

MINUTES OF EVERETT PORT COMMISSION WORK SESSION  
September 1, 2009

PRESENT:	Philip B. Bannan	President
	Michael F. Hoffmann	Vice President
	Duane Pearson	Secretary
	John Mohr	Executive Director
	Karen Clements	Chief Fin. Officer
	Brad Cattle	Port Attorney

CALL TO ORDER: Commissioner Phil Bannan called the meeting to order at 9:01 a.m.

1. COMMISSION PRESIDENT'S REPORT

**Consideration of Resolution No. 921 – Review of Decision of Collins Building Tax Levy**

Port attorney Brad Cattle said that in order for the Commission to consider possible action for Resolution No. 921, for review of the decision of the Collins Building Tax Levy, each of the Commissioners need to consent to the consideration of the resolution at the September 1, 2009 meeting. If the resolution is adopted, it will be delivered to the Auditor by September 2, to effectuate removing the levy from the November election ballot. Brad Cattle requested that each commissioner consent to the consideration of Resolution No. 921 at the September 1, 2009 meeting.

Commissioners Phil Bannan, Michael Hoffmann and Duane Pearson each consented to consider Resolution No. 921 at the September 1, 2009 Commission meeting.

Commissioner Bannan announced that he had solicited emails from the public on whether or not the Port should move forward with the Port's tax levy proposal. He prepared a summary of the responses from his queries and indicated there was a fair amount of people in favor of the tax levy, and a number of people against the tax levy.

Commissioner Bannan invited public comment on the tax levy proposal.

Jeff Hall, Everett, said that he supported pulling the levy from the ballot.

Dan Clements, Everett, urged the Commission to keep the tax levy on the ballot because he felt the only vehicle to save historic structures was by having public support through a tax levy.

Sue Pellegrini, Everett, asked the Commission to withdraw the levy.

In support of keeping the tax levy on the ballot, Commissioner Duane Pearson provided his assessment of the Collins Building based on geography, finance and legal interpretation.

Commissioner Pearson stated that the Commission has followed all of the procedures required to evaluate and assess the issue related to the deconstruction of the Collins Building and demonstrated that restoration is not economically viable. From the economic analysis, whether the levy is now or in the future, the cost of restoration will never be economically viable. Lease income may increase based on inflation, but it will never catch up with restoration costs, which also follows inflation rates. The Craftsman District will be completed next year and removal of the Collins Building and its use within that project are needed now.

Commissioner Pearson added that the Port Commission and staff have devoted an inordinate amount of time, effort and expense in responding to the Collins Building issue and the Port needs to focus on its primary business. The levy is in place and it is time to move forward.

Commissioner Hoffmann said he was concerned about the public's perception of the levy, that it may be considered a ruse brought forward by the Port. He would like to

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see the Port's image improved and not hurt. The proponents of the Collins Building are opposed to the levy, or the funding mechanism it represents. The Port chose this funding mechanism because it is the mechanism that could bring the issue to closure. Commissioner Hoffmann said as a good faith effort in response to the community, he would be in favor of dropping the levy.

Commissioner Bannan said that the Commission voted to put the tax levy on the ballot. If the Commission wants to reconsider that, the Commission would have to vote on a new resolution to remove the tax levy. At the same time, the Corps of Engineers has received an appeal whereby a response is due, and the City's issuance of the demolition permit has been challenged in court.

Brad Cattle said the appeal to the Corps of Engineers is a dispute resolution process within the Memorandum of Agreement that is a two-step process. The first step was exhausted by a 30-day time period that ran without a conclusion. The second step is a 30-day response time from the Advisory Council on Historic Preservation (ACHP). The Advisory Council makes an advisory recommendation that will go back to the Seattle Office of the Army Corps of Engineers who will then make a decision. As of August 31, 2009, nothing had been received from the Advisory Council. If a response is not received within the 30-day timeframe, the Corps is able to make a decision without the input from the Advisory Council.

The preliminary injunction was issued within Superior Court on the basis that the dispute resolution process should be allowed to run its course. Upon completion of the dispute resolution process, the port may be able to go back to superior court and dissolve the preliminary injunction.

Commissioner Bannan said that by setting the levy aside, the port could have the issues resolved before November. Brad Cattle said there is a second superior court proceeding which is the land use petition. The land use petition is a pending action.

Commissioner Bannan asked if staff has direction to proceed with deconstruction once all of the legal hurdles are clear. Port attorney Brad Cattle said that Resolution No. 918 directs staff to resume the course of action after the election results are certified. If the election results are not successful, that would defer to any superior court restraint if still pending at the time. Resolution No. 918 says if results of election are unsuccessful, Resolution No. 914 would set forth direction to staff.

Commissioner Bannan said the probability of the levy passing is low, so it is a test of public opinion. Commissioner Pearson said it was a test of public opinion, a test of financing, and is the only source of financing that has been pursued.

Commissioner Hoffmann said the tax levy would not be a legitimate barometer on how the public feels due to the current economy.

Commissioner Bannan commented that the levy is likely to fail, and the port should move on with its process. He said he was willing to vote affirmatively to pull the tax levy.

Commissioner Michael Hoffmann moved to adopt Resolution No. 921 to pull the tax levy from the General Election Ballot. Commissioner Phil Bannan seconded the motion. He said an affirmative vote on Resolution No. 921 would pull the tax levy from the ballot. A negative vote would keep it on the ballot.

Vote:	2-1
Yes:	Bannan, Hoffmann
No:	Pearson
Abstained:	None

Motion Passed.

Commissioner Bannan said in conclusion, the tax levy will be pulled from the ballot, and Staff has direction to proceed with the legal processes underway. Staff will file Resolution No. 921 with the Auditor that will formally remove the tax levy from the election process. Staff will prepare a resolution that will address the implications of Resolution No. 918, and bring it back to the Commission at the next meeting.

2. EXECUTIVE DIRECTOR'S REPORT

**Washington Aerospace Partnership**

Executive Director John Mohr reported that he would bring information relevant to the Washington Aerospace Partnership to the Commission at the September 8, 2009 Commission meeting.

3. CHIEF FINANCE OFFICER'S REPORT

**Petty Cash and Travel Advance Funds – Resolution No. 919**

Chief Finance Officer Karen Clements presented Resolution No. 919 to the Commission which increases the Fuel Dock Change Fund by \$100.00 – from the current \$200.00 to \$300.00. The resolution also addresses that the Boat Ramp Ticket Machines no longer need a change fund in the amount of \$760.00, because they have been replaced with ticket machines that do not give change.

Staff will recommend approval of Resolution No. 919 at the September 8, 2009 Commission meeting.

**Environmental Reserve Account Report**

Karen Clements provided the Environmental Reserve Account Report to the Commission. Per Port Commission policy, 10 percent of the property tax levy is reserved in the Environmental Reserve Account for projects and/or programs that benefit the environment. This program began with tax collections in 1996. From the year 2000 through 2008, the Port expended in excess of \$10 million on environmental projects and programs. The 10 percent of property taxes placed in the Environmental Reserve Account from 1996 through 2008 totaled \$4,351,947.47, and the balance in the account was \$401,370.33 at December 31, 2008, before it was allocated against environmental projects and programs.

4. OPERATIONS REPORT

**Marina Report**

Scott Grindy, Facilities and Security Director, provided a brief Marina report to the Commission.

**Boat Auction – Resolution No. 920**

Scott Grindy presented Resolution No. 920 to the Commission which authorizes the Executive Director to hold a public sale of vessels as a result of abandonment or non-payment of moorage fees.

Staff recommends approval of Resolution No. 920 at the September 8, 2009 Commission meeting, which authorizes Staff to proceed with the public sale of vessels.

5. PROPERTIES REPORT

**West Marine View Drive Improvements – Modification to Professional Services Agreement**

Chief of Properties Larry Crawford reported that the Port obtained funding through the American Recovery & Reinvestment Act for improvements to West Marine View Drive from 10<sup>th</sup> Street to 16<sup>th</sup> Street. In order to qualify for the funding, the design required Washington State Department of Transportation approval and fund commitment.

The previous design completed in 2006 by David Evans & Associates anticipated that the improvements would be constructed as existing businesses were relocated and new access points were required for the North Marina Redevelopment project. The original design required substantial revision in order to continue serving existing businesses, comply with state and federal

roadway standards and provide bid support services to the City of Everett who will construct the project. The project is anticipated to start construction in late September and be completed by March 2010.

Larry Crawford asked the Commission to authorize the Executive Director to amend the Professional Services Contract with David Evans and Associates for additional engineering support services for the West Marine View Drive Improvement project in the amount of \$22,200, for a total contract amount of \$116,800.00.

Commission Michael Hoffmann moved to approve the amendment to the Professional Services Contract with David Evans and Associates in the amount of \$22,200, as presented. Commissioner Duane Pearson seconded the motion. A vote was called for:

Vote:	3-0
Yes:	Bannan, Hoffmann, Pearson
No:	None
Abstained:	None

Motion carried.

## 6. PROJECTS UPDATE

### **Pier 3 Pile Repairs, Rebid – Contract Award**

Chief of Engineering & Planning John Klekotka reported that at Commission direction, Port staff prepared a rebid for the Pier 3 Pile Repairs project. The bids will be opened at 2:00 pm today. Staff will make a recommendation to the Commission at the September 8, 2009 meeting.

### **Marina Flotation and Float Surface Repairs**

Project Manager Poli Luis reported that upgrade of marina flotation was recommended in the 2005 Condition Assessment Report. The South Marina float and finger concrete surfaces have eroded due to age and severe weather conditions and require repairs.

Port staff received five bid submittals for the Marina Flotation and Float Surface Repairs project ranging from \$277,649.74 to \$488,800.88, including Washington State Sales Tax (WSST). Bids were evaluated for compliance. Shoreside Marina was the low bidder in the amount of \$277,649.74.

Commissioner Michael Hoffmann moved to award the Marina Flotation and Float Surface Repairs project in the amount of \$277,649.74, including WSST, to Shoreside Marina. Commissioner Duane Pearson seconded the motion. A vote was called for:

Vote:	3-0
Yes:	Bannan, Hoffmann, Pearson
No:	None
Abstained:	None

Motion carried.

### **TSA Rd 7A TWIC and Access Control/Lighting and Intrusion Detection**

Project Manager Poli Luis reported that the TSA Rd 7A TWIC and Access Control/Lighting and Intrusion Detection project will add new security cameras, a TWIC building, fence, gates, signage, pavement markings and lighting upgrades within the Marine Terminals. The Commission approved a call for bids for the project in May of 2009.

Five contractors submitted bids for the project ranging from \$703,003.39 to \$1,245,156.28, including WSST. Bids are being evaluated for compliance with requirements, and Port staff will present the bid results to the Commission at the September 8<sup>th</sup> meeting.

7. COMMISSIONER COMMENTS

Commissioner Hoffmann said he that he felt the Port made the right decision in pulling the tax levy. At a cost of \$400,000 for the Interpretive Program, the Port is getting value with regard to the history of the waterfront. Since the Collins Building is in a \$10 million shortfall for being viable, there is a lot more worth for the community with the mitigation of the Interpretive Program. Commissioner Hoffmann said that he believed the levy was placed on the ballot in good faith. Any suggestion otherwise is conjecture.

Commissioner Bannan said there were very good arguments pro and con in terms of the tax levy. He supported the Commission's decision to pull the tax levy.

Commissioner Duane Pearson said that he wasn't sympathetic to the levy process, even though he supported it.

Commissioner Pearson added that one topic that the Port Future's Group did not focus on in their presentation was the area of real estate management and leases for the Port. Steve Hager has been hired on a short-time basis for this type of work, and the Port is large enough to have somebody full time. He will discuss this topic with members of the Port Future's Group and bring their recommendations back to the Commission in a future meeting.

8. CITIZEN COMMENTS

There were no Citizen comments.

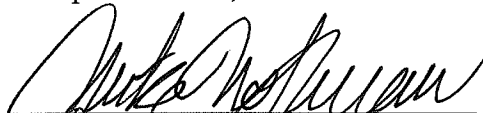
THE WORK SESSION was recessed into Executive Session at 9:58 a.m. for approximately 45 minutes to discuss with legal counsel a pending litigation matter, a real estate negotiation matter and legal issues pertaining to property that is currently rented. No action was taken by the Commission and no announcements were made.

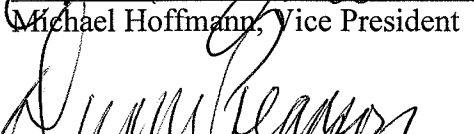
THE WORK SESSION WAS ADJOURNED at 10:46 a.m.

APPROVED: THIS 13<sup>th</sup> day of October 2009. EVERETT PORT COMMISSION

By:

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Philip B. Bannan, President

  
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Michael Hoffmann, Vice President

  
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Duane Pearson, Secretary