



PORT OF OLYMPIA COMMISSION
MINUTES OF REGULAR MEETING

January 25, 2010

CALL TO ORDER

President Barner called the meeting of January 25, 2010, to order at 5:30 p.m. at the LOTT Board Room in Olympia. Commissioners Davis and McGregor were also in attendance.

President Barner indicated that the Commissioners held an executive session prior to the meeting today at 4:20 p.m. to conduct the performance review of the executive director at the Port Administrative Offices in accordance with RCW 42.30.110(g). The executive session adjourned at 5:10 p.m. No decisions were made.

Staff in attendance was: Executive Director Ed Galligan, Administrative Manager Jeri Sevier, Finance Director Kevin Ferguson, Harbor Director Bruce Marshall, Engineering Director Rick Anderson, Communications Manager Kathleen White, Marketing and Business Development Director Kari Qvigstad, Marine Terminal Director Jim Amador, Marine Terminal Maintenance Foreman Mike Crawford, and Administrative Assistant Jessie Bensley.

Public in attendance who filled in the sign-in sheet were as follows: Keith Bausch, Monica Hoover, Riley Wilson, Alexandra Sizemore, Susan Ingman, Paul Ingman, Patty Belmonte, Agnieszka Kiswa, Nathaniel Jones, Krag Unsoeld, Clydia Cuykendall, Allen Pleus, and Mark Lahaie.

APPROVAL OF AGENDA

The agenda was approved as revised. Commissioner McGregor asked that the New Zealand Mudsail presentation be moved to Commissioner Reports and he added to the advisory calendar the Relief Effort in Haiti. Mr. Galligan asked that item #3 under action agenda to be #2 on the action calendar.

New Zealand Mudsail – Capital Lake Advisory

Nathaniel Jones and Allen Pleus provided the Commission with an update on the non-native creature that is currently thriving in Capital Lake. Nathaniel and Allen discussed the impacts to those using the lake while General Administration deals with this fast spreading snail.

COMMISSIONER REPORTS

Commissioner McGregor recognized Heber Kennedy on his retirement; he will be retiring with 22 years at the Port of Olympia.

Commissioner Davis indicated he attended the Transportation Policy Board meeting, attended the Thurston County Chamber meeting, a WPPA meeting, and he met with Department of Ecology on the NorthPoint site history and where they are at with that clean up.

Commissioner Barner reported he attended the Solid Waste Advisory Council meeting. He noted that the members of the council are set by legislation. He also attended the Transportation Policy Board meeting as his last meeting and to introduce Commissioner Davis. He noted that he also attended the Visitors Convention Bureau meeting.

EXECUTIVE DIRECTOR REPORT

Mr. Ed Galligan reported the Marine Terminal is expecting a ship later this week. He reported that Commissioner Barner and he would be attending a meeting in Tacoma with the WPPA regarding the Centennial project.

Mr. Galligan provided an overview the day-long meeting, held in the City of Lakewood, involving participants from multiple jurisdictions within local, state and federal agencies and professional disciplines ranging from safety, security, social services, and economic development. The meeting was the first of a series of meetings planned and facilitated by AECOM consulting firm under a \$1.5 million contract with the City of Lakewood to address

planning for growth that as occurred and expected to continue through 2012 at the “Joint Base Lewis McCord” which is the consolidation of Fort Lewis and McCord Air Force Base that takes effect on Feb. 1, 2010.

LEGAL REPORT

Mr. Bob Goodstein provided a legal update on matters occurring since the 12/14/09 Commission meeting.

He reported on the Olympians for Accountability (OPA) v. Port of Olympia, US DISTRICT Federal COURT, WESTERN DISTRICT OF WASHINGTON, 09-05756. He noted that today, January 25, 2010 attorney Richard Smith on behalf of OPA filed an amended Complaint to their federal Clean Water Act suit, originally filed on or about December 4th. The amended complaint refers to OPA's November 23rd 60-day Notice, and adds a breach of contract claim, based on the parties' prior Clean Water Act Settlement Agreement. We will continue to pursue ongoing settlement dialogue between the parties.

He also reported on the Arthur West v. Stephen Johnson (EPA), Port of Olympia and City of Olympia et al - 9th Circuit Court of Appeals No. 09-36066. He reported that January 11th was Mr. West's deadline to file his opening brief in this 9th circuit court of appeals Clean Water Act case; however he filed a motion for extension. The Court granted the Motion on 1/12. He noted that then on January 20th; the Commissioner for the 9th circuit Court of appeals filed an Order limiting the scope of Mr. West's appeal. The Order reviews the timing of Mr. West's actions: Back in September 11, 2009, the federal district court entered judgment in this case, dismissing the Clean Water Act litigation brought by Mr. West against the Port and various other entities.

Mr. West thereafter on September 21, 2009, filed a motion for reconsideration, which was denied on September 29, 2009. On October 13, 2009, Mr. West filed a second motion for consideration, which was denied on October 15, 2009. On December 1, 2009, appellant filed a notice of appeal, which was timely only as to the October 15, 2009 order denying appellant's second motion for reconsideration.

Because Mr. West's December 1, 2009 notice of appeal was not filed within 60 days after entry of the September 11, 2009 judgment, the Order limited scope of Mr. West's appeal to only review of the October 15, 2009 order denying his second motion for reconsideration. The Court also affirmed that the briefing schedule established on January 12, 2010 will continue to govern this appeal. The Port had been about to file a motion to dismiss and/or to limit the scope of the appeal on this exact legal basis; the Court instead issued the Order of its own initiative.

Mr. Goodstein reported 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). In December Mr. West appealed the Order by Thurston County Court (Judge McPhee) dated Nov 20th 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. Last week, on January 22, we received notice from the Court of Appeals that Mr. West missed two document filing deadlines (to file Statement of Arrangements and Designation of Clerks Papers). The Court gave Mr. West a deadline to file which if not met will result in a penalty of \$600 (\$300 sanction per document) and dismissal of the case.

Mr. Goodstein reported on the Johnson Jorgenson & West – Public Records Act. In this public records case which began in 2006 and which was remanded in late 2009 from the court of appeals, a hearing had been set for January 27, for the Jorgenson/Johnson penalty phase. The hearing is to address the records that the Trial court found were exempt from disclosure, but the Court of Appeals disagreed. The Port immediately released the records, but a penalty will be considered for the time the records were withheld. At the request of Plaintiff's counsel in mid-December, this matter was re-set to March 26th.

Mr. Goodstein reported on the PCHB No 09-135 through 09-141 (consolidated) – Olympians for Public Accountability (OPA) Appeal of Ecology’s issuance of Industrial Stormwater General Permit and PCHB 09-158, Industrial Storm water General Permit - Port Specific appeal issues. In this case, OPA appeals to the PCHB Ecology’s issuance of its 2010 Industrial Storm Water General Permit. OPA includes in the case additional issues related to the site specific application of the General Permit to the Port of Olympia’s the Ocean Terminal. Several other entities also appealed the industrial Storm Water General Permit, which is a permit of general applicability. (COPPER DEVELOPMENT ASSOCIATION, INC., and THE INTERNATIONAL COPPER ASSOCIATION, LTD., OLYMPIANS FOR PUBLIC ACCOUNTABILITY, ARTHUR WEST, PUGET SOUNDKEEPER ALLIANCE, COLUMBIA RIVERKEEPER, THE BOEING COMPANY, and GUNDERSON RAIL SERVICES).

In December, the PCHB consolidated all appeals of the General Permit and also created a separate cause (09-158) for the issues specific to the Port of Olympia. Preliminary lists of issues, witnesses and exhibits were due and filed by the Port for both cases in early January, and pre-hearing conferences were held for both cases on January 20th. The hearing in the General Permit appeal is set for early October 2010.

A separate hearing date for the Port specific appeal was tentatively set for Spring 2011. Parties agreed that the outcome of the General Permit appeal could affect or render moot the Port specific case, so it made sense to schedule the second case far enough out to come after the Board’s expected ruling in the General Permit matter. Mr. West filed a Motion to Intervene in the Port-specific case, seeking to raise Port and Weyerhaeuser related issues. The Board has asked for briefing and has not yet ruled on that motion.

The Board also set dispositive Motion filing dates in both cases of 23 February and March 23rd respectively. The Port will pursue dispositive motions where appropriate to seek early termination of the appeal and or to limit the scope of issues.

Finally, Weyerhaeuser filed a Motion to Intervene in the General Permit appeal, which the Port supported.

PUBLIC COMMENT

Agnieszka Kiswa presented a PowerPoint presentation on population growth and the necessity to create a master plan for the North Point area instead of planning single building.

Patty Belmonte commented that there was an article in the paper about the delays in the East Bay infrastructure project. However, she wanted to set the record straight that the East Bay partners are working together and are aware of the delays. She noted that the Hand’s on Children’s Museum is moving forward with current plans and the delays of the infrastructure are not planned to impact the museum project.

Monica Hoover commented on the NorthPoint redevelopment project. She indicated that she met with both MJR and the Port as the Port Commission had suggested. She indicated that they were good meetings and there are opportunities to work together. She noted that she also met with Ecology and is getting clarification. She noted that that they have a petition requesting a public process.

Steve Wilcox commented that he also thinks we need a public process for NorthPoint. He commented that the signage for the Farmer’s Market is not clear.

Commissioner McGregor commented that the signage for the Farmer’s Market is most likely not the Port’s, but that we would look into it and find the appropriate agency to share the concern with.

President Barner indicated he is very much in support of public process on the NorthPoint Redevelopment project.

Mr. Galligan expressed his appreciation for the meeting with Ms. Hoover and Mr. Ingman and the staff will continue to meet with them and work together on this issue.

ACTION CALENDAR

Resolution 2010-03 – Sale of an Abandoned Vessel

Mr. Bruce Marshall presented Resolution 2010-03 authorizes the Harbor Director to conduct a public auction of the vessel *Kimberly K*, a 30' wooden powerboat, 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 the purchaser at the sale.

He noted that with Commission approval the auction has been set for January 27, at 11:00 A.M at Swantown Boatworks. Estimate value of vessel: \$1000.00 Total owed for past due charges at Swantown Boatworks as of day of auction: \$3118.78.

Commissioner McGregor moved approval of Resolution 2010-03 Sale of an Abandoned Vessel. Commissioner Davis seconded the motion.

Mr. Wilcox commented that he thinks all bids should be considered and the Port should not be able to outbid because they are owed more.

The Commission unanimously approved Resolution 2010-03 – Authorizing the Sale of an Abandoned Vessel.

Stormwater Pollution Prevention Plan – Sweeper Truck Authorization to Purchase

Mr. Jim Amador indicated that staff provided the Commission with an advisory on this request at the January 11th Commission meeting. He indicated that the Port's marine terminal maintains a Stormwater Pollution Prevention Plan that includes best management practices relating to stormwater. As part of the best management practices sweeping of the paved surfaces are vital to maintaining an environment that prevents particulates entering the stormwater system. The current sweeper equipment the Port is currently is 25 years old and is limited in its ability to meet existing standards.

He noted that January 1, 2010 ushered in a new Industrial Stormwater Permit that encompasses new requirements and benchmarks for water quality. The sweeper is an important tool for the Port to meet these new requirements. This sweeper truck was included in the 2010 Capital Budget for the Marine Terminal.

He noted that the Port can save money and time by utilizing the purchasing power of King County by signing a Cooperative Purchasing Agreement, and buying the sweeper truck through their preferred vendor at the pre-negotiated price. Staff has identified the preferred sweeper as the Elgin FSX Crosswind J and is recommending purchase from Owen Equipment Company.

Mr. Amador indicated that staff is requesting authorization for the Executive Director to issue a Purchase Order to Owen Equipment Company for Elgin FSX Crosswind J Sweeper-Vac Truck in the amount of \$221,398.52. He noted that this item is in the 2010 Capital Budget for the amount of \$185,000. Mr. Amador indicated that the base truck is \$184,700. The additions is \$16,938 and sales tax is \$19,760.53.

Commissioner McGregor moved that the Executive Director is authorized to issue a Purchase Order to Owen Equipment Company for Elgin FSX Crosswind J Sweeper-Vac Truck in the amount of \$221,398.52 including applicable sales tax. Commissioner Davis seconded the motion.

Commissioner Davis asked if the standards change can this machine be modified to meet more stringent standards. Mr. Amador indicated that this is the most adaptable to making those modifications. Commissioner Davis asked what will happen to the old machine? Mr. Amador responded that the old machine will still be used to pick up some of the larger pieces.

The motion passed unanimously.

Authorization to Amend 2010 Capital Investment Plan to Include Swantown Marina G-L Dock Re-Leveling Project

Mr. Rick Anderson indicated that the staff provided the Commission with an advisory on this project on January 11, 2010. Mr. Rick Anderson indicated that the Port recently completed a \$1.6M rehabilitation of the Swantown Marina G-L docks, which included replacement of all the hardware and all of the wood. The wood was freshly pressure treated and completely saturated when installed. It will gradually dry over the next 5 years. As it dries, it will shrink in all dimensions, loosening the hardware, allowing the docks to lean and causing tripping hazards. If the floats are allowed lean, the wood will develop a permanent twist making future re-leveling efforts fruitless.

Mr. Anderson indicated that the estimated cost for this work is \$50,000 in 2010 and may need to be repeated once or even twice in future years until the wood has completely dried.

Commissioner McGregor indicated that he is well aware that this needs to be done to keep the docks to maintain the docks -- however, this appears to be a maintenance item and not sure he understands why this is a capital investment item. Mr. Anderson indicated that this should have been included in the project when it was completed to extend the life of the project. Therefore, it does qualify as a capital expense item.

Commissioner Davis moved to authorize an amendment to the 2010 Capital Investment Plan to include \$50,000 for the Swantown Marina G-L Dock Re-leveling project, and move funds from Port reserves to the 2008 Bond fund allocation. Commissioner McGregor seconded the motion.

Commissioner McGregor made an amendment to the motion changing the language about the funding. He moved to authorize an amendment to the 2010 Capital Investment Plan to include \$50,000 for the Swantown Marina G-L Dock Re-leveling project funded from the 2008 Bond fund allocation. Commissioner Davis seconded the amended motion.

The amended motion passed unanimously.

East Bay Infrastructure Authorization to Expand Architect/Engineering Contract

Mr. Anderson indicated that staff is requesting authorization to expand the scope of the existing Professional Services Contract No. 2009-1013 with PFK Construction Consulting of Milton, WA, for the East Bay Infrastructure project.

He noted that on February 11, 2009, the Executive Director authorized award of a professional services contract to PFK Construction Consulting to perform an overview of the Contract Documents and Engineer's Estimate for the East Bay Infrastructure project in anticipation of construction.

The professional services included: Review of Bid-Ready plans and details for general understanding and accuracy; Review of the Engineer's Estimate; General overview of the bid quantities and unit measurements; Review other pertinent background information provided by the Port; and Attendance at 1 meeting with the Port.

Mr. Anderson reported that previously authorized increases to the Agreement expanded the scope of services to include construction observation services, assistance with claims responses and documentation.

Mr. Anderson noted that the expanded Scope of Work for this Request is to compensate for additional time needed as a result of the contractor's failure to meet the scheduled milestone dates as previously defined by the contractor; and assisting Port staff with work progress and schedule analysis in defense of contractor's claims. This increased budget amount is anticipated to cover services through the new anticipated project completion date of June 1, 2010.

Contract Authorization Summary

Previous Authorized Increases	\$157,500
This Increase Request	\$ 70,000
Total Revised Authorization	\$227,500

He reported that the 2009 Capital Investment Plan allocates \$9.4 million for construction of the East Bay Infrastructure project.

Mr. Anderson indicated that staff is requesting approval for the Executive Director to expand the scope of services for Contract No. 2009-1013 with PFK Construction Consulting in the amount of \$70,000, for the East Bay Infrastructure Construction, Project No. PR0704.

Commissioner Davis moved that the Commission authorize the Executive Director to expand the scope of services for Contract No. 2009-1013 with PFK Construction Consulting in the amount of \$70,000, for a revised total contract amount of \$227,500, in association with the East Bay Infrastructure Construction, Project No. PR0704. Commissioner McGregor seconded the motion.

The motion passed unanimously.

Cascade Pole Treatment Plant Authorization to Issue Professional Engineering Contract

Mr. Anderson reported that on November 23, 2009, the Commission was advised that staff had commenced with the architect/engineering services selection process for the new Cascade Pole Site Groundwater Treatment Plant.

He indicated that on September 30th a Request For Qualifications (RFQ) for engineering services was published in the Daily Journal of commerce and *The Olympian*, and placed on the Port's website.

He noted that five (5) firms submitted their qualifications packets on October 20th. A panel of reviewed the submittals and rated each according to the selection criteria as stated in the RFQ. Three of the five firms were invited to interview with the consultant selection team. The interviews were held on November 16th, 19th, and the 20th. Following the interviews CH2M Hill was determined to be the most qualified consultant based on seven predetermined selection criteria. CH2M Hill scored higher on their key personnel and related project experience. Their project manager and lead design engineer each have over 19 years of experience in treatment system design. All members of their proposed team have worked on remedial projects at former wood treatment chemical sites and sites that have groundwater impacts from the same chemicals the Port is currently treating.

Mr. Anderson explained that the Scope of Work includes CH2M Hill will provide engineering, design, and estimating services to assist the Port with replacement of the current groundwater treatment plant with a state of the art, efficient, reliable, cost effective system; assistance with preparation of bid documents, technical support during construction and plant start up, and project closeout documentation. Specific Tasks will be to: develop an Engineering Design Report (EDR) in accordance with the Washington State Model Toxics Control Act (MTCA) and Cleanup Regulation; develop design drawings and specifications for bid documents; assist the Port during bid process and services during construction. CH2M Hill will be paid on a time and materials basis, and the total Agreement will not exceed \$600,000.

Mr. Anderson noted that the 2010 Capital Investment Plan allocates \$2.9 million for this project. This authorization is for the engineering/design costs associated with this project. This project is 50% reimbursable with Department of Ecology.

Mr. Anderson indicated that staff is requesting approval for the Executive Director to issue Professional Services Agreement No. 2010-1005 to CH2M Hill in the amount of \$600,000 for the Cascade Pole Site New Groundwater Treatment Plant engineering services.

President Barner indicated that in reading the legal briefs, he noticed that CH2M Hill was used for a witness in a legal defense. He asked if there was a conflict of interest here? Mr. Goodstein responded that this does not appear to be a conflict of interest. He noted that if the Port can provide information that the process was fundamentally fair, and the CH2M Hill was selected because they were the most responsive responsible bidder based on the selection criteria, then the Port is covered. Mr. Anderson indicated that the selection process followed port policy and RCW.

Commissioner McGregor moved the Commission authorize the Executive Director to issue Professional Services Agreement No. 2010-1005 to CH2M Hill in the amount of \$600,000 for the Cascade Pole Site New Groundwater Treatment Plant engineering services. Commissioner Davis seconded the motion.

President Barner commented that the current plant will be deconstructed and then what? Mr. Anderson indicated that part of this contract is provide us with alternatives. The treatment plant will need to continue to pump and treat throughout the construction of the new plant.

Commissioner Davis asked if the footprint would be the smaller or bigger? Mr. Anderson indicated that the goal is to keep the footprint the same size or smaller. He also asked how we get reimbursed from DOE. Mr. Anderson explained the grant reimbursement process.

The motion passed unanimously.

ACTION/OTHER CALENDAR

Commission Meetings in Community and Work Sessions "Special Meetings"

Commissioner McGregor indicated that the Port Commission attempts to hold at least one meeting each year in various other locations in the Thurston County. Last year we had a January meeting in Tumwater with the Tumwater City Council, in March we met in Yelm at their new Facilities Building, May we held a meeting at the Community Center in Lacey, in June we held joint meeting with the Olympia City Council, and in July we met in Tenino at the Tenino City Hall.

He indicated that this year he would like to encourage the Commission to continue this practice. With many new council members in the Thurston County jurisdictions, this year, he suggested would suggest that we establish dates early in the year to acquaint ourselves with these new councils as well as to acquaint them with us.

He suggested that the Commission begin this "road trip" of our meetings into the community as soon as possible, starting in February. Since he has received a contact from the Mayor of Rainier inviting us to their town, he suggested that be the first stop this year.

In addition to these meetings, he suggested that the Commission schedule at least one if not two special meetings per month to review upcoming agenda items - this would allow the Commission to review the upcoming Commission Agenda to familiarize ourselves with the content and have staff present to answer questions or concerns. He noted that Special Meetings are open to the public. He indicated that special meeting agendas will only allow the Commissioners to discuss specific agenda items, i.e., the published agenda such as Discussion of 1/25 Port Commission Agenda, other items could be added but this must be done prior to publishing the special meeting agenda for that particular date - nothing can be added to a special meeting without sufficient prior notification to the public. Special meetings would be announced at the Regular Port Commission meetings and the years schedule would be put on our web page.

Commissioner McGregor indicated that we have several items that will need to be discussed over the course of the year that could be introduced and worked on as needed at these special meetings - such as a 5, 10, 15 year capital plans, financing issues, etc. In those cases, the special meeting will need to be expanded in time to allow for discussion. While we can take action per RCW at these meetings, it would not be the intent to do that UNLESS it is of an EMERGENCY nature since we will not be broadcasting the special meetings on TCTV and we need to allow for public comment as matters of public interest proceed to formal action.

Commissioners Barner and Davis agreed with the proposal. President Barner indicated that he felt it was important to get out around the county. He also agrees with the special meetings to help give the board more information on the issues before being asked

Commissioner Davis suggested that they meet on Thursdays at 1:00 p.m. President Barner suggested starting at 1:30. The other commissioners agreed that we would hold a special meeting on February 4th at 1:30.

The Commission provided direction to Ms. Sevier to try and schedule the meetings in the outlying areas and come back with a proposal. President Barner suggested that the meetings start at 6:00 p.m. instead of 5:30.

Clydia Kunkedal asked about the special meetings. She indicated that she did not support the extra meeting especially since it will be held during the day. Commissioner McGregor indicated the intent was not to make any decisions, but to gather information on the agenda to be more prepared to make a decision at the regular meeting.

President Barner indicated that he meets with staff on agenda items, but he still asks the same questions at the public meeting because it is important for the public to understand as much as they can. So he will continue to ask the questions at both meetings. It is his job to ask the questions of staff, this will allow the staff an opportunity to understand what the questions are and be more prepared at the public meeting to answer the questions.

President Barner indicated he would like to delay the special meetings until April and bring this item up for discussion later.

Commissioner Davis indicated he does think the Commission should meet around the county. He also commented that the special meetings are open to the public and further gives more opportunity for public interaction.

Commissioner Davis moved to hold meetings throughout the county starting at 6:00 p.m. holding a meeting the week of February 22 in the City of Rainier, a meeting the week of March 22, joint with the Olympia City Council, a meeting the week of April 26, joint with

Tumwater City Council, a meeting the week of May 24 in the City of Lacey, and a meeting the week of June 22 in the City of Tenino. Commissioner McGregor seconded the motion.

Commissioner Barner also suggested that in the Fall we meet with Thurston County Commissioners.

Motion passed unanimously.

The Commission tabled the special meetings concept until April.

ADVISORY CALENDAR

Relief Effort in Haiti

Commissioner McGregor showed the devastating photos of the Marine Terminal in Haiti. He indicated that he would like for staff to research what we could do to offer to load ships with aid supplies to Haiti. He suggested that staff could reach out with special rates and work with Maritime Administration and others to see if there is something we can put together to be available to extend services to help Haiti recuperate.

Keith Bausch commented that back in the 80's the Port did work with the government and the longshore donated their time for a relief effort. He commented that to make this work, you need a bulk product or break bulk. He noted that the Longshore is in full support.

CONSENT CALENDAR

Bills and Voucher Approval. The bills and vouchers in the amount of \$1,228,016.53 were unanimously approved. General Fund Checks Issued: 051080 - 051310. Voided checks: 048373, 048414, 049351, 049514, and 049571. Voided Warrants: 051041, 051122, 050084, 050146, and 051208 – 051214.

PUBLIC COMMENT

No additional public comment was given.

ANNOUNCEMENTS

Commissioner McGregor announced that the Port Advisory Committee held a public hearing last Wednesday at 6:00 p.m. at the Olympia Center. There were no public comments. The hearing was adjourned at 6:20 p.m.

ADJOURNMENT

President Barner adjourned the meeting of January 25, 2010 at 8:00 p.m.

PORT OF OLYMPIA COMMISSION

President

Vice President

Secretary-Treasurer