



PORT OF OLYMPIA COMMISSION
MINUTES OF REGULAR MEETING

March 22, 2010

CALL TO ORDER

President Barner called the meeting of March 22, 2010, to order at 5:33 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 on March 8, 2010 at 4:00 p.m. to discuss lease negotiations and potential litigation in accordance with RCW 42.30.110(c)(i). The executive session adjourned at 5:34 p.m. No decisions were made.

President Barner indicated that the Commissioners held an executive session prior to the meeting today at 4:00 p.m. to discuss lease negotiations and potential litigation in accordance with RCW 42.30.110(c)(i). The executive session adjourned at 5:20 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, Airport Director Rudy Rudolph, Marine Terminal Director Jim Amador, and Administrative Assistant Jessie Bensley.

Public in attendance who filled in the sign-in sheet were as follows: Mark Lahaie, Drew Hendricks, Keith Bausch, Jay Kincy, Walt Jorgensen, Arthur West, Sharron Coontz, and Bob Jacobs.

APPROVAL OF AGENDA

The agenda was approved as presented.

COMMISSIONER REPORTS

Commissioner Davis indicated he attended the Special meeting on February 25, 2010. He also attended the March 10th Thurston Chamber meeting, on March 16th he met with David Shaffert, on March 18th he attended the Governor Gregoire press conference at the Port. He noted that he will not be able to attend the March 25th joint meeting with the Olympia City Council.

Commissioner McGregor noted that in light of the fact that Commissioner Davis could not attend the joint meeting, he would like to take off the Military discussion until a meeting that Commissioner Davis could attend. He asked that staff issue a revised agenda.

Commissioner McGregor indicated that he attended the Workplace Harassment training at the Port on February 23rd. In addition, he had meetings with the Executive Director, attended the Special Meeting on February 25th, the Executive Session on March 8th, the Yelm Chamber meeting on March 9th and the Governor Gregoire press conference at the Port on March 18th.

Commissioner Barner reported he attended the March 5th Mayors Forum in Yelm, the Executive Session on March 8th, and the Solid Waste Advisory Committee on March 11th.

EXECUTIVE DIRECTOR REPORT

Mr. Galligan reported that as the Commissioners had stated, Governor Chris Gregoire made a “Green Jobs” announcement to media, legislators, state officials and representatives of “green” businesses on the Port of Olympia’s Marine Terminal on March 18th. The Governor’s staff chose the location because of the “green” windmill blades, which formed a backdrop for the Governor’s announcement. The Port of Olympia name and logo were prominent on the podium. Approximately 30 guests attended at the invitation of the Governor. News media included KOMO-TV, KING-TV, Q 13-TV, TVW and The Olympian. Commissioner Davis, Commissioner McGregor and Mr. Galligan were there to greet the Governor.

Mr. Galligan indicated that at this time we have the Dry Beam scheduled in April 3rd through the 9th to load an estimated 7.5 mbf of logs to Japan. Right behind this we have the Aster K April 20th through the 26th to load an estimated 5.5 mbf.

He also reported that due to customer demand and requests, the Swantown has begun operation of a mini storage operation at the marina. This service will provide tenants with storage operations for their possessions close to their boats and has been one of the most requested amenities we have received over the years.

Mr. Galligan reported that the Port and Tarragon LLC entered into an exclusive negotiation agreement effective September 1, 2009, which expires on March 31, 2009. The parties have since entered into a Letter of Intent to develop the remaining parcels at East Bay and continue to negotiate a Master Development Agreement, which will be approved by the Port Commission. The Commission previously delegated authority to the Executive Director to negotiate the agreements. As additional time is needed to finalize the agreements, the exclusive negotiating status with Tarragon will be extended through June 30, 2010.

LEGAL REPORT

Ms. Carolyn Lake provided the Commission a Legal Update on matters occurring since the February 22, 2010 Commission meeting.

She reported on a new case - West v. Port et al, Thurston County Cause No. 10-2-00254-2. This is the most recent lawsuit/appeal Mr. West filed in Thurston County Superior Court (February 2010) against: Washington State Department of Ecology, Environmental Hearings Office, Port of Olympia, Weyerhaeuser, Pollution Control Hearings Board (PCHB), Phyllis McCleod, and the State of Washington. Recently, Mr. West filed a Motion for Summary Judgment arguing the PCHB dismissal was improper based on the Board’s lack of transcript. The hearing is set for April 16th. The Port will respond in opposition, along with Ecology and the other parties.

She 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. She indicated that March 12th was Mr. West’s deadline to file his opening brief in this 9th circuit court of appeals Clean Water Act case, however on March 6th; he filed a second motion for extension. The Court has not yet ruled on the Motion.

Ms. Lake indicated that regarding the Johnson Jorgenson & West – Public Records Act case, which began in 2006 and which was remanded in late 2009 from the court of appeals, the next step is a hearing is to address the records that the Trial court found were exempt from disclosure, but the Court of Appeals disagreed, and address penalty amount. The Port immediately released the records, but a penalty will be considered for the time the records were withheld. A hearing had been set for January 27, and then re-set to March 26th. On March 11, the matter has been re-set to May 21st. The Port agreed to the continuance based upon parties' agreement that the "clock" stopped in 2009 with the Port's records release.

Ms. Lake reported on the OPA v. Port of Olympia, US DISTRICT Federal COURT, WESTERN DISTRICT OF WASHINGTON, 09-05756. She indicated that in the federal Clean Water Act case filed by OPA, the parties conferred on March 8 regarding mandatory scheduling and procedural matters, required to be undertaken under the Federal case Schedule. The parties agreed mediation could be useful. Outside of the formal mediation context, the parties are continuing to pursue ongoing settlement dialogue between the parties. A meeting was held March 17, with another set for March 30th.

She reported on the PCHB 09-158, Industrial Storm water General Permit - Port Specific appeal issues. She indicated that in this case, OPA appeals to the PCHB Ecology's issuance of its 2010 Industrial Storm Water General Permit, and 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. Tomorrow, March 23rd, the Port will file dispositive motions where appropriate to seek early termination of the appeal and or to limit the scope of issues.

And finally, she reported on the Related PCHB 09-134-41, (Consolidated cases) Appeal of Industrial Storm water General Permit. She indicated that discovery is on-going. The Port is taking a "monitoring" role in this litigation; with Ecology the primary defender of the permit challenges.

PUBLIC COMMENT

Drew Hendricks commented that he had planned on giving comment on the Military issues that were going to be discussed at the joint meeting, but now it sounds like that issue will be pulled off the agenda. He indicated that the war in Iraq is illegal. He commented that the Port has conspired with the Olympia Police department against protestors. He indicated that conspiring is a felony and he will make a citizen arrest.

Keith Bausch passed a letter to the Commissioners that were sent to the City of Olympia about the concrete dividers on Marine Drive. He asked that this issue be dealt with immediately and get these removed.

Jay Kincy asked that the Commission create a board or committee to discuss a public use heliport at East Bay marina.

Walt Jorgensen commented about the Imagine Olympia campaign from the City of Olympia. He noted that this could be a collaborative community outreach process that the Port could be involved with. He also suggested adding NorthPoint to joint meeting agenda with the City.

Arthur West asked for an update on the East Bay redevelopment project. He wanted to know if the cleanup of the dioxins has been done properly. He also discussed the Pollution Control Hearings Board and that they do not keep verbatim record of the hearings.

Sharron Coontz commented on the Port of Tacoma's decision to sell the property in Maytown. She felt that the use of the property is unacceptable. She hoped the Port of Olympia is as outraged as the Friends for Rocky Prairie. Asking the Port contact the Port of Tacoma and indicate this will not be tolerated and to contract with outside attorney to pursue this matter.

Bob Jacobs commented that this meeting is in violation of the open public meetings law. The notice on the door has a phone number that went to an answering machine and the door was locked. He also commented about the Economic Impact Study and how it should be done correctly.

Commissioner McGregor suggested that Mr. Bausch attend the City of Olympia meeting and read his letter at their meeting. He also indicated that he would like staff to schedule time to discuss Mr. Kincy's proposal. He indicated to Mr. West that we are cleaning up the site in accordance with Department of Ecology's standards. He commented on the Maytown property and indicated that he has been in contact with the Port of Tacoma and has confirmed that the purchaser gets full control of the property. Once we get a complete copy of the agreement we will have our own attorney review it.

Commissioner Davis indicated that he has been briefed on the Maytown property and is trying to understand what the Port of Olympia can do – until we get the final agreement and get legal review, there is not much the Port can do, but we will continue to watch and monitor this.

President Barner indicated that he feels that the Port of Tacoma is in violation with out an Inter-local agreement. He indicated that he would like to move that the Port take action against the Port of Tacoma. We need to know what they are doing with the Maytown property. We need to protect the community's interest and find out what the agreement options are. We need to make sure that if the Port of Tacoma continues an interest in this property and does business in Thurston County without an agreement with the Port of Olympia, we need legal advice on this.

President Barner made a motion to direct the Executive Director to contact the Port of Tacoma and buyers and our own attorney (other than someone that has been a part of this process) to review the sale agreement of the Maytown Property to determine if the Port of Tacoma retains an interest in the property for their own use. President Barner indicated that he has names of land use attorneys.

Commissioner Davis seconded the motion. He commented that he could support this if we are asking for a legal opinion of the Interlocal agreement – if the Port of Tacoma will continue to have any rights in this property, then he feels that they would be in default of the Interlocal agreement. However, he commented that he is having a hard time understanding where the Port of Olympia has the right to tell the Port of Tacoma what they can do with their property.

President Barner indicated that if we do the investigation we can then ask the County to look into this. The county has not done anything about this yet. The County gave them the permit because they did not bother to see if there was an agreement in force, and there was not.

Commissioner McGregor indicated that the agreement stated that once it was cancelled, the Port of Olympia is out of it. The Port of Tacoma had to sell it. We need to know if the Port of Tacoma will have an interest in the property. We need to know what the intent of the 65 acres. If it is all under the control of the buyer, then we have nothing to do with it. It needs to be

determined if the Port of Tacoma has any interest or not in the property relating to the 65 acres or is it all transferred to the new owner. That is the question to be answered.

President Barner indicated that we need to protect the citizens of Thurston County. Commissioner McGregor indicated that the citizens told us to get out of the Interlocal agreement; therefore the Port has nothing to do with the property.

Commissioner Davis indicated that it seems to him that this is a county issue and not a Port issue. We just need to make sure that the Port is protected and we are not responsible in any matter. Any matter outside of the Interlocal agreement is not really the Port of Olympia's business, because we have no authority over it.

President Barner said that until the property is disposed of we are still tied to them and we may have some leverage with the Port of Tacoma to make sure they do not retain interest in the property.

Mr. Galligan requested that this be tabled until the Commission gets a briefing from Mr. Mackie who has already done work on this. Then make a decision after understanding better the issue. The Commission agreed to a Special Meeting on Wednesday, March 24, 2010 at 1:00 or 1:30 in the Large Conference Room at the Port office.

In response to other public comment, President Barner responded to Mr. Hendricks and indicated that the Port can help de-escalate the issue by bringing the troops home. We have an obligation to assist them in bringing home the troops and equipment to America.

He also responded to Mr. West, Mr. Jorgenson, Mr. Jacobs, and Mr. Kincy regarding their comments.

Commissioner Davis indicated that he agrees with Mr. Bausch – the dividers may inhibit future business at the Port. The City requirements for dividers may block the wind mill blades from moving out of the Port. Because he can not be at the meeting on Thursday, he asked that the Commissioners share this message at the Joint meeting with the City Council.

Mr. Galligan indicated that staff has fought the dividers all the way, but the City insisted. This has not been the Port's desire to put those in. He asked that the elected convey this message at the joint meeting.

ACTION CALENDAR

Emergency Works – Stormwater Repair

Mr. Rick Anderson indicated that on Thursday afternoon, March 17th staff found a failure in the stormwater pipe at the Marine Terminal, possibly causing contaminated water to seep into the Stormwater system. Therefore, in accordance with adopted Port policy, an emergency has been declared so that the Port may arrange for immediate repair of an isolated section of the stormwater system.

He reported that the repair has been completed. He asked that the Commission approve the issuance of emergency public works contract 2010-1018 to Active Construction Incorporated for an estimated cost not-to-exceed \$75,000. He noted that all other public work contract requirements will continue to apply.

Commissioner McGregor moved to approve the emergency stormwater line break repairs, contract 2010-1018 to Active Construction Inc. and all the relating purchase orders issued relating to this work. Commissioner Davis seconded the motion. The motion was unanimously approved. Commissioner Davis commended staff for keeping an eye on this and acting efficiently and swiftly.

ADVISORY CALENDAR

Security Grant Projects Information Technology Contract Advisory

Mr. Rick Anderson indicated that on September 29, 2009, the Port received a grant from the Department of Homeland Security FEMA Grant Programs Directorate in the amount of \$488,630, for additional terminal security enhancements.

He noted that the scope of work includes video system enhancements, and data network enhancements. Also included is the extension of the access control and alarm systems.

Mr. Anderson indicated that Port Computing, Inc. is the consulting firm that has provided technology, design, and software integration expertise for all of the security enhancements performed since 2007. The continuity of the design and integration is essential to completing the work awarded under this new grant.

Estimated Costs/Grant Awarded Budget:

Data Network Enhancements	\$265,000
Video Surveillance and Motion Detection System Enhancements	\$111,350
Extension of automated access control and alarm systems	\$112,280
Total Grant Award	\$488,630

He noted that Port Computing, Inc. will provide the equipment, software, and design services to support the above, and the total Personal Services Agreement will not exceed \$400,000.

Mr. Anderson reported that the 2010 Capital Investment Plan allocates \$488,630 for this project. This is an advisory only. Request for Authorization to issue Personal Services Agreement will be presented to Commission on April 12, 2010.

Marine Terminal Security Contract Advisory

Mr. Jim Amador indicated that in 2009 the Transportation Workers Identification Credential (TWIC) program was implemented nationwide at all Coast Guard regulated US Ports. In accordance with Coast Guard requirements, the Port added security to the terminal and updated the Port's Facility Security Plan.

In addition, guard service at the gates was also mandated, which resulted in the award of a Purchased Services Agreement to Securitas Security Company. On February 9, 2009, Commission authorized award of the contract for a two year period for an amount not to exceed \$129,662, with a 12 month renewal option.

At that time the Port was seeking definition of the requirements. The requirements for security were defined by the Coast Guard after we entered into the contract. The Coast Guard amended our requirements for vessel activity and increased hours. The majority of the additional costs were able to be accommodated through fees and lease amendments. Mr. Amador indicated that the overall requirements raised the security usage.

Based on these new requirements and the analysis of one year of actual operations, Mr. Amador indicated that he is proposing the contract 2009-1009 be increased by an amount of \$220,338, for a revised total contract amount not to exceed \$350,000. This increase would cover anticipated services through the remaining term of the contract.

Mr. Amador summarized the expenses:

Recommended Total	\$350,000
Less Actual 2009	\$135,351
Less Anticipated 2010	\$150,000
Contingency	\$ 64,649

He noted that the contingency would be used to cover potential increased vessels over the 2010 budget and unforeseen mandates ordered by the Coast Guard per Homeland Security.

Commissioner McGregor indicated that about \$215,000 of the \$350,000 is being billed back to the vessels and tenants.

Mr. Amador indicated that this is advisory only. Staff will request authorization of this amendment at the April 12, 2010 meeting.

Expanded Scope of Work for Heartland, LLC Contract

Ms. Kari Qvigstad indicated that authorization is requested to expand the scope of an existing personal services contract, Contract No 2007-1 with Heartland, LLC, for consulting and negotiation services associated with the East Bay Redevelopment, Project No. PRP004.

She noted that on July 26, 2006 the Port staff issued a Consulting Service Agreement to Heartland, LLC to provide comprehensive support services including strategic planning advice with respect to the predevelopment plan, market and financial analysis, and master plan development. This contract was for an amount not to exceed \$70,000. The port has continued to successfully work with Heartland and has amended this contract on two other occasions. With Heartland's assistance and advisement the Port recently completed a multi-step marketing effort that resulted in the identification of Tarragon as an exclusive negotiating partner and potential developer for the East Redevelopment Partner.

Ms. Qvigstad reported that the expanded scope of work would increase Heartland's contract by an additional \$40,000 (from \$282,000 to \$322,000) through June 30, 2010. Following is a description of assistance and the tasks to be provided by Heartland, LLC for this expanded scope of work:

Task 1 – Assist and advise in negotiations with selected developer during the exclusive negotiation period in order to create an Agreement consistent with Port objectives and vision for redevelopment of the East Bay District. Advisement in structuring reasonable commitments by both parties as to performance timetables, conditions precedent and subsequent, guarantees, and defaults and remedies.

Task 2 – Function with real estate and project management teams as needed in order to keep the project and the negotiations on task and on schedule. Heartland will also be available for meetings or other communications with Port of Olympia staff, the Port Commission, the selected developer, and other stakeholders as and when needed.

Task 3 – Strategic planning for negotiation, project management, and development.

Task 4 – Financial analysis of potential development scenarios and transaction structures as needed.

Task 5 - Assistance identifying and incorporating services needed from other outside advisors including legal, economic impact, public finance, and environmental specialists as needed to answer technical questions uncovered as part of deal negotiations.

Task 6 - Coordinating with Port’s legal representative in the drafting of contract documents during the course of the negotiation process.

Ms. Qvigstad indicated that this is advisory only. Staff will request that the scope of work for Contract No. 2007-1 with Heartland, LLC be expanded to the amount of \$322,000.00 at the April 12, 2010 meeting. The funds are included in 2009 Commission approved budget and also carried over into the 2010 budget.

Original Contract (7/26/06)	\$ 70,000.00
Previously Authorized Amendments	\$ 282,000.00
This Increase Request	\$40,000.00
Total Revised Authorization:	\$322,000.00

Commissioner Davis asked what Heartland provides the Port. Ms. Qvigstad indicated that they serve as the Port’s advisor, they are a facilitator. Heartland is promoting the vision of the area as defined throughout the public process.

President Barner asked if any of the properties were going to be sold? Ms. Qvigstad indicated that the property that has been identified for possible sale is the property along State Avenue. Ms. Qvigstad indicated that staff is proceeding with the direction given by the Commission to the staff throughout this process.

2010 Port Goals Advisory

Mr. Galligan indicated that the latest version of the 2010 Goals includes comments and suggestions from Commissioner McGregor. The changes reflect further objective measures and deleted goals that are routine and recurring tasks of staff.

Mr. Galligan asked for any comments before next meeting. He noted that the newest version of the 2010 Goals is on the website. He noted that we would appreciate comments from citizens. We have received a few from citizens and they that have provided significant comments that have been incorporated.

Mr. Galligan indicated that his is advisory and we will bring the 2010 Goals back to the next meeting for approval.

President Barner commented on the Overarching Goal – Number 4. He indicated that this is vague and we need to identify real estate sites. Mr. Galligan commented that we are budgeting for and planning a workshop in April with the Commission regarding the reinvestment policy to discuss this goal.

Commissioner McGregor indicated that he has provided comments to the Executive Director and they have been incorporated into this document.

PUBLIC COMMENT ON ADVISORY ITEMS

Drew Hendricks commented that in 2007 the Port accepted the shipment of trucks and these are trucks of an illegal war.

Keith Bausch commented that the Longshore strongly opposes residential along Marine Drive. The truck traffic does not work well with residential.

CONSENT CALENDAR

Minutes Approval. The Commission unanimously approved minutes from the February 8, 2010, February 22, 2010, and the February 25, 2010 meetings.

Bills and Voucher Approval. The bills and vouchers in the amount of \$665,925.05 were unanimously approved. General Fund Warrants Issued: 051521 – 051686. Voided Warrants: 051350, 051472, 051522 – 051523, and 051604 – 051609.

Shell Oil Termination Agreement

The Port signed a lease agreement with Shell Oil Co. in 1965 with five 5-year options (through 4/30/2015). The term expired and Shell exercised only 4 of its additional options which end April 30, 2010, and submitted notice to close the operations in Tumwater.

The Termination Agreement is effective December 31, 2009, at which time all improvements were removed and the site was restored as stated in the lease agreement and in accordance to City of Tumwater permit standards. In addition, the Termination Agreement includes an Access Agreement for consultants to enter the premises for monitoring purposes as the site is under a voluntary clean up action plan managed by the Department of Ecology. The Access Agreement provides access to the site through December 31, 2010, which is the period dictated by the Department of Ecology for monitoring the wells on the site set to determine the environmental conditions of the site. DOE requires that the site be monitored for a period of one year before releasing the site from the clean up action list, and set to satisfy the closure process of Shell operations in Tumwater.

The Termination Agreement also states that Tenant will pay a termination fee in the amount equal to the rent for the remaining term on the lease agreement, which is April 30, 2010 in the amount of \$6,291.12 including Leasehold Tax, and will continue to pay a monthly rent amount of \$341.43 for the encumbrances (access road and wells 5,114 s.f.) on the site through December 31, 2010 or until released by DOE.

The Commission unanimously ratified the termination agreement with Shell Oil Company.

ANNOUNCEMENTS

President Barner announced that the Port Advisory Committee will hold a meeting on Wednesday, March 24, 2010 at 7:00 p.m. at the Port Administrative Offices. He also announced that the Port Commission would hold a joint meeting with the Olympia City Council on March 25, 2010 at 6:00 p.m. at the Phoenix Inn.

ADJOURNMENT

President Barner adjourned the meeting of March 22, 2010 at 7:46 p.m.

PORT OF OLYMPIA COMMISSION

President

Vice President

Secretary