

PORT DISTRICT OF SOUTH WHIDBEY ISLAND

Minutes of the Regular Meeting
December 10, 2008
Freeland, Washington

Present at the meeting were:

Commissioner Lynae Slinden, Clinton	Ed Young, Langley Resident
Commissioner Rolf Seitle, Langley	Harrison Goodall, Langley Resident
Commissioner Geoff Tapert, Freeland	Richard & Sharon Porter, Langley Residents
Ed Field, Port Manager	
Dane Anderson, Port Financial Coordinator	
Molly MacLeod-Roberts, Port Clerk	
Rick Brewer, Port Harbormaster	

Absent: None

1. MEETING CALL TO ORDER:

The Regular Meeting of the Port District of South Whidbey Island's Board of Commissioners was convened on December 10, 2008, at the Freeland Library Conference Room in Freeland, WA. Commissioner Seitle, President, called the Regular Meeting to order at 7:30 p.m., followed by the Pledge of Allegiance.

2. BUSINESS MEETING – THE CONSENT AGENDA:

A. Consent Agenda:

1. Minutes: None available - drafts in progress.
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 Slinden and seconded by Commissioner Tapert to accept the Consent Agenda, including authorization of Vouchers #3627 - #3652 in the amount of \$24,458.90. The Motion passed unanimously.

B. Staff Contracts: Port Manager Ed Field noted that the contracts for Port Manager **(EXHIBIT B)** and for Port Accountant **(EXHIBIT C)** were scheduled for renewal, and the terms of each remain unchanged from the previous contracts.

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Tapert to approve the Employment Agreement for Port Manager Edwin Field (effective

January 1, 2009) and the Engagement Letter for Port Accountant Edwards & Associates (effective January 1, 2009). The Motion passed unanimously.

3. PUBLIC COMMENT – Including Items not on Agenda:

A. Ed Young, Whidbey Island Kayaking Company: Young said he wished to make an informal business proposal. His small business is entering its 7th season and they are “looking for a home.” He has been working with some private property owners near the marina who are willing to provide space for kayak storage. Young would like to have a permanent presence at the harbor. Regarding economic development, he noted that last year his business brought in 500-600 people for the kayak tours he provided. Many expressed interest in renting kayaks and he was unable to provide them with that service. He would like to have a summer slip at the marina to house his office in order to provide kayak rental services. Young explained he would be willing to pay a “per head” fee to the Port for every customer of \$1 - \$5, in addition to normal slip fees. Ideally, he would like to start on January 1st if at all possible.

Commissioner Slinden asked Staff if there is anything in the regulations preventing such an operation at the marina. Dane noted that the marina is under serious encumbrances by the Recreation and Conservation Office (RCO), the State organization that provided some of the funds for the original construction of the marina. Staff would have to look into it further.

Young said his business would be “commercial towards tourism,” and they would be providing water accessibility to non-motorized watercraft. Ed explained that the challenge is that the RCO grant was specifically for trailer boats.

Commissioner Slinden asked about the pier that was built privately without RCO funds, and Harbormaster Rick Brewer said it provides about 100 ft. of moorage. The problem is that most of that moorage is currently under lease. Ed said nothing can be done by the 1st of the year, but by moving the dinghy storage area and utilizing some of the small, unused spaces in conjunction with working around the RCO encumbrances, he believed it might be possible to accommodate Young’s proposed business activity in the future.

Commissioner Tapert asked about land-based storage possibility, and Young explained that he has temporary land-based storage for his kayaks, but he needs a place for an office where he can have a telephone, computer, files, etc.

The Commission agreed it was a very good idea and they would like to see it happen. Staff was directed to look into it further to see if it is possible. Young thanked the Commission for their time.

There was no additional public comment.

4. ACCOUNTANT REPORT:

A. Financial Statement: The Commissioners acknowledged the October 2008 Financial Statement, which had been mailed to them previously **(EXHIBIT D)**.

B. Accountability Audit for 2005 – 2007: Ed reported the Audit would take place next week, December 15-19, 2009. The Entrance Conference is scheduled for Monday, December 15, at

2:00 p.m. at the Port office. He noted that typically a Commissioner is invited, but not required, to attend the initial meeting. The Commissioners agreed they did not wish to attend.

5. PROJECT ACTION ISSUES:

A. South Whidbey Harbor:

1. City Coordination:

a. **Property Transfer Process:** Ed said the sequence would be as follows: The Commission would review the final (minus the legal description) amendment to the InterLocal Agreement (ILA) and discuss the Department of Natural Resources (DNR) Aquatics Lease issues. Jenny Barrett of Barrett Escrow should have the title report ready by tomorrow morning, and it will be immediately forwarded to the Port's attorney and the attorney for the City of Langley for review. If the Commission approves the ILA Amendment in concept with no exceptions, it will go to the City Council for review on Monday, December 15. The expectation is that the City Council will be authorizing Mayor Paul Samuelson to act on all the transfer documents. A signing session of all documents is to be held on Thursday, December 18th at 9:00 a.m. at the Harbor office or City Hall, with Barrett in attendance in order for her to notarize then record all documents with Island County before year-end. The transfer would then take place on January 1, 2009, and the Port would take over all harbor operations as of that date.

b. **Department of Natural Resources (DNR) Aquatics Land Leases Status:** Ed explained that after the City has signed the 15-year DNR lease, that lease would be transferred to the Port. Dane reported the DNR representative had no issue with lengthening the cure time frame (currently 10 and 30 days) or extending the term of the lease from 15 years, but it wouldn't happen before the end of the year since it would need to be brought before the DNR Board. The representative also mentioned that when the lease gets assigned, that is a real convenient opportunity for all parties to negotiate some changes, and DNR is expecting that to occur. Dane summarized, "The short version is the Port would have to trust DNR for three weeks."

The Commission briefly discussed the DNR lease fees, including the increase for the temporary location of the breakwater. Commissioner Seitle felt the Port should work towards a Port Management Agreement (PMA) as quickly as possible. Ed suggested when the Port starts looking at a bigger footprint, it would be a good time for a PMA. With DNR, it seems taking incremental steps are easier than the first big step.

Commissioner Seitle noted that the present DNR agreement doesn't contain any language with respect to any increase in the area in the future. He asked if the Port is assuming any risk expending engineering funds for Phase 1A without having some assurances from DNR that the waters will actually be available, and how they interface with adjacent DNR-leased areas. Ed said they will certainly ask DNR those questions, but it is rather unlikely that will get any kind of finite answers. Dane's perception is that if the area is available, DNR will not decline the Port the opportunity to lease it.

Commissioner Slinden voiced her concern over the 15-year term of the lease in light of the financing issue (unable to secure financing for such a short term lease). That would stop the project. Dane said DNR didn't give any sense of having any problem with extending the term to 20 years or more. Commissioner Tapert noted that the Port

would have to renegotiate the lease anyway prior to expansion for permitting and financing. Commissioner Seitle felt the only exposure the Port would have if the lease is not obtained is the engineering funds that have been expended for 25% Phase 1. They can't even go to the Joint Aquatics Resources Permit Application (JARPA) process without showing that the Port has rights to the underlying waters. Ed agreed once the footprint has identified, there would be immediate discussions with DNR before the permit goes in. However, the discussions regarding the extension of the lease term will occur as soon as the lease is transferred.

ACTION: A Motion was made by Commissioner Tapert and seconded by Commissioner Slinden to direct Staff to move forward with the InterLocal Agreement and the DNR Lease as discussed and pass them on to the City of Langley. The Motion passed unanimously.

Commissioner Slinden asked who would be signing and Ed explained that all three commissioners would sign the ILA Amendment since all three had signed the original ILA. However, the DNR lease has been prepared for one signature each from the City (Mayor), DNR (Asst. Regional Manager), and the Port (President). Since it was a team effort by all three commissioners to get the transfer completed, Commissioner Slinden asked Dane to look into the possibility of having all three sign all of the transfer documents.

Dick Porter, Langley Resident asked and received permission to speak, after Commissioner Seitle noted that the preferred time for public comment was earlier on the agenda. Since the levy didn't pass, Porter wondered what the Port's plans are for the harbor since that source of funding is not available. He asked if there is additional funding to maintain and expand it and where is that money coming from. Commissioner Seitle explained that the Port is going ahead to the 25% design level of the engineering required to make Phase 1 as identified a reality. The Port will then try to obtain permits and simultaneously try to locate funds. The Port has considerable hope that at least some money will be available, and coupled with the harbor income, will be enough to do a minimal expansion. That minimal expansion might include positioning the breakwater and providing access to it and nothing more.

Porter asked if the money would be coming from the State of Washington, and Commissioner Seitle explained that the Port has applied for funding from the Rural County Economic Development Funds (RCEDF), and they are hopeful the request will be approved. Porter asked about funding the maintenance of the harbor, and Commissioner Slinden explained that revenue from the marina would also be used to maintain it, as required in the ILA.

A brief discussion followed regarding the economic downturn, infrastructure expenditures and the Port's levy request. Porter asked, "Is there a fund that is established today to maintain and operate the Langley Marina?" Dane explained that the marina is a business entity "all its own" – with its own revenue and expenses and it functions fairly well. The Port will do more maintenance than the City did, so the Port's expenses will be higher than the City's. It will continue to operate smoothly, especially with the Port's full-time Harbormaster. Regarding the capital required for expansion of the marina, the Port is working on a number of different fronts, including the RCEDF and working with our State legislators to obtain dollars from the upcoming economic stimulus package.

Porter asked if the Port's only dependable source of income is from the marina operations itself, and Ed explained that is not the case – the Port's primary source of funding is property

tax revenue – approximately \$450,000 year. Ed noted that \$120,000 in expenditures for maintenance, repair, and operations of the marina has been allocated in the Port's 2009 budget. Sharon Porter said that was excellent, and thanked the Commissioners. She said, "We appreciate what you are doing. I think without that marina, Langley dies."

- c. InterLocal Agreement (ILA) Amendment Status: Ed referred the Commission to their copy of the draft Amendment to the InterLocal Agreement (**EXHIBIT E**) and read aloud the phrase the City requested be inserted. Ed noted that Port Attorney Al Hendricks reviewed it. Ed, Dane and Al feel the phrase simply confirms what's already in the lease and the RCWs, so inserting the phrase is fine.

Ed reported they are still waiting for the legal descriptions on the two parcels co-owned by Port and City, so they will transfer at the same time.

- d. Special Meeting for Final Approvals – Thursday, December 18th at 9:00 a.m.: Ed said depending on the condition of the Harbormaster office at the marina, they would like to hold the special signing meeting there. If the office is not ready yet, the meeting will be held at City Hall instead. Harbormaster Rick Brewer said the French doors will be installed this weekend and he will be purchasing some office furnishings this weekend.

2. Harbor Operations:

- a. Harbormaster Regulations: Ed explained that as soon as the transfer occurs, the City's regulations and municipal codes won't be applicable since the Port is a different public agency. He requested that the Commission approve the proposed South Whidbey Harbor Regulations, Policies and Procedures (**EXHIBIT F**), at least on an interim basis. Ed apologized for not getting them to the Commissioners sooner, but proposed that the Commission adopt them for now, knowing that in April the rates will need to be looked at and possibly adjusted and so will various policies and procedures such as slip priority, wait list issue, etc.

Commissioner Seitle felt the Resolution is a pretty formal adoption of a document, and he doesn't think the document is "ready for prime time." He said he would rather adopt the City's regulations by reference on an interim basis, and revisit the subject at the January meeting and make the necessary adjustments. He doesn't see any urgency since there won't be much marina activity in January and February, and the City's regulations "are not bad." Ed noted that the City's regulations talk of infractions and enforcement and are written from a legal standpoint within the larger framework of a Municipal Code, and the Port does not have a comparable Muni Code and furthermore "will not be the cops out there." Ed explained that the proposed regulations are closely based on Chapter 14, but have essentially been combined with the overall approach and supporting format that the Port of Everett took in their recently developed regulations.

Commissioner Slinden noted that the City would be removing their regulations from their ordinances.

ACTION: A Motion was made by Commissioner Seitle and seconded by Commissioner Tapert to adopt on a temporary basis the existing regulations for the harbor as provided by the City of Langley, and assume responsibility therefore until such time as the Port will create new regulations and expand the existing regulations.

Commissioner Tapert said he had a problem with adopting the City's regulations by reference, because of enforcement issues, etc., and suggested that if they adopt anything on an interim basis it should be the one that Staff has proposed. He said he trusts the Staff and the Port Attorney, and believes it has been prepared to be comparable to other ports and it has been legally reviewed and deemed acceptable. If the Commission adopts the Port's proposed South Whidbey Harbor Regulations, Policies and Procedures on an interim basis and revisit it in April, Commissioner Tapert thinks the Commission would be doing the right thing. Commissioner Slinden agreed, and added that the proposed regulations would be much more pertinent than the City's code.

Commissioner Seitle disagreed. He said it speaks to matters of policy that have never been discussed by the Commission, it is absent of any fees, and it contains a lot of complicated verbiage that would be difficult to use in an enforcement situation. He said they need short, precise regulations - not procedures, not policies - just regulations. Commissioner Seitle stated, "In my opinion, this is not such a big deal - this document can be created in an afternoon's work, provided the Port Commission has agreed on policies, such as live-aboards and periods of occupancy." For example, he said the 14-day period of occupancy was unacceptable to him, because it "does nothing for economic development uptown and just ties up the harbor."

Commissioner Slinden said the Commission would be revisiting this in April, and the proposed South Whidbey Harbor Regulations, Policies and Procedures is a better document than the City's version.

Upon calling for votes on the Motion and receiving none in favor of the Motion, Commissioner Seitle asked if there were any alternate Motions.

ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Tapert to approve the proposed South Whidbey Harbor Regulations, Policies and Procedures as submitted on an interim basis, to be reviewed in April 2009. The Motion passed with a 2-1 vote, with Commissioner Seitle voting against it.

Commissioner Seitle said, "This document, if you carefully read it, is not appropriate, it is not well written, it is not precise, it contains policies and procedures that should not be in the regulations, and it contains policy issues that have not been discussed by the Commission". Commissioner Tapert said it can be revisited in April or even January, but "we need something moving forward." Commissioner Slinden said there is lot of good information in the document - it's a good starting point for conversation. She said there are policies in it that the Commission will need to talk about, but they need to have something in place. Commissioner Seitle felt that indicated the Port was willing to approve and adopt a flawed document, and Commissioner Slinden disagreed. Commissioner Seitle stated, "I expect the Staff to bring me a document that is concise, to the point, does not contain policies that have not been on the table before that, and to provide that document not 24 hours before the meeting." Ed apologized again for not getting the document to them sooner, and Commissioner Seitle accepted his apology. Commissioner Slinden requested that they move on with the meeting since action has already been taken.

Dane suggested the Commissioners put their concerns about the interim regulations, policies and procedures in writing and remit them to the Staff. Staff will compile them

and make sure they are addressed. Commissioner Slinden said they absolutely needed to address policy issues, such as the live-aboard policy. Ed explained that the live-aboard policy is in the current policy because the Port pretty much stated that existing policies and rates would remain unchanged from the City's until April, when they would be subject to review.

Harbormaster Rick Brewer provided further details about live-aboards and moorage calculations in compliance with RCO restrictions, and explained that he, Dane and Ed would continue working with the City on any inconsistencies with the moorage agreements.

- b. Harbormaster Office: Ed reported that the Riehl cabin was approved for Office rental and the Port Attorney has reviewed the rental agreement.
- c. Financial Management: Moorage Agreement Status and Merchant Account Process: Ed explained that the moorage agreements will be sent at the end of the month, with payments not due to the Port until the 1st week of January. It will make for a clean bookkeeping period, with no marina revenue received by the Port until the property is transferred to the Port on January 1, 2009. All future monthly payments will be due on the 1st of each month. Rick is working on getting a card reader and setting up a Merchant Account in order to receive credit card payments at the marina beginning in January.
- d. Ramp Cleaning: Results of Bidding and Unexpected Permit Issues: Ed reported the Port received 8 bids in response to the request to provide an estimate per cleaning for a minimum of one cleaning per week with a possible second cleaning. The bids ranged from a high of \$36,000/year (\$692/week), several in the high \$200s, one at \$200, one at \$198, and the winning bid was \$190 for the 1st cleaning and \$145 for the 2nd cleaning. The winning bidder was Spyderman Excavating, and Ed noted that owner Arthur Fleming was the only one who submitted a bid that included a bid for a 2nd cleaning in any one week.

Ed then informed the Commission that an Army Corps of Engineers (the "Corps") employee had telephoned the Port yesterday after seeing the Request for Proposal for Ramp Cleaning in the Whidbey Classifieds, and asked if the Port had a permit. Ed explained the Port doesn't have a permit – the City of Langley does, and the cleaning would be done under the City's permit. The Corps said the City cancelled their permit in June of 2006. According to the Corps, the City's then Interim City Planner, Donna Keeler, wrote a letter to the Skagit River System Cooperative informing them that the City was planning a ramp construction project and would no longer need to clean the ramp. That letter made it to the Corps, and the Corps interpreted it to mean the permit should be cancelled, which the Corps did, evidently without notifying the City. The City's Director of Community Planning, Larry Cort, didn't even know there was a Corps permit – the City thought they had to work only with the City's approval and the Hydraulic Project Approval (HPA) from the Washington State Department of Fish and Wildlife. When Staff checked the file, they discovered the HPA had expired in October 2008. The City is investigating the situation, but Ed said it appears that the Port may have to re-file permits (which could take 1-3 months), so it's likely going to be a while before the ramp gets cleaned.

The Commission further discussed possible jurisdiction issues and fish windows. Ed said he and Staff would continue investigating the matter and keep the Commission updated on any progress.

3. Project Scope and Design:

a. Commission: Confirmation for Proceeding with Phase I Design (25%) and Permit:

The Commission agreed to “pause” on proceeding further until January, after the Council of Governments (COG) has made a decision regarding the Port’s application for an RCEDF grant.

b. Engineering Design Team Meeting: Pending DNR Lease and Rural County Economic Development Funding (RCEDF) Action: Addressed above.

4. Funding Opportunities:

a. RCEDF Status: Dane said the RCEDF application is a decision item on the agenda for the next COG meeting, which is scheduled for December 19th at 1:00 p.m. The Port has submitted a revised application for distribution to all COG members. Dane will attend the meeting, and added that he’s had conversations with a number of COG members and they have assured him that they don’t see any problem with the approval going through, now that COG has a better understanding of their cash situation and their previous commitments. Commissioner Slinden thanked Commissioner Tapert for the extremely useful summary of RCEDF he provided at the last Port meeting. Ed added that it helped not only the Commission, but it really helped the COG as well. Dane noted that officially, the COG advises the Island County Commissioners (ICC), and the ICC makes the final determination for RCEDF, and that won’t happen until their January meeting.

b. Federal & State Opportunities: Dane reported he’d been pretty busy the last couple of weeks speaking with the offices of U.S. Senators Patty Murray and Maria Cantwell, US Representative Rick Larsen and Washington State Senator Mary Margaret Haugen. Two of those four have staff assigned to handle appropriations requests only. Dane said they would be on the request for the 2010 funds with Senator Murray, primarily because of the schedule and when the Port will actually need the money. For the normal, programmatic funding, Dane is talking with Senator Haugen about the Economic Stimulus Package. He explained that the Federal government will give money to the States, and the States will then decide where it goes, so the Port will work with our state representatives to lobby on the Port’s behalf for those funds.

Commissioner Tapert said he was surprised to learn that there is a Federal Economic Development Administration, and the Commission and Dane discussed the Bush Administration’s rather onerous criteria for funding and noted that the incoming Obama Administration might make changes that would make it easier to qualify for funding. Dane will keep looking at it.

Commissioner Seitle asked Dane to provide the Commission with a brief memo on a weekly basis about who he is talking to, etc., and Dane said he would put together a weekly summary of his activities.

B. Bush Pt. Boat Launch:

1. Manager Hiring Status (Also note overall work assignments under review): Ed said the Port would not advertise the position until January, due to his current workload with the

marina, etc. Possession Park Managers Wayne & Laura Nance have been covering the cleaning and maintenance duties at Clinton Beach, and Rick and Ed have been checking on Bush Pt., which has been pretty quiet. Wayne told Ed that several local people have expressed an interest in the Bush Pt. position, so Ed thinks the Port should have a good pool of candidates when they advertise in January.

C. Whidbey Airpark:

1. **Compliance Report: Draft presentation at January meeting:** Ed said he received the 80-page draft report from Airside – it looks like a real good report, with lots of good pictures and drawings. The report addresses the entire airport-zoned area very well. Ed will get draft comments back to David Ketchum of Airside within a week, and Ketchum will plan a presentation for the Port’s regular January meeting.

6. ACTIVITIES/INVOLVEMENT REPORTS:

A. Economic Development Council (EDC): Nothing new to report.

B. Council of Governments (COG):

1. **Next meeting: December 19, 2008, at 1:00 p.m.** Nothing new to report.

C. Skagit-Island Regional Transportation Planning Organization (RTPO): Commissioner Tapert said Senator Haugen and Washington State Representative Barbara Bailey attended the last meeting and talked mainly about the upcoming session and the need for transportation projects, especially overlays because they don’t require permits.

D. Marine Resources Committee (MRC): Commissioner Slinden noted that she had forwarded copies of the MRC minutes to Ed, and Ed said he would forward them to Commissioners Tapert and Seitle.

E. Washington Public Ports Association (WPPA): Nothing new to report.

F. Community Trade & Economic Development (CTED): Nothing new to report.

G. Holmes Harbor Shellfish Protection District (HHSPD): Nothing new to report.

H. Puget Sound Partnership (PSP): Commissioner Slinden said she and Dane attended the meeting for the Action Agenda Adoption at the Seattle Aquarium on December 1st, and learned of some ideas for alternative funding sources from other attendees, including mitigation credits, etc.

I. Center for Wooden Boats Cama Beach/Whidbey Summer Event (September 5, 2009):
Nothing new to report.

7. OLD BUSINESS:

There were no Old Business items.

8. NEW BUSINESS:

A. Whidbey General Hospital (WGH) South Whidbey Clinic Building Project: Letter of Support Requested: Ed submitted a letter of support (**EXHIBIT G**) for WGH's South Whidbey building project for the Commission's approval. The Commission approved the letter, and Commissioner Seitle signed as President.

9. EXECUTIVE SESSION:

There was no Executive Session.

10. ADJOURNMENT:

The meeting was adjourned at 9:05 p.m.

Approved:

Minutes prepared by:

Commissioner Rolf Seitle, Langley

Edwin S. Field, Port Manager

Commissioner Lynae Slinden, Clinton

Commissioner Geoff Tapert, Freeland

Exhibit A: Voucher Listing
Exhibit B: Employment Agreement for Port Manager Ed Field
Exhibit C: Engagement Letter from Edwards & Associates, CPAs
Exhibit D: October 2008 Financial Statement
Exhibit E: Draft Amendment to the "InterLocal Agreement for the Transfer..."
Exhibit F: South Whidbey Harbor Regulations, Policies and Procedures
Exhibit G: Letter of Support for WGH to Sen. Haugen dated 12/10/08