

## **PORT DISTRICT OF SOUTH WHIDBEY ISLAND**

Minutes of the Special Meeting

December 3, 2008

Freeland, Washington

### **Present at the meeting were:**

Commissioner Lynae Slinden, Clinton

Commissioner Rolf Seitle, Langley

Commissioner Geoff Tapert, Freeland

Ed Field, Port Manager

Dane Anderson Port Financial Coordinator

Rick Brewer, Harbormaster

Molly MacLeod-Roberts, Port Clerk

**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 December 3, 2008, at the Port office in Freeland, WA. As announced, the purpose of the Special Meeting was to address three specific issues related to the upcoming transfer of the Langley small boat harbor to the Port, namely: Harbormaster office arrangements for 2009; Department of Natural Resources (DNR) Aquatic Lands Leases and property transfer details; and Funding status including Rural County Economic Development Funding (RCEDF) scope commitment and recent information regarding new infrastructure funding opportunities. Although the meeting was open to the public, due to the technical/detailed nature of these urgent issues, public participation was not scheduled for this focused Special Meeting. Commissioner Rolf Seitle, President, called the meeting to order at 9:05 a.m., followed by the Pledge of Allegiance.

### **3. PROJECT ACTION ISSUES:**

**A. Harbormaster Office Arrangements for 2009:** Port Manager Ed Field referred the Commission to the email he previously sent summarizing the options available for a Harbormaster office near the marina. He explained that although there are some advantages to a trailer office as far as size, security and location, after inspecting the cabin owned by Kathleen Riehl, he feels it offers the same advantages, "and then some." As boaters approach the harbor, the cabin is quite visible and the Port can place a large "Harbormaster Office" sign that boaters can easily see but won't be obnoxious to anyone on land. The available space offers a clear view of approaching boats. Ed explained the space offered is for the front of the beach cabin, which features an all glass front room and access to the bathroom. The Port would need to install a temporary partition to separate the bedrooms in the back of the cabin. The rent would be \$500 per month, including utilities. Ed noted that would be just \$6,000 per

year and \$12,000 had been allocated in the 2009 budget. The cabin has a couple of parking spaces available for staff as well as some storage space behind the building. Ed's recommendation was to rent the Riehl cabin for the Harbormaster's office.

**ACTION: A Motion was made by Commissioner Slinden and seconded by Commissioner Tapert to accept the Riehl offer to rent her cabin for the Harbormaster office.**

Commissioner Seitle said he had some concerns. He said Kathleen Riehl has "a running battle with the City of Langley's Planning Department about the critical area/setback issue" and is very vocal on the Langley Forum, and he hopes the Port would not get drawn into that by renting the cabin. He felt that being in a private residence where other people are living and sharing a bathroom would be a security problem. Commissioner Seitle said it is also a fair distance from the marina itself, and he estimated it at 800-1,000 feet. Ed and Rick said they had both walked from the marina to the cabin and it really isn't very far. Ed said for the near-term, the Riehl cabin really is the best option based on the location and the cost. He explained that the Port would build a temporary partition and a door with a lock to separate the rest of the cabin from the Harbormaster office. Rick noted that Riehl uses the cabin only on occasion and she would not have any access to the office.

Commissioner Tapert agreed that \$500 per month was an excellent offer, since the previous one considered was \$1,000 per month. He also agreed that the Riehl location is ideal in providing excellent visibility for the Harbormaster for incoming boats. Rick noted that the only location that has better harbor visibility is the Seabreeze Inn. Rick spoke with the Seabreeze owners, and they indicated that they welcome having a harbormaster there and they are not concerned with the potential traffic, which will be limited to staff vehicles and foot traffic. He added that his plan is to actually meet each boat at the dock as it comes into the marina.

Commissioner Seitle said he had always thought a trailer next to the restroom would be the best solution. Commissioner Tapert said at some point the Port would probably need a trailer there during construction anyway, and they wouldn't necessarily want the Harbormaster's office inundated with construction workers, etc. As far as operations are concerned, it makes more sense to have the Harbormaster's office in a more permanent structure such as the Riehl cabin.

**Commissioner Seitle called for a vote and the Motion passed unanimously.**

**B. DNR and InterLocal Agreement (ILA) Issues:** Ed reported that after weeks of Dane being "the squeaky wheel" at DNR, the Port had finally received the draft Aquatics Land Lease document yesterday. DNR sent it to Dane, but it is actually a document for the City of Langley to sign with DNR – not the Port. Ed said it has a lot of interesting provisions in it about transfer and everything else, and he and Dane are just beginning to plow through it. They have sent a copy to Port Attorney Al Hendricks for his review. Dane pointed out that it is not complete – it doesn't have the exhibits. According to the draft lease, the tenant (the City of Langley) is responsible for providing their own survey, and the State will rely on the survey provided by the tenant. Dane said the whole thing seems to start from the perspective of the State not wanting to do anything and not being held accountable for anything.

Ed said the draft lease is written from September 23, 2007, for 15 years to the City, and if the City wants to transfer it, they must give at least 30 days' notice (which is fascinating since the draft wasn't received until December 2<sup>nd</sup> and the transfer is scheduled for January 1<sup>st</sup>). He noted that the terminology is really unclear, particularly regarding the old sunken tire breakwater. Dane reported that Section 1.3 of the draft lease states that the property is leased "as-is" starting on September 23, 2007. It is not an extension of a previous lease – it is a new

lease. Dane thought DNR is “shooting themselves in the foot” with the “as-is”, unless there was something in the original 1963 lease requiring the removal of that breakwater prior to closing the lease.

Commissioner Seitle said the Port doesn't have anything to do with that lease at this point. Ed pointed out that if the City signs the lease, if the Port ultimately wants the harbor – the Port will have to sign the lease as well. That's why both the Port and the City and their attorneys are all reviewing it.

Ed explained that the draft lease is closed-ended at 15 years – “you have to pick up everything (all improvements) and leave and let DNR know at least one year in advance if you want to enter a new lease that will be discussed at that time.” He said that is a very interesting provision, considering all docks and wharves are considered improvements.

Commissioner Seitle wondered if they could convince the City to exercise the lease and then immediately request the transfer of that lease to the Port. Dane said the City wants to be “on the hook” with this lease for as short a time as possible, and the City's time preference would be two minutes – the time it would take to sign the transfer documents. Ed noted that there are significant numbers in the draft to pay the additional rent for the increased leased area occupied by the breakwater.

Dane said one possibility was to do a “hold harmless” for the City. If the City signs the lease as drafted, DNR would hold the City responsible for anything occurring between September 23, 2007, and January 2009 when it transfers to the Port. Dane said the City Council doesn't want to have anything to do with any liability at all, so the issue is a potential deal breaker as far as the City is concerned.

Commissioner Slinden said that gives her some heartburn – the City has deferred maintenance for a long time while collecting revenue from the marina, and it seems they should be held accountable. Dane said the City feels like they are giving away an asset, and they don't want any responsibility for that asset.

Commissioner Seitle said the Port could simply tell the City that because the Port's levy lift didn't pass, the Port faces serious financial difficulties in implementing the plan, and maybe the City should just keep the marina. He asked if that would be a credible threat to the City to get them to move forward. Dane said the City is pretty clear on the matter – they don't want to take on liability. He said the liability issue may be significantly reduced because of the “as-is” phrase and the timing.

Commissioner Slinden wondered if the City understands that if they renege on the transfer because of the DNR lease issue the facility will still be theirs and therefore they will be held liable for it. Whether or not the Port takes over, DNR is still their landlord and they are liable. She said the onus for acting quickly to help the City with its economic development plan is therefore off the Port and back to the City. By not signing a DNR lease and taking responsibility for their liability, they are not working with the Port and the Port has tried to provide assistance to them for a long time. She hopes it would be apparent that the City would be the ones basically “killing their own town.”

Dane said they will ask Al what happens to liability in the transfer document – in the transfer, where does liability reside? The City and Port will then need to sit down and share their concerns. The liability will probably stay with the City even after the transfer – the liability is

joint and several, not just one entity. If the Port decides it wants to keep the liability as it is (joint and several), Dane thinks the City will want to change it. He believes DNR will not want to make changes to the lease, so if there aren't any changes to the lease and the Port won't sign another separate agreement that takes on that liability, it is likely the whole thing will blow up.

Commissioner Tapert said the whole issue of creosote piles and the sunken breakwater would fall under Section 8, Hazardous Materials in the document. Everyone agrees those things need to come out at some point anyway, but there is nothing in the document about timeframes (when they need to come out). Dane said the document allows for DNR to specify the timeline. Ed said his understanding is that the Port would take responsibility for the tires, the creosote piles and everything else we know is out there. It seems like the City isn't even willing to stand by the unknown and acknowledge that they've been there for 20 years.

Dane said it's important to have a good negotiation strategy. Because of the potential mitigation from the removal of the Hein dock and the sunken breakwater when the Port builds out, he agreed that is to the Port's benefit to be responsible for those. Commissioner Slinden said the City needs to be clear on the matter – the liability is theirs “no matter what” and if the Port does the project, it will be the Port's “no matter what.” If the City decides to not be responsible for just that period of history – the City's lack of acknowledgement of the fact that they are liable is a moot point and is just “posturing.”

Commissioner Tapert said his understanding of responsibility for environmental clean-up is that by law, it goes back in title to the person who owned the property when the damage was created. He doesn't believe any document can get a property owner out of that legal liability. So if, for example, it is discovered that an oil spill occurred while the property was owned by the City, the responsibility for the clean-up would lie with the City, not the current owner of the property.

Commissioner Tapert suggested the Port should ask the City what they need the Board to sign in order to enable the City to sign the DNR lease. The Port would then immediately transfer the lease. If the City has a problem with it, they should talk with DNR. Dane explained that DNR is following the Model Toxic Controls Act (MTCA). Ecology is really effective in the Revised Code of Washington (RCW) in identifying that if you buy or lease a property with the knowledge that there is “bad stuff on it” – you can't claim you didn't know. You are responsible AND the previous owner is responsible. Ed asked if there is anything in the “as-is” wording, etc. that Ecology or MTCA would prevent the Port from getting mitigation for the sunken breakwater, etc. Dane said he didn't think Ecology would “go looking for stuff.” If the Port presented the new project, and the proposed removal for mitigation at no cost to Ecology, they would be happy with that.

Commissioner Slinden said the key is to do something (sign an agreement, etc.) to get the City to sign off on the DNR lease agreement so the Port can move forward with this. The pivot point is whether the City wants to keep the property and carry the liability forward forever, or transfer it to the Port and have the Port take on the liability for the sunken breakwater and the old Hein dock.

Commissioner Seitle said if the City doesn't sign the DNR lease, the aquatic lands cannot be transferred and the Port could not operate the harbor under the current agreements.

Dane said since no one is knocking on the City's door telling them to clean it up; status quo is tolerable for the City. He suggested the Port should move ahead with the legal review of the

draft and let the City know of any concerns the Port has, with the full knowledge that DNR is not going to change it (with the exception of some of the numbers and the exhibits). He said the Port will need to decide “if we can live with this thing for 15 years, along with the transfer documents and the exhibit or not.” The City only received the draft this morning, so they need to review it as well. If the City has any issues, the Port can’t do anything. The issues will only be affected by current RCWs and DNR, which the Port cannot change.

Dane said, “This isn’t going to happen before January 1, 2009,” so the staff recommendation is to amend the InterLocal Agreement to extend the transfer date to February 1, 2009, and put in place an Operating Agreement with the City effective January 1, 2009. Ed said another possibility is to amend the ILA to change every instance of January 1 to February 1, leaving the City in charge until the transfer (no operating agreement). Ed said the Port can be ready to run the harbor on January 1, 2009. Dane said he could have a draft management agreement prior to the Port’s next regular meeting on December 10<sup>th</sup> and the City’s next regular meeting on December 17<sup>th</sup>.

Commissioner Slinden suggested postponing everything for one month and not doing anything or spending any money toward the harbor during that time. She is really reluctant to commit anything else unless the City is willing to sign the required DNR lease agreement. Dane noted that there is a whole month of revenue associated with operating the marina in January and Commissioner Seitle said winter revenue is not very significant. Dane said the Port is expending funds for the Harbormaster and resources to figure out how to operate the harbor, and he would like to maximize revenue as much as possible to offset those expenses.

Commissioner Tapert asked why it should be delayed another month. If the City understands that the Port will immediately sign the transfer agreement after the City signs its DNR lease, then why can’t it be done in December? Dane explained that there are holdover provisions in the transfer documents, so the City is still on the hook after the transfer. Both the City and the Port need to first understand what those issues are prior to going forward with the transfer.

**ACTION: A Motion was made by Commissioner Tapert and seconded by Commissioner Slinden to push for the City to have both the DNR Lease Agreement and the Transfer Agreement in front of the City Council for their signature for their December 17, 2008, meeting.**

Ed asked if the request could include language along the lines of: “If the City is looking for an additional agreement or commitment by the Port, the City needs to spell out what that is.” The Commission agreed.

**Commissioner Seitle called for a vote, and the Motion passed unanimously.**

**C. Commissioner Position Papers Addressing the South Whidbey Harbor Project:**

Commissioner Seitle said he was gratified to see that all three Commissioners are pretty well in agreement with only small variations as to where to go from here. Commissioner Slinden thinks the Port needs a 25% type engineering to get a permit. She suggested getting input from Rick and others about design to come up with a better location for the breakwater. In her opinion, the breakwater is useful with or without the tree of moorage. It can be done with a different re-design, and she feels a different engineering firm is in order.

Regarding funding, Commissioner Tapert felt it would be prudent and a good idea to consider working with the City on the creation of a Local Improvement District (LID) to fund a portion of this small reduced phase. He suggested that \$1.2 million in funding could be put to a vote of the property owners in the commercial district of Langley over a 20-year period. It would show that those who will benefit the most from the project would be paying for it. It would also free up the Port's assets to pursue other projects or move forward in other ways. Commissioner Slinden added that in conjunction with an LID, the Port should look into the possibility of a public/private partnership for the commercial and the moorage. Ed noted that the onshore improvements such as the retaining wall, and the Wharf St. reconfiguration would need to be included in the scope of work to provide support for an LID.

Since Commissioner Slinden would have to leave the meeting soon, Commissioner Seitle suggested tabling further discussion until the regular meeting on December 10<sup>th</sup>. Ed noted that David Ketcham of Airside, Inc. is penciled in for that meeting's agenda to present his draft report on the airpark. Also, the State Auditor's Office is scheduled to begin its audit on Monday, December 15<sup>th</sup>, through Friday, December 19<sup>th</sup>. An entrance conference is scheduled for Monday, December 15<sup>th</sup>, at 2:00 p.m. Typically one Commissioner attends that entrance meeting.

Regarding the possibility of a different design firm, Ed asked the Board if they wanted to set up a meeting with Reid Middleton. After a brief discussion, the Board agreed Ed would collect and present the Board with a list of potential design firms and they would discuss their top preferences at the regular meeting on December 10<sup>th</sup>.

**D. Funding Status, including Rural County Economic Development Funds (RCEDF) and recent information regarding new infrastructure funding opportunities:**

Dane reported that the Council of Governments (COG) has asked for a revision of the Port's RCEDF application based on "where we're heading." Dane's suggestion is to revise the application on the project presented to the voters in November with some updated information on jobs saved, jobs created, etc., but stick with the \$8.2 million project. Dane doesn't want to scale it back, because the likelihood of obtaining funding for a small project is far less. Commissioner Tapert said that is fine, as long as the Port is very clear that the request is for "x" amount of dollars to do a project (Phase .5 or whatever) that will allow for passenger-only ferry service and relocation of the breakwater, which is part of a grander plan of a future marina. If that is not clear, the COG might not approve it this month, and delay it again. Commissioner Slinden said it might be delayed this month anyway, because Sharon Hart of the Island County Economic Development Council (ICEDC) has not been asked for input or even since the application.

The Board agreed the revised application should reflect that the Port is seeking funds for a portion of a larger project that will depend on other funding.

Commissioner Slinden said Ed or Dane could call her later if needed, but she had to leave the meeting to open her place of business. She left the meeting at 10:00 a.m.

Commissioner Seitle said he thought the estimate for Phase 1A was far too high and he thought it could be done for \$840,000. Commissioner Tapert disagreed and said \$3 million was probably pretty close. Commissioner Seitle asked Ed to take a look at his calculations, and Ed said he would.

Regarding the boat ramp, Commissioner Seitle believed they could separate the boat ramp and the upland parking lot and Phil Simon Park issues from the Phase IA marine work. He thought they could possibly use the City's contract documents for the boat ramp. Ed suggested before they do that, they should look at a good uplands improvement that includes moving Phil Simon Park, add gravel to the parking area...basically do major cosmetic improvements. But the boat ramp is the "first chunk of hardscape" the Port will do, and we don't yet know what the City's Master Plan will require. Commissioner Tapert added that the boat ramp might have to be moved – it could be in the way of a really good design; we just don't know. He added that we would want to keep the City's permits "alive" by extending them, etc. Ed agreed.

All additional discussion was non-significant and no decisions were made.

**4. EXECUTIVE SESSION:**

There was no Executive Session.

**5. ADJOURNMENT:**

The meeting was adjourned at 10:27 a.m.

Approved:

Minutes prepared by:

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Commissioner Geoff Tapert, Freeland

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Edwin S. Field, Port Manager

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Commissioner Rolf Seitle, Langley

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Commissioner Lynae Slinden, Clinton