

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

August 27, 2007

CALL TO ORDER

President Telford called the meeting of August 27, 2007, to order at 5:30 p.m. at the LOTT Board Room in Olympia. Commissioner McGregor was also in attendance. Commissioner Van Schoorl was on vacation.

Staff in attendance were: Executive Director Ed Galligan, Administrative Manager Jeri Sevier, Airport Director Rudy Rudolph, Harbor Director Bruce Marshall, Engineering Director Jeff Lincoln, Marine Terminal Director Jim Amador, Communications Manager Patti Grant, Sr. Manager of Property Development Heber Kennedy and Marketing Program Assistant Maureen Malahovsky. Bob Goodstein, and Carolyn Lake, Port's Legal Counsel, were also in attendance.

Public in attendance were as follows: Representing *The Olympian* was Jim Szymanski. Others in attendance who filled in the sign-in sheet included: Bill Pilkey, Tim Knittle, Suzanne Nott, Isabella Marocco, Jim Rose, Rita Rose, Jeff Brigham, Arthur West, Steve Roth, Robert Rose, Lori Rose, Patrisa Di Francesca, and Stanley Stahl. Walt Jorgensen, Richard Long.

APPROVAL OF AGENDA

The agenda was approved as amended. Mr. Galligan suggested that the executive session scheduled for the end of the meeting be cancelled or deferred. However, he asked for an executive session for approximately 15 minutes to discuss litigation following the consent calendar and before the action calendar in accordance with RCW 42.30.110(i).

COMMISSIONERS REPORTS

Commissioner McGregor noted that last week a member of the longshore, port supporter, and community member, Del Edgbert passed away.

President Telford commented that he attended a General Administration brown bag luncheon last week. He also mentioned that at the August 1st Work Session, as a result of the aborted military vessel visits, the Port needs to be prepared for the next time by preparing more detailed security plans and procedures. President Telford stated that he had assigned himself to be the Commission representative on the security team. Mr. Galligan indicated that staff members Jim Amador and Mike Crawford meet with the customer and the law enforcement and are in the beginning stages of formalizing procedures. Each vessel is examined on a case-by-case basis.

President Telford also commented that due to the upcoming Sand in the City event, the commissioners and staff had received phone calls about dioxin and public access to the beaches at the Port Plaza. President Telford had staff confirm that a surface sample has in fact been taken and analyzes on the beach just north of the guest dock ramp. The level is 5.5 parts per trillion, which is very low. He commented that personally he would not be concerned about his grandkids playing on the beach and that no one has shown that contact with the water is a hazard. He noted that the Thurston County Health Department is responsible for public health and they are determining where the signs go. They provided the Port with new generic signs and not much different from the old signs, to be placed in various locations. Mr. Galligan indicated that we have invited the Health Department to come to the next meeting for a report.

EXECUTIVE DIRECTOR REPORT

Mr. Ed Galligan indicated at the last meeting a person indicated that they went to the guardhouse at the Port and the guard did not know where the meeting was. Mr. Galligan reported that a schedule of upcoming commission meetings and locations has been posted on the outside of the guardhouse at the port gate.

He announced that the next log vessel, Rubin Pearl is scheduled at the port the first week of September. This will be a vessel for log tenant Merrill and Ring.

Mr. Galligan reported that a new information piece about the East Bay project has just been produced and is available at the sign-in table. The East Bay partners continue to meet to coordinate the various pieces of this complex project. He noted that there is a lot of interest – and

excitement - about the benefits renewing this part of the port peninsula will have for our community. He also noted that the East Bay partners met with the Carnegie Group and they suggested more communication with the public on this project.

Mr. Galligan reported that work has begun this week on the Swantown Boatworks expansion project. Staff is busy preparing for the upcoming Harbor Day's celebration. Over 100 visiting boats are expected at Swantown during the three-day event. This is the 34th year of the event, and will include the Lady Washington, Hawaiian Chieftain, Model Tugs, Dragon Boats, Puget Sound Pirates and other vendors.

He reported that the Sand in the City event was held over the weekend at the Plaza. This event was very successful community event. Over 45,000 people came to participate in activities and view the sand sculptures. The event has grown to become one of the best-attended events in our community and the largest sand-sculpting event in Washington State.

LEGAL COUNSEL REPORT

Mr. Bob Goodstein, the Port's Legal Counsel, indicated that at a recent commission meeting members of the public, during public comment, raised "appearance of fairness" issues suggesting that commissioners could not vote without violating the doctrine as a result of Port or individual membership in local chambers of commerce or the acceptance of campaign contributions.

Mr. Goodstein provided the Commissioners with a report on the application of the "Appearance of Fairness" Doctrine. He indicated that the Commissioners asked him to research and opine on the applicability of the "appearance of fairness" doctrine to the Port of Olympia Commission votes.

He commented, the short answer is: The "appearance of fairness" doctrine in Washington states emerges from a series of judicial decisions, has been limited by subsequent legislation and applies in situations where a local legislative body acts in a quasi-judicial or hearing capacity. The doctrine does not apply when an entity is acting in a legislative or executive capacity. Thus the doctrine does not apply to motions, votes, or resolutions taken by the Commission in the ordinary course of its business, but may apply to situations where the Commission is acting as a quasi-judicial body. He noted that Commissioners as always, as subject to statutory conflict of interest laws (direct or indirect financial gain) as well as it's own ethical policies.

The Commissioners asked him to give some examples of when they are acting as a quasi-judicial capacity. Mr. Goodstein indicated it would be when they are hearing a SEPA appeal or any hearing where the rights of an "individual" are adjudicated.

Mr. Goodstein indicated that being a member of a chamber has nothing to do with the "appearance of fairness" doctrine. The case that was being cited at by the public had to do with the executive director of the chamber sitting on the board and voting on an issue affecting the chamber of commerce. In that case, there was violation with the appearance of fairness doctrine.

PUBLIC COMMENT

President Telford indicated on August 15th the Commission had a work session on how meetings are conducted and we are not finished with that discussion and we may change the agenda later on. It was agreed that staff would summarize the commission consensus, in the mean time we did decide to be consistent with other jurisdictions, we would allow 3 minutes for public comment and we would develop a statement on ground rules for public comment. He commented that we may specifically delineate between public testimony and public comment and try to respond to legitimate inquiries. He noted that at the last Commission meeting the public made comments that were clear statements supporting or opposing candidates running for public office. He noted that it is unlawful for public employees to use or allow the use of public facilities public funds for campaign purposes. He indicated that this room is being paid for by a public agency and that the Port pays for these meetings to be recorded for broadcast. He asked that those making public comment to refrain from making campaign speeches in this forum.

Bill Pilkey thanked the commission for allowing more time for the citizens to provide public comment? He asked how much did the Port pay for the consultant that told you how to run your meetings? Did you put this out to bid? He commented that he has asked for budget information from staff, why didn't the commissioners or the executive director ask for this information? He also commented about the public health and pollution on Port land. He asked about the fence around the site at Maytown and wanted to know who is paying to put that fence up?

Mr. Ed Galligan reported that if a fence was going up around the Maytown property, the Port of Tacoma was paying for it.

Suzanne Nott commented about the potential conflicts of interest and the SEPA process, the latest hearing was with the Port administration where the attorney from Weyerhaeuser was at the table and that appears to be a conflict of interest. She also questioned the allocation of \$290,000 for the boatworks improvements and she wanted to get the ROI analysis. President Telford indicated that the Finance director did do an analysis on the project that provided a 6.5% return.

Jeff Brigham thanked the Commissioners for the opportunity to address the commission; he commented that the political contributions from any citizen in accordance with the laws, such as Mr. Galligan, do not deserve to be trashed as he has in the Olympian newspaper articles and editorials.

Arthur West thanked the Commission for getting a legal opinion on the conflict of interest issue. He also pointed out the recent articles in the paper about the contamination in the bay at the berth areas. The testing has showed that the contamination is much worse than what was expected. He commented that is why we have the state environmental policy act to catch these types of things before they endanger health.

Stanley Stahl commented that the information on the Cascade Pole site is too complicated and detailed for most to understand, he commented that he would sum it up the best he could. He provided the commission with his version of the Cascade Pole cleanup process. He commented that he fails to see that the appropriate testing is being done.

Meta Heller commented that Ports are the most important things going on in a community and citizens should get involved. She commented that she is happy to see so many citizens involved in this Port. She noted that she is very happy with the improvements that the Port has done. Very involved in promoting the garden project and is important in getting the public involved. She commented that she wants animal awareness gardens and working with groups to bring this about.

Walt Jorgensen asked how many of the red signs did the county allocate to the Port. Mr. Lincoln responded that the Port received 10 signs on Tuesday morning. Mr. Jorgensen asked who was responsible to place the signs? Mr. Lincoln responded that the sign placement was under the supervision of Don Bache, however, the Health Department decided where the signs would be placed, and Mr. Bache placed nine signs before the weekend. Mr. Jorgensen commented that the priority should be public safety, what did you gain by not posting all the signs. President Telford commented nine of the ten signs were posted, and that if Mr. Jorgensen has a problem he should talk to Thurston County Health Department.

Meril Bernstein commented that the Port met with the Rochester Chamber two months before the meeting was held in May for the SSLC. She commented that they are concerned that the Ports are just going through the motions about an alternative site. She also commented that she has not gotten back any answers back about the fence that is going up.

Jan Witt commented that she was concerned about the dioxin issue and has concerns about containments. She commented that she found documents that noted the dioxin issue over two years ago. She asked why is it two years later that the public is just now finding out about dioxin pollution. As a health care professional, she is concerned for the workers of the port and the children playing on the beach. She also commented that when asking for legal advise, the Port should not be going to the Port's legal attorney.

CONSENT CALENDAR

Minutes Approval. The Commission unanimously approved the minutes from the August 13, 2007 meeting.

Bills and Vouchers. The bills and vouchers were unanimously approved in the amount of \$817,874.14. This includes payments to DLB Earthwork Company for the Taxilane Rehabilitation Project and to Reid Middleton for the Cargo Yard Reconstruction. General Fund Checks Issued: 043807 - 044095. Voided Checks Issued: 0437736 – 043806 and 043621.

Lease Amendment - DaPaul Chip, LLC

The Commission unanimously ratified the lease amendment with DaPaul Chip, LLC that was assigned the original lease containing approximately 25 acres at the NewMarket Industrial Campus in 2006, from the original operator DePaul, Inc. DaPaul Chip, LLC continues the chip

operation through the term ending December 31, 2007. The lease agreement also provided 3 one-year options to extend the term on a year-by-year basis and approval of such options is at the sole discretion of the Port. DaPaul Chip has given notice to the Port to exercise the 1st Option to renew the term for one year. This Amendment states approval to extend the term for one year, through December 31, 2008, and adjusts the rent by the change in the CPI, which shall be calculated when the December 2007 schedule is published.

EXECUTIVE SESSION

The Commission recessed to Executive Session at 6:29 p.m. to discuss litigation in accordance with RCW 42.30.110 (i). The executive session adjourned at 6:45 p.m. and the general meeting reconvened with the announcement that no decisions were reached.

ACTION CALENDAR

Cargo Yard Improvements Bid Award

Mr. Jeff Lincoln reported that on July 9, 2007 the Commission authorized the call for bids for the Cargo Yard Improvements Project, Contract No. 298. These infrastructure improvements include improvements to the cargo yard in the form of paving, improved drainage and storm water pretreatment, improved state of the art glare reducing yard lighting, extensions of utilities including water related to the operations of the cargo yard, as well as other infrastructure improvements that will serve other areas, including, sewer, fiber optics and natural gas to the north area of the terminal, and the relocation of a natural gas line from the former Washington Street right-of-way that will allow the expansion of terminal rail in the future. This contract will also complete utility extensions, concrete slabs and the below grade foundations for a planned maintenance building in accordance with our lease with the Weyerhaeuser Corporation.

Mr. Lincoln noted that the bid package was advertised on July 12 and 19, 2007. On August 21, 2007 bids were received and opened by the Port. Three bids were received and are summarized on the attached bid summary.

He reported that the lowest responsive and responsible bidder is SCI Construction of Pacific, Washington with a bid price of \$2,778,675.19, including Washington State Sales Tax (WWST). The range of bids was \$2,778,675.19 to \$3,444,349.30. The engineer and project manager’s estimate of construction cost at time of bid was \$2,506,875.13, including WSST. The analysis of bids identified the major cost differences between the bid and estimated costs include increased cost of trenching and excavation (\$114,000 estimate, \$261,250 bid), additional requirements for contractor worker safety (\$8,000 estimate, \$77,000 bid – including the requirement for a certified industrial hygienist), and increased cost of terminal lighting (\$91,300 estimate, \$156,750 bid). The Port may have also seen an increase in bid prices as a result of the recent extraordinary increases in construction costs that has run as high as 1% per month over the past two years, and also as a result of a very tight construction market (“everyone is busy”) and the very late start point in the construction contract that will cause much of the work to be done in the winter.

Mr. Lincoln indicated that the contract includes elements of 6 port infrastructure capital improvement projects, including cargo yard paving, terminal lighting, utility extensions to the terminal and other projects directly related to the cargo yard and the Weyerhaeuser lease. The contract also includes elements of other infrastructure projects, including, the North Point sewer force main extension, fiber optics for the Port’s terminal security project, and the relocation of the gas line from Washington Street to the new utility trench to make way for expansion of the terminal rail. Additionally the Port has included those elements of Weyerhaeuser’s improvements that most efficiently can be accomplished in the same scope of work, including underground utilities, paving and foundation work for their tenant improvements. Weyerhaeuser has agreed to reimburse the Port for these improvements.

Cost Summary:

	Port	Weyerhaeuser	Contract Total
Bid Schedule A, Civil Site work:	1,158,098.49	634,131.51	2,152,230.00
Bid Schedule B, Electrical:	351,969.50	59,154.00	411,123.50
Sub Total:	1,870,067.99	693,285.51	2,563,353.50
WSST:	157,085.71	58,235.98	215,321.69
Contract Total:	\$2,027,153.70	\$751,521.49	\$2,778,675.19

Mr. Lincoln noted that this project was budgeted primarily as the Cargo Yard Improvements but also includes the other infrastructure elements. This was done to improve efficiency and reduce environmental impact by consolidating all anticipated underground utilities into one major utility corridor with one major trench (water, sewer, sewer force main, fiber optics, telephone, power and natural gas). The original budget, established in 2005, was \$4,086,165. This Capital Expense Authorization (CEA) was subsequently increased by \$325,000 in the 2007 budget for a current authorization of \$4,411,165 for the Cargo Yard only, not including other non-related infrastructure items (security, North Point Sewer, Gas Line Relocation). This also does not include Weyerhaeuser reimbursable items, which currently are \$751,521.49 plus a proportionate share of engineering costs (to be determined).

Capital Expense Authorization Increase:

Mr. Lincoln noted that project costs have increased since the inception of the project in 2005. The staff has also negotiated new rates for the Weyerhaeuser lease, which the commission has approved. The total current costs now exceed the current budget authorization and staff requests that the budget authorization be increased to provide budget for the current contract and other work necessary within the next two years, including construction contingency, additional engineering support through construction and additional electrical improvements necessary to improve terminal lighting. The current budget summary is as follows:

Current CEA Total:	4,411,165.00
Spent to Date (All)	<u>-2,433,351.58</u>
Balance Remaining on CEA:	1,977,813.42
Current Contract No. 298:	2,778,675.19
Future requirements (AE, Contingencies, Elect):	<u>639,494.71</u>
Current and Future Requirements Total:	3,418,169.91
Weyerhaeuser Cost Reimbursement:	<u>-751,521.49</u>
Balance Required:	2,666,648.42
Current CEA Balance:	1,977,813.42
CEA Increase Request:	<u>688,835.00</u>
New Total CEA:	5,100,000.00

Mr. Lincoln indicated that the staff is requesting that the Commission increase the Capital Expense Authorization for the Cargo Yard Improvements and associated projects by \$688,835 to a total amount of \$5,100,000 and authorize the Executive Director to enter into a Public Works contract with SCI Infrastructure LLC of Pacific Washington, for Contract No. 298, Cargo Yard Improvements Project, in the amount of \$2,778,675.19.

President Telford commented that the last three items are not related to the Weyerhaeuser Lease. He also commented that staff has prepared a new cost analysis for this project based on the higher numbers. The ROI analysis was recently re-done using the higher numbers and focuses on five and ten year periods. President Telford commented that repaving of the cargo yard was needed anyway and Weyerhaeuser coming in did not necessarily create this need. The repaving is general improvements and not necessarily related to Weyerhaeuser and probably should be amortized over 30 years – not 5 or 10. The bottom line is the analysis is conservative. He commented that we have a five-year lease with Weyerhaeuser. For land rental only, along with the other log tenants, the Port will collect almost a million dollars annually. Consequently, the worst-case scenario would be no log shipments, which is still a breaking even in five years. Depending on the assumptions, the likely scenario for the first 5 years is a 5-15% return. In addition the return over a 10-year period would be 13-28%. President Telford commented that this is a great opportunity to make the Marine Terminal profitable which is the job of the Commission. Commissioner McGregor indicated the opportunity is there for increased revenues at the Port.

President Telford asked for a report on legal issues by Carolyn Lake:

Ms. Lake indicated that there was a hearing on Friday before Judge Pomeroy; there were a number of motions scheduled at that time, and has been set over until September 21st.

She noted that there are three SEPA appeals before superior court by Mr. Dierker and Mr. West and Olympians for Public Accountability (OPA), which dismissed the first cause of action and

then they filed a second cause of action was filed on July 10th. At this time we have heard that the OPA is agreeing to consolidate with the Dierker/West appeal.

The case schedule means there will be a substantive hearing on the SEPA appeal in January, but that dates have been set in September and October to flush out pre hearing motions. The court also made a decision to segregate some public records cause of actions that were included in the West/Dierker case on a separate track than the SEPA appeal.

Ms. Lake noted there is no order of stay from the superior court that the project cannot move forward.

Jan Witt commented that two years ago the Port Commission approved a project for lighting conduit. She asked if the wiring in the conduit would provide power the lights as a part of this project? The Commission asked Ms. Witt to put questions in writing for a response.

Robert Rose, longshore representative, commented that it is time to award this bid; much time has been wasted in frivolous lawsuits.

Patricia Di Francisca commented that if a full environment impact statement had been done for the start we would be much farther down the road.

Arthur West asked the commissioners to not award this bid, the Commission tend to do what ever they can that is not prohibited by the court. He commented that they should do what is best for the community and let the legal system come to a conclusion properly. He also commented on the navigation system, it has been disconnected at the airport, and this is a danger to the community.

Mr. Rudy Rudolph commented that the comments just made are a distortion of the facts. The FAA has disabled the navigation system so that an aircraft cannot land on a runway under construction.

Stanley Stahl asked for a copy of the return on investment on the project. Mr. Steve Davis provided him with one.

Commissioner McGregor moved to increase the Capital Expense Authorization for the Cargo Yard Improvements and associated projects by \$688,835 to a total of \$5,100,000, and authorize the Executive Director to enter into a Public Works contract with SCI Infrastructure LLC of Pacific, Washington, for Contract No. 298, Cargo Yard Improvements Project, in the amount of \$2,778,675.19.

President Telford commented that there is a court case underway and Commissioner Van Schoorl is not present. President Telford made a motion to table this motion until the next meeting of September 10.

ADJOURNMENT

President Telford adjourned the meeting of August 27, 2007 at 7:18 p.m.

PORT OF OLYMPIA COMMISSION

President

Vice President

Secretary-Treasurer