

MINUTES  
SPECIAL COMMISSION MEETING  
JANUARY 14, 2005  
PORT COMMISSION CONFERENCE ROOM

Chairman Pfund called the Special Meeting to order and took roll call.

Commissioners present: Larry Pfund, Glenn Taggart, Jim Bergeron and Don McDaniel. Dan Hess is excused.

Staff present: Peter Gearin, Bill Cook, Ron Larsen, Rita Fahrney and Port Attorney, Heather Reynolds.

Others present: See sign-in sheet.

CHANGES TO AGENDA. Chairman Pfund called for changes to the agenda. Peter Gearin requested addition as first item, Conditional Use Permit Authorization for Englund Marine and recommended a change in the order of the remaining agenda items.

ENGLUND MARINE – CONDITIONAL USE PERMIT. Bill Cook reported Englund Marine is scheduled to break ground on April 1, 2005. They need a permit for the retail portion of their operation. He requested approval of the conditional use permit and authorization to sign it on behalf of the Port. Commissioner McDaniel moved to authorize approval of the permit request and signature by Bill Cook. Commissioner Taggart seconded the motion. The motion carried unanimously.

CONSIDER APPROVAL OF INTERGOVERNMENTAL COOPERATIVE AGREEMENT – OREGON D.L.C.D. AND PORT OF ASTORIA. Permitting process on the Near Shore Program Commissioner Bergeron has been involved in with the Lower Columbia Solutions Group to test for offshore disposal of dredged material. There is no financial cost to the Port, but the Port acting as the sponsor will allow this project to go forward. Commissioner Bergeron briefly explained the process that will be used for the study. Commissioner Bergeron moved to approve the Intergovernmental Cooperative Agreement with D.L.C.D. Commissioner McDaniel seconded the motion. The motion carried unanimously.

CONSIDER APPROVAL OF ASSIGNMENT OF LEASE – FREMONT SEAFOODS, INC. TO DA YANG SEAFOODS, INC. Peter Gearin reported as stated in the staff report is history on Port tenant, Fremont Seafoods and the tenants wish to assign their lease to either Da Yang Seafoods, Inc. or Custom Freezers. One item not addressed in the staff report is the payment of local suppliers and fishermen who are owed money by Fremont or its operators. The Port has no legal ability to demand payment to such creditors; however, Da Yang

will agree to make the payment to all legitimate invoices owed to local suppliers by Fremont and its operators if the Port makes that payment condition of its approval of the assignment and Fremont agrees to establishment of an escrow. Mr. Bennett, the attorney for Da Yang can explain this further. Peter Gearin explained it is his understanding that Da Yang intends to hold in escrow from its payment to Fremont Seafoods sufficient funds to pay all its suppliers. It is staff recommendation the lease be assigned to Da Yang with a condition of the approval subject to an escrow being established sufficient to pay the outstanding invoices of Fremont Seafoods and its operators. Additionally Mr. Gearin reported the Port has received just prior to the meeting a letter from attorney, Blair Henningsgard, who sent it on behalf of Alan Smith, a fisherman who is unpaid for delivery of sardines by Fremont Seafoods/Michael McLenaghan. The letter was read to the commission and audience for the records. The letter addresses the problems Mr. Smith has had collecting money owed and his request to the commission to assign the lease to Da Yang with condition that the new operators assume existing obligations of Fremont Seafoods.

Commissioner Taggart stated that whoever the lease is assigned to it is imperative that the commission put a condition on the lease that the local suppliers who have not been paid by either Fremont or Custom Freezers will be paid. Chairman Pfund voiced his agreement, adding the current tenant has not been making timely lease payments to the port or local suppliers and has not been holding up their end of the deal.

Commissioner Bergeron noted considerable staff time and legal expenses have been expended with the current tenant. The Port needs a tenant that has the financial ability to keep up the payments.

PUBLIC COMMENT. Chairman Pfund called for public comment.

John Hillman stated he is a spotter pilot who worked for Mike McLenaghan and Astoria Seafood. Alan Smith is owed \$32,000 and has not been paid by Custom Freezers, thus has been unable to pay him. Initial agreement with Custom Freezers is that they would be paid weekly. This has not happened. He urged the commission to consider Da Yang for assignment of the lease.

Alice Chaloux, JRC, Inc., advised Mr. McLenaghan addressed his interest in assuming the lease by letter and questioned why his letter had not been made a part of public record. Peter Gearin responded the commissioners have been given the letter and the contents of the letter never addressed submitting it for the record. Chairman Pfund added he has read the letter and also spoke with Mr. McLenaghan. He has given a great deal of attention to the matter. Alice Chaloux further noted Mr. McLenaghan addressed how he would fund the business in his letter, also that Mr. McLenaghan is attempting to pay the outstanding expenses and would continue to do so. Peter Gearin responded the letter addressed a proposal to try to obtain funds but no guarantee of it.

Bill Hunsinger, ILWU Local #50, stated Mr. McLenaghan is an employer of the local longshore force and worked with the longshoremen to get a "small ports subsidy" into the port thereby providing work for the local union members. Hunsinger further stated the Port Manager does not support the local union for providing the local work force and that other processors have hired temporary out-of-area employment agencies to fill job openings. He further noted Mr. McLenaghan is working with people owed money to get them paid and encouraged the commission to further research the issue before making a decision that could cause litigation.

Chairman Pfund stated it is the Port Commission's duty to be responsible to and for the taxpayer's money and property. Although he feels bad for the current tenants, they have had plenty of time to work as businessmen. Subject to their history and previous liens they have had, not making payments on time and taking proper care of their affairs, he is ready to make a decision.

Alice Chaloux suggested assigning the lease based on a condition that addresses where the labor pool is from. Peter Gearin replied the Port of Astoria cannot legally require tenants to draw their labor pool from a specific source.

Bill Bennett advised he is an attorney representing Da Yang Seafoods. He understands it is important to the Port to have certain provisions in the agreement to a lease assignment. Da Yang Seafoods agreed to pay a fair amount of dollars for purchase of the lease and the property on the leasehold premises. Da Yang's position is that it would be an economically good program if Anthony Su will agree to put a portion of the funds from the sale of the business into an escrow to pay bills. If Da Yang pays substantial dollars for the lease and an additional \$133,000 to pay debts, it becomes uneconomical. Fremont must agree to set aside payment terms for vendors. Bennett went on to say Custom Freezers, Fremont and Michael McLenaghan are all intertwined. It is difficult to determine whose is whose and how much money is involved. Bennett cited several outstanding fees owed to businesses by either McLenaghan or Fremont, noting there had been plenty of opportunity to pay these bills as the fish came in and the company was paid. Da Yang is a Washington corporation and going to establish Oregon corporation status. They are putting a significant amount of money into this venture and intend to put \$1.8 million in improvements into the facility.

Discussion followed on the Port's ability to place contingencies on the assignment. Heather Reynolds, as port attorney, can make those recommended conditions to the Port Commission as a consideration of assignment of the lease. Peter Gearin noted the Port was forced to file legal action against Fremont due to non-payment numerous times. If Fremont doesn't agree to the conditions and their lease is cancelled, these same issues in the lease will be part of the assignment to Da Yang.

Further discussion on the labor force followed with Bill Hunsinger noting that other processors have used a temporary labor force from Longview who vans the workers to the job and they are not contributing to the community. He urged the commissioners to talk to whomever the lease is assigned to ensure they hire from the local labor force. John Hillman said it is his understanding the temporary people were used at a certain point in the season only when there was not enough steady work for locals to count on.

Randy Stemper, Astoria Builders Supply, stated he has filed a complaint against Fremont for non-payment. He also requested that whoever takes over the Assignment of Lease have as a condition the requirement to pay the overdue bills.

Heather Reynolds explained legal provisions of the lease and the assignment of lease to protect property against encumbrances. Da Yang Seafood has provided the Port with personal guarantees and corporate guarantees from other entities in the Lung Soon Ocean Group. It has also agreed to provide for indemnity for any action brought on by any third party against the Port as a result of the assignment and eliminate Port construction and maintenance obligations on the dock apron in exchange for the last month's lease payment. This is a strong benefit to the Port.

Bill Cook commented staff worked hard with Michael McLenaghan to protect the business and although staff doesn't approach the commission with mundane issues, there was extensive staff time spent dealing with the issues.

Peter Gearin stated it is staff recommendation to accept the offer from Da Yang Seafoods.

Commissioner McDaniel acknowledged he is sympathetic to Michael McLaneghan's issues and has spoken to him; however, the Port is a business and the board has to make business decisions based on what is best for the business. There is a need for a company to take over the operation that is a substantial investor to protect the Port from risks. Commissioner McDaniel made a motion to (1) deny the request to assign the Fremont Seafood lease to Custom Freezers, LLC; (2) Approve the assignment of the Fremont Seafood lease to Da Yang Seafoods, Inc. conditioned on Da Yang Seafoods, Inc. assuming all legitimate unpaid invoices of Fremont Seafood, Inc. and its operators incurred within this Port district; and (3) approve the Second Amendment to the lease with Da Yang Seafoods, Inc. Commissioner Taggart seconded the motion. The motion carried unanimously.

There being no further business, the Special Meeting was adjourned.