

**PORT DISTRICT OF SOUTH WHIDBEY ISLAND**

Minutes of the Regular Meeting

December 13, 2006

Freeland, Washington

**Present at the meeting were:**

Commissioner Lynae Slinden, Clinton

Commissioner Rolf Seitle, Langley

Commissioner Geoff Tapert, Freeland

Ed Field, Port Manager

Amber O'Brien, Port Clerk

Mike McCarthy, Bush Point/Clinton Beach Manager

Jeff Van Derford, South Whidbey Record

Dennis Gregoire, Comp Plan Facilitator

Jim Recuperero, Langley Resident

Herb Helser, Langley Resident

Dennis Keefe, Freeland Resident

**Absent:** None

**1. MEETING CALL TO ORDER:**

Following a Workshop session from 7:00 to 7:30 pm, the regular meeting of the Port District of South Whidbey Island's Board of Commissioners was convened on December 13, 2006, at the community building in the old Chapel at Trinity Lutheran Church, on Woodard and Hwy 525, Freeland, WA. Commissioner Slinden, President, called the meeting to order at 7:30 pm., followed by the Pledge of Allegiance.

**2. BUSINESS MEETING – THE CONSENT AGENDA:**

**A. Consent Agenda -**

1. Minutes: Minutes from the Regular Meetings of October 11 and November 8, 2006 and the Special meeting of November 13, 2006.

2. 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)**.

**ACTION:** A Motion was made by Commissioner Seitle and seconded by Commissioner Tapert to accept the Consent Agenda, including approval of the Minutes and authorization of Vouchers #2870 - #2901 for a total amount of \$91,795.03. The Motion passed unanimously.

**3. ACCOUNTANT REPORT:**

**A. Financial Statements:** The Commissioners accepted the October 2006 Financial Statement **(EXHIBIT B)**.

#### **4. PUBLIC COMMENT:**

There were no public presentations and/or non-Agenda issues.

#### **5. PROJECT ACTION ISSUES:**

##### **A. Bush Point Boat Launch:**

1. Construction Update and Approval of Progress Payment: Port Manager Ed Field reported that the Bush Point floats had finally been delivered. He said that he and Manager Mike McCarthy watched as they were installed on Tuesday December 5, 2006, and then participated heavily in the removal process on Thursday December 7. Ed said that there were some critical items that need to be fixed. Included in the punch list are specific pile hoops, which need to be widened and relocated, and the north hinge plate, which needs to be refabricated and properly re-set on the north side of the concrete bulkhead. He said that the floats themselves seem quite sound, and Ed complimented the rail system used to keep the floats off of the ground during low tides and storage. Ed said that WA Dept. of Fish & Wildlife (WDFW) has a thorough operation and maintenance (O&M) manual but the Port has not been given a copy yet. Ed also reported that the restroom facility is finished but the Port has not been given the restroom keys. Ed recommended that the Commission approve partial payment of the \$115,000 invoice to reflect the good-faith progress that has finally been accomplished. Ed said that he would document exactly what needs to be completed before WDFW receives final payment on the project.

Commissioner Tapert said that on a recent visit to Bush Point, he noticed that there are severe design problems. He said that WDFW did not take into account that at low tide the floats would sit at such a severe angle, which is why the hoops are binding up, and this may be contributing to the northern hinge plates buckling and falling off. Also, there is a pocket developing on the north side of the boat ramp that needs to be fixed. He said that the Port should hold WDFW accountable for fixing these problems, and before paying the invoice, the Port needs to make WDFW aware that the Port expects a facility that is going to be well designed and relatively easy to maintain. Commissioner Slinden asked if it would be worth having WDFW fix the pocket in the ramp or should the Port accept and correct the problem. Commissioner Tapert said that it has already failed twice now. Ed said that the upper portion within 15' of the concrete bulkhead failed relatively quickly but has since been completely reconstructed. He said that there is another wider settlement area that is 30-40' down for which he is also concerned with sand removal. Ed said he has generally observed beach and ramp conditions over the year since ramp construction, and as documented by pictures of the ramp two months apart, the sand level just dropped approximately 2.5' feet around the ramp. Commissioner Seitle commented about potential erosion and scour problems around the base of the ramp. Ed noted that this may be related more to seasonal beach fluctuations rather than ramp design issues, but will need to be monitored closely. However, the seasonal beach fluctuations may also reduce the need for ramp cleaning. Ed recommended that the Port wait and see how the ramp operates for a year. Commissioner Tapert said that the area he saw where the pocket was developing was adjacent to the new pieces in the grid. He thinks that it is going to be an on-going problem. Commissioner Slinden questioned whether the Port should accept the design as constructed or request some type of remedy before taking over the facility. Commissioner Tapert said that the Port should wait to see what happens during the

winter to see how well it survives before making the final payment to WDFW. Commissioner Seitle said that there is an acceptance provision in the agreement with WDFW, and the moment WDFW declares the project complete, it is the Port's facility to operate. He said that the only recourse the Port would have is the \$50,000 final payment. Commissioner Slinden said that the 50% payment shows good faith by the Port in response to WDFW's efforts so far. Dennis Gregoire suggested that the Port keep WDFW in the loop because if there were problems with the ramp in the future, it would be helpful to have WDFW involved in helping to solve those problems. Ed agreed, noting that many of the problems are related to this newly-expanded use of grid surfacing for the entire ramp, which was specified for environmental constraints, and that he would be readily able to solve functional boat launch problems if he could get technical solutions approved under those same environmental constraints. Commissioner Seitle suggested going on record with a letter to WDFW that expresses all of the concerns with the project. Ed agreed, but suggested that the Port first send a letter to WDFW listing the specific construction defects in conjunction with the 50% progress payment, and then send a letter that documents the Port's long-term concerns. The Commission concurred with Ed and instructed him to prepare the letters to WDFW.

**ACTION: A Motion was made by Commissioner Seitle and seconded by Commissioner Tapert to approve a 50% payment (\$57,500) of the outstanding \$115,000 invoice to WDFW for the Bush Point construction project. The motion passed unanimously.**

2. Bush Point Residence- Proposal from Mike McCarthy: Bush Pt. Manager Mike McCarthy was on hand to request permission from the Port to install his gas stove in the Bush Point residence as a back-up heat source, especially in consideration of the numerous recent power outages. Mike said that he would propose to install the stove in the living room, install gas piping under the floor from a new tank location on the south side of the residence, run new exhaust piping up through the existing chimney, and place a mat over the carpeting under the stove. He said that he would always pay for gas and tank rental, and proposed to donate the stove and installation labor in exchange for the Port purchasing the materials for installation, including the various piping, duct and wiring. He said that the stove was quite new, with minimal use so far. The Commissioners said that McCarthy's request seems very fair. Bush Pt resident Dennis Keefe was in the audience and commented that McCarthy is doing a good job so far. Commissioner Tapert asked if the Port owns the Bush Point residence. Commissioner Slinden said that the house is owned by WDFW but the Port has management of the house, and the agreement with WDFW includes maintenance and improvements. Commissioner Tapert asked how old the stove is. McCarthy said that the stove is a 2005 model and has earthquake/motion and carbon monoxide sensors in it. Ed noted that while the cost amount is within his general authorization level, this seemed to be a policy-type decision for which the Commission would want to be involved. Commissioner Slinden confirmed with Mike that the stove would become the permanent property of the Port, and he agreed. The Commissioners approved McCarthy's request and instructed him to submit the invoices for materials to the Port for reimbursement. Ed said that he would work with Mike and the Port's vendors to minimize paperwork and ensure a proper installation.

## **B. Langley:**

1. City/Port Negotiations: Commissioner Seitle noted that the negotiations have started but expressed concern over the Executive Session issue, which seems to hinge on divergent opinions between the Port and City Attorneys. He said that the City Attorney considers that Executive Sessions on this topic would be acceptable. However, Commissioner Seitle stated that he concurs with the Port Attorney, in that RCW 42.30.110 allows for Exec Sessions only where public discussions could materially impact the cost of the property under discussion, and in this case, there is no competition for the asset nor could it be offered for sale, so there is no justification. Commissioner Seitle said that while the Port is not disagreeing with keeping the negotiation meetings between Port and City private, the Port should not then need to meet in Exec Session for subsequent discussions. He said that City Rep Paul Samuelson has indicated that this issue could be a potential deal-breaker. Commissioner Tapert said that he had recently met briefly with State Attorney General Rob McKenna, who has an Assistant AG specifically assigned for providing guidance for local government agencies with legal issues, and he volunteered to pursue this issue accordingly with the State AG's office. The Commissioners agreed with Commissioner Tapert's suggestion and encouraged him to pursue it in advance of the next meeting. Commissioner Slinden noted that the Port Attorney has also indicated that the Port can still proceed as long as all Port involvement meets Open Public Meeting Act (OPMA) guidelines, regardless of City compliance aspects. Commissioner Tapert asked if there had been any negotiations so far, and Commissioner Seitle responded that the initial meeting addressed procedural issues only. Commissioners Slinden and Tapert agreed that the upcoming January 9 meeting with the City could proceed (hopefully with guidance from the State AG), and as long as the Port follows OPMA for public and proper discussion of any possible agreement developed in negotiation with the City, then the Port will be proceeding in accordance with OPMA requirements regardless of the City's decision thereof.

Commissioner Seitle noted that he would expect to utilize Phil Pearl's expertise for the issue of valuation. He continued by commenting that he feels that the City is looking for the Port to take the lead in proposing possible "partnership" terms, so he had prepared drafts for a 1/9/07 Agenda and a partnership agreement for initial discussion within the Commission **(EXHIBIT C)**. Commissioner Seitle noted that he had a meeting with Paul Schell to discuss timing issues. With respect to a possible agreement, Commissioner Tapert noted that he considers the Port ready to accomplish a take-over, especially if there were a transitional period of joint operations, but he does not favor specific commitments, which may turn out to be too difficult for reasons as-yet unforeseen. He said that he also would not favor a reversion clause for the same reason, which the other two Commissioners concurred with. Commissioner Seitle said that he expects the City Council to request some significant compensation. Commissioner Slinden said that full operations should be associated with full transfer of ownership. She said that the draft agreement is a good starting point (with specific comments as noted below), which she would expect to be converted into an InterLocal Agreement if the City and Port reach agreement. She added that placement of the breakwater should be included in an agreement, and Commissioner Seitle commented that the agreement with Bremerton should be cancelled unless an agreement in principle can be reached soon with Langley. Commissioner Tapert noted that the Port could also resell the Bremerton floats if not deemed usable.

With respect to specific comments on the draft agreement, Commissioner Slinden recommended deletion of the second sentence in item B.2, in order to simplify commitments. For item B.6, she also asked Commissioner Seitle about his expectations for financial or management assistance to the City on their Ramp & Park project, and he noted that he had recommended that the Port budget \$200,000 for project assistance, which is well above the requested \$152,100 commitment. Ed commented that it would be very difficult to take over project management at this stage, and that he would not expect to meet a spring '07 completion if it suddenly became a Port project. Commissioner Slinden said that if the Port expects to have the facility in the future, it would be better to take over the Ramp & Park project now and do redesign as needed in order to avoid the type of problems being experienced at Bush Pt. Commissioner Tapert concurred, and acknowledged that it could push the project schedule back a year. Commissioner Seitle agreed, but said that residents are already frustrated at the slow progress. Commissioner Slinden noted that she considers improvement of Fire & Emergency Services to be an issue that should be added as item B.10. Commissioner Seitle said that would also be a significant aspect during review of what assets are "on the table". Commissioner Tapert emphasized that the Port's unique capabilities to improve the harbor facilities should be critical issues in appealing to the City.

Commissioner Seitle said that any major payment to the City would be self-defeating for two reasons: an inappropriate transfer of tax revenue between two overlapping jurisdictions, and a loss of the Port's financial ability to undertake major improvements. He said that the City needs to understand the value they will receive in shedding the huge unfunded liabilities of the harbor facility, and also that the Port cannot abandon other commitments for this one effort. He emphasized that he sees the harbor as a critical and irreplaceable opportunity to undertake economic development, but that the City needs to understand the possible long-term negative impacts if the current minimal maintenance is not improved. He continued that if a reasonable agreement in principle does not seem likely by February, the Port may need to move in a different direction, which may include voiding the Bremerton float purchase. Commissioner Tapert suggested that long-term storage of the floats should be investigated, in consideration of the possibility that a profitable resale could still be accomplished. With respect to the draft Agenda, the Commissioners agreed that an initial discussion of the assets in question and a realistic update on the Ramp & Park schedule should be requested for the January 9 meeting with the City. With respect to the draft partnership agreement, the Commissioners agreed that the updated draft (revised per Commissioner Slinden's comments) would provide a good starting position for negotiations with the City.

2. Marine Engineering Solicitation: In order to determine one or two firms to interview, the Commissioners agreed to simply share their initial opinions on the better firms out of the five proposals received, from Reid Middleton, Coast & Harbor Engineering, Art Anderson Associates, PND, and URS. Commissioner Seitle said that he favored Art Anderson Associates (AAA) and Coast & Harbor, although he noted that Coast & Harbor's specialized expertise could well result in them as a subconsultant to any of the other firms. He added that he would not favor proceeding further with Reid Middleton at this time, partly due to dissatisfaction with the engineering during their initial work and partly in order to obtain a second opinion. Commissioner Slinden indicated that she would favor Reid Middleton, commenting favorably on their recent summary reporting as well as their history with many aspects of the project, and also AAA. Commissioner Tapert noted that he would have liked a proposal from Layton & Sell (who specifically declined to be considered for this work), but he also favored AAA. He indicated that he

was not impressed with Reid Middleton's work or fees, although he acknowledged that they had not used up their allowance. All three Commissioners said that they rated AAA highly in consideration of their comprehensive knowledge of the Bremerton floats as well as their similar project experience. Given their unanimous preference, Ed recommended that the Commissioners plan to meet initially with project manager Rob Henry from AAA to explore technical considerations and cost issues, and then set up meetings with other firm(s) only if that does not go well. The Commissioners agreed, but Commissioner Slinden said that her work schedule would not allow for any Special Meetings until January. Ed was requested to try and set up a meeting with AAA on Monday morning, January 8, 2007.

**C. Clinton Beach, Fishing Pier & Dock, and Humphrey Rd. Parking Lot:**

1. **Clinton Beach Operations:** Commissioner Slinden announced that the Clinton Beach project had recently won two awards from the Northwest Chapter of the American Institute of Architects (AIA). The Glen Hunt Award was awarded for overall design, and the Honor Award was bestowed with the acclamation that the project should be studied by others. Ed mentioned that minor vandalism continues to be an aggravation at the facility. He said that efforts were apparently made to steal faucet controllers from two of the bathrooms, so they will need to be replaced with more resistant fixtures, and the fountain and shower were also damaged. He said that he will definitely work to have the fountain repaired in time for the beach season, but will need to see how badly damaged the shower is before determining how to proceed. The Commissioners discussed possible countermeasures for the vandalism problem, and then agreed that low use in the winter would make it reasonable to close off all but the Unisex bathroom. Ed said that he would do so after the faucet in the Unisex is fixed. The presence and cost of a Portapotty out on the Fishing Pier was also discussed, and the Commissioners directed that it be removed now that the Clinton Beach restroom is operational. There was some concern about fish-cleaning in the restroom and other possible problems from disgruntled fishermen, so Ed said he would continue to monitor the situation to see if the Portapotty is an appropriate expense out on the Fishing Pier
  
2. **Contractor Use of Clinton Dock:** Ed said that WSF has a project coming up in early 2007 to repair and replace electrical facilities under the Clinton ferry dock, and a prospective bidder has asked if the Port would allow work boat moorage at the dock over the duration of the project. In order to foster a cooperative attitude, Ed recommended that the Commissioners approve temporary moorage (at least during the winter months) for the contractor without rent. Commissioner Tapert suggested negotiations with the contractor. Commissioner Slinden recommended allowing the moorage but also notifying WSF that we are providing that moorage for their benefit. Ed referenced Port Resolution #95-2 and the attached Vessel Landing Agreement, and he suggested revising that Agreement into a new no-fee Work-Vessel Temporary Landing Agreement to ensure insurance and liability coverage for the Port. The Commissioners agreed, and directed Ed to prepare such a document, to be initially reviewed by the Port Attorney and then sent to the contractor for action.

**6. COMPREHENSIVE PLAN:**

- A. Commissioner and Committee Retreat:** Dennis Gregoire reported that the 6-hour Commissioner and Committee Retreat had been delayed from January 8 to January 15 due to an unexpected schedule problem for the facilitator. He said that it will be conducted in a meeting room at St. Hubert's church in Langley.

## **7. ACTIVITIES/INVOLVEMENT REPORTS:**

**A. Economic Development Council (EDC):** No Update.

**B. Council Of Governments (COG):** Commissioner Slinden said that the COG is working with WSDOT to accomplish a traffic study in Clinton to address various safety and resident concerns, and there has been positive response from Senator Mary Margaret Haugen and Representative Barbara Bailey.

**C. Regional Transportation Planning Organization (RTPO):** No Update.

**D. Marine Resources Committee (MRC):** Commissioner Seitle said that the MRC had a retreat at Tom Campbell's house. They looked at a work plan for 2007. They also had an Election of Officers for 2007. The new MRC Executive Director is Rex Porter. The "Getting to the Water's Edge" booklet is complete and has been a big success.

**E. Washington Public Ports Association (WPPA):** No Update.

## **8. OLD BUSINESS:**

### **A. Choochokam Arts:**

1. **Economic Development Grant Agreement:** Ed presented the Choochokam Economic Development Grant Agreement that was prepared and recommended by Port Attorney Al Hendricks (**EXHIBIT D, as later signed**). Ed said that he had recently discussed the Agreement with Choochokam Arts representative Nancy Rowan. Nancy advised Ed that the Arts Board had a meeting scheduled for December 14, at which time they would expect to approve the Agreement. Ed recommended that the Commissioners approve the Agreement and subsequent voucher for initial funding, as Choochokam Arts has indicated that they need the funding in 2006 to be ready for the 2007 Festival. He said that the Agreement would be void if not signed by Choochokam Arts, and in that case, he would not release the warrant but would cancel it.

**ACTION:** A Motion was made by Commissioner Tapert and seconded by Commissioner Seitle to approve the Choochokam Arts Economic Development Grant Agreement. The motion passed unanimously.

2. **Approval of Funding Disbursement:** The Commissioners agreed to approve and process Voucher #2901 (which comprises the funding granted under the Choochokam Arts Economic Development Grant Agreement) with the direction that release of the resultant warrant is to be conditional upon approval and signing of the Agreement by an authorized representative of Choochokam Arts.

## **9. NEW BUSINESS:**

**A. Resolution #06-08: Appointment of Agent to Receive Claims for Damages:** Ed presented this Resolution (**EXHIBIT E, as later signed and recorded**), which is required by RCW 4.96.020. He said that the text of the Resolution was provided by the Port's insurance carrier WGEP to establish proper identification of where the Port is to receive legal notices. He recommended that the Commissioners approve the Resolution immediately, as the

District is precluded from conducting a defense of any claims received prior to the approval and recording of such a Resolution.

**ACTION: A Motion was made by Commissioner Tapert and seconded by Commissioner Seitle to approve Resolution #06-08 to appoint the Port Manager as the agent to receive claims for damages. The Motion passed unanimously**

**10. EXECUTIVE SESSION:**

There was no executive session.

**11. ADJOURNMENT:**

The meeting was adjourned at 9:02 pm.

Approved:

Minutes prepared by:

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Commissioner Lynae Slinden, Clinton

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Edwin S. Field, Port Manager

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Commissioner Rolf Seitle, Langley

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Commissioner Geoff Tapert, Freeland

- Exhibit A: Voucher Listing
- Exhibit B: October 2006 Financial Statement
- Exhibit C: Draft 1/9/07 Agenda and partnership agreement, rec'd from Seitle 12/7 & 11/06
- Exhibit D: Choochokam Arts Economic Development Grant Agreement (as signed 12/14/06)
- Exhibit E: Resolution #06-08: Appointment of Agent to Receive Claims for Damages (as recorded 12/21/06)