

## PORT DISTRICT OF SOUTH WHIDBEY ISLAND

Minutes of the Regular Meeting

November 8, 2011

Langley, Washington

**Commissioners Present:** Chris Jerome (Langley), Curt Gordon (Clinton) and Geoff Tapert (Freeland)

### **Others Present:**

**Port Staff:** Ed Field (Port Operations Manager), Ron Rhinehart (Port Finance Manager), and Molly MacLeod-Roberts (Port Clerk); **Clinton Residents:** Clyde & Marcia Monma; **Langley Resident:** Brian Woloshin; and **Freeland Resident:** Dennis Gregoire

**WORKSHOP & MEETING CALL TO ORDER:** Following a Workshop from 7:00 p.m. to 7:30 p.m. for informal Commission review of vouchers and recent correspondence, the Regular Meeting of the Port District of South Whidbey Island's Board of Commissioners was convened on Tuesday, November 8, 2011, at the South Whidbey Parks & Recreation District Meeting Room at 5475 Maxwellton Rd., Langley, WA. Commissioner Chris Jerome (President) called the Regular Meeting to order at 7:30 p.m.

### **BUSINESS MEETING**

#### **Consent Agenda**

**A. Vouchers:** Vouchers audited and certified by the Auditing Officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the Board, and have been presented to the Board for review. The vouchers so listed and presented are summarized on the attached Voucher Listing **(EXHIBIT A)**.

**B. Minutes:** Minutes from the Regular Meetings of July 12 and August 9, and Special Meetings of July 20 and August 17 (morning and evening), 2011.

**ACTION:** A Motion was made by Tapert and seconded by Gordon to approve the Consent Agenda as submitted, including the authorization and acceptance of Vouchers dated November 2011 as signed today in the amount of \$70,208.89. The Motion passed unanimously.

### **FINANCIAL ACTION ISSUES**

**September 2011 Financial Report:** The Commission acknowledged receipt of the September 2011 Financial Statement, which had been distributed to them previously **(EXHIBIT B)**. As far as substantial variances, Finance Manager Ron Rhinehart said there was nothing terribly significant. The only anticipated capital income is the Clean Vessel Program reimbursement received earlier in the year. The Harbor revenue is forecast to be a little lower at year-end than budgeted due to the cold Spring, and the Humphrey Lot revenue has consistently been higher than expected since the Port took over the operations. The property tax revenue is expected to be slightly ahead of budget. Rhinehart said the capital expenses are running high relative to revenue because of the investment the Port is making in design and engineering work. At the end of the year, the cash balance is expected to be about \$442,000.

**Staff Compensation:** Rhinehart recommended increasing compensation and benefits for the Port Clerk. He noted that the original Offer Letter in April 2010 said the Commission would review and adjust compensation after 6 months, and it has now been 18 months. The recommendation is to increase the wages to \$19.50/hour and increase the benefit allowance to match the other full-time employees of the Port.

**ACTION: A Motion was made by Gordon and seconded by Tapert to accept the recommendation to increase the Port Clerk's compensation and benefits as presented. The Motion passed unanimously.**

**Final Action for 2012 Budget:** Rhinehart said the three models (EXHIBIT C) were essentially unchanged from last month, with minor changes of about \$20,000. The three models consisted of one model that included no construction, one that included construction only for the boat ramp floats, and one that included construction for the boat ramp floats and the first phase of the South Whidbey Harbor expansion.

Before continuing the discussion, Gordon suggested Jerome should report on the City of Langley's Council meeting held the night before. Jerome said the Council had discussed the marina expansion. He noted that there had been debate amongst the City staff, with the Port and amongst the Councilmembers about whether they support moving ahead with what the Port's proposed first phase of construction. Jerome said, "Last night, the City's planning staff recommended in favor of having the Port proceed with that construction and the four Councilmembers in attendance all expressed their support as well. So it was essentially unanimous support for moving ahead with the construction next year." Tapert said, "So that would mean we should go for the largest budget." Gordon and Jerome agreed.

A. Approval of 2012 Final Budget:

**ACTION: A Motion was made by Tapert and seconded by Gordon to approve "2012 SWH-Con v3.3" as presented. The Motion passed unanimously and Jerome provided his signature as President.**

B. Ordinance/Resolution No. 11-07 to Establish 2012 Levy: Rhinehart presented Resolution No. 11-07 (EXHIBIT D) for Commission approval and adoption.

**ACTION: A Motion was made by Tapert and seconded by Gordon to approve and adopt Ordinance/Resolution No. 11-07, providing authorization for the levy to be collected in the 2012 tax year. The Motion passed unanimously.**

**PUBLIC COMMENT – Items not on Agenda:**

Clyde Monma asked if he could get a copy of the approved final budget. Rhinehart said copies would be available as soon as it is submitted to Island County, and Port Operations Manager Ed Field noted that it would also be posted on the website after County submittal.

**PROJECT ACTION ISSUES**

**Possession Beach Waterfront Park**

A. Proposed Property Lease to AT&T: Negotiations ongoing.

Monma read aloud a letter dated November 8, 2011 (EXHIBIT E) from him and his wife, Marcia Monma. The letter stated that the Monmas have "...ongoing and serious concerns regarding the current decision of the Port to lease property to AT&T for the construction of a cell tower" and described those concerns. They asked the Port to explain "why you think a lease, with a potential revenue stream of at most \$220,000 over twenty years, makes more economic sense for the citizens of the South Whidbey Port District than the sale of the property. In addition, please explain why you think a cell tower will result in greater economic benefit to the District than having all the funds now to move forward with other projects." The Monmas also questioned who in the South Whidbey community would benefit from a cell tower in the Possession location, and if the Port intends to comply with its own noise ordinances with

respect to sounds that would arise from cell tower equipment. The letter closed with a request for a response in writing and at the next Port meeting.

The Commission directed Staff to prepare a written response prior to the next regular Port meeting.

## **South Whidbey Harbor**

### A. Expansion Project

1. Status of Proposed Phase 1 (266'+133'): Reid Middleton proceeding with Plans & Specs. Field said, *"Now that we have a fairly definitive 'go' from the City, we'll get a schedule for the combined project (the boat ramp floats and the breakwater launching)."*

#### 2. SWH Expansion Permit Status

- Hydraulic Project Approval (HPA): Approved by Washington State Department of Fish & Wildlife (WDFW): Issued 2/13/10, revised 3/8/11. Follow up HPA for Temporary Breakwater Parking approved by WDFW: Issued 3/4/11, revision being coordinated by Joe Callaghan of GeoEngineers.
- United States Army Corps of Engineers (USACE) Permitting for Complete Expansion: Joint Aquatic Resource Permit Application (JARPA) submitted August 2009. Review of impact-driving underway per pending Marbled Murrelet and Marine Mammal (MM&MM) Protection Plan from GeoEngineers, submitted on 4/21/11. Review may take 6 to 24 months.
- USACE Permitting for 266'+133': Submitted 8/19/11 by Callaghan of GeoEngineers as part of full build-out permitting, may now be switched to revision of Temp Parking LOP Approval.
- City of Langley: JARPA requested for revised Phase 1 scope and configuration.
- GeoEngineers Proposal (10/28/11) for USACE introductory letter and Special Project Information Form (SPIF), JARPA and Coordination **(EXHIBIT F)**: Field explained that the SPIF is essentially the Programmatic Bio-Assessment (a reduced bio-evaluation that reflects all the current information as well as what they've done before). In initial discussions, Callaghan and Field agreed that WDFW would clearly be expecting to see a JARPA for moving the breakwater from its current location to the Phase 1 location. Apparently, the USACE has also requested a drawing that shows the current location as part of the existing permit stream. Field said, *"What Callaghan accomplished in his negotiations with the USACE was to split the Phase 1 breakwater deployment into a subset of the existing permit for the temporary parking of the breakwater. But what that doesn't deal with is the WDFW mitigation issue, because the mitigation for the temporary parking was separate from the mitigation for the big project. So we'll re-engage in negotiations with WDFW, and we will propose that we take part of the big project mitigation (say, the superstructure of the Hein dock) and remove some or all of that decking (especially the near-shore section) as mitigation for moving the breakwater out to its new location. That will use some of the proper mitigation, it will deal with some of the safety issues, and it will allow us to keep the rest of the mitigation in the Hein dock for the big project, while eliminating most of the public safety hazard."* Gordon asked if the Hein dock pilings would be left for removal at a later phase, and Field said, *"Yes."* Gordon said he liked that idea. Jerome noted that part of the tire reef would also have to be removed in order to move the breakwater. Field explained, *"We'll offer those individual pieces as mitigation for this Phase 1 project, while keeping the rest of the tire reef and that mitigation in place for the rest of the phases."*

Field thought it was a really good strategy. He said, *"Callaghan is ready to go with the letter, the SPIF, the JARPA and the coordination and he says he can get it done in 10 to 12 days. I request that you consider approving GeoEngineer's proposal of \$14,800 for environmental permitting services related to the expansion project."*

**ACTION: A Motion was made by Tapert and seconded by Gordon to accept GeoEngineers' proposal for Environmental Permitting Services as presented. The Motion passed unanimously.**

Regarding the tire reef removal, Tapert noted that it is a very popular dive location and he hopes that at some point someone will come up with a replacement for that. He said, *“As a longer range goal, I would like the Commission to consider how that destination could somehow be replaced – at no expense to the Port – but simply as a partner and acknowledging the importance of that artificial reef.”* Jerome said it could certainly be a part of the discussions for the both the Master Plan and the Port’s Comprehensive Scheme.

3. Boarding Floats & Uplands Design: In progress, working toward 60% review submittal. Field said he would notify the consultants to put together a combined milestone schedule. He thinks there will be probably be one more set of plans that are somewhat separate before they get combined in the bid documents. The first step will be to get the JARPA into the City, and that is a 90-day process. He hopes to have the plans and any building permit processes going early next year. The last realistic bid date would be June 1<sup>st</sup> to get the work done in the fish window. Jerome asked if the boarding floats would be in the water year-round, and Field said they would.

#### 4. Boarding Floats & Uplands Permit Status

- Permit Extension Request to USACE: Revised JARPA submitted 2/22/11, U.S. Fish & Wildlife Service questions issued 6/3/11; Response submitted 6/9/11 by Reid Middleton; Clean plans submitted 7/13/11, Endangered Species Act (ESA) Informal Consultation issued/OK on 10/4/11 which should allow renewal to proceed soon.
- Master Permit Application to City of Langley; Approved through 12/29/11 with one-year extension pre-approved.
- Department of Ecology (DOE) Water Quality Certification and Coastal Zone Management (CZM) valid through 12/29/11 with one-year extension pre-approved.
- HPA: #122942-2 approved on 3/3/11, with 30% grating requirement.

#### 5. Property Issues: No update

#### 6. Funding Issues

- Port Security Grant (Phase 1A): No update. Gordon said, *“It is great that we chose to phase this project the way we did, because we’ll be ready if we find more funds. And if we don’t find more funds, we won’t break the bank.”* The Commission agreed.
- Boating Facilities Grant (Floats only): Rhinehart working on reimbursement process. The period performance runs from August 2011 through December 2013. The Port will receive 75% reimbursement once money has spent. RCO requests that the Port bill at least quarterly, and more often is fine. There will be up to 10% retainage until project completion, and then they’ll pay that out. It’s all in the 2012 budget.

Jerome asked if the Port needs to take any action on bonding capacity. Rhinehart responded, *“We’ll be ramping that up. I’ve spoken with the bond counsel in Seattle and they keep saying it’s a 60-day process, but I’m assuming it’s twice that.”* Rhinehart said they will start the process of getting a bond rating at the first of the year. He explained that if you get a bond rating but don’t create and sell a bond, when you are ready to do that, that rating becomes aged and has to be re-done – it doesn’t have much a life span. So there isn’t much benefit in getting a bond rating early; it just needs to be the first step in the process.

#### 7. Consortium Coordination

- InterLocal Agreement with Island County Fire District #3: Waiting for FEMA.
- InterLocal Agreement with Island County Sheriff’s Office: Waiting for FEMA.

## B. Harbor Operations

1. Electrical Refurbishment: Bid documents in review; Staff proposes advertising Request For Proposals (RFP) November 16, 19, 23, and 28, 2011, with bid opening tentatively scheduled for November 29<sup>th</sup>. Field said, “Based on the preliminary ‘big picture’ scoping, we’re estimating it will be a \$20,000-\$30,000 bid package.” If bid opening is on November 29<sup>th</sup>, the Port could conceivably get Notice to Proceed as early as December 5<sup>th</sup>. It should be 2-3 weeks of work and it might be able to get done by the end of this year.

Gordon asked, “So is this a maintenance item that was budgeted in 2011?” Rhinehart said it hasn’t been called out as a specific item in the 2011 budget, and payments for the work won’t be made until 2012. Gordon said it would need to be included in the 2012 budget then. Field explained that the cost of the electrical refurbishment work was originally included in the big project cost in the 2011 budget. Gordon asked, “So are we penalizing ourselves with our ability to match by pulling this out from the big project?” Field said the repair/refurbishment wouldn’t be covered by any matching since the work is only to be done on the existing marina, but is necessary for on-going operations regardless of whether or not there is a construction project.

Gordon asked that the 2012 budget be reviewed and revised as necessary to reflect the cost of the electrical refurbishment as a separate line item from the big project. The Commission authorized Staff to proceed with advertising the RFPs for the electrical refurbishment work as proposed.

2. Insurance Provisions for Long-Term Leases – Commission Direction for Insurance Requirements: Per Commission Direction at the regular October meeting, Rhinehart provided the following alternatives to the current requirements for liability insurance to be maintained by moorage tenants:

- a) Leave existing policy in place, requiring moorage tenants to provide one of three distinct levels of liability coverage, depending on boat length and duration of stay:
  - Under 26’ and less than 90 days requires \$100K coverage
  - Over 26’ and less than 90 days requires \$300K coverage
  - Any length for over 90 days requires \$1M coverage, with Port named as additional insured
- b) Increase the baseline requirement to \$300K for all short-term moorage tenants, and change the requirement for long-term moorage tenants (defined as more than 90 days within a calendar year) to either a \$1M boat insurance policy or a \$1M personal umbrella liability policy
- c) Increase the baseline requirement to \$300K for all moorage tenants with no requirement for additional liability coverage regardless of stay duration

Rhinehart recommended revising the Harbor Regulations to reflect option c). He explained, “This alternative gives the Port coverage consistent with comparable Puget Sound marinas while removing the unsupported linkage between boat length/stay duration and increased liability.”

**ACTION: A Motion was made by Tapert and seconded by Gordon to revise the Harbor Regulations to reflect alternative c) as presented.**

Gordon asked if Rhinehart had researched the issue of a Hold Harmless Agreement so that if damage to a boat exceeds the insurance limit, the Port wouldn’t end up picking up the tab. Rhinehart said the Port Attorney’s response was that the Port’s “hold harmless” clause in the moorage agreement is as good as any, which means it’s as good as the tenant’s ability to pay and no hold harmless agreement does much beyond that. Gordon wanted to make sure that a boat owner whose boat was damaged by a vessel without enough coverage could not sue the Port for the additional amount of damage. He said he was in support of the alternative c) with the \$300K standard, but he wanted the Port’s lease agreement to be tightened up so the Port would not be sued when a vessel caused damage beyond that amount. Rhinehart said he

would contact Washington Public Ports Association regarding the issue, and if necessary he would ask the Port Attorney to review and refine the moorage agreement.

**Jerome called for a vote on the Motion. The Motion passed unanimously.**

**Brian Woloshin** asked if the change would be effective immediately. Since Staff still needed to do some additional research, the Commission agreed the change would take effect no later than January 1, 2012, but would try to have it done in time for the December moorage payments.

3. Ramp Cleaning: Staff proposed advertising RFP November 30, December 3, 7 and 10, 2011, with bid opening on December 13<sup>th</sup>. Field explained that it has been 3 years since Spyderman Excavating was awarded the job, so it must be re-advertised. The Commission authorized advertising the RFP as proposed.

### **Port Operations**

#### A. Maintenance & Operational Wrap-up

1. Langley Ramp Cleaning: Planning for first Egg Inspection Nov. 15-17, then cleaning for holiday weekend.

B. Septic System Inspections per Island County: Clinton Beach - To be determined.

C. Landscape Maintenance: Staff proposed advertising RFP November 30, December 3, 7 and 10, 2011, with bid opening on December 13<sup>th</sup>. The Commission authorized advertising the RFP as proposed.

### **New Project Opportunities**

A. Sustainable Economic Development and IPZ (Innovative Partnership Zone) Issues: (Tapert & Gordon) Gordon thought they should take the IPZ off the table and Tapert agreed.

1. Potential Langley area “Green” Business Park and “Impact Washington” Possibilities: No report.

B. Mukilteo Parking Issues: (Gordon) Gordon said it’s very clear that the Port won’t have any opportunities with the tank farm and it’s very unclear who will own the property in the next few years. There is even a possibility that it would go back to the Tribes. Gordon said, “*So I really would like to reconsider going after the piece of property I talked about in the first place. So we need to figure out what year we can do it or if it’s going to go away, but I think it needs to be a discussion again.*” He added that he wouldn’t mind having a partner, and since the Port cannot apply directly for RTPO funds, Gordon spoke with Larry Kwarsick (Langley’s Mayor-elect) and Kwarsick said the City would be the Port’s lead agency and help apply for the funds and might possibly partner with the Port. Gordon said he would like to keep going on it and the Commission agreed.

C. Oak Harbor Opportunity for Nichols Brothers Boat Builders (NBBB) – Commission discussion re: possible assistance: Tapert said one of Oak Harbor’s council members had invited him to come speak at their recent meeting, and he did so but he made it very clear that he was speaking as one individual and not for the Port Commission. Rhinehart said the Port has offered to help the City of Oak Harbor look into it, but he cautioned that there are a lot of moving pieces. There are questions about multiple phases of Nichols’ build schedule – they might do one phase in one place with a second phase in Oak Harbor, etc. The parcels they are talking about have a lot of overlapping lines on the map, and DNR would be heavily involved. Part of what Rhinehart is doing is just investigating it with DNR and having discussions.

Tapert said the City of Oak Harbor was struggling to figure out how to proceed. He said, “*Another avenue would be for the City to do a Programmatic EIS to say that ‘we’re going to designate this particular area for all kinds of opportunities and moving industrial kinds of operations that could change*

*daily. And as long as that's addressed in an environmental review process, then it's open and then the Port could be in the position to lease it to whoever needs to use it at any particular time as long as it fits within the parameters of the environmental review."*

During the Oak Harbor Council meeting, the City Administrator indicated that the U.S. Navy has proposed \$100,000 to pay for environmental studies, and the City was entertaining \$40,000 to do a feasibility study. Tapert said, *"So there's already \$140,000 on the table and we haven't proposed a cent. So we could potentially use that \$140,000 and compensate our Staff and any consultant time, and we would have the control."* He viewed it as a money-maker because the Port could get back the money invested in infrastructure by leasing the property to NBBB and others.

### **ACTIVITIES /INVOLVEMENT REPORTS**

**Economic Development Council (EDC):** (Tapert) Tapert said the whole idea of NBBB expanding to use the seaplane base originated with Ron Nelson, who is Executive Director of the EDC. Tapert added, *"By the way, the Oak Harbor Chamber of Commerce is very supportive of the Port being involved in that."* At the last EDC meeting, they revisited the idea of passenger-only ferries up and along Saratoga Passage (to be discussed further under New Business).

**Council of Governments (COG):** (Gordon) Gordon said the COG has mostly been dealing with the Puget Sound Partnership, and they have finally resolved the matter of formally directing to have a member from business or the ports on the Technical Advisory Committee (TAC). The TAC is not for elected officials though, so when Dennis Gregoire is sworn in as Port Commissioner in January, the Port will have to fill that seat with someone else.

Gordon said the COG would meet with State Representative Barbara Bailey the next morning to talk about transportation concurrency. He said he would also request that state funds for the Boating Infrastructure Grant program should not be swept again. Tapert suggested that Gordon should also stress to Bailey the importance of vocational training in our community, specifically aviation and/or boat building.

**Skagit-Island Regional Transportation Planning Organization (RTPO):** (Gordon) Gordon said the Technical Advisory Group started a "white paper process" to deal with the concurrency law. He noted that the law could have a dramatic effect on development here (given the level of service of the ferries and highways). The law is very, very murky and could have serious ramifications, so the RTPO has funded the TAG's idea to hire a consultant to work on making the concurrency law clearer (using the \$12,000 leftover in funds).

**Marine Resources Committee (MRC):** (Jerome) No report.

**Washington Public Ports Association (WPPA):** (Jerome)

*A. Small Ports Seminar, October 20-21 in Leavenworth:* Rhinehart attended; it was informative.

*B. Annual Meeting (Bellevue) – New Commissioner Seminar, December 6-7:* Gregoire to attend.

*C. Annual Meeting (Bellevue) – Continuing Legal Seminar: Commercial Leases, December 6:* Rhinehart to attend.

*D. Annual Meeting (Bellevue) – General Sessions December 7-9:* Gordon said he might attend the Public Relations Seminar on December 6<sup>th</sup>.

**Holmes Harbor Shellfish Protection District (HHSPD):** (Tapert) No report.

**Puget Sound Partnership (Policy Development/Technical Advisory Committee):** (Gregoire) No report.

**Langley Shoreline Master Plan Committee:** (Gregoire) Gregoire reported that the City Staff has had 4 meetings with the Committee and they are actually restructuring their approach of how to deal with the Committee, because it's going to go on longer than anticipated. The Port will need to be involved as it progresses. Gregoire noted that Island County is also updating their Shoreline Master Plan.

**Pacific Coast Congress of Harbormasters:**

A. Fall Conference, Oct 25-28 in Olympia: Rhinehart attended the 2<sup>nd</sup> day of the conference; mostly on legal issues including how to deal with deadbeat tenants.

**Federal Funding Seminar:** Rhinehart attended the Seminar on November 3<sup>rd</sup>. He said it was a good review of programs and provided lots of contacts with agencies and offices. All 3 seminars (WPPA, PCC and the Federal Funding Seminar) were very useful.

**OLD BUSINESS:** None.

**NEW BUSINESS**

**Passenger-only Ferry Service:** As agreed at the Port's regular October meeting, Tapert had prepared a Letter of Support for Passenger-Only Ferry/Taxi Service in Saratoga Passage (**EXHIBIT G**). The letter was addressed to Island County Commissioners, and copied representatives of the Port of Coupeville, the City of Oak Harbor, the City of Langley, the Town of Coupeville, the Port of Mabana and Washington State Parks. Tapert explained that the intent is to arrange an informal meeting of all the stakeholders to discuss the possibility. The Commission agreed to sign the letter.

**ADJOURNMENT:** The meeting was adjourned at 9:02 p.m.

Approved:

Minutes prepared by:

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Commissioner Chris Jerome, Langley

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Edwin S. Field, Port Operations Manager

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Commissioner Curt Gordon, Clinton

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Commissioner Geoff Tapert, Freeland

- Exhibit A: Voucher Listing
- Exhibit B: September 2011 Financial Statement
- Exhibit C: 2012 Budget Models (NoCon v3.3, BF-Con v3.3 and SWH-Con v3.3)
- Exhibit D: Ordinance/Resolution No. 11-07
- Exhibit E: Letter dated 11/8/11 from Clyde & Marcia Monma re: Cell Tower/Possession Pt.
- Exhibit F: GeoEngineers 10/28/11 Proposal for Environmental Permitting Services
- Exhibit G: Letter of Support – Passenger-Only Ferry/Taxi Service