

MEMORANDUM

To: FILE
From: Meridee E. Pabst
Client: 718830
Matter: 0011
Subject: Riverwalk on the Columbia
Date: June 2, 2005

This memorandum outlines how the proposed Riverwalk on the Columbia project, a water-dependent mixed-use project proposed on the City of Washougal's Columbia River shoreline, may be completed with the cooperation of the Port of Camas-Washougal (the "Port") and the City of Washougal (the "City").

I. Introduction

Riverwalk on the Columbia, LLC, proposes a water-dependent mixed-use project including a marina, hotel, offices, restaurants, retail, recreational, and residential development, which would (a) redevelop the City's Columbia River waterfront with a signature project; (b) redevelop a Brownfields (the Hambleton mill); (c) fulfill the City's Shoreline Management Master Program policies which favor high intensity land use including residential, commercial, and industrial development in the Urban Shoreline Environment, particularly policies giving priority to water-dependent uses, emphasis to visual and physical access to the shoreline, and encouragement of multi-purpose use of the shoreline; and (d) generate sales tax, property tax, and other revenues.

As outlined herein, the proposed Riverwalk on the Columbia project may be completed with the City's creation of a community renewal area according to Chapter 35.81 RCW along with the cooperation of the Port, which owns a substantial portion of the real property within the project site area. In summary, together the City and the Port have various powers to create a community renewal area, manage a community renewal plan, finance a community renewal project, and contract with a private developer for the rehabilitation and redevelopment of the community renewal area.

II. Proposed Riverwalk on the Columbia Project

Riverwalk on the Columbia is proposed as a mixed use project to be developed by Riverwalk on the Columbia, LLC (the "LLC"), with the cooperation of the Port and the City.

The project would be developed on property already owned by the Port as well as property currently owned by others. The general area proposed is shown in Exhibit ____.

Riverwalk on the Columbia is a water-dependent mixed-use project including a marina, hotel, offices, restaurants, retail, recreational, and residential development. Proposed elements of the Riverwalk development are:

1. An approximately three-acre park;
2. 80,000 square feet of retail shops located around the central park;
3. One hotel (with restaurant, conference center, and subterranean parking);
4. One Mariners Landing Harbor with 700 feet of dock serving condominiums, hotel, shopping, and grocery;
5. One multi-story dry stack boat storage
6. Three restaurants;
7. A 130,000 square foot department store;
8. A 20,000 square foot drug store;
9. Three 60,000 square foot office buildings;
10. One 75,000 square foot grocery store;
11. One 30,000 square foot hardware store;
12. 7,000 square feet of fast food retail;
13. 165 condominiums facing the river; and
14. Approximately 200 apartments.

Please see the conceptual development plan attached as Exhibit ____.

III. Benefits of the Riverwalk on the Columbia Project

Benefits to the City and the Port include the following:

- A. Redevelopment of the Columbia River waterfront with a signature project.
- B. Redevelopment of a Brownfields (the Hambleton mill).

C. Fulfillment of the City's Shoreline Management Master Program policies which favor high intensity land use including residential, commercial, and industrial development in the Urban Shoreline Environment, particularly policies giving priority to water-dependent uses, emphasis to visual and physical access to the shoreline, and encouragement of multi-purpose use of the shoreline. Washougal Shoreline Management Master Program, pp. 20-21 (1974).

D. Sales tax, property tax, and other revenues.



IV. Steps to Complete the Riverwalk on the Columbia Project

The following are the various steps for creating a community renewal area and planning for the proposed Riverwalk on the Columbia Project.

A. *LLC and Port Agreements*

The Port currently owns a considerable portion of the Riverwalk site area, a smaller portion of which is proposed to be developed with traditional port district uses, such as boat storage and marina improvements, office buildings, and a park/recreation area.

For these proposed uses, the LLC proposes to enter into a long-term ground lease for the Port's uplands and adjacent tidelands according to the Port's authority in RCW 53.08.080. This statute authorizes the Port to lease its real property for up to 50 years, with options for extensions for up to an additional 30 years.¹

B. *City forms Community Renewal Area under RCW 35.81*

For portions of the Riverwalk site area currently owned by another party or proposed to be developed with retail and residential uses, the City may form a community renewal area under RCW 35.81. These statutes permit a flexible approach to the acquisition, planning, and disposition of property within the renewal area. As the municipality authorized to create a community renewal area, the City would take the lead in forming the area, but the management and administration of the area may be performed by either the City or the Port, or some combination thereof.

1. Community Renewal Area

The proposed community renewal area includes all of the area within the proposed Riverwalk on the Columbia site. This area may be designated through an ordinance or resolution passed by the City. RCW 35.81.050.

In support of its formation of the renewal area, the City must make a finding of "blight" under RCW 35.81.050(1). Among other things, "blighted areas" include areas with physical dilapidation of buildings or improvements; areas with inappropriate uses of land or buildings; areas of deterioration; areas with hazardous soils, substances, or materials; and areas with a diversity of ownership, obsolete platting, defective street layout, or faulty lot layout. RCW 35.81.015(2). At the same time, the City must find that the rehabilitation and/or redevelopment of the area is necessary in the interest of the public health, safety, morals, or welfare of the residents of the City. RCW 35.81.050(1).

¹ RCW 53.08.080.

The City then approves a community renewal plan, which may be developed by the City or by the Port and/or another person such as the LLC, for the City's approval. RCW 35.81.060(2).

2. Exercise of Community Renewal Agency Powers

After the City makes the findings of blight and that redevelopment of the area is in the public interest, the Community Renewal Law provides that the powers of the community renewal agency may be exercised by:

- a. An appointed board or commission;
- b. The City Council directly; or
- c. The Board of a public port district or other similar entity.²

Similarly, the Port has the authority under RCW 53.08.400 to enter into a contract with the City for exercising the powers of a community renewal agency.

Therefore, in this case the Port might manage the community renewal plan on behalf of the City.

C. *City Concurrently Amends Comprehensive Plan*

Concurrent with the formation of the renewal area, the City may amend its comprehensive plan to permit the proposed mix of uses. The Community Renewal Law provides that if the community renewal plan is not consistent with the existing comprehensive plan, the City may amend its comprehensive plan. RCW 35.81.060(2).

We understand that the City is now considering amendments to its "no net loss" policy for industrial lands, so this appears to be an appropriate time to consider how the proposed Riverwalk development will be consistent with the City's comprehensive plan. Presumably, the City's plan policy providing for the protection of industrial land within the Port of Camas/Washougal from conversion to non-industrial uses is intended to protect the Port's interests, so with the Port's support of the Riverwalk development plan the City has reason to revisit this plan policy.

D. *Interlocal Agreement Between City and Port*

Through an interlocal agreement³ or other contract between the City and the Port, the two municipalities can provide for revenue sharing of the additional sales tax and property tax generated by the proposed Riverwalk project. The Community Renewal Law authorizes the

² RCW 35.81.050(2); see also RCW 35.81.150(1).

³ Chapter 39.34 RCW.

City to make payments for consideration for the Port's commitments to develop, expand, or retain land uses that contribute to the success of the project or plan.⁴

And generally, the City and the Port may enter into an interlocal agreement to jointly provide services that they each have authority to provide in connection with the Community Renewal Area.⁵

E. *Selection of Person to Undertake Development*

The Community Renewal Law provides a specific process for the selection of the party to undertake the redevelopment of real property in RCW 35.81.095, which includes either a request for qualifications or a request for proposals. This process may occur either before or after the City's acquisition of real property in the renewal area.⁶

F. *LLC Leases Community Renewal Area for Development of Residential, Retail, and Related Uses*

As noted above, properties located in the potential community renewal area include parcels owned by the Port as well as parcels owned by other parties.

1. **Property Currently Owned by the Port**

For property currently owned by the Port that is proposed to be developed with residential and retail uses, the property may be leased as follows.

a. **Lease from Port to City or Renewal Agency**

The Port has the general authority to lease real property for such purposes and upon such terms as the port commission deems proper,⁷ and under the Community Renewal Act, the Port has the authority to sell or lease its property to a municipality or other public body.⁸

Under this authority, the Port may lease its property located within the renewal area to the City or a Community Renewal Agency organized under Chapter 35.81.

The Port's lease of real property may be for a term of up to 50 years, with options to extend up to an additional 30 years.⁹

b. **Lease from City or Renewal Agency to LLC**

The City may sell or lease real property acquired by it for a community renewal project in a community renewal area, for residential, recreational, commercial, industrial, or other uses.¹⁰

⁴ RCW 35.81.070(4).

⁵ Chapter 39.34 RCW.

⁶ RCW 35.81.095(1).

⁷ RCW 53.08.080.

⁸ RCW 35.81.130(1).

⁹ RCW 53.08.080.

Thus, the City may sublease the Port's property to Riverwalk, LLC, for residential and retail development consistent with the community renewal plan.

2. Property Currently Owned by **Other Parties**

Those parcels within the community renewal area that are now owned by other parties (and not owned by the Port) may be condemned¹¹ or otherwise acquired¹² by the City consistent with the approved community renewal plan.

Then, the City may sell or lease the property¹³ to the LLC under the requirements of the Community Renewal Law.

G. *Options for Project Funding*

The Community Renewal Law and other statutory authority provide various options for funding elements of the Riverwalk on the Columbia project, such as the infrastructure and park improvements.

For instance, the City has authority under RCW 35.81.070(4) to make payments, loans or grants for consideration for commitments to develop, expand, or retain land uses that contribute to the success of the project or plan; under RCW 35.81.070(8) to borrow money and accept grants or any other form of financial assistance from the federal government, the state or other public body, or a private source; and under RCW 35.81.070(11) to levy taxes and assessments.

The City also has the authority under RCW 35.81.100 to issue bonds to finance the undertaking of a community renewal project.

Similarly, the Port has authority under RCW 35.81.130 to lend, grant, or contribute funds, including funds derived from bonds issued, to the City or a private person, subject only to applicable constitutional limits.

H. *Relevant Constitutional Limitations*

The exercise of the City's and the Port's powers described above is subject to the constitutional limitations on gifts and lending of credit with taxpayer dollars found in Article VIII, Section 7.

Particularly relevant to this case, another section of the constitution (Article VIII, Section 8) expressly provides that port districts are governed under another rule. This section provides:

¹⁰ RCW 35.81.090(2).

¹¹ RCW 35.81.080.

¹² RCW 35.81.090(1).

¹³ RCW 35.81.090(2).

The use of public funds by port districts in such manner as may be prescribed by the legislature for industrial development or trade promotion and promotional hosting shall be deemed a public use for a public purpose, and shall not be deemed a gift within the provisions of section 7 of this Article.

This section of the Constitution was approved in 1965 to respond to State Supreme Court cases in which the court held that a port district was prevented from (1) acquiring land and subsequently using or reselling to private industry and (2) using of public money for certain promotional and advertising activity to cultivate trade relations.

Also relevant is the constitution's requirements that condemnation must be made for a public use under Article I, section 16, of the Constitution, but in this case, the Legislature has expressly stated in RCW 35.81.080 that condemnation for community renewal of a blighted area is declared to be a public use.

Various Washington cases further address the constitutional limitations on a municipality's exercise of its statutory powers. We recommend that as agreements are drafted, we revisit these issues to ensure that the details of the project are consistent with these principles.

V. Conclusion

As outlined herein, the proposed Riverwalk on the Columbia project may be completed with the City's creation of a community renewal area according to Chapter 35.81 RCW and with the cooperation of the Port.