

**P O R T O F O L Y M P I A C O M M I S S I O N**  
**M I N U T E S O F W O R K S E S S I O N**

**May 20, 2008**

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**CALL TO ORDER**

President McGregor called the work session of May 20, 2008, to order at 2:00 p.m. at the Port Offices. Commissioners Barner and Telford were also in attendance.

Staff in attendance were: Executive Director Ed Galligan, Administrative Manager Jeri Sevier, Airport Director Rudy Rudolph, Finance Director Steve Davis, Harbor Director Bruce Marshall, Marketing Director Kari Qvigstad, Senior Property Manager Heber Kennedy, Engineering Director Jeff Lincoln, Property Manager Clarita Mattox, and Communications Manager Patti Grant. Carolyn Lake and Bob Goodstein, the Port's legal counsel also attended.

Public in attendance were as follows: Representing The Olympian was Jim Szymanski. Others in attendance included: Ric Abbott, Raymond Schuler, and Richard Wolf.

President McGregor indicated that all three commissioners attended the WPPA conference in Vancouver last week. He noted that the sessions were very good. Commissioner Telford asked if he could add item 5 on the agenda for discussion of the sessions.

Mr. Ed Galligan noted that the staff is proposing that the Commission take informal public comment when appropriate at the work sessions and have added that to the agenda. He noted that in the past, the Commission did not take any public comment at work sessions. President McGregor indicated that the work sessions is a good time to have dialog between Commissioners and there are times when we can take the opportunity to hear public comment when appropriate, but he did not want the public comment to hinder the time allowed for commissioner dialog. He commented that when the public in attendance is directly affected, then we should engage them in conversation when appropriate.

**Comprehensive Scheme of Harbor Improvements**

Ms. Carolyn Lake provided the Commission with an over view of the history of the discussion of the Comprehensive Scheme of Harbor Improvements. She indicated that she provided a briefing at the September 20, 2007 work session where she outlined the proposed changes.

She noted that to date, the port operates with a scheme of documents that comprise the Ports Comprehensive Scheme of Harbor Improvements (CSHI). The proposal is to focus on smaller set of documents to make up the CSHI and realign the other documents as port management tools.

Ms. Lake provided the Commissioners with a summary of the existing Comprehensive Plan and the other Port Planning Documents, which cumulatively are the Ports Comprehensive Scheme of Harbor Improvements.

Ms. Lake indicated the plan needs to be relabeled as the Comprehensive Scheme of Harbor Improvements (CSHI) and would include the Capital Investment Plan, 5 year Investment Plan, Map of Districts, Project Specific Drawings Overlaid onto district maps, and the Annual project specific budget narratives. She suggested that the other parts of the Comprehensive Plan would be appendixes to the CSHI, used as management tools.

Ms. Lake indicated that the Port Advisory Committee (PAC) submitted recommendations, summarized on page 5-6 of the PAC report. The recommendations include:

- (1) The admiral district should be eliminated as a separate district.
- (2) The name of the State Avenue district should be changed to East Bay District.
- (3) Substitute East Bay Redevelopment Program site plan for State Avenue District Land Use Plan (LUP).
- (4) The Building heights specified in the Port Land Use Plan should be eliminated because they are controlled by city code.
- (5) The shoreline trail along the east side of the Peninsula should be called East Bay Promenade.
- (6) The Port should delete the old Tumwater Capital Campus design and adopt the Tumwater Town Center plan.

- (7) The Port should adopt the proposed New Market Industrial Campus Plan. This includes changing the use designation of one parcel from "Airport-Oriented Industrial to General Aviation.
- (8) The Port should update its land use plan so as to reflect name changes to New Market Industrial Campus and Tumwater Boulevard.

Ms. Lake suggested the Commission use a two-step process to make changes to the Comprehensive Plan (Comprehensive Scheme of Harbor Improvements). She suggested that first the Commission take action on the PAC recommendations, rename the land use plan to the Conceptual Port Development Plan and then eliminate the term Comprehensive Plan to avoid GMA confusion. Then secondly, the Commission would realign the existing planning tools to better label and spotlight the Port's core planning tools as Comprehensive Scheme of Harbor Improvements (CSHI). Ms. Lake indicated that there are no substantive changes proposed as a part of this realignment.

Commissioner Telford indicated that he is frustrated with the lack of progress on the Comp. Plan revision; he noted that we have been working on for two years. He indicated that the Admiralty District needs to be changed to either be Marine Terminal use or NorthPoint uses. He commented that he supports getting step one done as soon as possible. He confirmed with staff that the changes would come to the Commission as a marked-up/redlined to the existing chapter 3 of the Comp. Plan reflecting the PAC's recommendation. Mr. Galligan indicated that staff would bring this back to the Commission at the June 23rd Commission meeting for public hearing on the proposed changes.

### **SEPA Policy**

Ms. Lake provided the Commissioners with a recap of the Port 2007 SEPA policy amendments. She noted that it has been suggested that changes be made to the Port's SEPA policy. She indicated that judges have ruled in the Port's favor on the current policy.

Ms. Lake indicated that the current SEPA policy was amended in June of 2007. The current resolution 2007-13 contains the following revisions:

1. The appeal section was eliminated the reconsideration request process.
2. Section 9.2 was modified to allow for three options for the Commission action on an appeal.
3. New section 8 was added formalizing comments.
4. Section 7.2.1 was modified to specify the means of public notice and to clarify that supporting technical appendixes to the SEPA checklist are publicly available.
5. Section 9.1 added a reference to the Port's SEPA guidance policies.
6. New section 9.3.2.ii was added for standing for administrative appeals.
7. New section 9.4.9 was added for independent legal counsel for the Commission.
8. New section 9.5.3 was added for refunding when appellants substantially prevail on appeals.
9. New section 9.6.3 was added allowing for costs of preparing administrative record on appeal are paid equally for judicial appeals.

Ms. Lake indicated that the current SEPA policy has withstood numerous court challenges where the Port has prevailed. She noted that we have been challenged many times and the courts have held that the Ports SEPA policy is sound.

Ms. Lake indicated that it has been suggested that the administrative record has too much duplication. Ms. Lake indicated that the Port could control the content and eliminate repetition within its set of administrative documents. However, if a judicial appeal is filed, the Port is required to provide the court with an exact copy of all documents submitted by the public as part of the administrative record, and cannot eliminate any duplication.

Commissioner Telford read a statement from Judge Hicks and he suggested that the Commissioners get out of the SEPA appeal process completely. He would like all appeals to go directly to a hearings examiner. He indicated that both Olympia and Thurston County have only a hearings examiner involved. President McGregor asked what impact with tinkering with that section would have on decisions that have already been made or future decisions. Ms. Lake indicated that right now they have three options: to elect to hear the appeal, to forward the appeal to a hearings examiner, or to decline to hold an administrative appeal hearing.

Ms. Lake indicated that if the assumption were that they would appeal anyway, by sending the appeal directly to superior court speeds up the process and eliminates unnecessary cost and time.

Mr. Galligan suggested that by automatically sending appeals to the hearings examiner is an unnecessary expense and adds time to the process.

Commissioner Telford indicated that the time it takes for legal counsel and staff will be the same either way and he commented that the Commissioners are not qualified to make this decision.

Mr. Lincoln indicated that it will take a minimum of three months to send appeals to the hearings examiner and then the hearings examiners decision will most likely be appealed. Ms. Lake indicated that if the concern is that the Commission is not qualified to hold a hearing, then just eliminate that option.

President McGregor suggested that we eliminate 9.2.1 [Elect to hear the appeal, and after a public hearing, issue a final decision.] Ms. Lake indicated that if you remove that option, then you are free to choose one of the other two options.

Commissioner Barner indicated that in his experience at the County, using a hearings examiner was more accepted by the public and the public was confident that it was fairly administered.

The Commission agreed to revise the SEPA policy and removes 9.2.1 [Elect to hear the appeal, and after a public hearing, issue a final decision.] Mr. Galligan indicated staff would bring this revision to the June 23rd meeting.

### **End of Lease Provisions**

Mr. Bob Goodstein indicated that he has invited Raymond Schuler, SIOR, CCIM, Sr, Vice President of GVA Kidder Mathews in Tacoma. Ray is an expert on this topic.

Mr. Goodstein indicated that the main component of real property is land. A landowner is said to have an “inverted pyramid” of interest. He noted that the rights and privileges associated with ownership of real estate are sometimes referred to as “the bundle of ownership rights.” Improvements to real property will be come part of the real property if certain tests are met. These tests include, among others, the method of attachment, the intention of the installer, the relationship of the parties, any written agreement, and the adoption of the item to the realty. Those improvements not passing the tests are typically referred to as fixtures and are removable upon transfer of the interest in the real estate.

Mr. Goodstein indicated that there are different kinds of ownership. Ownership interests can range from full title to tenancy to possession without title by single or multiple entities. He reviewed the definition of fixed leases, graduated leases, net leases, percentage leases, and ground leases. He further discussed the percentage lease concept. He noted that there are many types of percentage leases. For instance, under a pure percentage lease, the entire rental amount is based on a percentage of gross sales. Under the most common type of percentage lease, a fixed minimum rental amount is required along with a percentage of gross sales, or a percentage of gross sales above a certain specified amounts. He indicated that percentage rents are common in the commercial setting.

Mr. Goodstein also reviewed the definition of ground leases. In a ground lease the landowner leases vacant land to a tenant who wants to erect a building on the property.

Mr. Goodstein indicated that the Port has many land leases. The Port’s basic rental structure has been approved by the Port Commission. Typical negotiations with tenants begin with the delivery to the prospective tenant of a lease template. A typical section “Disposition of Improvements” is in the lease for the Port of Olympia.

Mr. Schuler indicated that he understood that there are some ground leases coming up for termination. At the end of the lease term, the improvements are left with the property.

Commissioner Barner asked about the sale of the property to the City of Olympia and the first right of refusal if the HOCM or the City were to change the use. Kari answered that it is at our discretion.

Commissioner Telford indicated that his point is that at the end of the lease if we want to take the improvements, then we should have to pay for those improvements. Ms. Qvigstad indicated that the incentive is to maintain the building instead of having to remove it at an additional cost to the tenant. Mr. Goodstein indicated that the formula used by the port for leasing is discounted because they are leasing the property. The Port has the option of requiring tenant to remove the building or the Port takes ownership of the improvements.

Mr. Schuler indicated that a reasonable compromise is to get the decision made in advance whether they leave it or take it. There are very few structures that have a useful life past 50 years.

Ms. Qvigstad provided the Commissioners with a survey done on disposition of improvements with other Ports and Commercial Brokerage Representatives.

Commissioner Telford indicated that the people he has talked to do not think that percentage rents are reasonable, are based on gross sales, and require the Port to have concerns over a tenant's bookkeeping. Staff explained the policy for percentage rents that they do not kick in until they exceed the base rent. Commissioner Telford indicated that he may misunderstand the concept and he will have to go back and re-read the typical leases.

Commissioner Telford indicated he has indicated that he has stated that he would not approve another lease with the current "end of lease" provisions. He believes that these are not in the best long-term interests of the Port or tenants. He also noted that we have not been consistent by making an exception in the ProLogis option agreement.

Mr. Galligan indicated that staff is listening to Commissioners and we tried to present this matter today as what the industry standard is. This is a policy matter and the Port's perspective of operating in a manner consistent with other ports and the commercial industry.

Commissioner Barner indicated that he has a better understanding and is more comfortable with what we are doing.

### **Discussion of Meeting Format Changes**

Ed indicated that after the last work session staff was asked to come back with some recommendations to make our time more efficient and effective, to tighten up the meetings while not sacrificing the information shared with the public and hearing from the public. Mr. Galligan indicated that Public comment would be provided for 30 minutes with a 3-minute limit per person on all items including those on the agenda. There will be many ways the public has to comment:

Commission materials are released one week in advance and are available on the website.

Topics will be placed as an advisory before action is sought.

Opportunity to comment via the Port's website on topics.

View televised meetings on TCTV.

Staff is available to respond to questions.

**Richard Wolf** suggested we have forms to fill out if the public comment period ends and they don't have time.

**Ric Abbot** indicated that Commissioner Barner made a commitment to the public to personally respond to the public. Credibility is dependent on the perception of the public in how they are responded to.

The commission suggested changing the location of the announcements of the televised meetings and the completed agenda packets. In addition, they suggested bold/underlining the statement "including items on the agenda," under the public comment section.

### **Washington Public Ports Association Conference**

Commissioner Telford shared notes from the WPPA meetings at conference. He reported on HB – 3274 - Port Contracting and indicated that this was a major item of discussion. He understands that the Port of Olympia policy development is underway. He commented that the thresholds in the bill for Commission involvement are too high for this Port and that his expectations are that the thresholds will be no higher than current.

He also reported on the public relations discussions about Blogs and whether there was value or not. He indicated that Port partnerships and community events sponsorships and that there would be closer scrutiny by Auditors office. He commented that we "cannot subsidize events" with exceptions if there is a direct benefit to port or tourism.

He indicated that there were some good examples of Port newsletters and publications.

Commissioner Telford reported on the Open Public Meetings Act discussion and indicated that there was pressure on Legislature to record Executive sessions. He noted that we must

remember to clearly announce time, purpose and length; keep on subjects (have agenda); and to consider minutes.

He reported on the Public Records session noting that the Philosophy is " Providing information to the public is what we do". We need to budget for records requests in major projects, establish reading room for large projects, and do annual training. Commissioner Telford says that even when not in doubt release the record!

**ADJOURNMENT**

President McGregor adjourned the meeting of May 20, 2008 at 5:03 p.m.

PORT OF OLYMPIA COMMISSION

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President

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Vice President

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Secretary-Treasurer