



PORT OF OLYMPIA COMMISSION  
MINUTES OF SPECIAL MEETING

March 24, 2010

**CALL TO ORDER**

President Barner called the meeting of March 24, 2010, to order at 1:30 p.m. at the Port of Olympia Administrative Offices. Commissioners Davis and McGregor were also in attendance.

Staff in attendance was: Executive Director Ed Galligan, Administrative Manager Jeri Sevier, Marketing and Business Development Director Kari Qvigstad, and Communications Manager Kathleen White. Sandy Mackie, the Port's Special Legal Counsel was also in attendance.

Public in attendance who filled in the sign-in sheet were as follows: Sharron Coontz, Sue Danver, and Walt Jorgenson.

**COMMISSION CONSIDERATION**

**Discussion with Special Legal Council Regarding Sale of Maytown Property by the Port of Tacoma**

Mr. Galligan introduced Mr. Sandy Mackie, special legal council for the Port of Olympia regarding this matter.

Mr. Mackie indicated that the responsibilities of the Port Commission are very limited and was essentially over once the interlocal agreement expired. He noted that the interlocal agreement was effective July 19, 2006. The Port of Tacoma purchased the property not in a joint venture with the Port of Olympia. The joint venture was for the development of the property. The Port of Olympia would be the lead of all development planning, permitting, etc. He indicated that if the parties are unable to agree on terms and conditions for the joint development and operation of the Property by December 31, 2007, then the Port of Tacoma shall proceed to divest itself of its ownership of the property, at no risk or cost to the Port of Olympia. On December 3, 2007, the Port extended the date to June 30, 2008.

Mr. Mackie indicated that the Commission let the agreement expire. Therefore after June 30, 2008 – the Port of Olympia lost all legal control over the property and the Port of Tacoma has the responsibility to divest in the property. The Port of Olympia did not give themselves legal authority to have any control over the divestment of the property.

Mr. Mackie reported that the Port of Tacoma can not go into port operations in Thurston County, but their decision on to sell is of no legal concern to the Port of Olympia. He commented that the Port of Tacoma is divesting themselves and there is now a private contract between the Port of Tacoma and private purchaser and the Port of Olympia has no legal basis in interfering.

He noted that since there was a pre existing gravel operation as a part of the value of the property that the Port of Tacoma acquired and to the extent they wanted to lease that out they could. They do not need an interlocal agreement to do that.

However, he noted that the point is moot, now the transaction is to close a sale of the property to a third party. In the event a portion of the property is sold for rail purposes, a portion of the proceeds would go to the Port of Tacoma. The Port of Tacoma does not retain interest in the property for any other purposes.

Having said all that, Mr. Mackie advised the Port Commission that the Port of Olympia is done. The Port did not reserve the right to object to the sale or have any say in the sale of the Maytown property. He indicated that individual Commissioners may decide to take a personal view, but be careful that any comments are expressed as your role as a citizen and not as a Port Commissioner.

Ms. Coontz indicated that she thought the Port of Tacoma is planning to keep a portion of the property to do business there. Mr. Mackie indicated that the Port of Tacoma is engaging in a sale of property, the issue that Ms. Coontz has is between her and the Port of Tacoma. The Port of Olympia has no evidence that the Port of Tacoma is doing anything illegal. Commissioner Davis asked if legally if the Port of Tacoma sells the property, is there any legal issues that will pertain to the Port of Olympia. Mr. Mackie indicated that the Port of Olympia should track the sale and when it is closed the Port is done. There is no land use control for the future. The Port of Olympia has no rights, they are not an owner, there is no joint development venture, and the contractual obligation is to tell them to sell the property.

Commissioner Davis asked if we have no authority of what the Port of Tacoma does after they sell it. Mr. Mackie confirmed. He noted that legally if Maytown Sand and Gravel decides to put a rail yard in; how is the Port of Olympia associated? Mr. Mackie said you are not. Once the June 30<sup>th</sup> deadline passed, the only post contract obligation is for Port of Tacoma to divest of the property. You didn't say you wanted to control the sale or subsequent land uses. So you don't have any say. Mr. Mackie indicated that if they were to exercise port activity on the site, then you have a right to stop them in your county.

Commissioner Davis asked if there was a timeline that the divestment should happen. Mr. Mackie commented as long as it is a reasonable time and the court would find that this is a reasonable time. Commissioner Davis asked if an interlocal agreement is common in Washington State. Mr. Mackie said that it is common, but not a boiler plate; it is usually worked out between the two.

Commissioner Davis asked what legal recourse does the Port of Olympia have towards the Port of Tacoma, what illegal activity could the Port of Tacoma be doing and how would that effect the Port of Olympia. Mr. Mackie commented that he does not see any.

Commissioner McGregor indicated his concern is what was being said at our last public meeting about the 65 acres; however, having heard what has been discussed today, he thinks we have no business being involved in this at this point.

Mr. Mackie cautioned that the risk is if you try and go beyond what you told them in the contract that interferes with the sale – you could be charged with tortious interference.

Commissioner McGregor indicated that he wanted to clear up one thing. The Port never said they did not want a South Sound Logistics Center; it was the community that insisted the Port not move forward with this.

Mr. Ed Galligan indicated that we never had an opportunity to define what the South Sound Logistics Center was, because of the pressure of the citizens we never got to the point of understanding what we could have done with the South Sound Logistics Center.

Commissioner Barner indicated at the March 22<sup>nd</sup> a motion was made and tabled. He asked Ms. Sevier to read the motion. The motion read as follows:

*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.*

Ms. Coontz asked what if the Port of Tacoma is not being upfront on this issue and they are planning on using the property for their own use. Mr. Mackie commented that when the sale document is recorded and it is public and we find some indication that there is in appropriate Port of Tacoma activity – engaging in Port of Tacoma activity in Thurston County. Then the Port of Olympia could investigate and Port of Olympia could seek an injunction to stop activities.

Commissioner Davis moved to remove the motion from table and placed it before the board. Commissioner McGregor seconded the motion.

Commissioner McGregor indicated based on what has been clarified today he is very comfortable voting against the motion. Commissioner Davis also indicated that he will vote against the motion also. He does not see any legal authority nor does the Port have any legal recourse.

Commissioner Barner indicated that he was frustrated because he thought that the Port of Olympia had some role in the divesting of the property.

The motion failed with 1-2 vote. (Commissioner Barner voted for; Commissioners McGregor and Davis voted against.)

Commissioner McGregor directed the executive director to track the sale of the property and to let the Commission know when it closes.

## **ADJOURNMENT**

President Barner adjourned the meeting of March 24, 2010 at 2:41 p.m.

Port of Olympia COMMISSION

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President

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Vice President

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Secretary-Treasurer