

Port of Anacortes
Regular Commission Meeting
May 7, 2009

The Port Commission of the Port of Anacortes held its regular business meeting at 7:00 P.M. on the evening of May 7, 2009. This was a regularly scheduled Commission Meeting held in the Commission Meeting Room of the Port Main Warehouse Building, 1st & Commercial Avenue, Anacortes, Washington.

In Attendance: Commission President Rubin, Commission Vice-President Mooney, Commission Secretary Niver, Commissioner Hopley and Commissioner Short.

Also in attendance: Executive Director Hyde, Director of Engineering Elsner; Director of Finance & Administration Johnson; Director of Operations & Facilities Hachey; Marina Manager Fowler, and Administrative Coordinator Lindsey.

Others in attendance included Port legal counsel, Frank Chmelik.

CALL TO ORDER

At 7:00 P.M. Commission President Rubin called the regular meeting of May 7, 2009, to order and welcomed all in attendance.

ANNOUNCEMENTS

Commissioner Rubin noted that the Passagemaker Magazine's Trawlerfest dinner was taking place in the adjacent main warehouse, so those in attendance or listening to the meeting playback on Channel 10 might be aware of some noise from that event.

PUBLIC COMMENT PERIOD

Commissioner Rubin opened the floor for public comment pertaining to items on the regular agenda.

1. Mr. Vince Sellen, 1802 Cedar Springs Lane, Anacortes, addressed the Commission. Mr. Sellen identified himself as a board member of the Anacortes Yacht Club, representing that group at government meetings, and stated that he had been at Cap Sante Boat Haven looking at trawlers earlier in the day. Mr. Sellen noted that most people get started in boating with small sailing craft. He explained that the Anacortes Yacht Club (AYC) was focusing on recruiting new, younger members, many of whom are just getting started in boating. AYC has 20 members who will be providing free boat rides at the Anacortes Waterfront Festival May 16 and 17. Mr. Sellen noted the Yacht Club appreciated the encouragement shown to small boaters by the Port in planning for a small boat hoist at P/Q Dock at the Boat Haven.

2. Mr. John Pope, 4001 Peters Lane, Anacortes, addressed the Commission. Mr. Pope voiced great admiration for the public process used by the Port to get public input on small boat access, public access, the P/Q Dock hoist, and upland development. He encouraged the Port Commission to bring the small craft hoist to P/Q Dock at the north end of the Boat Haven, noting it would be good for business, and offering the assistance of the small boating community.

3. Mr. Scott Bullock, 816 34th Street, Anacortes, addressed the Commission in regards to the small craft hoist for P/Q Dock. Mr. Bullock stated he had attended a number of the Comprehensive Plan and Boat Haven Advisory Group meetings. He thanked the Port Commission for including small boaters

and boating facilities for small craft at the Boat Haven and hoped construction on the P/Q hoist would move forward.

4. Mr. Pat Barrett, 11987 Marine Drive, Anacortes, addressed the Commission. Mr. Barrett spoke regarding the authorization for P/Q small craft launch upland project and voiced his appreciation for the Commission moving forward, noting he had seen the plans for the hoist.

CONSENT AGENDA

Commissioner Rubin called for any objections to the consent agenda.

Commissioner Hopley asked to remove the action item for the P/Q Small Craft Launch Upland Project from the consent agenda and have it placed on the regular agenda for discussion.

Commissioner Niver wished to remove the action item for Ratifying Commission Actions and place it on the regular agenda as well.

Commissioner Rubin requested that the action item to Authorize a Vote to include the Samish Indian Nation in the Skagit Council of Governments be moved from the regular agenda to the consent agenda. He called for any objections to any of the requests. Hearing none, Commissioner Rubin read the revised consent agenda: Approval of Minutes for the Regular Meeting/Executive Session of March 5, 2009, the Regular Meeting of April 2, 2009, and the Regular Meeting Work/Study Session of April 16, 2009; Vouchers: No. 4-1 through 4-169 (\$1,615,068.77); and the Treasurer's Report for March 2009 totaling \$10,258,478.82, as well as action item to authorize a vote to include the Samish Indian Nation in the Skagit Council of Governments.

Commissioner Mooney noted that removal of items from the consent agenda was counterproductive as doing so stretched out the meeting times

Hearing no other discussion, Commissioner Rubin asked for a motion to approve the consent agenda. Commissioner Hopley moved to approve the consent agenda. Commissioner Short seconded the motion. Commissioner Rubin called for a vote on the motion, which carried unanimously.

REGULAR AGENDA

ACTION ITEM

Construction Authorization for P/Q Pier Small Craft Launch Upland Project, Project #CSBH-17a

Executive Director Hyde introduced Director Elsner who presented the item to the Commission. The item requested Commission authorization for staff to proceed with the construction elements associated with the P/Q Pier Small Craft Launch Upland Project, with a construction budget totaling \$112,215. Director Elsner reviewed the scope of work for the project which included: Excavation of approximately 1500 cubic yards of soil from the grassy hill upland of the P/Q Pier; Transportation of the excavated soil to the west basin outdoor room area for reuse; Re-grading of a portion of the former Cap Sante Marine site west of the outdoor room area for use as temporary seating for the summer concert series at the marina; Outdoor room seating area site landscaping and irrigation; P/Q Pier Small Craft Launch upland construction, concrete pier approach, and upland landscaping and irrigation restoration.

In responding to questions from the Commission, Director Elsner noted the project was permitted in 2005 and identified as a high priority in the 2008 Comprehensive Plan.

Commissioner Niver noted the suggested motion included language identifying the project as a public access requirement for Boat Haven improvements. Director Elsner observed the item integrated the title from the Port's Capital Plan, which he explained could be struck from the motion.

Commissioner Hopley inquired whether there was any element of the proposed capital project that had come out of a process with the City of Anacortes as a public access requirement of the Port's shoreline permit. Director Elsner explained that when the project was identified, it was originally part of the Port's shoreline permit for the overall west basin, and though not a requirement, it was part of the package submitted to the City.

Commissioner Mooney noted that he would like to see the words public access retained in the motion as the project did provide for increased access by the public.

Commissioner Niver moved to authorize a construction budget totaling \$112,215 to be spent from the Tax Fund, to complete the P/Q Pier Small Craft Launch Upland Project, project #CSBH-17a. Commissioner Rubin seconded the motion and called for any further discussion.

Commissioner Short noted the project has been brought up at Port/City liaison meetings.

Commissioner Niver wished to clarify that P/Q is a public dock, that the verbiage in the original motion was incorrect and that staff had clarified there was no trouble in removing the incorrect verbiage.

Commissioner Hopley offered additional clarifications and corrections to language in the body of the action item, including a reference to the P/Q project being included in the 2009 Capital Improvement Plan, noting the project had been removed from a draft of the Plan by the Commission and replaced with a project called "Public Access Requirements for Boat Haven Improvements," the definition of which was given in the motion: "A public access project that will come out of a process to be determined with the City to define or specify a public access project that will fulfill our public access permit requirements." Commissioner Hopley noted that he believed that although the public process for designing the hoist was beneficial, he found the process as a whole was lacking and served as a study of how not to make project decisions.

After further discussion and clarification, Commissioner Rubin re-read the motion as stated by Commissioner Niver and called for a vote on the motion, which carried 4-1 with Commissioner Hopley opposed.

Ratifying Commission actions of April 2, 2009 and April 16, 2009 -

Commissioner Rubin noted that Commissioner Mooney had been in attendance via speakerphone for both the April 2, and April 16, 2009 meetings. He requested a motion and discussion.

Commissioner Mooney moved to ratify all votes taken at the April 2, 2009 and April 16, 2009 regular Commission meetings. Commissioner Short seconded the motion.

Commissioner Niver noted that while being in attendance via speakerphone may be legal, he found it difficult for the absent Commissioner to participate fully.

Commissioner Rubin introduced Port legal counsel Chmelik who provided the Commission with an in-depth response, including the two requirements that must be met to satisfy the Open Public Meetings Act, namely that the Commissioner participating in the meeting via speakerphone can hear all comments at the meeting and that people can hear the Commissioner on the phone when he is speaking. Mr. Chmelik stated that he advises all of his public clients to ratify all actions, and noted that some government entities in Washington routinely meet by phone. Until the Attorney General issues clear guidance to the contrary, he considered a Commissioner's presence via speakerphone to be both legal and acceptable.

Director Johnson further explained that meetings by phone were a function of technology. He noted that in accordance with the Open Public Meetings Act the Attorney General has often stated that if a quorum of commissioners have an e-mail discussion it could be considered a meeting and subject to the Act, having to be noticed and open to the public.

Commissioner Hopley inquired about the import or meaning of the word "ratify". Counsel Chmelik explained that if the Commission was determined to have in any way violated the Open Public Meetings Act, the actions they had taken would be null and void. Ratifying the vote at a subsequent meeting covers those actions.

With discussion concluded, Commissioner Rubin called for a vote on the motion, which carried 4-1 with Commissioner Niver opposed.

DISCUSSION ITEMS

Community Grants – Executive Director Hyde reported that the Port of Bellingham and the Port of Skagit County have given out grants under a program established for that purpose. He noted that Port legal counsel Chmelik may have additional information on such grant programs.

Commissioner Rubin explained that he had requested a discussion regarding the possibility of the Port awarding such grants, which would be funded from the Port's Tax Fund.

Discussion ensued with questions raised as to funding options, whether there was a need for such a program to be first included in the Port's Mission Statement or Strategic Plan, whether such grants were equitable, noting that the Port operates on a budget that does not include programs such as this one at this time, and scenarios for economic development.

Executive Director Performance – Commissioner Rubin reported that he and Commissioner Short had researched and developed a draft performance evaluation form for the Executive Director with assistance from Administrative Coordinator Lindsey.

The Commission discussed the form as presented and offered possible changes. Commissioner Rubin requested that all suggested edits be submitted in writing to incorporate into the next draft which will be discussed at the Commission retreat scheduled for May 29, 2009.

RECESS

Executive Director Hyde requested a short recess to allow those who wished to leave the opportunity to do so.

Commissioner Rubin called for a recess at 8:02 P.M. At 8:07 P.M. he called the meeting back to order.

ACTION ITEMS

Construction Authorization for former Scott Paper Mill Cleanup Project – Phase 1, project #ENV-01A –

Director Elsner briefed the Commission on the first of two items, with the first seeking Executive Director authority for an authorization in the amount of \$2,863,831 for the construction elements associated with Phase 1 of the cleanup project.

The Port received 11 bids for the Phase 1 project with the most responsive and responsible bidder being RAM Construction of Bellingham. Phase 1 elements include shallow upland remedial excavations located on the western portion of the site; various utility relocations including water, gas, electrical, and sewer including a replacement sanitary sewer left station; installation of a temporary haul road along 17th Street to facilitate site access to and from the shoreline for Phase 2 project elements; and site restoration including pavement and landscape areas.

Director Elsner highlighted other significant project costs, including purchase of a generator, a 30% construction allowance for change orders, the purchase of a wheel wash system, maintenance costs, analytical laboratory testing, utility connection and inspection fees, and routine project administration costs.

The Cleanup Project is conditioned by the Department of Ecology and funded by DOE and liable party Kimberly Clark. The Port's costs for the project are 100% reimbursable. Director Elsner noted that the Commission had been briefed by legal counsel Chmelik.

Final First Addendum to Agreement for Cleanup, Action Plan, Preliminary Design, Permitting and Settlement -

Counsel Chmelik stated that as the Commission was aware, the DOE was proposing the Port sign a consent decree for this work. That consent decree may not be ready for execution prior to the commencement of the work. He advised that in this situation the Port proceed and also send a letter from the Executive Director to clarify that the Port is undertaking this work with the understanding that a new consent decree has not yet been signed and the Port waves no rights under the old consent decree. Since the more comprehensive funding package is also not yet ready, counsel Chmelik and Port staff have generated a draft addendum to the December 2008 Agreement that the Commission executed for the Cleanup Action Plan, Preliminary Design, Permitting and Settlement, which was the agreement that provided the cost share mechanism between Kimberly Clark and the Port for some reimbursement for Port past costs in exchange for the Port paying its share of the remedial design. The addendum would extend that to cover \$500,000 of this work so long as the contractor has done the work prior to July 15, 2009. This agreement would serve as a bridge until the final documents are done. Kimberly Clark is going to reimburse the Port for some other past costs in exchange for the Port agreeing to undertake this work, with Kimberly Clark will agreeing to reimburse the Port for up to \$250,000 for past costs and the Port also has a grant for \$250,000. Mr. Chmelik anticipated that the new

documents will be ready in 7-14 days. What will come before the Commission will be the new consent decree – sometime in mid-June of this year.

Director Elsner and counsel Chmelik responded to questions from the Commission regarding the bid process and the Port's adoption of supplemental criteria for determining responsive and responsible bidding.

Hearing no further discussion, Commissioner Rubin called for a motion on the Addendum. Commissioner Hopley moved to authorize the Executive Director to execute the Final First Addendum to Agreement for Cleanup Action Plan, Preliminary Design, Permitting and Settlement for an amount not to exceed \$500,000 incurred on or before July 15, 2009. Commissioner Mooney seconded the motion. Commissioner Rubin called for a vote on the motion, which carried unanimously.

Commissioner Rubin called for a motion for the Scott Site Cleanup Project. Commissioner Mooney moved to authorize funding in the amount of \$2,863,831 to complete the construction elements associated with the former Scott Paper Mill Cleanup Project, project #ENV-01A. All costs will be paid from the Environmental Fund and cost recovery proceeds will be applied back to the Environmental Fund. Contracts will not be executed until the funding agreements, or an interim agreement, have been executed. Commissioner Short seconded the motion. Commissioner Rubin called for a vote on the motion, which carried unanimously.

Authorization to exceed the 2009 Capital Improvement Budget of \$125,000 by \$25,000; and Authorize the Executive Director to spend \$150,000 to purchase a regenerative air street sweeper -

Director of Operations & Facilities Hachey presented the item which requested Executive Director authorization to exceed the 2009 Budget by \$25,000 for the purchase. Director Hachey explained that the required storm water sampling for the Port's National Pollutant Discharge Elimination System storm water permit for Pier 2 has recorded results that consistently exceed the permit levels for zinc and turbidity. During a recent inspection, the Department of Ecology inspector strongly suggested that the Port implement an aggressive sweeping program for the Pier 2 facility to capture these minute particles.

After researching and testing sweepers, Port staff solicited bids from three vendors for a Schwarze A4000 specified with necessary options for our facility. The low bid was \$147,777.52.

Director Hachey noted that the Port will also be able to rent the sweeper to the Scott Site Cleanup project over the next two years, and could also use the sweeper in reciprocal agreements with the City of Anacortes and Skagit County.

Following a brief discussion, Commissioner Rubin called for a motion. Commissioner Short moved to authorize the Executive Director to exceed the 2009 Capital Improvement Budget of \$125,000 by \$25,000 and authorize the Executive Director to spend \$150,000 for the purchase of a regenerative air street sweeper. Commissioner Mooney seconded the motion. Commissioner Rubin called for a vote on the motion, which carried unanimously.

COMMISSION DISCUSSION

Summer Concert Series Sponsorship – Commissioner Rubin introduced Mr. Cliff Verhoeff, from the Snohomish Artists Guild (SAG), promoter of the summer concert series, who noted that

funding was short this year, and that \$12,000 of the \$15,000 needed to hold the concert series had been obtained. The concert series is adding a stage for the performers to use this season. Mr. Verhoeff requested monetary sponsorship from the Port.

Commissioner Rubin requested discussion from the Commission, with topics brought forward that included whether the series added value to the Boat Haven as a destination, whether the request fell within the Executive Director's authorization, whether the Commission should devise a policy and budget to legitimize any sponsorship, and whether the Port could view the concert series as tourism promotion.

Executive Director Hyde noted that sponsorship for the concert series was not included in the Port's budget, but that for future series SAG could seek a contract with the Port for services that include the concert series.

Commissioner Rubin observed that the appropriate role for the Port at this time was to provide the venue, the power, and garbage hauling, as was done last summer. Following additional discussion, Executive Director Hyde will work with Director Johnson to bring additional information back to the Commission at a future date.

Resolution No. 1151- Commission Pay –

Director Johnson explained that he had requested discussion from the Commission regarding Commission per diem as categorized in Resolution No. 1151, specifically, what the Commission defined as service "on behalf of the Port." He gave examples of wording which could be interpreted differently. Director Johnson also noted that under Revised Code of Washington (RCW) 53.08, the Commission has the authority to raise their monthly salary and/or to not pay themselves any per diem, and to have a flat salary, or both.

The Commission discussed the wording of the resolution and made suggestions for verbiage that would provide more clarity. Members of the Commission objected to any increase in Commissioner salary. Port staff will bring a resolution back to the Commission incorporating the clarified verbiage for Commission approval.

Strategic Goals (Ends) developed during the December 16th 2008 Governance Session –

Commissioner Rubin reviewed the strategic goal setting and "ends" developed by the Commission at their December 16, 2009 meeting, facilitated by Dr. Monte Bridges. In that meeting the Commission had discussed how to assign value to each end goal. Following a brief discussion, the Commission was of a consensus to hold further discussions during the May 29th retreat.

COMMUNICATIONS

Strategic Planning – Tourism Committee Report-

Commissioner Rubin reported that he and Commissioner Short had met with the Chamber of Commerce and the Anacortes Futures Project group regarding tourism. He explained that RCW 53.08.255 authorized Port district Commissions to fund the promotion of resources and facilities in the district or general area by advertising, publicizing, or otherwise distributing information to attract visitors and encourage tourist expansion. Commissioner Rubin used the Boat Haven as an example. He reported that in their meeting, the Chamber of Commerce

indicated they would like to retain the direction of tourism for Anacortes. The Port contracts with the Chamber each year for promotion of Port facilities.

The Commission discussed tourism opportunities unique to Anacortes in general and tourism tied to Port facilities in particular. Commissioner Rubin noted that the Anacortes Futures Project group would be presenting their report at the next regular Commission meeting. He asked for Port support of that group, including a Port representative from the Commission and staff to serve on a task force to develop a future plan for Anacortes. The Commission will add this discussion to their agenda for the May 19th retreat.

Upcoming Events

Executive Director Hyde reviewed upcoming events. On Monday, June 8th at 4:00 P.M. the Port will host the next community tour of the Pier 1 Project and Dakota Creek Shipyard area. Those interested in the tour should meet outside the Dakota Creek Office at the corner of 4th Street and Q Avenue.

Passagemaker Trawlerfest is underway at the Cap Sante Boat Haven with over 60 boats participating. At the Seafarers' Memorial Park building, Passagemaker is holding Passagemaker University, offering classes for trawler owners.

The 19th Annual Waterfront Festival will kick off with a dinner in the Port Main Warehouse on May 15th, followed by family friendly activities, boat rides, displays, and entertainment at the Boat Haven.

The Port's Relay for Life team will hold a masquerade ball event in the Main Warehouse on May 22nd.

The first ever Anacortes Work Boat Races will be held on July 18th starting at 4:00 P.M. The race committee's next meeting will be May 11th at the Wheelhouse.

UPCOMING MEETINGS

Executive Director Hyde reviewed the Commission's upcoming meeting schedule.

Members of the Commission and will attend the Washington Public Ports Association spring meeting in Pasco, Washington on May 13-14. The next Regular Port Commission Meeting will be a Work/Study Session on May 21, 2009, at 7:00 P.M.

Executive Director Hyde advised the Commission of findings from an engineering survey of Warehouse 4, which revealed that 15 pilings beneath the warehouse have significant damage and are providing no support to the structure. The majority of Warehouse 4 is currently leased to Dakota Creek Industries as a fabrication shop. In light of the significance of the damage, Executive Director Hyde notified the Commission that under his authority from the Commission he was providing notice that he was declaring an emergency and getting a contractor on site as soon as possible to begin replacement of the pilings.

PUBLIC COMMENT PERIOD

Commissioner Rubin opened the public comment period for items not on the regular agenda. Hearing none, the public comment period was closed.

ADJOURNMENT

With no further business to come before the Commission, Commissioner Mooney moved to adjourn, which was seconded by Commissioner Short. Commissioner Rubin called for the vote on the motion, which carried unanimously and at 9:38 P.M. the meeting adjourned.

Attest:

Keith Rubin, President

Pat D. Mooney, Vice-President

Ray Niver, Secretary

Steve Hopley, Commissioner

William L. Short, Commissioner

Julie Johnson Lindsey, Administrative Coordinator
May 7, 2009