

**AGENDA**  
**THE PORT DISTRICT OF SOUTH WHIDBEY ISLAND**  
**SPECIAL MEETING of the BOARD OF COMMISSIONERS**  
**Wednesday, February 23 at 2:30 pm**  
**St. Peter's Lutheran Church, 6309 Wilson Place, Clinton, WA**

**SPECIAL MEETING CALL TO ORDER**

1. Pledge of Allegiance

**PRESENTATION OF OFFERS FOR PURCHASE OF SURPLUS PROPERTY**

**PUBLIC COMMENT**

**EXECUTIVE SESSION** (Duration TBD)

1. Commission & Staff discussion of offer(s) received for the purchase of Port District's surplus property at Possession Beach Waterfront Park

**PROJECT ACTION ISSUES** - Staff Report, Public Comment, Commissioners' Discussion & Action

1. Possession Beach Waterfront Park –
  - A. Uplands Property Surplus Sale: Commission action (accept, reject or counter) on offer(s) received on the surplus Uplands Property

**UPDATE**

1. Impact Washington special meeting request - Tapert

**ADJOURNMENT**

## PORT DISTRICT OF SOUTH WHIDBEY ISLAND

### Minutes of the Special Meeting

February 23, 2011

Clinton, Washington

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

**Others Present:**

**Port Staff:** Ed Field (Port Manager), Dane Anderson (Port Finance Manager), and Molly MacLeod-Roberts (Port Clerk); **Others:** Brian Kelly (South Whidbey Record), Alex White (Whidbey Examiner), Tom Cahill (Whidbey-Camano Land Trust), Pat Powell (Whidbey-Camano Land Trust), Sarah Schmidt (Whidbey Audubon Society) and Tom White (Coldwell Banker/Tara Properties) **Clinton Residents:** David Wright, Ann Wright, Pete Andersen, Richard Engstrom, Clyde Monma, Bruce Buls, Doug Struthers, Bob Maschmedt and Ed Jenkins; **Langley Residents:** Donna Jackman, George Jackman, Hal Seligson and Carl Robinson; **Freeland Residents:** Tom Cahill and Tillie Scruton; and others not signed in.

**MEETING CALL TO ORDER:** The Special Meeting of the Port District of South Whidbey Island's Board of Commissioners was convened on February 23, 2011, in the Meeting Room at St. Peter's Lutheran Church located at 6309 Wilson Place in Clinton, WA. As announced, the purpose of the Special Meeting was to review and take action on the offers for purchase of 14.04 acres of upland property on the hillside and ridge above Possession Beach Waterfront Park. Commissioner Chris Jerome (President) called the Special Meeting to order at 2:30 p.m., followed by the Pledge of Allegiance.

**PRESENTATION OF OFFERS FOR PURCHASE OF SURPLUS PROPERTY:** Jerome noted that two purchase offers had been received so far (**EXHIBITS A and B**) and would be considered today. Port Finance Manager Dane Anderson provided the following summary of offers to purchase surplus property:

	Offer A	Offer B
Prospective Purchaser	Gilbert	Independent Towers Holding LLC
Price	\$240,000	\$145,000
Offer closing date	4/14/2011 (+/- 60 days)	2/28/2012 (1 year)
Earnest money	\$2,000	\$5,000; plus additional \$5k for each of two 6-month extensions
Trail easement	Partial, not including uppermost loop (see map)	Yes. Access to Lupine Lane may be moved at owner's discretion
Contingency (ies)	Financing (water issues)	All permits and entitlements for subdivision and permitting of a communications tower.
Buyer's intended use of prop.	Home (longer term)	Communications tower

Anderson noted that the offers differed dramatically in price and in closing dates. Both prospective buyers have made accommodation for the Trail easement: The easement for Offer A includes almost all of the existing Dorothy Cleveland Trail, but it does not include the loop up at top. The easement for Offer B includes all of the Dorothy Cleveland Trail, with the caveat that the access from Lupine Lane

may be moved at the buyer's discretion. The intended use of the property for Offer A is for a home (longer term) and for Offer B is a communications tower.

Tapert asked about the word "subdivision" in Offer B's contingency. Tom White of Coldwell Banker (the listing agent for the property) said he assumed it was just universal, standard language and that maybe subdivision is required to put up a cell tower. He said he could get more information if needed. Regarding the Trail, Anderson noted that Offer B's prospective buyer mentioned he would rather "deed that easement off to some other entity."

**PUBLIC COMMENT:** Jerome opened the meeting to public comment on the specific topic of the purchase offers and since there were several people in attendance, he asked that comments be limited to three minutes.

**Ed Jenkins** (Clinton) said, *"I am very much opposed to the sale of this property. The stated purpose of the Port (in recent articles and conversations) is to start focusing more on economic development. To start selling off assets for any reason, that can never be replaced, is a travesty. My big concern is: Will this money be used for economic development or will it go into your general fund and find its way into the Langley Marina? He paused and asked the Commission, "Can I get an answer to that before I use up my 3 minutes?"*

Tapert noted that at a previous meeting he had suggested the money could be applied for the marina, but the other Commissioners had said, "No, not necessarily."

Jenkins continued, *"My contention is: Be it that the Port should be more in the economic development area, which I wholeheartedly concur with – to sell off assets to do that is not the case. We can never replace these assets. If you're looking at excess property, you've put a ton of money into Clinton Park, which is vastly underused. I don't think you have to put much of anything into maintaining the Trail on the property that is up for sale now. Clinton Park is an ongoing money pit to maintain it – very underused. The only cars that are generally there are people waiting for people on the ferry. If anything should be put up for sale, it should be that park, which could generate a substantial amount of money for other purposes.*

*I'm circulating a petition today, and I've talked to many other people that want to see this stopped. If the sale is approved, I will immediately file a lis pendens (suit pending) and a lawsuit for breach of fiduciary responsibility to stop the sale of the property."*

**Bruce Buls** (Clinton) said, *"I concur with the previous speaker. I encourage you not to sell the property. It amazes me that for the past year...you guys are pretty well familiar with objections to surplussing public space, which has already been purchased with public money and used by the public. The Trail was built with public money by AmeriCorps volunteers. To potentially destroy the upper part of the Park is a travesty. I think it speaks very poorly of your environmental stewardship – that you would want to take this piece of property and open it up to commercial development. I also think that the sale of the Park, especially to cell tower interests, is a real kick in the ass to our neighborhood. You guys haven't cared about that either, which I also find shocking. You not only want to destroy the Park, you want to do some damage to our neighborhood at the same time. I don't think that's good public policy and it's certainly not being good neighbors. Again, I urge you not to sell it, and I concur with the speaker – if there is any way we can sue, impeach, recall...we'll certainly be looking into it."*

**David Wright** (Clinton) said, *"I would like to ask who was the giver of property, why was it given to you, and are you carrying out the wishes of the giver?"* Jerome explained that the property was purchased with Port funds – it was not donated to the Port.

**Tom Cahill** introduced himself as President of the Whidbey-Camano Land Trust (WCLT). He read aloud a 3-page letter from WCLT dated 2/22/11 and signed by himself and WCLT's Executive Director Pat Powell (**EXHIBIT C**). The letter expressed WCLT's opposition to the sale and requested that the Port stop the marketing of the property in order to explore other solutions. WCLT gave the following main reasons for the opposition: 1) It makes economic sense to retain the property, 2) A sale is contrary to the Port's Comprehensive Plan, and 3) A cell tower will have detrimental impacts. WCLT strongly urged the Commissioners to stop the sale and work through the issue, and stated the group is "happy to lend assistance to this effort."

Jerome noted that the Port had received a lot of correspondence on this issue. Staff confirmed that a record of all correspondence (emails, phone calls, etc.) would be attached to the Minutes (**EXHIBIT D**) and kept on file at the Port office.

**Steve Erickson** spoke on behalf of Whidbey Environmental Action Network (WEAN). He said, *"First I want to point out that the reason I didn't sign the petition that is circulating because it urged selling off public park lands owned by the Port, and we're opposed to any alienation of publicly owned park, recreation or habitat lands, period. Now historically, the Port was South Whidbey's recreation agency. I know you know that, Curt (Gordon); you've been here a long time."* Gordon said, "I don't know that, actually, but go ahead." Erickson continued, *"Well, I think that pretty much was the case. Ultimately, the Parks & Rec was formed..."* Gordon said, "It's not the case. The Parks & Rec District was formed to be the parks district; the Port District was not formed to be a parks district." Erickson responded, *"Well, for many years including Possession Beach Park, that was one of its primary functions."* Gordon said, "It may have been, but that wasn't why it was formed and it also isn't part of its mandate."

Erickson went on, *"We're getting to the crux of the issue; certainly that land was bought as park land – that's why that land was bought. If anyone wants to dispute that, I don't think it'll pass the laugh test. Now, the Comprehensive Scheme says nothing about selling off park land. It includes the general legal wherewithal if you have to sell land, but it neither generally as program or policy, or specifically says anything about selling this land, or generally about selling off park land. It's not in there at all. Now if you're making a policy decision that you want out of the 'non-marine recreation business' then you first need to define that. As a single park unit, the Comprehensive Scheme even mentions the Trail and it doesn't separate out the upland portion and the marine portion. It mentions the park specifically and it doesn't talk about how many parcels are in that park; it doesn't say anything about this part was purchased with this pot of money and this part with another; we don't consider this much of a park – it doesn't say anything like that. It regards it as a single park unit. If you're going to get out of the non-marine recreation business, first of all you need to define what that means. How much of that park is non-marine recreation? How much of other land you've got is non-marine recreation? And you need to say what lands you're planning on selling off or don't sell off, so the public knows what your program really is. Our position is that any park land alienated by the Port needs to be transferred to another entity that will keep them in that use. That is the reason those lands were bought – to do otherwise is to break faith with the Port's historical inheritance, and it's also breaking the faith of the people. When people approved and backed buying that land, it was not so that it could be sold piecemeal later; it was so that there would be a park there. That's true of the Port's other park properties, too. If you are really going to shift the Port's focus like this, you need to be up front about it and that means really going back to the Comprehensive Plan and amending it. And if it is amended, it should be with public input and let the chips fall where they may. Again, to do otherwise is to breaking faith with the Port's historical inheritance and people's expectations."*

**Carl Robinson** (Langley) said, *"I've heard a lot of speculation so far about the instability of the particular area, and the hazards and risks to the ecological system there. I don't think any of that has been documented or substantiated in any way. I don't need to remind anybody; I think you're very well*

*aware that the 9-1-1 service in this area is negatively impacted to a great degree. That's been pointed out to us by the Fire Department, and personally I think we need a cell phone tower up there – not just for chitchat but for safety and security. If someone up on the Trail or in the area needs help from the 911 service, it would be a roll of the dice if you got it. If you don't have the proper cell phone, you're S.O.L."*

**Ann Wright** (Clinton) said, *"I don't understand what kind of benefit our community would get from the surplus and sale of the piece of property. Is there any benefit to the Possession Shores community if you sell this? Do we get a benefit from it?"* Jerome responded, *"The reason we got to this place is that there was opposition to the proposed cell tower. So the reason we embarked on the exercise of surplussing and selling this property was to make it possible for it to be acquired by some agency that is empowered to operate parks, which the Port is not. Now, that has led to other people making offers on the property and we're here to consider those offers. The benefit to the community if a sale is approved is that the funds will go into the Port's fund and could be used for other purposes; that the Commissioners may decide would be of greater benefit to the South Whidbey community than owning a park. That's why we're here today."*

Wright asked, *"Is that the same kind of issue that Langley has – where they can't get signals in downtown Langley?"* Jerome noted that the Port held a public meeting in March 2010, and there were presentations from an AT&T agent about improvements in cell phone communications that might result from a tower, and also from Island County Fire District #3 about improvements in emergency communications that would result from placement of a cell tower. Wright said, *"Personally, I would request that you not sell that property – that you don't parcel it off and sell it. I would prefer to have it as a park, and I'll use my land line if I need to call emergency services."*

**Sarah Schmidt** (Coupeville) said she represented the Whidbey Audubon Society, which has many members on South Whidbey. She said, *"I know you've already received emails and possibly phone calls from other Audubon members. I don't have a statement to read, but I think you have a lot of input about the value of that forest, the wildlife and particularly the birds. The statement about surplussing it so someone else can make a park out of it seems a little disingenuous to me because you're talking about selling it for either a house or a cell tower. If the Port, through an appropriate process of public input, decides that the management of a park is not the Port's job, then why not transfer it to South Whidbey Parks and Recreation District? I know that they did a study and collected input from South Whidbey, and by far the largest portion of public input said we want additional wildlife land, undisturbed habitat and places where we can walk."* Jerome explained, *"This is the process by which such a transfer could occur. There is no other process for doing it. That's how we ended up here today. The property has to be surplussed and listed for sale in order to be transferred."* Schmidt said, *"Then I hope that that is where you're heading rather than accepting one of these offers to sell it to a private concern for either building houses or communication towers."*

Schmidt continued, *"Some questions were raised about whether there's proof that it is a geologically unstable slope, and again, if there is talk about selling it off, what about having an Environmental Impact Study done to see what the implications would be of losing that habitat? Another frustration that I have is that once I learned about this issue, I tried to find the minutes of the meetings going back into November and they are not available. With most of the organizations I know, you can see the minutes of their past meetings at the next meeting when they are approved. They are not on your website from the middle of November, and that makes it difficult to see what other kinds of input you've had and what the public response has been. Those are my few comments, and as you know, Audubon feels this is very important and significant forested habitat that adjoins other habitat, and because of its location on the tip of South Whidbey, it attracts and supports the very unusual migratory species. Again, I concur very much with the letter from the WCLT on the importance of forest and upland to the health of the lower park."*

**Doug Struthers** (Clinton) said, *"I live in the neighborhood, and I moved here 8 years ago. A large part of the decision to buy property where we did was because of the Trail. I know that at a public meeting we were reassured that having a cell tower in our backyard was going to enhance the value of our property, but frankly, I find that very hard to believe. Selling off this property will negatively affect the value of my property as well as that of my neighbors. The last time I spoke, I offered my son in marriage if you would not sell off the park. Each time I go to these meetings, I hear many, many voices speaking out against the sale of the park or the placement of a tower there, and yet at the end of each meeting, I see the agenda goes forward with the placement of the tower, selling property, etc. So I wonder: Is there another venue where you are getting public input, or is it only at these meetings?"*

Struthers continued, *"In that neighborhood, we first had an issue with us needing a water tower and (the Port's) desire to put a parking lot there in the neighborhood (a small neighborhood, surrounded by trees). So our neighbors objected to that, and the next thing that came up is that the Port wants a cell tower there. Clyde (Monma) especially might object to having a cell tower because it is within one cell tower of his house. Then when that objection was raised, the next thing that comes up is the Port now says it's going to sell the park. I don't know if there's any linkage, but I do know that once people have made up their mind that something is right, the more information they get, the more they get locked into that idea that they originally had. And I just hope when you hear all these voices speaking about the value of that park to us and to the community...I wouldn't be living here on Whidbey Island if it weren't for the piece of property and the park, and many people come here because of those values. I don't see how destroying that infrastructure ultimately benefits Whidbey Island. I have tried to treat you with respect and I hope that you are listening to the voices that have spoken here over and over, and the number of voices that speak against it at these meetings far outweigh the number of people who support putting a cell tower there or selling the property."*

Jerome responded, "We do indeed get input from sources other than the meetings. I certainly get emails and phone calls and have conversations with citizens that are not part of these meetings." Struthers asked, *"What is the balance of those? Because wouldn't you agree that the balance at the meetings is far more against as opposed to for? And in the newspaper, it is far more against than it is for. Are you doing what you're doing based on public input, or are you doing it because you have decided that this is the best thing for the commerce of Whidbey Island?"* Jerome replied, "Speaking for myself, I think the Commissioners are obliged to consider public input, applicable law, the mission of the Port, and various other factors in making these decisions, but certainly public input is a big part of that, whether it occurs at public meetings or elsewhere."

Struthers asked, *"Is it okay for me to ask if you personally have decided the benefits of doing this far outweigh all the main reasons we've given for not selling it?"* Jerome answered, "I have not made a decision yet. We are in the process now."

Gordon said he really appreciated that Struthers has attended meetings faithfully and has been respectful. He went on to say that there are a lot of things on the table, and he reiterated that for the property to be maintained as a park, the Port first had to surplus it. Gordon agreed with the earlier comment that this Commission is swinging toward economic development and away from building and maintaining parks. Regarding the property, he noted, "There's a lot of conversation about development, commercial development, destroying habitat, etc. and a lot of those things are not just protected due to Port ownership; we have a Critical Areas Ordinance in Island County that is not going to allow development on that hillside, let alone within "x" amount of feet of that hillside. Nobody got final approval to put a cell tower there; only a pre-application was completed. There's a whole lot between here and there. If the Port sells this property to someone who wants to build a home on it, they will have to comply with all the regulations. Contrary to what some of these people would have you believe, it doesn't mean that the whole hillside will be denuded tomorrow or that the salmon run will be all full of silt."

In response to Struthers' question, Gordon said, "I haven't made up my mind. What I wanted more than anything else, what I wanted a year ago, and what I asked specifically of people in this room is to figure out alternatives and come up with offers. I truly believe the Port should follow the letter of the law and not duplicate the South Whidbey Parks & Rec District (which I was on for 19 years), and not duplicate the Conservation Futures (a Board I was on for 14 years). We should do our job and our mandate, and work toward transportation and economic development. If we could do that and successfully leave that area as a park, that would have been the supreme goal. And the only way we could get there was to get here and look for an offer that might fit, and we may have an offer that fits – that's where I've been trying to get to." Gordon said he pushed for extending the time to allow for alternatives to be presented and holding public meetings, but he thinks the Commission needs to do what is best for all of South Whidbey.

Struthers asked, *"But can the Commissioners not just say: 'We will not allow a cell tower on that property'? Is that not within your mandate or authority? Because that was the second issue to our neighborhood: Don't put a cell tower in my back yard. Is it not possible to just say no, you're not going to allow that?"* Gordon said, "If that's a legal question, I think it's probably possible for us to create some kind of restriction, but if we did that, we would immediately reduce the value of an asset. It would be a hard decision. It's difficult because we're about economic development. I want to ask you: What is more important to you? Is it more important to have a Trail or not to have a cell tower? Struthers responded, *"To me personally the cell tower is very offensive and it's economically damaging to me and my neighbors."*

**Clyde Monma** said he wanted to challenge some of the Commission statements. He said, *"First of all, if you in fact think it is unbuildable, then you should put an easement on that entire piece of property except for maybe the lowest three acres to ensure that it can never be built on. Because unless there is legal assurance for that, the next Commissioners could come along and do something else – they could get a waiver and build there. Put an easement on the property. You need to keep in mind that if there is a Conservation Easement, that does not mean you can't do anything with it. It specifies what you can and can't do on different parts of the property. You should enter into negotiations with the interested parties as to how to get an easement, what it should do, what it should say, etc., well before you even think about selling it to anyone. Because if you sit there and say no one could build there – are you going to give a guarantee on that? Are you going to put money on it? No, you can't guarantee anything. So put an easement on the property – that's number one. Secondly, Chris (Jerome), you know I've criticized many of your statements and I stick by all of them. You especially have been taking a radical interpretation of what a mandate is and what the state law says. In fact, state law does not prohibit the Port from having an upland park. It gives you certain rights; it does not prohibit you. And any interpretation you might spin to the contrary, is just not backed by any facts at all. So you should back off of that statement. Another point is that you are saying: 'Hey, we're surplussing this because we want it to be a park, so buy it if you want a park.' That's basically blackmail in my opinion. You're saying: 'You want a park? Give me \$238,000 first; if not, I'll split it wherever I damn well please.' Now that's not fair at all. By any of you – it's not fair – all three of you."*

Monma continued, *"Now my impression of Geoff (Tapert) is that he would like to see an easement placed before a sale. Curt (Gordon), you have said that if someone buys the property and wants to make it a park, you would put an easement on the lower part of the Trail. So between the two of you, we don't need Chris (Jerome). Gordon interjected, 'I also said (and I heard the other Commissioners say) that we would have entertained a lower priced offer in lieu of public benefit, if they came in with the offer of keeping the Trail easement there. Monma resumed, 'Neither of these offers say they're going to preserve the park and the Trail; that's number one. There is no offer that will keep that. There might be, but you have to sit down and talk with us about what kind of easement we're willing to have. So Chris (Jerome) says: 'Hey we're surplussing it so someone can come along and make it a park.' Well, why don't you first figure out who wants to make it a park, and if there is someone that wants to make it a park (South*

Whidbey Parks & Rec or whatever), before surplussing it? You're doing this thing backwards. And the fact is that you keep complaining about a cell tower. Well, there was strong opposition to the cell tower. So now you're sitting there and you want to punish us by making someone build the cell tower, rather than doing the right thing. I think one of you in particular is doing that, and I am so sick of it, frankly. I believe we have one member (of the Commission) who would oppose the selling of this property, and I would urge him to vote against it. If it's 2-1 in favor of selling, fine – at least we have a voice against it. All it needs is one other person, and I appeal to your sense of justice, Curt (Gordon), I appeal to your ability to look at the reasons to make this happen."

Monma added, "Another thing: there was a statement made that there's not evidence of geological problems with this place. I've been to the County, I've seen maps, I've posted them on the website – you look for yourself – there's plenty of information and you all know it. There is. So, placing an easement, forbidding a cell tower or any commercial development and protecting the property that you say can never be built up – those are prerequisites of any discussion."

**Bob Maschmedt** (Clinton) said he has lived on South Whidbey his whole life, and he represents some private investors who are preparing to make an offer on the property. He said, "The private investors are interested in hunting and fishing, and as I understand it, a lot of the Port land (like this property) is not open to hunting. We're interested in buying property that we can have open to the public to hunt – not just for our own private hunting, not to be 'nobody else can use it', not for target practice, not for the discharge of pistols or firearms, etc. but for legal hunting on South Whidbey during an approximately 45-day season of deer hunting. You should know there are monies available including federal funds and sportsmen's funds. We have worked in other parts of the state with the Audubon Society to protect wildlife. Hunting is the best way to protect wildlife. We would not want a cell tower there; we would not want to develop it, we don't want to cut down any trees, we don't want to affect the salmon – all we want to do is have a place to hunt and to see the kids of South Whidbey (where I went to school) have a place to hunt. We believe hunting can coincide very nicely with hikers and maintaining the trails. We're good stewards of the land, and we're doing it now where people don't even know we own the land. That's our proposal and we're prepared to make an offer based on that use."

**Pat Powell** introduced herself as Executive Director of the WCLT, and said she worked very closely with the Port of Coupeville on their Comprehensive Plan, which they modeled after the Port of South Whidbey's Comprehensive Plan. She said, "They did a lot of research into the balance between economic development and environmental protection, which on Whidbey somewhat equals the same thing, and they found that that is legal. I think on this particular property, you've made (and I don't mean to be offensive, but...) an arbitrary decision of what's upland and what's lowland. And what Tom (Cahill) had read was RCW 53.08.260, which says that property can be managed as a park as necessary to more fully utilize your marine facilities. What we're saying is: really do look at that."

Powell continued, "The other thing is when you talk about surplussing and wanting it to become state or park land and managed by some other entity, the Port has the authority (and I also know this from working with the Port of Coupeville, attorneys and the Attorney General's office) to transfer this property to another entity at no or very minimal cost. So the idea that you are selling it does invite this other aspect. Public money has already gone into this property – it's Port money, but you're public. And therefore, why should public money buy it again. And that's a really huge thing for the Land Trust – it's already protected, guys. If you don't think you should manage this part of a park, transfer it to another entity that will manage it appropriately, but don't charge them again, because they then will have the fiduciary obligation."

She added, "I'm sympathetic to the hunting issue. We (WCLT) get a lot of hunters, and we bought a big piece of property that we'll be allowing hunting in (to the consternation of many), but it's a large piece of



property. I would caution that this particular property (because I've worked a lot with the sheriff's office and the public works director) is really small – 14 acres is not very big – and it is criss-crossed by Possession Road (a county road). There are a lot of problems with shooting across roads or near roads, and then of course there's the neighborhood at the other side."

**Tillie Scruton** (Freeland) said, "I just want to voice my opposition to development of the property. I don't understand all the technicalities of transferring and buying as well as many of the people here, but I am confused by the seemingly understanding of economics as being strictly in cash terms. If you're trying to protect economic development in South Whidbey, then I think a deep understanding of economics should definitely include clean water, clean air, quality of life and marine resources. I hope that you'll really consider what economics means here, as the woman from WCLT said. As a public entity with public land, I also really believe that the public's opinion and desires as to what happens to that land really is your responsibility as well."

**Pete Anderson** (Clinton) said, "I live in Possession Shores and I'm really proud of our community, different agencies on the Island that protect the environment, and our neighbors who are doing a ton of research and giving you folks a lot of input that may influence your decision. I don't know what it's going to take. You asked for public input; you certainly got it. We've got studies done by WCLT and Audubon Society, who know what they're talking about. The neighbors have done research, and you've gotten a ton of public input against selling the properties. So I just hope you make that consideration and don't sell."

**Carl Robinson** said, "I'd like to address some of the issues that I've heard. One is the concern raised by the Audubon Society about bird migration. I would submit to you there's no indication whatsoever that a cell tower would impact the migration of migratory birds. As far as anything I've seen, cell towers make nice nesting places for osprey – I've seen at least two that I'm aware of. The other thing is that I've never known of a cell tower that impacts salmon runs, so maybe you know something I don't know. Also, I don't know how many landlines would be available for emergency calls from someone on the Trail. You might be able to run to a nearby house and use their landline if they're home and allow you to use it you might be in luck, but that might be a little late in an emergency situation."

Robinson continued, "The monies brought in by a cell tower would be considerable and would make that property quite valuable. I would say that when proposing a cell tower, AT&T is not dumb when it comes to enacting millions of dollars in investment, and the protracted revenues to the property owner of years would be substantial. He added, "I don't know about 14 acres being that much of a hunting area, I would submit you'd probably have to limit it to bow hunting or something like that."

**Ed Jenkins** wanted to respond to Steve Erickson's comments about not signing the petition. Jenkins said, "I guess I didn't make it clear enough. I have 5 different boxes to check on the petition for a number of issues I brought up, and when someone signs it they can check one or all of those boxes. One of the boxes definitely applies to not selling this property, the rest apply to other issues. Secondly, I've heard several statements, and I don't for one second believe that any of you are trying to slap any of us in the face with this thing. I'm just glad I'm not sitting in your chair up there and having to make these decisions – it's a tough one, but the issue is very, very clear. This property is part of the community; it's a jewel. If you wanted to get rid of it and not be responsible (even though it really doesn't take any maintenance on your part), the proper thing to do would be to hold off and contact some people that could get together a movement that could put in a market value bid for it. We're just coming off the heels of the Trillium Woods purchase, the community is probably pretty much overextended with this kind of thing right now, and hanging onto it for a year or so until it's a better opportune time is the better thing to do. Thirdly, the fact is that selling it right now, we're at the very bottom of the market, and if it was strictly turning assets into cash – now is absolutely the worst time to do it."

Jenkins said he and a lot of others are also very concerned about, *"Why do you need the money? Is it about the cell tower? Well, I don't believe you have to sell it to get a cell tower there. If the Commission believes that a cell tower is in the best interest of the community (and I happen to think it is, but I don't live below it), the fact is that you could sell that small chunk of property in the original proposal to AT&T and let them put the cell tower up. Then the rest of it settles out in the courts or public hearings or County or whatever level and it either goes through or doesn't, but you've done what you decided and were elected to make decisions on and you think the cell tower is proper. If it isn't, then why sell the property? Right now, people think the Port may be broke and every available cent is going into the Langley Marina. Now whatever people's feelings on the marina may be, my personal concern from the very beginning is not a slam against Langley, because I..."* Jerome interrupted with a request to please keep the discussion to the topic of the meeting (the sale of the property and the purchase offers). Jenkins argued, *"It is, because there was no assurance earlier that the money would not go into the Langley Marina."* Jerome responded, *"Could I just refer you to our budget?"* Jenkins replied, *"I would say you should recuse yourself from this because you live in Langley; the other two Commissioners have..."* and Jerome interjected, *"Can I refer you to the 2011 Budget, which happens to show \$200,000 income from the sale of this property? And to the best of my recollection, most of that money is carried forward into 2012. It is not shown in that budget as going into the Marina."* Jenkins retorted, *"But nobody has given any assurances that that money will be set aside and used only for economic development. The point is that my constant request for a business plan or financial plan to show the Langley Marina..."* Jerome again reminded Jenkins that we are not discussing the Langley Marina today, and Jenkins responded, *"We are discussing the Port selling off the property and putting money into the general fund with absolutely no assurances that it will not end up finding its way into the Langley Marina. That's the issue."*

Jenkins said his final comment was: *"Like people said here, the predominant voice is that it should not be sold. There are a lot of different reasons. People are fractionalized in a lot of areas because of why they want it or don't want it, and most of them don't want it (it's in their backyard, it's a cell tower, they want a Trail, etc.) – all of those are valid reasons. The bottom line is that you were elected to do the will of the people, and the majority of the people want this not to happen. That's what needs to happen. The fact is, there will be a lawsuit by one or more people if this happens, a lis pendens (and for anybody that doesn't know, basically that's a filing that shows there's a pending action, and it goes on title and no banker or lender will lend money on the property once that is filed until it has worked its way through the Court). Nobody wins with that action. It's costly for both sides. It ties up the Port taking care of real business, it ties up the people trying to stop it, and the simple matter is to have the integrity and the guts to stand up and for whatever the backroom reasons are, to say no and the sale will not go through. If you want to bring it up in the future (as I said earlier about converting it into a park and transferring the ownership to another entity), then put that out there and let groups get together and have the opportunity to raise a fair market price for it and let it be transferred in the proper manner (but not to a private enterprise)."*

**Sarah Schmidt** wanted to make a quick response about cell towers and birds. She said, *"I agree that a cell tower itself (the structure) isn't necessarily harmful to bird migration. What is, is the loss of trees, the building of roads, and the opening of habitat to invasive bird species (which happens whenever you break into a forest). I just wanted to set that straight here. As someone said, various ones of us here have our various priorities for the property, and I am speaking on behalf of intact habitat for wildlife, but what I think holds us all in common is the belief that this land is held in the public trust and that it should stay as public property one way or another and move forward with real respect to public wishes and public input."*

**Steve Erickson** said he had two quick points: *"First I'm going to look at the RCWs, but I know for example that when the County declares a surplus, they can indeed sell it at a public auction kind of thing (they have to take the highest bidder), but I also know that does not hold when they are transferring it to another governmental agency."* Jerome explained that the Port is not required to sell it to the highest

bidder. Erickson said, *"Okay, then I will have to look into the RCWs about your ability to transfer to another agency and how that works. My other point is regarding the public benefit of having a cell tower there, and that it's necessary because of the possibility of emergencies. I work in a lot of truly remote areas, and there's always the possibility that I'll drive off the road, a tree will fall on me, I'll fall and break my leg or otherwise get injured, and I don't carry a cell phone. It's become an increasing issue because people go out there unprepared and think that because they have a cell phone, they're covered. The reality is that you can't make every square inch of the planet totally safe for people – it is just not possible. South Whidbey is a fairly inhabited area, and if someone gets in trouble on the Trail or nearby, there generally will be other people around. I don't really think a cell phone is going to help that much – it might speed up a rescue, but the reality is that once you say that is the purpose and the public benefit...what else becomes a public benefit? If it's steep anywhere on the Trail, are you going to put up handrails? How safe can you make it for people has become a real issue in land management, and you need to look at how far you're going to go down that slippery slope here."*

**Clyde Monma** said he met with Realtor Tom White last week. Monma said, *"I was very disturbed that the first time he (White) mentioned the cell tower was when he was specifically asked about the subdivision, so I would ask you to provide full disclosure on what you know about the buyers and what their intention is with the property, and let us know at this meeting so we can process it."* Anderson explained that the Summary presented at the beginning of the meeting is what the Port knows about the intentions of the buyers, and it's pretty clear about the intention of the buyers and potential easements, etc. Monma said that was the information he was requesting, and Jerome re-read the "Trail easement" and "Buyer's intended use of property" for his benefit.

**Carl Robinson** said, *"It's been suggested that the majority of this community is against this. I don't think the folks in this room are the majority of this community. You'd never know that unless you had an actual vote. You have a few people that are definitely concerned about it, and I understand that. Many people on Whidbey work out of their homes and the benefits of a cell tower include not just cell phones, but Internet access which means less travel time and less of an impact on the community."*

**Pat Powell** said, *"We believe in cell towers; we think they are important for public safety and emergency services and Internet. But I think it's a bit of a red herring (this cell tower) because it sounds as if this particular piece of property (that is proven to be geologically unstable and has other benefits) is the only piece of property you can put a cell tower on. We know that's not true. It's not either/or for the cell tower, it's just: Is this the right place? And we believe it's not, but that doesn't mean we don't believe there should be a cell tower somewhere to provide that service."*

There was no additional public comment.

#### **EXECUTIVE SESSION:**

**1. Commission & Staff discussion of offers received for the purchase of Port District's surplus property at Possession Beach Waterfront Park:** Jerome reminded the Commission that they could go into Executive Session if needed to discuss the minimum price at which real estate will be offered for sale. Staff had consulted the Port Attorney and consideration of offers on the table meets that criteria. Gordon thought any discussion regarding the price of property, even if an easement affected that price, would have to happen in Executive Session. The Commission agreed they needed to enter into an Executive Session for 15 minutes and would do so after a 5-minute recess.

Jerome said, "The Board will go into Executive Session at 3:45 p.m. and we expect to come out at 4:00 p.m. The purpose is to discuss the minimum sales price of the property."

**Bob Maschmedt** asked, *"When is the official time that offers would no longer be accepted? Do we have to have an offer to you by 4:00 p.m.?"* Jerome explained that the Board would enter into an Executive Session to discuss these two specific offers, and the only action the Board can take at this meeting is to decide what to do about these specific offers. The listing agreement for the property is for the period of 90 days, and it will remain listed until the Port accepts an offer. Gordon noted that if the Board did decide to accept one of the offers today (after coming out of Executive Session), then there wouldn't be any point in Mashmedt's group making an offer.

**Ed Jenkins** asked, *"Why do you need to go into Executive Session? From my understanding of the Open Meetings Act, you only have to do that if you're dealing with personnel, disciplinary action, salaries, etc. Why can't you discuss this in front of us?"* Jerome reiterated that the public meetings law states that the Board can go into Executive Session *"...to consider minimum price which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price."* (Part of RCW 42.31.10)

The Board of Commissioners went into Executive Session at 3:45 p.m. for an expected duration of 15 minutes to discuss the minimum price at which real estate will be offered for sale. At 4:00 p.m. the Board agreed to extend the Executive Session for an additional 10 minutes. The Board came out of Executive Session at 4:10 p.m.

**PROJECT ACTION ISSUES – Staff Report, Public Comment, Commissioners' Discussion & Action:**

**1. Possession Beach Waterfront Park:**

A. Uplands Property Surplus Sale – Commission action (accept, reject or counter) on offers received on the surplus Uplands Property:

**ACTION:** A Motion was made by Tapert and seconded by Gordon to reject Offer B from Independent Towers Holding LLC, and to counter Offer A from William A. Gilbert that it be contingent upon the inclusion of an easement for the Dorothy Cleveland Trail, including the loop and excluding the construction trail access, with response required by March 7, 2011.

Gordon asked Tapert to clarify for whom the easement would be retained, and Tapert said the intent is that it would be a conservation easement for public use that the Port would not be responsible for.

**Jerome called for a vote on the Motion. The Motion passed by a vote of 2-1, with Gordon and Tapert voting in favor and Jerome voting against the Motion.**

**UPDATE:**

**1. Impact Washington special meeting request:** Tapert asked if the Commission and Staff would be willing to hold a special workshop with the intent of getting familiar with Impact Washington, a group in Mukilteo whose primary focus is manufacturing. The group is about 50% subsidized by the federal government, but they work with ports and economic development councils. The president of Impact Washington can meet at the Port office conference room at 9 a.m. on either March 22 or March 29, 2011. The Commission agreed to tentatively schedule the meeting for March 29, 2011, pending confirmation c/o Tapert.

**ADJOURNMENT:** The meeting was adjourned at 4:15 p.m.

Approved:

  
Commissioner Chris Jerome, Langley

  
Commissioner Curt Gordon, Clinton

  
Commissioner Geoff Tapert, Freeland

Minutes prepared by:

  
Edwin S. Field, Port Manager

- Exhibit A: Offer A - William A. Gilbert
- Exhibit B: Offer B – Independent Towers Holding LLC
- Exhibit C: WCLT letter dated 2/22/11 re: Proposed Sale of Dorothy Cleveland Trail/Possession Property
- Exhibit D: Compiled record of correspondence (phone log, emails)