

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

February 27, 2006

CALL TO ORDER

President Pottle called the meeting of February 27, 2006, to order at 5:30 p.m. at the LOTT Board Room in Olympia. Commissioner Van Schoorl was also in attendance. Commissioner Telford was out of town.

Staff in attendance were: Executive Director Ed Galligan, Administrative Manager Jeri Sevier, Communications Manager Patti Grant, Harbor Director Bruce Marshall, Public Works Director Andrea Fontenot, Marine Terminal Director Jim Amador, Marketing Director Kari Qvigstad, Marketing Program Assistant Maureen Malahovsky, Airport Director Rudy Rudolph, and Property Director Heber Kennedy. Legal counsel in attendance included Bob Goodstein and Carolyn Lake.

Public in attendance were as follows. Representing *The Olympian* was Jim Szymanski. Others in attendance included Richard Wolf, Red Goheen, Keith Bausch, Tom Howdeshell, Harold Clark, Chris Stegman, Barnett Kalikow, Jim Griggs, Jerry Parker, Jerry Dierker, Arthur West, Jan Witt, Wayne Blocher, Timothy Knittle, and Ron and Kirsten Manwell.

APPROVAL OF AGENDA

The agenda was approved as presented.

PUBLIC COMMENT

Keith Bausch, resident of Olympia, representative of the local ILWU, commented he was left a message on his phone by a person who attended the last meeting and the message indicated a member of the union threatened him. The phone call made allegations and threats. Mr. Bausch indicated that he feels that every member of the public has a right to speak his or her opinion. He commented that he was here tonight to assure that the union is not threatening anyone.

Arthur West, resident of Olympia, addressed the union indicating that he has members of his family in the union and he has high regard for the union. He indicated he would like to continue the open dialog without violence. There should not be a confrontational dynamic around the issues. He commented he was threatened at the last meeting and he thinks the union has organized criminal intent.

Chuck Holland, representing Jones Stevedoring at the Port, commented they support the Weyerhaeuser moving to the Port. He commended the Port Commission for their leadership in bringing in family wage jobs to this community and building this export facility.

COMMISSIONERS REPORTS

No commissioner reports were given.

EXECUTIVE DIRECTOR REPORT

Mr. Ed Galligan reported that we recently had a log vessel in at the Port, the Northern Light. This vessel loaded approximately 750,000bf of logs. We are also expecting a garnet vessel, the Emmagracht, at the end of March.

Mr. Galligan reported that we closed the sale of the West Bay parcel to the City of Olympia.

Mr. Galligan reported on the China Business Trip indicating staff did comparisons on the same trip if we were to book it ourselves instead of working through the Saint Martins University. Mr. Galligan noted that we saved about 40 percent. The cost would be \$8,100 and we are paying \$5,000.

Mr. Galligan noted that we received a request from the City of Yelm for a letter of support for their application to the Washington State Department of Transportation for funding for Rail Connections. Mr. Galligan indicated we are planning to assist them with a letter.

Consent Calendar

The Consent Calendar was approved as follows.

Minutes. The Commission unanimously approved the minutes from the February 13, 2006 meeting.

Bills and Vouchers Approval. The Commission unanimously approved the bills and vouchers in the amount of \$1,432,125.57. General Fund Checks Issued: 039189, 039190, 039191-039205, 039206, 039207, 039208, 039209-039239, 039240-039243, 039244-039281, 039282-039286, 039288, 039291-039292, and 039293-039294. Voided Checks: 039280, 039287, and 039289-039290.

ACTION CALENDAR

SEPA Policy Adoption – Resolution 2006-03

Ms. Andrea Fontenot indicated that this agenda item is the update of the Port's SEPA policy, and is the fourth in a series of Commissioner briefings. At the last Commission meeting, staff sought Commission input on key areas of amendment prior to proceeding with these detailed amendments.

Ms. Fontenot reviewed the proposed policy with the Commission indicating that the policy has been amended to bring the Port's SEPA policy procedurally up-to-date with the underlying SEPA Revised Code of Washington and Washington Administrative Code. In addition, she noted that staff proposes the following substantive amended policies:

SEPA Policy Amendments

1. Comment and Appeal Periods

Current Policy: A concurrent 14-day comment and 10 day appeal period.

Revised Policy: A sequential 14 day comment period and 7 day appeal period

Explanation: The Policy has been revised from a concurrent 14-day comment and 10-day appeal period, to a sequential 14-day comment period and 7-day appeal period. This actually increases the time allowed for appeal from 10 days to 21 days, and is exactly the same procedure adopted by the City of Olympia.

2. Appeal Process

Current Policy: A direct appeal to the Port Commission

Revised Policy: A 2 step administrative appeal process, with option for Commissioner or Hearing Examiner to hear the appeal.

Explanation: The appeal process is modified from the current practice of a direct appeal to the Port

Commission to adopt a 2 step administrative process. First, the appeal begins with a Request for Reconsideration to be considered by the Responsible Official. Second, if not resolved, an appellant appeals to the next level, where the Commissioners have the following process options:

- (a) the Commissioners hear the appeal,
- (b) the Port's Hearing Examiner hears the appeal, or
- (c) the Commission could opt to adopt the Responsible Official's Decision as the Final Decision and not further consider the appeal.

A Final Decision rendered under any of the above three processes is appealable to Superior Court within 21 days. Only the parties to the Final Decision would have standing to appeal to Court.

3. Fees

Current Policy: No Appeal fees.

Revised Policy: \$300 for Request for Reconsideration, and
\$500 for Commission or Hearing Examiner Appeal

Explanation: Staff recommends a fee of \$300 for Request for Reconsideration, and \$500 for Commission or Hearing Examiner Appeal. These fees would be included in the Port's Fee Resolution that is amended and adopted on an annual basis.

Ms. Fontenot indicated that based on our research with other organizations, the criteria used in setting fees include a minor amount of cost recovery and some discouragement of frivolous appeals. Full cost recovery is not a realistic goal in the fee setting process given the high costs associated with appeals.

Ms. Fontenot indicated that regarding whether to charge a fee for a staff or administrative decision, we note that other agencies routinely charge appeal fees for administrative decisions as well as Hearing Examiner or elected body decisions. She noted that staff recommends charging a nominal fee for the responsible official's (Executive Director) reconsideration of a SEPA decision because at this point in the process the Port will begin to incur external direct costs, primarily legal counsel. The Executive Director's decision will require legal consultation as this may be the basis for a lawsuit if the Port Commission elects to not hear the next level of appeal or have a Hearing Examiner hear the next level of appeal.

Ms. Fontenot indicated that at the last meeting there was a question of whether or not we responded to comments. She wanted to clarify that we do acknowledge the comments, but do not respond. Responding to the comments prior to the appeal period would be overly burdensome for staff time.

President Pottle asked if comments were received after the deadline, would we accept them. Ms. Carolyn Lake responded that if comments were received after the comment period, we would not accept the comments for consideration.

Ms. Fontenot indicated that at the last Commission meeting one citizen suggestion was to offer fee refund for a successful appeal. Ms. Fontenot indicated our rationale for not refunding administrative fees is twofold. First, the fee is not intended to be a punitive measure, but instead a mechanism for recovering some fraction of the public costs for the process. Those costs are incurred on an evenhanded basis no matter what the outcome. For instance, the Port does not increase the fee where the appellant is unsuccessful. Secondly, this type of attorney fee provision is appropriate in instances where one party in the appeal is not also rendering a decision on the appeal. Ms. Lake indicated that our recommendation is to not refund an administrative fee as this could put the Port in a conflict of interest, as the Port is a party to the appeal and also the adjudicator.

President Pottle indicated that at the last meeting there were also questions about acknowledging comments vs. commenting on comments. He noted that if we do any thing other than acknowledge the

comments, we are putting ourselves in a situation where those comments are thrown back at us in another context or project.

Ms. Lake indicated that it is a policy decision. President Van Schoorl indicated that he feels that we have a responsibility to acknowledge the comments. When we get a comment that warrants a response in a case where we are to change our decision, then we should let the party know.

Jerry Dierker, resident of Olympia, submitted a brief on the proposed policy. He commented that he feels that a provision should be made regarding the fees for those that cannot afford and who are disabled. He commented that he would most likely file a lawsuit with the courts for violating his amendments. He felt that it is a good idea to change the comment and appeal period. He felt that charging a fee is double-dipping, Port staff are already paid by the Port with property taxes.

Chris Stegman, resident of Olympia, indicated that he was surprised the Port was proposing a fee for appeals, and he was surprised that the other jurisdictions charged fees. He did not know that.

Ron Manwell, resident of Olympia, commented that he feels that this is a reasonable fee and if the Port is incurring costs for these appeals, he feels that these frivolous suits are costing the taxpayers. If they are not frivolous then they should be able to pay the fees.

Barnett Kalikow, attorney in Olympia, commented that he feels that the Port proposed policy is illegal and denies citizens due process rights. He commented that many of the provisions may be outside the scope of the Commission's authority. He indicated that the Port is attempting to set its own critical areas and does not have the authority to do that. He commented that the Port does not have the authority to have more than one appeal processes on SEPA and charge two separate charges on those.

Jerry Parker, resident of Olympia, commented that the current policy needs revision and commented that the draft provides clarity but at a cost to the citizens. He does not feel that is a good trade. The fee schedule discourages participation by the citizens. He suggested the Port provide training for staff on the current law.

Arthur West, resident of Olympia, commented he is against the fees for the appeal process. He commented that there should be more attention given to getting the project right so no one has to appeal, therefore there would be no wasted money. He commented that more money should be dedicated to planning and all effects be predicted and put forth to the community – it would be cheaper and more efficient – hire planners to do it right and not ever go to court.

Sue Danvor, resident of Olympia, asked that the comments given tonight should be considered and a decision should not be made tonight. She asked that a decision be made when all three commissioners are present.

Commissioner Van Schoorl commented that there was a need for clarification of our SEPA policy – we need to revise our policy and he commented that he would support this proposed policy for adoption.

Ms. Carolyn Lake indicated that the policy being proposed is not inventing the wheel and she commented that she read Mr. Kalikow's comments and find nothing in our policy that is in conflict with the law.

Commissioner Van Schoorl indicated that staff is very much in tune with environmental issues and we can always do better to communicate and work with the public.

The commission unanimously approved Resolution 2006-03. The Commission moved revision of resolution 99-22 "Rates and Fees" to adopt the fees for the purpose of implementing the SEPA policy and procedures. The Commission unanimously approved the revision to Resolution 99-22 for the purpose of adding SEPA appeal fees in the amount of \$200 fee for request for consideration and a \$300 fee for an appeal.

ADVISORY CALENDAR

Satsop Development Park Advisory

At the request of President Pottle, Ms. Tami Garrow provided the Commission a presentation about the Satsop Development Park, a 1,700-acre mixed-use business and technology park being created on the site of the unfinished nuclear power plants in eastern Grays Harbor Washington.

Ms. Garrow provided a short overview of the Park itself, how it came to be and what they are doing to enhance the economic development potential of our corner of Southwest Washington.

ADJOURNMENT

President Pottle adjourned the meeting on February 27, 2006 at 6:57 p.m.

PORT OF OLYMPIA COMMISSION

President

Vice President

Secretary-Treasurer