

PORT DISTRICT OF SOUTH WHIDBEY ISLAND

Minutes of the Special Meeting

January 4, 2005

Freeland, Washington

Present at the meeting were:

Commissioner Rolf Seitle, Langley
Commissioner Lynae Slinden, Clinton
Commissioner Geoff Tapert, Freeland
Chuck Edwards, Port Accountant
Ed Field, Port Manager
Amber O'Brien, Port Clerk

Jeff Van Derford, South Whidbey Record
Doug Allderdice, Langley City Council
Larry Dobrin, Freeland Resident
Russell Harvey, Freeland Resident
Janet Harvey, Freeland Resident

Absent: None

1. SPECIAL MEETING CALL TO ORDER:

The Special Meeting of the Port District of South Whidbey Island's Board of Commissioners was convened January 4, 2006, in the conference room at the Port office at 5492 S. Harbor Avenue in Freeland, WA. Commissioner Seitle, President, called the meeting to order at 8:00 am. The Special Meeting was called for two primary purposes: 1) To formally seat the 2006 Board of Commissioners, and 2) To address issues related to projects in the Langley harbor environs.

2. 2006 BOARD OF COMMISSIONERS:

A. Pledge of Allegiance

B. Oath of Office for Commissioner-Elect Geoff Tapert: Commissioner-Elect Geoff Tapert was sworn into office by Commissioner Seitle. Tapert then signed the Port District of South Whidbey Island Oath of Office statement. **(EXHIBIT A)**

C. Election of Officers: The Officers for the Board of Commissioners for Port District of South Whidbey Island for the year 2006 were elected as follows:

- Commissioner Slinden was elected President.
- Commissioner Seitle was elected Vice President
- Commissioner Tapert was elected Secretary

D. Resolution #06-01: Commendation for Gene Sears: Commissioner Seitle had prepared and read aloud a proposed Resolution, #06-01, to commend Gene Sears for his past twelve years of service as Commissioner for District 1. **(EXHIBIT B)**

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Tapert to approve Resolution #06-01 as proposed. The motion passed unanimously.

3. PUBLIC COMMENT:

There were no Non-Agenda items or Public Presentations.

4. PROJECT ISSUES:

A. Langley Projects: Commissioner Slinden requested a motion regarding the Langley projects after which the topic would be open to discussion. She requested that the Commissioners generally follow Roberts Rules of Order for the discussion, proposing that each Commissioner be allotted ten minutes in turn to discuss the topic (with no overall limit), although Commissioner Seitle objected, noting his concern that this might limit his freedom of speech.

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to address the Langley issues in three separate categories:

- **Boat Ramp** (the current project)
- **Marina and Park** (the two additional project areas)
- **Ownership/Participation/Management/Financial Obligations of the Port**

Commissioner Slinden asked for discussion from the Commissioners on the motion.

Commissioner Seitle agreed that the boat ramp discussion should be separate from the Marina. He stated that the original design prepared by the Berger Group and Layton & Sell, had been changed in order to accommodate the InterAgency Committee's (IAC) grant guidelines that would not allow the funding of park improvements. He went on to state that the City then changed the original design by removing most of the park features and replacing them with additional parking spaces in an effort to qualify the design for IAC grant funding. At this point in time, Commissioner Seitle felt that the Port had no firm cost for the Langley project. He referenced his copy of the Langley budget and stated that Langley's budget included only a total of \$337,066 for capital improvements for the project, and pointed out that this total did not allocate any funding for design fees associated with the project. Commissioner Seitle estimated the amount of funding necessary to complete the design could be as much as \$50-60K. Commissioner Seitle said at this point, the next reasonable step would be for the Commission to determine their level of commitment to the project, but he felt that this would be very difficult without knowing the overall costs involved and without having a completed design.

Commissioner Tapert said that he had reviewed the Langley Boat Harbor + Environs Master Plan (dated 4/26/04) and the InterLocal Agreement between the City of Langley and the Port of South Whidbey (Auditor's file #4056439, dated 4/28/03). According to that ILA, he stated that the Port's involvement with this Langley Boat Harbor project is primarily as funding source, not as planning or managing partner. He noted that the ongoing permitting and costs associated with getting the boat ramp to the construction phase are also addressed in item number four of the ILA which states "Procedure: For any projects on which the parties jointly concur in concept, the City shall submit to the Port a written "work order" proposal for the Port's review and approval. Said work order proposal shall include detailed descriptions of the scope of work contemplated and the itemized cost thereof based on bids or estimates by qualified professionals and indicate the amount of funds requested from the Port." With respect to ongoing participation in the permitting process for the boat ramp, it was Commissioner Tapert's opinion that it is Langley's responsibility to provide this

information to the Port. Tapert said that it could be possible for the Port to participate on an equitable basis if the City were to reimburse the Port for staff time at an agreed rate, but absent that, the Port remains as only a source for funding for the project. Commissioner Tapert said he would like to look forward to the possibility of creating a new ILA with Langley regarding new or different Marina developments or projects.

Commissioner Slinden explained that the ILA Tapert had reviewed primarily dealt with the ramp portion of the project and had recently been modified to increase the Port's matching funds to \$152,000. She said that because the Port and the City both have a vested interest in the boat ramp, the Port should help in any way possible to keep the project moving forward. She agreed with Tapert's suggestion of the possibility of a new or revised ILA to address the issues with the other phases of the project. She would like to see the Port proceed with supporting the City with the funds already committed by the Port (\$152,000). She said that the City should request funding utilizing the Port's Application for Funding, so the Port can evaluate the Application as submitted, including how the funds requested relate to the Port's Comprehensive Plan. Commissioner Seitle said that the Port would need to revise the ILA so that it clearly describes the task. He pointed out that the current ILA addresses only improvements to the Harbor and does not reference the boat ramp. He said he is in favor of supplying matching funds for the successful application for grants through the InterAgency Committee for Outdoor Recreation (IAC). He would like the Port to revise or replace the current ILA so the Port will have a clear legal position on that funding. He is not in favor of committing funds to the project until the City provides the Port with a completed design and a professional estimate of the costs involved and a low bid that the City can accept. Commissioner Tapert agreed with Seitle that the ILA may need to be revised, but disagreed that it should be terminated, noting that it could possibly be simply supplemented with a Memo Of Understanding to outline requirements or process. He said that the Port could not expect to have a good handle on the costs associated with the boat ramp until that portion of the project is permitted. Until permits are in place, the Port can only use rough estimates. He stated that if the City shows due diligence in obtaining permits and supplying the Port with the necessary documentation for reimbursement, then the Port should disburse payments to assist them as they progress through permitting and design.

Commissioner Slinden asked if the Commission would be in favor of modifying the existing ILA. Commissioner Tapert said that if the Port decides to modify or terminate the existing ILA, their action to do so would need to be submitted to Langley in writing within 90 days. However, details not included in the original document could be submitted to Langley in the form of a letter clearly outlining what Port's role in the project is, specifically the boat ramp, and include the terms and conditions of the Port the process the City will need to go through when requesting funds. If the Port and the City agree on the terms and conditions set forth in the letter, it would allow the existing ILA to remain unchanged. Commissioner Slinden concurred with Tapert. Commissioner Seitle reiterated that he was unwilling to commit Port funding to the City without first knowing the costs involved.

ACTION: A Motion was made by Commissioner Tapert and seconded by Commissioner Seitle that Port staff prepare a letter to the City of Langley outlining the process by which the City will submit requests for work orders and progress payments and that with their requests they provide the Port with a schedule showing their progress towards ultimate completion of the boat ramp.

Commissioner Seitle said that the Port should still consider revising the ILA document because in his opinion, by motion and vote of the Commission in a previous meeting, the Port committed to provide \$152,100 in matching funds to the IAC grant application for the

Ramp & Park project, which he considered to be in addition to the \$100,000 funding as already addressed in the ILA. He suggested that the Port rescind or revise the existing ILA for that reason, and create a new document such as a Memorandum Of Understanding or other legal document that also provides for the intent of the motion on the table made by Commissioner Tapert. Commissioner Slinden disagreed, stating that both Port and City representatives understand that the current Port funding commitment to the Ramp & Park project has been documented as \$152,100. She noted her opinion that there is no urgent need to revise the existing ILA, and if it becomes necessary, the Port can obtain legal advice on the matter. Port Manager Ed Field suggested that along with writing a letter to the City to get the process going and obtain feedback from the City, the Port could consider amending the existing ILA to adjust the amount of Port funding from \$100,000 to \$152,100 as well as incorporate and address any process issues that come out of this exchange, with full input from Port Attorney Al Hendricks. Commissioner Slinden called for a vote on Commissioner Tapert's motion, with Ed to prepare a draft letter to the City of Langley and submit it to the Commission for review.

ACTION: The motion made by Commissioner Tapert and seconded by Commissioner Seitle (to have Port staff prepare a letter to the City of Langley outlining the process by which the City will submit requests for work orders and progress payments, and that with their requests they provide the Port with a schedule showing their progress towards ultimate completion of the boat ramp) was brought to a vote and passed unanimously.

Commissioner Slinden asked for discussion on the marina, Park uplands and Department of Natural Resources (DNR) waterside portions of the project area.. She said that the issues involved include ownership issues, management during the construction phase of the uplands portion of the project, maintenance and operations of the park after completion, and who is responsible for payments for improvements. Commissioner Seitle read aloud a letter dated February 22, 2005 submitted and signed by the Port Commission to the City of Langley. The letter set forth the position of the Port in regards to the project. He noted that in a meeting on March 2, 2005, the City withdrew from the Memorandum Of Understanding by indicating that they would not give up the small boat harbor. In a second meeting between Seitle, Langley Mayor Neil Colburn and Paul Schell, Commissioner Seitle said that Colburn had agreed to all of the points outlined in the Ports February 22, 2005 letter. Since that meeting, he said that all of the points in that letter that benefited the Port had been removed and the points that benefited the City remained in place. Commissioner Seitle said the position of the Port was outlined in the letter dated February 22, 2005, and now the Commission needs to decide whether to hold that position or change it. Commissioner Seitle said that at this point the Port would need to decide on a position on the project before additional meetings are held, including the mediated meeting requested by the City. Commissioner Slinden pointed out that there has been additional correspondence from Langley since the letter dated February 22, 2005. In a letter written by the Port in September 2005 regarding the project, the Port had asked the City to respond to the questions, "Why are we are doing this and what do we hope to have in the end?" Commissioner Slinden pointed out that the City had submitted a response to the Port regarding their position on the project, and also had requested a mediated meeting with the Port. Commissioner Slinden said that the Port would now need to come up with a similar response regarding the Port's position on the project. Upon Commissioner Seitle's request, Commissioner Slinden read aloud from the 12/13/06 letter from the City, signed by Neil Colburn and Walt Blackford, in response to the Port's letter from September 2005.

Commissioner Seitle concluded by stating that he was not in favor of attending a mediated meeting with the City of Langley.

Commissioner Tapert said that the Port could avoid a mediated meeting via the development of a third or new ILA that discusses the roles of the Port and the City with respect to new and expanded boat harbor opportunities. However, he noted that the cost associated with an expanded boat harbor could at some point require the issuance of revenue bonds, in which case the Port would need to show revenue in order to demonstrate how the revenue bonds would be paid back. He noted that another option would be the issuance of bonds by the Port which, unlike revenue bonds, would require a vote of the people.

Commissioner Slinden said that the Port should consider taking a fresh view on the overall picture concerning the project. She continued that the Port and City seem to agree that they want to see improvements to the marina area completed, but at this point, the City and Port need to decide how to best accomplish those improvements. She noted that the City does not want to turn over ownership of the existing small boat harbor to the Port because of concerns over appropriate improvement and control, in consideration of legal and administrative criteria regarding “full value” and the transfer of public assets. Similarly, the Port cannot invest funding in a project without substantiating its value to the Port. Commissioner Slinden said that Port funding is to be used to benefit the entire District including the City of Langley, so she does not see a problem with continuing to support the City financially for the project. Commissioner Slinden also said that she does not have a problem with investing Port funds in Langley project(s) without having full ownership, although ideally the Port would look forward to establishing management and/or ownership of water-based facilities. She continued that the Port should have accountability for their investments, but that can be accomplished in various approaches.

Commissioner Seitle disagreed with Commissioner Slinden, stating that in order to issue revenue bonds, the Port must own the underlying facility that produces the revenue. He pointed out that there is sufficient revenue associated with the boat harbor, referencing his City budget figures showing 2006 City-projected total revenue from the Harbor at approximately \$428,828, with about \$65,032 designated for operating expenses and \$19,116 as an operating transfer to the City General Fund. Commissioner Seitle stated that he believes that the Port should not fund other agencies capital improvements or major projects without having the responsibility for the execution of the projects, and the Port should not improve the marina on the basis of income that might be derived from the taxpayers. In his opinion, the Port would have to use its bonding capacity and revenue bonds are the only way to accomplish improvements to the marina such as providing a fuel dock, deferred maintenance and an improved fire suppression system. At the present time, he stated that the City has shown that they are unwilling to invest additional funds for the purpose of marina improvements even though an existing engineering report states the expected life of the Marina is approximately 10-15 years with regular maintenance. He pointed out that the City had not performed any maintenance in 2005 and the budget did not reflect funds for maintenance of the facility in 2006 and said, “Consequently, this facility will ‘die’ unless something is done.” Commissioner Tapert questioned whether the Port could qualify for revenue bonds if they did not own the property but had a legal binding agreement with the City of Langley that locked in a percentage of the moorage fees. Port Accountant Chuck Edwards said the revenue bonds are issued by an entity, and whether it is the Port or the City of Langley, the bonds are secured by the revenue source. The ownership of the facility is largely immaterial, and either Port or City has the ability to revenue bonds. If the Port decided to issue general obligation bonds, however, the ownership of the facility would become an issue because the Port has more ability to issue general obligation bonds as a tax

base entity, which the City is not. After further discussion, the Commission agreed to attend a mediated meeting with the City of Langley.

ACTION: A Motion was made by Commissioner Seitle for the Port to write a letter to the City of Langley pointing out the Ports position on the project. There was no vote or action on the motion.

ACTION: A motion was made by Commissioner Tapert and seconded by Commissioner Slinden to proceed with a joint meeting with the City of Langley, to find out if the City is willing to compromise on its positions with the Port and in hopes that the result of the meeting could turn into some type of Agreement to move forward together. The motion passed unanimously.

Commissioner Slinden asked Ed to make arrangements with the City of Langley to establish the joint mediated meeting. Ed agreed but questioned how a mediator should be chosen. Commissioner Slinden suggested finding an "Off island" professional mediator. Commissioner Seitle recommended two Whidbey-based professional mediators, John Graham and Anne Medlock, for consideration. Commissioner Slinden asked Langley Council member Doug Allderdice if the City had anyone in mind to mediate the meeting. Allderdice said the City had not told him any names of mediators at this time. Commissioner Slinden asked Ed to coordinate with the City to research possible mediators for the meeting. The Commission would plan to discuss and possibly endorse a mediator at the next regular Port meeting scheduled for January 11, 2006. Commissioner Slinden closed the meeting by stating that the approved action for the Port is that the Port Commissioners shall move forward towards a mediated meeting, but have agreed to disagree on a current position regarding the Langley Harbor project.

B. Bush Point:

The Commissioners agreed to table the Bush Point discussion until the January 11, 2006, regular Port meeting, although Ed distributed an additional-funding request letter from Wa. Dept. of Fish & Wildlife (dated 12/22/05) for the Commissioners' consideration at that time.

5. EXECUTIVE SESSION:

There was no Executive Session.

6. ADJOURNMENT:

The meeting was adjourned at 9:35 a.m.

Approved:

Minutes prepared by:

Commissioner Rolf Seitle, Langley

Edwin S. Field, Port Manager

Commissioner Lynae Slinden, Clinton

Commissioner Geoff Tapert, Freeland