

Port of Anacortes
Regular Commission Meeting
March 4, 2010

The Port Commission of the Port of Anacortes held its regular business meeting at 7:00 P.M. on the evening of March 4, 2010. 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 Secretary Niver, Commissioner Hopley and Commissioner Short. Commission Vice-President Mooney was present via speakerphone.

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

Others in attendance included Port legal counsel Frank Chmelik.

CALL TO ORDER

At 7:04 P.M. Commission President Rubin called the regular meeting of March 4, 2010, to order and welcomed all in attendance. He made note that Commissioner Mooney was joining the meeting via speakerphone and confirmed that Commissioner Mooney could hear and be heard. Commissioner Rubin noted that following the second public comment period the Commission would enter into Executive Session to consider the lease, sale or purchase of real property. The Executive Session was anticipated to last for one hour, and action might or might not be taken.

PRESENTATION – Cost Cutter Award

Commissioner Rubin was pleased to present a Port Cost Cutter Award for Dan Burns, of the Port's Marina Operations staff. Dan saved the Port more than \$800 on new straps for the trailer boat launch by researching these products on his own. Dan was unable to attend the meeting since he is a reservist with the Island County Sheriff's office and was on assignment. Marina Manager Dale Fowler accepted the Cost Cutter Award certificate and mug on Dan's behalf.

PUBLIC COMMENT PERIOD

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

1. *Mr. John Pope, 4001 Peters Lane, Anacortes, addressed the Commission regarding opposition to House Bill 3181 and Senate Bill 6851 concerning the proposed increase in the tax on hazardous substances. He thanked the Commission for putting this item on the agenda and considering a resolution in the interests of local industry. Mr. Pope related that the bills represented a huge increase in taxes that could shift the margins of competition for the petroleum industry. He noted the legislature had raided the HST Fund several times in the past, to fund the General Fund and he thought it unlikely the legislature would refund those dollars. Mr. Pope asked for the Commission's support against this legislation.*

Considering the length of the agenda, Commissioner Rubin opened the floor for public comment pertaining to items not on the regular agenda.

2. *Mr. Greg Springs, 204 “V” Avenue, Anacortes, addressed the Commission. Mr. Springs expressed concern regarding prilled sulfur coming to Anacortes for shipment over the Port’s Pier 2 facility. He believed there were safety issues that might not be addressed and cited concern that he understood sulfur could be shipped here from other states. Mr. Springs stated he loves Anacortes and would like more information about the prilled sulfur shipments as he was concerned about safety and the shipments being detrimental to those living here.*

3. *Mrs. Carol Springs, 204 “V” Avenue, Anacortes, addressed the Commission. Mrs. Springs stated she was quite disappointed regarding prilled sulfur shipments. She stated she had been told this was a new Port with a new attitude and that neighbors who attended a meeting at the Port regarding prilled sulfur viewed a presentation noting 120,000 tons was estimated to be shipped annually. Mrs. Springs stated she had heard this could actually be as much as 350,000 tons and possibly more. She stated that Executive Director Hyde had explained during the presentation that the Anacortes Shell refinery produces approximately 30,000 tons and that the Cherry Point refinery produces an estimated 90,000 tons for a total of 120,000 tons and was uncertain whether Conaco Phillips or Chevron would participate. She observed that also mentioned in the presentation was the possibility of sulfur coming from a small refinery in Montana and she stated she felt deceived and concerned that a number of refineries would be involved from outside of Anacortes and cause Anacortes to be a dumping site. She questioned why the Port would consider handling prilled sulfur and didn’t wish to see it de a detriment to scenic Anacortes.*

4. *Mr. J.B. Smith, 414 3rd Street, Anacortes, addressed the Commission and encouraged them to examine the Port’s Mission Statement, noting the last statement concerning protection of quality of life for area residents, should be viewed as the primary consideration. He noted that prilled sulfur was a commodity and did not need to be shipped through Anacortes and next to a residential neighborhood. Mr. Smith said he understood it to be a matter of money, but believed the refineries had other options and stated the plant on March’s Point could de-gas the sulfur for shipment elsewhere but chose not to due to cost.*

5. *Mrs. Darith Langjahr, 1004 Commercial Avenue, #1004, Anacortes, addressed the Commission. Mrs. Langjahr explained that she was born in what she described as the aroma of Tacoma before her family moved further south. She believed this was a turning point for this beautiful island of Anacortes and that the Executive Director was paid well to make important decision that affect all neighbors and residents.*

Commissioner Rubin thanked all speakers for their comments. Hearing no others with a desire to address the Commission, the floor was closed.

CONSENT AGENDA

Commissioner Rubin Commissioner Rubin read the consent agenda items: Approval of Minutes of the Regular Meeting of February 4, 2010, Special Meeting/Strategic Planning Session and Ribbon Cutting of February 16, 2010, Special Meeting/Attendance at EDASC Economic Forecast Dinner of February 18, 2010, and Special Meeting/Joint Session with the Anacortes City Council and the Anacortes Chamber of Commerce of February 22, 2010; Approval of Vouchers No. 2-1 through 2-174 totaling (\$2,344,277.02); Approval of the January 2010 Treasurer’s Report totaling \$9,303,668.02; and an action items for: Resolution No. 1215 – Policy on Personal Services Contracting, and Authorization of Consultant Services for New Ecology Stormwater Permit Compliance. Commissioner Rubin called for any objections to the consent agenda. Hearing none, Commissioner Rubin called for a motion for approval. Commissioner Short moved to approve the consent agenda. Commissioner Hopley seconded the motion. Commissioner Rubin called for a vote on the motion, which carried unanimously.

REGULAR AGENDA

ACTION ITEMS

Resolution No. 1216 – Opposing House Bill 3181 and Senate Bill 6851 and all Associated Amendments, Concerning the Clean Water Act of 2010, Funding Cleanup of Water Pollution Through an Increase in the Tax on Hazardous Substances -

Executive Director Hyde noted that in the Commissioners' packets was a draft resolution to oppose these two bills. He observed that the City of Anacortes, the Economic Development Association of Skagit County, and Whatcom County were among those entities that had already passed and sent resolutions regarding the ill effects these bills would have on local economies and regional refineries. The state legislature has swept the Model Toxics Control Act (MTCA) funds in recent years in an attempt to balance the General Fund.

Commissioner Niver stated he did not feel he was properly briefed to fully understand where the MCTA Tax comes from and that it appeared to presently apply to everything other than crude oil as well as dealt with a matter of first possession of hazardous substances.

From the audience, Mr. John Pope, an engineer and employee of Puget Sound Refinery, responded that it was a product tax, levied per barrel, and that historically there used to be a better written law as compared to recent laws which have contained hidden excise taxes.

Commissioner Short noted concern where interstate trade is affected by restrictions.

Mr. Pope noted that ironically under federal law, it is alright for states to inhibit their own manufacturers and their products via taxation, but not to tax other products coming in from other states. He noted these refineries export 40% of their product out of state.

Commissioner Rubin requested for a motion prior to continued discussion. Commissioner Short moved to adopt Resolution No. 1216; Commissioner Rubin seconded the motion and called for further discussion.

Commissioner Short believed taxes such as this put local businesses at a disadvantage and would cause more businesses to relocate to leave Washington.

Commissioner Niver noted he had always taken the position that the Port's Mission Statement does not say for the Port Commission to tell state legislators how to run the state, however, he believed it was a responsibility of the Commission to inform them of issues that affect the Port. Commissioner Niver voiced concern that the proposed bills could damage the Port's grant funding from the MTCA account and that the proposed increase to taxes, considering the past actions of the legislature in regards to the MTCA Fund, was significant as was the percentage of product shipped out of state. He also noted a recent newspaper article which stated the proposed taxation amount had been reduced and would only be slated for environmental cleanup with out of state shipments being exempt, and if so, then the impacts noted in the proposed resolution would be lessened.

Commissioner Rubin explained the proposed action item and resolution had been prepared last week for the Commission and that newer versions of the House bill were now being circulated.

Commissioner Niver noted that although all were concerned with job retention these concerns did not impact Port issues and were not the Commission's area of expertise.

Mr. Pope concurred that a recent amendment to the House bill had been proposed but had not yet been voted on and there had been no changes proposed to the Senate bill as of yet.

Commissioner Mooney noted the action before the Commission was to answer the House and Senate bills as written at this point. He favored passage of the resolution and also sending a cover letter to clarify the resolution's intent and ask the legislature for clarification in return.

Commissioner Rubin observed that only nine days remained in the legislative session, with changes made minute to minute by those bodies. He believed with the resolution the Commission had the opportunity to let the legislature know how passage of these bills could affect our community.

Commissioner Hopley stated he was unhappy with the resolution and noted that individual Commissioners were free to go to Olympia to comment as individuals, but thought the Commission acting as a whole should do so more responsibly with thoughtfulness and fairness and not allowing interest groups to influence Commission decisions while understanding and expressing the Port's needs. He did not believe the resolution as presented met those standards.

Commissioner Niver noted that he had asked Executive Director Hyde to prepare a letter to the legislators, thinking that a resolution was not the correct way to go about expressing the views of the Commission. His primary concern was for the MTCA funding and noted that if the presently proposed amendment to the House bill were upheld including the exclusion of the tax on exports, then he would prefer the Commission send a letter regarding the need for preservation of the MTCA Fund, as this directly affected the Port's environmental cleanups which were an area of the Port's responsibility. Commissioner Hopley agreed, but noted he would like to extend the letter's comments beyond the MTCA Fund to include a well-informed comment on the tax on exports. Commissioner Hopley noted he would like further information as to whether California taxes products shipped to Oregon and if they do not, then he would support writing a letter to the legislature asking them to consider this issue specifically.

Commissioner Rubin observed that in 2009 the legislature swept the MTCA Fund account for other uses and did not trust the legislature to increase the tax and not sweep the Fund again. He noted the Port's Strategic Plan called for the Port to participate in collaborative efforts to address legislative, regulatory and public policy issues affecting economic development and that the resolution before the Commission was originally put together by the Economic Development Association of Skagit County. Commissioner Rubin believed the bills before the legislature would impact the competitiveness of local industries and that MTCA and related funds and cleanups should be paid for by polluters rather than manufacturers.

Commissioner Hopley observed that within the state of Washington, the field was level, however out of state export posed a different situation and that should be addressed. He favored what he termed a balanced approach in sending a letter to address the issue of the tax on exports and the effect that would have on local jobs.

Commissioner Short agreed it likely that the legislature would sweep the MTCA Fund once again. He noted that local refineries operate on very thin margins and some refineries had closed due to a lack of profit. He observed that if refineries in Anacortes were to close the impact to the Port in the loss of the petroleum coke export and the community in the loss of family wage jobs and that effect on school enrollments, hotels, restaurants, and services would be great.

Commissioner Mooney believed both the resolution and letter were appropriate and suggested an additional letter be sent in response to whatever action the legislature takes.

With discussion concluded, Commissioner Rubin stated the motion once more, to adopt Resolution No. 1216, opposing House Bill 3181 and Senate Bill 6851 and all associated amendments, concerning the Clean Water Act of 2010, funding cleanup of water pollution through an increase in the tax on hazardous substances, and called for a vote on the motion, which carried with Commissioners Short, Rubin, and Mooney in favor and Commissioners Hopley and Niver opposed.

Executive Director Authorization to Amend the 2010 Service Contract with the Anacortes Chamber of Commerce -

Commissioner Rubin noted that this item, which addressed funding for the Anacortes Futures Project, had been tabled at the Regular Meeting of February 4, 2010 and the Commission now had the option to take it off the table for action or amendment, to leave it on the table until a future date, or to leave it on the table indefinitely. He further noted that the City Council had chosen not to act on a similar item during their most recent meeting due to a legal question about the routing of funds, which the Port Commission had already discussed in prior meetings. Commissioner Rubin handed out a proposed motion to amend the item's present suggested motion to not exceed the lesser amount of what the City of Anacortes allocates to the project.

Commissioner Hopley favored a vote on the item and the authorization of \$25,000 rather than have the amount be contingent on what the City decided to contribute. Commissioner Short favored matching the contribution of the City. Commissioner Niver noted the Commission could take the item off the table and amend it, but did not think the Port should lead the City on this matter. Commissioner Mooney noted that past considered amount was \$12,500 per year and the amount stated in the action item was for \$25,000 and requested clarification.

Commissioner Rubin requested any objections to taking the item off the table. Hearing none, the item was removed from the table by consensus. Commissioner Rubin requested any amendments to the motion as suggested from February 4th. Commissioner Short moved to amend the motion to add language suggested by Commissioner Rubin to match the amount contributed by the City.

Commissioner Rubin read the original motion, "authorizing the Executive Director to execute an amendment to the Anacortes Chamber of Commerce 2010 Service Contract to include the routing of funding for the Anacortes Futures Project, not to exceed the 2010 budgeted amount of \$25,000." He noted the amendment would be as follows: After the word "exceed" in the motion, insert the wording, "the lesser of: 1) the amount the City of Anacortes allocates to the Futures Project for 2010 or, 2)" and then continue with "the 2010 budgeted amount of \$25,000." Commissioner Mooney seconded the motion as amended. Commissioner Rubin called for any further discussion.

Commissioner Short thought it fair that the Port match the City's contribution, noting that long-range planning called for in the Futures Project was more of a City function, although the Port would be affected by it. Commissioner Niver agreed the Project was largely a City issue, but was willing to approve an amount of \$25,000 rather than wait to see the City's contribution. Commissioner Hopley stated he could vote for the motion as amended or if it were the pleasure of the Commission to elect to contribute \$25,000 he was ready to support that.

Commissioner Rubin called for a vote on the amendment, which carried 4-1 with Commissioner Niver opposed. Commissioner Rubin then called for a vote on the motion as amended, which carried unanimously.

Executive Director Authorization to Amend the 2009 Service Contract with the Anacortes Chamber of Commerce -

Executive Director Hyde explained the item was to approve additional funding to the Chamber for work performed by Mr. Mark Bunzel of the Futures Project in 2009. This work included facilitation of about twenty-five meetings with Mayor Maxwell, Bob Hyde, and committee members, and the initial production of the Futures Project document. The amount suggested for payment was \$6,475.

Commissioner Rubin noted that the item had been on the Commission's agenda in December of 2009 and also discussed earlier this year, with no action taken by the Commission following the last discussions. Commissioner Niver inquired whether legal questions regarding this amendment had been reviewed. Executive Director Hyde confirmed that the questions had been answered and the Commission was clear to approve the amendment to the 2009 Chamber Contract as they saw fit. If approved by the Commission, the contract will be amended to document the work that was done.

Commissioner Niver moved to authorize the Executive Director to execute an amendment to the Anacortes Chamber of Commerce 2009 Service Contract in the amount of \$6,475. Commissioner Mooney seconded the motion. Hearing no further discussion, Commissioner Rubin called for a vote on the motion, which carried unanimously.

STUDY SESSION

Executive Director Authority –

Executive Director Hyde explained that the information provided was for Commission study and that there was no request for action at this time. He noted there had been no changes to the Executive Director Authority resolution since 1985 and reviewed the item and the need for possible updates to be consistent with state law and other authorizations including the processing of small contracts. Port staff will draft a revised item and bring it to the Commission for review in April or May.

COMMISSION DISCUSSION

Washington State University Extension Course

Commissioner Rubin called for any discussion by members of the Commission. He reported that Washington State University is offering an extension course for facilitation and felt this training would contribute to improved Commission meetings. Commissioner Rubin also noted that the Port's strategic Plan calls for fostering responsible and effective leadership and proposed to bring approval for participation in the course back to the Commission for action at a future meeting. The cost for the course is \$250 per attendee. Commissioner Hopley suggested that the action not limit the participation to Commissioner Rubin, but instead include any member of the Commission who wished to attend.

Strategic Planning Meeting

Commissioner Rubin suggested April 14th or 20th as possible dates for the Commission's next strategic planning meeting. After a brief discussion, April 20th was selected. A special meeting notice will be issued for that meeting.

Prilled Sulfur

Commissioner Niver requested that Port staff prepare an information sheet that addressed all rumors and statements heard by the Commission this evening regarding prilled sulfur. He believed the Port should answer all of these statements and questions and make certain residents' quality of life would not be affected. He noted the Port performed a genuine demonstration, which he attended, and that he was impressed with all aspects of the demonstration. Commissioner Niver believed those with concerns may not have attended the demonstration or may have seen other operations in other locations that did not act responsibly. He noted that any contract the Port developed regarding prilled sulfur should meet all safety requirements.

Executive Director Hyde explained that a full SEPA document, addressing all aspects of the proposed prilled sulfur handling and shipment was available on the Port's website as well as a video of the demonstration posted on You Tube. The Port has hired a fire and safety expert to review prilled sulfur and the proposed Port operations and have applied for a permit from the Northwest Clean Air Agency. Commissioner Niver noted a representative from that agency had been present at the demonstration. Commissioner Rubin noted citizens had spoken about the dangers of sulfur dust. Executive Director Hyde explained the prilled sulfur form is dust free and that all shipments were misted with water as an added precaution. The water mist is visible in photos of the demonstration. The Port has only performed the one demonstration test.

Commissioner Hopley concurred that an information sheet was a good idea. He wished to know what steps are needed going forward before the Port actually considers signing an agreement. In anticipation of the concerns for dust, he wished to know the standard that must be met for fugitive dust and any background testing regarding ambient levels, noting that any yellow dust like material seen around town by local residents was most likely tree pollen. He questioned legal counsel Chmelik regarding the Port's SEPA checklist which considered operations within the Anacortes City limits, and inquired whose SEPA covers any impacts at the refinery and storage facilities.

Counsel Chmelik explained that the state SEPA act is a process statute with the Agency determining whether there is any significance. With regard to companies that handle the prilled sulfur, if they need a permit they must go through the process as well. Transport companies, he explained, do not need a separate permit or SEPA they just have to comply with transport regulations. The Washington Administrative Code (WAC) is precise and sets up a system to determine who has lead agency status. In its SEPA document the Port was careful to cover trucks from Highway 20 to the Port's Pier 2 facility. He further explained that the Northwest Clean Air Agency is the agency concerned with any dust or smell and the Port has completed its application to that agency, now pending.

Legislative Items

In light of the evening's earlier discussions, Commissioner Hopley observed the Commission should set a policy to decide how they will respond to items before the legislature. Commissioner Rubin noted he would like to work with Commissioner Hopley in this regard.

COMMUNICATIONS

Executive Director Hyde reported on the following:

The next Project Community Tour is scheduled for March 9th at 4:00 p.m. and will meet at the Dakota Creek office at 4th & Q Avenue and will then proceed to the Scott site project area. Commissioner Hopley noted that date is International Women's Day.

Commissioner Short noted he is on the Washington Public Ports Association Centennial Committee and they've hired History Link to produce a book about Washington Ports and to obtain input from the ports themselves. A Commissioner from Friday Harbor is also working on an outline for 8th grade history classes that will teach Washington students about our public ports.

Commissioner Short also noted that he had participated in the Port/City Liaison meeting and toured the Scott Site cleanup and breakwater as well as the former plywood mill property.

UPCOMING MEETINGS

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

The next Commission Meeting will be a Special Meeting/Annual Joint Meeting with the Port of Skagit County at the Port of Skagit's Commission Meeting Room in Burlington on March 16, 2010, followed by the Regular Commission Meeting Work/Study Session of March 18, 2010. The first Regular Meeting in April will be April 1, 2010.

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.

EXECUTIVE SESSION

Commissioner Rubin announced that the Commission would take a brief recess before moving into Executive Session to consider lease, sale or purchase of real property. The Executive Session was expected to last for one hour and action might or might not be taken following its conclusion. The Commission recessed at 8:41 P.M. and moved into Executive Session at 8:45 P.M. At 9:42 P.M. the Commission came out of Executive Session. Commissioner Rubin called for a motion or motions regarding the matters considered and discussed. Commissioner Niver moved to authorize the Executive Director to negotiate and execute a Purchase and Sale Agreement with the McKee Family for Parcels P56519 and P56520 adjacent to Wyman's Marina at a price not to exceed \$533,500 plus associated normal and customary taxes and transaction fees. Commissioner Hopley seconded the motion. Commissioner Rubin called for a vote on the motion, which carried unanimously. Commissioner Niver moved to authorize the expenditure of up to \$50,000 from the Property Sales Proceeds Fund to conduct due diligence on the Custom Plywood Site. Commissioner Short seconded the motion. Commissioner Rubin called for a vote on the motion, which carried unanimously.

ADJOURNMENT

With no further business to come before the Commission, Commissioner Short moved to adjourn, which was seconded by Commissioner Mooney. Commissioner Rubin called for the vote on the motion, which carried unanimously and at 9:45 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, Executive Assistant
March 4, 2010