

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

December 12, 2005

CALL TO ORDER

President Van Schoorl called the meeting of December 12, 2005, to order at 5:30 p.m. at the LOTT Board Room in Olympia. Commissioners Pottle and Telford were also in attendance.

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, Business Development Sally Alhadeff, and Finance Director Steve Davis. Bob Goodstein, Port's legal counsel, was also in attendance.

Public in attendance were as follows. Representing *The Olympian* was Jim Szymanski. Others in attendance included Don Waterhouse, Keith Bausch, Jerome Parker, and Walt Jorgensen.

APPROVAL OF AGENDA

The agenda was approved as amended. Executive Director Ed Galligan requested the Commission add discussion of the Tumwater Moratorium to the advisory calendar.

PUBLIC COMMENT

Don Waterhouse, resident of Olympia, indicated he wanted to re-introduce himself to the commission regarding the Olympia Sailing Foundation non profit formed to help facilitate putting in a small boating center on the Northpoint peninsula. He indicated he is in contact with the Port office to begin conversations with the new executive director.

COMMISSIONERS REPORTS

Commissioner Telford noted that he attended a vision reality task force meeting resulting from the TRPC. He indicated they distributed a report but he has not had a chance to read it all. He also commented that he attended the TRPC meeting last week. Commissioner Telford noted that he has heard the Instrument Landing System at the Airport is out of commission until next spring, impacting flights into the airport. He asked for information on that issue. Mr. Galligan noted that he understands it is scheduled to be activated the middle of January, but he will follow up on that.

Commissioner Pottle indicated Senator Murray was here last week to announce the grant for rail. She provided a press conference on the issue and she went on a tour of the Port. Commissioner Pottle noted he also attended a tour of the Port of Vancouver looking at what they are doing there, as they are also getting federal funds for rail. He commented that he was very impressed with the Port and what they are doing.

President Van Schoorl acknowledged staff for the fine job on the customer appreciation event. He commented that he recently attended a meeting to plan a forum that will be sponsored by the Puget Sound Action Team on environmental impacts to our waters. He said he would let the Commission know when it will be held and invite them to attend.

EXECUTIVE DIRECTOR REPORT

Mr. Ed Galligan thanked the Commission for the opportunity to work at the Port of Olympia. He indicated he attended the WPPA Conference to start out his first week providing him with a great overview of Washington Port and he commented he is convinced the Port has many opportunities ahead.

He commented that during his second week, the real week of working, he has discovered there is no shortage of opportunities for this Port, but significant shortage of resource and time and effort. He commented that his goal is to keep focus and to meet the goals of the strategic plan.

Consent Calendar

The Consent Calendar was approved as follows.

Minutes. The Commission unanimously approved the minutes from the November 23, 2005 and the November 28, 2005 meeting.

Bills and Voucher Approval. The Bills and Vouchers were unanimously approved in the amount of \$209,940.78. General Fund Checks Issued: 038656-038667, 038672-038740, 038741-038750, 038751-038778, 038779, 038780-038782, 038783-038810, 038811-038815, 038816-038859, and 038860-038868. Voided Checks: 037718, 038093, 038101, 038242, 038327, 038668-038671, and 038725-038726.

Capital Expenditures Approval. The Commission unanimously approved the Capital Expenditures in the amount of \$406,242.70 to Coast Rail for the Phase I Rail project and to Rognlin's Inc. for the NorthPoint Restaurant and Esplanade project and the Marine Terminal Fender Pile Repairs.

ACTION CALENDAR

West Bay Property Sale Authorization

Mr. Heber Kennedy reported that Port and City staffs have been working towards an agreement regarding the sale of the Port's West Bay property to the City for use as a park. There are three Purchase and Sale Agreements addressing separate portions of the land. The agreement for the main portion (parcels B, C, and D) provides for the City to acquire the Port owned upland and shoreline in an agreement set to close not later than February 28, 2006. The purchase price is to be negotiated between the two parties based on independent appraisals of the property. The parcels to the north (Parcel A) and to the south (the berm and rail line areas at the mouth of the lagoon) will close condition subsequent to the appraisal.

Mr. Kennedy indicated that the northern parcel contains an underground pipeline to the former ARCO tank farm on the West side of West Bay Drive and is being evaluated for potential contamination by the Washington State Department of Ecology. Upon release by the Department of Ecology, this property will be sold to the City of Olympia.

Mr. Kennedy noted that the City has recently decided that it would prefer to purchase the land under the berms adjacent to the rail line at the mouth of the lagoon. The southern property has not been investigated, surveyed, appraised, or a price negotiated at this time. However, under the agreement with the Port, the City is committing to purchase this property upon resolution of these issues.

Mr. Kennedy recommended that the Commission authorize the Executive Director authority to approve the Purchase and Sale agreement as presented in the attachment for this parcel contingent upon City Council approval of the Purchase and Sale Agreements as presented to the Commission.

President Van Schoorl indicated he is concerned about the Northern parcel. He asked what guarantees do we have that we will be selling the City the northern parcel in a reasonable amount of time. Mr. Kennedy

indicated that staff sees no problems with ARCO cleaning up the site. The City wants to make this a waterfront trail, in order for them to complete the trail; they will need the northern parcel. President Van Schoorl wanted to make sure that we make the sale clear that there will be no trail, without a purchase. President Van Schoorl asked if the price per square foot the same on all sections? Mr. Kennedy indicated the northern and the main sections are the same. We have not received an appraisal on the southern portion.

Commissioner Pottle asked about the clean up and the timeline for ARCO get the clean up completed. Mr. Kennedy indicated that the Dept. of Ecology indicated their sampling shows the property is clean, however, the City of Olympia said their sampling found some contaminants. We now need the site re-tested. Mr. Kennedy reported that staff just received a letter sent to ARCO with the information of this current find. They will do retesting to see if they agree there is contamination. Mr. Kennedy estimated the timeline of 1-2 years to finalize this and get a no further action from DOE.

Mr. Kennedy indicated if the City decides to sell this to anyone else and not make this a park, we have right of first refusal. Mr. Kennedy indicated the city is looking at building this park in phases. It will be at least 10 years until full development of the park.

Commissioner Telford asked if the city is negotiating with Burlington Northern directly. Mr. Kennedy confirmed. He noted that our sale goes through regardless of how long it takes the city to work it out with Burlington Northern. Commissioner Telford also commented he thinks we should give them the lagoon at the southern portion. Heber commented that staff agrees.

President Van Schoorl asked if legal counsel is ok with the agreements. Bob Goodstein replied that the documents are legal. Commissioner Pottle asked if this sale is in the best interest of the Port. Mr. Goodstein reported that he is unaware of any other use for this property that would return on the Port's investment. Given that, if you are willing to work through the timeline and some ambiguities of the agreement, indemnity provision in the agreement for any risks relating to the property not being clean. Commissioner Pottle asked if we should get an insurance policy for risk associated with contamination. Mr. Goodstein indicated you could get insurance for known risks, not unknown risks.

Keith Bausch, representing Local ILWU 47, asked if there were any projects in the future that the Port will have for mitigation purposes. President Van Schoorl commented that we already sold mitigation rights to the city for the bridge and in return we received property at Priest Point Park for mitigation rights.

The Commission unanimously authorized the Executive Director authority to approve the Purchase and Sale agreement as presented in the attachment for this parcel contingent upon City Council approval of the Purchase and Sale Agreements as presented to the Commission.

Policy and Procedures Update Approval

Ms. Jeri Sevier presented the Commission with a PowerPoint presentation covering the proposed policy and procedures changes for 2005. She indicated that in 2003 the Port Commission adopted a revised comprehensive Policy and Procedure Manual. Since that time, several policies have been tried and tested and we have found some minor changes that need to be made to clarify or further define a policy.

In addition, she noted that staff is proposing three new policies regarding inclement weather, integrated pest management, and pets in the workplace. Ms. Sevier reported that the business team and all port staff have reviewed the proposed changes. The Commission was also provided with a proposed draft some time ago.

Ms. Sevier reviewed the new Policies proposed:

Inclement Weather – Policy 117

This policy is established to provide guidance to employees in the event of inclement weather.

The policy follows the WAC 356-18-115, which determines that in the event of inclement weather, employees are allowed up to one hour if late to work, any thing over the one hour is to be comp time, accrued vacation time, sick leave, or leave without pay (in that order). In the event a decision is made to close the Port, that decision would be announced on KGY and on the voice mail at the main office.

Integrated Pest Management – Policy 118

This policy requires that staff and contractors involved with vegetation and pest management comply with all legal requirements pertinent to these activities. The policy provides guidelines for vegetation and pest management.

Pets in the Workplace – Policy 119

This policy prohibits pets in the workplace.

Ms. Sevier reviewed the revised Policies proposed:

Residency Requirement – Policy 203

Changed the policy from “The Port requires a director to reside in Thurston County” to “encourages.” If the director lives outside of Thurston County it requires an exemption for exceptional circumstances by the Executive Director. **The other option is to delete this policy.

Personnel and Payroll Records – Policy 204

The addition to this policy indicates the employee may request that certain information be removed; the employer need not comply, but allow the employee to place in the file a rebuttal or correction.

Sick Leave and Retirement Benefit – Policy 215 and 305

Revised these policies to clarify the cash benefit to employees that retire or resign from the Port in regards to sick and vacation leave. The policy states employees with 5 years or more cash out sick leave at a rate of 25 percent, with 15 years or more at a rate of 30 percent. Vacation leave is cashed out at the regular rate of pay.

Vacation Leave – Policy 302

Revised the Policy to indicated if an employee is in excess of the maximum accrual of 320 hours they can cash-out up to one year’s leave accrual if the employee reaches the maximum and is not able to use the time because of work requirements. This cash out is available one time every three years to encourage employees to take vacation and avoid burnout.

Vacation Leave Cash-Out Based on Need – Policy 304

Revised the Policy to indicated if an employee is cashing out vacation leaved based on financial need, they must maintaining a balance of 80 hours on the books. This cash out is available one time every three years.

Industrial Insurance – Policy 307

Revised the policy to indicate the Port will credit back used leave to employee as a result of an L & I Claim.

Promotional Hosting – Policy 604

Revised the policy to remove the use of purchase orders and to include documenting expenses w/ purchase card for promotional hosting. In addition the revision changes the language for authorized personnel. The policy used to list position titles, of which many of those titles have changes. I changed the language to allow all employees subject to the guidelines listed in the policy. In addition added language to define Promotional Hosting as defined by the State Auditor.

Vehicle Use and Reimbursement – Policy 605

Added language to the policy that the Port’s insurance will cover personal vehicle use for business

purposes in case of an accident.

Phone Usage – Policy 703

Removed the name of the long distance carrier since that changes time to time.

Claims Management – Policy 706

Added language to the policy that the Port's insurance will cover personal vehicle use for business purposes in case of an accident.

Expenditure System of Internal Controls – Policy 801

Revised the policy to clarify minor expenditures as \$50 or less and changed title of persons responsible for approvals where appropriate. In addition, we removed Appendix A that listed each cost center. Policy 802-809 – were changed to procedures and listed as 801 A-H.

Petty Cash Procedure - Policy 801-C

In addition to changing this policy to a procedure, the section addressing Cash/Change Machine procedures was also added.

Public Records – Policy 903

Amended the policy to include Port photos as a public record and the procedure to request a photo. Also added a section on Records Indexing (an issue that came up earlier in the year). In addition I added that the Executive Department would be the lead on all public records requests and maintain the official copy of the response.

After discussion of each of the policies, the Commission unanimously approved the following: Policy 117, Policy 118, Policy 604, Policy 605, Policy 705, Policy 706, Policy 801, Policy 801-C, and Policy 903. In addition, the Commission unanimously approved Policy 119 as amended.

Furthermore, the Commission unanimously approved deleting Policy 203 and asked that staff re-write Policy 204 as discussed. The Commission asked that the following policies be referred to the team that will be reviewing the compensation package for the Port: Policy 215, Policy 302, Policy 304, Policy 305, and Policy 307.

ADVISORY CALENDAR

Freight Mobility Presentation

Mr. Ed Galligan reported that the Port of Olympia, the Economic Development Council of Thurston County, and the Thurston Regional Planning Council, along with several State and Pierce County agencies, co-sponsored a freight mobility summit on October 14, 2005 in Tacoma. The summit gave some 130 participants a chance to focus on our region's unique freight challenges and opportunities.

At the event, the Washington State Department of Transportation (DOT) launched a video addressing the challenges we face in growing our economy, creating jobs and the need for efficient freight mobility in our global society.

Mr. Galligan noted that we would be showing the video to demonstrate that the efficient movement of freight, specifically the transport of cargo to and from the ports in Puget Sound and around our region, is a critical factor in our ability to compete in the world economy. Within the existing infrastructure system, transportation chokepoints prevent a smooth trip on the landside portion of the trade route. Many of these exist in the road system, while others exist in the rail system or private sector links of the chain. The outlook will be further complicated as the road and railroad networks reach capacity.

Freight mobility is critical to a growing a healthy economy and meeting the needs of carriers, shippers and distributors. Reducing friction in the system will retain existing freights flows and attract new trade

through our gateways.

SEPA Policy Advisory

Ms. Andrea Fontenot indicated that this project is a revision of the Port's State Environmental Policy Act policies, which have not been revised substantially since 1982 and do not reflect advances in case law since 1982, or revisions to the State Environmental Policy Act procedures since that time. This is basically an update to keep the Port's policies contemporary.

She noted that at the workshop on November 23, the Commission expressed interest in administrative appeal options, and requested more information about appeal fees. The purpose of this advisory is to further discuss these two areas and get Commission feedback.

Administrative Appeal Procedural Options

She presented three options and their pros and cons are outlined below.

Option A

Separate legal counsel for the Commission and separate legal counsel for project. This option would provide for a separate legal counsel to Commission on procedural matters regarding a SEPA appeal. The Port Commission would hear all SEPA appeals. We recommend as part of this option the creation of a Guidebook for the Commission that outlines its role in appeals, burden of proof responsibilities, ex parte communications, how to conduct appeal hearings, and its responsibility in preparing a written decision.

Pros.

Provides legal counsel to Commission.

Provides enhanced support to the Commission by way of a Guidebook.

Enhances compliance with procedural aspects of the law.

The Commission is familiar with the SEPA policies.

Cons.

Additional cost a professional services contract for outside counsel.

Commissioner Pottle asked what the cost of the past two appeals have cost the Port. Ms. Fontenot indicated she did not have that number, but would get them.

Option B

Hearings Examiner, with any appeal of Hearing Examiner heard by Port Commission. This option has been the standard approach by municipalities in the Olympia area, with a corresponding 2-part fee.

Pros.

Record established through Hearings Examiner process instead of Commission hearing process.

Enhances compliance with procedural aspects of the law.

Cons.

Potential of adding an estimated 3 months to the process.

Adds additional cost to the Port for the appeal.

Commissioner Pottle asked if the hearings examiner sided with the appellant, would it come to the Commission? Ms. Fontenot indicated Port staff could bring it forward. The appellant will not appeal if they are sided with.

Option C

Hearings Examiner, with any appeal of Hearing Examiner filed in Court. This option is the direction that

some communities are going to.

Pros.

Record established through Hearings Examiner process instead of Commission hearing process.

Enhances compliance with procedural aspects of the law.

Eliminates a Commission appeal step in the event an appellant is intent on going to court.

Cons.

None identified.

Ms. Fontenot indicated that staff recommends development of a Citizen's Guidebook for SEPA appeals regardless of which option is chosen.

President Van Schoorl indicated we would hire an appeal hearing examiner that would be on call to provide this service to the Port, most likely a local attorney. Commissioner Telford indicated there are attorneys that specialize in this area.

Commissioner Telford indicated he does not feel the Commission is qualified to serve in this capacity and he is concerned about the perceived or real appearance of bias or objectivity of the Port Commissioners. He indicated the hearings examiner removes that appearance of bias by one step. He commented he would like for the Port to consider option C -- the Commission plays no role in option C.

Commissioner Pottle indicated it is the duty of the Commission in one sense and he questions if as elected officials they elect to bypass the Commission on these decisions they are not maintaining the level of oversight that they are elected to do.

The Commission indicated they would like to examine the options and think about a recommendation.

Appeal Fees

Ms. Fontenot presented a summary of what other municipalities charge for an appeal:

Olympia	\$200/\$500 (hearings examiner/city council)
Thurston County	\$260/\$500
Tumwater	\$100/\$175
Lacey	\$383/\$383
Yelm	\$50/\$100
Pierce County	\$1,323

Commissioner Pottle asked what other Ports do in this regard. Ms. Fontenot indicated she does not have that information yet, but staff is looking into that.

Ms. Fontenot indicated that staff recommends adoption of an appeal fee, \$250 hearings examiner and \$300 to Commission appeal.

Commissioner Telford indicated he feels that there is a better way of handling these things from the beginning. We need to build into policy guidance and instruction for staff to do everything they can to resolve the issue before it goes to the legal process. He noted that he feels the Commission should direct staff to make a conservative effort to resolve this matter outside the courtroom, arbitration meeting with no attorneys present. They should make a better effort to resolve rather than going into the legal process. He suggested the Commission direct the executive director to see if there is some basis for staff to resolve the current issue using the Thurston Dispute Resolution Center.

Commissioner Pottle indicated Commissioner Telford is making an assumption that this group wants a resolution -- they want to stop what the Port is doing.

President Van Schoorl indicated that he feels that staff and the attorneys are working to resolve the issues and do not need to be directed to use the Thurston Dispute Resolution Center. Commissioner Telford indicated the appellants of the cargo yard paving project want to know when the environmental review will be done on the remaining work to accommodate Weyerhaeuser, and he also keeps asking that question. President Van Schoorl commented that we are looking at re-doing this policy to try and avoid future appeals.

Jerry Parker, resident of Olympia, appellant, indicated they are interested in resolving the issues and keeping the costs down – it is better for both parties. He noted that Commissioner Telford indicated the case of fairness, you made some decision, the court will decide if those were good or bad decisions, Mr. Parker noted that it is hard to separate the role as decision maker and judge. Mr. Parker also indicated that having to go to a hearings examiner prohibits anyone from speaking to the issue. He also noted that providing a citizens guidebook would be good. In conclusion, he commented that a solution would be in any matter the Port is involved with, they should not to be the lead agency. His recommendation is for a third alternative of going straight to the courts through a hearings examiner.

Tumwater Moratorium on Warehouses

Ms. Sally Alhadeff, Property Business Development, noted that the Tumwater City Council voted on December 6 to place a 6-month moratorium on warehouses over 125,000 s.f. The moratorium takes places 30 days after adoption and affects NewMarket Industrial Campus and the Port's plans to develop 92 acres of industrial property.

She reported that ProLogis and Port staff had a feasibility review with City staff on November 3 to discuss plans to build over a million square feet of a warehouse/distribution facility. This type of development is in accordance with the City of Tumwater's Comprehensive Plan and Land Use Plan and is also in accordance with the Port's Comprehensive Plan.

Ms. Alhadeff indicated that the City adopted the moratorium without a public hearing. In accordance with RCW 36.70A.390, if a governing body does not adopt findings of fact justifying its action before a hearing, then they must do so immediately after the public hearing. The public hearing has been scheduled for Monday, December 20.

She noted that staff is preparing to attend and speak at that hearing. Staff will focus on the facts including plans for stormwater management in accordance with Salmon Creek Basin and City of Tumwater's stormwater guidelines. ProLogis representatives will also attend. The moratorium will be in place for 6 months and could be extended for another 6 months if a work plan is developed for related studies providing for a longer period.

Commissioner Pottle asked what the plan is to educate the city counsel, because the problem is not with staff. Ms. Alhadeff agreed. Commissioner Pottle indicated he agreed with the editorial in the Olympian.

President Van Schoorl asked what the process is for the City Counsel. Ms. Alhadeff indicated the City has to establish the facts justifying their actions. If they have no meeting and take no action, the decision stands.

President Van Schoorl commented that it might be appropriate for Commissioners to have discussion with city counsel members. President Van Schoorl indicated there is some educating the city and the public about the stormwater issues and the flooding issues. He commented that the Port did a study and identified that the stormwater flows in the Deschutes waterway and not necessarily in to the salmon creek.

Walt Jorgensen, resident of Olympia, commented on the Tumwater Moratorium and indicated that ProLogis has indicated in the newspaper that they would not want to locate in a community that did not want them. He warned that Walmart said the same and still located in communities that desired not to have them there. He commented that he felt that the City of Tumwater has learned its lesson and that the

moratorium is an instrument for the jurisdiction to use to give them time to consider the project.

EXECUTIVE SESSION

The Commission recessed to executive session at 8:05 p.m. to discuss potential litigation with legal counsel and after discussion returned and reconvened the meeting to take action at approximately 8:30 p.m. The Commission voted unanimously to accept the settlement for \$70,000 regarding the Nick Handy Compensation claim.

ADJOURNMENT

President Van Schoorl adjourned the meeting at 8:35 p.m. on December 12, 2005.

PORT OF OLYMPIA COMMISSION

President

Vice President

Secretary-Treasurer