

**PORT DISTRICT OF SOUTH WHIDBEY ISLAND**

Minutes of the Special Meeting

July 16, 2007

Freeland, Washington

**Present at the meeting were:**

Commissioner Lynae Slinden, Clinton  
Commissioner Rolf Seitle, Langley  
Commissioner Geoff Tapert, Freeland  
Ed Field, Port Manager  
Molly MacLeod-Roberts, Port Clerk

Jeff VanderFord, South Whidbey Record  
Allen Hendricks, Port Attorney  
Jan Jutte, State Auditor's Office  
Sadie Armijo, State Auditor's Office  
Jean Wilkinson, State Attorney General's Office  
Phil Pearl, Port Consultant  
Neil Colburn, Mayor of the City of Langley  
Paul Samuelson, Langley City Council member

**Absent:** None

**1. MEETING CALL TO ORDER:**

The Special Meeting of the Port District of South Whidbey Island's Board of Commissioners was convened on July 16, 2007, in the Freeland Library conference room in Freeland, WA. Commissioner Tapert, President, called the meeting to order at 1:35 p.m., followed by the Pledge of Allegiance. As announced, the primary purpose of the Special Meeting was to discuss the Office of the State Auditor's interpretation of the Inter-Local Agreement (ILA) between the Port and the City of Langley (**EXHIBIT A**), as reflected in the 6/19/07 letter from Ms Jan Jutte, Director for Legal Affairs (**EXHIBIT B**). Commissioner Tapert began the meeting with introductions.

**2. DISCUSSION OF THE STATE AUDITOR'S LETTER:**

Commissioner Tapert said the purpose of the meeting is to determine what the Port needs to do to modify the ILA in order to allow for the fair and honest transfer of the Langley Marina facilities. Commissioner Slinden said she would like to start the discussion. She asked the representatives of the State Auditor's office to explain what they felt was lacking in the ILA. Jan Jutte, Director of Legal Affairs with the State Auditor's office, said that it appears most of the effort was placed in trying to justify saying that the property has zero value rather than indicating that the Port is paying for the property in some way. She said that even though the Auditor's office agrees the property has a diminished value due to restrictions, etc., they have a hard time believing that waterfront property could have a zero value. Jutte discussed the matter with the City Administrator, and she said she understands that the City of Langley has requirements and obligations regarding the property that the Port will assume when it takes over. She feels the Port would be better served to focus on what it is incurring and showing some value returning to the City of Langley. She noted that the Port is taking obligations away

from the City of Langley that would be consideration for the property. Commissioner Tapert asked if Jutte was referring to "relief of burden." He asked if she was essentially asking the Port to document what the relief of burden may be. Jutte agreed and said the Port needs to get away from focusing on trying to say there is zero value to the property. She said the Auditor's office agreed there is probably diminished value and that it would not be the same as waterfront property elsewhere that does not have the same restrictions. Jutte said the Port needs to show some sort of consideration for taking over the property, whether it's taking obligations or some payment from the Port.

Commissioner Tapert asked Jutte if she had the opportunity to review the letter that Phil Pearl, the Port Attorney, provided. Jutte said she had. Commissioner Slinden said there was an engineering study done by Berger-Abam Engineers in conjunction with the Master Plan for the Langley Marina. Commissioner Slinden said the study pointed out several observations of things that are lacking at the Langley Marina. The conclusion of that study was, "We estimate that with proper maintenance these structures can remain serviceable for another 10 to 15 years. Serviceability may be impacted by changes in current deterioration and damage from severe storms and vessel damage." Commissioner Slinden said there were several maintenance items required and she is not aware that the City of Langley has any resources to pay for those maintenance items. The Port; however, has already spent nearly \$150,000 in the last 10 years just to do planning. The engineering study alone cost \$70,000. She said the Port can relieve the burden to the City, which she believes the City does not have the wherewithal to do. Jutte said she had not seen that particular study, but she didn't think she needed to see every bit of information available. She noted that the City Administrator had indicated that he felt there were documents that would help the Port and the City of Langley to put together a plan itemizing some of those items. She said he felt that if some of those items were not done in the short term, the Langley Marina could be "red-tagged" and rendered unusable due to safety issues. Jutte said those types of items are an obligation of the City, and if the Port is committed to taking care of those items, an agreement could be made that would show the obligation as value. She suggested itemizing the list of obligations and the costs to fulfill those obligations as the means to demonstrate that the Port is providing consideration for the property.

Commissioner Slinden said there are 5 items in the engineering report and asked if the Port lists them and gives them a value the City agrees with, would that be adequate? Jutte said it is hard for her to say without actually seeing the items and values, but if it only adds up to a couple of hundred dollars, the State will probably still have "a little bit of heartburn." However, if there are bigger numbers, it will probably be okay. Jutte stated that a distinction needs to be made between those items that are really an obligation to the City and are potential safety issues versus items that would be "nice to do" or ones that may be a longer term maintenance issue. The "nice to do" and longer term maintenance items have less value as consideration for this transaction.

Commissioner Tapert said much of the existing structure at the Langley Marina consists of creosote-treated wood, which has a finite life span. Because new environmental regulations forbid replacing creosote pilings with more creosote pilings, he said the replacement cost would be much higher. He said the current structure has a remaining life span of 10-15 year, and there is not enough revenue being generated to pay for the replacement, which is why there is a zero value. Commissioner Tapert said he is looking for direction from the Auditor's Office as to how the Port can clearly explain that it is relieving the City from a burden and is committing to keep the facility operational.

Commissioner Seitle said there is a long history with respect to the Port and the City of Langley and the Langley Marina. He said the Port District of South Whidbey sees an obligation to operate the Langley Marina for the benefit of the South Whidbey community. Commissioner Seitle said the existing Langley Marina is a liability and not an asset. He said the Langley Marina was created by taxpayer money, and the taxpayers who paid for it are Port of South Whidbey taxpayers, because the people in the City of Langley are also part of the Port of South Whidbey district and their property taxes are paid to both the City and the Port. Commissioner Seitle feels that if a value is assigned to the Langley Marina, the taxpayers would therefore be paying for the same property twice. The total investment in the original facility was \$650,000. Two-thirds of that money came from the common taxpayer base of Langley and the Port, and one-third came from the Inter-Agency Committee for Outdoor Recreation. Commissioner Seitle said the issue of value was very carefully considered during negotiations with the City of Langley. He had represented the Port and Paul Samuelson had represented the City. Their primary focus was to make sure the City's rights and interests were protected in this process. Commissioner Seitle believes they did that and it is reflected in the ILA.

Commissioner Seitle said he understands the Port cannot acquire a property without first having a fair valuation, such as an appraisal. The Port cannot buy anything above market value, so the Port has centered on what is the market value of the Langley Marina. The Port has contracted with Phil Pearl as its consultant to render his opinion of the fair market value. Commissioner Seitle said the whole point is that this agreement involves two governmental agencies representing the same constituency and both agencies want to do what's best for the community. In the ILA, the Port made major commitments to keeping the facility operational, maintaining it and improving it. The Port has already committed a substantial amount of taxpayer money toward improvement through its ILA with the Port of Bremerton to purchase a floating breakwater for \$290,000. Commissioner Seitle said one of the primary objectives of RCW 43.09.210 was that whenever negotiations about full value take place, it must be considered in such a way that one constituency is not favored at the expense of the other constituency. Jutte asked if the Port and the City have identical taxpayers. Commissioner Tapert explained that the City is a subset of the Port. Commissioner Seitle added that all City of Langley taxpayers pay taxes to the Port as well as to the City. Jutte asked if the Port's total taxpayers are a larger group, and Commissioner Seitle said yes, they are.

Jutte said the Port and the City have a couple of choices: 1) They can go forward with the current ILA and defend it by trying to convince the State Auditor that the property has no value and therefore there is no need to demonstrate that there is any consideration passing between the Port and the City, or 2) The Port and the City can demonstrate that the Langley Marina has diminished value and there is consideration being passed between the Port and the City in the form of the obligations that the Port will take on. Commissioner Tapert asked if the Port steered away from zero value and instead went to relief of burden, would that meet the intent of the RCWs? Jutte said relief of burden is one of the paths that the two entities can take and would be the easiest way to get the three entities (Port, City and State Auditor) on the same page. Jutte agrees there will be some maintenance in 15 years, but that does not weigh as heavily as more immediate burdens that the City has and would be relieved from. The immediate burdens would be more persuasive. Jutte said that the focus so far has been on what the City is transferring to the Port, and she understands that some of the property is jointly owned. Jutte said that since there are certain parcels where the City is only transferring a partial interest and the State Auditor's office would appreciate a clearer explanation of what the City is transferring rather than the entire marina that is already partially owned by the Port. Mayor Colburn said that the City's jointly owned piece is very, very small. Jutte asked if the majority of the marina is owned by the City. Colburn estimated the jointly owned piece is less

than 400 sq. ft. Commissioner Slinden said she guessed it was 3 or 4 times that but it is still not significant. Port Manager Ed Field provided a the property map that was included within the ILA (Exhibit A-1 from **EXHIBIT A**) was able to point out to Jutte the area that is being transferred including the small area that is jointly owned.

Commissioner Slinden said she thinks it is of historical interest to note that the Port originally owned the marina and had put up a marina with a tire breakwater in 1975, which subsequently sank. She noted that while the Port decided it was not in its best interest to go through the lawsuit, the City of Langley was willing to pursue the legal issues, and so the Port transferred the marina to the City. The compensation was only that the City was willing to go after legal recourse in order to be compensated for the sunken breakwater.

While looking at ILA Attachment A-1, Jutte said she assumed that most of the things discussed in the engineering report were in the blue areas of the map. The Port Commissioners agreed. Commissioner Slinden said there was a second engineering recommendation in March 2004 by the engineering firm of Layton and Sell, Inc. Commissioner Slinden read from the letter: "Thus to make the project more attractive to the agency, the City and Port may want to consider the following additional mitigation measures to remove the existing creosote treated breakwater and fishing pier at the Langley Boat Harbor, relocate the fishing pier to the new wave attenuator, replace the Boat Harbor's existing creosote treated timber guide piles with steel or concrete piles, replace the Boat Harbor's existing timber access pier with steel and concrete construction, relocate the submerged remnants of the Boat Harbor's former rubber tire wave attenuator to an offsite location for use as an underwater reef."

Commissioner Seitle said there is one other issue he would like to add. He pointed out to Jutte the over water portion on the map and explained that was located in the Department of Natural Resources' (DNR) aquatic lands. Commissioner Seitle said there is no operating title, and the only way the facility can be used is by a public agency based on the restrictions placed on it. Jutte said she didn't know they gave aquatic land leases or Port Management Agreements (PMAs) to cities; she thought they only gave them to ports. Commissioner Slinden explained the City of Langley pays rent. Ed said there is no PMA in place at this time, the City has a straight lease with DNR. Jutte asked if the Port would get a PMA. Commissioner Seitle said the Port would probably end up with a PMA after all the improvements were done, but before that the Port would have to negotiate with DNR. Commissioner Seitle said his point is that if the Port buys something and pays for it, it has to have some underlying documentation of the rights to it. He said this is not a case of transferring an asset, rather it is the transferring of operational responsibility. Jutte said she doesn't think money will have to be transferred between the City and the Port to do this. She asked for someone to indicate on the map what the City owns. Mayor Colburn said the City owned all of it except the privately held pieces and the jointly owned pieces. Jutte said she thought she understood that the city didn't own any land. Mayor Colburn said the City owns the associated uplands. Phil Pearl explained the area is subject to IAC restrictions. Jutte said the City owns the wharfs or docks, but not the aquatic lands or tidelands. She added, "You pretty much own the parking lot and the structures." Jutte said this is not so much a sale of waterfront property as she was thinking, but more the exchange of a facility that may or may not have very much value depending on what the engineering study says. She said it might be in very bad shape. Commissioner Seitle said it is not in terrible shape, but in 2004 it was estimated to have a life span of 10-15 years provided certain underwater repairs are made. He understands that the City has not been able to do the repairs and does not have the reserves necessary for maintenance or replacement. Commissioner Seitle said again that the discussion is about transferring of responsibility and assumption of liability and not about obtaining an asset.

Commissioner Slinden read the list of maintenance and repair items recommended by the 2003 engineering report. Commissioner Tapert added that the life span was based on the improvements being done. Jutte asked if the improvements were done. Commissioner Seitle said some improvements have been made on the upper structure but no work has been done on the critical underwater portion of the marina. Commissioner Slinden asked the City if that were true and if they agreed with that statement. Mayor Colburn said they were here to support the Port. He also wanted to clarify to Jutte what the City owns. Mayor Colburn explained the City owns the parking lot, the road, the park and the bluffs going up which are not part of this deal. He said the Port has quite fairly represented the deterioration of the facility. The City does not have the wherewithal to maintain the facility and transferring the Langley Marina to the Port is clearly in the public interest. Mayor Colburn explained that he and Paul Samuelson were here for three reasons: 1) To support the Port in its endeavor as there is "overwhelming public benefit" to the transfer of the facility to the Port, 2) To assist in that transfer and 3) To make sure the transfer is done legally, which is why the ILA included the requirement of the State Auditor's approval. The City of Langley is willing to do whatever it takes to ensure that the Attorney General's office, the State Auditor's office, the Port and the citizens of South Whidbey are all "good with this deal." The City's only concern arose from the research that one City Council member had conducted and that council member had said, "I don't see how this can work." Because of that, the City included the language about the approval of the State Auditor in the ILA. Jutte said she thought that was a smart move.

Commissioner Slinden said the Port's Attorney, Al Hendricks, would like to speak. First, Jutte asked for clarification about the map and specifically about Phil Simon Park. Mayor Colburn showed her the Park and all of the areas involved in the ILA. Hendricks said it is not a zero value situation, because in the contract itself it is laid out very clearly that in consideration of the transfer of the Harbor by the City to the Port, the Port "shall perform the obligations and make the improvements to the Harbor as described in Exhibit B." In Exhibit B, there is a whole list of items. Jutte said it is unclear to the Auditor's office is what the improvements are: Are the improvements something that would be nice to have on that property or are they things that are necessary. Commissioner Slinden said the engineer's study should help to clarify that. Jutte said that the Port and the City are not that far away from something that is acceptable. She thinks if the property is explained better in "user friendly terms," describing that there are leased aquatic lands with some docks or improvements on it and having title to some land and that is what is being transferred along with the operations of the facility. Jutte said it should also be explained what has to be done and what the value of that work would be, while stating the Port is committed to completing that work and provide some timeframe as well.

Commissioner Slinden said the Port is already working on the boat ramp with the City. Commissioner Seitle pointed out the boat ramp on the map and said it has been inadequate and needs to be repaired and the Port is basically paying for it. Jutte said to "throw that in there" as that is already consideration the Port is giving the City. Commissioner Seitle said the City is still operating the project, but it is totally funded by IAC and the Port. He said the Port's contribution is \$180,000. Mayor Colburn said he would take exception to the comment that the City has no investment. Commissioner Seitle agreed, noting that the City had done engineering work and Mayor Colburn added the City has also done project management.

Commissioner Tapert said that what will probably happen is there will be an expanded marina and the existing one will be removed at some point, probably when its life span has been reached. Assigning a cost to that will be difficult, but Commissioner Tapert asked if it would be acceptable for the Port to tie the two together by saying the Port is committed to having an expanded marina and removing the old one when its serviceable life span is exhausted. Jutte

said the Port would need to be very clear that it is taking away the obligation that the City would have to do something now to keep the Marina operational. Commissioner Tapert added there is also a cost associated with removing the old marina.

Jutte said its not that the Auditor's office disagrees with what the Port and the City are doing by any means. Paul Samuelson, Langley City Council member, said that it was on purpose that the ILA involves the Port, the City and the State Auditor's office working together. Jutte said they appreciated discussing it now rather than at the end of the next audit. Samuelson said what he has heard at today's meeting is that the Port and the City need to define more clearly what the properties being transferred are so the Auditor's office understands them. Jutte said not just the Auditor's office but the public as well. Samuelson agreed. He said he thinks Jutte is also asking the Port and the City to be clear about the improvements that will be made and their value, and provide a timeframe for them. If the Port and the City provide those things and the values make sense to the Auditor's office, Samuelson asked if that would make the ILA work. Jutte said yes, as long as the list of improvements and repairs that the Port is taking on are really obligations of the City that would have to be done in the short term. Samuelson asked if she was talking 5 years. Jutte said maybe, but not 15 or 20 years. She said the 15- and 20-year items could be added, but suggested the focus should be on the shorter term items where the Port is really taking an obligation from the City. Mayor Colburn asked if they should also stay focused on the land rather than the water. Jutte said yes, because the water doesn't have any value to the City since it is leased. She said to focus on the land and the facilities and structures. Samuelson asked Jutte if she had in her mind what number would be acceptable for the value. She said, "No idea." Jutte said they won't question the number as long as its reasonable. Commissioner Tapert said, "More than zero." Jutte agreed and said to get away from zero, get away from under \$1,000.

Commissioner Seitle said something else should be considered. He said the land portion consisting of Phil Simon Park includes a commitment and deed restriction that was put in the original purchase between the Simon family and the City. The Park must forever maintain its water views, must forever maintain a boat ramp for public use, etc. Commissioner Seitle said the City cannot sell the land because of those restrictions. Samuelson said he thinks that is why the number doesn't have to be big. Commissioner Seitle said he doesn't want to put any number on it at all. He said the loss of value by the City was considered and that is why the Port agreed to provide the City with the Marina revenue for two years.

Commissioner Tapert asked if the Port gave a cost estimate of the suggested improvements that are necessary to keep the Marina operational as well as the prorated value over the lifespan of the structure and the Port is relieving the City of that burden, is that what is needed? Jutte said, "I think that's going to get you where you need to be." Commissioner Slinden asked if they could do it in a letter format or do they need to amend the ILA. Commissioner Tapert said he thought they needed to amend the ILA. Jutte said she thinks it needs to be included with the ILA. She thinks the clarifying information needs to be incorporated with the Agreement so it's all together and very clear. Commissioner Seitle said it's already pretty much contained in the ILA. Hendricks said it is in the ILA, and that ILA Exhibit B says the Port is assuming full responsibility for all of the listed commitments and obligations. Commissioner Tapert said he thinks the Auditor's office is asking for more clarity. Jean Wilkinson of the Attorney General's office agreed and said that when they reviewed the ILA, it wasn't clear which obligations were immediate versus deferred maintenance. Samuelson said it appears all the State wants is clear definition and they are not concerned about the exact numbers. Jutte agreed she was not as concerned about the numbers. Port Manager Ed Field said that as the person who would probably be writing the letter, he understands the concern over the deferred maintenance and

the other “urgent obligations.” Ed said a large amount of the commitments in the ILA are improvements, such as additional dock area and additional facilities the Port will be building there. Ed asked if those would also be on the table. Jutte said the Port could include them as demonstration of the Port’s commitment to the property, but she doesn’t think that would be a payment to the City for the property because the Port isn’t relieving the City of anything by doing them.

Commissioner Slinden said regarding the value, there is the issue of accretion of sand on the boat ramp that is being rebuilt, and if the Port puts in the breakwater they are purchasing, that should alleviate a good portion of the sand accretion problem. She asked Jutte if that could be considered a relief of burden since the City would no longer have to scrape the ramp regularly. Commissioner Seitle said the City has no reserves adequate to replace the structures at the end of their life span. Commissioner Slinden asked if the breakwater could be considered as something of “immediate value.” Samuelson said putting in the boat ramp piece would be fine. Commissioner Slinden said she was talking about the breakwater. Samuelson said that it is not known yet where the breakwater will be located. Commissioner Tapert said what he is hearing that the Port needs to “keep it simple” and Jutte agreed. He said they need to focus on existing structures and its liabilities for maintenance and replacement value, and if they do that, it will probably pass muster with the Auditor’s office. Jutte said, “I think it would get us where we need to go.”

Commissioner Slinden said the basic things required by the Auditor’s office are description of the project, an explanation of what must be done and in what timeframe, and include a value and description of the boat ramp project and include the Port’s contribution amount. Hendricks said if they wrote a Letter of Explanation, he didn’t see any reason to amend the contract because ILA Exhibit B covers all of that in general. Commissioner Tapert asked if a Memorandum of Understanding (MOU) of both parties would help. Jutte said that would be fine. Commissioner Slinden asked if the MOU could be done instead of amending the ILA and Jutte said that would be fine.

Commissioner Slinden asked how long it would take the Auditor’s office to respond to the MOU. Jutte said it would not take her very long. Commissioner Seitle pointed out that the Port has serious commitments for the facility that currently total about \$350,000 in engineering work and the purchase of the breakwater. Commissioner Tapert said the Port has been moving forward in good faith to continue that. Jutte said that was pretty clear. Commissioner Tapert said this is just a bump in the road and it sounds like it can be fixed, and Jutte agreed, adding that it was better to have the bump now than later. Ed asked if the purchase of the breakwater and those kinds of improvements would be considered as future improvements, as opposed to the critical or urgent needs. Jutte agreed. Commissioner Tapert said they could skip it and it could still pass muster. Jutte agreed, but said if the Port wants to throw it in there so it looks even better, then throw it in. Samuelson asked if Ed or Walt Blackford, City Administrator, could clear things with her along the way while preparing the MOU. Jutte said that would be fine, they can give her a call. Commissioner Slinden asked if Jutte wanted copies of the engineers’ reports and Jutte said, “No, thank you.”


Jeff VanderFord of the South Whidbey Record asked if Jutte, Armijo and Wilkinson had seen the Marina. Jutte said they had not, but said they did not have time to visit it on the way home since they needed to catch a ferry. Instead, she asked that pictures be included with the MOU.

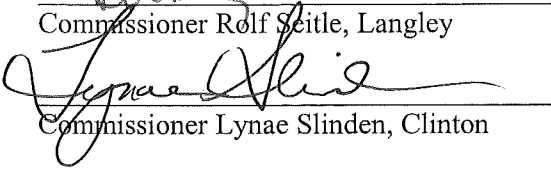
**3. ADJOURNMENT:**

The meeting was adjourned at 2:27 p.m.

Approved:

  
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Commissioner Geoff Tapert, Freeland

  
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Commissioner Rolf Seitle, Langley

  
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Commissioner Lynae Slinden, Clinton

Minutes prepared by:

  
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Edwin S. Field, Port Manager

- Exhibit A: InterLocal Agreement for the Transfer of the City of Langley Harbor to the Port...", dated 4/17/07  
Exhibit B: Letter from Washington State Auditor, dated June 19, 2007