

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

**August 14, 2006**

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**CALL TO ORDER**

President Pottle called the meeting of August 14, 2006, to order at 5:30 p.m. at the LOTT Board Room in Olympia. Commissioners Telford and Van Schoorl were also in attendance.

Staff in attendance were: Executive Director Ed Galligan, Administrative Manager Jeri Sevier, Communications Manager Patti Grant, Marketing Director Kari Qvigstad, Business Development Sally Alhadeff, Finance Director Steve Davis, Harbormaster Bruce Marshall, Airport Director Rudy Rudolph, Public Works Director Andrea Fontenot, Marine Terminal Director Jim Amador, Business Development Representative Jim Knight, Marketing Program Assistant Maureen Malahovsky, Facilities Project Manager Rod Hudson, and Property Director Heber Kennedy. Bob Goodstein, the Port's Legal Counsel was also in attendance.

Public in attendance were as follows: Representing *The Olympian* was Jim Szymanski. Others in attendance included: Jerry Dierker, Prism, Solace, Brian Han, Jeff Brigham, Tom Howdeshell, Bill Pilkey, Kathleen Brigham, Harold Clark, Arthur West, Dan Cathers, Mimi Calkins, Patrisa DiFrancisca, Richard Wolf, Carlos Perez, Karynee Rayan, Jay Burney, Drew Hendricks, Arielle Feffmer, Jon Madziarczyk, Pat Rants, Jacobson Milleton, Caitlin Esworthy, Nickki Miller, Wally Cudderford, Brendan Dunn, Jack Millikan, Josh Elliott, Muhammad Ayub, Carl Miller, Christin Osgood, Nancy Sigafos, and Doug Mah.

President Pottle announced that the Commission held an executive session with staff and legal counsel to discuss litigation and lease negotiations. He announced that staff and legal counsel briefed the Commission, and no decisions were made. President Pottle indicated that we would add item #8 on the agenda to make a decision on the settlement of claims made by Northwest Construction.

**APPROVAL OF AGENDA**

The agenda was approved as revised. Settlement of a claim made by Northwest Construction was added as action item #8. Commissioner Telford asked to add prosecution of protestors for the damage at the marine terminal for discussion under other business.

**CONSENT CALENDAR**

**Minutes Approval.** The Commission unanimously approved the minutes from the July 17, 2006 meeting.

**Bills and Vouchers Approval.** The Commission unanimously approved the bills and vouchers in the amount of \$690,623.84. General Fund Checks Issued: 040691-040895. Voided Checks: 040653, 040704, and 040568. Project payments to Mike McClung Construction for the Runway Safety project at the airport in the amount of \$126,043.66 was also approved.

**Lease Amendment – Tumwater Airdustrial Investment, LLC.**

Tumwater Industrial Investement, located along the south side of Tumwater Boulevard, has an existing lease with the Port. The lease contains a provision for option to renew the lease and Tenant has elected to exercise its option.

The first provision of the amendment covers the exercise of the option to renew for term commencing January 1, 2007. This allows the tenant to finance improvements to the facility.

The second provision in the amendment is the expansion of the use of the premises. The existing use in the lease is limited to light industrial. However, because the strategic plan now calls for use of the properties along Tumwater Boulevard to be office/commercial/retail, the use needs to be expanded to fit the plan for future redevelopment of the site as envisioned by the Port and intended by the Tenant. The Commission unanimously ratified the lease amendment with Tumwater Airdustrial Investment LLC.

## **ACTION CALENDAR**

### **Port Pricing Resolution 2006-12**

Ms. Kari Qvigstad reported that at the May 22 Commission meeting, staff provided a presentation that reviewed current port policy and described staff's process and recommendations for changes to our pricing strategies. She indicated that staff also provided a detailed presentation on airport properties and recommendations. The June 26 presentation to the Commission focused on staff analysis and proposed recommendations for NewMarket Industrial Campus and Swantown Marina & Boatworks properties.

Ms. Qvigstad reported to the Commission that the Port of Olympia uses standard, market practices to pricing its properties, which are periodically updated to reflect market conditions and strategic objectives for development of its properties through changes to Port Policy. She noted that staff has assessed Port properties and reviewed historical absorption patterns for leased land at the Olympia Regional Airport, NewMarket Industrial Campus (NMIC) in Tumwater, and the Swantown Marina & Boatworks on the Port Peninsula in Olympia over the past year.

Ms. Qvigstad noted that this evening, staff is requesting Port Commission action in the form of a Commission Resolution 2006-12 addressing pricing policy changes and adoption of the Port Market Rate Schedule for vacant property leases.

Commissioner Telford indicated over the years we have paid for appraisals. He thought that this change in the system would use CPI. However after reviewing the resolution, he finds that years 16-30 require an appraisal. Ms. Qvigstad indicated that the years 1-15 uses CPI so the tenant could make reasonable estimates on rate increases, years 16-30 would use an appraisal to make sure we are using current values for leases. The appraisal process would be for land use area and not lease by lease. Ms. Qvigstad noted that by looking more comprehensively, this reduces the administrative cost.

The Commission unanimously approved Resolution #2006-12 and adoption of Port Market Rate Schedule for vacant property leases.

### **Marine Drive North, Award Bid**

Ms. Andrea Fontenot indicated the purpose of this agenda item is to request the Commission to award of NorthPoint Marine Drive Construction Contract No. 303 to Grading and Excavating, Inc. in the amount of \$84,225. The Engineer's estimate was \$89,006. The budget is \$140,000 with approximately \$115,000 remaining, so there is ample budget for the final phase of this work. In addition, a portion of this work will be allocated to the NorthPoint Sewer Force Main capital budget item, since it includes the installation of a 4" force-main for future service to this area.

**Jerry Dierker, resident of Olympia**, asked about the sewer force main. He commented that he talked to the City of Olympia about this and they said it was just a replacement and did not require a permit. However the way this is presented, he thought this looks like it is new. Commissioner Telford commented that this is a replacement for a three-inch line that goes under the road and needs to be put in now before the road is paved.

**Arthur West, resident of Olympia**, asked what environmental reviews were done for this project and why this wasn't included in a more comprehensive plan. Ms. Fontenot indicated that this work was included in the SEPA review for the Northpoint Project.

The Commission unanimously awarded the NorthPoint Marine Drive Construction Contract No. 303 to Grading and Excavating, Inc. in the amount of \$84,225.88.

#### **Approval to Bid Marine Terminal Potable Water Backflow Prevention, Contract #304**

Ms. Fontenot indicated that the purpose of this agenda item is to request Commission approval to bid the Marine Terminal Potable Water Backflow Prevention Contract.

Ms. Fontenot indicated that the City of Olympia is the purveyor of potable water to the Port. The Port owns a private water system that serves the Marine terminal. This system does not have adequate backflow prevention, and marine terminals are identified as high risk for potable water contamination.

The Engineer's Estimate for this work is \$220,691.21, and is based on a design. The approved budget is \$143,490, which was a planning level cost estimate.

**Jerry Dierker, resident of Olympia**, indicated that he was not aware that the Port had a well down here so this is a surprise to him. Ms. Fontenot indicated this is not a private well the water is from the City of Olympia.

The Commission unanimously authorized staff to bid the Marine Terminal Potable Water Backflow Prevention Contract No. 304.

#### **Sale of Abandoned Vessel – Resolution 2006-13**

Mr. Bruce Marshall presented the Commission with Resolution # 2006-13 asking for authorization for the Harbor Director to conduct a public auction of the 25 foot Bayliner powerboat "Black Velvet" WN1365LK, to the highest and best bidder. The resolution further authorizes the Harbor Director to bid all or part of the accrued port charges at the sale and the Port of Olympia may become a purchaser at the sale.

**Tom Howdeshell, resident of Olympia**, commented he is glad to see the Port is passing a resolution to recover money.

Commission unanimously approved Resolution # 2006-13- Authorizing the Sale of an Abandon Vessel.

#### **Lease Form Approval - ProLogis**

Ms. Sally Alhadeff indicated that the Port of Olympia and ProLogis have negotiated a form Ground Lease to be used when and if ProLogis exercises their options to lease industrial and commercial property in Tumwater.

She noted that presentation of this form Ground Lease is for administrative purposes only. At the present time ProLogis has not exercised any options to lease. Ms. Alhadeff reviewed the lease terms. Unless otherwise noted in italics on the summary, all terms are as originally included in the Option Agreement dated July 20, 2005 as outlined at the July 27, 2005 Commission meeting.

Commissioner Telford questioned why we would treat the big guys different than the little guys. Ms. Alhadeff indicated that they are different. This company is a publicly traded company and provides little risk to the Port. Commissioner Telford also asked why we would give the option to ProLogis to decide whether or not they get percentage rents for retail or not. Commissioner Van Schoorl agreed that we don't give others the option. Ms. Alhadeff indicated that we will approve all leases with ProLogis

subtenants, however, we do not have a say in what ProLogis charges for rents. ProLogis states that some companies will not pay percentage rents and therefore if it were required, it would limit the tenants they can bring in.

Commissioner Telford indicated he feels that this requirement should not be included unless we can require it and not just leave it up to ProLogis. Ms. Alhadeff indicated it was included because about 7 acres is on Tumwater Boulevard and that is a district that we would like to pursue percentage rents.

**Jeff Brigham, resident of Tumwater**, is there any bond or security deposit that will protect the Port from bankruptcy. Ms. Alhadeff indicated that is the purpose of security deposits.

**Arthur West, resident of Olympia**, commented that the size of the lease and if built will have significant impacts on the area and notices that the requirement of the lease requires a master plan in compliance with the environmental act. This should have been done with Weyerhaeuser as well.

**Jerry Dierker, resident of Olympia**, commented that this appears to be one of the forms of incrementalism of the Port and is a dangerous form of snow balling.

The Commission unanimously approved the Lease Form for ProLogis.

### **NorthPoint Construction Update**

Mr. Heber Kennedy noted that the Port signed a Lease agreement with Anthony's for development of a new restaurant at NorthPoint. As part of that agreement, the Port was responsible for design, coordination and construction of substructure and site utilities. The Port Commission approved a total budget of \$2,249,788.

Mr. Kennedy indicated that during the course of construction, additional costs were incurred such as additional consultant fees, unallocated staff costs, change orders, permit fees and miscellaneous costs such as testing, advertising, plan copying and legal. These additional costs total \$220,000.

Mr. Kennedy noted that the site has been delivered to the tenant and in the course of their construction several issues have been raised involving coordination. These issues involve sewer connection; pump alarm conduit, shoreline grading, defective curbing, water meter connections and other miscellaneous items. Upon examination, it appears many of the issues involve coordination among consultants and oversight of construction plans. Tenant expects correction of issues so their contractor may proceed and looks to Port for action. These contingent costs are estimated at \$100,000.

He indicated that staff considered a range of alternatives to resolve the issues. These included requiring Anthony's to correct the issues using their on-site contractor or prepare a separate construction set of documents and take bids from other contractors for the necessary work. Both of these options would require more time and cause further delays; would probably result in increased cost for construction; probably result in potential delay of building construction and ultimately delay planned opening for business.

Mr. Kennedy reported that by the Port electing to move ahead expeditiously with field fixes this permits the tenant to proceed in a timely manner and the Port minimizes the potential impact on Anthony's building construction contract. In addition, there is a reasonable probability some of the cost of this work may be recoverable from Port's design consultants due to the apparent lack of design coordination that was a requirement in their contract with the Port.

He noted that staff recommendation is to approve a Capital Expense Authorization (CEA) in the amount of \$320,000 and seek reimbursement from consultants where likely.

Commissioner Telford indicated that he supports the \$100,000 because he understands the need to move

forward with this. However, the \$220,000 is another 10 percent overrun of the original budget. He asked why this did not come back to the commission when this went over the budget. Mr. Kennedy indicated that there was a change order when asbestos was found, there was another change order for a water line, another for a request for a conduit, the unallocated staff costs, and the individual orders added up before it was realized it was over budget.

Commissioner Pottle asked if any of the \$220,000 is appropriate to recover? Mr. Kennedy noted that there are some consultant costs involved, but most of the other probably would not be. Commissioner Telford indicated that we need to have the discussion about when staff comes back for further approval when they over run the budget. Commissioner Van Schoorl indicated that the commission has authorized the Executive Director to authorize change orders, however, when the change orders begin to add up, the Commission should be briefed along the way. Commissioner Pottle indicated that this project seems to have had more issues and problems than any other project at the Port.

Rod Hudson indicated that this project when awarded the bid, the Port did not include a contingency that we would normally include on a project. Commissioner Telford indicated that the project manager if tracking this appropriately, should have seen this over run coming before we got there.

The Commission indicated that they do not like to be surprised at the end of the project and would like to be briefed along the way instead of after the fact.

**Arthur West, resident of Olympia**, indicated that he wanted to stress the comprehensive planning for projects so that we don't arise to this point.

**Tom Howdeshell, resident of Olympia**, commented that the Commission talked about getting reimbursement for some of this money. Commissioner Pottle indicated that we do not know at this time, but it would be appropriate for staff to come back with a report. The full amount that could be recovered would be \$100,000 – but most likely less.

The Commission unanimously approved a Capital Expense Authorization (CEA) in the amount of \$320,000 and to seek reimbursement where appropriate. Mr. Ed Galligan indicated that a budget overrun would not occur again in this manner.

### **Recruitment Process for Port Commissioner**

Mr. Ed Galligan indicated that staff has worked with the two Commissioners Van Schoorl and Telford to coordinate a timeline and process that is being presented this evening.

Commissioner Telford indicated that Mr. Galligan submitted several versions of this and the only issue he has is when the effective date of the resignation will be. The last version indicates October 10<sup>th</sup> would be the effective date. Commissioner Van School indicated that this is the third time the Port will go through this process in the past 10 years and this is the same process as was done in the past two times and there is nothing in the statute that prohibits us from moving forward.

Commissioner Telford indicated that he did not think it was appropriate to solicit applications until there is a vacancy.

Commissioner Van Schoorl moved approval of the process; President Pottle seconded the motion to move it forward.

**Jerry Dierker, resident of Olympia**, indicated he thinks it is a conflict of interest for Commissioner Pottle to second the motion. He indicates that he also has a problem with the effective date of October 10<sup>th</sup>. Now that he has his new job in Snohomish County, and this new job is a conflict of interest and since he stays in Snohomish County most of the week, the residency requirement is not met.

**Arthur West, resident of Olympia**, indicated that he also feels that this is a conflict of interest. He asked the commission to get an opinion from the Attorney General's office. He also suggested that the Port allow the County Commissioners to select the replacement.

**Jeff Brigham, resident of Tumwater**, asked if the Port's attorney has provided advice of this issue. Bob Goodstein, the Port's legal counsel, indicated that we are dealing with two issues. First the general concern with the process of soliciting applicants prior to an actual vacancy, the statute indicated that a vacancy occurs in the event of a resignation, in this instance we are dealing with a speculative resignation, the process occurs when a vacancy occurs and give the Port Commission 90 days to fill the vacancy. There is nothing in this statute that prevents the commission to create a process in anticipation of a vacancy. He commented that the last two processes were done in a similar manner. It is clear however; the Commissioner Pottle has to resign prior to filling the vacancy.

Mr. Goodstein also noted that with the regard to the issue of conflict of interest alluded to by some members of the audience; the law being referred to applies to someone holding two conflicting elected offices. In this case Commissioner Pottle is not holding two conflicting offices. The guidance is that you must announce your conflict of interest when it occurs and with draws from the discussion and consideration of that issue. He noted that we are talking about two more meetings of the Port Commission and in the remote chance that at one of the meetings arises a conflict of interest, Commissioner Pottle would need to recuse himself.

Commissioner Pottle indicated that the idea of him staying until October 10 is to maintain continuity and to leave now would not be in the best interest of he Port or the citizens that elected me. He commented that he does not have to resign; his employer is not requiring this. He is resigning because he does not feel it is in the best interest of the Port or his employer to stay on indefinitely.

The Commission approved the process with a 2-1 vote. Commissioner Telford indicated that process is under protest, and he does not feel that Commissioner Pottle should be included in this process.

#### **Settlement of Claims by Northwest Construction Inc.**

Bob Goodstein presented the Commission with a settlement of claim by Northwest Construction Inc. The dispute is that Northwest Construction claims the Port owes more money on the contract, the Port claims the quantity of materials used is not in agreement with Northwest Construction. The materials in question were for Hydro seeding and excavation of dirt and movement and placement of topsoil. The dispute is over how much was moved and the quantity of what was moved. The claim is in excess of \$50,000. Mr. Goodstein noted that Northwest Construction has agreed to a settlement of \$35,613 which 95% is covered by the FAA. Mr. Goodstein indicated that it is the recommendation that we settle this matter since cost of any litigation will quickly exceed the difference and there is no guarantee that we will prevail.

Commissioner Telford indicated that he supports the settlement with reservation. He also stated that he understood from Public Works staff that this is the second time we have had problems with Northwest Construction and this should be considered if they bid on another Port job.

**Arthur West, resident of Olympia**, indicated that it is nice for the Port to be so reasonable, and good advice from counsel to settle.

The Commission unanimously approved settlement with Northwest Construction in the amount of \$35,613.

#### **ADVISORY CALENDAR**

##### **Harbor Days Advisory**

Ms. Patti Grant, filling in for Nancy Sigafos, Harbor Days Coordinator, presented plans and promotional activities for the 2006 Olympia Harbor Days Festival. She noted that the Olympia Harbor Days is scheduled for September 1st – September 3rd, on Percival Landing and Port Plaza. This is the 33rd Anniversary of Harbor Days!

Ms. Grant indicated that Port Plaza Activities would include the Lady Washington, Model Tugs, Dragon Boats, Puget Sound Pirates, Just Me Music, other various vendors and the Port of Olympia booth. The Lady Washington will be open for public tours each day during the festival. Model tugboat replicas will be conducting races in water tanks.

She noted that Marine Terminal Walking Tours will be held at the Port of Olympia will have a booth on Saturday the 2nd on the Plaza and will be conducting tours of the Port's Working Waterfront. Port staff, ILWU Local #47 and Tri-City & Olympia Railroad representatives will guide tours and provide general information to the public on Port activities.

The Port of Olympia's sponsorship for 2006 includes advertising and promotion for Harbor Days events in exchange for a cash contribution of \$2500 and in-kind support valued at \$2135. The in-kind component includes moorage for the Lady Washington and Dragon Boats on the Port Plaza dock. The Port of Olympia has been prominently included in event promotion.

### **Sand in the City Advisory**

Patty Belmonte from the Hands On Children's Museum presented plans for the 2006 Sand in the City event to be held on Port Plaza Aug. 24 – 28th. This is the sixth sand event to be held in Olympia, which has grown to become one of the largest community events and the largest sand-sculpting event in Washington State drawing visitors to from the Puget Sound region.

The Port is the host sponsor providing a cash sponsorship at \$2500 and in-kind sponsorship of \$10,000.00 which includes includes staff assistance and facilities to support the success of this year's event. One of five "signature" events, Sand in the City provides the Port significant exposure through Port logo recognition in event advertising and promotional opportunities including print and broadcast media, Sand in the City website, promotional materials and on-site banners and T-shirts.

### **East Bay Advisory**

Mr. Heber Kennedy and Ms. Sally Alhadeff presented a PowerPoint presentation to the Commission regarding East Bay. They noted that at the May 22, 2006 Commission meeting, the Commission approved the formation of an East Bay Team and authorized the team to begin predevelopment work. Since that time, the team has moved forward with a number of the Critical Path strategies. They presented an update on our progress and report on next steps.

Commissioner Telford indicated the footprint of the City Hall surprised him. Pat Rants indicated that this footprint is for 3 or 4 floors. He indicated that the design of the building has not yet been determined. The first floor will include some retail. The site will also include some parking for police cars.

The Commission indicated that they would like a road network approved before any site plan. Mr. Kennedy indicated that staff has hired transportation consultant.

In addition, the Commission discussed the City hall parking issue. They asked what would be parked on site versus off site in a parking garage or other lots. Commissioner Pottle encouraged to build up not out.

**Mimi Calkins**, spoke against the up not out, appreciates the shortness of the buildings and would like to keep the size of the buildings.

**Jeff Brigham, resident of Tumwater**, commented on the taller buildings and indicated that he does not

see how we cannot do both, build out in the rural areas and not also go up in the urban areas.

**Arthur West, resident of Olympia**, asked the Commissioners to make more opportunities for public comment on projects.

**Harold Clark, resident of Olympia**, reminded everyone that the shortage of parking has been going on for a long time and there should be no consideration of a site unless they have appropriate parking, plan upfront for parking.

## **PUBLIC COMMENT**

**Prism, resident of Olympia**, asked the Commission to consider a position of not supporting the illegal war. She encouraged the Port to close its doors to the military. Her six-year-old daughter, Solace, spoke that the military had bombs in large trashcans disguised. Commissioner Van Schoorl assured her that no bombs or ammunition was shipped through the Port.

**Brian Ham, resident of Olympia**, encouraged the Commission to not bring the service men and women to Olympia via ships to endure the protests, because the protests will continue.

**Mimi Calkins**, spoke against the shipments of military through the Port.

**Jeff Brigham, resident of Tumwater**, spoke in favor of the military use of Port facilities.

**Drew Hendricks, resident of Olympia**, spoke about the restitution being sought by the Port for the protests; he indicated that the only thing the Port could be asking for is the cost of the gate in the amount of \$2000. Why are you asking for money for gates we already paid for?

**Josh Madziorczyk, resident of Olympia**, spoke against the activity at the Port.

**Rachel Graham, resident of Olympia**, expressed her dissatisfaction with the continued support of the military and they told the Commission that the Port Commission would not intimidate them.

**Wally Cuttiford, resident of Olympia**, spoke against the military shipments going through “our” port.

**Caitlin Esworthy, resident of Olympia**, expressed her concern of the illegal war and encouraged the Port Commission to stop shipments through the Port.

**Jack Millikan, resident of Olympia**, spoke against the support of the military at the Port.

**Arthur West, resident of Olympia**, spoke against the Port in general.

**Arielle Feffmer, resident of Olympia**, spoke against the military at the Port.

**Karynne Raynor, resident of Olympia**, spoke against the illegal war and the support by the Port. She was also upset by the disrespect that was shown to the citizens.

**Carl Miller, resident of Rochester**, concurred with the unprofessional conduct.

## **COMMISSIONERS REPORTS**

Commissioner Telford noted he attended the meeting of the Solid Waste Advisory Committee and the people outside of Olympia will get blue depositories. He also mentioned that the Port of Olympia won the duck race at the Thurston County Fair.

## **EXECUTIVE DIRECTOR REPORT**

Mr. Ed Galligan reported he received a letter from LOTT asking for 2 acres of property, or about 90,000 square feet as opposed to the current 30,000 square feet. Mr. Galligan indicated that staff would look at the request; however, this large of a site could knock out the currently proposed parking garage and Hand's on Children's Museum.

Mr. Galligan also reported on the South Sound Logistics Center and indicated that the Port of Tacoma has closed on that property. He noted that Kari is the staff lead working with the Port of Tacoma to develop a team structure, roles and determine next steps for the planning process. He noted that staff is planning to schedule a briefing in September to keep the commission up to date on this process.

**Other Business:**

Commissioner Telford noted the article in paper where it refers to \$200 in restitution and no contact with the secured area of the Port for the prosecution of the protestors at the Port Plaza during the visit of the military vessel.

The Commission asked the Executive Director to contact the prosecutor. In addition to the current order, the Port would like to add that it also be contingent upon no arrests on Port Property in the next year in order to clear this from their record.

**ADJOURNMENT**

President Pottle adjourned the meeting on August 14, 2006 at 8:37 p.m. He announced the Commission will hold a work session on August 16, 2006 at 1:00.

PORT OF OLYMPIA COMMISSION

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President

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Vice President

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Secretary-Treasurer