

**THE PORT DISTRICT OF SOUTH WHIDBEY ISLAND
SPECIAL MEETING**

Held at Port Office Conference Room, 1804 Scott Rd, Freeland, WA
Thursday, October 3, 2013 at 2:00 p.m.

AGENDA

CALL TO ORDER and PLEDGE OF ALLEGIANCE

SOUTH WHIDBEY HARBOR
Phase 1 Schedule and Cost Update

ADJOURNMENT (Approximately 4:00 p.m.)

PORT DISTRICT OF SOUTH WHIDBEY ISLAND

Minutes of the Special Meeting

October 3, 2013

Freeland, Washington

Commissioners Present: Curt Gordon (Clinton) and Chris Jerome (Langley) **Absent:** Dennis Gregoire (Freeland)

Others Present

Port Staff: Ed Field (Port Operations Manager), Angi Mozer (Port Finance Manager), and Molly MacLeod-Roberts (Port Clerk) **Others:** Shannon Kinsella (Reid Middleton) and Justin Burnett (South Whidbey Record)

MEETING CALL TO ORDER: The Special Meeting of the Port District of South Whidbey Island's Board of Commissioners was convened on Thursday, October 3, 2013, in the Port office conference room at 1804 Scott Rd. in Freeland, WA. As announced, the primary purpose of the Special Meeting was for Commission and Staff review, discussion and direction on construction schedule and cost issues associated with the current South Whidbey Harbor construction project. Although the Meeting was of course open to the public, it was scheduled primarily for Commission and Staff consideration of those specific issues, and public participation was not on the Agenda.

Commissioner Curt Gordon, President, called the Special Meeting to order at 2:00 p.m., followed by the Pledge of Allegiance.

SOUTH WHIDBEY HARBOR

Phase Schedule and Cost Update: Port Operations Manager Ed Field reported that several surprises and issues have come up in the last two weeks with work on the water line starting and mooring lines/hardware now that pile driving is complete. Field had prepared a draft spreadsheet (**EXHIBIT A**) listing the three previously approved change orders and the associated cost estimates, as well as the current Pending Issues and associated cost estimates.

Change Order #1 was to revise rigging to reduce chafing for a Cost Estimate of \$12,989.65. That work has been done. Change Order #2 was to epoxy anchor bolts for rub board to replace unusable bolts for a Cost Estimate total of \$3,008.11. That work has also been done. Change Order #3 was for repairs and resurfacing using Dynacrete to improve dock surface. The Cost Estimate totals \$3,674.06 and that work is underway, with the materials purchased but not yet applied. Total amount of change orders approved to date is \$19,671.82.

The spreadsheet identified the following Pending Issues and Cost Estimates: Waterline \$25,461.45, Pile Driving \$28,363.45, Mooring Lines \$21,544.34 and Puget Sound Energy Work \$7,927.98. The total for the Pending Issues is \$83,297.22.

Waterline: Field said the crew working on the water line is holding for direction, but if they can maintain progress at the current rate it could be done by the middle of next week. He explained that the initial connection areas were a lot different and in poorer condition than expected in terms of the thrust blocks and the concrete that had to be repaired. The existing "crooked" hydrant in front of the Drake property started moving last Friday and the pipe started separating, leaving it on the verge of blowing out of the ground. At that point, they stopped working on it, repacked and secured it for the weekend and then the City kept an eye on it. Field said there was a fair amount of extra work involved with that. Also, as Mike Carlson Enterprises started into the main waterline trench, they started pulling out logs, with the largest one so far measuring 26 feet long and 2½ feet in diameter. There have been several 5' and 10' logs as well that are between 2' and 3' in diameter and a large amount of wood debris, obstructions, etc. Then, within the first 50-100 feet, the workers noticed the material they were digging out had a hydrocarbon/petroleum type smell to it. That soil cannot be reused and cannot be disposed of at a normal landfill. The contractor separated that soil and the Port's soils engineer was asked to do a quick sample

and characterization testing so it can be disposed of properly. The results indicate that one pile is a Category 4 and must be disposed of properly, as at a facility in Everett. The rest was a lower Category 2, which is a lesser problem but it can't go back in the trench so it will have to be disposed of as well. All of that material was stockpiled and covered and the contractor continued with the pipe excavation in front of the boat ramp. As they worked, they once again noticed the same smell and they discovered that below the grade of our waterline pipe there were some sands that had a fair amount of diesel smell to them. Field explained that since those sands are *below* our pipe, they feel they can just work above it and stay out of the majority of it. Since it's down the City of Langley's right-of-way, the City is the owner of the property. The City subsequently agreed with the Port's approach to dig out no more than absolutely necessary to get the pipe through there.

Field said the only question now is whether or not the pipe in that area needs to be encased with a controlled density fill/light duty concrete as initially discussed. Wayne Haefele (the engineer of record for the waterline) has provided his opinion that encasement is not necessary. The Commission agreed to go ahead without encasement.

Regarding the requests submitted by Mike Carlson Enterprises about the size of the thrust block, Gordon disagreed that it is an abnormal size – it is adequate and the contractor should have expected that. He doesn't think the Port should make any provision for the fact that the thrust block is there. As a contractor himself, he noted that when digging around a hydrant or any structure you always have to anticipate thrust and be very careful not to dislodge or unload the backside of any of those devices and Mike Carlson should have known that going in. He doesn't believe the contractor needs any compensation for that either.

In terms of the logs, Gordon said the contract documents Field sent him were only concerning potable water on the docks – there was no information or specifications for the actual on-shore waterline, so he doesn't know if there were any provisions made for structures and obstructions. Shannon Kinsella of Reid Middleton said that in the General Conditions, they used the EJCDC template (Engineers Joint Contract Document Committee) which covers sub-surface conditions and there is language in Section 4 that discusses what the contractor can reasonably rely on, the material, the information, the surveys, etc., but it also says the contractor has the right to notify the owner and get a response if they encounter things that are materially different than what they expect. Gordon agreed that 25' logs and soils that have petroleum are unexpected conditions. He said, *"So there are legitimate requests, but then there's also piling on."*

Field said the first item listed under Waterline was the MCE's 9/20/13 proposal of \$8,616.45 for additional time and engineering for pipe type and scope revision. It includes a \$4,000 credit for going from the ductile iron pipe to the C-900 pipe and a \$4,800 add for doing the live hydrant tap that was not expected. He said those are raw numbers and he has not gotten into negotiation. The work is underway.

The second item is the Inspection Costs of \$12,345 for Wayne Haefele to serve as the engineer of record to fulfill the City's requirements. The work is underway.

On 9/30/13, Mike Carlson submitted a Changed Condition Notice specifically addressing the waterline layout issues, old steel piping, the old fuel lines encountered, details on the point of connection issues and the concrete, the blocking they found at the point of connection, the unstable existing water main and the logs in the trench zone. Field said he acknowledged receipt of the Notice and that the conditions were generally as observed, but he did not specifically agree to any costs. MCE also submitted a Changed Condition Notice on the petroleum soils. Mike Carlson is working on cost estimates for all of the issues identified in those Notices. The final item under Waterline is the cost for soil testing due to unexpected conditions and that total is \$4,500.

Pile Driving: The first two items (Geotechnical Inspections at a cost of \$6,700 and GeoEngineers' Marine Mammal Monitoring at a cost of \$11,500) are the result of the extended schedule. Field explained that because the contractor took an extremely long time to get the piles in the ground, we had to be out there doing geotechnical inspections and marine mammal monitoring for a much longer period than the expected 3-4 days. The last item is Pile Cut-Off at an estimated cost of \$10,163.45. The final pile at the entrance had a technical refusal before the 40' embed and needs to be cut off once confirmation is received as to how much needs to be removed. Kinsella explained that they can only cut off 1' 10" or it gets too close to the tab where the anchor fits. Reid Middleton has asked the contractor to verify exactly what elevation, mud line and top of piling is in that area. That item will not be approved until the Commission has more data.

Mooring Lines: In Neptune Marine's 9/29 email, Jay Tomasko submitted questions regarding the assembly of the various rigging pieces and indicated that some of them did not fit together. The three items listed (Extra 2.25" shackle, Connecting link conflict, and Shackle pin conflict) are in being evaluated. The cost estimates are \$18,500.74 for the connecting link conflict and \$3,043.60 for the shackle pin conflict. Kinsella explained that Neptune had routed out the 14 links and got them in. Gordon said to Field, "*So does that mean this change has been approved?*" Field said they would have had to stop them – to stop the rig. Gordon asked, "*So, does that mean that you approved this change at this price?*" Field replied, "*A change has been approved. Yes.*"

Gordon said his concern is whether Reid Middleton is acting as the Port's advocate and asked Kinsella if there is push back to the contractor to keep these things reasonable. She said there is and added that it is definitely Reid Middleton's position to represent the Port and the Port's interest, but in a fair and consistent manner with the contractor. He asked if they were involved in the \$18,000 plan revision and Kinsella said they were and felt it was important for Neptune to keep going and go forward with the die cut. She thinks there is still space within the next few days to work on a credit for the shackles they're not using, etc. Kinsella confirmed that Field was able to consult with her and have Reid Middleton assess the costs as reasonable.

Jerome asked about the additional monitoring costs due to the extended schedule for pile driving. Field explained that in hindsight the Port should have put a limit on the drive time that was expected. Jerome asked if there was anything in the contract, and Gordon said there was not but there should have been. In his experience, there is always a limit on inspection time in the contract.

Regarding the waterline, Gordon said he had reviewed the history somewhat, and had interviewed some local engineers, including former engineers for the City. He also had a long conversation with Jack Seipel of Reid Middleton. Regardless of the history, there are two things that stand out for Gordon. He explained, "*The situation we're in now is that we have an outside engineer. And that very advocacy thing I was talking about that Kinsella is able to provide for us with the mooring line changes does not exist with the waterline changes. We basically have an engineer the contractor hired but we're having to pay them, and the contractor has hired the inspector and we're having to pay them. And that puts us in a really bad position when things come up because we're not there. I'm really uncomfortable with the fact that we were put in a position where we had to have someone other than Reid Middleton as our engineer of record for that waterline extension.*" Gordon had also looked over Reid Middleton's invoices and noted that Seipel had indicated he had submitted 8 different plans to the City of Langley and the Port paid about \$5,000 for that work. Another local contractor at a nearby project did similar work for a total of \$5,000. So he thinks they need to really look at the \$12,000 bill for design and inspection, break it down and get some advice on it. To him, it jumps out as "piling on."

Gordon has worked on waterlines for various municipalities and water districts for South Whidbey, so he is very familiar with them. He explained that what occurs is that all water systems file a plan with the Department of Health (DOH). So the City couldn't even suggest having a water main extension across the property in front of the Harbor without having filed it at the DOH. Additionally, every water system

or municipality has a developer's agreement. When the Port goes for a building permit, the Port is considered a developer. It should have been crystal clear that there would be a water main extension across the front of the property as part of the developer's agreement that must be on file with the DOH. He could not find anything in the contract documents that refers to the 8" water main. He thinks someone really missed something, because it should have been there. Somebody had either the City or the Port should have said "Hey, is this all we're supposed to do?" Because it came on later and had to be drafted over time, Gordon said it feels like the design part of it was handed to the contractor and it makes him nervous because now the contractor's engineer is the engineer of record and we're in the midst of another \$20,000 worth of change orders minimum, plus another \$10,000 that aren't his fault (soil contamination). Adding the pending change orders of \$83,000 to the previous approved orders puts the project \$100,000 over budget. The 10% contingency is \$155,000. He said, *"So we're kind of going down a path here, and we've still got some blank spots. And I have some serious concerns about the preliminary engineering work that was done to this. It left Field in a tough and contentious position with the City."* Kinsella said that during the period of preliminary engineering, Reid Middleton met frequently with the City and the Fire Marshall to incorporate requirements. Throughout the process they received piecemeal feedback from the City that would come trickling in, and Reid Middleton ended up submitting 8 different iterations trying to address and meet their requirements, and each one took time going back & forth.

Field said when they put in the 40% submittal to the City, it came back with no comments on the water line. Gordon said it seems like the City was aware that a water main extension was required but they did not communicate that to the Port's engineer. Jerome asked why after 8 iterations the Port still needs another \$12,000 worth of work on the drawings. Field explained that most of that is for onsite inspection and testing. The engineer of record will basically be acting as an onsite inspector on behalf of the City. Jerome asked, *"So we should have expected that anyway?"* Field said, *"Apparently it's typical for South Whidbey agencies, yes. And I didn't know that."* Gordon said it actually isn't typical for South Whidbey agencies to have an onsite inspector 100% of the time. It's very rare. The local engineers send someone out once or twice a day and for the final tests. Based on work he has done previously in the City, he believes after reading the conditions required by the City, the position they took was very, very over stringent.

Gordon said he would have been more comfortable if Reid Middleton had been our engineer of record, but that apparently didn't work for the City. He added, *"But we need to have an advocate down there so there's no piling on by the contractor."* He asked Kinsella to be sure to do that for the Port.

Gordon asked what Commission action was needed today. Field said, *"Acknowledgement that subject to negotiation, proceeding with the rigging items is authorized. The inspection costs have already been expended, unavoidably. We'll work on the pile cut-off number, the initial contractor cost and the upcoming cost, but acknowledgment and direction to proceed subject to final negotiations."* Gordon noted that the pile cut-off could wait until the regular meeting on October 8th and asked what else could wait until that meeting. Field said GeoEngineers had not submitted their invoice yet for the marine mammal monitoring. Gordon said that's not really negotiable. It is what it is, and Field has to be approved to do that. He continued, *"But like I said; the items you were taking about from Mike Carlson – I think there are some items that are not legitimate there. Probably not big items, but complaining about a thrust block when you were going to plug into a dead end of a 100 psi, 8" water main? Any water contractor would have been predicted a huge thrust block. And if he did his investigation of how many valves are in the area, he would have known he had to shut everybody down in order to do that. Yet he put those on as if they were a change of conditions. That is not a change of conditions."* He told Field, *"If you don't have an advocate that can help with you that, we need to figure that out. Obviously that shouldn't be my job."*

Gordon asked if there are more ongoing engineering costs that haven't been plugged into the cost overrun yet. Kinsella said there are none from Reid Middleton's standpoint that she could think of. Gordon

would like Reid Middleton to provide a field-oriented civil engineer to help advocate/negotiate with the contractor, and Kinsella agreed they would work with the Port.

Field said they are trying to take measures to reduce upcoming costs, such as the electrical duct bank. Originally, it was specified as four 4" conduits and two 2" conduits (basically 2 occupied and 4 spare for future phases). He has given direction to back it down to one 4" for this project and one 4" spare for a future phase and a couple of the communication lines. That will shrink the size of the trench and make it easier to get it over everything. Gordon thought that was very wise.

Without the change orders approved at this time, Field reported that Mike Carlson has put in a fairly aggressive pay application for the waterline work, and Jay Tomasko of Neptune Marine has put in an even more aggressive pay application for the piling work. Field said he was trying to work on a way to enable them to get paid a little more promptly, and thought maybe it could be done with two separate checks: one for the work that is clearly going to be done by the cut-off date and one for the work that will be done in the next 10 days or so. Gordon said that technically the contractor can only bill the Port for work that has been completed and the County can only pay off of an invoice. Port Clerk Molly MacLeod-Roberts confirmed that a second check run was possible if the Commission approved the voucher(s) at the Special Meeting on October 15th (the week after the Regular meeting).

Waterline: The Commission confirmed approval of the Inspection costs and the Contaminated Soil testing (\$12,345 and \$4,500, respectively). Field was directed to negotiate the Contractor costs.


Pile driving: The Commission confirmed approval of the Geotech inspections and Marine mammal monitoring, and those vouchers (estimated total of \$18,200) will be submitted for authorization of payment at the Regular meeting.

Mooring lines: As discussed, the Connecting link conflict and Shackle pin conflict items were already approved (total of \$21,544.34). Kinsella said Reid Middleton will continue to evaluate the cost and work on getting the Port a credit.

Regarding the construction schedule, Field said most of the onshore work should be done in the next 2-3 weeks. Offshore, Neptune Marine hopes to do the breakwater separation next week and then the rigging. Once the rigging is in place, they will leave for a week to ten days to work on a different job before returning and seeing how the breakwater performs.

ADJOURNMENT: The Special Meeting was adjourned at 3:20 p.m.

Approved:



Commissioner Curt Gordon, Clinton

ABSENT

Commissioner Dennis Gregoire, Freeland

 *ngm (approved via teleconference/Skype)*

Commissioner Chris Jerome, Langley

Minutes reviewed by:



Edwin S. Field, Port Operations Manager

Exhibit A: Draft Pending Issues Spreadsheet