

**PORT OF OLYMPIA COMMISSION
MINUTES OF REGULAR MEETING**

January 26, 2004

CALL TO ORDER

President Telford called the meeting of January 26, 2004, to order at 5:30 p.m. at the LOTT Board Room in Olympia. Commissioners Pottle and Van Schoorl were also in attendance.

Staff in attendance were: Executive Director John Wolfe, Administrative Manager Jeri Sevier, Harbor Director Bruce Marshall, Property Director Heber Kennedy, Marketing Director Kari Qvigstad, Public Works Director Andrea Fontenot, Communications Manager Patti Grant, Marketing Program Assistant Maureen Malahovsky, Property Administrator Sally Alhadeff, and Finance Director George Fox.

Public in attendance were as follows. Representing *The Olympian* was Chris Clough and Jim Szymansky. Representing KGY was Val Vaughan. Others in attendance included Jim Peters, Tom Gillik, Mike Hart, Destry Ahre, Marjorie Ruegsegger, Marnie Tyler, Harold Chambers, Ev Dunklee, Gay Booth, Stacey Tobin, Marie Tobin, Russell Lidman, Mary Pontarolo, Mary Leahy, Louise Barnett, Barbara Brecheen, Scott Phillips, John Brecheen, Kathleen White, Peter and Judy Witt, Darrel and Alice Stoner, Gerald and Jessie Ambrose, Caroline Lehman, Doris St. Louis, Jim Haseltine, Mike Leahy, Paul Deranleau, Liz Snell, Jim Snell, Debbie Harding, Roger Harding, Harold Clark, and Marianne Partlow.

APPROVAL OF AGENDA

The agenda was approved as submitted.

PUBLIC COMMENT

Harold Chambers, resident of Yelm, indicated he wanted to comment on something that Mr. Handy said at the last meeting. He indicated that Mr. Handy praised Mr. Sandy Mackie, who served as the Port's legal counsel, for his fine legal work, however, he never pointed out several legal mistakes Mr. Mackie made that cost the Port thousands time after time.

COMMISSIONERS REPORTS

Commissioner Van Schoorl indicated he attended the TRPC meeting and would like to get staff involved in the rail and air transportation discussions.

EXECUTIVE DIRECTOR REPORT

Mr. John Wolfe reported the Swantown and marketing staff closed out the Seattle boat show booth on Sunday after a 10-day event. The Seattle boat show is the largest on the west coast. He commented that we made many good contacts, rented slips and generated interest in the current marina and boatworks operation as well as future activities planned on the property.

At the Olympia Airport, Mr. Wolfe noted that we had a total of 94,230 operations for the 2003 calendar year. That's over 8,500 more than the previous year's total of 85,675. He indicated that total operations include all take-offs, landings and approaches.

Also at the Olympia Airport, Mr. Wolfe reported that the fixed based operator Glacier Aviation is entering a new business area by expanding their operations to include a full service maintenance shop for aviation

customers, beginning in Jan. Glacier currently has a total of 126 students receiving all or part of their flight instruction at the Olympia Airport.

Turning to the properties program, Mr. Wolfe indicated that staff recently held the 3rd East Bay Master Planning public workshop on January 22. The consultants presented four frameworks showing different traffic and development configurations and public comment was taken. Discussions are underway by staff, the Port Planning and Advisory Committee, and the consultant team to develop a preferred alternative to be presented at the 4th workshop to be held March 2.

Mr. Wolfe reported that the State of Washington and the Port came to an agreement with the Port terminating the reverted clause, which resulted in the State paying the Port \$1.7m for the 20 acre parcel at the corner of Linderson and Tumwater Blvd. Payment was received last week.

Mr. Wolfe indicated that another log vessel was recently in port, this vessel loaded approx 1.8mmbf for Okuyama. In addition, a cedar log barge was discharged for Aloha Lumber Company. Mr. Wolfe noted that we are expecting Superwood log vessel in early Feb, loading approx 4.0 mmbf.

Mr. Wolfe announced that plans are getting under way for the 8th annual Swantown BoatSwap & Chowder Challenge to be held May 15. Save the date!

CONSENT CALENDAR

The Consent Calendar was approved as follows.

Minutes. The minutes from the December 22, 2003, December 31, 2003 and January 12, 2004 meetings were unanimously approved.

- **Big Sky Lease.** Included in the Commission packet was information on the Big Sky lease. The Port and Big Sky entered into a one-year lease agreement when air service commenced at the Olympia Regional Airport in November 2002. The lease was amended through January 31, 2004 to allow for time to negotiate a longer term lease agreement.

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LEASE HIGHLIGHTS

The following highlights changes to the new lease agreement.

- Lease Term. Big Sky Airlines agreed to a three-year lease with one two-year option. The previous agreement was a one-year lease.
- Lease Area/Common Area Maintenance (CAM). Our previous lease had a fixed rate for the CAM. We have modified the percentage to reflect actual lease area and modified to assess CAM on percentage of actual costs.
- Surety. We have changed the surety amount from three-times the annual rent to one-time the annual rent.
- Passenger Facility Charge (PFC). We have agreed the Olympia Regional Airport will impose a PFC once we have met FAA criteria and approval. A user fee, new revenues will be collected from Big Sky Airlines to absorb terminal related expenses.
- Technical Language Changes. We have also modified language in Exhibit F to reflect actual activities at the terminal.

The Capital Project Expenditure for this period was not approved.

Capital Project Expenditure Approval. The capital project expenditures in the amount of \$485,820.03 to Bellingham Marine for the DEF Dock Expansion project was not approved until more information is presented on this issue. Since there are continuing problems with this project, the Commission was not willing to make a payment until staff provided more information on the project and what has been paid at

this time.

ACTION CALENDAR

Welcome Pole Recommendations by Blue Ribbon Panel

Mr. John Wolfe reported that the Commission appointed a Blue Ribbon Panel on the Welcome Pole in August, 2003 requesting advice from an outside independent panel of respected community leaders on how best to proceed with the pole at this point.

He indicated that the Blue Ribbon Panel met three times at the Port offices. At the first meeting, held on October 6, 2003, the panel received testimony from Jeff Dickison, Paul Deranleau, Duane Pasco, Ed Charles, and Nick Handy giving a historical summary of the pole.

At the second meeting, held on November 6, 2003, the panel talked with Dave Lopeman and Ray Peters from the Squaxin Island Tribe, friends and family of Joanne Jirovec, Bob Droll, the landscape architect for the plaza, and Professor Russ Lidman from Seattle University.

The third meeting was recently held on January 8, 2004. At that meeting the panel discussed their individual views on what the recommendation should be to the Port Commission.

Ms. Marianne Partlow, chair of the Blue Ribbon Panel, indicated the following individuals served on a panel for the purpose of providing the Commission with a final recommendation on what to do with the Welcome Pole.

- Jim Haseltine, Local Arts Advocate
- Ralph Munro, former Secretary of State
- Marianne Partlow, Artist and Arts Advocate
- Dr. Les Purce, President, The Evergreen State College
- Jim Snell, Friend of the Jirovec Family
- Jim Peters, Squaxin Island Tribe

She indicated the panel spent hours researching this pole. The panel tried to fully understand all issues relating to this issue. Ms. Partlow noted that all the minutes from all three meetings are in the Commission packet. She indicated that at the final meeting, a recommendation passed with a 4-2 vote as follows: Jim Haseltine, Marianne Partlow, Ralph Munro, and Jim Peters voted in favor of the motion. Dr. Les Purce and Jim Snell voted against the motion. She presented the commission with the final recommendation:

The Welcome Pole Panel would like to thank the Port for choosing a Native American symbol to represent the site and recommends the pole be raised at the Port Plaza site. In addition the panel recommends the Port ask the tribal leaders to cleanse the pole and prepare a plaque that tells the story and describes the symbols of the pole and recognizes the designers and carvers that carved the pole.

Commissioner Pottle indicated that from reading the minutes, he saw that the South Sound Maritime Heritage Association initiated the pole. They were the ones that commissioned the pole and indicated they would contribute \$9000. Ms. Partlow confirmed that statement, she indicated Tobin came forward when the SSMHA initiated the search for a carver, they new of his history, and hoped the pole would be a redemption act at that time. They all knew of his past and went ahead with it. Ms. Partlow also noted that if the pole were to be erected, the SSMHA would make payment of the \$9000.

Ms. Partlow indicated that since there was no policy in place for procuring public art, even though there was money in a public art fund, there was no policy for actually procuring public art and how it was selected. So they made it up as they went. Commissioner Van Schoorl corrected Ms. Partlow's statement by indicating that we did have policy, which is how the art fund was established.

Ms. Partlow noted that the vote of the panel was most likely swayed by the fact that Tobin was such a small part of the pole and Duane Pasco and David Franklin designed the pole and therefore we cannot call him the main person behind the development of this pole. The symbols have nothing to do with the crimes that he has committed, the symbols are positive messages. Ms. Partlow indicated that this pole is a fine work of art and is good enough that it has attracted a lot of people to this project.

Commissioner Pottle asked why no one came forward until the last minute requesting this pole not be put up in this community. Ms. Partlow responded that the family did not make the connection until the last crime Tobin committed came up in the paper. She indicated it was a known fact at the time he was commissioned to carve this pole. Ms. Partlow said that she thinks the pole should be considered as a separate entity and separate Tobin from the pole physiologically. She also indicated that the plaque should tell the complete story of those that actually worked on this pole. She suggested the plaque indicate that Tobin was the contractor, but was unable to execute the carving and then list the players that participated and to also list the symbols on the pole for people to learn about the history.

Commissioner Pottle thanked the Blue Ribbon Panel for taking the time to research this pole and to help everyone better understand what happened in this process. President Telford also thanked the Blue Ribbon Panel and indicated he appreciated the work of the panel. He asked how the Commission can proceed when Tobin is in prison and cannot participate in the final erecting of the pole and development of the plaque. Mr. Wolfe indicated that staff negotiated the final preparation for installation and therefore a trade for that work instead of the final erecting of the pole.

Commissioner Pottle asked Commissioner Telford if he knew who actually drew up the contract. President Telford said that Kirk Vies of Owens Davies told him that it was an attorney who normally represents the tribe. Mr. Vies indicated he had reviewed this contract.

Jim Snell, participant on the panel, indicated he served on the panel as a friend of Joanne Jirovec, he indicated he knew nothing about this pole or who was involved when he started on this panel, and he only served on this panel to represent Joanne. Mr. Snell indicated that he learned from this process that the SSMHA came up with the idea, Jeff Dickison served on that board, he also served on the Commission and worked for the Squaxin Island Tribe at the time. Looking at all of this as an outsider, this appears unethical. Mr. Snell described the process of how he understood it after hearing all the testimony during the panel meetings. Mr. Snell indicated that he felt the reason why the panel voted the way they did was because he felt that Mr. Handy hand selected the panel and was swaying the vote one way. He indicated that he felt that Les Purce's recommendation was very good and a workable situation. He indicated that his proposal is to sell the pole out of the community, and condition it that it stay out of the community, form a new process, and get the Indian Nation together to help fund the new commissioning of a pole or a piece of art.

Commissioner Pottle asked Mr. Snell when he heard all of the testimony, did he feel that this pole so tied to Doug Tobin that the family and friends of he deceased couldn't get over this. Tobin signed the contract, but he ripped the Port off as well as everyone else. Commissioner Pottle indicated that he could not support putting Tobin's name on the plaque. But he asked, is it so linked that it will be a divisive pole in this community? Mr. Snell indicated that he feels that it will be divisive until his grandchildren are gone. Tobin does not deserve any honor in this community.

Public Comment:

Paul Deranleau indicated he was involved in the development of this pole from the very beginning, he said that at the time, the Commission was giving Tobin a second chance -- who was to know what the future would bring. However, if all art were only displayed by the righteous, how much art would actually be displayed. He indicated he has sympathy for the family, however not their support of this issue. He indicated this has only generated negative energy by the family. Mr. Deranleau said it is a piece of wood, why don't you put it up?

Liz Snell indicated she was opposed the erection of the Welcome pole.

Debbie Harding read a letter from Mindy Ricker Eldridge, daughter of Joanne Jirovec and she commented that she has no desire to be welcomed by a pole carved by Tobin.

Carolyn Leaman indicated that she is a friend of Joanne; she read a letter by Joanne's brother where he indicated he is strongly against the erection of the pole. She commented that Tobin has never contacted any family member reflecting remorse.

Mike Leahy said he is a teacher, what are we as teachers going to say to our children about this pole? Will the story go on and on throughout history. He indicated that he does not want his grandchildren to hear about this pole.

Barbara Brecheen noted that she was a close friend of Joanne Jirovec, she indicated she felt the Commission has an opportunity to correct a mistake they made. She indicated that this community has suffered enough from Tobin's actions. If erected it makes the statement that art is valued more than a woman's life. She said if this were the Commission's mother, sister, daughter, or friend, would you be able to disassociate from this? She asked the Commission to restore the community's faith and vote against the placement of this pole.

Scott Phillips indicated that artwork in this community is shared as a family value; this pole does not provide for family values, he indicated it is in the best interest of the community to not put up this pole.

John Brecheen said on March 25, 2002 he appeared before the Commission and objected to the Commission raising the pole. He commented that even though the Port paid Tobin \$66,000, this is not an issue of money. The trial in Thurston County for Joanne's murder cost the taxpayers hundreds of thousands of dollars; the money was not the issue then either. He read an editorial from the Olympian that states the placement of the pole would divide the community. He indicated he felt the pole should be disposed of and replaced with something more suitable.

Kathleen White indicated that she does not know the Jirovec family and feels this pole will only divide this community and encouraged the Commission to surplus and sell the pole and start over and do it right.

Jim Peters, member of the Blue Ribbon Panel, indicated he made his decision to vote the way he did based on what the meaning of the pole is and the discussion that took place at the last meeting of the panel. He commented that the pole is not a religious piece of art, but a welcoming pole. He indicated that he did not necessarily want to be on this panel, but he looked at this as a piece of art and not who was involved in it. We cannot look back at things that have happened to our family and ancestors and change those things. Do we now have to go back to all the public art works and have the community agree that the artist is worthy of this art being displayed? He strongly recommended the Commission raise the pole.

Tom Gillik indicated that he knew Tobin back when he was stealing goeyducks. Placing a plaque up that recognizes Tobin in any way, only gives him the notoriety he seeks. He should not have any notoriety. He encouraged the Commission to move on and get rid of the pole.

Mike Hart indicated that he sees this as an albatross around the Port's neck. The taxpayers were ripped off on this pole and designed and carved by a murder. Move on and make something positive by not putting this pole up.

Destry Ahre and Stacey Tobin, daughter of Tobin, indicated that she was speaking on behalf of the art he created. She indicated that Tobin has artwork in Australia, New Zealand, Hawaii, Burke museum, and past Governors from Olympia has his art. He is not an amateur, he has artwork all over this world, and she noted that his criminal history has nothing to do with his artistic ability.

Marney Tyler indicated she is strongly opposed to erecting this pole in this community. The process has been flawed from the beginning. She encouraged the Port to sell the pole, or have it destroyed and conduct a new process and piece of art.

Harold Chambers indicated the process was a mistake from the beginning. He indicated this is a religious symbol and should not be erected on public property.

Doris St. Louis indicated it would be a slap in the face for law-abiding citizens for the Port to erect this pole. A lot of money has been wasted on other projects that are much more costly and \$66,000 is a drop in the bucket when it comes to correcting a wrong. Throw it in the bay and let it float to Alaska.

Mary Pontarolo said she works at Safeplace and indicated this is not an issue of a waste of money, or questioning of art. Saving a woman's name can waste no amount of money. We spend a lot of time educating people about domestic violence and by putting this pole up associates the loss of Joanne's life and it does not represent the communities values. She indicated this about what we believe a woman's life is worth.

Wayne Ruegsegger indicated that he would contribute \$100 toward getting rid of this pole and another \$100 towards a new piece.

Commissioner Pottle thanked all those that turned out for the meeting this evening. He commented that this is not about the pole anymore and the original intent of the pole. It is now about Doug Tobin and how we did not do a very good job a few years ago, we made a mistake then, and he indicated he did not want to make the same mistake again. He also did not want to honor a criminal in this society. He said we need to move on, and stop this once and for all. He made a motion to put the pole into storage and not erect the pole. Van Schoorl seconded the motion.

Commissioner Van Schoorl commented this has become a very divisive issue in this community. It is a beautiful piece of work. Unfortunately this will never be seen as a piece of art in this community. He also agreed with Commissioner Pottle that he would never put Tobin's name on a plaque. He also agreed with Mr. Leahy, and would not want his daughter to learn about the issues surrounding this pole. He commented that the fish have a beautiful story to tell. It is unfortunate because the intent of this pole was to honor the south sound tribes. It was meant to be welcoming to the Port Plaza. He indicated that he would fight to get another pole up in this community and would hope the whole community could be partners in commissioning a new pole. He said he would match the \$100 offered earlier. He indicated he would vote against erecting the pole.

President Telford noted that when the panel was formed he had hoped for a consensus vote, when that wasn't the case, he had to look into this process more. He noted the process was flawed from the beginning.

Commissioner Van Schoorl thanked the members of the task force and indicated the Commission put them in a very difficult situation.

The Commission voted unanimously to not erect the Welcome Pole. Commissioner Telford indicated that staff direction on what to do with this pole. Commissioner Van Schoorl indicated that the pole is still on the surplus list. He asked Mr. Wolfe to contact Mr. Purce to see how he can help us sell the pole. Commissioner Pottle indicated that he was not in a rush to make a decision on this tonight. Staff should look at options that will get this pole out of this community.

NorthPointe Redevelopment Approval

Mr. Heber Kennedy reported to the Commission that on November 7, 2002, a fire caused severe damage to Genoas Restaurant resulting in cessation of business operations. The Port, as building owner and insured reached a settlement with our insurance carrier August 28, 2003, in the amount of \$1,084,866.

On December 8, 2003, the Port Commission approved the terms and conditions of a lease termination agreement with Silversten, Inc. the owner of Genoa's.

Mr. Kennedy indicated that in the fourteen months since the fire occurred, the Port had in-depth conversation with two parties interested in developing the old site. One concept involved development of a card room/casino and the other party wanted to continue to use the site as a restaurant. Despite continued networking activity on the staff's part to promote the site, numerous articles in regional and local papers regarding the fire and closure and those detailing the lease termination and the availability of the property for development, no other viable parties have come forward.

Mr. Kennedy commented that staff has reviewed the two parties' expressions of interest and found redevelopment of the restaurant to be consistent with the vision for the NorthPoint district. In addition, the restaurateur has the operational experience, financial capacity, brand name recognition, local presence, familiarity with waterfront restaurant development and most importantly the strong desire to be in the area. The staff believes entering negotiations with this party will result in a market rate lease and allow the Port to meet the City of Olympia submittal deadline for building plans which is November 7, 2004. The necessity of having to meet this submission deadline to the City for a complete re-building plan requires tenant involvement in development of the plans.

Mr. Kennedy indicated that if you decide to not build this exactly in the same footprint, the Port would lose the waterfront attributes that attract a restaurant. If the building is pulled back from the shoreline, it will be hard to attract a restaurant in that area since it is not in a high traffic area.

President Telford asked if staff has asked the City of Olympia if they would permit this if the building is moved back 50 feet. He indicated that he expects a valid economic analysis of this project. Mr. Kennedy indicated that staff has talked to the City staff on two occasions that if we move the building back, it would begin a whole new process and there is a city ordinance that indicated after a burning of a building, you have two years to reconstruct. Mr. Kennedy noted that we have a unique asset that sets over the water and that is part of the attraction to a restaurant owner.

Commissioner Pottle moved to accept the staffs recommendation. Van Schoorl seconded the motion. Commissioner Van Schoorl commented that this Commission continues to provide public access to the waterfront. He asked for staff to ask the Restaurant to help with frontage improvements to the site.

Commissioner Pottle indicated he has met with this restaurateur and because he wanted to understand their committment to the community. Through his discussions, he indicated this restaurant is willing and able to go out to Northpointe and very committed to this project.

The recommendation to enter into negotiations with the restaurateur for lease of space at the NorthPoint, and in the event an agreement cannot be reached within 90 days, the staff recommends pursuing recruitment of an alternate development scenario and a RFP process was approved. Commissioners Pottle and Van Schoorl voted in favor of the recommendation, President Telford abstained from voting.

ADVISORY CALENDAR

Arts and Conference Center Parking Agreement Advisory

Mr. Kennedy reported to the Commission that the City of Olympia has approached the Port regarding an undeveloped lot owned by the Port between Franklin and Washington for use as parking for the Arts and Conference Center. This lot is identified in the Lease Agreement between the Port and Market Place Office building as auxiliary parking for that facility. During the last few years the Port and Market Place have agreed that Market Place may use the Marine Terminal parking lot located behind Batdorf and Bronson for auxiliary parking. The City's request requires obtaining agreement from Market Place Building to extend their use of the Marine Terminal lot while the City uses the lot on Washington Street. He noted that we have approached the Market Place Building folks and they are willing to continue to use

the lot for up to four years.

Mr. Kennedy indicated that the Port and City have held on-going discussions about the terms and conditions of using the lot and the City has formatted an agreement based on a standard Port of Olympia Option and Lease Agreement. Port staff received this draft agreement last week and have scheduled meetings with City staff to work out terms and conditions satisfactory to the Port. I will not address the “boiler plate” changes the city suggested as I will consult with our legal counsel to address those items, but rather the main points of the proposed agreement. In general this is a good first draft but requires some discussion of various points. Staff is hopeful that the City and Port can resolve any outstanding issues. In no particular order these are:

- **Option Payment:** City is proposing to pay \$10 to option the property for a period up to four years. Port staff recommends that Option payment be based on 10% of the annual rent as determined by current Port lease rates for the Market District (9.5% of 85% of fee simple fair market value). Staff favors using the current Commission policy.
- **Term:** The agreement proposes a term commencing with the signing of the Option and/or the Lease and ending four years thereafter. They have the ability to terminate the agreement at any time by providing 30 day notice if they have found alternative parking in the vicinity. Staff is in agreement with this term.
- **Minimum Ground Rent:** The agreement contains a provision that rent is determined to be the net parking revenue received by the Tenant multiplied by the ratio of the land value to the total value of the leased premises including the value of the improvements constructed by Tenant. “Net parking revenue” is defined as the total revenue received by Tenant for use of the parking spaces on the leased premises less Tenant’s cost of utilities, operation and maintenance, insurance, and administration of parking on the lot. Sharing of revenues is not uncommon based on each parties’ contribution to the project, however, only the direct operating costs of the lot should be subtracted from the revenues, and administration should not be included. Alternatively, the rent structure could be applied by using the current formula of 9.5% of 85% of fee simple fair market value.
- **Option to Renew:** The City is proposing they have one exclusive option to renew for a period of four years upon a six month notice from the City. The staff cannot support this proposal. Staff recommends there either not be an option, or if the Port agrees to any Option, the Option should require mutual consent of both parties before it can be exercised; it should not have a term longer than one year; and it should have a notice period of no less than one year.
- **Disposition of Improvements:** The agreement contains a provision that after the lease terminates, the Port will buy the parking lot improvements from the City. The proposal is to pay the cost of the improvements to the property amortized over twenty years at a rate of 6% annually, minus the quotient of said amount divided by the number of years the Lease was in effect. Staff recommends paying the City for the value of the unamortized portion of the leasehold improvements (parking lot improvements) at the end of the lease. I have referred this to our Director of Finance and Administration to confirm the correct amortization period for a parking lot according to IRS depreciation schedules and the appropriateness of the rate. Also we will need to review and approve plans for the facility.

Commissioner Van Schoorl indicated he supported continuing with Port policy on the option payment with the 10% of the annual rent. He said he wants to help make the conference center happen. Both Commissioners Pottle and Telford agreed.

ADJOURNMENT

President Telford adjourned the meeting of January 26, 2004 at 8:40 p.m.

PORT OF OLYMPIA COMMISSION

President

Vice President

Secretary-Treasurer