

RECORD OF PROCEEDING OF  
CHUCKANUT COMMUNITY FOREST PARK DISTRICT  
APPROVED MEETING MINUTES

Special Meeting

Wednesday, August 13, 2014

Held at: Fairhaven Branch, Bellingham Public Library  
1117 12<sup>th</sup> St, Bellingham, WA  
In the Fireplace Room  
8:00 to 9:00 PM

Our Mailing Address: PO Box 4283, Bellingham, WA 98227

Official email addresses for the Commissioners, where the public may send comments (subject to public disclosure):

John Hymas	<a href="mailto:hymas@fidalgo.net">hymas@fidalgo.net</a>
Vince Biciunas	<a href="mailto:vbici.ccfpd@gmail.com">vbici.ccfpd@gmail.com</a>
Cathy McKenzie	<a href="mailto:cmckenz.ccfpd@gmail.com">cmckenz.ccfpd@gmail.com</a>
Sue Kaun	<a href="mailto:skaun.ccfpd@gmail.com">skaun.ccfpd@gmail.com</a>
John Brown	<a href="mailto:jbrown.ccfpd@gmail.com">jbrown.ccfpd@gmail.com</a>

**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.

**Called To Order** The meeting was called to order by President John Hymas at 7:06 pm. No audio recording made tonight.

**Roll Call:**

Susan Kaun  
John Hymas, President  
John Brown  
Vince Biciunas, Clerk  
Cathy McKenzie

**All Present**

**Motion** was made to approve the agenda for today's meeting. Cathy McKenzie moved and Susan Kaun seconded to approve the agenda. Vote was unanimous to approve.

There were no public comments requested, though six citizens were in attendance, in addition to our legal counsel, Robert Carmichael.

**Motion:** Made by Vince Biciunas and seconded by Susan Kaun, to consent to continued representation by our legal counsel, Robert Carmichael and Simi Jain, of Zender Thurston, PS, as a “concurrent conflict of interest” has arisen with regards to our representation in *Ferlin et. al. v. Chuckanut Community Forest Park District et. al.* and authorize President John Hymas to sign the authorizing letter dated August 13, 2014, written by Robert Carmichael, explaining the four conditions that are met regarding the concurrent conflict of interest. Discussion included clarifying that we have a letter in writing from Mr. John Ferlin that he will not contest this decision, and that our representation by Zender Thurston will be impartial and competent and diligent. Rules of professional conduct are being followed. Letter is included in these Minutes. Vote was unanimous to approve.

**Motion:** Made by Sue Kaun and seconded by Vince Biciunas to convene an Executive Session to discuss with our legal counsel the lawsuit, *Ferlin et. al. v. Chuckanut Community Forest Park District et. al.* and how we will respond. Discussion. Bob Carmichael explained that the lawsuit is a complaint for declaratory judgment and injunctive relief filed with the county clerk on July 29<sup>th</sup> of this year, served to us on August 1<sup>st</sup>, and the next step is to file a notice of appearance in Superior Court before August 20<sup>th</sup>. That is why we need to have this meeting. The lawsuit is on public record, and we can say in general, it challenges the validity of the park district itself. Vote was unanimous to convene an Executive Session.

Meeting adjourned to Executive Session at 8:20 PM for the purpose of discussion of the lawsuit, and we will re-convene at 8:50 PM to report and take action.

Meeting re-convened at 8:51 PM.

**Motion** to extend executive session made by Sue Kaun and seconded by Cathy McKenzie for another ten minutes. We shall reconvene at 9:00 PM. Motion passed unanimously.

Meeting reconvened at 9:00 PM.

**Motion** made to file an Answer to the Complaint in *Ferlin et. al. v. Chuckanut Community Forest Park District et. al.* on the timeline and at the discretion of our attorney, by John Brown and seconded by Vince Biciunas. Motion passed unanimously.

Our next meeting will be our Regular Meeting on Thursday, August 28, 2014, from 7 to 9 PM, in the Fireplace Room of the Fairhaven Public Library.

No further business.

**Meeting Adjourned at 9:03 PM.**



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**ROBERT A. CARMICHAEL**, Attorney  
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**SIMI JAIN**, Attorney  
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Board of Commissioners  
Chuckanut Community Forest Park District  
PO Box 4283  
Bellingham, WA 98227

Re: *Ferlin Family Living Trust, et al. v. Chuckanut Community Forest Park District, et al.*  
Whatcom County Superior Court Cause No. 14 2 01694 4

Dear Commissioners:

The purpose of this letter is to obtain your consent to this firm's representation of the District in the above named lawsuit. Our law firm has what is called under the lawyers' Rules of Professional Conduct (RPC) a "concurrent conflict of interest" with respect to the above-noted lawsuit ("Lawsuit") filed against the Chuckanut Community Forest Park District ("District").

Tim Potts, an attorney at our law firm, currently represents Brooks Manufacturing Co. (plaintiff in the Lawsuit), and John and Mimi Ferlin, (Trustees of Ferlin Family Living Trust – plaintiff in the Lawsuit) (collectively "Ferlin") on matters pertaining to their business operations, and some personal business and estate matters. Mr. Potts does not now and never will represent any of the plaintiffs in matters touching upon the Lawsuit and neither of us know the plaintiffs or have had any contact with the plaintiffs.

The lawyers Rules of Professional Conduct ("RPC") allows a law firm to represent clients with a concurrent conflict of interest if the following conditions are met:

1. The lawyer reasonably believes that he/she (law firm) will be able to provide competent and diligent representation to each client.
2. The representation is not prohibited by law.
3. The representation does not involve the same litigation; e.g. representation is on unrelated matters.
4. Each client consents to the representation, confirmed in writing.

In the present situation, it is our opinion that we can continue to provide competent and diligent representation to the District, despite Mr. Potts representation of plaintiffs on other matters. Such representation is not prohibited by law and clearly, the representation is on unrelated matters. Therefore, our firm may continue to represent the District, and in particular

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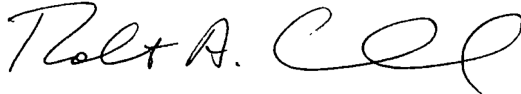
may represent the District in the Lawsuit, while Mr. Potts represents Ferlin on other matters, so long as the District and Ferlin provide their consent.

Mr. Potts informs me that Ferlin has provided written consent to our firm's representation of the District against them in the lawsuit, as it is unrelated to what he is doing for them.

In undertaking the representation pursuant to a waiver, we are also prohibited from giving either party access to any confidential information relating to the other. Therefore, we provide that in our undertaking of these matters, internally there will be no communication between the attorneys or staff relating to the respective matters and clients.

We intend to remain vigilant in reviewing positions of our clients for conflicts of interest. We encourage you to keep the issue in mind going forward and to raise any concerns, starting with this letter. If there is anything in this letter with which you disagree or causes you any concern, please let us know. If you consent to our continued representation of the District, and particularly consent to our representing the District in the Lawsuit, please sign below and return the letter to us. Thank you.

Yours truly,



Simi Jain and Robert A. Carmichael

CLIENT:

**Chuckanut Community Forest Park District – Consent to Zender Thurston representation**

By: John Hymas  
Its: Board President

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Date