

PORT DISTRICT OF SOUTH WHIDBEY ISLAND
Minutes of the Special Meeting
July 20, 2011
Freeland, Washington

Commissioners Present: Chris Jerome (Langley), Curt Gordon (Clinton) and Geoff Tapert (Freeland)

Others Present:

Port Staff: Ed Field (Port Manager), Dane Anderson (Port Financial Manager) and Molly MacLeod-Roberts (Port Clerk); **Others:** Paul Schell & Tony Puma (Boatyard Inn Co-Owners), and Dennis Gregoire (Freeland Resident)

MEETING CALL TO ORDER: The Special Meeting of the Port District of South Whidbey Island's Board of Commissioners was convened on Wednesday, July 20, 2011, in the Port office conference room at 1804 Scott Rd. in Freeland, WA. As announced, the primary purpose of the Special Meeting was to conduct a workshop for Commission and Staff review and direction on design and permit issues for the South Whidbey Harbor Expansion Project. Possession cell-tower lease provisions from the Port Attorney will also be addressed. Although the Meeting was of course open to the public, this Special Meeting was scheduled to enable the Commission to fully review project, technical and legal details with Staff, and to address scoping, prioritization and direction for the designers and Staff, and public participation was not on the Agenda. Commissioner Jerome, President, called the Special Meeting to order at 7:00 p.m. followed by the Pledge of Allegiance.

PROJECT ACTION ISSUES

Possession Beach Waterfront Park

Commission Review of Proposed Lease from Attorney: Anderson referred the Board to their copies of the Draft Proposed Lease Agreement for construction of a cell tower and placement of an antenna system (**EXHIBIT A**). Jerome had previously provided some input and Anderson wanted to get additional input; all input will then be incorporated in the comments to Port Attorney Al Hendricks.

Commissioner Gordon referred to the following section from page 6 of the draft: *Section 3.05 Additional Terms. See Exhibit "C" attached hereto and incorporated by this reference.* Noting that Exhibit C is not attached, Gordon said he assumed it addressed the terms of additional carriers on the tower. He would like to have a discussion about that. Since the exhibit isn't attached, Gordon said he also assumes there won't be anything added about a special probationary period. Additionally, whether the provision is for land use or tower space, if the cell company is getting more money, the Port should be able to negotiate getting paid more money for the lease. Jerome said he had raised a similar point and he suspected the Port might get some push back from AT&T over the initial period. Anderson agreed.

Commissioner Tapert suggested they could define a window of 3-6 months before the lease payments begin, and Gordon said he preferred to start with no probationary period.

Anderson reported that his research of local public agencies with cell tower leases shows that most are getting about \$1,000 per month per carrier. Nationally, the range for this type of site is \$1,000 - \$1,500. Anderson's recommendation for the lease was to start at \$1,400 per month, with no probationary period. The Commission agreed. Anderson said he would send the Commissioners' input and terms back to the

Port Attorney for review. The Commission would then have another opportunity to revise the draft prior to forwarding it to AT&T/Goodman Networks.

South Whidbey Marina Expansion Project Design & Schedule Review Workshop

Commission and Staff Review of 30% Submittal for First Phase (266' + 133'): Port Operations Manager Ed Field referred the Board to their copy of the 30% submittal set prepared by Reid Middleton (**EXHIBIT B**). He noted that there has not been significant technical review of these design elements until now, and that there is a significant change recommended by staff for the lay-out. Field said he has spent a fair amount of time on the phone with Shannon Kinsella of Reid Middleton, and he's gone over the initial conceptual lay-out with Harbormaster Rick Brewer in the field. Brewer had provided a lot of comments as well. Field explained the recommended change, *"When you stand on the dock in a typical northerly breeze, it is quite apparent that the Harbor is getting significant effect off of the Nichols' pier. We know it, we've all seen it, but it doesn't make it to the modeling that is done by Texas A&M. It's an actual site condition that we need to look at and we need to fit this thing as best we can to the conditions we know. Brewer's recommendation (and I agree with him) is that we shift the breakwater about 60' to the northwest from where Kinsella has it drawn."* Brewer also recommends opening the angle of the 133' segment out from 90 degrees until it is pointed due south. Kinsella and at least one of Reid Middleton's designers will be at the Harbor on Tuesday to meet with Brewer on-site. Field said that if the Port agrees to move ahead with this, it's important to nail down a detailed layout now, so we're not still fine tuning it later. He said that Kinsella is open to the idea of looking at it, but they need to look at their evaluation and the modeling, etc. and the actual on-site conditions. Anderson said it's important to note that the Nichols' pier was completely excluded from the wind & wave studies and modeling conducted by Texas A&M, and that pier has a pretty significant effect, particularly with the fetch from the north. Field said, *"If we were doing the full build out for a 50-year or 100-year marina, I would not want to rely on the Nichols' pier to be there to provide us with wave attenuation. But what we are building (which everybody hopes is the first step in continuing expansion and improvements) with a outer timeline of 10 to 20 years – it's not at all unrealistic to expect the Nichols' pier to still be there."*

Brewer is also hoping to use a lot of the outboard space on the breakwater for the Victoria Clipper and other bigger tour boats. Field will ask Kinsella to look into the cost of making some of those rail sections removable and about putting bigger bollards in the middle for tying off on that side, etc.

Reid Middleton's Opinion of Probable Construction Costs for the 266'+133' concept is \$1,848,975. Field said at this 30% submittal point the Port needs to look at the details and technical aspects. He said, *"This is where you do your value engineering, where you do the major reviews, where you've got to catch the big issues and get the big technical aspects squared away. If you want to make a change, now is the time to make it."*

Tapert said he was really disappointed with some of the things in Reid Middleton's cost estimate, which he said was very expensive, starting with the turbidity curtain because there was "no tolerance in there." He said, *"This is a very extensive proposition and I don't care for their current specs. At minimum, I'd definitely want to see something that allowed the contractor to value engineer that thing."* Field said he didn't think the Port would have a choice; he's pretty sure that's the Best Management Practice. Tapert said, *"I don't think it's a viable spec."*

Tapert asked Paul Schell if he had a question. Schell said he wanted to make two comments. Regarding the old Hein dock, he said that he wouldn't mind if the Port left intact the two-story (superstructure) section, which is clearly a remnant of the historic waterfront. He said, *"It's a wonderful bird roost right now and a lot of natural sea life use it. I don't think it's in the way of anything that would affect the marina. As far as pulling the piling and the potential risk that has, I don't mind if a lot of those pilings stay and are just cut off a little bit."* Field reminded him that the removal is mitigation for the project.

Tapert said he would like to revisit the removal issue, because he feels the turbidity curtain for the removal is too expensive. He thinks the Port could save a ton of money with a slight modification, by instead placing 36" diameter piece of PVC pipe over each piling and then pulling it. For the new dock design, he noted there's no end wall detail, and on the 133' section, he said there is no protection to keep people from falling off and that detail would have to be worked out. Tapert said he was insulted by what he'd seen so far because it was his profession and because of the amount of money the Port had spent so far.

Gordon said the engineers understand the agencies and know what the agencies expect to see. Tapert said he also knows that when there are no tolerances in the spec, the contractor will jack up the price. He thinks the Reid Middleton spec is too rigid, and those little things add up and when you go out to bid you're over budget – he wants to nip it in the bud. He said the debris boom was okay, but not the impervious curtain. He would like to see a performance spec on that detail in lieu of what he considered a rigid specification.

Referring to the 150' concrete float, Tapert said he assumed that Reid Middleton thought it could be reused later for the connector dock for the future full build-out. Field said, "You're reading too much into it. Kinsella did NO design on that – it's simply a space holder." Gordon noted that the cost is not included, it's just drawn there because the Port asked her to include a concept for what could be added if additional money were available. Jerome said Kinsella's work on that was not as extensive as he expected. He expected to have a description of options and a rationale for them rather than just a placeholder. Field thought the question of "what is it" hadn't been answered by the Commission. Is it an attenuator? A summer dock? Reid Middleton has been looking for a used "whatever" that would work in that location, hasn't found anything. Jerome said his first response to Reid Middleton is, "*Well, you tell us. Does it need to be a wave attenuator or something else?*" Field explained, "*We told them to put it there – they didn't come up with it on their own. Whether it was for additional attenuation or additional summer space or whatever; but as far as a design direction – that didn't come from Reid Middleton.*" Jerome explained the way he understood the previous conversation as, "*We thought we might be able to get more money out of the Port Security Grant if we were able to provide more space – that was one consideration. And there was also the possibility that money would come from the City of Langley (as Puma and Schell proposed) that would allow the Port to do more than just 266'+133'. So the way I understood the direction we gave to Reid Middleton was that we were looking for some concepts and explanations of what else might be done if we have more than \$1.8 million, and how might that help us with the wave environment or capacity. But all I see is a placeholder on a diagram.*" Field said, "*Then that's partly my fault, not theirs, because I didn't understand we were going to have Reid Middleton do that much of a design exercise. My apologies.*"

Gordon said he had just wanted Reid Middleton to answer the question: If we get additional money, is it practical to affix a dock somewhere in there so we can demonstrate that there is a component situation available. He doesn't remember asking for more of a design than that. If it something the Port could do, and it looked like the money was coming, Gordon said he figured the Port could design it then.

Gordon said they are not really looking for a design; rather, the Commission is interested in determining the feasibility of an additional piece. Field said it is certainly feasible, but in order to give Kinsella better direction, he needed to know: Do we want to look at feasibility costs as a wave attenuator, or as the future 150' dock, or as a summer float? Jerome said the question to Kinsella would be, "*What could usefully be done in addition with another \$1 million potentially?*"

Paul Schell said, "*We really wanted to see whether there was an expansion possibility of having an additional transient moorage, and I think summer-only use is probably the practical limitation anyway.*"

Whether it needs to be attenuated really depends on the wave issue and the damage it might do to our buildings.” Schell reiterated that he and Puma were going to ask the City of Langley to devote \$30,000-\$40,000/year of the \$120,000/year they collect from the hotel/motel tax toward the marina expansion. He is more comfortable going after \$300,000-\$500,000 for an additional dock, especially if it meets the wave demand and the Port lets it become the Langley dock for transient moorage (and the City will benefit from it). He suggested they ask Reid Middleton what kind of expansion can be done using the \$500,000 number, and provide something that illustrates it so he and Puma can show the City Council what they would be buying.

Field noted that the Port is attempting to get a fast-track permit on the 266'+133' concept, and he suggested that since it is not realistic that the Port will get any of that additional money in the next 6 months, that they use two different tracks – one for the 266'+133' concept and one for the feasibility of additional expansion to that concept if/when funding becomes available. It would be very hard to do additional feasibility and get ready to build by January 2012 as a new concept. He explained that the fast-track permit is for 20 piles under 12” diameter, and the 266'+133' concept has fourteen 12” H-piles. Throwing in another dock adds to the number of piles and could disqualify the project from the fast-track permit. Joe Callaghan of GeoEngineers is asking for permit drawings right now, because the Corps (U.S. Army Corps of Engineers) and the Services (U.S. Fish & Wildlife Service and National Marine Fisheries Service) are saying: *You want to build something different? What do you want to build? Give us a drawing.”* Callaghan informed Field that the Port is looking at a 120- to 180-day review period with NOAA (National Oceanic and Atmospheric Administration) from the time they get the new drawings, so it would be complete by February. The Port needs to send a set of 30% drawings from Reid Middleton by early August at the absolute latest. With that, Callaghan believes he can go back to the Corps and at least get permit conditions by January. The Port could then roll the permit conditions into the bid documents and get those out the door even if the permits haven't been issued yet. Gordon said, *“So the fast track permit is totally predicated on the number of piles. How many piles do you have left? Six?”* Field explained that it is “fuzzy” because they say twenty 12” diameter piles, and we're going with fourteen 12” H-piles. Gordon said Field should ask Reid Middleton what they can do with six piles - is there any outside chance that we could still use the fast-track with an addition and build something that's usable. If Reid Middleton and GeoEngineers say no, then any addition would have to be put off for a year or so, and wouldn't be a part of this. The Commission agreed.

Gregoire said the Port needs to show the minimal drawings, and get the fast-track permit to build something now. Although he'd also like to see an addition to the concept, it would gum up the permit process.

Gordon asked if an additional dock would be cost prohibitive to do all by itself. Field explained that the biggest cost is for the design and fabrication of the structure. It would also require mobilization of a crane to set the piles, but that wouldn't be a horrendous cost.

Gordon speculated, *“Let's say we leave the 266'+133' concept alone (as-is, no addition), and we get our fast-track permits. Then, as soon as we get the permits, if we have the money – we immediately go out for a permit for the additional dock. How long would it take? Would that be another six-year permit, if we set that as a separate project?”* Field explained that Callaghan is continuing to push the big project permit – it has not been shrunk. He's just trying to get this small project permitted in the meantime. If by chance there was another piece of the big project that came ready to build as the big permit came through, it would only require a minor revision at that point. Gordon said, *“So we don't have to give up on an additional piece - if the money becomes available, since it is part of the grand scheme it might not take long to permit it. We can focus on what we need to get done by early next year, and hope the money comes through for an addition anyway.”*

Tapert added, *"In addition to removing the Hein dock, we need to remove the sunken tire reef. We want to make sure we keep that mitigation tied to the larger project, because if not – we'll lose our mitigation credits."* Gordon suggested that the additional dock should be taken off the drawings, but Reid Middleton could be asked to design something to be added as soon as we get the big permit and the funding for it, preferably some other component that could then be used in the full build-out. He suggested they should go ahead and spend some money on the preliminary design of the additional piece, so they would be ready to go as soon as the permit and funding were in hand. The Commission agreed. Field noted that Reid Middleton could certainly set it up as a separate task so the costs would be tracked separately.

Jerome summarized the discussion as follows: *"We've got some very specific engineering issues that Tapert has raised; there's the issue around refining the wave analysis and the positioning of the breakwater; and then there's separating out the additional dock as a separate project."* Gordon agreed with his summary and added that Reid Middleton would need to do preliminary feasibility and conceptual design of the additional piece.

Tony Puma asked Field, *"Are you going to bring up our issue on the eastern wave condition?"* Field explained that the analysis showed that in a 50-year return event, there is a potential for a 20% increase of wave action on storms from the southeast. Puma said, *"We donated our tidelands and have supported this whole project because there was a plan on the table that said we were going to have a marina in front of us, and that can't happen for reasons we all know. The alternative you picked has a potential for increasing waves in certain events. We paid the Corps to do a baseline flood plain elevation, and they have determined that the 100-year flood plain for our property (and yours, by the way) is about 7" over our first floor line, so in a 100-year event, we are potentially subject to flooding. So in a major event, the consequence is that we would have increased waves on our shoreline, and we would have flotsam (logs) reflected off the breakwater that would pound our 200 feet of shoreline. In constructing the newest buildings, we raised everything 3 feet above the flood plain, but the existing buildings to the north are a different story and that is what concerns me the most. I ask you to do one of two things: either have Reid Middleton improve the design to mitigate that reflection, or alternatively, armor our shoreline. The wave climate is going to change as a result of this project and I would like the Port to do something about that."*

Field said he had discussed the issue with Kinsella that afternoon. She pointed out that the identified data points used in that evaluation were still a good distance from the shoreline (offshore; not shoreline data points), so it's hard to say what the actual impact will be (less or more), and the Nichols' dock was not included. In other similar cases, Kinsella said an agreement was drawn up to address if adverse conditions occur and to monitor over a review period. Puma said, *"That's no good. That's not acceptable."*

Jerome suggested that the Port needed to revisit the wave analysis anyway, taking the Nichols' dock into account, and in that process of doing that, he thinks the Port needs to get a better understanding of what is happening near shore as well as at the data points to see if there is still an issue. Gordon asked if that could be done with another study, and Field said, *"No."* Anderson noted that the latest wave analysis cost about \$9,000. Field, *"I'm not sure they would be able to build a model that is sophisticated enough to cover the conditions we're looking at; that's a lot of what we'll be discussing when Reid Middleton comes to the Harbor next Tuesday."* Gordon explained that the Port is trying to verify the difference between the study and what is really occurring in the field.

Gordon asked for clarification regarding the Boatyard Inn's donation of the tidelands. Puma said, *"We did that because we were told it was necessary – that for the Port to have the DNR lease – in order to build the plan that you are attempting to permit – you told us that it was absolutely necessary. It was not*

a quid pro quo for protection. But now what's happened is that (the full project) went away, and now you have a geometry that is going to reflect waves directly at us, so it's worth less than nothing." Gordon said, *"In a 50-year event, there is one model that claims there is a potential for wave increase."* Anderson explained the actual sequence of events that led to the Boatyard Inn's donation of tidelands to the Port. In order to build the project, the Port must have an Aquatic Lease from DNR. An Aquatic Lease requires that if the Port does not control the uplands, the Port must obtain the approval of the uplands property owner. One part of the way to smooth that process is for the Lessee to own the tidelands. The Port did not ask for the donation; the donation was initiated by Puma and Schell. Anderson did ask them if they would consider leasing their land to the Port and was told they would not, and that was the end of the conversation. Later, Puma and Schell offered to donate their tidelands.

Puma said, *"The point is that the situation now is different than it was, and you are building a facility that has a sub-geometry that now has some unknown impact on our property and I'm concerned about it. All I want you to do is address it."* Gordon thought the Port needed to work on it so that there is no increase in potential damage to their property.

After some additional discussion about the wave environment, Anderson said, *"My sense of this issue is that this is one of those things that can't be known, and we can talk about things that can't be known until we're blue in the face but we are still not going to know them, or we can buy insurance and move ahead."*

Gordon suggested the best direction for Kinsella was to provide assurance that whatever design we end up with is not going to add any problems to the Boatyard Inn's shoreline. Schell said, *"Just so it's really clear – we support what you're doing and we want to see it get started on a fast-track next year."*

Field said he would meet with Kinsella at the Harbor on Tuesday and go over wave and technical issues, and alignment issues, and possibly direct her to do another wave modeling if she thinks it would help resolve the issue. Jerome said the question to Kinsella is: *"How can we better understand this? Especially given that we're considering moving the breakwater 60' as the Harbormaster has suggested, because he believes it will make a material difference to the wave environment. The Nichols' dock should also be considered."* Gordon said, *"I'll believe my trusted, well paid engineers and go with them. It doesn't require an additional study unless Kinsella believes that's the only way we can figure this out."*

Field said they would need to hold another special meeting in August to review the results from Reid Middleton, get a more detailed response to the wave analysis and decide whether or not to send the 266'+133' concept out to permit. The Commissioners agreed.

Funding Update: No new information from FEMA on the Port Security Grant. Anderson said he had revised the models to lower the capital cost of the project cost down to \$1.85 million and add in the boarding float project. He explained that in the model he had assumed that the Port Security Grant funding did not come in on time. In order to maintain a cash balance of over \$200,000 for the first few years, the Port would have to bond about \$500,000, which would mean an annual payment of \$40,000 for 20 years. The bottom line is: It's still buildable. Gordon emphasized that the \$1.85 million is all that the Port can afford to build right now. Schell said that that when they ask the City for a portion of the hotel/motel lodging tax, it would be helpful if the Port could provide an estimate for the cost of an additional moorage dock. Schell said they should also pursue private/public partnerships with leases, etc. Gordon explained that DNR has given a great deal of push-back on the issue of long-term leases; DNR doesn't like them.

Design Contract Status Update for Reid Middleton: The original contract in 2010 was for \$285,000. The design work and plan prep to get the Port up to the start of the 266'+133' concept was approximately \$144,000. The feasibility on the 266'+133' concept and current ongoing efforts has cost about \$20,000

so far, which leaves about \$100,000 in the budget. Reid Middleton's fee estimate for taking the 266'+133' breakwater reinstallation to 90%, through final bid documents and bid services (not construction) is \$115,000. Since that estimate depends on the scope of the work and the scope of the project, Field agrees with Kinsella's recommendation that the Port continues to proceed through final design utilizing the remaining budget of the current contract. She will set up two separate tasks for each submittal – one for the work associated with the 133' section, and one for 266' section. Field said Reid Middleton is doing a good job so far and noted that they brought in the ramp/float design considerably under budget by re-using documents as much as possible.

Permit Status Update: Most of the update was provided earlier in the evening. Field said Callaghan of GeoEngineers is working hard – it's just challenging trying to get anything out of the agencies. If the Port can get him a fairly simple plan set, Callaghan should be able to get a permit in six months.

Commission Direction to Proceed Toward Bidding in January 2012:

- Next deliverable = 90% Review Set in November 2011
- Preliminary Direction for Packaging with Ramp Floats and (limited) Uplands Improvements
- Final Direction on Bid Package Contents TBD based on Permit and/or Port Security Grant status

Field said, "At this point, I would suggest that we keep Kinsella going on the non-controversial aspects such as design detail work and prep of an uplands plan." On Monday 7/18, Field said that he spent a fair amount of time with Larry Kwarsik and Jeff Arango from the City of Langley to discuss placing a construction office up on the hill in front of the trailer parking at the Harbor, which would turn into a temporary mid-term Harbormaster office. They said they would respond with the process needed to get that permitted, so Field would like to get Kinsella going on that. There are a lot of details that Reid Middleton could continue to be working on. The Commission agreed.

ADJOURNMENT: The Special Meeting was adjourned at 8:50 p.m.

Approved:


Minutes prepared by:



Commissioner Chris Jerome, Langley



Edwin S. Field, Port Manager



Commissioner Curt Gordon, Clinton



Commissioner Geoff Tapert, Freeland

- Exhibit A: Draft Property Lease Agreement for construction and placement of cell tower and antenna system
- Exhibit B: Reid Middleton 30% Submittal (266'+ 133' Concept)