

THE PORT DISTRICT OF SOUTH WHIDBEY ISLAND
WORKSHOP and SPECIAL MEETING
Held at Port Office Conference Room, 1804 Scott Rd, Freeland, WA
Wednesday, September 26, 2012 at 6:30 p.m.

AGENDA

WORKSHOP (6:00 – 6:30 P.M.): Informal discussion of recent correspondence and project status

SPECIAL MEETING CALL TO ORDER (6:30 PM) and PLEDGE OF ALLEGIANCE

ACTION ISSUES**

Possession Beach Waterfront Park

1. Proposed AT&T Lease: Review of Draft Lease Provisions

Economic Development Grants

1. Resolution No. 12-07: Agreements for Port Grant Funding, as approved at Sept. 11 Regular Meeting

South Whidbey Harbor

1. Phase 1 Project:
 - A. Permitting updates and cumulative schedule impact
 - B. Port Security Grant information
2. Harbor Operational Staffing

2013 Budget

1. Initial Review of Draft Preliminary Budget for 2013

ADJOURNMENT

PORT DISTRICT OF SOUTH WHIDBEY ISLAND

Minutes of the Special Meeting

September 26, 2012

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:** Marcia Monma (Clinton)

MEETING CALL TO ORDER: The Special Meeting (in workshop format) of the Port District of South Whidbey Island's Board of Commissioners was convened on Wednesday, September 26, 2012, 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 the topics listed on the Agenda.

After informal discussion of recent events and correspondence, Commissioner Gordon, President, called the Special Meeting to order at 6:40 p.m., followed by the Pledge of Allegiance.

PROJECT ACTION ISSUES

Possession Beach Waterfront Park

1. Proposed AT&T Lease – Review of Draft Lease Provisions: Port Finance Manager Angi Mozer referred the Commission to their copies of the revised AT&T (now Cingular Wireless) Property Lease Agreement (**EXHIBIT A**). Port Attorney Brad Cattle of Anderson Hunter had reviewed the Agreement at her request, and he had called attention to the following areas (with all other edits appearing acceptable):

- Section 2.02(b): ~~If the Lessee enters and remains on the Property in violation of this provision or in violation of any other provision of this Agreement, the Lessee shall pay the Lessor liquidated damages in the amount of \$300 for each violation. Each day shall constitute a separate violation.~~ The attorney said, *"The deletion in that Section is a "business" decision as opposed to a "legal" decision. The purpose behind the language that was inserted and is now deleted was to give Cingular an incentive to get in and out of the property when it has to do work. It is up to the Port whether it wants that incentive. A counterproposal might be to lower the amount."* The Commission agreed to accept the change proposed by Cingular.
- Section 2.02(f): ~~If the Lessor's employees or agents remain on the Property, the Lessee shall pay the Lessor for the time the employees or agents remain on the Property and for the time needed for the employee of the Lessor to open the gate to the Property. The time of the Lessor's employees shall be charged at the hourly rate equal to 3.75% of the then current monthly Rent (as that term is hereinafter defined) or seventy five dollars (\$75.00), whichever is higher. The Lessee shall pay these costs within thirty (30) days after written notice by the Lessor of the amount of such costs.~~ The attorney explained, *"This provision was meant to compensate the Port where it felt its personnel needed to be on-site while Cingular was on-site. Cingular objects because it doesn't want to write a 'blank check.' This is a 'business' decision. Does the Port feel it needs reimbursement? Is it likely that Port personnel will have to be on site as a result of Cingular? If the Port does not feel reimbursement is necessary, then the deletion shouldn't matter. If Port personnel will need to go to the site because of Cingular and would not otherwise expend that manpower, reimbursement is not unreasonable. A compromise might be to put some controls on the Port's use of its personnel by describing the circumstances in which it would be entitled to reimbursement."* Mozer suggested the Port could offer a counterproposal that if Port presence is required for more than 4 total hours per month, we can request for reimbursement at a rate of \$40 per hour per person, to a maximum of 20 hours per month. Jerome suggested phrasing the counterproposal

as: *"If Port presence is required by the Lessee or for regulatory reasons."* He also suggested the rate should be increased to \$50 per hour, and the actual language could be written as: *"...if the Lessor's employees or agents are required by the Lessee or for regulatory purposes to remain on the property, then the rate should be (the 3.75% language, etc.) or whatever are the actual costs, whichever is higher."* That way, if the Port's agent was an expensive consultant, the Port would be fully reimbursed. Gordon agreed with Jerome's suggested counterproposal and the Commission directed Mozer to make the changes as discussed.

- Section 3.03: ~~Prior to the commencement of each Renewal Term, Lessee shall provide to Lessor a copy of an ERP Study verifying the continued compliance of the Facility with applicable FCC regulations.~~ (ERP is Effective Radiated Power) Cingular's explanation for the deletion was that Section 5.03 already address compliance and remedies with regard to FCC regulations. The attorney said it is basically up to the Port and technical expertise to figure out whether or not the Port needs an ERP study. Mozer's research indicates that is an issue if the tower is low to the ground and pedestrians are walking by, but with a 100' tower or higher it should not be an issue at all.

Jerome's inclination was "if it's okay with the FCC, then it's okay for us." But he added that if it was still a concern, perhaps the Port could respond to Cingular by explaining the concern we have is for low antennae and trail users, and ask what assurance Cingular can provide that Section 5.03 covers that. Gordon noted that this Section is under "Right to Extend" and he wanted to know if the Port could assume that Cingular would do an initial ERP. He suggested the Port should request at least an initial ERP under Section 5.03, and that should be sufficient. The Commission agreed and directed Mozer to respond as discussed.

- Section 3.02(a): ~~Additional Rent. The Lessee shall pay, as Additional Rent, all reasonable costs and expenses, including reasonable legal and engineering costs, incurred by the Lessor related to the review, coordination, inspection or supervision of the activities undertaken through the authority granted in this Agreement. The time of the Lessor's employees shall be charged at the hourly rate equal to 3.75% of the then current monthly rent or seventy five dollars (\$75.00), whichever is higher. The Lessee shall pay the Additional Rent within thirty (30) days after receipt of written notice by the Lessor of the amount of such Additional Rent, together with detailed invoices therefore.~~ The attorney's response was, *"Again, this is a business matter. The Additional Rent was intended to compensate the Port for its expenses related to and caused by Cingular's Lease."* Jerome proposed using the same construction used for the employees and agents in Section 2.02(f), where if the Port is required by the Lessee or by regulatory agencies, then we need to be compensated for it. After a brief discussion, he suggested they also make a comment to Cingular indicating that the Port's intent here is to make sure we're compensated for reasonable expenses. Gordon agreed and Mozer said she would prepare that replacement language as directed.

- Section 4.02: (4) ~~Lessee's self-insurance obligation for Lessor shall not extend to claims for punitive damages, exemplary damages, or gross negligence arising out of or related to the acts, omissions or breach of this Agreement by Lessor, its employees, agents or independent contractors; and (5) such obligation shall not apply when the claim or liability arises from the negligent or intentional act or omission of Lessor, its employees, agents, or independent contractors.~~ The attorney's recommendation is that in (4) "gross negligence" be deleted and in (5) "negligent" be deleted. His reasoning is this: These provisions are exclusions to what Cingular has to cover if it chooses to self-insure instead of purchasing conventional insurance so if it chooses to self-insure, it should provide the same coverage. The Commission directed Mozer to contact Enduris (risk management pool for government entities) to determine if the Port's policy provides that coverage, and if it doesn't, ask Enduris if it is reasonable to request that AT&T cover it.

Port Operations Manager Ed Field noted that after Clyde Monma's Letter to the Editor in today's South Whidbey Record voicing opposition to the Port allowing the cell tower, the Port office received 3 phone calls from local residents. Paulette Becker and Louise Stanley strongly opposed the cell tower and Neil Colburn was strongly in favor.

Economic Development Grants

1. Resolution No. 12-07: Agreements for Port Grant Funding as approved at September 11 Regular Meeting (**EXHIBIT B**):

ACTION: A Motion was made by Jerome and seconded by Gordon to approve Resolution No. 12-07, Establishing Agreements for Port Grant Funding In Support of Economic Development with Clinton Chamber of Commerce, Whidbey Island Arts Council, South Whidbey Tilth and Freeland Chamber of Commerce. The Motion passed unanimously.

South Whidbey Harbor

1. Phase 1 Project

A. Permitting updates and cumulative schedule impact: Regarding updates, Field said there was “the good, bad and ugly” to report. The good news was that last week the Port received the required written Coastal Zone Management federal consistency determinations by the Department of Ecology (DOE). The bad news is that during his Plan Review, he discovered that the as-built Reid Middleton used is not accurate. Field explained, *“They were assuming the Port had a 3” water line running out underneath the dock and they were just tapping into it for the new project. In fact, we have a 2” water line and a 1” water line that both run out underneath the dock with various hose taps off them, so it’s a bit different than Reid Middleton was expecting. I’ve given them the actual as-built information and they are now looking at it to see whether there is adequate capacity, flow, etc. for serving it. This slows us down on design & permitting, and has the potential for a healthy price tag as well.”*

Field continued, *“The ugly news is the Design Review Board and the lighting situation. It now appears that the Port will need to go all the way back through the Hearing Examiner process and the DOE conditional use process, unless the City of Langley changes its code. It’s very frustrating because there are public safety issues involved with this lighting situation.”* Jerome suggested it would be helpful to find out where and why the 3’ lighting requirement in the code came to be. Gordon said he would talk to Jack Lynch to get that information. Field noted that if the Port has to go through the building variance process it could stretch out for another 3-6 months. He explained that the lights on the existing dock can be replaced in kind under the Port’s existing Operating & Maintenance permits. The Port was proposing to replace all those lights and the decrepit lights on the breakwater with the same, uniform, 12’-14’ nice new fixtures. At this point, if the Port has to go through the variance process, the Port would delete ALL lighting from the bid package, leave the lights on the existing structure for now and “fight the battle” via the variance process, and then if the 3’ lights are required it would be done later under a separate contract.

Since the Port still does not have the required permits from either the City of Langley or the U.S. Army Corps of Engineers and given the design issues, lack of permit comments or design conditions, etc., Field has asked Shannon Kinsella of Reid Middleton to work with him on coming up with a more realistic schedule as opposed to a very optimistic schedule on when the project can get out to bid. Gordon asked what the current “very optimistic” schedule and Field said late October/early November.

B. Port Security Grant information: Mozer had prepared a Summary of the phone conversation she had with Mary Anne Chapman at Marine Exchange (the Port’s fiduciary agent) on September 19, 2012 (**EXHIBIT C**). She referred the Board to their copies of the Summary and the accompanying spreadsheet with detailed depreciation calculations (**EXHIBIT D**).

She reviewed the following high level notes from the Summary:

- The Port of South Whidbey is responsible to the federal government (FEMA) for real property and equipment (i.e. the 133’ breakwater and the rescue boats, respectively) for the lifetime of that property, but with an option to purchase property and equipment at a mutually agreed upon depreciated value in the future.

- There is little to no chance that the Port will need to repay grant funds, based on several reasons provided by Chapman (and described within the body of the Summary).
- As written, the signed documentation between the Port and Marine Exchange dictates that the dock be used as moorage for the response vessels funded by the grant without charge.

Based on the summary provided, the Commission agreed to go ahead with the Port Security Grant.

Field said there was one more item regarding design and permitting. He and Mozer met with Don Olmsted at the Department of Natural Resources regarding lease issues. Part of the discussion involved what activities are allowed over water (water dependent vs. non-water dependent), and the Harbormaster office is very water dependent. Field said, *“So we could potentially put the Harbormaster office out at the very end of the fixed pier, and the supplies (which are non-water dependent) could be stored on a 2nd story built above the bathroom...and we’re self-sufficient and no longer need to rent space from anyone.”*

2. Harbor Operational Staffing: Field said his efforts to find a consultant to look at staffing was unsuccessful. His initial discussions with each of the Commissioners indicate that all 3 think the Port should be cutting back on Staff, but Staff disagrees. At the Board’s request, Staff outlined the various duties that Harbormaster Rick Brewer fulfilled prior to his death and explained which duties were not currently being carried out without someone filling that position. Commission and Staff discussed the 2012 budget and where the Harbor is at for expenses and revenues for the year to date. Field suggested advertising for the Harbormaster position at ¾ time and hire additional dockhands at a lower pay to compensate for the ¼ time the Harbormaster would not be there. After additional discussion, the Commission directed Field to prepare a job description for their review, working with Mozer regarding salary, etc. and the impact on the budget.

2013 Budget

1. Initial Review of Draft Preliminary Budget for 2013: Mozer had prepared the Draft Preliminary Budget for 2013 (**EXHIBIT E**). Due to the length of the meeting and lateness of the hour, Gordon said he would prefer they not conduct a detailed review of the budget at this time. He asked Mozer to simply highlight the major changes from last year’s budget. She noted that the grant funding budgets for FEMA and RCEDF were unchanged, but the RCO Boat Ramp Boarding Floats had been reduced to reflect the actual contractor bid. Mozer pointed out that only the expense for the Possession Ramp Design and Engineering was in the draft; the RCO grant funding for it was not. The Commission agreed that both the funding and the expense should be included and if the Port doesn’t get the funding, both the revenue and the expense will be pulled.

Jerome recalled that the Commission had previously discussed developing a capital plan listing all the facilities and their needs and some sort of schedule to pay for them. It would be very helpful in developing the budget. Gordon noted that the first step would be to have someone prepare a Capital Facilities Inventory. Field noted that Enduris (the Port’s insurer) does have an asset listing of the Port’s facilities and improvements. Mozer was tasked with reviewing that listing with Field to identify the needs and prioritizing them and begin developing the Capital Facilities Inventory.

Regarding payroll increases in 2013 (requested by the Operations Manager and the Port Clerk); Gordon said he was not in favor of giving any raises based on cost of living. However, he was strongly in favor of justifiable merit increases. He noted that the Commission would need to evaluate the performance of the Finance Manager during an Executive Session at the regular October meeting. After the Executive Session, the Commission would then discuss compensation in open session. Jerome asked Staff to provide the Commission with the personnel costs (wages, benefits, etc.) laid out for all of the Port’s employees so they can look at the total impact on the budget. Staff was also directed to look for comparables in WPPA’s annual Personnel and Benefits Survey.


Field noted that the draft budget assumes the Port will do about 90% of the construction on the South Whidbey Harbor Phase 1 project in 2013, based on bidding late this year.

Going forward, the Commission will have at least two more opportunities to discuss the budget: at the during the regular October meeting and once again at a special meeting (tentatively Tuesday, October 30th). During the late October special meeting, the Commission will approve the Preliminary Budget and it will be published as required, with a Public Hearing scheduled for 7 p.m. on November 13th (immediately prior to the regular meeting). Following the Hearing, the Commission will adopt the Final 2013 Budget. Gordon noted that if there are any significant changes (such as notification from FEMA regarding funding, etc.) after the Hearing, the Port still has until November 30th to approve and adopt the final budget for submittal to the County.

Jerome pointed out that the Port exceeds the budget for Tourism & Business Development sponsorships. He suggested they should increase the budget so it is closer to the actual amount awarded each year (\$20,000), and announce to all applicants that the Port will stick to that budget in 2013. Gordon agreed, and asked if it was necessary to continue splitting it between Admin and Capital – he believed it could all go under Admin since it is simply a grant. Staff agreed, but said they would get confirmation from the State Auditor. The Commission agreed to budget \$20,000 for Sponsorships, with \$12,000 available at the March meeting and \$8,000 at the September meeting, and stated their understanding that the total budget will NOT be exceeded.

ADJOURNMENT: The Special Meeting was adjourned at 9:23 p.m.

Approved:



Commissioner Curt Gordon, Clinton

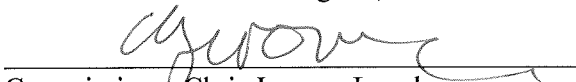
Minutes prepared by:



Edwin S. Field, Port Operations Manager

ABSENT

~~Commissioner Dennis Gregoire, Freeland~~



Commissioner Chris Jerome, Langley

- Exhibit A: Revised AT&T (now Cingular Wireless) Property Lease Agreement
- Exhibit B: Resolution No. 12-07: Agreements for Port Grant Funding
- Exhibit C: Summary of phone conversation with Mary Anne Chapman at Marine Exchange
- Exhibit D: Detailed Depreciation Calculations
- Exhibit E: Draft Preliminary Budget for 2013