



PORT OF OLYMPIA COMMISSION
MINUTES OF REGULAR MEETING

May 24, 2010

CALL TO ORDER

President Barner called the meeting of May 24, 2010, to order at 5:30 p.m. at the LOTT Board Room in Olympia. Commissioners Davis and McGregor were also in attendance.

Staff in attendance was: Executive Director Ed Galligan, Program Assistant Lorie Watson, Harbor Director Bruce Marshall, Engineering Director Rick Anderson, Airport Director Rudy Rudolph, Marine Terminal Director Jim Amador, Marketing and Business Development Director Kari Qvigstad, Communications Manager Kathleen White, Controller Andi Mounts, and Administrative Assistant Jessie Bensley. Carolyn Lake, Port's Legal Counsel, was also in attendance.

Public in attendance who filled in the sign-in sheet were as follows: Mayor Doug Mah, Brian Reynolds, Teri Thorning, Patty Belmonte, Steve Wilcox and Richard Wolf.

APPROVAL OF AGENDA

The agenda was approved as amended. Commissioner Barner noted that Mayor Doug Mah was present for comments and in consideration of his schedule, asked that he be allowed to comment after the approval of the agenda. Commissioner McGregor asked that the Advisory calendar be moved up to the start of the meeting to accommodate our guest presenters.

Mayor Doug Mah commented that he was speaking both as Mayor of Olympia and as President of the LOTT Alliance Board of Directors. He thanked the Port Commission for their continued partnership with LOTT and the City over the past several years. He expressed support for two items on the agenda; the City of Olympia/HOCM Purchase and Sale Agreement Amendment #4, and the City/LOTT Agreement Regarding Easements. He said Amendment #4 is being brought forward this week to both the Port Commission and City Council for approval. He indicated that it enables the project to continue on its path forward and they are very excited. He thanked the Commission for their flexibility as the partners managed through the process. He commented on the second item, indicating the City/LOTT Agreement is an easement agreement and allows a certain amount of flexibility for LOTT. He added that it does no harm to any parties and allows flexibility for future expansion of the treatment plant if warranted. It is in accordance with the spirit of cooperation, and the spirit of being a good neighbor and can accommodate all parties involved. He also added that he believes there will be strong approval for these items at the City Council meeting this week.

Commissioner McGregor expressed agreement with Mayor Mah's comments about the partnership with the City and LOTT, saying that we have a good relationship and he wants to see that continue. He added that East Bay is a tremendous asset for the community. Commissioner Davis also commented that collaboration between the City and Port is essential and he looks forward to working with the Mayor and City on future endeavors.

COMMISSIONER REPORTS

Commissioner McGregor reported that on May 12 and 13 he went with Commissioner Barner to the WPPA Spring Meeting. He shared information about some of the programs that were presented, including the Clean Marina Program, which Swantown participates in. He noted that under this program, in 2008, the Marina was awarded a certificate of achievement and certified a clean marina. He also shared information with the other Commissioners on a presentation by the Port of Bremerton and suggested we might be able to develop a similar program at our Port. He said he also attended a seminar on the green ports initiative and said the WPPA will be bringing this initiative to the winter meeting. He also attended the WPPA Legislative Committee report, as well as a presentation by the many great wineries in eastern Washington. He reported that he attended the Thurston Legislative work session on May 17, and on May 18 he attended the Lacey Planning Commission meeting at which he testified on lifting the cap on building size. On May 20 he attended the Thurston Chamber awards breakfast at which Michael Cade was recognized with the President's award. Also on May 20 he attended the Port Commission meeting and the Lacey City Council work session. On May 24 he attended the EDC Board of Directors meeting.

He said that a proposal is on the table for a West Olympia public plaza between Yaeger Way and Cooper Point Road on Harrison. Lastly, he reported that the EDC and Thurston Climate Action Team jointly established the Thurston Energy group who is in the process of doing energy assessments of homes, with a kick-off event scheduled for June 2. He brought copies of their brochure for members of the public.

Commissioner Barner reported he attended a portion of the WPPA Spring Meeting, but returned early to attend a day-long retreat for the Solid Waste Advisory Committee. He attended the VCB Board meeting on May 18, and the Thurston County Chamber annual meeting on May 20. He attended the Port Commission study session on May 20 as well. He also attended and spoke at the Tumwater City Council meeting on May 18, along with Kari Qvigstad, acknowledging the City's flexibility and willingness to hold action on a current ordinance until we'd had a chance to give comment.

Commissioner Davis indicated that on May 11 he attended the Tumwater Planning Commission's meeting, where he testified on behalf of the Port on the City's economic development plan. He attended a meeting of the Transportation Policy Review Board on May 12, the Tumwater Chamber meeting on May 18, and on May 20, he attended the Port Commission special meeting. He also reported that on May 18 he had the opportunity to tie up a boat at our Marina. The boat was The Cape, and Governor Gregoire had used it for the evening. He said he was able to welcome them to the Port, and commented about what a fantastic facility we have.

EXECUTIVE DIRECTOR REPORT

Mr. Ed Galligan reported that at the last Commission meeting, he'd requested citizens call and give their email address to add to our list. The phone number to call is 528-8014 to leave an email address. He thanked those who have called in already, and said our goal is to connect to every household in Thurston County in the most economical way.

He also commented on the cover story about the Peregrine falcon. He said those were Department of Fish and Wildlife volunteers doing the banding, adding that the Port staff let the falcons live in peace and don't disturb them. As a point of interest, it has been many years the falcons have been coming back to nest on the crane.

He reported that cargo ships are expected June 9 and 14, and a barge and another cargo ship is expected at the end of June. He noted that we send an email blast with a photo and short statistics about the shipment so people can be aware of it. He added that it is easy for citizens to take themselves off the Port's email list if desired.

Mr. Galligan invited the public to attend the East Bay District ribbon cutting ceremony on June 2 at 4:00 p.m., between Olympic Avenue and Jefferson Street. He said the Port will be joined by partners from the City of Olympia, LOTT, and Hands on Children's Museum.

He also commented that the Port has been involved in a legislative initiative group representing the public agencies in Thurston County. The goal of the group is to act and work collaboratively on various initiatives that each agency might be working on, and to work on those initiatives that are common and that all the agencies can support. An initiative that all agencies can work on is the I-5 strategy. The initiative group is requesting a governmental grant for work on this. Mr. Galligan said this is one example of what this group is doing to work collaboratively, and is submitting something that benefits the entire region.

In response to Commissioner McGregor's comments about the great wineries in Eastern Washington, Mr. Galligan also made comment about the fabulous wineries in the western side of the state producing world class wine.

President Barner then announced that the May 25th Special Meeting has been cancelled and will be held at another date.

LEGAL COUNSEL REPORT

Carolyn Lake provided a legal update on matters occurring since the April 26, 2010 Commission meeting.

Ms. Lake reported that in March, the Port filed Motions to Dismiss OPA's Port specific appeal pending before the PCHB. 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 Ocean Terminal. She indicated that recently, the Board declined to dismiss the case. The matter remains pending, with

a hearing date set after main appeal of 2010 Industrial Storm Water General Permit. That hearing date was just extended so this matter is not expected to be heard until mid 2011 at the earliest.

Ms. Lake also reported that Mr. West has a pending appeal of the PCHB's ruling which denied his appeal of Department of Ecology to approve the Weyerhaeuser operation to be included within the scope of the Port's Industrial General Storm Water Permit (Oct 2008). 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. Ms. Lake reported that recently, Mr. West filed a motion to dismiss and remand asking the court to find that the PCHB procedures were flawed because the Board did not record or keep transcripts of teleconferences held before it. This matter is being heard by Visiting Judge Lewis of Clark County. Hearing on Mr. West's motion was held on April 30, and attended by attorneys for Ecology, Weyerhaeuser and the Port, in addition to Mr. West. At the conclusion, the Court denied Mr. West's motion to dismiss. The matter remains set for briefing schedule and hearing on this appeal.

Ms. Lake reported on the case of Arthur West v. Washington Association of Cities et al. 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 that on or about April 23, the Port filed motions to dismiss the issues Mr. West raised specific to the Port. Hearing had been set for June 4, 2010. Shortly thereafter, the Port was notified that visiting Judge Heller had recused himself based on a claim filed against him by Mr. West. A new King County Judge was appointed (Bruce Hilyer). A status conference was held May 19, with the result that the Court denied Mr. West's Motion to reconsider the court's dismissal of Thurston County from the case, agreed to hear the Port's dispositive motions on June 4, confirmed the trial between AWC and Mr. West will be held June 7, and the Court bifurcated the claims Mr. West brought against the Port to be heard in a separate trial late summer 2010. Trial is needed only if the Court does not agree with the Port's dispositive motions.

Ms. Lake indicated that on April 27, the Court of Appeals issued its ruling in a West v. Port case, in which Arthur West appealed from the dismissal of his Land Use Petition Act LUPA petition challenging an engineering permit that the City of Olympia issued to the Port of Olympia for the Weyerhaeuser Log operation. The Court ruled that the superior court properly dismissed Mr. West's LUPA petition because he did not exhaust his administrative remedies. The Court also found Mr. West's appeal was frivolous and therefore the Court awarded the Port and Weyerhaeuser their attorney fees and costs. The Court also issued this as a published decision, which means it has value as precedent, and can be cited to as authority in future and pending matters. Weyerhaeuser and the Port each have filed their cost bills to seek reimbursement of the attorney fees and costs incurred by each on appeal; the requests are for approximately \$17,000 each.

PUBLIC COMMENT

Steve Wilcox commented that his recent letter to the editor was in effort to begin discussion on ways to restore wooden boats rather than destroy them all. He expressed concern that the Port does not try to see if the boats are restorable or try to part them out. He said restoration is a big industry in Port of Port Townsend, but almost non-existent at the Port of Olympia. He pointed out that the Wooden Boat Shows demonstrate there are a lot of people who care about wood boats. President Barner asked if Mr. Wilcox would put his ideas on paper and schedule time to talk with a Port representative. Mr. Wilcox said he will forward a response to Mr. Galligan in hopes he will pass it on to Commissioners.

Patti Belmonte echoed Mayor Mah's comments and thanked the Port Commission for their flexibility in working with them. She said she just got back from a national conference where the Hands on Children's Museum and East Bay were awarded a Promising Practice Award by MetLife Foundation and the Association of Children's Museums for green vision and using the museum as a catalyst for that cleanup, and partnership with LOTT. She said we were recognized in front of children's museums from throughout this country and from other countries as well. She also reported that yesterday the museum took possession of the first shipment of 20 foot timbers that Weyerhaeuser has donated for use in the new museum. She said that local businesses have donated trucking and storage space for them as well.

Commissioner McGregor asked Mr. Wilcox what happens to abandoned boats at other marinas. Mr. Wilcox said there are some that get destroyed there too, but some find different owners. President Barner asked if the other marinas are under different requirements than the Port. Mr. Wilcox indicated that West Bay Marina has an auction once a year, but they have a more informal process. He said if a boat is going to get cut up, it gets treated more like pick-a-part, people

remove pieces they need, so there is less left over to go into a dumpster. Commissioner McGregor responded that as a public agency we have strict requirements and an RCW to follow and a private company may not have the same requirements. He added that parting them out makes a problem because we have to account for it, and if we operate a junk yard, it may not be pleasing to look at. Mr. Wilcox suggested there may be something in between, like removing working systems first. He said he just wants to get the discussion started.

Commissioner McGregor also responded to Ms. Belmonte, saying it is always a pleasure to work with her and thanked her for all the hard work fundraising. He added that getting Weyerhaeuser to donate timber is a great start. Commission Davis echoed his comments, adding that he's looking forward to the schematics becoming reality.

ADVISORY CALENDAR

Olympic Flight Museum Air Show Advisory

Ms. Kathleen White introduced Brian Reynolds, President of the Olympic Flight Museum, and Teri Thorning, Executive Director.

Mr. Reynolds indicated that the Museum's Air Show is set for June 19 and 20 and they will also be doing a training show on June 18. He said the show is similar to that in years past and will last about 3½ hours. He said the public can visit the Museum's website for information at www.olympicflightmuseum.com.

Mr. Reynolds indicated that the Museum expects over 10,000 people to come to the area for the event. The wounded warrior event is scheduled for that Friday before and there will be some joint participation. He said that staff at the Museum works all year long to produce the show and it is an immense undertaking. He added that the event is FAA approved for all procedures and programs, and follows all safety guidelines. He noted this is their 12th year and they anticipate keeping their 100% safety record.

Commissioner Davis said he has attended the Museum's Air Show for several years and he appreciates the effort put into putting the event together.

President Barner said it is an arduous task making sure everyone's schedules are coordinated and he commended them for working all year to make it a successful event. He added that there's a lot for everyone in the county to see and enjoy at the Air Show.

Commissioner McGregor also thanked them for putting on the event and shared his pleasure at hearing the old pilot stories. Mr. Reynolds said the air show itself is a multi-faceted event. It is not only historic, but an opportunity to get young people interested in the air transportation industry.

Mr. Rudy Rudolph spoke at the request of Teri Thorning, saying that in consideration of the fact that not everyone likes aircraft noise, this year the Museum is making ear plugs available for those who would like to use them during the Friday practice and the weekend event. He said the earplugs are available for pick up at the Museum from June 7 to 17.

Port & City of Olympia Impacts on Climate Change

Mr. Rick Anderson introduced Mr. Michael Mucha, Director of Public Works for the City of Olympia and Mr. Andy Haub, the City's Planning and Engineering Manager, who provided a presentation on sea level rise and potential impacts to the Port and City. Mr. Mucha provided an overview of the City's efforts and Mr. Haub presented information about the research that has been done.

Mr. Haub indicated that the city has been trying to better understand sea level rise implications in Olympia, clarifying that he doesn't have answers for how much and how soon that will occur. He said Olympia's focus is sea level rise in response to climate change and after a public involvement program in 2007 the City Council encouraged staff to adopt a work plan that would build technical knowledge about the City of Olympia. The work plan included securing new aerial photography that is extremely accurate, and using commuter simulation to look at the interaction between extreme high tides, storm events and sea rises. The plan also includes monitoring geologic subsidence, installing a tide gauge, and understanding water supply implications.

He reviewed the current high tides and their frequency, and sea level rise interactions. He indicated that first, marine waters will most likely flow up storm water systems and discharge

through street drains. Next, staff hypothesizes storm water and piped streams may be unable to discharge fast enough during storm events and high tides, and lastly, Budd Inlet may overtop its banks. He said the first instance of water flowing backwards into our streets does happen.

Mr. Haub presented maps that project what the record high tide would look like in Olympia if it were to happen today and in future using sea rise scenarios projected by the University of Washington. He reminded the Commission that again, they don't have the ability of projecting if this will really happen or when, but their maps showed areas of vulnerability. Mr. Haub also indicated that computer simulations were used to evaluate whether a large storm event could cause flooding with pipes flowing at capacity, noting that we are fine now with adequate capacity, but there could be potential problems when there is combined moderate levels of sea rise, high tide and heavy rainfall. He then displayed maps showing potential problem areas.

Mr. Haub described the City's near term responses to the threat of sea level rise, which include raising floor elevations of new buildings, consolidating storm water outfalls, preparing for tidal gate and pump installations, heightening shorelines, installing a tidal gauge and monitoring hot spots and tides. He indicated that longer term needs are policy guidance through the City's comprehensive plan, potentially a stronger regulatory framework, infrastructure planning and ongoing monitoring.

President Barner asked if there are any requirements about retrofitting buildings to protect them from salt water, and Mr. Haub indicated they've looked nationally at what other jurisdictions are doing, but they're not to that point yet.

Commissioner Davis expressed appreciation to the City for bringing this information to the Port Commission. He noted that if there is a worst case scenario, there's still a large portion of Port property above water, adding that he understands and respects that the soil and stability of groundwater underneath could become an issue, but surface water isn't as significant as the downtown area.

Commissioner McGregor asked for an explanation of what a tidal gauge is. Mr. Haub indicated it is an accurate calibrated continuous recording system that documents tides. Commissioner McGregor also commented that LOTT is looking at putting in underground tanks to increase their storage capacity, and Mr. Haub indicated that this is not in relation to sea level rise.

President Barner expressed appreciation for the work done and ongoing efforts by City staff, saying it is significantly important to our community, businesses, and utilities and he is glad to live in a community that this is being addressed.

Mr. Galligan also thanked Mr. Haub and Mucha for allowing the Port to work with the City because everything we do going forward takes this into consideration so it is helpful to leverage the City's information.

Commissioner Davis asked if the City was working as a consortium of other cities looking at this data. Mr. Haub responded that they are working with other cities around the state and nation, and within Puget Sound, the city of Seattle, and the area counties discuss issues occasionally. He said we're all on the same track right now, working to understand the information that's available, adding that the Association of Washington Cities will play a big role in the future. Commissioner Davis also asked how the impact on Olympia relates with other cities in the state. Mr. Haub responded that Olympia is seen as being very vulnerable, we are built at a low level, we are geologically sinking, and we're at the bottom of the Puget Sound, so our tidal variation is very high. President Barner also asked if dredging Capital Lake would increase its holding capacity for rising sea water, and Mr. Haub responded that results of modeling showed there was not a definitive benefit.

Marine Terminal Stormwater Architect and Engineering Contract Advisory

Mr. Rick Anderson presented an advisory on a Marine Terminal stormwater and pavement design architect and engineering professional services contract. He indicated that the 2010 Stormwater Permit has been revised by the Department of Ecology. This revision requires an update to the Port's Stormwater Pollution Prevention Plan (SWPPP). In addition, the asphalt paving in the cargo yard needs rehabilitation to meet the stormwater permit standards.

He noted that the consultant's scope of work will be to develop a sediment sampling and analysis plan to meet the Olympians for Public Accountability settlement requirements. The plan will include sediment sampling and remote inspections of all storm drains on the Marine Terminal. The scope of work will also include preparing the updated SWPPP, recommending additional stormwater controls, a topographical survey of the log yard, preparing bid documents for

pavement rehabilitation of the log yard, incorporating SWPPP requirements, and preparing cost estimates and schedules for construction. He indicated that staff will present the request to authorize issuance of an Architect Engineer Contract at the June 14 Commission meeting.

President Barner asked if the stormwater controls take the form of structures to be built. Mr. Anderson responded that it may mean modification of existing or addition of others. In response to another question from President Barner, Mr. Anderson clarified that the pollution plan update will be done by the firm that is hired, but Port staff will oversee it.

Commissioner McGregor noted that the area behind the Warehouse is some of the oldest pavement we have. He then asked about the cost and timeline. Mr. Anderson said we don't know yet what the cost will be and the timeline will come with their proposals. President Barner asked whether the cost estimate will be worked out by the June 14 meeting. Mr. Galligan explained that this is a negotiated contract, not a low bid. After a question from Commissioner Davis about this, Mr. Anderson explained the difference between the processes for Architectural contracts and construction contracts.

Marine Terminal Rail Enhancement Equipment Advisory

Mr. Jim Amador presented an advisory to update the commission on the final portion of the 2006 Intermodal Enhancement Project. He indicated that in July of 2006 the Port Commission approved \$2.8 million for the Intermodal Enhancement Project. He reported that the final funding was received from the federal and state agencies this month enabling us to complete the final portion of this project.

He highlighted the major items completed as part of this project, the Safety Crossing on Market Street, addition of storage track, yard improvements and rail equipment. He indicated that the majority of the project was completed in 2009, but the equipment part of the project was put on hold pending the receipt of the final funding. The funding was for specific items: used railcars, underground switch, rail ramp and lifting bar. He described the rail cars that we are considering purchasing and also showed an example of the types of cargo that could be moved using those rail cars. He added that all equipment is 100% reimbursable by grant funding.

Commissioner Davis asked what the original rails cars were used for and whether we anticipate any modifications needed. He also asked how many cars we would buy initially. Mr. Amador responded that they are specialty cars for heavy weight capacity equipment and have a continued life expectancy of 40 years and are capable of continuing to go over the rail. He said additionally we can offer them to a customer to deliver the cargo and return the car as an additional revenue source. He stated that we were offered seven cars and would pick the best three to buy. In response to a question from Commissioner McGregor, Mr. Amador indicated that we are working with Tacoma Rail to get the cars certified to go over rail outside the Marine Terminal. Tacoma Rail also inspects and monitors all the switches including the Market Street crossing.

President Barner asked if we anticipate looking beyond this expenditure to acquire additional resources or equipment to give us additional flexibility. Mr. Amador responded that we had a committee look at what we could use on the yard, and we feel that three to four rail cars is close to capacity of the terminal itself. He said we prioritized a list of additional equipment and looked at funding as well. President Barner also asked if we need to build a ramp and Mr. Amador responded that a ramp would give us the ability to move equipment onto a rail car.

PUBLIC COMMENT ON ADVISORY ITEMS

No public comments were given on advisory items.

ACTION CALENDAR

Percentage Rent Revision

Ms. Kari Qvigstad indicated that in the Port's efforts to remain current with the real estate market and industry practices, staff has reviewed the Port's leasing policy and is recommending the Port Commission consider a change to its current policy.

She noted that at the May 10, 2010 Commission meeting, staff reviewed former and current Port leasing policies and presented alternatives for discussion for the percentage rents provision in its leases. She presented a sample motion for commission consideration to eliminate the percentage rent provision for new leases. She noted this does not affect current leases.

Commissioner Davis moved the Port Commission directs staff to eliminate the Percentage Rents provision for new leases and incorporate the change in policy in a master policy resolution later in the year. Commissioner McGregor seconded the motion for the purpose of discussion.

Commissioner McGregor said there are two issues. We have an existing policy in place and we've heard from people who don't like it. He suggested we need to let existing tenants decide whether to move to the new policy or stay with the old one. After additional discussion, Commission Davis rescinded his motion and Commissioner McGregor withdrew his second.

Commissioner McGregor then made a motion that the Port Commission directs staff to eliminate the percentage rents provision for new leases to reflect industry practice. The Commission will replace Port Resolution 95-04 (percentage rents) with a new Port resolution and a master lease policy change later in the year. The Commission further authorizes staff to implement the new percentage rent policy for existing Port leases affected by percentage rents policy by way of a technical amendment, should any Tenant choose to modify its existing lease terms to current lease policy and rate provisions. Mr. Galligan requested the words "to reflect industry practice" be removed and Commissioner McGregor amended his motion as such.

In response to questions from President Barner about whether new appraisals would need to be done, Ms. Qvigstad clarified that rates would be determined by current Port policy so that we would be consistent with our current lease practices.

Commissioner McGregor asked Legal Counsel if this can take place immediately or if the new resolutions need to be approved first. Ms. Lake responded that the motion gives authority so long as the resolution is done in a timely manner.

Commissioner Davis expressed hesitation about seconding the motion without seeing it on paper. He said he was comfortable with the sample motion he made which addresses future leases. He said we can look at this from two different angles, future and current leases, but he still doesn't know what that looks like. He said he thinks the intent is to allow current lessees the ability to eliminate percentage rents and go with the new lease policy. He asked who it puts the onus on as far as determining new value. Ms. Qvigstad responded that this would change the current rate formula from the existing lease term, which might have been negotiated several years ago, to the current rate using the current commission policy.

After additional question from Commissioner Davis, Ms. Qvigstad offered that it might be helpful, if the Commission has question, to bring this action item back a second time, or if there is willingness to allow, we can bring back leases on a case by case basis. She indicated that based on the ten current tenants this policy affects, no one would benefit by moving to this, but as Commissioner McGregor has pointed out, it could be a tenant's choice at some future point. Mr. Galligan also clarified that what we're offering a tenant is if you're not satisfied with the current percentage rent lease, come to us, we're open to negotiating new lease procedure.

Commissioner Davis seconded the motion.

President Barner commented that it's clear we're attempting to provide flexibility. He asked about leases being on a variety of rates. Ms. Qvigstad explained that the rate of return varies by land use and location, and each year the Commission adopts through resolution a rate schedule. President Barner said he would like some exposure to comparables of the private sector and to see what those percentage rates are. Ms. Qvigstad suggested we can schedule one on one sessions or a future special meeting in advance of the new rate resolution.

The commission unanimously approved the motion.

End of Lease Provision Language Change

Ms. Qvigstad reported that in the Port's efforts to remain current with the real estate market and industry practices, staff has reviewed the Port of Olympia's leasing policy. She noted that at the May 10, 2010 Commission meeting, staff presented background, reviewed former and current leasing policies and presented alternatives for Port's end of lease provision that addresses the tenant's disposition of improvements.

She noted that in summary, improvements to real property become part of the real property if certain tests are met. The Tenant is required to remove tenant improvements at the end of the lease term. She indicated staff is requesting the Port Commission clarify the end of lease language such that the lease addresses the Port's right to retain improvements at the end of the lease term.

Commission Davis moved the Port Commission directs staff to reinstate language in the end of lease provision where for Port may elect to have improvements remain on the property at the end of the lease term and incorporate the change in policy in a master policy resolution later in the year. Commissioner McGregor seconded the motion. The motion was approved unanimously.

The Commission requested to review the new lease language after it is revised.

City of Olympia/HOCM Purchase & Sale Agreement Amendment #4

Ms. Qvigstad reported that the Port of Olympia (Port) as Seller, and the City of Olympia as Buyer, entered into a Purchase and Sale Agreement on March 10, 2008 for the Hands on Children's Museum (HOCM) on Lot 5 of the East Bay Short Plat. She indicated that the proposed Amendment #4 would add additional language to the Purchase and Sale Agreement concerning two subjects: 1) Parking: Clarifying language is added to Section 4.8.4 (regarding Seller's right to construct a parking garage) to ensure that Buyer (City) has the ability to charge for parking on parking spots allocated to Buyer if a parking garage is built on Parcel 5B. 2) Ecology Order: Clarifying language is added to Section 7 (regarding environmental matters) to acknowledge that Buyer and Seller may both need to sign an Agreed Order with Ecology regarding the East Bay Site and to ensure that such Order will not affect the liabilities and indemnities between Buyer and Seller as provided for in the Purchase and Sale Agreement.

Ms. Qvigstad indicated that this will be going before the Olympia City Council tomorrow.

Commissioner McGregor moved the Commission ratify the City of Olympia/HOCM Purchase and Sale Agreement Amendment #4. Commissioner Davis seconded the motion. The motion passed unanimously.

City of Olympia/LOTT Agreement Regarding Easements

Ms. Qvigstad indicated that the Port of Olympia (Port) as Seller, and the City of Olympia as Buyer, entered into a Purchase and Sale Agreement on March 10, 2008 for the Hands on Children's Museum (HOCM) on Lot 5 of the East Bay Short Plat. She noted that the Purchase and Sale Agreement provides that the Property will be used solely for the construction and operation of a Children's Museum and related parking, and that Buyer shall not use the Property for any other purpose without the prior written consent of the Port in its sole and absolute discretion, and that any use of the Property approved by the Port other than a Children's Museum shall be a public use.

Ms. Qvigstad indicated that the City of Olympia and the LOTT Alliance desire to enter into easement agreements to grant LOTT Alliance the right to use portions of the Property for underground pipelines, equalization basins, and ancillary appurtenances to provide additional capacity for and sustain the long-term capability of the LOTT Alliance Budd Inlet Treatment Plant. She reported that the Agreement Regarding Easements between the Port, the City, and LOTT would approve this additional public use on the Property, subject to certain terms and conditions as provided in the proposed Agreement.

President Barner asked if there would be some kind of provision to ensure they would have unrestrained access for maintenance. Ms. Qvigstad replied that it's premature to design the future parking structure, but this agreement is written for the Port to participate in the design process and ultimate approval authority. She added that if the cost of construction increases as a result of the tanks, the Port would not be responsible.

Commissioner McGregor moved the Commission ratify the Agreement regarding easements with the City of Olympia and LOTT alliance. Ms. Qvigstad clarified that the Commission needs to give authority to the Executive Director to sign the easement agreement between the Port and City of Olympia. Ms. Lake, Port's Legal Counsel also clarified the approval is for the agreement in substantially the form presented.

Commissioner Davis asked which lots would be directly affected and Ms. Qvigstad provided further clarification. Commissioner Davis also commented that he was under the impression that if the Hands on Children's Museum does not go through then this document is null and void. Ms. Qvigstad clarified that the City intends to close on this property on May 28 and the easement would be tied to transfer of ownership to the City. In the reversion provision, if it is no longer used as a museum, we have the right to revert back to Port ownership.

Commissioner Davis also asked if we can generate revenue for LOTT's underground tanks. Ms. Qvigstad responded that this was discussed, but the Purchase and Sale Agreement was signed in March 2008 and we're working under those terms. The purchase and sale agreement will govern

how we interact after the sale is final. The Port would not be collecting revenue from the easement and ability for the city to provide that easement to LOTT for tanks. She added that if LOTT moved forward with tanks on site B and we moved forward with structured parking, there could be some benefit achieved.

Commissioner McGregor amended his motion to state the Commission gives authority to the Executive Director to sign the easement agreements between the Port and City of Olympia in substantially the form presented. He asked that staff bring it back for ratification at the June 14 meeting. Commissioner Davis seconded the motion. The motion passed unanimously.

CONSENT CALENDAR

Minutes. The minutes from the April 22, 2010, April 26, 2010, May 6, 2010, and May 10, 2010 meetings were unanimously approved.

Bills and Voucher Approval. The bills and vouchers in the amount of \$1,374,863.60 were unanimously approved. General Fund Warrants Issued: 051911 - 052172. Voided Warrants: 051996, 052051, 052111, and 052088.

ANNOUNCEMENTS

President Barner announced the Port Commission will attend a joint meeting with the Olympia Downtown Association on May 25, 2010 at 6:00 p.m. at Chica's.

President Barner announced again that the special meeting scheduled for May 25 from 3:30 – 5:30 p.m. has been cancelled and will be held at another date.

ADJOURNMENT

President Barner adjourned the meeting of May 24, 2010 at 8:13 p.m.

PORT OF OLYMPIA COMMISSION

President

Vice President

Secretary