

PORT OF OLYMPIA COMMISSION
MINUTES OF REGULAR MEETING

February 11, 2002

CALL TO ORDER

President Van Schoorl called the meeting of February 11, 2002, to order at 5:30 p.m. at the Lacey City Hall, Council Chambers. Commissioners Pottle and Telford were in attendance.

Staff in attendance were: Executive Director Nick Handy, Administrative Manager Jeri Sevier, Finance Director George Fox, Engineering and Planning Director Andrea Fontenot, Deputy Director Wendy Holden, Marketing Director Kari Qvigstad, Property Development Manager Heber Kennedy, Communications Manager Patti Grant, Program Assistant Teresa Olson, Swantown Manager Bruce Marshall, and Olympia Regional Airport Manager Doug Sandau.

Public in attendance were as follows. Representing the Olympian was reporter Scott Wyland. Representing legal counsel was Mick Phillips and Bob Hauth. Representing KGY was reporter Ian Fox. Others in attendance include: Virgil Shillam, Jerry Dierker, Bob Shillam, Harold Chambers, J.E. Kooike, Mike Pettit, Matthew Green, Patrick Beehler, Ed Makoviney, Phil and Yvonne Conway, Wil Carlsen, Bill McGregor, and Keith Bausch.

APPROVAL OF AGENDA

The agenda was approved as submitted. Commissioner Telford suggested moving the Port Plaza Conflict of Interest issue to the advisory calendar. President Van Schoorl concurred.

PUBLIC COMMENT

Mike Pettit commented about Nick Handy working on a few projects with him and indicated that Mr. Handy is the most open and frank individual he has worked with in a long time. Mr. Pettit indicated that he wanted to make sure that although they have disagreements on many points, he appreciated Nick's time and candidness on those issues.

Harold Chambers commented that the Port agenda is only published one day prior to the meeting that does not allow anyone to do any research. He indicated that he was sure it could be put together 3-4 more days earlier. Second, he commented on the PAC, he indicated he would like to see more people from South County on the PAC. He said the Port does not need any more attorneys or public officials on the commission. He said it should be ordinary average people and should not be from locations where we work. He would appreciate a mixture of people from throughout the county. President Van Schoorl responded that he assumed he was referring to the PAC and in the past the Port has tried to get a mix from throughout the county.

Jerry Dierker indicated that he had been taken off mailing list for the agenda, therefore he missed the one on Cascade Pole site. He said he would like to be put back on. He also commented that on the cascade pole site clean up there was a question on the site, the containment cell was built to hold photograph material shown in picture appears to be the same material that came from the cascade pole site and have been dumped onto this site. He commented that between 1986-1992 and from the last few years, there has been material taken from the site and put onto this other site. Railroad ties, other wood materials, I believe that these piles are recent according to the person who has hauled material from the site and evidence that he knew there was material from the site.

President Van Schoorl responded that he would like to get documentation on the issue. It is hard to tell by a picture if this is the same sediments from the Cascade Pole site or not. Mr. Nick Handy, also commented that the Commission may recall last summer when Mr. Cole came to a Port Commission meeting with the same complaint and the Port looked into that complaint. The material was being transported was from the Marine Terminal and not from the Cascade Pole site. Mr. Handy assured Mr. Dierker that the Cascade Pole site has been totally contained. President Van Schoorl indicated he did remember that discussion last summer and is very confident that all of the material has stayed on the site.

COMMISSIONERS REPORTS

Commissioner Pottle reported he attended a meeting in Everett, representing the EDC, to discuss economic impacts that Boeing has had on the economy. Commissioner Pottle indicated that Boeing would be making decisions of the future of Boeing over the next few years, and the group discussed the impacts to the state economy if they decide not to build planes here.

Commissioner Pottle also gave a Planning and Advisory Committee process report. He indicated that the Port placed ads throughout Thurston County, deadline to apply was December 21st. The applicants went through great effort to prepare resumes and letters of interest. We have applicants from South County, Tumwater, Lacey, and Olympia and a total of 15 applicants. Next Tuesday and Wednesday the interview team will be interviewing 8 applicants and then the Commission will be able to decide whether they want approve the four recommended applicants.

President Van Schoorl passed along a compliment to Mr. Heber Kennedy. The compliment was from someone he talked to about the RFP process for the Airport Golf Center and he commented how well laid out the RFP was.

EXECUTIVE DIRECTOR REPORT

Mr. Handy gave a brief overview of each of the departments. At the Marine Terminal he reported that we have two log vessels scheduled this month. ETA 2/12 the Century Elkhorn (Emachu) will be here, on approx. 2/16 the Oriente Shine (Nichimen) will be here. Both will load about 1MMBF of logs. Glass and lumber continue to ship out by rail and truck. We are expecting a garnet ship in March.

At the Boatworks and Marina, Mr. Handy reported the Boatyard continues to be nearly full with vessels. In 2001 overall, the Marina had 95 percent occupancy, and slips 28' and over was at 99 percent. All the research we have done confirms the need for the large slips in the bay. Skookum Bay is scheduled to move into the Boatworks building Feb 16-17.

Mr. Handy reported on activities at the Airport noting the Port recently sent out an RFP for the Habitat Protection Plan for two sensitive species of wildlife found at the airport. This wildlife protection project will be moving forward over the next several weeks. The traffic counts for January 2002 - 4,352 operations. This compares to 5,390 operations in January 2001. February traffic counts are significantly higher, with 1,456 operations in the first six days of the month, an average of 242 per day. Big Sky Airlines continues to be interested in the airport and will be visiting the Port at the end of the month.

In the Properties department, staff sent out the RFP on the golf course and the News Tribune, Daily Shipping News, Daily Journal of Commerce, and Business Examiner have picked up the story and ran in their publications. 37 requests interest are very high. 1200 notices will go out to golf professionals this week.

Mr. Handy reported staff has scheduled Sales Training for early March incorporating staff from executive, marine terminal, and marina & boatworks.

CONSENT CALENDAR

The Consent Calendar was unanimously approved as follows.

Minutes. The minutes from the January 28, 2002 meeting was unanimously approved as presented.

Capital Project Expenditure Approval. This is payment for RCI Environmental for the Cascade Pole project for \$828,750.31. Ms. Fontenot indicated this payment puts us most of the way through the contract for 3.1 million. Ms. Fontenot indicated she could provide the Commission with a summary sheet of the contract and what has been paid to date.

Lease: Holbrook, Inc. The lease agreement between the Port of Olympia and Holbrook, Inc. memorializes the allowed use of one acre of land at the marine terminal for a period of 13 months for the purchase, receiving, sorting, storage, and shipping of logs across the Port's terminal. Holbrook has been a Port tenant for over 15 years. This is an extension of their existing agreement. The Commission unanimously ratified the lease with Holbrook, Inc.

Lease: Richard Rutledge The lease between the Port of Olympia and Richard Rutledge provides a three-year least for agricultural use at the south end of the airport in an area of 2.6 acres. The Commission unanimously ratified the lease

with Richard Rutledge.

ACTION CALENDAR

Ethics Issues

Mr. Handy indicated staff would be presenting three ethics issues for commission consideration.

Model Code of Ethics. Mr. Handy reported that Commissioner Telford and Mike Pettit are working on a model code of ethics for all municipal governments in Thurston County. Commissioner Telford will request the Port Commission to support this initiative and to participate with other jurisdictions in creating a model code.

Commissioner Telford indicated his proposal is to get the five major jurisdictions together to develop one. He indicated that we do not have a draft ethics code already written and he hoped the Port could lead the way and then the other jurisdictions do not have to recreate the wheel.

Mike Pettit indicated as he started researching the state ethics code he found there are conflict of interest, financial benefit, indirect or direct, and another section involving remote interest involving a municipal officer involved with a organization. Also involved in the remote interest is the place of employment. He indicated that therefore, a landlord tenant relationship with a municipality, a commissioner should not be participating in that contract. Mr. Pettit indicated that in good government we need to obey the law. He noted that he and Commissioner Telford has done a lot of research in this issue and have put the information in a packet including court cases, legal opinions, and a proposal to create a model ethics code by all the jurisdictions. Commissioner Telford and Mr. Pettit think it is best if all the jurisdictions come together in a task force and develop a model code. Then we can go on with good government. We have diversity training and understanding the policies, but we don't have classes on ethics. He commented that he is asking the Port to lead the way.

President Van Schoorl responded that he would like to correct his statement indicating we do offer ethics classes at the Port and also at the state level. President Van Schoorl asked why they selected the five they did, and why not some of the smaller districts, school districts, and fire districts.

Mr. Pettit responded that it was just a matter of resources, the larger jurisdictions have more staff or people to assign to task force. It would probably easier at the larger jurisdictions and hope the others would then adopt the model policy.

President Van Schoorl asked if they would be opposed to inviting those smaller jurisdictions as well. Mr. Pettit indicted, no not at all. Commissioner Telford commented that the Port of Seattle has a good ethics code. He noted that this could just be a staff person cutting and pasting the best of the policies to create one document. However, none of the local jurisdictions have a policy. Commissioner Telford indicated that it shouldn't take a whole lot of work, because there is a basis to work from.

Commissioner Pottle asked what is the real reason that after all of these years being a government watch dog, that why right now this issue grabs two pages in the Olympian. He asked what peaked the interest into looking into this issue at this time.

Mr. Pettit responded that when he looked at other boards and commissions, he could find minutes of other jurisdictions and find places where people have violations, not because they want to get away with something, but because of ignorance. Commissioner Pottle responded that these are Mr. Pettit's opinions and inquired whether Mr. Pettit has ever consulted a legal counsel for advice on these issues.

Mr. Pettit indicated that he has not contacted an attorney, but he responded that it seems easy to understand. Commissioner Pottle responded that he disagreed that it is easy to understand, the ethics law is one of the most complicated laws. Commissioner Pottle asked if these are personal opinions or if an attorney has been consulted.

Mr. Pettit responded that he is not sure what he is getting at and said a model ethics policy is a good idea, why are you challenging me?

Commissioner Telford indicated that he has contacted attorneys. Commissioner Pottle asked whom.

Commissioner Telford indicated he does not need to say. Commissioner Pottle indicated we have legal counsel that represents the Port and they have legal opinions and they don't agree with your opinion. Commissioner Telford indicated that the legal counsel is mixing up the issues.

President Van Schoorl indicated that the question before us is whether we support development of a model ethics policy. He commented that we do not want to leave the impression that the elected officials do not have proper training and knowledge of the ethics laws, when in fact they do. President Van Schoorl noted that he would like to see it offered to all local jurisdictions and not just the five indicated. The invitation should be addressed to the mayors and leaders of all jurisdictions. It will then be up to the jurisdiction to make the decision as to who serves on the task force. President Van Schoorl indicated that the Port is willing to participate if this gets off the ground.

Commissioner Pottle indicated there was recently a letter sent out by Citizens for Responsible Government and he applauds the efforts of the group, however, Commissioner Pottle indicated that he was troubled by the letter and the signature block of Commissioner Telford as a Port Commission. The letter did not include a disclaimer that this was not done on behalf of the Port and no joint effort was on the table. Commissioner Telford should refrain from using his signature block on any correspondence unrelated to the Port.

Commissioner Telford indicated this point was well taken.

Children's Museum. Mr. Handy reported that Commissioner Telford has requested that the Commission ratify the Port's sponsorship of the Working Waterfront exhibit at the Children's Museum. Last year when this matter was presented to the Commission, Mr. Handy indicated he was a member of the board and also on the capital campaign committee.

President Van Schoorl commented that this is an issue relative to process; there has been allegations that Mr. Handy did not disclose his participation on the board of the museum. President Van Schoorl asked Mr. Handy if he disclosed this interest in public session before the Port Commission?

Mr. Handy indicated that yes, he did disclose his position on the board on the record. The Children's Museum submitted a comprehensive packet with a request. Even though there was not a conflict of interest, President Van Schoorl did recuse himself because his wife was president of the board.

Ms. Patti Belmonte, President of the Museum, presented a request for a \$5,000 sponsorship. Ms. Belmonte indicated that the longshore, Plum Creek, the Maritime Museum, and other tenants around the Port also participated in the sponsorship. She said the working waterfront exhibit has a cargo hold area that helps connect the kids to the community, she noted that we want the kids to feel part of Olympia, they see the cranes when they go to the market district and this exhibit helps them understand the maritime connection. Ms. Belmonte noted that the museum had over 10,000 visitors in January. This year the memberships have grown tremendously.

President Van Schoorl commented that this is not an issue of whether we should be considering this, we just want to make sure this is done correctly. Commissioner Telford asked Commissioner Van Schoorl if he was recusing himself or not. President Van Schoorl indicated he was not a member of the board and finds no conflict of interest when a spouse is involved. Commissioner Telford asked legal counsel if there was a conflict or not. Mr. Mick Phillips, legal counsel, indicated that since his wife served on the board and not Commissioner Van Schoorl, there was not a conflict of interest that addresses spouses.

Commissioner Pottle noted that there were allegations made indicating that Nick Handy violated the ethics code by not disclosing his interest and that Commissioner Van Schoorl violated the same law because he did not recuse himself. Commissioner Pottle observed that these allegations are not in fact correct. Commissioner Pottle indicated that Mr. Handy did disclose his connection and it is on tape and legal counsel indicated that Commissioner Van Schoorl disclosed his wife's interest and it is also on the tape and it was even not a violation of the law.

Commissioner Telford asked Mr. Pettit if he had any comment. Mr. Pettit indicated his allegations of violations are in the letter to the Port. He commented however that in regards to municipal officers, Mr. Chambers reviewed the tape and he did not pick it up. The marketing director also has a remote interest. Commissioner Pottle asked to see a copy of the complaint.

President Van Schoorl asked the Commission how they chose to move forward. Do we want to re-vote for reconsideration or let it stand because we have not violated any laws. Counsel advised the Commission to ratify the decision thereby there will be no question about this in the future.

Commissioner Telford indicated he would like to honor the previous commitment but will not make the motion. President Van Schoorl said he believes there is not an issue with this, but many times have recused himself on issues to the Children's Museum and will again recuse himself and asking the Commission to reaffirm the decision made. Commissioner Pottle moved that the Commission ratify the sponsorship to the Museum for the \$5,000 payable over two years. Commissioner Telford seconded the motion.

Mr. Pettit commented that it was not his intention to take money away from the museum, but to make sure the Port is following the law, he strongly recommend the Children's Museum funding be ratified. However he noted that there could be a technical matter of whether the museum submitted a request or not. President Van Schoorl indicated that we gave the materials back to the Museum after the presentation since the brochures were an expensive piece.

The motion passed unanimously with President Van Schoorl abstaining from voting.

Port Plaza Conflict Issue. Mr. Handy indicated that Commissioner Telford has taken the position that Commissioner Van Schoorl has a conflict of interest for purposes of approving a contract for improvements on the Port Plaza. Port staff has obtained advice of counsel indicating no conflict exists in this situation. Mr. Nick Handy presented the Commission a presentation on the Port Management Agreement clearly indicating that no conflict of interest exists. In addition, Port counsel Mick Phillips presented his opinion on the issue also indicating that no conflict of interest exists for this situation. Mick Phillips was assisted by Bob Hauth who was the author of the RCW Chapter 42.23 The code of Ethics for Municipal officers-contract interests. Mr. Hauth was also available to provide legal advice on this issue.

Commissioner Telford asked indicated he had serious problems with where legal counsel was going with this. He commented that there is no court case that says that remote interest has anything to do with beneficial interest. Commissioner Telford indicated that there is an opinion prepared by counsel that says that Commissioner Van Schoorl does not have a remote interest however; he commented that he disagreed and continued to quote many different court cases and legal opinions to question that opinion.

Mr. Matthew Green commented that he wanted to talk about the notion of whether there is an interest with Commissioner Van Schoorl. Mr. Green indicated that he worked for the Aquatic Resources Division at DNR. He noted that he has worked with the laws on this management of aquatic lands and that he is an expert on these laws. Mr. Green commented that first of there has to be an interest, in this case there is no interest for the state or for Commissioner Van Schoorl. In this agreement, 85 percent of land rents go to the state, in this situation the land the Port would own improvements and no rents would ever be paid to the state. In addition, Mr. Green noted that DNR does not have the authority to expend the funds until appropriated by the legislature. However in this case no funds will ever be paid to the state. Improvements would remain the property of the Port and not owned by the state. If in the remote interest, the state wanted to sell the property, they would have to sell it to the adjacent landowner, being the Port. However, the port would never buy it because they have a management agreement and don't need to pay for it. Mr. Green pointed out that there is no possible remote interest involved here. Mr. Green commented that he is disappointed that this has come up in this context. This is not a question of ethics.

Commissioner Telford said the fundamental issue is spending port money on someone else's land. This agreement expires in 2014. Mr. Green indicated that he is correct that this is the issue and it is not the issue of whether Bob Van Schoorl has a remote interest or not.

Bill McGregor commented that he was quite upset about what he read in the paper, but what we hear at this meeting, is not quite the same. If a commissioner is not happy with the legal opinion, then that commissioner should go to an outside attorney and stop the haggling that is going back and forth here. Mr. McGregor indicated this is not productive and would like to see this issue moved forward.

President Van Schoorl thanked legal counsel, Mr. Green, Mr. Chambers, Mr. Pettit, and Mr. McGregor. President Van Schoorl indicated that he is an employee of DNR and has tried to look at this as broadly as he can, the Port is clearly the manager of this property and is also clear that there is no revenue that will go back to the state. This is the peoples land, not DNR'S or the Port's. The Port's responsibility is to provide for direct

public use and access as a public benefit. The Port is doing nothing more than providing for the people of Thurston County and the State of Washington access to the waterfront and to ensure environmental protection. President Van Schoorl said the development of the property enhances the property and the public amenities. He commented there is no revenue and probably no instances that there will ever be revenues, at this point there are no conflicts of interest here. Look at what we are trying to do. Are we enhancing access? Yes. Are we fostering water dependant use? Yes. Are we environmentally protecting our waterways? Yes. The Port has gone well beyond the test of all of those conditions. President Van Schoorl closed the comments on this issue.

Solid Waste Advisory Committee – Port Representation

Ms. Andrea Fontenot reported to the Commission that the Solid Waste Advisory Committee (SWAC) is comprised of members of each local jurisdiction, a representative from the private waste management sector, and a citizen representative. The SWAC serves in an advisory capacity to the Thurston County Commissioners. The members are appointed by the Thurston County Commission.

Ms. Fontenot noted that currently, each representative from a local agency is an elected official, except for the Port's representative. Staff member Don Bache has been the Port representative since 1996. He was chosen to represent the Port since he deals with hazardous waste management and landfill issues on a daily basis. Members who are elected officials commonly rely on a staff person as an alternate. The term of service is 3 years. The current issue before the SWAC is garbage disposal rates.

She indicated that staff is bringing the Port's SWAC representation to the Commission because staff believes that Port representation on the SWAC should be re-visited by the Commission, and the beginning of the year is a good time to have this discussion since appointments are determined at this time.

Ms. Fontenot identified 3 Options for consideration by the Commission:

1. Continue with a staff representative, with regular reporting to the full Commission;
2. Commission participation on the committee with a staff alternate.
3. Discontinue Port representation on SWAC.

Staff recommended option #2 as the SWAC routinely deals with policy issues, as opposed to technical issues.

President Van Schoorl indicated there are 15 members on the committee and he asked Commissioner Telford if he was interested in serving. Commissioner Telford asked if Mr. Bache felt the Port needed to be involved at all. Ms. Fontenot indicated that the next major issue is for garbage disposal rates. Telford asked why the Port should be involved. Ms. Fontenot indicated that from the past it has been important for the Port to be involved, we worked with the County and other jurisdictions on a recycling program. She noted that there has been issues where the Port has an interest.

Commissioner Telford volunteered to serve on behalf of the Commission and the Commission by consensus authorized Commissioner Telford to represent the Port on the SWAC.

ADVISORY CALENDAR

Foreign Trade Zone #216 Advisory

Ms. Kari Qvigstad provided the Commission with a power point presentation on the Foreign Trade Zone #216. She gave an overview on how the FTZ is an important economic development tool. The FTZ provides many advantages for the community. She indicated there are national, regional, and business benefits that this collaborative effort brings to the community including improving cash flow, development of new business, expanded tax base, improved infrastructures, and direct and indirect jobs created.

ADJOURNMENT

President Van Schoorl adjourned the meeting of February 11, 2002 at 8:30 p.m. to an executive session for evaluating the executive director. He announced the next meeting would be held at the Tumwater City Hall, Council Chambers on February 25, 2002.

PORT OF OLYMPIA COMMISSION

President

Vice President

Secretary-Treasurer