

**PORT OF ASTORIA  
SPECIAL COMMISSION MEETING MINUTES  
JANUARY 12, 2010**

**1. CALL TO ORDER/ROLL CALL**

President Hunsinger called the meeting to order at 6:03 pm and took roll call.

Persons present were:

Commission: William Hunsinger, President; Floyd Holcom, Vice-President, Dan Hess, Secretary; Lawrence Pfund, Treasurer; and Jack Bland, Asst.

Secretary/Treasurer.

Staff: Jack Crider, Executive Director

Staff Support: Janet Farstad and Lesle Palimar

News media: Cassandra Profita, The Daily Astorian and Jeff Nelson, KAST Radio

Guests: Lori Durheim, Ted Thomas, Pam Hunsinger, Jim Larsen and Rachel Jensen

**2. AGENDA CHANGES**

To move Resolution 2010-02 and Peter Gearin into number 3 agenda item.

**6. PETER GEARIN HEARING ON LEGAL FEES – RESOLUTION 2010-02**

At issue is whether the Board should pay or reimburse Peter Gearin for legal expenses incurred in defense of his prosecution for dredging violations which occurred while Mr. Gearin was Executive Director of the Port of Astoria; and whether Resolutions 2005-27 and 2005-08 which authorized to retain the law firm of Lane Powell Spears Lubersky LLP as separate counsel for the Port Director authorizes payment.

According to the Port Staff Report attached to Resolution 2010-02, there is no entitlement to legal defenses to indemnity someone for their own willful misconduct. In pleading guilty to the felony charge, Gearin admitted he knowingly violated the terms of the federal dredging permit in March 2005 during a period when he was the Port's Executive Director. This admission clearly indicates that Gearin's action is outside the good faith act of omission language of Resolution 2005-27.

Legal counsel for the Port of Astoria, Andy Jordan joined the meeting via telephone. Andy Jordan opened the hearing announcing that the original hearing scheduled on December 29 was postponed by Peter Gearin's attorney, Steve Unger of Lane Powell Law Firm. He then talked about the process of the hearing.

Peter Gearin read his statement (attached) objecting to the proceedings and requesting a 30-day postponement based on the need to acquaint new counsel with the issues and to prepare a response to the resolution.

President Hunsinger called for the question.

**Commissioner Holcom moved to adopt Resolution and Order 2010-02 IN THE MATTER OF AUTHORIZATION OF PETER GEARIN'S LEGAL DEFENSE**

**AND DENIAL OF REQUEST TO PAY LEGAL FEES, seconded by Commissioner Pfund.**

Commissioner Hunsinger asked if the letter of December 28 from Gearin's attorney waiving his right to a Public Hearing should be entered into the meeting.

Andy Jordan said yes it needs to be in the record.

Commissioner Bland voiced concern over the time allowed for Gearin to get his new attorney up to speed in order to represent him at the Hearing.

**President Hunsinger called for a vote:**

**In favor of the motion: Commissioners Holcom, Hess, Pfund and Hunsinger**

**Against the motion: Commissioner Bland voted no only because of his concern for additional time needed for Gearin's new attorney.**

**3. ASTORIA SEA SCOUT STORAGE BILL**

Hal Norman, Skipper of Sea Scout Troup 635 informed the Commission on his goals to reinstate the Astoria Troup for kids 14 – 20 years in age. Their assets include a building, 26' Pearson rescue boat, 26' sailboat, and a 40' sheriff patrol boat that needs lots of work (+\$2,000). Within 3-6 months they will know if the sheriff patrol boat can be fixed or should be sold.

Commandant Jim Larson talked about the Astoria history dating back from 1920 to 1970 as the Flying Clouds. It was restarted in 1989 to 2006 and very active until the then Skipper had a change in his work schedule and couldn't keep up with the activities. They are now looking to reinstate the group within the next six months. The Sea Scouts provide navigational and safety training along with a positive approach to life skills.

Jack Crider said that they had paid the marina bill and proposed the scouts work at the pier to off-set moorage fees.

Commissioner Holcom talked about the large group of scouts that comes to Camp Rilea each year and that he would like to have the kids involved with the port instead of a hard line collection for moorage.

Commissioner Pfund said that the scouts are a local non-profit group that the Commission could allow special conditions.

**Commissioner Hess made a motion to chop off now the charges in the boatyard for six months with an option for another six months and to return to the Board in six months for an update on their progress, seconded by Commissioner Holcom and unanimously approved.**

President Hunsinger requested an update in three months.

4. A. **FEDERAL REQUESTS FY 11**

Several projects from this last year were discussed, noting that the federal requests from FY 10 that were not funded should be used again this year to be consistent; not coming up with new projects every year.

**B. DC TRIP**

Jack Crider asked who might be interested in going from February 28 to March 4, cost is about \$5,000. Past procedure has been for the President and possibly another Commissioner along with the Executive Director.

President Hunsinger declined the offer due to impending surgery, but requested that he switch with Vice-President Holcom . Holcom would go this year and he would go next year.

Commissioner Holcom said if he goes that he wants a clear delineation of the projects and what needs to get done. He wants a collective plan on what needs to be achieved. He then voiced his frustration on the slow completion of the Strategic Business Plan and that the Port should be using that document to influence the project list.

Jack Crider talked about the need to retain presence in DC, that the Port went last year but not for several years prior to that. The problem is matching the projects to accounts in the federal requests. Also not all the contacts in DC are about projects, but creating relationships.

**C. LOBBYIST**

Last year the Port hired Jim Beal for federal request lobbying, although throughout the year he did work on some state funding that was successful. FY 10 federal requests were not successful but it takes time. He also helps the Port to identify accounts for the funding applications.

5. **RESOLUTION 2010-01 – OREGON PORT REVOLVING FUND  
LOAN FOR AIRPORT T-HANGAR**

A resolution authorizing a loan from the Oregon Port Revolving Fund with the Oregon Business Development Department in the amount of \$400,000 whose proceeds are for the construction of a T-Hangar at the Astoria Regional Airport.

**Commissioner Holcom made a motion to approve Resolution 2010-01, seconded by Commissioner Pfund and unanimously approved.**

~~6. RESOLUTION 2010-02 – PAST DIRECTOR'S LEGAL FEES~~

7. **DSL PIER LEASE AGREEMENT**

The Division of State Lands has approved the request for State Waterway Lease 394-16ML and requesting payment of \$100,493.97 for lease years July 1, 2007 to June 30, 2010.

Commissioner Holcom expressed his doubt that DSL has authority to tell the Port what a wharf is, based on the new administrative rules not yet approved. He believes this goes beyond DSL's jurisdiction and they are getting into Port business.

**Commissioner Pfund moved to request a date extension on the DSL Pier Lease Agreement. Commissioner Holcom seconded the motion and amended it to ask DSL to approve the fact that they have authority to determine a "wharf" as it is believed to be a statute conflict. Vote was unanimous to approve the motion and second.**

President Hunsinger recommended a 30-day extension.

**8. TONGUE POINT LEASE RATES**

Jack Crider presented proposed North Tongue Point Tariffs as of November 1, 2009 as an amendment modification to the ports existing tariff schedule.

No objection was made to the proposal; it will proceed forward for policy approval at the next meeting.

**9. PUBLIC COMMENT**

Lori Durham thanked Commissioner Bland for promoting the tug project and Commissioner Holcom for his different issues. Complemented them on good work.

**10. RECESS at 7:30 pm TO EXECUTIVE SESSION IN ACCORDANCE WITH ~~ORS 192.660 (2) (c) TO CONDUCT REAL PROPERTY TRANSACTIONS AND ORS 192.660 (2)(b) TO CONSULT WITH ATTORNEY REGARDING LITIGATION.~~**

Commissioner Pfund left the meeting.

**11. RECONVENE SPECIAL MEETING FOR ANY ACTION ITEMS**

A. Upcoming dates:

- Jan. 13 @ 9:30 Senator Wyden at High School
- Jan. 14 @ 10:00 OPPA meeting in conference room
- Jan. 14 @ 3:00 Congressman Wu at Tongue Point
- Jan. 15 @ 10:00 Airline Consortium meeting conference call
- Jan. 15 @ 3:00 100 Year Celebration kick-off meeting at Ship Yard Bar & Grill
- Jan. 28 TBD proposed Budget Committee meeting

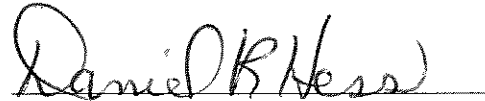
**12. ADJOURNED at 8:22 pm**

APPROVED

ATTEST:



William L. Hunsinger, President



Daniel Hess, Secretary

Submitted by Janet Farstad, Special Projects



*Port of Astoria  
North Tongue Point Tariffs  
As of November 1, 2009*

Piers and docks

Pier space	\$0.25/ft/day
Barge loading dock (Day use)	\$500.00/day
Long-term (7 days or longer)	\$6.00/ft/month
Floating dock	\$0.50/ft/day
Launch ramp	\$500.00/day
Long-term annual in advance	\$5.00/ft/month

Vacant land

Uplands, less than 1 acre	\$0.10/sq/ft/month
Uplands, 1 acre and over	\$0.05/sq/ft/month

Hanger space

Warehouse >1,000 square feet	\$0.30/sq/ft/month
Warehouse <1,000 square feet	\$0.50/sq/ft/month
Office space (remodel) (Hanger 3 E)	\$1.00/sq/ft/month
Office space (Hanger 3 W)	\$0.75/sq/ft/month
Quonset-Hut	\$0.40/sq/ft/month

Freight loading

Truck dock	\$100.00/day
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Equipment

Forklift	\$65.00/hour
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Man power

	<u>MTCE</u>	<u>L/S</u>
Straight Rate	\$66.00	\$88.00
Premium Rate	\$99.00	\$113.00
Holiday Rate		\$113.00
Line Handlers		\$99.00/hr (see minimum)
(Minimum call out: two men, two hours)		
5 hour total		\$495.00

Utilities

Water	Cost plus 15%
Power	Cost plus 15%
Garbage	Cost plus 15%
Hazardous waste disposal	Cost plus 25%

Potable water

Connect/disconnect	\$200.00/occurrence
Meter service	\$75.00/month
Water	Cost plus 15%

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Before the Port of Astoria Commission, January 12, 2010

My name is Peter Gearin. I reside at 1117 Jerome Ave, Astoria, Oregon.

I object to the proceedings here tonight. I requested a 30 day postponement of these proceedings based upon the need to acquaint new counsel with the issues, and to prepare a response to the Resolution and Orders on this evening's agenda.

The port took six months to respond to my request for reimbursement of my legal fees. Now it denies my simple request to delay for 30 days to evaluate the port's position in this matter. That position was not made available to me until yesterday, January 11.

You have in your commission packets this evening R&O No. 2010-2 denying my request for reimbursement of my legal fees. Obviously your decision has already been made. I am unaccompanied by my lawyer, and do not waive any rights by speaking here tonight.

I would like to use my time to provide a little refresher course on the history of what took place during the 2004/2005 dredging season, which explains why I believe I am justified in demanding the Port honor its contractual obligation in this matter.

In the Presentence Investigation Report covering the dredging violation, prepared for US District Judge, Ancer Haggerty, as agreed to by the US Attorney and the Environmental Protection Agency, the following statement was made:



economic hardship on both the port and local businesses. Cruise ships were not the only concern.

Construction of the Bornstein plant was dependent on the dredging. Timing was of particular concern because of the condition of their old plant; one engineer suggested it should be condemned. Fortunately for the Bornsteins and their employees, they were able to complete construction of the new building, so they didn't have to see if the old plant would have held up for another year.

Soon after the close of the dredge season, I advised the port commission by memo that "It was a difficult two months . . . but sufficient dredging got done to support the cruise business and the Bornstein project. There will be some fall out. We released water from the weir before sampling."

Shortly thereafter, in my absence out of the country, Port council Heather Reynolds hired environmental lawyer Mike Lilly to deal with the potential dredge claims. Lilly and then- port Deputy Director Bill Cook conducted an investigation into the dredge violation and reported the results to the Corps of Engineers. Lilly also recommended to Reynolds that the Port retain individual criminal lawyers for both the port and me. On July 19<sup>th</sup>, 2005 in the absence of a policy regarding legal defense, Resolution & Order 2005-27 was adopted, and immediately followed by the adoption of Resolution & Order 2005-28 approving retention of legal counsel for me.

The commission was clearly satisfied in adopting R&O 2005-28 within the policy established by R&O 2005-27, as they were fully aware of the violation at the time it occurred, and throughout the period leading up to the port's decision to provide legal counsel for me.

Over the ensuing 20 months until my separation from the port, the port paid my legal bills in a continuing indication of their satisfaction that the provisions set forth in the policy were met.

"On March 10, 2005, the Columbia River Estuary Task Force (CREST), a local government council contracted to test the water at the site, tested water samples from the settling pond. CREST noted that the pond was overflowing into the river. The discharge was ultimately investigated by the Army Corps of Engineers and Environmental Protection Agency, who determined that Gearin was aware of and allowed the discharge on March 10, 2005. Further testing revealed no evidence that the discharge water or sediment violated water quality standards, or that it contained hazardous levels of contaminants." That was the sole violation of the Clean Water Act to which I plead guilty.

On March 10, 2005, a representative from CREST called me to advise that we were not authorized to release water from the settling pond until the water was tested, and we received authorization from the Corps to release the water. I instructed CREST to have the water immediately tested via an expedited service, but we did not stop dredging. On the same day, a commissioner called saying that CREST had called him. I relayed my conversation and decision to continue dredging. I also relayed the incident to a second commissioner.

Thus two commissioners were then knowledgeable about the dredging violation, and neither questioned my action to continue releasing water from the settling pond.

Commissioners Pfund and Hess, you were there during the 04/05 dredge season. You remember the contamination issues that necessitated the settling pond in the first place. You remember that we didn't get the dredge permit until February 24<sup>th</sup>, four days before the end of the dredge season.

Even with the extension, it was necessary to dredge 24/7 in order to dredge slip 1 where cruise ships were scheduled in four months time. Dan, you remember what happens when the port can't accommodate ships. The port used to layberth the tanker fleet until one ship broke loose and the port got blackballed by the tanker operators. The thought of having to turn the cruise ships away was a very real concern, and one that if it came to pass could have created significant

I have read the Council Action and Staff Report attached to R&O 2010-2. I am neither a lawyer nor do I have a lawyer present and therefore cannot comment on legal issues. However I can comment on factual issues. I was not criminally charged with a violation of the Clean Water Act. I voluntarily plead guilty and negotiated a plea agreement with the US Attorney.

Upon separating from the Port, the port agreed to retain counsel for me until resolution of 2004/05 dredge violations. That violation has been resolved, and now the port should live up to its obligation.