

Mason County Auditor



Allan T. Brotche

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Certifying Charge for Recall

I Allan T. Brotche, Mason County Auditor, hereby certify the attached copy of a petition for the recall of Cynthia Olsen, as submitted to me on February 17, 2005. Under RCW 29A.56.120 I hereby transmit the charge to the preparer of the ballot synopsis provided in said statute.

Subscribed and sworn to me
this 17th day of February , 2005

Allan T. Brotche

Mason County Auditor



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FEB 17 2005

Cynthia Olsen
13150 NE North Shore Rd
Belfair, WA 98528

Enclosed is a copy of RCW 29A.56.120. A petition has been filed with our office for the recall of Cynthia Olsen. You are hereby being served a copy of the charges filed against you on February 17, 2005. Under statutory authority these charges have been certified to the Prosecuting Attorney, of Mason County.

A handwritten signature in cursive script, appearing to read "Allan T. Brotche", written over a horizontal line.

Allan T. Brotche
Mason County Auditor



PETITION FOR RECALL OF
CYNTHIA OLSEN
AS PORT COMMISSIONER OF THE
PORT OF TAHUYA

The undersigned legal voters of the State of Washington and the Port District of the Port of Tahuya hereby demand the recall and discharge from office of Cynthia Olsen, Port Commissioner of the Port of Tahuya on the grounds and for the reason that Cynthia Olsen has committed acts of malfeasance or misfeasance while in office in the following particulars:

1. **Perjury - November 8, 2004 Declaration of Cynthia Olsen.** On November 8, 2004 Cynthia Olsen submitted to the Mason County Superior Court a Declaration under penalty of perjury under the laws of the State of Washington which stated, in part, that

"An advisory committee was formed. Brad Carey, who is the Director of the plaintiffs and Harold Carey were appointed, and to this date the public access plan has not been addressed."

The November 8, 2004 Declaration was filed by Commissioner Olsen in Mason County Superior Court Cause No. 04 2 00954 9, a lawsuit brought against the Port of Tahuya to invalidate the Port's Public Access Plan. The Declaration was submitted by Commissioner Olsen to recite facts regarding actions of the Port Commissioners of the Port of Tahuya and its Citizens Advisory Committee in an attempt to persuade the court not to enter a default judgment invalidating the Port's Public Access Plan.

The Declaration was false in that (1) the Citizens Advisory Committee (CAC) did address the public access plan in an October 16, 2004 written report specifically recommending that the Port "un-adopt" the Public Access Plan; and (2) the CAC written recommendations were well known to Commissioner Olsen because they were presented to the Port Commissioners and discussed at Port meetings on October 20, 2004 and November 5, 2004 and (3) the Port Commissioners did address the plan and fail to "un-adopt"

the Public Access Plan at the Port Commission meeting on November 5, 2005 even though consideration of the Plan was on its November 5, 2005 agenda.

Attached hereto are the following Exhibits relevant to this perjury charge:

- Exhibit A November 8, 2004 Declaration of Cynthia Olsen in Mason County Superior Court Cause No. 04 2 00954 9
- Exhibit B October 16, 2004 transmittal letter forwarding report of Citizens
- Exhibit C Page 1 of Citizens Advisory Committee October 16, 2004 Recommendations
- Exhibit D Minutes of Port of Tahuya October 20, 2004 Meeting (Prepared by Port Secretary but as yet unapproved by Port Commissioners)
- Exhibit E Minutes of Port of Tahuya November 5, 2004 Meeting (Prepared by Port Secretary but as yet unapproved by Port Commissioners)

2. Violation of Public Records Act

Cynthia Olsen, in her capacity as Port Commissioner and as secretary for the Port of Tahuya Port Commission, failed to timely or completely respond to and comply with public record requests by the Residents For Preservation of Quality of Life on Hood Canal in violation of the provisions of RCW 42.17.320 and Port of Tahuya Resolution 90-004 resulting in the payment by the Port of Tahuya of a penalty of \$1040.00 pursuant to RCW 42.17.340 (4) and attorneys fees and costs of \$13,352.16.

Attached hereto are the following Exhibits relevant to the Public Records violation:

- Exhibit F Findings of Fact and Conclusions of Law in Residents for Preservation of Quality of Life on Hood Canal v. Port Commission of the Port of Tahuya, Mason County Superior Court Cause No. 03 2 0758 1
- Exhibit G Judgment in Residents for Preservation of Quality of Life on Hood Canal v. Port Commission of the Port of Tahuya, Mason County Superior Court Cause No. 03 2 0758 1

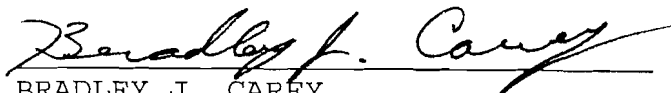
Exhibit H Transcript of Cynthia Olsen testimony at trial of Residents for Preservation of Quality of Life on Hood Canal v. Port Commission of the Port of Tahuya, Mason County Superior Court Cause No. 03 2 0758 1

Exhibit I Oral Decision of Judge James B. Sawyer III in Residents for Preservation of Quality of Life on Hood Canal v. Port Commission of the Port of Tahuya, Mason County Superior Court Cause No. 03 2 0758 1

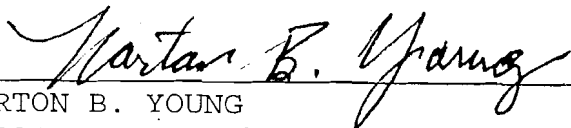
VERIFICATION

The undersigned, being first duly sworn, on oath, affirm that they have knowledge of the facts upon which the above stated Petition to Recall Cynthia Olsen as a Port Commissioner of the Port of Tahuya are based and believe that the above charges contained in the Petition to Recall Cynthia Olsen as a Port Commissioner of the Port of Tahuya, are true and correct as stated.

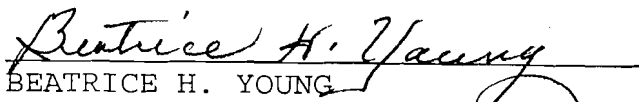
February _____, 2005



BRADLEY J. CAREY
20811 N.E. Northshore Rd.
Tahuya, Wa. 98588
360-372-2600

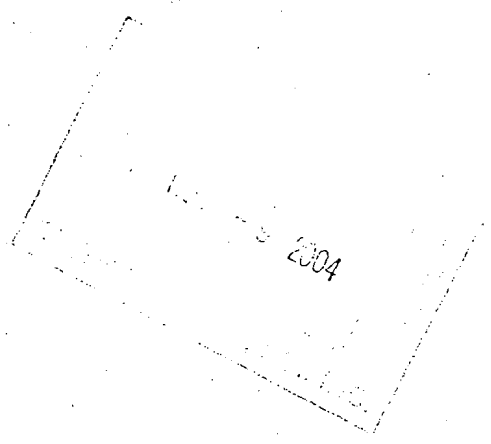


NORTON B. YOUNG
20231 N.E. Northshore Rd.
Tahuya, Wa. 98588
360-275-2098



BEATRICE H. YOUNG
20231 N.E. Northshore Rd.
Tahuya, Wa. 98588
360-275-2098

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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR MASON COUNTY

IN THE MATTER OF :
RESIDENTS TO PRESERVE
QUALITY OF LIFE ON HOOD
vs.
PORT of TAHUYA, Washington

NO. 04 2 00954 9
DECLARATION of
CYNTHIA OLSEN

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I, Cynthia Olsen, have personal knowledge of the facts set forth below, and declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

The Port of Tahuya began a process to update our comprehensive plan January 15th,2002, with a vote at that regular meeting to run an ad calling for proposals to do such.

The only interest generated was from Colie Hough Beck, of Hough Beck & Baird Inc., a Landscape Architecture, Planning & Urban Design company. The company was hired by the board March 19th,2003 to begin the process. Beginning July 6th, 2002 with a Public Access Intercept Survey at the 2002 Tahuya Day celebration, the survey form was filled out by 301 individuals. At the July 12th,2002 regular port meeting the survey results were

1 discussed, along with the existing inventory and service area for the Port of Tahuya.

2 At the September 18th,2002 regular port meeting we reviewed vision, goals and objectives,
3 existing inventory and map. Discussed and reviewed development plan elements and
4 proposed project map, and set a date of Oct. 16th, for an open house for public participation.

5 Advertisements in the newspaper, as well as a prominent sign in front of the local fire
6 department on the primary access road, advertised the open house for more than a week.

7 There were 22 attendees at the open house held at the Fire District #8 station. They
8 represented a diverse group of interests: Port of Dewatto, Mason County Planning, Mason
9 County Parks, Tahuya Community Club, Washington State Parks, Hood Canal
10 Coordinating Council, Hood Canal Salmon Enhancement Group, as well as members of the
11 community. In addition, we received a letter of support from the Washington Water Trails
12 Association. 25 organizations including the Tahuya Community Club president had been
13 invited to attend. At the beginning of March 2003 all of the same organizations were
14 mailed a copy of the Feb. 2003 draft plan. Which was also available at the Timberland
15 Library in Belfair. The Port held a Public Hearing on March 19,2003 on the Port of Tahuya
16 Public Access Draft Plan. 7 individuals attended that hearing, representing the Port of
17 Dewatto, The Hahobas Boy Scout Camp, Washington Water Trails, Fire District #8 Fire
18 Commission and the general public. All public Testimony was positive. A letter from Bill
19 Koss of the Washington State Parks and Recreation Commission was read, complimenting
20 the port for the efforts made in soliciting public involvement and in producing a very
21 usable document.

22 There were no negative comments about the plan until The Port of Tahuya meeting on
23 July17th, 2003, where Brad Carey and others were under the impression that the plans

1 concepts were all a done deal. The consultant was at that meeting and explained to the
2 audience that was not true and that adoption of the plan in no way commits the Port to any
3 of the conceptual projects in the plan. Brad Carey and others asked for a new survey claiming
4 bias. A Port of Tahuya Special meeting was called July 23rd, 2003 to request another
5 survey. It was the Boards unanimous decision to have no new survey. Just prior to August 20th,
6 2003, the board of Port of Tahuya Commissioners were served with a public disclosure lawsuit.
7 The meeting was attended by the Brad Carey and James Christen group with an attorney not
8 wanting the Port to proceed with the adoption of the Public Access Plan.

9 The Port of Tahuya Board unanimously adopted the Public Access Plan by resolution.

10 The Port of Tahuya Commissioners voted to put the plan on hold until such time as an
11 advisory group could be formed to make recommendations to the board about the plan.

12 An advisory committee was formed. Brad Carey, who is the Director of the plaintiffs and

13 Harold Carey were appointed, and to this day the public access plan has not been addressed.

14 Also during this period of time the Residents to Preserve Quality of Life on Hood Canal filed
15 a lawsuit against Commissioner Olsen and Commissioner Gilbert and their spouses alleging
16 violations of the Open Public Meetings Act, which is still pending at this time. Also through
17 all of this, erroneous information has been mailed to property owners and voters in the entire
18 port district, which would have made it impossible to do another unbiased survey.

19 Commissioner Christen filed a declaration for the Residents to Preserve Quality of Life on
20 Hood Canal, which he was a member of , claiming he could have produced a records request
21 in 4 hours, that took Commissioner Olsen 25 hours with help. At the June 18th, 2004 hearing

22 The Residents to Preserve Quality of Life on Hood Canal vs. Port of Tahuya , Commissioner
23 Christen admits, page 16, line 8 thru 24, to 10 hours plus 4 hours for himself, and 4 hours for

1 the plaintiffs records technician.

2 On June 18th ,2004 Christen also testified, yes, he is a member of the plaintiff's group.

3 At the July 9th,2004 Special meeting of the Port of Tahuya, Commissioner Christen voted
4 against the indemnification of Commissioners Olsen and Gilbert.

5 Commissioner Gilbert resigned immediately after that meeting.

6 A Recall was filed against Commissioner Olsen. It failed in Superior Court ,but is being taken
7 to the Supreme Court.

8 At the Aug 9th,2004 Recall Hearing of Port of Tabuya Commissioner Olsen, Judge Draper
9 identifies Commissioner Christen as "a plaintiff for the Recall litigation, the litigation that the
10 Citizens group vs. Olsen, he as a plaintiff with one hat, a plaintiff in that litigation, another
11 hat as a commissioner of the port." Page 21, lines 17 on.

12 I was in attendance at a Port of Tabuya public hearing June 17th, 2004 at the Timberland
13 Library in Belfair at approximately 6:30 pm. Commissioner Gilbert chaired the opening
14 of the meeting and then excused himself from the hearing, stating he had a conflict of
15 interest. He stated that he was in receipt of a letter that offered to drop a personal lawsuit
16 against him if he was willing to vote to unadopt the Access Plan. He then left the room.

17 Brad Carey, the "Director of Residents for Preserving Quality of Life on Hood Canal",
18 stated that he withdrew his offer on the 10th of June. Brad Carey also later explained
19 That he withdrew his offer from the table, and for that reason Commissioner Gilbert's
20 excuse was not valid. Brad Carey said the deal he made to Commissioner Gilbert was
21 gone, so he could vote tonight because it would have no effect on the lawsuit.

22 The letter that Commissioner Gilbert was referring to was a Settlement Agreement.

23 The Agreement states in part;

1 #1 Action, Robert Gilbert will vote in favor, the final vote to remove the Port of
2 Tahuya Public Access Plan from the Port of Tahuya's Comprehensive Plan on June
3 17th, 2004.

4 #2 Action, Robert Gilbert agrees to resign from his public office as Port of Tahuya
5 Commissioner District # 1 on June 17th, 2004.

6 #3 Dismissal of Actions: Residents for Preserving Quality of Life on Hood Canal
7 shall file with Mason County Superior Court, Agreed Orders of Dismissal with prejudice
8 and without cost or fees to any party. The Open Public Meetings Lawsuit filed against
9 Robert and Pamela Gilbert and the Recall Action against Robert Gilbert shall
10 unconditionally be so dismissed within 10 days of the date of the mutual agreement and
11 the signing of said agreement. The Residents for Preserving Quality of Life on Hood
12 Canal therein having the obligation to present the respective Agreed Orders to the Court.

13 #4 Additional Lawsuits, Residents for Preserving Quality of Life on Hood Canal
14 agree not to file additional Lawsuits already prepared, but not yet filed against Robert
15 and Pamela Gilbert.

16 See attached Settlement Agreement:

17 #5 Refers to: No Admission of Liability.

18 #6 Refers to: Full Disclosure

19 #7 Refers to: Attorneys Fees and Cost if Breach.

20 #8 Refers to: Venue.

21 #9 Refers to: Countersignatures and Faxed Signatures.

22 Also Attached : The June 17th approved meeting minutes from the Port of Tahuya public

1 hearing meeting minutes that validate Brad Carey's comments about his offer to
2 Commissioner Gilbert.

3 All of this transpired while Commissioner Christen was a member of the Residents for
4 Preserving Quality of Life on Hood Canal

5 The Residents for Preserving Quality of Life on Hood Canal served the Port of
6 Tahuya, with a Summons and Complaint for Declaratory Judgment and/or Writ of
7 Certiorari on Oct.20th, 2004. In order to defend against this lawsuit , the Port must
8 respond to the complaint by stating it's defense, in writing, and serve a copy upon
9 The attorney Thomas O'Hare within 20 days of that service.

10 I immediately mailed Commissioner Christen a letter requesting a Special Meeting be set
11 for the Port of Tahuya to discuss the appointment of an attorney to represent the port in
12 this matter. Commissioner Christen's reply in part states: If this suit goes unanswered
13 by the Port then we would save the people the cost of litigation. The Courts could simply
14 rule in their favor without rendering a finding of wrong doing on the Ports part. I

15 responded in part stating again the need to schedule a special meeting to discuss the
16 appointment of counsel for the pending litigation. Pointing out that allowing the lawsuit
17 to go unanswered would expose the Port to needless damages with a default judgement.

18 Commissioner Christen did set a special mtg for Nov 5th,2004 but refused to approve the
19 appointment of legal counsel to represent the port. Those minutes are not available yet.

20 The Residents to preserve Quality of Life On Hood Canal have had counsel since before the
21 adoption of the Port of Tahuya Public Access Plan and never appealed the plan during the
22 window of time between the adoption on Aug 20th 2004, and it's effective date 21 days later.

23 All of the Lawsuits that are pending against the port and against Commissioner Olsen and

1 former Commissioner Gilbert, and the Recalls that were filed against Commissioner Olsen
2 and Gilbert , have been represented by attorney Thomas O'Hare. Attorney O'Hare is also
3 representing Commissioner Christen as he has been served with a recall. The Port of Tahuya
4 has had no legal representation since the end of July,2004, resulting from Commissioner
5 Christen's refusal to approve payment of the port's attorney fees. Due to these extenuating
6 circumstances, I respectfully request the Court to not enter a default judgement against the Port
7 of Tahuya.

8 The supporting documentation is attached as follows:

9 Exhibit A: Settlement Agreement

10 Exhibit B: June 17th, 2004, the approved, Port of Tahuya Public Hearing Meeting minutes.

11 Exhibit C: Cause No. 04 2 00954 9 "Residents" vs. Port of Tahuya

12 Exhibit D: Correspondence between Commissioner Olsen and Christen

13 Exhibit E: copy of the Port of Tahuya Public Access Plan

14 Exhibit F: the contact and mailing list for the Public Access Plan

15 Exhibit G: June 18th,2004 partial transcript No. 03-2-00758-1

16 Exhibit H: Aug 9th,2004 Olsen Recall transcript.

17 Exhibit I: the Jan 2003 thru Aug 2003, Port of Tahuya meeting minutes.

18 Exhibit J: Notice of Withdrawl and Consent to Substitution *-inadvertantly omitted*

19 Exhibit K: Public Access Survey used by the port.

20 Exhibit L: Public Document Ledger from the Timberland Library in Belfair.

21 Exhibit M: Oct 6th,2002 Open House sign in form and format.

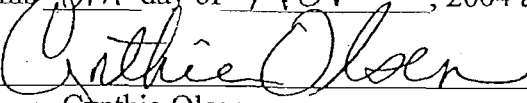
22 Exhibit N: Letter from Commissioner Christen, to Brian Sonntag Wa. St. Auditor.

23 Exhibit O: Declaration of Jean Gall in the Recall of Commissioner Christen

- 1 Exhibit P: Declaration of Patricia Perry in the Recall of Commissioner Christen.
2 Exhibit Q: Declaration of Jan DeStephano in the Recall of Commissioner Christen.
3 Exhibit R: RCWs referred to in the summons No. 04 2 00954 9

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Signed this 8th day of Nov, 2004 at Tahuya, Wa



Cynthia Olsen

October 16, 2004

Dear Port of Tahuya Commissioners,

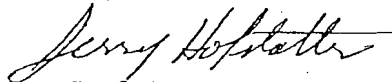
I am reporting to you that the citizens advisory committee, in good faith, has fulfilled the charge you requested in your January 2004 meeting and amended by the May 19, 2004 meeting.

We have been meeting almost weekly from March 13th thru October 16th except for holidays and a 9-week break in the summer. Different committee members have researched and written the various sections of the draft comprehensive plan and in some cases, just individual paragraphs within a section. All sections were agreed on by either a general consensus or an actual committee vote. I will point out that on votes taken there were never more than one or two dissenting votes, indicating a substantial majority agreement before that section was completed.

In addition to the draft comprehensive plan we have given you a number of recommendations. It is felt that these recommendations will help the Port conduct its business in a more efficient and productive manner, in future years. The committee recommends adoption of the draft comprehensive plan, after review and comment by the commissioners and public.

It has been an honor for all committee members to have had the opportunity to serve you and the people of the Port District of Tahuya.

Sincerely,



Jerry Hofstatter
Chairman, Citizens Advisory Committee

THE PORT OF TAHUYA CITIZENS ADVISORY COMMITTEE (CAC) RECOMMENDATIONS

1. The CAC recommends to the Port of Tahuya Commissioners they “un-adopt the Public Access Plan and remove it from the Comprehensive Plan”.
2. The CAC recommends to the Port of Tahuya Commissioners they adopt a Comprehensive Plan for the port district. The CAC has drafted and assembled a “draft” Comprehensive Plan for the Port of Tahuya Commissioner’s consideration and action. A copy is attached hereto in the section of this report under the tab called “The Committee’s Product(s)”
3. The CAC recommends to the Port of Tahuya Commissioners that they follow the required procedure in adopting a Comprehensive Plan and in addition they send to all the residents, voters, businesses and landowners in the Port District for input and comment a draft of the revised Comprehensive Plan before they adopt a Comprehensive Plan.
Further, the CAC recommends to the Port of Tahuya Commissioners they look into whether the current Comprehensive Plan was properly adopted before they consider an update. While discharging the CAC charge and looking at the history of the Comprehensive plan it could not be determined that the existing plan resulted from any earlier plan properly adopted. Therefore, it may be that any future plan needs to be adopted as “the” plan.
4. The CAC recommends to the Port of Tahuya Commissioners they place the adopted Comprehensive Plan on the Port’s website once adopted as well as in other public places so people without a computer can read or obtain copies.
5. The CAC recommends to the Port of Tahuya Commissioners they adopt a policy for timely review and update of the Comprehensive Plan. The Committee recommends that the process occurs at least every three years.
6. The CAC recommends to the Port of Tahuya Commissioners they finalize a set of “Quality of Life Values” for the Port of Tahuya district as referenced in goal statement number 2.2 in mission statement 2.0 under the Mission and Goal section of the draft Comprehensive Plan. (Note that a potential list of Quality of Life Values is found in section 6.2 of this report). The CAC further recommends that a public survey, possibly by an independent professional third party survey company, be considered in helping finalize these values.
7. The CAC recommends to the Port of Tahuya Commissioners they adopt a policy wherein existing and new commissioners are required to familiarize and/or educate themselves on the RCW’s and Acts pertaining to their office and duties, the WPPA, grant organizations such as the IAC, the Hood Canal Coordinating Council, other governmental agencies that relate to or can impact the duties of the Port Commissioners and understand and stay in touch with the Port of Allyn and Port of Dewatto.

Port of Tahuya THESE MINUTES ARE
P.O. Box 90 UNAPPROVED/USE AT
Tahuya, WA YOUR OWN RISK
98588-0090

The October 20th, 2004 regular meeting of the Board of commissioners was called to order at 7:31 pm. With commissioners Olsen and Christen present and the dist. 1 seat still vacant. Commissioner Olsen chaired the meeting.

The minutes of the September 15th meeting were not approved as well as the July and August minutes which have still not been approved.

Commissioner Olsen pointed out the Commissioner Christen had provided 77 pages of duplicate pages to her attorney in the matter of her public records request for port documents.

Commissioner Christen explained that he supplied 1,112 pages of documentation and 7 audio cds. The duplicates were documents that were supplied by the different commissioners.

The following vouchers were MSA for payment:

2004-57 Shelton Publishing	\$ 15.00
2004-60 Commissioner Comp. Christen	70.00
2004-61 Commissioner Comp. Olsen	70.00
2004-62 AAA Septic	250.00
2004-63 Mason County Auditor	14.71
2004-64 Summertide Resort	122.54
2004-65 James Christen/ re-imburement	377.21

The financial statement was aloud by Commissioner Olsen. It was then MSA to approve as read.

It was MSA to approve the transfer of \$ 1,500.00 from our investment account to cover our anticipated expenses to end of year.

Old Business:

Menards Landing

Maintenance contract

Still no contractor

CAC

Jerry is going to keep a master book but has handed over copies to the Commissioners and some extra copies. He thanked some of the members of the CAC. He also made the recommendation that future committees not have alternates. He further recommended that the Commissioners should read and understand the Comp Plan before it is released to the public. It was also noted that the number one recommendation of the group was to remove the Public Access Plan removed from the Comp. Plan.

Vacant Commissioner Position:

October 31st is the dead line for getting your resumes to the County for consideration.

Port legal representation:

Commissioner Olsen cleared up a point. She said that she was not recommending James P. Foley as it said in the September minutes.

Website:

Commissioner Christen said that he would try to find a college student to run our website.
New Business:

The Port was served with a lawsuit in connection with the Public Access Plan.
Commissioner Olsen received this service prior to the meeting being called to order.

Commissioners Olsen and Christen worked together to read the suit aloud to the people in attendance.

Commissioner Christen asked Commissioner Olsen if at any time before the port developed the Plan or during its development did any one find out if the Port had the authority to do so.

Commissioner Olsen said that she wasn't going to tell him any thing because the port was being sued.

After much discussion the issue of the lawsuit and the Public Access Plan were set aside.

Legal Bill.

A legal bill was received from Mr. DeJulio for legal services.

Commissioner Olsen agreed that Commissioner Christen should contact the attorney for a clarification on the back ground of the bill.

With no further business before the Board it was MSA to adjourn at 8:52 pm.

Port of Tahuya THESE MINUTES ARE
P.O. Box 90 UNAPPROVED/USE AT
Tahuya, WA YOUR OWN RISK
98588-0090

The November 5th 2004 special meeting of the Board of Commissioners of the Port of Tahuya was called to order at 7:30 pm with Commissioners Olsen and Christen present. Commissioner Christen chaired the meeting.

Commissioner Christen said that the meeting was to consider to separate items. The first was to consider a motion to amend the Comp Plan by removing the current version of the Public Access Plan. The second was to discuss and consider the hiring of council to defend the port in the law suit that was served on them just prior to the October 20th, 2004 budget hearing.

Commissioner Christen stated that this was a matter for the Board to discuss and that at this time he had no plans for public comment but if he decided it was appropriate he would allow it. He also asked for no disturbances from the audience. He said that any one disrupting the meeting would be asked to leave.

Item 1:

Commissioner Olsen said that she was not interested in discussing item 1.

Commissioner Christen said that item 1 was tabled. He then brought up for consideration item 2.

Commissioner Christen read a series of letters that were exchanged between the Board members that led to the special meeting. These letters can be found on file at the port. He then said that it was his belief that it was in the best interest of the Port as an entity and the communities we serve to allow a default judgment to be entered and the plan to be removed from the Comp Plan. He said that the CAC as its number one recommendation said that the Port should remove the Plan. That two hearings were held that were attended by over 100 people each and the overwhelming majority were in favor of the removal of the Plan. { Commissioner Olsen recommended the Port hire an attorney to represent the port to avoid a default judgment. }

Commissioner Olsen expressed concerns about the fact that the port could be ordered to pay legal fees to the plaintiffs. She also that she wanted legal council to represent the port at a hearing held by the WGEP.

Commissioner Christen pointed out that the matter was not one where the port was asking for reconsideration but it was in fact a personal suit that had been tendered to the insurance company. He said that it was not the port that was asking for coverage.

Brad Carey stated that as the director of the Residents Group we had his word that the Port will pay no attorney fees if the Port does not defend the suit.

Commissioner Olsen expressed skepticism about his sincerity.

After considerable arguing and public in put it was decided that the Commissioners were at an in pass. Commissioner Christen wanted to save the taxpayers the cost of litigation on a matter that neither commissioner could find a basis for defense. Commissioner Olsen believed that the port should hire an attorney and defend the Plan but was unable to produce a single RCW that she could claim gave the port the authority to develop the plan.

With no further business before the board it was MSA to adjourn the Special Meeting at 8:16pm.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

RESIDENTS FOR PRESERVATION)	
OF QUALITY OF LIFE ON HOOD)	NO. 03 2 0758 1
CANAL)	
)	FINDINGS OF FACT AND
Plaintiff)	CONCLUSIONS OF LAW
)	
v.)	
)	
PORT COMMISSION OF THE PORT)	
OF TAHUYA,)	
)	
Defendant)	

The above captioned matter coming on duly and regularly for trial on June 18, 2004, and the court having heard the testimony offered, reviewed the exhibits offered and heard the argument of counsel, and being fully advised in the premises, now makes the following

FINDINGS OF FACT

1. Plaintiff Residents for Preservation of Quality of Life on Hood Canal (hereafter "Residents") is a

Findings of Fact and
Conclusions of Law - 1 -

Smith & O'Hare, P.S., Inc.
Post Office Box 68
Silverdale, Washington 98383
Phone: (360) 692-5566
Fax: (360) 692-1373
E-Mail som@tscnet.com

1 Washington non-profit corporation whose members are
2 residents of the Port of Tahuya.

3 2. Defendant Port Commission of the Port of
4 Tahuya (hereafter "Port") is the governing body of a
5 municipal corporation and a "local agency" under the Public
6 Disclosure Act, RCW 42.17 et seq.

7 3. On or about August 8, 2003 Plaintiff
8 Residents, through their attorney Mary Kay High, made a
9 request to Defendant Port for copies of documents related to
10 the Port and specifically related to action the Port was
11 considering known as a Beach Access Plan.

12 4. On or about August 11, 2003 the Port notified
13 Plaintiff's counsel that the Port would be unable to provide
14 an exact date for providing the requested documents but that
15 an attempt would be made to locate the documents by the end
16 of September, 2003.

17 5. On or about August 12, 2003 counsel for
18 Residents made another request for documents from the Port
19 advising the Port that review of the documents was necessary
20 prior to the August 20, 2003 meeting of the Port Commission
21 and offering to come to the Port offices at any reasonable
22 time to review the documents and select documents for

1 | documents of the Port of Tahuya available to Residents at
2 | the Silverdale, Washington offices of the Port attorneys.
3 | Many, but not all, of the documents requested by Residents,
4 | were included in the September, 2003 response to the
5 | Residents' document requests.

6 | 10. The documents and records of the Port of
7 | Tahuya were, at all material times, contained in one four
8 | drawer file cabinet and a cardboard "banker's box" located
9 | at the Tahuya Fire Hall where a copier was also available
10 | for use by the Port of Tahuya.

11 | 11. On February 23, 2004, more than 208 days
12 | after a five day grace period following the August 8, 2003
13 | records request, newly elected Port Commissioner Jim
14 | Christen met with representatives of Residents at the Tahuya
15 | Fire Hall and permitted a complete review by Residents of
16 | the Port of Tahuya files and records. At that time
17 | Residents received copies of documents not previously
18 | supplied to Residents but which had been the subject of the
19 | August 8, 2003 and August 12, 2004 document requests
20 | including Port of Tahuya resolutions regarding document
21 | production policies, documents relating to the creation of
22 | the Port of Tahuya, documents concerning Port of Tahuya

1 policies and procedures, documents relating to public
2 comment on the Beach Access Plan, documents relating to SEPA
3 compliance in the adoption of the Beach Access Plan,
4 November, 2002 Draft of the Beach Access Plan, Budget
5 Records, the Port Comprehensive Plan and Port Minutes.

6 12. The actions of the Port in complying with the
7 Residents' document requests of August 8, 2003 and August
8 12, 2003 were not in compliance with the Port's policy
9 pursuant to Resolution 90-004 and were not prompt as
10 required by RCW 42.17.320. The Port actions in complying
11 with the document requests were not reasonable in time or
12 completeness. The Port actions did not provide the fullest
13 assistance to the Residents or the most timely possible
14 action on the Residents' requests for information.

15 13. As a result of the failure by the Port to
16 timely or completely comply with the Residents' document
17 requests, Residents' commenced and maintained this action
18 against the Port. Residents incurred reasonable attorneys
19 fees of \$13,275.00 and costs of \$257.16 for filing fees,
20 service of process, office copies and postage in maintaining
21 this action.

22 CONCLUSIONS OF LAW

Findings of Fact and
Conclusions of Law

- 5 -

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1 Based on the foregoing Findings of Fact the Court
2 makes the following Conclusions of Law:

3 1. Defendant Port failed to timely or completely
4 comply, as required by RCW Chapter 42.17 with the Residents'
5 August 8, 2003 and August 12, 2003 records requests.

6 2. Pursuant to RCW 42.17.340 (4) Defendant Port
7 should be required to pay to Plaintiff Residents \$1,040.00
8 representing \$5.00 per day for each of the 208 days when
9 Plaintiff Residents was denied the right to copy and inspect
10 the requested records of the Port.

11 3. Pursuant to RCW 42.17.340 (4) Defendant Port
12 should be required to pay to Plaintiff Residents the sum of
13 \$13,275.00 in reasonable attorneys fees and \$257.16 in
14 reasonable costs incurred by Plaintiff Residents as a result
15 of the failure by the Port to permit inspection and copying
16 of its records in a reasonable time. Such costs include
17 \$110 in filing fees, \$112.91 for service of process, \$26.35
18 for copies and \$7.90 for postage.

19 Done in Open Court This _____ Day of July, 2004

20 _____
21 JUDGE JAMES B. SAWYER II

22 Findings of Fact and
Conclusions of Law

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Presented by:

THOMAS C. O'HARE (WSBA #220)
SMITH & O'HARE P.S. INC.
Attorneys for Plaintiff Residents

Approved as to form:

JAMES K. SELLS (WSBA #6040)
RYAN, SELLS, UPTGRAFT, INC.
Attorneys for Defendant Port

Findings of Fact and
Conclusions of Law

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

RESIDENTS FOR PRESERVATION)	
OF QUALITY OF LIFE ON HOOD)	NO. 03 2 0758 1
CANAL)	
)	JUDGMENT
Plaintiff)	
)	
v.)	
)	
PORT COMMISSION OF THE PORT)	
OF TAHUYA,)	
)	
Defendant)	

JUDGMENT SUMMARY

Judgment Creditor:	Residents For Preservation of Quality of Life On Hood Canal
Judgment Debtor:	Port Commission of The Port of Tahuya
Principal Judgment:	\$ 1,040.00
Costs Incurred:	257.16

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Attorney's Fees: 13,275.00

Principal Judgment Amount, Attorney's Fees, Costs and Other Amounts Shall Bear Interest At The Rate of 12% Per Annum On and After The Date Hereof.

Attorney for Thomas C. O'Hare
Judgment Creditor: Smith & O'Hare, P. S., Inc.
P. O. Box 68
Silverdale, Washington 98383

The above captioned matter coming on duly and regularly for trial on June 18, 2004, and the court having heard the testimony offered, reviewed the exhibits offered and heard the argument of counsel, and having previously entered its Findings of Fact and Conclusions of Law, and being fully advised in the premises,

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that Plaintiff Residents For Preservation of Quality of Life On Hood Canal is hereby awarded a judgement against the Port of Tahuya pursuant to RCW 42.17.340 (4) in the amount of \$1,040.00 representing \$5.00 per day for each of the 208 days when Plaintiff Residents was denied the right to copy and inspect the requested records of the Port, and

IT IS FURTHER ORDERED ADJUDGED AND DECREED that Plaintiff Residents For Preservation of Quality of Life on Hood Canal is hereby awarded a judgment against the Port of

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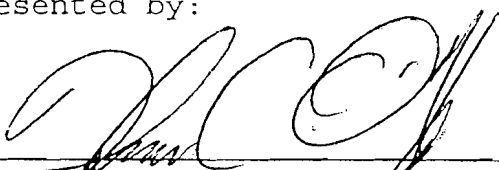
1 Tahuya pursuant to RCW 42.17.340 the sum of \$13,275.00 in
2 reasonable attorneys fees and \$257.16 in reasonable costs
3 incurred by Plaintiff Residents as a result of the failure
4 by the Port to permit inspection and copying of its records
5 in a reasonable time. Such costs include \$110 in filing
6 fees, \$112.91 for service of process, \$26.35 for copies and
7 \$7.90 for postage.

8 Done in Open Court This 12th Day of July,
9 2004.

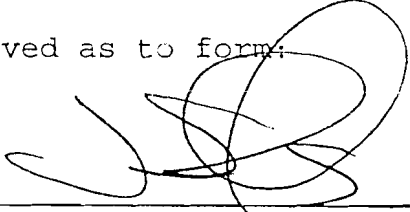
10 JAMES B. SAWYER, II

11 JUDGE JAMES B. SAWYER II

12 Presented by:

13 
14 _____
15 THOMAS C. O'HARE (WSBA #220)
16 SMITH & O'HARE P.S. INC.
Attorneys for Plaintiff Residents

17 Approved as to form:

18 
19 _____
20 JAMES K. SELLS (WSBA #6040)
RYAN, SELLS, UPTGRAFT, INC.
Attorneys for Defendant Port

JAMES CHRISTEN/Re-direct by Mr. O'Hare

1 Q. But I take it the four hours was time spent
2 specifically while Ms. Sloman went through the
3 documents to determine what ones related to her
4 request.

5 A. Yes, Sir.

6 MR. O'HARE: Nothing further, Your Honor.

7 THE COURT: Anything further?

8 MR. SELLS: No, Your Honor.

9 THE COURT: If you'd step over and sign the
10 witness roster please which the clerk has right over here,
11 you're welcome to step down.

12 MR. O'HARE: Plaintiff rests, Your Honor.

13 THE COURT: Plaintiff has rested. -- Counsel.

14 MR. SELLS: Call Cynthia Olsen, Your Honor,
15 please.

16 CYNTHIA OLSEN called as a witness on behalf of
17 the defendants, is duly sworn on
oath and testifies as follows:

18 THE COURT: State your name and spell your last
19 name for the record please.

20 MS. OLSEN: My name is Cynthia Denise Olsen. The
21 last name is spelled O-L-S-E-N.

22 THE COURT: Counsel, your witness.

23 MR. SELLS: Thank you, Your Honor.

24 DIRECT EXAMINATION BY MR. SELLS

25 Q. Ms. Olsen, you are currently a Port of Tahuya

CYNTHIA OLSEN/Direct by Mr. Sells

1 Commissioner, is that correct?

2 A. That's correct.

3 Q. And how long have you been a commissioner?

4 A. I have been a commissioner for the Port of Tahuya since
5 1996.

6 Q. Prior to that, did you hold any public office?

7 A. Prior to that, no public office, no.

8 Q. Have you ever held any other public office?

9 A. Yes, I have. I was a Mason County Commissioner for
10 four years.

11 Q. When was that?

12 A. That was '97 through 2000.

13 Q. Representing the area of the Port of Tahuya?

14 A. Yes, as well as the entire county.

15 Q. Now can you briefly describe the geography and the
16 population of the Port of Tahuya?

17 A. The Port of Tahuya is approximately 30 square miles of
18 rural forested area, bordered on two sides by Hood
19 Canal. The population is about 3,500 people, and with
20 a larger influx in the summertime.

21 Q. Are there people that have, for example, summer homes
22 there?

23 A. Yes, quite a few.

24 Q. In August of last year, of 2003 when all this started,
25 were you secretary of the port commission?

CYNTHIA OLSEN/Direct by Mr. Sells

1 A. Yes, I was.

2 Q. And did you in fact receive what's been marked as
3 Exhibit 1 I believe? Let me double check. I'm sorry,
4 Exhibit 12. Well, let's do it this way. Did you
5 receive a request for public records from a Mary Kay
6 High?

7 A. Yes, I did.

8 Q. And where did you get that?

9 A. It was faxed to my home.

10 THE COURT: I have, I have a copy. Thank you.

11 Q. Did you receive it at your home then?

12 A. Yes, I did.

13 Q. And at that time, did the port have a fax machine?

14 A. No, the port did not.

15 Q. So when you say it was faxed to your home, it came - it
16 really did come to your home.

17 A. Yes, it did come to my home.

18 Q. And what did you do when you got it?

19 A. Well, I read it, and then I was overwhelmed. It was a
20 lot of documentation. So I called the attorney's
21 office and asked, my gosh, how do I, how do I deal with
22 complying with this in a timely manner.

23 Q. I'm looking at Exhibit 1, which is the August 8th
24 letter, and that had 28.

25 A. 28 multiple, yes.

CYNTHIA OLSEN/Direct by Mr. Sells

1 Q. What did the attorney tell you?

2 A. The attorney told me to make sure and write them back
3 within the five days and give them an approximate date
4 of when I thought I could have the information together
5 for them.

6 Q. Handing you Exhibit No. 2, or copy of Exhibit No. 2, is
7 that your response?

8 A. It is. It says I've received your fax public
9 disclosure request. We will be reviewing the files to
10 provide your office with the disclosable information.
11 Due to the size of your request and the age of some of
12 the documents, I am unable to provide you with an exact
13 date or cost of copying. We will try to locate all of
14 the documents by the end of September and give you a
15 date and cost then. Please send any other
16 correspondence to the port's P.O. Box 90, Tahuya. I
17 have not found my message or fax machine to be
18 dependable, and the copy I got from your office was
19 barely readable. And it's sincerely, Cynthia Olsen,
20 Commissioner Secretary.

21 Q. How did you come up with that estimate of the end of
22 September?

23 A. Well, being self-employed and at a very busy time of
24 the year for construction, I assumed that it was going
25 to take me a good many hours to go through the files to

CYNTHIA OLSEN/Direct by Mr. Sells

1 A. It was, yes.

2 Q. Did you anticipate that you'd have to be using that
3 copy machine to make these copies?

4 A. Oh, yes, I did.

5 Q. Make sure I finish, Cindy, before you answer. And the
6 file cabinet, I'm going to hand you Exhibit 17 and
7 Exhibit 18, which - is that a pretty, is that a pretty
8 good representation of what the inside of that file
9 cabinet looked like at the time?

10 A. Yes, full.

11 Q. And were all four drawers full?

12 A. Yes.

13 Q. To your knowledge, was there any - was there in fact
14 any organization to the records?

15 A. Yes, there was some organization to the records. The
16 current ones were in the top drawer.

17 Q. By current, what dates?

18 A. I couldn't give you the exact dates, but I know that we
19 basically worked out of just the first few files for
20 our minutes and our vouchers.

21 Q. What was in the bottom three drawers?

22 A. Files. I had never been through them prior to this.

23 Q. When and how did you start going through these files to
24 respond to this request?

25 A. One at a time.

CYNTHIA OLSEN/Direct by Mr. Sells

1 Q. What time, what time of the day or the week did you do
2 that?

3 A. I spent a couple of, I spent a couple of weekends, and
4 I spent some evenings. And then my daughter came out
5 and spent a full day helping me go through the files so
6 that I could pull and she could copy.

7 Q. Did you keep rough track any way of how much time you
8 spent on this project?

9 A. I did, yes. I didn't in the very beginning. That was
10 when I was just gathering the, the recent minutes and
11 things like that. But then when I did have to start
12 going actually physically through the files, I did
13 start writing it down in my calendar.

14 Q. How much time did you put in on trying to put this
15 request together, the first request?

16 A. The first request, my daughter's and my time was 25
17 full hours.

18 Q. Did you then get a second request?

19 A. Yes.

20 Q. And what did you do with that?

21 A. Called the attorney's office again, and we just went
22 from there and tried very hard to pull more files and
23 find what they were looking for and provide them to
24 them in a timely manner.

25 Q. Did you in fact - I think it's already been alluded to

CYNTHIA OLSEN/Direct by Mr. Sells

1 in the previous testimony - but apparently you loaded
2 up a bunch of files and brought them into my office, is
3 that correct?

4 A. Yes, I did.

5 Q. Why did we decide to do that?

6 A. We decided to do that because our copy machine is so
7 extremely slow.

8 Q. If someone had come out there from Citizens, the
9 plaintiffs here, or Ms. High's office to the port
10 office, which also was the fire office, as I understand
11 at that time, correct?

12 A. Correct.

13 Q. Fire district office. Would someone have had to have
14 been with them at all times?

15 A. Yes.

16 Q. Who would that someone have been?

17 A. I would assume it would have been my responsibility as
18 the secretary.

19 Q. And by having them copy them in your attorney's - the
20 port's attorney's office, you were relieved of that
21 sort of thing.

22 A. That's correct. It, it also relieved the fire district
23 office of the congestion in it. Our file cabinet was
24 behind the door, and when you opened the drawers, it
25 blocked the drawers so the fire personnel would not

- 1 have been able to get in the office.
- 2 Q. When you brought the materials into our office, did you
3 believe that those were in response to the, to the two
4 August 8th and August 12th request for public
5 documents?
- 6 A. Yes, I did.
- 7 Q. Did you ever get a phone call, fax, e-mail or anything
8 like that directly from either anybody from the
9 plaintiffs' or from Ms. High's office saying I want to
10 come to the port's office within 24 hours?
- 11 A. Other than that August 12th letter, no, I did not.
- 12 Q. Did you ever get any complaints, anybody calling you
13 saying that it was unacceptable that the documents be
14 copied in the port attorney's office?
- 15 A. No, I did not.
- 16 Q. Now you've been sitting next to me here today, and
17 we've seen these exhibits. And there's currently 10
18 exhibits that appear to be or at least we're told
19 they're from the port files. Correct?
- 20 A. Correct.
- 21 Q. Do you have any reason to doubt that?
- 22 A. I have, I have no reason to doubt that. If they say
23 that's where they came from, I, I have to believe
24 that's where they came from.
- 25 Q. So it appears that you missed some.

CYNTHIA OLSEN/Direct by Mr. Sells

1 A. It appears that I missed some.

2 Q. Were any of these documents that you looked at and
3 said, boy, I don't want to give them those documents?

4 A. Absolutely not.

5 Q. Did you give them all of the documents that you felt
6 that you could find that were in compliance with the
7 August 8th and the August 12th request?

8 A. Yes, Sir, I did.

9 Q. Just to bring us up to date, what's the port office
10 like now?

11 A. We have our file cabinet in the foyer of the fire hall.

12 Q. That's it? You got a fax machine yet?

13 A. No.

14 Q. E-mail?

15 A. No.

16 Q. Your own copier?

17 A. We still share the copier with the fire district.

18 Q. They allow you to do that?

19 A. Uh-hum.

20 MR. SELLS: I have no further questions.

21 THE COURT: Cross examination.

22 MS. HIGH: Thank you, Your Honor.

23 CROSS EXAMINATION BY MS. HIGH

24 Q. Ms. Olsen, you said that you were elected to the port
25 commission in 1996. Is that correct?

CYNTHIA OLSEN/Cross by Ms. High

1 A. Not, not elected. I was appointed.

2 Q. Okay, appointed. When did you become secretary?

3 A. Immediately. I was the new kid on the block, so I got
4 to be the secretary.

5 Q. So from 1996 to 2003, you had never bothered to
6 organize or index the port files. Is that correct?

7 A. Not the old files, no.

8 Q. From 1993 to 2006, you had never bothered to
9 familiarize yourself with the port's policies regarding
10 public records request.

11 A. No.

12 Q. And is it your testimony that from 1996, 2003, you
13 never even read the 1990 resolution regarding access to
14 records?

15 A. No, I had not seen that.

16 Q. Now you indicate that the current records were kept
17 pretty much in one file drawer, and in fact reviewing
18 request number one - Exhibit No. 1, excuse me, most of
19 those requests related to public comments regarding the
20 recreation plan, the notices for the recreation plan,
21 the correspondence regarding the recreational plan,
22 minutes of meetings where that plan was discussed, the
23 minutes and meetings of the SEPA DNS. So those would
24 have all been current things within that top file
25 drawer, would you agree?

CYNTHIA OLSEN/Cross by Ms. High

1 A. They weren't all necessarily in the file drawer. Some
2 of them were in a box because they had not been filed
3 at that point.

4 Q. So those were items though that were fairly
5 identifiable for you.

6 A. Yes.

7 Q. And in fact one of the other major requests was just
8 the port enabling documents, is that right?

9 A. When you say port enabling documents, explain what you
10 mean.

11 Q. Well, the petition and the ordinance that establish the
12 port. That would have been a key document for the port
13 to have, is that correct?

14 A. I, I don't know. I'm sorry . . .

15 Q. So you, you never bothered to check the files to
16 determine the port enabling documents.

17 A. The port had been in existence long before I ever
18 became a port commissioner. I never - it never
19 occurred to me to even look for anything like that.

20 Q. So it's your testimony that as an elected official who
21 is the secretary of the port, it didn't occur to you to
22 review the files or any of the port policies or
23 enabling documents. Is that correct?

24 A. That's correct.

25 Q. Now you never responded, did you, to the August 12th

CYNTHIA OLSEN/Cross by Ms. High

1 letter where there was the offer to come and review and
2 mark documents?

3 A. All of that was then taken to the attorney's office and
4 was handled through the attorney after, after that
5 second response.

6 Q. Right, you never bothered to call or respond to take up
7 the offer of coming in and marking and reviewing the
8 documents?

9 A. No, I did not. I, I left it over to the attorneys.

10 Q. Is it fair to say that you never familiarized yourself
11 with the Public Disclosure Act requirement for public
12 agencies?

13 A. I, I already knew what the public disclosure rules and
14 such were. This was the first time that I had ever
15 received a public disclosure request for the port was
16 when this started, and I believe that Jim Christen was
17 the very first one that I ever received.

18 Q. But you said you were familiar generally with the
19 requirements.

20 A. Yes, yes.

21 Q. So then you were familiar with the requirement that an
22 agency prepare an index of its files.

23 A. No, that I was not.

24 Q. Or . . .

25 A. I understood the five-day you need to get back to them

CYNTHIA OLSEN/Cross by Ms. High

1 and you need to provide them in a timely manner and
2 provide everything they ask for that is disclosable.

3 Q. Well, then were you familiar with the provision where -
4 and the act would seem to acknowledge that there are
5 some kind of small entities that there needs to be
6 flexibility. You'd agree with me. Not every agency
7 has a secretary and a cast of thousands, is that true?

8 A. That's true.

9 Q. And in fact the Public Disclosure Act, perhaps you were
10 familiar with they had a requirement that if a small
11 place doesn't have customary office hours, it sets up
12 customary office hours. Were you aware of that?

13 A. No.

14 Q. Now one of the actions that the port took after
15 receiving the Public Disclosure Act request was to
16 increase the rate of copying. Is that correct?

17 A. That's correct.

18 Q. And so you were familiar that - with the fact that the
19 Public Disclosure Act provided for costs for copying,
20 is that right?

21 A. Yes.

22 Q. And you're also then familiar with the act's
23 requirement that there be a formal order or resolution
24 identifying how that cost is determined. Is that
25 right?

CYNTHIA OLSEN/Cross by Ms. High

1 A. Through a public hearing process.

2 Q. And in fact there was not in your resolution a
3 designation or determination of the actual costs that
4 were involved where you came up with the 20 cents per
5 page, was there?

6 A. We had a public hearing, and it was adopted at 20
7 cents.

8 Q. And what was said at that public hearing was we met and
9 decided it would be 20 cents. Is that correct?

10 A. No, I don't recall that.

11 Q. You don't recall telling individuals what went into the
12 determination of the 20 cents, did you? No.

13 A. No.

14 Q. And it's not reflected in your minutes how the 20 cents
15 was determined.

16 A. No, I don't believe it is.

17 Q. And in fact you're aware that if you don't specify how
18 you calculate it, the Public Disclosure Act limits the
19 cost to 15 cents per page?

20 A. I didn't realize that.

21 Q. You didn't realize that.

22 A. No.

23 Q. Now if I may, Exhibits - oh, it looks like 17, 18, do
24 you know who took these pictures?

25 A. I've been told it was Bob Gilbert.

CYNTHIA OLSEN/Cross by Ms. High

1 Q. Do you know when those pictures were taken?

2 A. No, I couldn't say for sure.

3 Pause.

4 Q. Let me show you Exhibit 20 if I may. Do you recognize
5 that?

6 A. Yeah.

7 Q. And Exhibit 20 is a picture of the filing cabinet, a
8 little lower filing cabinet and a box.

9 A. That's correct.

10 Q. And that lower filing cabinet that says port in-box,
11 that was provided by Commissioner Christen, wasn't it,
12 for port mail.

13 A. I'm, I'm assuming it was.

14 Q. It was not there before, was it?

15 A. No, it wasn't.

16 Q. It wasn't there in August.

17 A. Right, no.

18 Q. And it wasn't there in September.

19 A. No.

20 Pause.

21 Q. Now you indicated that if someone had offered to come
22 in and look at port records, that you believed you'd
23 have to stay there personally.

24 A. That's correct.

25 Q. Now there were two other commissioners, is that

CYNTHIA OLSEN/Cross by Ms. High

1 correct?

2 A. True.

3 Q. And one of those commissioners was retired?

4 A. Yes.

5 Q. So in fact there were other officers or commissioners
6 that were available to be present. Isn't that correct?

7 A. That's correct.

8 Q. And you would agree when you went through the documents
9 that you missed some important documents.

10 A. There, there are documents there - yeah, I, I would
11 suppose I missed them. I tried to be as absolutely
12 thorough as possible.

13 Pause.

14 Q. Handing you what's been admitted as Exhibit 15, you
15 would agree that was an important document in this
16 case, wouldn't you?

17 A. And I may, I may have looked at this when I was going
18 through the files and thought that it didn't pertain to
19 us because we no longer have a secretary. And then
20 each of these commissioners that it says to call and
21 contact are all - one of them is deceased and two of
22 them are no longer in the area at all.

23 Q. Now you've held positions other than the Port of Tahuya
24 commissioner position, is that correct?

25 A. That's correct.

CYNTHIA OLSEN/Cross by Ms. High

1 Q. And so I mean clearly it can't be your understanding
2 that resolutions in the past, whether it's by the
3 county commissioner or the port, only pertain to the
4 people and place when they're passed.

5 A. I, I will, I will never pretend to understand
6 everything that goes on with government. When I was
7 county commissioner, I did have a staff that handled
8 nearly all of that.

9 Q. But you wouldn't, you wouldn't expect that laws,
10 resolutions, policies passed only apply to the people
11 that passed them.

12 A. I could very well have looked at this and thought that
13 it pertains only to those commissioners being that it
14 states those commissioner's names, and --

15 Q. So you may have actually

16 A. -- I, I may have actually, I may have actually passed
17 it up unknowingly.

18 Q. So you may have seen that document --

19 A. Yeah.

20 Q. -- and have made a call not to provide it.

21 A. I may have. I

22 Q. Did you ever consider taking the file cabinet to, to
23 the law attorney, to the office of your law attorney to
24 facilitate the inspection?

25 A. That - it didn't occur to me, but that might have been

CYNTHIA OLSEN/Cross by Ms. High

1 a very good idea.

2 Q. And you indicated that it took you 25 hours to go
3 through the filing cabinet.

4 A. That's correct.

5 Q. And this though you had never bothered to do that from
6 1996 to 2003 before to organize your files.

7 A. There, there was no reason to do that that I had ever
8 found. I had never had a public disclosure request
9 before so . . .

10 Q. And in your mind in your duties as the port secretary,
11 there was no reason to become familiar with the port
12 files.

13 A. Most of it was ancient history.

14 Q. And so in your mind, there was no reason for you to
15 become familiar with the port files.

16 A. And I didn't have the time or the opportunity or the
17 need, yeah.

18 Q. I just need to get an answer to my question. So you
19 would feel that the secretary found no reason to go
20 through those files.

21 A. No.

22 MS. HIGH: No further questions at this time. If
23 you'll let, I'll get these back to your clerk before I get
24 them shuffled.

25 THE COURT: Please. -- Re-direct.

CYNTHIA OLSEN/Re-direct by Mr. Sells

1 MR. SELLS: Yes, Your Honor.

2 RE-DIRECT EXAMINATION BY MR. SELLS

3 Q. Ms. Olsen, do you still have Exhibit 15 up there?

4 A. No.

5 THE COURT: We can get it very quickly, however.

6 There you go.

7 A. Thank you.

8 Q. I think you started to explain why you may not have
9 felt this applied and didn't get to finish. Let me ask
10 you. The second page of that, the 1990 resolution.

11 A. Yes.

12 Q. It says, does it not, said records may be inspected
13 between the hours of 9:00 to 4:00, Monday through
14 Friday, by contacting one of the Port of Tahuya
15 commissioners as listed below.

16 A. That's correct.

17 Q. And the ones that are listed below are Neil Johnson,
18 Donald Geylon, Ghylin, and Bill Pregnall. Is that
19 correct?

20 A. That's correct.

21 Q. It doesn't say by contacting one of the port
22 commissioners period.

23 A. No, it doesn't.

24 Q. Would that have been why maybe you wouldn't have
25 thought this applied?

CYNTHIA OLSEN/Re-direct by Mr. Sells

1 A. That very well could be. If it had said any or any
2 port commissioner, I, I'm sure I would have included
3 it.

4 Q. And the first page of that involves - that exhibit,
5 involves the secretary.

6 A. Yeah, which we have none.

7 Q. And since you don't have a secretary, that wouldn't
8 apply now at all would it?

9 A. No.

10 MR. SELLS: No further questions.

11 THE COURT: Any other questions for this witness?

12 MS. HIGH: No. Thank you, Your Honor.

13 THE COURT: Thank you, you can step down if you'd
14 sign our witness roster. -- Your next witness please

15 MR. SELLS: That's our - we rest.

16 THE COURT: Rebuttal.

17 MR. O'HARE: No, no response or rebuttal material,
18 Your Honor, so it's a matter of going to argument.

19 THE COURT: You've got 20 minutes. Do you think
20 you can get your argument done in 20 minutes or would you
21 like to take a noon recess, come back and present argument
22 at 1:15?

23 MR. O'HARE: I think it's a little tight to do it
24 in 20 minutes. Come back, Your Honor.

25 THE COURT: 1:15. Actually since it's 20 to

1 12:00, let's go ahead and come back at 1:00 o'clock.

2 MR. O'HARE: Thank you, Your Honor.

3 MS. HIGH: That's excellent. Thank you, Your
4 Honor.

5 THE COURT: Okay, we'll be back here at 1:00
6 o'clock. Court is in recess.

7 RECESS/COURT RECONVENES

8 Court reconvenes on the same date,
9 and the following is heard in the
presence of the parties:

10 THE COURT: Thank you, please be seated. Court is
11 back in session. Counsel, argument.

12 PLAINTIFFS' CLOSING ARGUMENT

13 MR. O'HARE: Your Honor, the statute that we're
14 here about is one that you probably recall was actually
15 adopted through an initiative to people, Initiative 276.
16 And it was part of an effort to in effect make sure that the
17 confidence of the public in government was protected in all
18 respects by making sure they had access to all the
19 information about their government that one could possibly
20 have, and that was the philosophy of that particular
21 statute. The preamble to the statutes . . .

22 THE COURT: Carolyn, you can leave that on.
23 That's fine. Thank you.

24 MR. O'HARE: The preamble to that statute in
25 42.17.010 talks about the policy and specifically talks

1 MR. O'HARE: Your Honor, very briefly, the, the
2 issue of whether bringing a lawsuit to forfeit your right to
3 prompt document production under the statute, under the
4 statute is kind of an amazing argument to make. These folks
5 were entitled to the stuff without a lawsuit. They brought
6 a lawsuit because they felt they needed to to get the
7 documents in any kind of timely manner, and that certainly
8 didn't reduce their rights to get these documents. The
9 financial status of the Port of Tahuya is not before you,
10 and the only document requests before you are the ones
11 contained in the August 8 and the August 12 letters. And
12 that's what's on the record here and before you and to be
13 considered by you. And so - by the way, I said Exhibit 7
14 through 16. It's actually Exhibit 7 through 16 and Exhibit
15 22 were the documents.

16 We haven't asked for, despite the fact that the statute
17 permits it, for \$5.00 per day per document or \$100.00 per
18 day per document. You'll note I didn't make that argument.
19 I'm not making it now. But I do think that a daily fine of
20 some amount between - for the 208 days between the request
21 and when things were ultimately presented in, in February is
22 appropriate. But I, but I think it probably would be
23 excessive to assess it or levy it on a per document basis.

24 THE COURT: Truly this initiative, which is now
25 law, was intended to provide for open government, open

1 accountable government. Part of that process is the timely
2 provision of documents upon reasonable requests made by the
3 citizens of the jurisdiction. In this case, a request was
4 made on the 8th of August, and it sounds like - I believe
5 it's a quote - the commissioner went into a panic mode when
6 she received that, that request.

7 The Court needs to look at the totality of the
8 circumstances when determining whether that panic mode and
9 its ultimate response was reasonable or unreasonable in the
10 circumstances. And everybody should recognize that
11 Commissioner Olsen was only one of three commissioners at
12 the time, and they had the resource - they had additional
13 resource there that perhaps could have been dealt with.

14 The totality of the circumstance is that apparently the
15 people in the community knew that there was a significant
16 port decision that was about to be addressed on the 20th of
17 August, and for that reason there was perhaps a greater need
18 for information on a more expedited basis than simply
19 somebody that had a curiosity or somebody that knew that it
20 was going to take a long time to build a stadium and get it
21 funded and had a lot of time to be able to work it through.
22 That's a circumstance that certainly wasn't unknown to any
23 of the parties before the - or during the process.

24 Significantly also was the limitation of the amount of
25 information that was available to be requested. Four, a

1 four-drawer filing cabinet, even though filled to the brim,
2 is not a particularly undaunting task when one considers
3 that the reality is that you could go through and eliminate
4 those documents that can't be produced because of the
5 exclusions and produce the balance. In this particular
6 instance, the discovery requested, the documents requested
7 were not produced until well after the crucial meeting date
8 and essentially denied access in a timely fashion to an
9 element of the community that is served by the commission.

10 There were a lot of decisions that could have been made
11 that weren't made. It doesn't appear that anybody ever
12 said, gee, I am only one of three, get your tails in here
13 and help me out. Although I am the secretary, we're all
14 commissioners and we all have to deal with this type of
15 thing. I think that you made the right response in getting
16 a hold of your lawyer. Obviously that's always helpful.
17 Most lawyers appreciate that their clients get a hold of
18 them early rather than late.

19 But under the circumstances, I can't find and do not
20 find that the response was timely and adequate given the
21 totality of the circumstances here. I am, therefore,
22 finding that the actions violated the right to access. I am
23 awarded \$5.00 per day for 208 days total. I will be
24 addressing attorney's fees. I do agree with Mr. Sells that
25 I have discretion in awarding attorney's fees. I believe

1 that some of this . . . Well, I'll deal with that when we
2 get to it. Counsel.

3 MR. O'HARE: Your Honor, I'll let Ms. High address
4 that topic because they're her fees.

5 THE COURT: Ms. High.

6 MS. HIGH: Thank you. I did prepare - and I was
7 way more organized at the beginning of the morning - a
8 declaration regarding my attorney's fees. [Portion
9 inaudible] copy as well.

10 THE COURT: Thank you. If you will please. I'll
11 give her the original.

12 MS. HIGH: Right. And I have put in 88.5 hours
13 strictly related to the Public Disclosure Act. That
14 involved the requests, that involved show cause hearings
15 that we've come here for, then ended up being canceled, a
16 summary judgment motion and this trial preparation at
17 \$150.00. And, you know, as the lodestar approach takes a
18 look at what is a reasonable rate in the relevant community,
19 \$150.00 is actually less than my standard billing rate,
20 however . . . Yeah, and also and Mr. O'Hare has not
21 included any of his fees. And you can see as a cost, we
22 didn't even include the cost of Dr. Sloman or our other
23 costs, but simply the bare minimum costs of some copying,
24 the service and the mileage.

25 And, and in effect - because I think the Court realizes

1 that this is not going to be retribution and that's why
2 we've asked for the most diminimus of damages, both in terms
3 of the daily penalty and in terms of the kind of fees that
4 could have been asked here, I would ask that you award
5 attorney's fees for 88 and a half hours at \$150.00 an hour
6 and the costs. I think they're about \$250.00 or \$260.00.

7 THE COURT: Mr. Sells, are you prepared to respond
8 to this or would you like some time to come back to respond
9 to it.

10 MR. SELLS: Well, I'm gonna - maybe if the Court
11 please maybe I can think out loud. As I understand it then,
12 Mr. O'Hare is not going to seek attorney's fees.

13 MR. O'HARE: No, Your Honor, that's, that's the
14 attorney fee requested. We elected to have two of us here
15 today, but we're not asking the Port of Tahuya to pay that.

16 MR. SELLS: Well, I'm not gonna question Ms.
17 High's affidavit, Your Honor. I mean if she says she put in
18 88 hours, she put in 88 hours. 150.00 is - I can tell you
19 that's our governmental rate that we charge, so I, I can't
20 address that.

21 THE COURT: Well, I can tell you that having sat
22 in this position as long as I have, it doesn't cease to
23 shock me when I look at attorney's fee requests. And this
24 one surprises me from the standpoint that the request I
25 think has been tempered with with reason. There does not

1 appear to be an exorbitant request for attorney's fees or
2 does not attempt to be any - or appear to be any attempt at
3 adding - costs are kept minimal. Although two attorneys
4 have been here today to represent the plaintiff, they're
5 only billing for one. The thirteen - the 13,275.00 is
6 reasonable, and the costs of 257.16 are assessable and
7 reasonable and will be awarded. I'll sign an order.

8 MR. O'HARE: Thank you, Your Honor. We'll prepare
9 and present one.

10 THE COURT: Any questions?

11 MR. SELLS: No, Your Honor.

12 THE COURT: Court's in recess.

13 Court is adjourned.

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