

PORT DISTRICT OF SOUTH WHIDBEY ISLAND

Minutes of the Special Meeting
September 25, 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
Molly MacLeod-Roberts, Port Clerk
Jeff VanDerford, South Whidbey Record

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 September 25, 2008, at the Port office in Freeland, WA. As announced, the purpose of the Special Meeting was to review the inter-related technical, cost and permit issues associated with the possible removal of the abandoned wharf in Langley by Department of Natural Resources (DNR). Commissioner Seitle, President, called the meeting to order at 8:34 a.m., followed by the Pledge of Allegiance.

2. PROJECT ACTION ISSUES – Staff Report, Commissioners' Discussion:

A. DNR Proposal to Remove Hein Dock at Langley Boat Harbor:

ACTION: A Motion was made by Commissioner Slinden and seconded by Commission Seitle to not accept the Department of Natural Resources offer to remove the Hein dock.

Commissioner Slinden said Port Manager Ed Field and Port Financial Coordinator Dane Anderson researched it very well, and made a great recommendation in Dane's email dated 9/24/08 (**EXHIBIT A**). She said the Staff's recommendation to not accept the offer is the appropriate thing to do.

Commissioner Tapert asked if DNR's program was an annual program, and Dane said it is, but Lisa Kaufman, DNR Restoration Manager, has not received word from the Governor's office that it will be renewed during the next biennium. Dane said his understanding is that this is the first time the program has been in the State budget.

Commissioner Slinden said that since creosote removal is such an important issue for the Puget Sound Partnership (PSP), she thinks there will be additional funding for it in the future. She

believes future funding will be easier to find than other mitigation in the future, when the Port needs it for the Harbor expansion project.

Commissioner Tapert asked, “What is the likelihood of having permits in place for the relocation of the existing breakwater by the time they’re pulling piles?” Ed’s response was “zero.” He said it might be possible to have a “bare bones” application submitted for the relocation, but there is no way it would be approved in that timeframe. He added that Joe Callahan of GeoEngineers was quite discouraging about going in with a bare bones/space holder type of permit.

Commissioner Slinden asked if most of the creosote of the Hein dock pilings has already leached out, and Ed agreed it had. At this point, the dock is basically an attractive nuisance and a safety hazard. The bigger issue for the Washington State Department of Fish & Wildlife (WDFW) is the shading. In response to Commissioner Seitle’s question regarding the permitting process, Ed’s reasonable guess was that it would take 18 months to receive the permits for the relocation of the breakwater and Phase 1.

Commissioner Seitle said in spite of Staff’s experience and concerns, he “has difficulty believing that common sense and logic will not prevail.” Whether a structure is removed with taxpayer dollars provided by the State or with taxpayer dollars provided by the Port, he said it makes no difference with respect to the actual outcome of mitigation. Commissioner Seitle pointed out that unless the breakwater was removed and put into landfill, it would be shading the seafloor someplace in Puget Sound anyway. He believes the Port has no current standing in the matter, because the tidelands where the Hein dock is located will not transfer to the Port until January 1, 2009. City of Langley Mayor Paul Samuelson has indicated that the City would like the Hein dock removed as soon as possible. It’s important to show there is finally some action on the waterfront. Commissioner Seitle felt that the Port should “always take money when you can get it” and hope things will turn out. He believes the Port could remove the sunken tire breakwater as appropriate mitigation for the placement of the existing breakwater. Ed said his best guess is that removal of the sunken tire breakwater would probably mitigate for a lesser project like a bare bones Plan B, but it would be insufficient for a Phase 1 scope.

In response to Commissioner Seitle’s comment about the Port having no standing in the matter, Dane said DNR is comfortable with a letter from the City that authorizes the Port to go forward with the removal. DNR doesn’t require any other documentation. Dane explained that he and Ed meet with Mayor Samuelson and Director of Community Planning Larry Cort every other Tuesday. The City wants the Hein dock removed primarily for aesthetic reasons, but if removal of the dock now would hinder the marina expansion, the City will support the Port’s decision to wait. Ed said the bigger priority for the City is the marina expansion, not the removal of the old dock.

Commissioner Slinden said it is very unfortunate that the Port has to “bank this in the water” instead of taking the old wharf out and banking the mitigation credits. The Army Corps of Engineers is the agency that prevents that. Dane explained that DNR approached the Port because the Corps put the same regulatory roadblock for the brown field reclamation project in Bellingham Bay.

Commissioner Seitle said “this is all anecdotal” and things can change. He feels not accepting DNR’s offer will mean giving up \$130,000 without knowing what will happen in 18 months. Ed pointed out that is essentially what the Port of Bellingham did.

Commissioner Slinden expressed her concern is that the Port will have to look for mitigation credits at some point regardless of the size of the project at the marina (bare bones or full build out). She pointed out that for the small widening of the ramp and dock at Bush Pt., WDFW had to find mitigation at Penn Cove and it was pretty costly. The marina is a much larger project and the Port will need every bit of mitigation they can get. She doesn't want to pay top dollar for it and she doesn't want to have to go looking for it, particularly in light of the fact that the Hein dock isn't really harming anything and it won't be long before the marina project begins (and the dock can be removed then).

Ed pointed out that the Port has not yet addressed the matter of the Tribes, and he noted that their participation and approval is needed, starting with the pre-application hearing. He said removal of the derelict structure as part of the project would carry significant weight with the Tribes.

Commissioner Seitle reiterated that he felt common sense would prevail because mitigation occurs regardless of who pays for it. Dane explained that although the initial question was "who will pay for it," they've progressed beyond that and the question now is regarding sequencing and processing. Staff recommends not accepting DNR's offer because regulations will not allow the Port to use mitigation credits for a project that is not yet permitted.

Commissioner Slinden said since removing creosote throughout Puget Sound is such a significant issue, there will be other potential grants and funding available in the future from the state and federal government. This is not the only opportunity to get assistance paying for the removal, but it is one of the only opportunities to have mitigation credits. Looking for mitigation credits later could be a real challenge. Ed agreed and noted that on site mitigation would allow one blanket permit to cover the entire project, but offsite mitigation requires a whole second permit.

Commissioner Seitle said he was in favor of accepting DNR's proposal, opting for the "bird in the hand over the two birds in the bush."

Commissioner Tapert asked if the Hein dock has to be removed before moving the floating breakwater to its permanent location. Dane explained that if the Hein dock is not removed first, the area set aside for the small boat center would not be usable because the dock would be in the way. Commissioner Tapert asked if the Port had to do mitigation for all shading, and Ed said, "Yes." Dane said the Hein dock has 7,740 sq. ft. of coverage plus 84 piles for mitigation. Although that is not enough mitigation for all of Phase I, Dane said it is certainly more than what's required for the breakwater. Ed said the sunken tire reef, the piles and the shading are three different components of mitigation. He added that the piles "count double" for the surface area of chemical exposure as well as for shading. There is a lot of mitigation in the Hein dock.

Commissioner Slinden said, "Practicality trumps aesthetics in this case." Commissioner Seitle said to him, "it's today's dollars (\$133,000) that we don't need to spend vs. future dollars that we will need to spend." Commissioner Slinden believed the Port could get the funding in the future from other sources. Commissioner Tapert asked if the \$133,000 included disposal, and Ed said it did. Dane said although the removal of the Hein dock represents \$133,000 the Port could save, from a mitigation perspective the dock is worth far more than that. Replacing the amount of mitigation that the dock represents will cost a great deal more than \$133,000.

Commissioner Slinden pointed out that taxpayers would disapprove of the Port going somewhere outside of the District and paying for mitigation elsewhere.

Ed added that if the Port only does the lesser “bare bones” project, it is conceivable that the Port could sell the mitigation to an agency that needs it for their project.

Commissioner Tapert said he was bothered by the fact that if the Port rejects DNR’s offer, the soonest the Hein dock could be removed is 18 months from now. He said it is very unfortunate that the Port can’t just get the work done and retain some mitigation for it.

Commissioner Seitle said again that, “Common sense says mitigation has occurred.” Whether DNR or the Port pays for it, it is all taxpayers’ money. He feels logic and common sense will prevail in the permitting group. Dane said everyone they’ve talked to “up and down the line” has indicated that is not going to happen. Commissioner Slinden said it is pretty significant that the Port of Bellingham couldn’t pull it off with their legal team, especially since they have the biggest project in Puget Sound. Dane added that Joe Callahan of GeoEngineers has scar tissue from a project he worked on where the permits were issued for a phased project. They did the mitigation activities required for the whole project in one of the first phases. The permit expired after 5 years and they re-upped it, but the Corps came back and said, “Thanks for doing the mitigation for the whole project, but it doesn’t count now for the second phase.”

Commissioner Slinden said it is easier and less costly to come up with funding alternatives than it is to come up with mitigation alternatives. The “more rare commodity” will be mitigation credits. Commissioner Seitle said it is strictly an issue of procedure, and he is not submitting to a procedure that doesn’t make common sense.

Commissioner Tapert asked when DNR needed a response, and Dane said Kaufman needs a decision by tomorrow so she can prepare the Request for Proposal by the end of the month. She estimates the work will be done in December/January. DNR’s blanket permit runs only through February 28, 2009.

Commissioner Slinden said logic is not prevailing in this circumstance at all, and Ed agreed. She said she appreciates all of Dane’s and Ed’s work on this issue and they made a good recommendation that she endorses.

Commissioner Seitle called for a vote on the Motion. The Motion passed with a 2-1 majority, with Commissioners Tapert and Slinden voting in favor of the Motion and Commissioner Seitle voting against.

The Commission directed Dane to inform DNR that the Port will not be removing the Hein dock at this time.

3. ADJOURNMENT:

The meeting was adjourned at 9:07 a.m.

Approved:

Minutes prepared by:

Commissioner Rolf Seitle, Langley

Edwin S. Field, Port Manager

Commissioner Lynae Slinden, Clinton

Commissioner Geoff Tapert, Freeland

Exhibit A: Email dated 9/24/08 from Finan. Coord. Anderson to Commissioners