

MINUTES—Regular Meeting
CHUCKANUT COMMUNITY FOREST PARK DISTRICT
Wednesday, September 27, 2017
Fairhaven Branch, Bellingham Public Library
1117 12th St, Bellingham, WA
Fireplace Room 6:00 to 8:00 PM
Mailing Address: PO Box 4283, Bellingham, WA 98227

Our Mission: The mission of the Chuckanut Community Forest Park District is to ensure the entirety of the property is protected in perpetuity in public ownership, with respect for its ecological, recreational, and educational functions and to serve as a fiscal mechanism through which the district, via a tax levy, will repay the City of Bellingham for the Greenways Endowment Fund loan.

Call to order: President V. Biciunas called the meeting to order at 6:01 PM.

Roll Call: John Hymas, Susan Kaun, John Brown (Clerk), Vince Biciunas, John McLaughlin (arrived at 6:03 PM)

Introductions: Those acknowledged include Bob Carmichael, legal counsel, board secretary Diane Birsner, Charlotte Waller of the Whatcom Mountain Bike Coalition (WMBC), and Michael Chiavario.

Motion: J. Brown moved to approve the agenda for today's meeting. J. Hymas seconded. Vote was 4-0 to approve.

Motion: J. Brown moved to approve the August 23, 2017, draft meeting minutes. J. Hymas seconded. Vote was 4-0 to approve.

Public Comment: No public remarks at this time. Waller and Chiavario did request to comment at the end of the meeting, once the board discussed the amendment to the conservation easement (next item).

Report: On the proposed amendment to the conservation easement, V. Biciunas expressed concern that Page 3 of the redline conservation easement appears to render the current conservation easement void. B. Carmichael, CCFPD legal counsel, replied that City attorney A. Marriner probably assumed the proposed amendment would replace the current conservation easement. Carmichael expressed his own concerns over the proposed amendment. The current conservation easement is an enforceable document, Carmichael stated. His opinion is that the proposed amendment to the conservation easement does not protect the park district, specifically Exhibit A which is the proposed bike pump track presented by the WMBC and the City. The proposed document, according to Carmichael, doesn't include an obligation by the city to ensure that any of the promises made by the WMBC to the park district will be enforced. Carmichael stated he was expecting an enforceable Exhibit A, and his opinion is that it doesn't meet professional standards. Such standards would include prescriptions and conditions which enable the park district to require the city to enforce those promises stated in Exhibit A. Carmichael told Marriner that he assumed the City's

amendment would meet the same standards as the existing conservation easement, and be folded into the current easement. Marriner told Carmichael the City is fine with the proposed amendment as written. Biciunas asked what the board's next steps should be. Carmichael replied that, against his advice, the board could approve the proposed amendment as it stands. However, he reminded the board that ultimately the park will pass on to a land trust who will expect a certain kind of document, too. The other options are: 1) the board could task Carmichael to rewrite the amendment, which would incur additional expenses to the park district, or; 2) the board could reject the proposed amendment in favor of waiting for the master plan to be developed. J. Brown asked if the board has the authority to preclude bikes from the park. Carmichael said the park district does not have that authority. It does have the authority, through the current conservation easement, to require restoration from new trails or the widening of trails through bicycle use. Carmichael recommended to the board that if they want to amend the conservation easement to allow for the construction of a bike pump track in the quarry prior to the development of the master plan, that amendment should be an enforceable one, where the city is taking responsibility for enforcing these commitments. Biciunas invited comments from Commissioners Hymas and Kaun. Hymas stated he's in agreement with Carmichael. Kaun said she empathizes with the kids who presented their proposal for a bike track, for the work they put forth in their proposal and their enthusiasm. She expressed disappointment in the city for the document it produced. Brown suggested the option of seeking support from City Council if need be. With regard to enforcement of current environment degradation to the park, Carmichael said that up to now, CCFPD has not exercised its right to enforce the provisions stated in conservation easement. The district could make the City put a stop to the destruction of the park, or take it to court if City doesn't comply. Carmichael added that he's not suggesting this, but if the Land Trust were the park's steward, the Land Trust would approach enforcement differently, due to their resources and experience. CCFPD is a governmental entity with funding from taxpayers. As a "stop gap", Carmichael asked how much the board wants to do for the park before it comes under the stewardship of the Land Trust. He stressed that when CCFPD does ultimately turn the park over to the Land Trust, it should include an enforceable document. J. McLaughlin added that currently the park district's enforceable agreement is being violated with new trails, widening, etc. The board could compel the city to take action, which it hasn't exercised to date. And yet the board is now considering an amendment which would reduce the park district's ability to enforce such violations. McLaughlin doesn't think it appropriate to start eliminating the board's options. Kaun suggested the board keep the current conservation easement intact and write an enforceable amendment with an exhibit such as the one attached to the proposed amendment. Once approved, the district could ask park stewards to take pictures of violations to take to the City for enforcement. Carmichael stated the political cost to fighting with the city. He clarified that the board is faced with two issues. One is the enforcement of the existing easement; the other is creating an enforceable amendment to the easement. He defined "enforceable" as binding on the city. He suggested first

having a meeting with the city stakeholders before spending district's resources on preparing an amendment that City might not be willing to commit to. Biciunas asked the board to make a motion for such a meeting to take place. Brown asked Carmichael to estimate the cost of developing an amendment prior to the board's October meeting. McLaughlin commented that additional incentives to work with the City on this amendment include: 1) frustrated constituents who at present can't utilize the park in the way they'd like, and; 2) until a master plan is in place, negative environmental impacts will continue.

Motion: S. Kaun moved to direct Carmichael and two CCFPD commissioners to meet with the Parks Director and City staff to explore the possibility of CCFPD's legal team creating an enforceable amendment to the conservation easement. J. McLaughlin seconded. Vote was 5-0 to approve.

Report: M. Chiavario, liaison to the Park Advisory Board, reported that in the September 2017 COB Park Advisory Board meeting, a citizen, Michael Plummer, reported that CCFPD's property, along with other city parks, incurred a lot of degradation of way-finding and directional signs, trails widening and new trails being built, and signs not being replaced. L. Bryson's (Parks Director) response to Plummer was that the Parks Dept. is doing what it can with the budget it has.

Report: D. Birsner, legal defense costs are as follows:

2015: \$41,108.50

2016: \$40,915.15

2017: \$15,905.86 (no change as of August 31, 2017)

Total costs to date: \$97,929.51

Monthly expenses and cash flow sheets: Submitted by J. Brown and D. Birsner.

Treasurer's Report: As per the August 31, 2017, Whatcom Co. Treasurer's Monthly Report, beginning unencumbered cash balance was \$155,468.72, ending unencumbered cash balance was \$155,446.59.

Petty Cash: Heritage Bank account balance as of 08/31/2017: \$2,925.62.

Report: D. Birsner that the State Auditor's Office Box Audit Report for 2015-2016 has begun. Completion date is unknown at this time.

Motion: J. Brown moved to amend the 2017 Approved Budget to increase the audit expense from \$2000 to \$4000. S. Kaun seconded. Vote was 5-0 to approve.

Direction: V. Biciunas requested D. Birsner to provide actual year-to-date numbers to the amended budget to be presented to the board at the October meeting.

Report: D. Birsner reported that the website has been updated per the board's direction in last month's meeting.

Next meeting: Wed. Oct. 25, 2017, Fairhaven Library, Fireplace Rm., 6:00 PM.

Motion: J. Hymas moved to approve the District Payroll Input Form, wages for Diane Birsner, 17.25 hours in August 2017, total gross of \$431.25. S. Kaun seconded. Vote was 5-0 to approve.

Consent Agenda: J. Brown moved to approve the following consent agenda payments. S. Kaun seconded. Vote was 5-0 to approve.

Payment on the August 15, 2017 Invoice #80999 from Carmichael Clark PS for \$359.50 for general counsel services.

Payment on the Aug 15, 2017 Invoice #81000 from Carmichael Clark PS for \$163.00 for legal defense.

Report: On the September 21, 2017 *Ferlin et al.* Court of Appeals hearing, V. Biciunas reported that Carmichael's closing argument was compelling. Legal counsel said he's cautiously optimistic. J. Brown asked when the board can expect a decision to be rendered. Carmichael replied it could take a few months to six months.

Motion: The board and legal agreed it wasn't necessary to adjourn to Executive Session.

Public Comments: C. Waller stressed that the document she authored be viewed as a good faith agreement, and this is the heart of the project. She said the worst thing that could happen would be a couple of lines put into the quarry and the kids deciding it's not worth their time to put energy into it. She believes that having to go through months of legal process dilutes the kids' experience, and they are already disappointed and losing interest. The best case scenario if it's left pretty simple is to divert the kids to one area, working with them to improve trails, showing them cooperation with user groups. She also feels that with regard to the City, there's such a lack of funds that they're basically hands off, to the extent that keeping the document simple until a master plan's completed and things will work out ok. Lastly, Waller said she was transparent about creating this document, only to have it "completely kabashed." Biciunas and Kaun assured Waller that her document is not kabashed. Carmichael also assured Waller that her agreement is good, conceptually. The biggest question he has: will the City stand behind it and is the park district able to require the city to live up to those commitments? The board could decide that's not important, but if they do decide it is, the city has to back it. By backing it, Carmichael means the city would be legally liable if they didn't, and it would be a breach of the conservation easement. M. Chiavario commented that the basis of moving the mountain bike use from an area that is inappropriate to an area that is less impactful is based on reducing

harms to the woods. He believes everyone wants that, and that the mountain bikers have come together to try to reduce some of the harms to the woods. He doesn't believe that, if the city is not required to enforce the agreement, more harm will come to the woods. He does believe that more harm will come to the woods if the park district doesn't have an agreement with the mountain bikers. He recommended that the park district accept Exhibit A without negating the rest of the conservation agreement. And move forward as quickly as possible.

McLaughlin countered that there is a risk of creating further harm; of other people building more structures in other parts, modeling their structures after the quarry ones. And if the city isn't willing to enforce the easement to prevent or restore that, we could have more degradation. McLaughlin would want the amendment to provide an obligation on the city's part to stop such development in other parts of the park. Carmichael said he'd request that the amendment would have that provision, as well as one to take steps to remediate existing violations, which the current amendment didn't address. McLaughlin said then the kids would get what they wanted and worked so hard on, and the park district would fulfill their responsibility to ensure those conservation values and restore those values. Waller added that the trail restoration component is in her proposal.

New Business.

Carmichael added a couple of new business items:

- 1) He asked for a motion to appoint two board members to represent the park district in an upcoming meeting with city staff and CCFPD's legal counsel.

Motion: S. Kaun moved that V. Biciunas and J. McLaughlin be appointed to work with Carmichael to deal with the city to bring forth an enforceable amendment to the conservation easement. J. Brown seconded. Vote was 5-0 to approve.

2) Regarding the big leaf maple tree that was cut on park property, Carmichael asked if the board wants him to send a letter to the city, inquiring what happened and why it happened. Biciunas added that other trees have been cut, firs or cedars, in nearby sections. At this time it's unknown as to who or why the trees are being cut on the property, and CCFPD has received no notice from City Parks, either prior to or subsequent to the cuttings. The Board's concern is that these cuttings are in violation of the conservation easement.

Motion: J. Hymas moved to authorize Carmichael to write a letter of inquiry to the Parks Department. S. Kaun seconded. Vote was 5-0 to approve.

Adjourn. Time: 7:15 PM