



PORT OF OLYMPIA COMMISSION
MINUTES OF REGULAR MEETING

February 22, 2010

CALL TO ORDER

President Barner called the meeting of February 22, 2010, to order at 6:00 p.m. at the Rainier City Hall in Rainier. Commissioners Davis and McGregor were also in attendance.

Staff in attendance was: Executive Director Ed Galligan, Program Assistant Lorie Watson, Finance Director Kevin Ferguson, Harbor Director Bruce Marshall, Engineering Director Rick Anderson, Marketing and Business Development Director Kari Qvigstad, Airport Director Rudy Rudolph, Marine Terminal Director Jim Amador, and Program Assistant Conley Booth. Port's legal counsel Carolyn Lake was also in attendance.

Public in attendance who filled in the sign-in sheet were as follows: Ken Jones, Mayor of Tenino, Tom Fell, Clydia Cuykendall, Richard Wolf, Agnieszka Kiswa, Dirk Farrar, Krag Unsoeld, Monica Hoover, and Mark Lahaie. Also in attendance were the Mayor of Rainier Randy Schleis, City Council Member Dennis McVey, City Administrator Charmayne Garrison, and Planning Commissioner Scott Garrison.

Commissioner Barner introduced the city officials from Rainier and Tenino and expressed appreciation to them for the use of their facility and for attending the meeting.

APPROVAL OF AGENDA

The agenda was approved as presented.

COMMISSIONER REPORTS

Commissioner McGregor reported that he met with Mike Carone of Merit Shipping from Seattle, and with the Rainier City Council at their regular work session along with Ed Galligan and Kari Qvigstad.

Commissioner Davis reported that he attended the Yelm Chamber, met with Thurston County Chamber, and attended the Harassment Training that was put on for all employees of the Port. He also attended the Tumwater Chamber meeting, met with Local 47A at the Marine Terminal, and met with some of the farmers from the Farmers Market to discuss issues they have. He also noted that the Market opens April 1.

President Barner reported he attended the Yelm Chamber of Commerce and met with the Visitors and Convention Bureau Board. He also attended the Chamber of Commerce Distinguished Leaders Award event at St. Martin's. He indicated that he has a lunch meeting scheduled on February 23 with the ILWU on the Marine Terminal, and noted that the Port is hosting the WPPA centennial planning meeting on February 25 at 10:30 at the Port Administrative Office.

EXECUTIVE DIRECTOR REPORT

Mr. Ed Galligan reported that, at the invitation of the Thurston County Chamber President, he recently met with Congressman Smith and talked about jobs that have been created at the Marine Terminal over the past several months. He added that Congressman Smith has been very supportive of the Port.

Mr. Galligan also reported that he met with Carolyn Lake who has been discussing and reviewing with staff at Goodstein Law Group a transition plan for handling legal matters of the Port following the death of Bob Goodstein, and he is comfortable and confident the Port will continue to get the same outstanding legal service it has gotten in the past.

He also indicated that we have extended for another year the Farmers Market parking arrangement. He said we are also in discussion with the former Farmers Market president and a board member on some of their concerns.

Mr. Galligan then reported that in January we had several tours at the Port and he encouraged anyone who wants a tour to contact the Port office. He said the Evergreen State College Cultural Landscape class and Maritime Studies class received tours. We have five more tours scheduled with local schools. He added that students are seeing a working terminal and it has been encouraging to hear the questions the kids have been asking.

He also reported that we had the Paul Bunyan Barge in on February 19. It discharged 1.5 million board feet of lumber destined for Japan. We are also expecting the Aster K on March 8 loading 5.5 million board feet of logs.

LEGAL REPORT

Ms. Carolyn Lake presented an update on legal matters occurring since the January 25, 2010 Commission meeting.

She reported on the Olympians for Public Accountability (OPA) appeal to the PCHB on Ecology's issuance of its 2010 Industrial Storm Water General Permit, which includes in the case additional issues related to the site specific application of the General Permit to the Port of Olympia's Ocean Terminal. She indicated that on January 29, 2010 the Board set a deadline to respond to Mr. West's Motion to Intervene. All existing parties to this case (Ecology, OPA and the Port) filed briefs objecting to Mr. West's attempt to be added to the case. Ms. Lake reported that today we received the Board's Order denying Mr. West's Motion to Intervene, dated February 17. The Board denied Mr. West's motion for reasons including the following (quoted from the Board's Order, page 11): The presence of Mr. West in the case provides a substantial risk of disruption, such that the interests of justice are not served by intervention and that current parties will be substantially prejudiced by the intervention. Ms. Lake indicated that the Board previously set a dispositive Motion filing date of March 23. The Port will pursue dispositive motions where appropriate to seek early termination of the appeal and/or to limit the scope of issues.

Ms. Lake also reported that we have a new case, West v. Port et al, Thurston County Cause No. 10-2-00254-2. She indicated that perhaps in response to the objections filed by OPA and others in the PCHB matter, on February 4, Mr. West filed a new lawsuit in Thurston County Superior Court. Named in the suit are Washington State Department of Ecology, Environmental Hearings Office, Port of Olympia, Weyerhaeuser NR, Pollution Control Hearings Board, Phyllis MacLeod (a hearings officer for the shoreline board), and State of Washington. In this lawsuit, Mr. West again reiterates his objection to the October 2008 decision by Department of Ecology to approve allowing the Weyerhaeuser operation to be included within the scope of the Port's Industrial General Storm Water Permit. She indicated that Mr. West also includes a monetary claim against the Port of Olympia and the state's Environmental Hearings Office in the amount of \$1.5 million for "damages resulting from the criminal assault of October 9, 2008." Ms. Lake indicated the Port will shortly file its answer to the complaint. A status conference is set for May 7.

Ms. Lake then provided an update on the West appeal of Ecology's SEPA decision for MTCA interim cleanup action work plan (Thurston County Superior Court No. 09-2-00844-0). She reported that in December Mr. West appealed the Order by Thurston County Court (Judge McPhee) dated November 20 which dismissed Mr. West's appeal of Ecology's SEPA decision for the Model Toxic Control Act (MTCA) interim cleanup action work plan for the East Bay site. The Court of Appeals previously set a deadline for sanctions and possible dismissal of the appeal based on Mr. West missing two document filing deadlines. Ms. Lake indicated that on or about February 5, Mr. West filed the necessary pleadings, so the appeal remains pending. Ecology, the City of Olympia and the Port are responding against Mr. West's appeal.

In the matter of Arthur West v. Stephen Johnson (EPA), Port of Olympia and City of Olympia et al - 9th Circuit Court of Appeals No. 09-36066, Ms. Lake reported that Mr. West filed a Motion to set aside the 9th Circuit Court of appeals Commissioner's January 20 Order which limited the scope of Mr. West's appeal. She indicated that last week, the Port and other various parties filed responses opposing Mr. West's motion. This included Federal Railroad Administration, the City of Olympia and Weyerhaeuser. The Court has not yet ruled.

Ms. Lake also reported on the Arthur West v. Washington Association of Cities et al., Thurston County Superior Court No. 07-2-02399-0. She indicated that on February 16, 2010, the Court held a status conference on this lawsuit filed by Mr. West to address procedural matters and to set trial and Motion dates. In this case, Mr. West had taken a broad brush approach in alleging claims against the various Defendants. The remaining defendants in the case are Thurston County, the Port and the Association of Washington Cities. Ms. Lake indicated the Port will shortly file dispositive motions as to each claim. If successful, the Port will be dismissed out of the case prior to trial. The Court also set a trial date of June 7, 2010.

In the matter of OPA v. Port of Olympia, US District Federal Court, Western District of Washington, 09-05756, Ms. Lake reported that on the federal Clean Water Act case filed by OPA, the parties today agreed to a date of March 8 to confer on scheduling and procedural matters, required to be undertaken under the Federal case Schedule. We will continue to pursue ongoing settlement dialogue between the parties.

Following her report, Ms. Lake stated that she was gratified to meet with Ed Galligan. She assured the Commission that the team Bob Goodstein put into place remains intact. She indicated that she provided Mr. Galligan with profiles of the attorneys working on Port cases.

Commissioner McGregor commented that he is confident Ms. Lake and the other attorneys will continue to give us good representation. The law firm has done an exceptional job for the Port. Commissioner Davis asked Ms. Lake how many of the Port's cases she has personally been involved with. She responded that she has been involved with 54 cases. Commissioner Barner echoed that he has been very pleased with the services being provided by the law firm.

PUBLIC COMMENT

Monica Hoover responded to prior statements made by staff about the cost of grass versus asphalt on the Cascade Pole cleanup site. She said cost estimates were gathered after the last meeting and the cost of sand and liner may have been overstated. Rather than grass being more expensive, it might be less expensive than asphalt. She talked with several contractors and got some cost estimates on liners. She responded to comments about asphalt being more effective than grass. She also responded to comments that have been made about Ports not being allowed to have parks, saying that an analysis of the RCW states that Ports can have parks and in fact, the Port of Seattle has several. She said she has a growing concern about the accuracy of statements being made by Port staff to the public and Commissioners.

Tom Fell spoke on the existing pier at KGY, noting that different plans have described the pier differently. He said that KGY sitting in its current location is not compatible with any changes occurring at NorthPoint. He questioned the Commission why they think keeping KGY at its current location is compatible with anything going on at NorthPoint.

Dirk Farrar of Tumwater thanked the Commission for their work in maintaining the quality of life in the County. He commented that the NorthPoint project is a good project for the Port to be undertaking. He said it is needed in our community and is a wise use of resources and land. He commented that by moving forward on it, we can capture other dollars to help with clean up.

Agnieszka Kiszka asked if there is a record of the petition signed by 250 people of Olympia and submitted to the Port by Susan Ingman. She indicated that 250 people asked that the NorthPoint development be stopped. She said it would be great if that petition were put on the Port's website.

Commissioner Davis asked Ms. Hoover for copies of her findings. She said she will get it to him.

Commissioner McGregor addressed Dr. Fell's comment, stating that KGY has been a long term tenant of the Port and their presence is something they need to evaluate. He indicated that there is the option that if development occurs at NorthPoint, KGY could lease space in one of the buildings. He added that he is in favor of leaving them where they are at, but it is their decision.

President Barner also responded to the question about KGY, indicating that he doesn't know if that's the best use of the land at NorthPoint, and that KGY has some decisions to make about where they want to end up. He added that he is personally on record opposing the hotel being promoted by MJR and would like to see alternative options on that site. He commented that KGY has to make its own decision about where they want to ultimately relocate to, adding that he'd like to keep them at KGY and is hoping they'll be invited to be a part of whatever ends up there.

President Barner addressed Ms. Kiszka's comment about putting the petition on the Port's website and asked Mr. Galligan about doing so. Mr. Galligan responded that we can do so if it is the Commission direction, but he thinks it sets precedence about doing something like that. Commissioner McGregor recommended that we list it on the website like we did with the comments received from the NorthPoint open houses. He said we should put a statement that the petition was received and make note of it as part of the comments received on the NorthPoint redevelopment portion of the website. Commissioner Davis agreed. President Barner said the substance of the petition should be included and Commissioner McGregor agreed the record should show what the petition was asking for.

President Barner said there is a Commission meeting scheduled Thursday February 25 from 1:00 to 3:00 at LOTT and the subject is NorthPoint. He encouraged any interested persons who would like to listen to that discussion to attend. He expressed concern about the meeting being held during the work day and said he wants it moved to 6:00 p.m. to make an opportune time for people to come.

Commissioner Davis objected to changing the time saying that he works nights. He said there are 18 meetings he attended this last month alone and for him to take more time out of his schedule doesn't work for him. Commissioner McGregor commented that special meetings or work sessions are opportunities for the three commissioners to sit down in a public meeting so people can hear the discussions. He said the Commission doesn't normally take public comment because that is their time to discuss items on the agenda between themselves. The meetings are recorded so people who can't attend can hear the discussion. He said he is not in favor of moving the meeting to a later hour.

President Barner reported that he received a call from a citizen who had attempted to contact members of the Commission and said the number published for Commissioner Davis on the Port's website is incorrect.

ACTION CALENDAR

Resolution 2010-06 Restoration on Amtrak's Pioneer Train

Ed Galligan reported that at the February 8, 2010 meeting, Lloyd Flem, Executive Director, All Aboard Washington Organization provided the Commission with an advisory on the restoration of Amtrak's Pioneer Train and requested the Commission pass a resolution and provide a letter of support to Senator Patty Murray.

He presented Resolution 2010-06 and a letter supporting the restoration of Amtrak's Pioneer Train. He pointed out a minor typographical correction to be made to the resolution. He also commented that any improvements we can make on the rails system is a major improvement. He noted that this is a fairly unique situation in that the station was built primarily by local, mostly donated funds, and is staffed by a dedicated group of volunteers.

Commissioner Davis moved approval of Resolution 2010-06 Restoration on Amtrak's Pioneer Train with the correction as noted. Commissioner McGregor seconded the motion.

Commissioner McGregor asked legal counsel if there was a conflict of interest since Commissioner Barner sits on the board of All Aboard Washington. Ms. Lake responded that there does not appear to be a conflict since Commissioner Barner is an advocate for the organization as a citizen. She also noted that there is no adversarial relationship.

The Commission unanimously approved Resolution 2010-06.

ACTION/OTHER CALENDAR

No items were presented under this calendar.

ADVISORY CALENDAR

2010 Proposed Port Goals Advisory

Ed Galligan reviewed the 2010 initiatives and goals directly associated with the Commission-adopted 2010 Operating Budget and Capital Investment Plan. He indicated that the intent of the advisory is to reflect on what we want to accomplish on a broad scale. He noted that these goals simply memorialize what we committed to do in the operating budget and capital investment plan, and added that staff can provide updates to the Commission on how we are doing on these goals in quarterly reports.

Commissioner Davis asked if this list of goals has been made public. Mr. Galligan responded that it has been posted on the Port's website and was sent to about 100 people on the Port's mailing list.

Mr. Galligan indicated that the list of 38 goals and their 53 accompanying strategies can be summarized in four major, over arching initiatives and goals as follows:

- Increase net cash flow from commercial operations, and in so doing, produce an ever increasing ratio of commercial revenue to property tax revenue.
- Increase and sustain direct and indirect family wage jobs with each major capital investment.

Mr. Galligan said this is a lofty goal but we are committed to doing it. He said an Economic Impact Study was done in 2004 and the Commission approved updating it; an RFQ is nearly ready to go out.

- Expand the Port's direct economic impact in Thurston County through real estate and infrastructure investments inside and outside the boundaries of the Port's current asset base.

He said currently our asset base is principally in the cities of Tumwater and Olympia. We are involved with other cities but we don't have any direct investment there. He indicated that the Port has a real estate reinvestment fund; if the Port sells real estate, the money goes into that fund which is to be used by policy for reinvesting in real estate or infrastructure. He said that's what this goal is attempting to address. He said our boundaries are this county, not just the cities we're currently in.

President Barner said he struggles to understand infrastructure as an investment and asked how we justify funding infrastructure using the real estate reinvestment fund. Mr. Galligan clarified that infrastructure doesn't have to be paid for with the real estate fund. The goal is not intended to be restricted to just the use of that fund. He added that there is a prior resolution on the use of those funds and suggested that be addressed separately.

- Achieve or exceed the 2010 Operating Budget projection of net cash flow from commercial operations.

Mr. Galligan indicated that from a staff perspective, we consider this a commitment to the Commission and public.

Commissioner Davis commented that he is excited about the opportunities to expand the Port outside of Olympia and Tumwater. He's unclear whether that's something we need to pursue or whether outlying areas bring ideas to the Commission saying they have an opportunity for the Port. Commissioner McGregor said it is both; we should pursue, but also evaluate opportunities that are brought to our attention. He said he's been a proponent of trying to do something in areas we don't already have a vested interest in with land. President Barner said he doesn't see it as a requirement necessarily for land but maybe an investment in facilities or buildings that could be placed on other public properties around Thurston County. Mr. Galligan indicated that an impact to Thurston County could be through joint ventures. He said he and Commissioner McGregor learned of some parcels in Rainier when they visited recently.

Mr. Galligan reported that there are over 34 goals listed in the document that was provided in the Commission packet, but there was nothing new added. He clarified that the dollars reflected in the document represent outside costs that are in the budget and do not include staff time.

Commissioner McGregor asked that the goals and strategies be numbered so it is easier to refer to them in the quarterly reports. He also expressed a concern that the document uses a lot of acronyms. Mr. Galligan responded that we will purge the document of acronyms or at least identify them.

Commissioner Davis expressed that he has looked at this and met with Mr. Galligan. His concern is where is this coming from, what's driving it and where is it going. Is this the standard by which we're going to be held as far as whether or not we're a successful Port. He said it is a good way to check the temperature or pulse to see where we're at and this is perhaps a benchmark or ideal. He is concerned this is a direct reflection or measurement of our success. He also suggested perhaps it be narrowed down to perhaps ten goals. He said he is open to discussion to see if this is something the Commission has additional input on before actually adopting something like this.

Commissioner McGregor said he needs time to go through the document and asked that this be brought back as an advisory item at another meeting.

Mr. Galligan said that if between now and the next meeting we could get feedback and comments it would be helpful. He indicated that following Commissioner Davis' comment, what he's trying to do is to hold us accountable to what we said we were going to do in the budget and how we're going to do it. Secondly, not to separate these from the over arching goals; they go hand in hand because each of these accomplish the loftier goals. Mr. Galligan indicated that staff will

edit the document, post it on the Port's web page, and hear back from commissioners and perhaps citizens also.

PUBLIC COMMENT

Krag Unsoeld said in response to Commissioner Barner's comments about infrastructure, that he recommends including a definition of infrastructure to include not only the service requirements of a building environment such as sewer lines, but also air, water, and land on which all life depends. If you build a hotel, how can you integrate it into the landscape, for example including green roofs, composting toilets, etc. There is a whole field of information about this available. He also commented on the Goals document presented, saying that under the NorthPoint development it says completion date of December 31, 2010 subject to possible extension if option is exercised. He hopes the term option means more public input.

Richard Wolf said he hasn't yet gone through the list of goals presented, but it is a great tool, and sending it out to all the Port's internet addresses would be helpful. He commented that measurement of goals is important. He added that this is not to pin anybody down specifically, but to see how your business is doing. He commented that he can't think of how to measure some of the goals as they're written, for example for the goal to Enhance Marine Terminal Revenues, you could enhance revenues by \$1 dollar and you've met your goal. He suggested instead we think about what we want to do to improve the business to improve revenue. He encouraged consideration of the suggestion to be more specific so the goals can be measured. He added that this is an excellent document and an excellent approach.

President Barner commented that we will return at the next Commission meeting with a revised version without acronyms.

CONSENT CALENDAR

Bills and Voucher Approval. The bills and vouchers in the amount of \$1,069,919.59 were unanimously approved. General Fund Checks Issued: 051311 - 051520. Voided checks: 051374, 051161, 051380, 051332 and 051459. Voided Warrants: 051374, 051161, 051380, 051332, and 051459.

ANNOUNCEMENTS

President Barner expressed appreciation to those who attended tonight's meeting. Commissioner McGregor also expressed appreciation to those from the City of Rainier and the Mayor of Tenino for their attendance.

President Barner announced that the Port Advisory Committee will hold a meeting on February 24, 2010 at 7:00 p.m. at the Port Administrative Office. He also announced that the Port Commission will hold a special meeting on February 25, 2010 at 1:00 p.m. at the LOTT Board Room to discuss NorthPoint.

He commented that he appreciates TCTV's presence and taping of the Commission meetings, and announced that the program will be played on Channel 3 on Wednesday at 7:30 p.m. and Thursday at 12:00 p.m.

The next regular Commission meeting will be held March 8, 2010 at 5:30 p.m. at the LOTT Board Room in Olympia.

ADJOURNMENT

President Barner adjourned the meeting of February 22, 2010 at 7:32 p.m.

PORT OF OLYMPIA COMMISSION

President

Vice President

Secretary-Treasurer