

MINUTES OF EVERETT PORT COMMISSION WORK SESSION

April 3, 2012

PRESENT:

Troy McClelland	President
Michael Hoffmann	Vice President
Tom Stiger	Secretary
John Mohr	Executive Director
Karen Clements	Chief Fin. Officer
Brad Cattle	Port Attorney

CALL TO ORDER: Commissioner Troy McClelland called the meeting to order at 5:04 p.m.

There was no Consent Agenda for April 3, 2012.

1. EXECUTIVE DIRECTOR'S REPORT

Washington DC

Executive Director John Mohr reported that Commissioner McClelland, Les Reardanz, Lisa Lefebber and John Mohr attended the American Association of Port Authorities meeting in Washington DC recently, and also took the opportunity to meet with the legislative delegation to discuss the Port's federal priorities which are the transfer of the Mukilteo Tank Farm and the relocation of the lower settling basin in the Snohomish River. Staff has been working very closely with Congressman Larsen's office and Senator Murray's office on the relocation of the settling basin. Also, while in Washington DC, word was received from the Seattle Corps of Engineer's office that they have approved the Section 107 program that will allow the study for the relocation of the lower settling basin.

Commission Retreat Recap

John Mohr reported that both the power point presentations and podcast from the March 27-28, 2012 Commission Retreat are available on the Port's web site for interested citizens.

Port Memberships

John Mohr reported that a review has been done regarding the Port of Everett memberships and Port counsel Brad Cattle will provide a review of the Executive Director's authority in approving Port memberships.

Brad Cattle said that under the Delegation of Authority resolution, the Commission allows the Executive Director to approve memberships up to a spending authority of \$15,000. In excess of that spending authority of \$15,000, the Commission has to approve the memberships. There are two memberships that exceed \$15,000. One of the memberships falling within that category is the Economic Alliance Snohomish County (EASC) and Commission President McClelland is employed by this organization. Since Commissioner McClelland is a Port Commissioner and his employer, Economic Alliance Snohomish County, would be receiving a membership fee, the Executive Director asked Port counsel to review the matter as to whether or not there is any conflict with state law in the Commission action approving that membership. The Port in the past has not had a contract with EASC and if approved, there would be no contract – it would be a membership, and there is a distinction with that. Commissioner McClelland would receive no benefit from the Commission approving the membership as his compensation is not affected by that in any way. Commissioner McClelland did not participate in the Executive Director's recommendation to select the EASC as one of the memberships that he is recommending to the Commission, and Commissioner McClelland from the EASC side of the equation did not participate in establishing the recommended membership fee that the Port is to pay if the Commission decides to participate as a member in the EASC.

In going forward with the Commission action, and in prior discussions with Commissioner McClelland, it is legal counsel's recommendation that he not

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participate in a vote with the Commission on this matter and that he disclose for the record his connection with and employment with the EASC. Based upon all of those factors, it is Port legal counsel's conclusion that there would be no conflict in the Port Commission taking action to approve a membership with the EASC, in particular with the code of ethics for municipal officers which is Chapter 42.23 of the Revised Code of Washington.

Upon discussion with the Executive Director, Port counsel contacted the State Auditor's office and discussed the matter with the legal advisor for the State Auditor's office and she was in agreement with Port legal counsel's analysis.

Port counsel recommends that when the Commission is considering taking action on the EASC membership that Commissioner McClelland should disclose for the record his position and involvement and then recuse himself from participation. The Commission then can proceed to take consideration of the membership and take whatever action it chooses to take. If the Commission were to approve the EASC membership, there would be no conflict with state law.

John Mohr stated that he has reviewed the list of membership dues and fees and stated that he is familiar with all of the organizations. All but two of the organizations are within the Executive Director's approval authority. John Mohr asked the Commission to consider the Washington Public Ports Association membership first and then following legal counsel's recommendations, consider the second membership dues.

John Mohr asked the Commission to consider the approval of the Washington Public Ports Association 2012 membership dues and the annual building assessment in the total estimated amount of \$48,103. The Port of Everett Commission previously approved the building assessment of five equal annual payments of approximately \$5,000 and that assessment is included in the \$48,103.

Commissioner Michael Hoffmann moved to approve the renewal of the Washington Public Ports Association membership for the year 2012 in the amount of \$48,103, including the annual assessment for the purchase of the building. Commissioner Stiger seconded the motion. A vote was called for:

Vote: 3-0

Yes: McClelland, Hoffmann, Stiger

No: None

Abstained: None

Motion carried.

Commissioner Troy McClelland stated that as the President and CEO of Economic Alliance Snohomish County, and as Executive Director John Mohr has designated a proposed membership fee for that organization as an economic development entity, he did not participate in the decision to designate EASC for membership by the Port, nor did he influence the decision for Executive Director Mohr to make that recommendation. Commissioner McClelland stated that in his role as President and CEO of EASC, he was not involved in determining the amount or the requested membership fee for the Port of Everett. His compensation at the EASC is not affected in any way by the Port's membership and his compensation is not affected in any way by any public entity's membership in EASC.

Commissioner McClelland said that he would not be participating in discussions on whether or not the Port should approve the membership fee for EASC, and abstained from voting in terms of the membership for EASC.

Commissioner McClelland turned the gavel over to Vice President Hoffmann for this matter.

Commissioner Stiger said that Commissioner McClelland disclosed his relationship with the EASC in December 2011. The other thing to remember is there was a merger of the Everett Chamber of Commerce and the South County Chamber of Commerce into the new EASC organization; and the dues have been fairly consistent over the last five years. The membership is certainly appropriate and the Port of Everett is fortunate to have the President and CEO on the Commission staff. It is certainly a win-win situation for the Port of Everett.

Commissioner Hoffmann said it was just an extension of what the Port of Everett has been doing over the past several years and called for the motion.

Commissioner Stiger moved to approve the membership of the EASC for the year 2012 in the amount of \$25,000. Commissioner Hoffmann seconded the motion.

A vote was called for:

Vote:	2-0
Yes:	Hoffmann, Stiger
No:	None
Abstained:	McClelland

Motion carried.

Commissioner Hoffmann turned the gavel back over to Commissioner McClelland.

Executive Session Overview

Port counsel Brad Cattle reported that in March 2012, the Port had two Executive Sessions, the first was held on March 6, 2012. At 5:23 pm the Commission recessed into Executive Session with legal counsel to discuss the potential sale of a piece of property, discussion of which in open session could have disadvantaged the Port's negotiations; and to consider negotiations concerning three pieces of real property which were under consideration for lease by the Port, which discussions in public might have disadvantaged the Port's negotiations. The Executive Session continued until 6:30 pm at which time the Executive Session was continued for an additional 20 minutes. The meeting was adjourned at 6:50 pm.

The second Executive Session was held at the March 28, 2012 Commission Retreat meeting at which time the Commission recessed into Executive Session at 2:35 pm. The Commission discussed with legal counsel one pending litigation matter and three potential real estate transactions, one concerning a potential acquisition of property, the second was a potential lease of Port property to a third party, and the third was the transfer of Port property to a third party. The Executive Session continued until 4 pm at which point the Commission meeting was adjourned.

2.

DEPARTMENT REPORTS

Projects Update – Rail Access Recovery Project – Change Order No. 6

Chief of Engineering & Planning John Kleotka provided a brief update on the history of the Rail Access Recovery project. The project involves a new rail spur that is approximately 2,500 feet long and there are two parts that were defined by the project funding source; Part A was funded by the Department of Homeland Security grant for recovery and Part B was funded by a Surface Transportation federal grant. Both parts were also funded by a Washington State Department of Transportation Rail Bank Loan.

Construction began in September by Mid-Mountain Construction. They completed the track work for Part A in December, and Part B was mostly complete by the end of March. Currently the project is essentially complete other than paving and striping which is weather dependent and miscellaneous punch list work remains to be done.

There have been a number of challenges during construction that have resulted in several change orders. The biggest item is the increased level of force account work to accommodate underground obstructions that were discovered during construction. In addition to concrete rubble, workers also encountered old pilings and unsuitable soils.

John Klekotka provided a summary of the change orders to date for the Commissioners. With change order no. 6, the Port is within approximately \$2,000 of the Executive Director's authority which is 10 percent of the original contract. Staff does not anticipate any more changes, but wanted to brief the Commission on the status of the project, and that if additional work is required, Staff will bring the matter back before the Commission.

John Mohr commented that Staff wanted to make sure that the Commission was comfortable. Staff does not need additional authorization from the Commission, but Staff does not want to be in a situation where there is an appearance that they are trying to spend right up to the Executive Director's authority.

Commissioner Stiger said he's been down to the site several times and has seen what the contractor has been up against. Commissioner Stiger inquired about the original engineer's estimate. John Klekotka responded that he didn't have the figure with him but thought it was approximately \$2.1 million.

John Mohr said that Staff will gather that information for the next Commission meeting.

Commissioner McClelland said speaking from experience, the underground unforeseen site conditions for this area are almost predictable in that there are numerous areas with buried concrete and/or facilities that no one has any as-built drawings for, so this is not something that is unexpected. It was reasonably predictable that the contractor was going to run into some unexpected site conditions.

Craftsman District Boatyard Expansion Project

John Klekotka reported that the Port has reached substantial completion on the Craftsman District Boatyard Expansion project. There are punch list items still needing to be done but the Port will be able to take occupancy tomorrow.

Commission President's Report

Commissioner McClelland commented about the Washington DC trip and specifically noted the work that was done for the lower settling basin. This important work will enhance the Port's ability to maintain both the Marina and the channel and all of the goods that are transitioned through that channel. Also, the AAPA event was very well done and important for Port staff to participate in, as well as the opportunity to have some very meaningful and important meetings with our legislatures.

Commission Discussion

Commissioner Hoffmann inquired about the Mission and Vision statement. Commissioner McClelland responded that the Chief Administrative Officer was going to make a recommendation as it relates to the Strategic Planning as well as follow-on meetings during the month of May. John Mohr said Staff will present a schedule next month.

Commissioner Stiger commented that he recently attended the Puget Sound Regional Council conference. It was very interesting to see this group's involvement in the four county region. They are working on various projects that could dovetail with the Port's goals.

Citizen Comments

There were no citizen comments.

No Executive Session was held.

THE WORK SESSION was adjourned at 5:51 pm.

APPROVED this 8th day of May, 2012.

EVERETT PORT COMMISSION

By: 

Troy McClelland, President



Michael Hoffmann, Vice President

Tom Stiger, Secretary