

MINUTES  
PORT OF ASTORIA  
REGULAR COMMISSION MEETING  
MAY 27, 2008  
SEASIDE CITY HALL

Chairman Dan Hess called the regular meeting to order and took roll call.

Commissioners present: Dan Hess, Larry Pfund, Kathy Sanders, Floyd Holcom, and Bill Hunsinger. Chairman Hess commented on how nice it was people were able to attend.

Staff present: Ron Larsen, Port of Astoria attorney Andrew Jordan, and Esther Jones. Leslie Palmeri was also at the meeting.

Others present: See sign in sheet

CHANGES TO AGENDA. Add two 'public comments' sections to the agenda, the additional one on item #4 (a). Discussion followed on the history of changing the "public comment" segment from the beginning of the meeting to the end of the meeting. Commissioner Sanders added the board had started to use the sign-up sheet for a "specific" item when someone may have a comment. The "public comment" item had been moved from the top of the agenda to the end of the agenda some time ago, giving a person time to hear discussions, etc., in turn, enabling them to make comments afterwards. People can sign the request for a specific item or comment at the beginning and the end of the meeting.

MINUTES: Regular meeting, March 19, 2008, Workshop meeting, April 14, 2008, Regular meeting April 15, 2008, and Special meeting April 17, 2008 minutes. Regular meeting March 19, 2008 minutes were not in their notebooks and it was decided to delay approval until the next meeting.

Not seeing any written answers or follow-ups to questions the board asks in all the meeting notes, Commissioner Holcom asked what the process is. Answers sometimes come in written form and are copied to board members' mailboxes at the port's office.

Chairman Hess called for questions: Commissioner Sanders noted 1) page 4 in the April 14, 2008 Workshop minutes, at the bottom (bullet 3) should specify 'in Region 2' for ConnectOregon... 2) April 15, 2008 Regular minutes 'public comment' section, page 4, comment from Lori Durham should read 'public' interviews.... Hess called for any other corrections or additions and called for a motion to approve. Commissioner Hunsinger made the motion to approve the minutes with corrections mentioned above. Commissioner Sanders seconded the motion. The vote carried unanimously.

VOUCHERS FOR THE MONTH OF APRIL 2008. Chairman Hess called for questions on the vouchers.

- **Q:** Port's water bill high every month? **A:** The water that is metered is re-billed to tenants (users). During processing season, they are extremely high.
- **Q:** April 22, 2008, referencing legal fees, Peter Gearin. **A:** Janet Hoffman legal firm, page 10, invoice #5275. Legal firm, Janet Hoffman is the port attorney for the commission working on Peter Gearin's legal case at the time. Commissioner Holcom would like to be briefed.

Since negotiations are ongoing, port attorney Andrew Jordan suggested discussing the issue in an executive session.

- **Q:** Page 11 in the vouchers, Jet A aviation fuel (\$40,692.65). Does the port have a spending limit for approval of a bill that size? Understanding money has been spent already, do we just pay it for the amount it is for? **A:** When it is an invoice for fuel that is for re-sale, absolutely, if we order it, we pay it. Inventory on hand to sell jet fuel at the airport. **Q:** Are we rebilling, it as with the water? **A:** The fuel is sold and money is put back into the accounts after the sale of the fuel, like the water. **Q:** How does the port track the money transactions? **A:** The finance manager, Colleen Browne keeps track of the money. Receipts are kept for all fuel sales, brought in to the front desk, entered in the system as sales. Explanation continued on how prices are set.
- **Q:** Page 14, 'interest on flex lease for dredge pipe/dump truck, May 1, 2008. **A:** A flex lease loan to purchase the new pipe for the dredge.
- **Q:** Are line items annotated on the budget? **A:** More discussion followed on whether budgeted items, leases or bonds, etc., would be on the audit.

Chairman Hess called for more questions or to approve the vouchers. Commissioner Hunsinger questioned monies owed on aged receivables, Hess added it is not what we are on right now, and called for a motion to pay the bills. Commissioner Pfund made the motion to approve the vouchers for payment. Commissioner Hunsinger seconded the motion. The vote carried unanimously.

*PUBLIC COMMENT. The following public comments are not verbatim but intended to reflect the substance of matters discussed.*

- Alan Sprague of Aviation Adventures in Seaside, and another company Coast Spa and Pool Service. He's filled out the application paperwork (a 10-page form) three times to be part of the excursions offered to the cruise ship passengers.

Commissioner Sanders asked Commission President Hess to request a report by the next meeting for a follow up, possibly from the cruise marketer, Bruce Conner.

RESOLUTION NO. 2008-05 – BOARD GROUND RULES Commissioner Holcom asked to have some history of how the rules came to be. Chairman Hess answered; it is an attempt to get the board to be more cohesive. Hess continued to explain there has been a lack of communication. A training session for a day and a half had taken place with facilitator Stacey McLaughlin, who works with groups similar to ours, suggested most of the rules. The rules have been modified and changed. Questioning if port attorney Andrew Jordan had reviewed the rules, Commissioner Sanders added he had and noted the rules did not interfere with the port's by-laws.

Larsen continued to explain the attorney had offered his recommendation with the "logical progression" of items in the "consequences" section. Commissioner Pfund had a question on item 3 under "consequences" for port attorney Andrew Jordan. Item #3): 'Being given a letter or resolution of censure', asking for a legal definition of 'censure'. Jordan answered, censure although having no weight, is a scolding. It is a notice that is given to a board member if he has done something in violation of rules or policy and that he or she should not do it again. Another troubling item to Pfund is Item #4) 'being given a letter or resolution requesting the commissioner's resignation' requires a vote of the commission. Pfund, questioning whether something like that should be done by another board member, Jordan answered that although not commonly done statewide at all, it can be done.

Only a request basically, Commissioner Pfund thought it was somewhat overstepping authority. Commissioner Sanders added how it was non-binding. It simply says that members have had enough, in a public statement. Chairman Hess called for a motion to approve, striking item #4) in the consequences part. Commissioner Pfund made a motion to approve the ground rules with item #4 in 'consequences' deleted. Commissioner Holcom seconded the motion. The vote carried unanimously.

DIRECTOR PERFORMANCE EVALUATION – PUBLIC COMMENT/ADOPTION From three samples to choose from, commissioner's chose the Port of Astoria's performance evaluation (#1). Discussion on the legality and liability issues continued. The board was reminded the evaluation is only to review. Two of the samples (#s 2 & 3) involve an internal staff part, other than the board members and would be quite expensive. Commissioner Holcom questioned the legality of the evaluation form. Attorney Andrew Jordan answered the evaluation form is not a liability issue unless there are questions that are illegal, as age, religion, and gender, protected questions. The purpose of the proceeding is for the board and public to review and take public comment on the forms. He continued to explain forms # 1 & 3 are quite common. He also added it is basically up to us to select one of the forms, the most easiest and useful.

Some discussion followed on the number of times Acting Executive Director Ron Larsen had been evaluated, which was two times in the last seventeen years employed at the port. Chairman Hess reminded the board that at the time of Larsen's two evaluations, he worked for the Director, not the board of commissioners. Larsen had never been evaluated serving as the interim. Public comment is needed before the vote. Hess called for public comment. Copies of the forms were provided for the audience. For the record, no public comment was offered from the audience.

Commissioner Pfund made a motion to approve sample #1, the current port's director performance evaluation form. Commissioner Sanders seconded the motion. The vote carried unanimously.

M.S.R.C. AMENDMENT TO LEASE The Marine Spill Response Corporation has requested to extend their existing lease, exercising their second five-year option, to July 31, 2013. The company has docked a barge and a vessel at the port docks since 1993. Requested action is to approve amendment number 5, extending their lease. Chairman Hess called for questions. No questions were asked. Commissioner Holcom made a motion to approve the amendment to the M.S.R.C. lease. Commissioner Hunsinger seconded the motion. The vote carried unanimously.

BANK OF ASTORIA – CONSENT AGREEMENT, ASTORIA BAY, LLC – The board of commissioners authorized Acting Executive Director Ron Larsen to negotiate with the Bank of Astoria, for a ground lease underneath the Pier 1 building. Larsen continued to explain details of the agreement that allows the bank to sell the building. The bank will continue to make monthly payments to the port for the land lease. Ultimately, the port will have the right to approve the new owner once sold.

Commissioner Sanders questioned if the port has a right to terminate the lease. Port attorney Andrew Jordan answered that only if the bank forecloses, then we can declare a default. She turned to Commissioner Holcom for his opinion on standard lease per square foot rates for waterfront marina property. Unhappy the port did not have first right of refusal on the building, he continued to explain his concerns. Larsen explained specifics on why the payments changed. Improvements made to port's property and paid for by Taggart on the parking lot reduced the port's lease payments for the marina office. Jordan explained to Sanders there is no reason to compare the revenue the port receives for the ground lease to the amount of money we pay for office space. Those are two separate questions. The port is not under water. Discussion followed on per square foot rates the port uses.

A motion was made by Commissioner Holcom to allow the interim executive director to negotiate on behalf of the Port of Astoria a more favorable relationship with the bank. Working together with both parties put the port in a much better position. The port cannot declare a default until the bank forecloses. It was recommended to have port attorney part of the negotiations. Commissioner Sanders seconded the motion. The vote carried unanimously.

PUBLIC COMMENT. The following public comments are not verbatim but intended to reflect the substance of matters discussed

- Don McDaniel, Astoria, Oregon. - Recalling the normal procedure for leases and rentals was 10% of the most current assessed value. The second thing, every lease the port had written, a clause states the 'transfer of leasehold will not be unreasonably withheld'. He thinks the way the board is going, the bank could go to court and say the port is unreasonably withholding the leasehold transfer.
- Chris Shepard of Astoria, Oregon – Suggests the port look at the commercial aspects of the lease. By increasing the land lease rate may make the whole building not rentable to investors. He continued to explain the square foot dollar amounts and commercial rates in the area. He believes it will be very difficult for an investor to buy the building and make a profit. Good piece of property and a good location. Lease, construction, and parking issues, profits are not there.

Commissioner Sanders continued discussing details of the lease. Considering base rent rate increases, and the term of the lease, if the port does not terminate the lease we may be locked into the lease for thirty years. Commissioner Holcom asked for the executive director to give a thorough staff report (executive summary) with valid points, and monies coming in and going out.

Shepard offered his assistance. Commissioner Holcom made a motion for the executive director to negotiate and discuss with the bank issues resulting under the current lease and report back to the board their options as soon as possible. He would also like him to review the existing leases and all other existing information on this particular property working together with port attorney. Hess called for other comments, none were offered. Commissioner Sanders seconded the motion. The vote carried unanimously.

ROBERT JACOB – WAIVER OF RIGHT OF FIRST REFUSAL - At the time, Commissioner Holcom would like to make a statement of a conflict of interest, with Mr. Jacob, who is on a contract with him and be removed from the decision. Chairman Hess agreed. The board of commissioners approved a transfer of the land lease for the Cannery Pier Hotel, owned by Robert Jacob to another one of his companies, No.10 Basin Street, LLC that is merging with Cannery Pier Hotel, LLC. Commissioner Hunsinger made a motion to approve the waiver of right of first refusal, including authority for the executive director to sign the waiver. Commissioner Sanders seconded the motion. Commissioners Kathy Sanders, Dan Hess, and Larry Pfund voted yes, and Commissioner Holcom abstained. Motion carried with the majority vote.

BORNSTEIN SEAFOOD NON-BINDING TERM SHEET SUBLEASE As acting Director Ron Larsen began explaining the details, Chairman Hess interrupted to declare a potential conflict of interest. Attorney Andrew Jordan asked Hess to explain what the potential conflict is. Hess continued to explain if the company increases their production, he might get another load of crab shells from the company. Jordan continued to explain, since it is a potential conflict only, he can participate and vote on the issue.

The initial terms of the sublease between Bornstein Seafoods, Inc. (BSI) and Oregon Fish Factory, LLC. (OFF), is to sublease a portion of the existing processing facility's leased land on Pier 1 to OFF. The company is seeking approval of basic sublease terms, assisting the OFF to obtain financing to streamline the process for a complete sublease. It is only a non-binding term sheet. Larsen continued to explain the details of the master lease. He asked for questions. Commissioner Sanders had a question. Is this a sublease of the sublease? Jordan explained it is a sublease of the ground lease. Larsen added the new facility is on the land that is currently leased by BSI from the Port of Astoria. Project manager, Andrew Bornstein began a presentation of the OFF.

Commissioner Holcom made a motion to approve the term sheet sublease that will return to the board for approval as well as the Oregon Economic and Community Development Department. Commissioner Sanders seconded the motion. The vote carried unanimously.

BORNSTEIN SEAFOOD LAND LEASE – Jay Bornstein and Andrew Bornstein presented their proposal and a presentation on the Oregon Fish Factory project's parking and land lease. Bornstein continued with the PowerPoint presentation, explaining the transition from tourist type activity to industrial activity. The company's original idea came when deciding how it can transition from a seafood company into the next frontier of fish processing. The company also offered to work together on the possibility of placing a bollard on the pier to help the process continue.

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- Jared Rickenbach, contractor of Astoria, Oregon – totally 'sold' on the project due to the developers' vision and professionalism. A breath of fresh air. Enthused and excited.

Chairman Hess called for any other comments from the audience. Commissioners Holcom and Hunsinger commented they were in favor of the project. Holcom explained how he has come into the situation at a time when all parties involved have been dealing with this for three years. Larsen added he has presented everything he has to offer the board and continued to explain it is only to approve a term sheet and a sub-lease still needs approval by the port and the state. Holcom still confused with material given to them in the notebook and Larsen's staff report. Commissioner Hunsinger continued to say how he was also confused as to how prior meetings had been handled, splitting the board. He also mentioned how he wished this had started seven months ago with all the board members, instead of holding private, two-man meetings with the executive director creating inner arguments between members. Chairman Hess explained to Holcom the only item needed to approve was negotiation of a lease for the strip of land needed for parking and the non-binding term sheet. Commissioner Sanders expressed her discontent with the problems associated with the handling of the issue with the Bornsteins and the port. Commissioner Pfund added his written comments. Looking back, he believes the board should have been involved from the get go. He continued to read his statement he had written in advance. Frustrated by not receiving information from staff on other parking options also adding meetings he had requested to identify the other options. Up until now, he added, staff did not give him the information he had requested. Larsen continued to explain to Pfund the options he was asking for and the many meetings he had tried to arrange.

Before making a motion to approve the pier one land lease with Bornsteins, Commissioner Holcom had questions about parking plans and whether city planner Rosemary Johnson had approved the plan. Larsen added approved parking plans he questioned are for pier two, not pier one where the port has no plan yet. He continued to inform Holcom status of the parking details in the works for pier two. Discussion followed on the plans for parking associated to the Fish Factory and other options. Holcom further commented on how the material presented was incomplete in order to make an informational decision and had not received the plans that had been requested from staff. Andrew Bornstein explained their plans had been approved with the second parking lot by the city and had given the port a two-year timeframe to address the parking issue. Holcom stated he would like to see the document from the city. Commissioner Pfund added he had other options for parking and would not reveal the parties.

Commissioner Sanders asked if a motion could be made to allow staff to negotiate a lease for a parcel of land mutually agreeable. Holcom agreed to have a motion directing staff to "clean this up". Jay Bornstein then added he was surprised the board would allow the pier one parcel to just

sit there, waiting for something, whatever that may be. Holcom continued to say the staff report should have included the other options and had not received information he requested the week before that follows the port's master plan. Larsen continued to explain his reasoning behind his material provided for the board, visibly frustrated, began to defend his work to Holcom and agreed to provide more. Commissioner Hunsinger added he would certainly like to see option 2. Feeling like they were about to leave the meeting with still no decision, Bornstein asked what they could expect. Holcom continued to ask how long it would take to see other options. Asking Bornstein what their deadline is, they answered, yesterday, although tonight would work. Feeling frustrated and with ideas flowing back and forth, a day to discuss options was being looked into.

Commissioner Holcom made his motion to allow Acting Director Ron Larsen to negotiate for feasible parking options and set a meeting for Tuesday, next week, to revisit the issue. Still visibly frustrated with the outcome at the meeting tonight, Bornstein felt no solid decision had been agreed on this evening. Still unsure what direction the board is heading in, Bornstein would leave the meeting feeling a real decision would be made next week. Holcom continued to make a motion giving the interim executive director the authority to review locations for parking for the Bornstein facility to make an informed decision. The discussion became loud and out of hand, Chairman Hess had to speak up over the noise to bring order to the meeting. Someone in the audience had a request for a comment.

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- Ted Thomas – 392 Atlantic, Astoria, Oregon: The meeting now going on for three hours is suggesting a brief recess was needed for everyone.
- Jay Bornstein, Bornstein Seafoods: way too much on Ron Larsen and added how he believed Larsen had held the whole thing together.

After the brief recess, the meeting resumed. After returning from the recess, Commissioner Holcom stated he is modifying his motion. He was lead to believe final approval from the city was needed to move forward. He was informed by port counsel, he was not correct. The motion is to move forward and appoint the executive director to continue negotiations a final approval of options with feasibilities stated on his former motion and move forward. Commissioner Pfund seconded the motion. The vote carried unanimously. The meeting next week is still planned.

RESOLUTION 2008-06 TARIFF AND 2008-07 BOAT YARD RATE INCREASES The boatyard and moorage live aboard fees is in need of an increase in fees to keep up with property and equipment values. The active storage rates are 50% less than the competitors along with rising fuel costs, citing the reason the rates need to be reflected in the port's prices. A motion made by Commissioner Sanders to approve Resolution 2008-06 adopting modifications to Port of Astoria Tariff No. 10. and Resolution 2008-07 adopting modifications to the Boatyard and Marina Rates. Commissioner Pfund seconded the motion. The vote carried unanimously.

STAFF RECOMMENDATION – COPIER MACHINE The port's copier is very old. Staff is asking for authorization to enter into a lease with Pacific Automations for a copier that does color copies, scans, faxes, and allows staff to perform functions from their work stations. Staff did comparisons on two models and chose the model preferred and they believed would best suit the workload in the office. Commissioner Sander made the motion allowing staff to lease the copier selected. Commissioner Pfund seconded the motion that carried unanimously.

CALENDAR

- Special Meeting, Tuesday, June 3, 2008 at 3:00 p.m.
- Port of Astoria Meet and Greet at the Columbia River Maritime Museum for executive director top applicants for the job on June 6, 2008.
- Workshop, June 10<sup>th</sup> and Regular meeting and budget hearing June 16, 2008.

REPORTS: Commission

Commissioner Sanders:

- Executive director search paperwork
- Norwegian Pearl reception
- Clatsop Economic Development Resources (CEDR) meeting and their director search.

Commissioner Hunsinger:

- Attended are the same everyone else had attended

Commissioner Pfund:

- Surgery on his knee

Commissioner Holcom:

- Attended lunch receptions for inaugural cruise ship visits

Chairman Hess reported:

- Various meetings for the port

Chairman Hess called for other public comments.

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- Kris Calvin of MSRC from the Washington state office: mentioned he had been to several port meetings for a year and a half following contract negotiations of the marine spill operations. He added he was at the meeting to express when his organization had difficulties with their lease he wanted to let the board know Ron Larsen has always kept them focused on items that needed to be resolved with the board. He continued to express his support for Larsen and port staff. He has always responded well when they had questions. Considering the negative comments he heard at tonight's meeting he just wanted to let the board know staff at the port are the ones with the knowledge and integrity.

OTHER BUSINESS

Commissioner Sanders noted we should appoint a budget committee member. Three people are willing to serve. Only one vacancy, Sanders moved to appoint Dan Brown to fill the vacancy. Commissioner Hunsinger expressed opposition. Commissioner Pfund added, Brown only mentioned of willingness to help and maybe it was time to have new people if the port had received other offers. Commissioner Holcom seconded the motion. Commissioners Hess, Sanders, Holcom, and Hunsinger voted yes, Commissioner Hunsinger voted no.

With no further business to discuss, the meeting was adjourned.