreiber abstaining and Crawford***
7 ***absent.***

8
9
10 **SPECIAL PRESENTATION**

11
12 **PRESENTATION BY MAHLON CLEMENTS, ASSOCIATE PARTNER AT**
13 **ZIMMER GUNSEL FRASCA PARTNERSHIP, REGARDING THE 2004**
14 **CENTENNIAL PROJECT (AB2003-017)**

15
16 This item was withdrawn from the agenda.

17
18
19 **MINUTES CONSENT**

20
21 ***Nelson moved*** to approve Minutes Consent items one through five.

22
23 ***Motion carried unanimously.***

- 24
25 **1. COMMITTEE OF THE WHOLE FOR JULY 8, 2003**
26
27 **2. REGULAR COUNTY COUNCIL FOR JULY 8, 2003**
28
29 **3. WATER RESOURCES WORK SESSION FOR JULY 15, 2003**
30
31 **4. COMMITTEE OF THE WHOLE FOR JULY 22, 2003**
32
33 **5. REGULAR COUNTY COUNCIL FOR JULY 22, 2003**

34
35
36 **OPEN SESSION**

37
38 The following people spoke:

39
40 Roger Almskaar, 3610 Meridian, stated he submitted maps to the Council
41 Office to illustrate a proposal to rearrange boundary lines (*on file*) regarding the
42 **James Way Road Vacation (AB2003-237)**. The present ownership proposal
43 involves only the Christiansen lot, the Topham lot, and lot C. The proposal is to
44 grant a ten-foot pedestrian easement to the County, in response to the objections
45 to the vacation, in exchange for the major part of the James Street right-of-way.
46 Ms. Topham would get a small part of the right-of-way.

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1 He's looked at the history of this property very closely. He looked at the
2 record in the County Auditor's Office and in the other County offices. The
3 Engineering Division staff agrees that there is no legal public access to get from the
4 end of James Way to Birch Bay tidelands, which are private. The opponents have
5 talked about many things, but have not provided any documentation for the record.
6

7 Dennis Jones, 1487 Sudden Valley, thanked the Council. Watching the
8 County Planning Department work with the City is a pleasure. Three years ago, the
9 question came up of whether or not Sudden Valley should become a city. The best
10 option is some sort of township or district instead of making Sudden Valley a city.
11 Most importantly, the lawsuit County vs. CWA is counterproductive to growth issues
12 being worked on carefully together. Settle that as much as possible. Consider
13 Sudden Valley becoming some sort of district for roads, surface stormwater, and
14 parks, in conjunction with Water District 10.
15

16 Todd Mandrel, 317 Marine Drive, Point Roberts, stated he is the co-chair of
17 the Point Roberts Economic Development Committee. He described the history and
18 meeting schedule of the committee. The committee works on the economic well
19 being of Point Roberts.
20

21 On June 17, two people chose to speak to the Council regarding the
22 development of a community sewer system. Those two people did not represent
23 the community. His committee is concerned that this project was moved from
24 number 13 to number 18 on the Washington Community Economic Revitalization
25 Team (WA-CERT) project list. His committee has provided reports to the County
26 Council on this project. It is very difficult for Point Roberts residents to get to
27 Council meetings because they have to travel through two borders. They need
28 improved dialog with the County Council so the things that happened on June 17
29 don't occur.
30

31 Terre LaPorte, 101 Goodwin Road, Point Roberts, Point Roberts Economic
32 Development Committee, stated she resigned as director of the Chamber of
33 Commerce in November to work on the wellness clinic. Now that's completed, she
34 can work at the Chamber again. She read a letter from the current Chamber of
35 Commerce president regarding the Washington Community Economic Revitalization
36 Team (WA-CERT) project list (*on file*) that says the comments of Tom Hollett do not
37 represent the Chamber of Commerce. They are trying to make Point Roberts more
38 economically viable.
39

40 David Niles, Point Roberts, Infrastructure Committee Chair, stated he is
41 available to answer any questions regarding the remarks made at the June 17
42 meeting on the Washington Community Economic Revitalization Team (WA-CERT)
43 project list. He submitted information on this issue to the Council and County
44 administration. He authored the original application and the new application. The
45 reason he used the Chamber as the lead organization was because it was the
46 original lead organization. There was a limited timeframe to get the new
47 application in on time. At the following water district meeting, he said it would be

1 best for the water district to take the lead because they'd received an 80/20 grant
2 from the U.S. Forest Service to update the Point Roberts Sewer Comprehensive
3 Plan. They tabled it because one of the members was not present.
4

5 Dave Cottingham, attorney for Shirley White, stated the consideration of her
6 appeal was in executive session, which Ms. White objects to. She would like a
7 statement on the reasons for the decision to hold consideration in executive
8 session. Her new objection is to exclude all evidence not before the Hearing
9 Examiner, in the form of attachments or addendums to Mr. Swanson's brief. He
10 asked that his remarks now be appended to the record.
11

12 Charles Van Gorter, attorney, spoke on the James Way vacation. James
13 Way, as platted, was intended to extend to and provide public access to the beach
14 reserve. That's why it stopped there. Otherwise, it would simply have been a
15 driveway and not platted. This public access was provided for the area denoted as
16 the beach reserve, and was intended for public bathing purposes and a public
17 playground for all the owners of lots in that plat and in Birch Bay Park. This was
18 explicitly spelled out on the plat for Birch Bay Park. That same purpose can be
19 imputed to Birch Bay Park First Addition. It is adjacent to Birch Bay Park, is
20 commonly known as Birch Bay Park, and had owners in common with Birch Bay
21 Park, which was platted the year before. It was an easement by implication
22 through a common scheme of development by common ownership.
23

24 The land to which the petitioner claims ownership is entirely within the area
25 denoted on the original plat as beach reserve. The question is whether the public
26 right to use the area known as beach reserve was properly and legally
27 extinguished. The position of his client, Kary Gobbato, is that no County action
28 should be taken to vacate James Way unless and until the question of the propriety
29 of the conversion of the beach reserve to private property without public access has
30 been resolved through judicial determination.
31

32 A statute precludes vacation of a County right-of-way that abuts a body of
33 saltwater. Unless there is a definitive determination that James Way does not abut
34 a body of saltwater, the County Council should not vacate James Way. For a
35 vacation pursuant to the statute, the petitioner must show that the right-of-way is
36 a useless part of the County road system. This property was reviewed in 1999 for a
37 variance application to permit a zero lot line setback from the right-of-way. The
38 Engineering Division noted that the area has a limited amount of parking, and the
39 right-of-way may be used at some time in the future for parking. That observation
40 remains current.
41

42 Little or no public benefit would be derived from this vacation. The benefits
43 cited by the petitioner are de minimis. The proposed vacation will close one of the
44 existing areas of public parking and access, and will potentially block one of the
45 remaining view corridors to Birch Bay.
46

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1 George Astler, 4815 Alderson Road, Birch Bay, stated the vacation of roads
2 abutting bodies of water is not legal per the Revised Code of Washington (RCW)
3 36.87.130. Mr. Whitcomb said the vacation would not violate the law because the
4 road leads to privately owned land and not the water directly. That is a change of
5 verbiage. Birch Bay Drive itself abuts the body of water. James Way does abut the
6 water. He is opposed to the vacation of James Way.

7
8 Patricia Alesse, 4825 Alderson Road, Birch Bay, stated the original purpose
9 when first platted in 1912 was not ambiguous. It was not to be a through street
10 because it stopped at a beach reserve to provide public use. It was for the use of
11 all the lot owners. All lot owners in Birch Bay First Addition still have an interest in
12 the beach access. The original plat shows the beach reserve and has a description
13 that says all streets and alleys are dedicated to the use of the public forever.
14 Beach reserve is designated on the maps at the areas to the south. If they vacate
15 this reserve area, it sets a precedent for vacating the reserve areas all down the
16 line. The people who organized it knew that they created a more valuable piece of
17 property for themselves and Whatcom County when they did it that way.

18
19 Patrick Alesse, 4825 Alderson Road, Birch Bay, stated Mr. Morrison, who
20 owned all this property, put the beach reserve there. It was smart growth. The
21 intent is clear. James Way abuts the beach reserve. The County owes Birch Bay a
22 park at this spot. Don't make any deals now. Just say no to the vacation.

23
24 Claudia Hollod, 8240 Birch Bay Drive, stated they have to fight for
25 everything they get in Birch Bay. The burden of proof lies with Mrs. Christensen.
26 No proof has been given to justify the vacation. This will only benefit Mrs.
27 Christensen. The residents have lost a lot of beach reserve, which is to be
28 protected by the County. She doesn't know where that went. She asked who is
29 responsible. Protect their beach areas. Birch Bay Park is now charging \$5 for
30 access. People can't afford it. Mrs. Christensen could dedicate this entire parcel to
31 the community as a public park. The community would be happy to name it after
32 her. Please deny the request to vacate.

33
34 Ray Hong, 7553 Morrison Avenue, Birch Bay, stated he's owned his property,
35 lot 11, since 1969. In 1971, he bought lot 10. At that time, the owner of lot 10
36 told him that the lot was conditioned with the right to go to the beach. Pete
37 Hanson had Evelyn Christiansen on a lot further up the street to begin with. He
38 moved her to this lot when he found out he couldn't do anything with it. Mrs.
39 Christiansen should be suing Pete Hanson, not trying to take a lot from the public.
40 Vote no on the resolution.

41
42 Steve Shropshire, attorney for Mrs. Christensen, stated the petition for
43 vacation has been tabled. He asked the Council to remove it from the table and
44 vote for a vacation. A vote to deny the vacation is a vote to close whatever beach
45 access there may be, and is a vote that will lead to litigation that will include the
46 County. On the other hand, a vote to grant the vacation is a vote to clarify and
47 allow public access to the beach, resolve the concerns expressed tonight, and avoid

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1 litigation. The issues about the reserve are beyond Mrs. Christensen's control. It
2 may be something the community or County wish to litigate. This is an opportunity
3 for the County to give the public access to the beach.
4
5

6 **CONSENT AGENDA**

7

8 **Nelson** reported for the Finance and Administrative Services Committee and
9 **moved** to approve Consent Agenda items one through eight.

10
11 **Motion to approve Consent Agenda items one through eight carried**
12 **unanimously.**
13

- 14 **1. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO APPROVE THE**
15 **PURCHASE OF PRECAST CONCRETE FLUSH TOILET BUILDING FOR**
16 **THE GLACIER REST AREA USING THE WASHINGTON STATE**
17 **CONTRACT WITH CXT PRECAST PRODUCTS, INC. IN THE AMOUNT OF**
18 **\$47,496.29 (AB2003-278)**
19
- 20 **2. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
21 **FIVE-YEAR LEASE AGREEMENT BETWEEN WHATCOM COUNTY AND**
22 **GOLDFOGEL FAMILY PARTNERSHIP FOR MORGUE SPACE AND**
23 **MEDICAL EXAMINER OFFICE SPACE, IN THE AMOUNT OF \$201,370.20**
24 **(AB2003-279)**
25
- 26 **3. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
27 **FIVE-YEAR LEASE AGREEMENT BETWEEN WHATCOM COUNTY AND**
28 **GOLDFOGEL FAMILY PARTNERSHIP FOR HEALTH DEPARTMENT**
29 **SPACE AT 1500 N. STATE STREET, IN THE AMOUNT OF \$964,635.00**
30 **(AB2003-280)**
31
- 32 **4. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
33 **CONTRACT BETWEEN WHATCOM COUNTY AND DR. GARY GOLDFOGEL**
34 **TO PROVIDE MEDICAL EXAMINER SERVICES, IN THE AMOUNT OF**
35 **\$1,245,088.19 (AB2003-281)**
36
- 37 **5. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
38 **GRANT AGREEMENT BETWEEN WHATCOM COUNTY AND**
39 **EDUCATIONAL SERVICE DISTRICT 105, FISCAL AGENT FOR**
40 **NORTHWEST HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA),**
41 **FOR RENEWAL OF THE DRUG COURT GRANT, IN THE AMOUNT OF**
42 **\$40,000 (AB2003-282)**
43
- 44 **6. RESOLUTION ESTABLISHING CRP NO. 903007 AND AWARDING THE**
45 **BID FOR THE SOUTH PASS ROAD BOX CULVERT REPAIR AT**
46 **BRECKENRIDGE CREEK TO THE LOW BIDDER, EBENAL GENERAL,**
47 **INC., IN THE AMOUNT OF \$116,196 (AB2003-283)**

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1
2 **7. RESOLUTION ESTABLISHING CRP NO. 901012 AND AWARDING THE**
3 **BID FOR THE KWINA ROAD BICYCLE/PEDESTRIAN IMPROVEMENTS**
4 **FROM DIKE ROAD TO LUMMI SHORE ROAD TO THE LOW BIDDER,**
5 **COLACURCIO BROTHERS CONSTRUCTION, IN THE AMOUNT OF**
6 **\$1,616,337 (AB2003-284)**
7

8 **8. RESOLUTION ESTABLISHING CRP NO. 902006 AND AWARDING THE**
9 **BID FOR THE CAIN LAKE ROAD STRUCTURAL OVERLAY FROM SKAGIT**
10 **COUNTY LINE TO NORTHEAST CAIN LAKE ROAD TO THE LOW**
11 **BIDDER, WILDER CONSTRUCTION COMPANY, IN THE AMOUNT OF**
12 **\$928,955 (AB2003-285)**
13

14 **Addendum:**

15 **9. RESOLUTION WAIVING THE BID REQUIREMENTS FOR THE**
16 **REPLACEMENT OF A COMPONENT OF THE JAIL CONTROL SYSTEM AND**
17 **AUTHORIZING EXECUTION OF CONTRACT FOR SAME (AB2003-290)**
18

19 *Nelson* reported for the Finance and Administrative Services Committee and
20 *moved* to approve Consent Agenda item nine.

21
22 *Motion carried unanimously.*
23
24

25 **OTHER ITEMS**

26
27 **1. CONSIDERATION OF APPEAL OF HEARING EXAMINER'S DECISION**
28 **ON APPLICATION BY GOLDSTAR RESORTS, INC. (SHR03-0002,**
29 **SHC03-0001, BSP03-0002, AND CUP03-0006), FILED BY DAVID**
30 **COTTINGHAM FOR SHIRLEY WHITE (AB2003-229)**
31

32 See Announcements.
33

34 **2. RESOLUTION AMENDING RESOLUTION 2002-043, ESTABLISHING**
35 **DATES FOR 2003 WHATCOM COUNTY COUNCIL MEETINGS (AB2003-**
36 **275)**
37

38 McShane stated this proposal is to change a Council meeting from
39 Wednesday November 12 to Monday, November 10 so the County Executive will be
40 able to attend. The County Executive will be out of town on Wednesday, November
41 12. The meeting that night will include budgetary matters.
42

43 Nelson stated he cannot meet on Monday, November 10.
44

45 *McShane moved* to amend the resolution to change the Wednesday,
46 November 12 meeting to Tuesday, November 18.
47

1 **Motion carried unanimously.**

2
3 *(Clerk's Note: Continued below.)*

4
5 **3. REQUEST CONFIRMATION OF THE EXECUTIVE'S APPOINTMENT OF**
6 **PAM MURPHY TO THE DEVELOPMENT DISABILITIES BOARD (AB2003-**
7 **286)**

8
9 **Fleetwood moved** to confirm the appointment.

10
11 **Motion carried unanimously.**

12
13 **2. RESOLUTION AMENDING RESOLUTION 2002-043, ESTABLISHING**
14 **DATES FOR 2003 WHATCOM COUNTY COUNCIL MEETINGS (AB2003-**
15 **275)**

16
17 *(Clerk's Note: Continued from above.)*

18
19 **McShane moved** to rescind the previous Council vote on this issue.

20
21 **Motion carried unanimously.**

22
23 **McShane moved** to amend the resolution to change the original November
24 12 meeting to Wednesday, November 5.

25
26 **Motion carried unanimously.**

27
28 *(Clerk's Note: End of tape one, side A.)*

29
30 **4. RESOLUTION VACATING THAT ENTIRE PORTION OF JAMES WAY**
31 **LYING WESTERLY OF BIRCH BAY DRIVE (AB2003-237)**

32
33 **Nelson moved** to remove the item from the table and bring it forward for
34 Council consideration. He asked how this property came into ownership. It looks
35 like James Way should go straight to the beach. He asked how it became private
36 property.

37
38 Joe Rutan, County Road Engineer, stated it is a clouded issue. Staff
39 researched it. The title search was very difficult. Birch Bay Park, platted in 1910,
40 dedicated the beach reserve as it was quoted. In 1912, the Birch Bay Park First
41 Addition plat doesn't have similar language dedicating the beach reserve. It
42 dedicates the streets and alleys. There's nothing that dedicates the beach reserve.
43 An argument was made that it is held in common with Birch Bay Park. A lot of his
44 answers are a best guess of what a judge would say. They don't have anything on
45 Birch Bay Park First Addition dedicating that beach reserve to anyone. In 1957, the
46 person who held title to that beach reserve property parceled it out and sold it to

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1 the upland lots for \$1. In 1959, The Palms Tavern was built on what is the beach
2 reserve.

3
4 Nelson asked if the beach reserve disappeared in 1957 because it was sold to
5 the property owners that are upland of the beach reserve. Rutan stated that is
6 correct.

7
8 Roy asked if the upland owners is the condominiums, or Birch Bay Park and
9 Birch Bay First Addition. Rutan stated the upland owners are the Birch Bay First
10 Addition lots that abut the beach reserve. The title has been held that way since
11 1957.

12
13 Brenner stated this has been a real hassle for everyone. She doesn't know
14 where someone got the title. Rutan stated the person owned the entire Birch Bay
15 Park First Addition area, and dedicated away the roads and alleys.

16
17 Nelson stated the property owner still owned the beach reserve.

18
19 Brenner stated a lot of people said this was to be a beach reserve forever.
20 Rutan stated that is the wording on Birch Bay Park, not Birch Bay Park First
21 Addition. The legal description of Birch Bay Park, from 1912, does not include the
22 beach reserve area.

23
24 Brenner stated the intent of the law is just as legal as the letter of the law.
25 She can't imagine how this was dedicated to the use of the public forever if it
26 wasn't to be used for the reserve. This issue is important enough that it needs to
27 be resolved in court. She's not comfortable making that decision to vacate it.
28 There is a big public interest in keeping it. That's what the Council is supposed to
29 look at when vacating property. Rutan stated staff's recommendation is to not
30 vacate the property. If the Council wishes to pursue the vacation, he recommends
31 that someone bring this before a court to establish a quiet title. Right now, the
32 County doesn't know what it is giving up and what it is getting.

33
34 Brenner stated the County should not instigate a court challenge.

35
36 Fleetwood asked if there is a question about the true title to the Christiansen
37 property or just the reserve. Rutan stated there are a number of issues. There are
38 issues with the beach reserve, survey between private and public lands, survey
39 between private lands, the legal title boundary, and the physical title boundary.
40 There are many issues. It's difficult to argue for any information as a fact.

41
42 Nelson stated he agreed with staff and Councilmember Brenner. It is a
43 confusing issue. The best course of action is to maintain the reserve and let the
44 private property owners go through the appropriate adjudication process. After
45 100 years, there are a lot of changes that could impact people. He appreciated the
46 Christianson's efforts in providing a clear, delineated access for the public. It
47 doesn't look like the County has the jurisdiction without better information.

1
2 Caskey-Schreiber agreed with Councilmember Nelson. They should hesitate
3 to enter into any situation where the facts are ambiguous. The County should stay
4 out of it. There is no benefit to the citizens of the county to get into this. She
5 doesn't understand why the owner can even put a fence barring access. That
6 doesn't look legal. Perhaps the neighbors with rights to the beach reserve should
7 investigate a lawsuit.

8
9 Roy stated the Revised Code of Washington (RCW) is clear that a vacation of
10 roads abutting bodies of water is prohibited unless it is for a public purpose or
11 industrial use. It's not appropriate for the Council to add another layer to this
12 murky issue. The Council's question is whether or not they should vacate the
13 property. She would like to see both sides of the issue come forward with an
14 agreed solution. She appreciates the work that has gone into this. The County will
15 add to the legal morass if it vacates the land.

16
17 **Roy moved** to approve the resolution to deny the vacation.

18
19 **Motion carried unanimously.**

20
21 **5. RESOLUTION INITIATING AN EMERGENCY AMENDMENT TO**
22 **WHATCOM COUNTY CODE 20.82.030 (AB2003-242)**
23

24 Caskey-Schreiber stated this is an emergency in the sense that they've
25 renewed the moratorium so many times, and many people are tired of renewing, so
26 they need to put the item on the Planning Commission's docket. The item can only
27 be put on the Planning Commission's docket once per year, but that time is past.
28 To avoid having to renew the moratorium three more times, it is an emergency to
29 address this long-neglected problem. The Council must respond to the citizens'
30 concern. The people passed an initiative that restricts electrical power transmission
31 lines greater than 115,000 volts a long time ago. **Caskey-Schreiber moved**
32 approval of the resolution.

33
34 Nelson asked if this is a recommendation that came from the power line
35 committee that met.

36
37 Sylvia Goodwin, Planning Division Manager, stated it is not. The Utility
38 Planning Advisory Committee came up with another recommendation. Some of the
39 language in this proposal is consistent with their proposal.

40
41 Caskey-Schreiber stated some of the language in her proposal is from the
42 Utility Planning Advisory Committee and some of the language came from Mr.
43 Tryzynka from Puget Sound Energy. She received assistance from two Utility
44 Planning Advisory Committee members and from staff.

45
46 Nelson asked if the intent is to go forward so they can get rid of the
47 moratorium.

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1
2 Caskey-Schreiber stated it is. The County would get in trouble for renewing
3 the moratorium without working on this item.
4

5 Goodwin stated the committee didn't come up with a proposal that everyone
6 agreed on. When they brought their recommendation to the Council, all the
7 members of the committee didn't agree, so it was never adopted. Councilmember
8 Caskey-Schreiber volunteered to work on it. Staff wasn't working on it.
9

10 Nelson asked if staff looked at the recommendations. Goodwin stated they
11 have.
12

13 Nelson asked if it would be looked at in terms of future needs for industrial
14 land supply. Goodwin stated they would go through an entire review if it is
15 docketed.
16

17 ***Motion carried unanimously.***
18
19

20 **Addendum:**

21 **6. CONSIDERATION OF APPEAL OF HEARING EXAMINER'S DECISION**
22 **ON SHR02-0031 AND SHV02-0011, REGARDING LIGHT FIXTURES**
23 **ALONG A DRIVEWAY LEADING TO THE LAKEWOOD STUDENT**
24 **CENTER, FILED BY JONATHAN SITKIN, ATTORNEY FOR WESTERN**
25 **WASHINGTON UNIVERSITY (AB2003-225)**
26

27 See Announcements.
28
29

30 **INTRODUCTION ITEMS**
31

32 ***Nelson moved*** to accept the Introduction Items.
33

34 McShane stated there is a substitute for item two. They need to hold a
35 special meeting to consider the Introduction Item two on August 26 at 1:30 p.m.
36

37 Nelson stated he would be unable to attend the special meeting because he
38 will be out of town.
39

40 ***Motion carried unanimously.***
41

42 **1. ORDINANCE AMENDING THE 2003 BUDGET, 9TH REQUEST (AB2003-**
43 **287)**
44

45 **Addendum:**
46

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2
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5

Dana Brown-Davis, Council Clerk

Dan McShane, Council Chair