

PORT DISTRICT OF SOUTH WHIDBEY ISLAND
Minutes of the Special Meeting
March 5, 2007 (Postponed from February 28 due to snow)
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

Dennis Gregoire, Comp Plan Facilitator
Jim Recuperero, Langley City Council
Don McArthur, Langley Resident

Absent: None

1. MEETING CALL TO ORDER:

The Special Meeting of the Port District of South Whidbey Island's Board of Commissioners was convened on March 5, 2007, at the Freeland Library Conference Room in Freeland, WA. Commissioner Tapert, President, called the meeting to order at 7:00 pm., followed by the Pledge of Allegiance. (This Meeting had been initially scheduled for Wednesday, February 28, but was postponed due to an unexpected snowstorm.)

2. PUBLIC COMMENT:

There was no public comment during this period.

3. PROJECT ACTION ISSUES:

A. Langley Projects:

1. Port City Negotiations:

ACTION: Commissioner Seitle made a Motion to discuss the Port's offer to the City of Langley, based on the Port's letter of 2/19/2007 (EXHIBIT A), the Summary of Agreements (Draft #2, dated 2/23/07) as prepared by the City (EXHIBIT B), and his Discussion Points memo (dated 2/26/07) first presented to the City on February 27 (EXHIBIT C),

Commissioner Seitle stated that his points of discussion were that the Port believes that the harbor property cannot presently be valued at market value and that the Port will meet certain commitments for the improvement of the facility over the next five years that would amount to approximately \$1,000,000.00. At the most recent negotiation session with the City, he said that they had discussed the possibility of a two year transition period for the transfer of the Marina to the Port. As part of the agreement, he said the Port would then augment the City budget using Marina revenue for three years after transfer, with the Port providing \$20,000 per year to the City for certain services that they would perform on behalf of the Port. Commissioner Tapert stated that each of those points was currently outlined in the new draft Interlocal Agreement (ILA), dated

3/3/07. **(EXHIBIT D)** Commissioner Seitle felt that the Port should not give public money to the City for undetermined purposes. Port money should be used for purposes that are within the mission of the Port and for services that would benefit the public by further improving the Langley Harbor. He pointed out that all of the points of discussion between the Port and the City had been agreed on with the exception of the valuation of the property. Commissioner Tapert said he believed that everyone was on board with what the issues are and they are outlined in the ILA. The Commissioners said they had all reviewed the ILA and offered initial comments to Port Manager Ed Field. Commissioner Tapert then suggested that the Commission just discuss the ILA.

Commissioner Seattle's motion failed for lack of a second.

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Tapert to adopt the Interim Interlocal Agreement (ILA) as proposed and amended by Al Hendricks (dated 3/3/07) to transfer the City of Langley Marina to the Port District.

Ed stated that the draft Interim ILA was included in the Commissioner packets, including his comments, the comments that he had received from each of the Commissioners and the comments from Port Attorney Al Hendricks. He said he had highlighted the items that were changed from the original draft to the new draft. Commissioner Seitle stated that the ILA needed a little more urgency. He said he was not comfortable with the 2 year transition period included in item #1 of the ILA and would prefer that the transfer occur in April of 2008 rather than January 2009. He said that would allow the Port approximately one year to work all of the transfer details. Commissioner Tapert asked Ed if a one year period would be adequate for the transfer to occur from a staffing and management/operation standpoint. Ed said that if the Marina transfer was the only Port project, the proposed one year period would be adequate. However, he said he would prefer to have additional time for the transfer so that the bulk of the major maintenance tasks (as included in the Berger/ABAM report) could be finalized and included in the construction package for the 400 ft. floats, which then must be submitted for permitting. He would also like additional time to research various grant opportunities. With all of the different tasks involved in the process and limited staff, he said the full 18 months would be needed for a good transition.

Commissioner Slinden said that she does not really have a problem with the 2-year element in the ILA but does have an issue with providing the City with \$20,000 for three years, since the initial two year transfer period should allow the City time to catch up with any budgetary issues. She said that the Port should not be giving them any additional funding. Commissioner Seitle did not have any objection with giving the City \$20,000 per a year for three years provided it is used for Harbor improvements. He said the Port does need to start the permitting process and a one year period should be sufficient to solve any operating-the-facility issues. Commissioner Seitle suggested that a condition that he would like to see included in the ILA is that the Port would not take over operation of the facility until the boat ramp is completed. He said the boat ramp needs to be completed so the Port does not end up in a situation where they would be responsible for taking over a faulty or incomplete facility. Commissioner Tapert said he would prefer the Port taking over construction and design of the boat ramp to be sure it is done right, but acknowledge that the maintenance tasks, permitting and installation of the floating break water are going to keep Ed fairly occupied over the next year, and to add the operations and maintenance of the Marina may be a bit much for current Port staff. If the Commission agrees to reduce the transition period by a year then it should be subject to revision. Commissioner Seitle said that two years would be too long for the transfer. The process has already gone on for a long time and it should be brought to a close.

Commissioner Tapert asked Commissioner Seitle if he would be comfortable with the draft ILA if the transfer period was changed from 2009 to 2008. Commissioner Seitle said yes.

Commissioner Slinden suggested that the Commission review each item of the ILA and make any necessary modifications. She would like item #3 regarding paying the City \$20,000 per year for three years deleted. The Port could contract with them separate from the ILA for various services. Commissioner Seitle said that item #3 was a condition requested by the City at the last negotiation meeting. The Port would give the City funding for Harbor improvements anyway. Commissioner Slinden was concerned with providing funding to the City without know specifically how that money would be spent. Commissioner Seitle said that the scope of work would be mutually agreed upon between the City and the Port no less than six months prior to the year in which the work is to be performed by the City and such services must be directly related to the Marina, transportation improvements to and from the Marina or economic development. Commissioner Seitle felt that if item #3 was removed from the ILA the City would not accept it. Commissioner Slinden also had concerns with item #22 of the ILA regarding the Port obligations to the City. The Port needs to evaluate the obligations that they would be agreeing to. She said the obligations that are currently included in item #22 seem awfully tight. Commissioner Slinden also said that the City should help the Port with the permitting process, and if they are unwilling to help with permitting then the Port should not agree to such tight obligations. Commissioner Seitle was concerned with going back on something that the Port and City had already agreed on. Ed said that the text included in the summary of agreements was “Members of the City Council want assurance that they would have reasonable recourse. The Port’s attorney suggested that he could draft a default clause for the sale/transfer that would be acceptable for both parties without affecting the Ports ability to borrow funds.” Ed said that tonight is the first time anyone has seen the draft clause from the Port’s Attorney, so it would be reasonable for the Commission to fine tune it. After further discussion, the Commission agreed to review the draft ILA item by item.

ITEM #1: Commissioner Tapert said that it was unusual that the topic of paying excise taxes is discussed in item #1 but pointed out that if the property is transferred to the Port at zero cost that would be a non issue.

ACTION: A Motion was made by Commissioner Seitle and seconded by Commissioner Tapert to change the wording of item #1 from “The City agrees to transfer to the Port on January 1, 2009 the City’s Marina and related property as described in exhibit ‘A’ attached hereto and incorporated herein by this reference, hereinafter referred to as the ‘Marina’ to “The City agrees to transfer to the Port on April 1, 2008 the City’s Marina and related property as described in exhibit ‘A’ attached hereto and incorporated herein by this reference, hereinafter referred to as the ‘Harbor’.” The motion passed unanimously.

Commissioner Seitle said that at the last negotiation meeting, the Port asked the City for documentation showing ownership of the Marina. He said that the Port needs to confirm that there is a deed that shows the ownership of the Marina, and that they will discuss the issue further at the negotiation meeting tomorrow.

ITEM #2:

ACTION: A Motion was made by Commissioner Seitle and seconded by Commissioner Slinden change the wording from “Marina” to “Harbor.”

Commissioner Slinden suggested that the Commission review Exhibit “B” before voting on the motion. Ed pointed out that Exhibit “B” was the scope of work simply reprinted from the Port’s 2/19/07 letter to the City. The Commission reviewed Exhibit “B.” Commissioner Slinden said that the wording in Exhibit “B” refers to a time schedule but there is no time schedule attached. Ed said that the time schedule had not been included. The Commission agreed that the wording “and on the time schedule” needed to be deleted from Exhibit “B”.

ACTION: The motion was amended Commissioner Seitle and seconded by Commissioner Slinden change the wording from “Marina” to “Harbor” and also delete the wording “and on the time schedule” from Exhibit “B”. The motion passed unanimously.

ITEM #3: Commissioner Slinden wanted item #3 deleted from the ILA as too “nebulous.” She said the Port should choose where to spend Port funding in Langley. Commissioner Seitle pointed out that item #3 had been amended to include the wording “the of work for such services shall be mutually agreed upon between the City and the Port no less than six (6) months prior to the year in which the work is to be performed b the City”. He noted that the subject is further modified in item #7. Commissioner Slinden still did not see any reason for the Port to agree to item #3. Commissioner Seitle said that item #3 had been included in the ILA because that was the position of the City at the last negotiation meeting. At that meeting, he said the Port team members pointed out to the City that the Port is not in a position to provide funding for unspecified purposes, which is why item #7 was added to the ILA. Commissioner Slinden said that if a service needs to be done, the Port could contract with the City to provide the service, and the service could even amount to much more than \$20,000 per year. Commissioner Seitle was concerned that if the Port removed item #3, the City would feel that the Port is not providing any money for the Marina. Commissioner Seitle suggested changing the \$20,000 commitment from a three year period to a one year period. Commissioner Tapert said that one of the problems with item #3 is that the Port is very specific about dollar amounts but not specific about the itemization of services that the Port is expecting in return. However, one of the reasons that item #3 exists is because Langley has been taking a certain amount of money from the operations of the Marina and placing it in its general fund to cover general fund overhead. He said that the Commission needs to determine if there is a way that the Port can help the City with its budget during the transition period to allow this agreement to come together. Also, he noted that the amount of money discussed in item #3 is not a large amount considering the initial numbers that were discussed. Commissioner Seitle said that the Port funding would be restricted by the ILA to be spent on services related to either the Marina operations, transportation improvements to, from and within the Marina, or economic development. Based on the ILA restrictions, he said the money from the Port would be restricted from going the City’s general fund and used for unspecified purposes, and the City would have to make a request to the Port for funding six (6) months prior to the year in which the work would be preformed by the City. He said this would allow the Port plenty of time to determine whether or not the work falls within the parameters set forth in the ILA. The Commission asked Phil Pearl to explain this issue further. Phil said that a specific example of this is when King County

transferred to smaller cities those County pools that were located in the outlying towns. Each pool was a big liability that a town was taking on, and because of that, King County agreed to provide funds to the towns so that they could get through the first couple of years to allow them time to adjust to the new expenditure. He added that the difference here is that the pool is an asset for the town and the Marina would be a liability for the Port.

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to delete item #3 from the draft ILA.

Commissioner Seitle said that the Port should make this deal happen and asked his fellow Commissioner what they think needs to be done in order for that to happen. Commissioner Seitle said that he was never in favor of item #3 but that the City's position is that they want to receive some money for the Marina, and that is why the negotiation team inserted item #3. He said the Port cannot give money to the City for purposes that are undefined and item #3 defines the purposes and they are the same purposes that the Port would have if it were operating the facility. Item #3 is relatively harmless with respect to Commissioner Slinden's objection. Commissioner Seitle suggested modifying item #3 in a way that would make the Commission comfortable with it. Commissioner Slinden would be more comfortable with item #3 if it were changed from a three year period to a one year period. The Commission had no objections.

ACTION: A modification to the previous Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to change the first sentence of item #3 to read "Commencing on **January 1st, 2008, the Port shall pay the sum of \$20,000 for certain services the City will perform on behalf of the Port." The motion passed unanimously.**

ITEM #4:

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to change the date in item #4 from January 1, 2009 to April 1, 2008. The motion passed unanimously.

ITEM #5:

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to approve item #5 as written. The motion passed unanimously.

ITEM #6:

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to approve item #6 as written. The motion passed unanimously.

ITEM #7: Commissioner Tapert said that the word "process" needed to be changed to "processes."

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to change the word "process" to "processes" and approve item #7 as amended. The motion passed unanimously.

ITEMS #8 THROUGH #14:

ACTION: A Motion was made by Commissioner Seitle to approve items #8 through #14 as written.

Commissioner Slinden said item #10 was not necessary because the Port has previously agreed that a fuel facility does not make sense in that location. Commissioner Tapert pointed out that the fuel facility is an item in the Master Plan. Commissioner Slinden said that since the fuel facility is in the Master Plan it does not need to be in the ILA as well. Ed said that he was concerned with item #14. Commissioner Seitle said that the City had asked for item #14 to be included in the ILA. Commissioner Seitle said that currently, there is only a parking lot and a boat ramp and no design. Commissioner Slinden said that the way item #14 reads, the Port would be agreeing to help fund the additional improvements that were omitted from the current construction project due to lack of funding. Commissioner Slinden pointed out that the current Master Plan does allow for the Port to make improvements to Phil Simon Park. She suggested deleting the wording “subject to finalization of plans during the Master Plan amendment process.” Commissioner Tapert said that the Master Plan amendment process would occur after the scheduled transfer start date which could create a timing issue. Commissioner Slinden said that there is an expected Phase I and then Phase II part to the project so that would not be an issue. Commissioner Slinden changed her mind and said that it would make sense to leave the last sentence of item #14 in because it allows the Port the option to re-evaluate the construction project during the Master Plan amendment process. The Commission concurred.

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to approve item #8-14 with an amendment to delete item #10 and change the wording of item #14 to read “The Port will complete additional improvements to Phil Simon Park subject to finalization of plans during the Master Plan amendment process.” The motion passed unanimously.

ITEM #15: Ed said that Phase I would include the float installation and the repairs to the Harbor, but that anything major beyond that is not realistic at this time, and that is why he had included some additional text in item #15. Commissioner Slinden said that a type of “qualifying mark” could be viewed as the Port making a commitment between the two agencies. Ed said that the original text stated that the Port “will provide for storage, safe and convenient water access, safe passage through the Marina and similar amenities for small water craft.” His concern was that during the development of the Master Plan and the near-term initial project, the Port would end up with a lot of things that may be desirable but may not be in the budget. Commissioner Seitle said that these things are already in the Master Plan and had been included in the ILA as a commitment such that the Port would accomplish them in a certain time frame. Commissioner Slinden suggested leaving the wording “endeavor to” but deleting the draft last sentence of item #15. The Commission concurred.

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to approve item #15 as amended, including deletion of the last sentence. The motion passed unanimously.

ITEM #16:

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to approve item #16 as written. The motion passed unanimously.

ITEM #17:

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to approve item #17 as presented. The motion passed unanimously.

ITEM #18:

ACTION: A Motion was made by Commissioner Seitle and seconded by Commissioner Slinden to approve item #18 as written. The motion passed unanimously.

ITEM #19:

ACTION: A Motion was made by Commissioner Seitle and seconded by Commissioner Slinden to approve item #19 as written. The motion passed unanimously.

ITEM #20: The Commission agreed to amend the wording of item #20 to read “The Port will improve the Harbor with the same quality and attention shown to other recent Port projects.”

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to approve item #20 as amended as written. The motion passed unanimously.

ITEM #21:

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to approve item #21 as written. The motion passed unanimously.

ITEM #22: Commissioner Slinden said that the wording in item #22 seemed weighted against the Port. Commissioner Seitle said that the wording is typical legal language and that he did not object to because it is a general clause. He noted that the Port would have to abandon all of its obligations to the City before we would be affected by this clause. Commissioner Tapert pointed out that if the Port had this type of wording in the agreement with WDFW for the Bush Point project, that project would have been completed by now. Although the clause is weighted, Commissioner Tapert said he had complete confidence in the Port’s ability to take on and finish the project. He concurred that the clause is somewhat one-sided but not risky and he is comfortable with it. Commissioner Seitle said that the intent of Al Hendricks’ inclusion of the paragraph was to show good faith on the part of the Port to improve and run the Langley Marina facility. After further brief discussion, the Commission agreed to modify item #22 to delete the last sentence.

ACTION: A Motion was made by Commissioner Seitle and seconded by Commissioner Slinden to approve item #22 as amended by deletion of the last sentence. The motion passed unanimously.

ITEM #23:

ACTION: A Motion was made by Commissioner Seitle and seconded by Commissioner Slinden to approve item #23 as written.

Ed was concerned with the timeline for final agreement of June 1, 2007, as stated in item #23. Commissioner Seitle said that it is important to have a tight timeline so that the Port can begin the permitting process. Commissioner Tapert suggested adding the wording “unless otherwise agreed upon by both parties.” Phil Pearl suggested extending the timeline to June 30, 2007, and including the wording suggested by Commissioner Tapert.

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to approve item #23 as amended to include the wording “unless otherwise mutually agreed upon by both parties” and extending the timeline from June 1, 2007, to June 30, 2007. The motion passed unanimously.

ITEMS #24 THROUGH #28:

ACTION: A Motion was made by Commissioner Seitle and seconded by Commissioner Slinden to approve items #24 through #28 as written. The motion passed unanimously.

2. Breakwater Float Acquisition: Ed said that he had made some changes to the draft ILA between the Port of South Whidbey and the Port of Bremerton, which were highlighted in gray. **(EXHIBIT E)** Commissioner Tapert said the wording “forty fine” needed to be changed to “forty five.”

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to approve the draft ILA as presented, revised to correct the wording “forty fine” to “forty five.”

Commissioner Seitle asked if the \$29,000 deposit would essentially constitute an escape clause. Phil Pearl suggested adjusting the Consideration paragraph of the document to more clearly state what liquidated damages could be applicable in the event of PoSW cancellation. The Commission asked Ed to work with Phil to amend the wording of that section of the draft ILA.

ACTION: The Motion was revised by Commissioner Slinden and seconded by Commissioner Seitle to approve the draft ILA as presented, revised to correct the wording “forty fine” to “forty five”, and modified if needed to further define Consideration contingency in the event of PoSW cancellation. The motion passed unanimously.

B. Bush Pt. Boat Launch:

1. **Request from WDFW for Payment of Outstanding Invoice for \$57,500:** Ed reported that he received an email from Kristen Kuykendall of WDFW (**EXHIBIT F**). The email referenced the Port's 2006 commitment to pay an additional \$115,000, of which half has already been paid, and implied that any further progress on the project hinged on payment of the Port's outstanding \$57,500. Ed noted that, for the purpose of that Agreement, the \$115,000 was tied to the Phase II fencing, landscaping and paving which have been completed, although the facility remains unusable due to ongoing problems with the unrelated Phase I bulkhead and ramp structures. According to the email from Kuykendall, WDFW can not close out the Phase II contractor without the Port's \$115,000 contribution and because of that they are not able to complete the project. Ed recommended the Commission approve paying the outstanding invoice on the primary basis that the contractor has indeed completed those elements of work, but equally importantly, to indicate to Kuykendall that the Port has fulfilled its obligations to WDFW, and therefore expects WDFW to accomplish its commitment to satisfactorily complete this long-sought project.

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Seitle to approve paying the final \$57,500 invoice. The motion passed unanimously.

4. UPCOMING MEETINGS:

1. **March 8, 2007 - Workshop:** Ed noted that a workshop has been scheduled for March 8, 2007, at the Port office conference room to discuss Industrial Development Districts with Port of Bellingham Attorney Frank Chmelik.
2. **March 14, 2007 - Regular Meeting:** The regular meeting will be held on March 14, 2007.
3. **April 11, 2007 - Regular Meeting:** Ed reminded the Commissioners that he would be on vacation out of the country from April 6 through 15, and given that this week is also spring break for the schools, he suggested that the Commissioners might consider shifting the regular April meeting to April 4, 2007, which is one week earlier. The Commission had no objection to changing that meeting to April 4, and directed that the regular meeting for April 2007 be officially rescheduled for April 4, 2007. Ed said that an additional voucher signing may be necessary due to the early-month meeting date.

10. EXECUTIVE SESSION:

The Commissioners convened in Executive Session at 8:40 pm to discuss property acquisition issues, and came out of Executive Session at 9:04 pm.

11. ADJOURNMENT:

The meeting was adjourned at 9:05 pm.

Approved:

Minutes prepared by:

Commissioner Geoff Tapert, Freeland

Edwin S. Field, Port Manager

Commissioner Rolf Seitle, Langley

Commissioner Lynae Slinden, Clinton

- Exhibit A: Port letter to City, dated 2/19/07
- Exhibit B: "Summary of Agreements between City and Port...", City Draft #2, dated 2//2/3/07
- Exhibit C: "Discussion Points 22607", from Commissioner Seitle
- Exhibit D: Draft ILA for the transfer of the City of Langley Marina to the Port
- Exhibit E: Draft ILA with the Port of Bremerton for the breakwater float acquisition
- Exhibit F: "Bush Point Funding" email from Kuykendall/WDFW, dated 2/21/07