

Report for LWV of Port of Bellingham (PoB) Commissioners Public Meeting

January 4, 2011

Meeting attended by Mary Ellen Woods and Martha Mills

PUBLIC MEETING CONVENED AT 3:00

PUBLIC COMMENTS

1. Analysis of Marina Fees – one person requested that the PoB postpone a decision on fees at the marinas until he could do a more detailed analysis of the proposed fee structure.

2. Cherry Point facility

Darren _____ (a longshoreman) commented on an article on December 15, 2010 called “Coal for Christmas” that he wants the Port to comment on the other side of the issue expressed in the article. Darren said that the Port should support development of the coal facility, that coal trains go by Bellingham to and from Canada all the time, that we could do it here, and there is lots of state, federal, and labor support for the project.

Commissioner Jorgenson said he has seen the Point Roberts coal terminal and the company does a good job of keeping dust down. BP is transporting coal or coke; this facility would stop that activity.

Commissioner Walker expressed that he wanted to pass along to Darren very favorable comments spontaneously made at a Port of Tacoma meeting about Darren’s father that Walker attended: Darren’s father didn’t speak often, but when he spoke, he always had something thoughtful to say.

CONSENT AGENDA

The major items on the consent agenda are to approve the December 7, 2010 minutes, approve the appointments of the CFO and legal counsel, and authorize the Executive Director (ED) to sell property valued at \$10,000 or less.

The only discussion of items on the consent agenda was a question by Commissioner McAuley about the process for hiring legal counsel, i.e. is an RFP required? Executive Director Sheldon said there wasn’t time to do one before the end of the year. The legal counsel said that legal services are exempt from the RFP process, as is the auditor. The current legal firm has served the Port since 1987.

Commissioner Walker commented that the legal counsel job used to go to the newest attorney in town every 2-3 years while building up a practice. When there is lots of legal work, it makes sense to do it in-house, although there are costs for a law library, etc. The Port of Everett, which is about the same size as PoB, has done it both ways. Sheldon said that Seattle has 6 staff attorneys and also outside counsel.

Counsel said that Olympia and Tacoma both use outside counsel and his firm represents three ports, a couple cities, many water districts, about 50 fire districts, and about 55 governments around the state. The Port's real estate section does a very good job; legal questions about real estate are referred only in unusual situations.

The consent agenda was approved unanimously.

ACTION AGENDA

EXECUTIVE

1. Officers for 2011 are to be: Michael McAuley, President; Jim Jorgensen, Secretary; and Scott Walker, Vice President.

There was discussion about changing the time of the meetings to an earlier hour to accommodate the time it has taken for recent meetings to finish. The time was left unchanged: 1st and 3rd Thursdays at 3:00.

The Commissioners decided on appointments as representatives or board members to various boards as follows:

Northwest Economic Council (NEC) – Walker, alternate is Jorgensen.

Whatcom Council of Governments (COG) – McAuley, alternate is Jorgensen

Washington Public Ports Association (WPPA) – Walker, alternate is McAuley

Whatcom County Economic Development Investment (EDI) Program Committee

- Jorgensen

Public Art Advisory Team – Walker

There was discussion about the EDI – it does loans rather than grants, so there is presently \$9 million there.

2. Resolutions 1106- M delegating certain administrative powers and duties to the Executive Director (ED) was approved. There was discussion on several points as described below.

This resolution is required annually by statute. Commissioner Walker asked why some changes were made to the resolution? Sheldon requested recommendations for changes from the staff, which recommended some administrative changes. The two primary changes are that the Executive Director may delegate authority to various other staff when he is absent and may do sales under \$10,000 without approval by the commissioners. The CFO explained that the state auditor has rules to prevent sales from being manipulated to meet the \$ amount.

Concerning leases, the commissioners must approve any lease over 5 years. Commissioner Walker recommended that short-term leases be defined, clarified, and regularized with the shipping terminal and throughout the system. He explained that the commissioners used to approve all leases. Even though the commissioners have granted authority to the executive director for a year, they can also change the authority at any time. Walker asked if any leases move through the system so quickly that they would not be included in the staff reports between commission meetings. Staff said that there are times when leases move that quickly, although it does not happen often. Their job is to keep existing tenants. Staff does notify the commissioners in the weekly update about new developments. Walker explained that his concern is that space may be tied up with short-term uses.

Concerning leases to non-profits, Walker said that they are treated the same as other tenants in order to limit their requests for use of space. Legal counsel explained that is also required because the state auditor wants non-profits treated the same as other groups.

Change orders – the ED may approve a 10% change order on contracts. There was discussion about how change orders operate and whether they are budgeted or unbudgeted. Commissioner Walker said that there used to be no provision for contingencies because they felt it kept the costs down, i.e. the contractor knows there is money left in the budget, he could not take the project engineer to lunch, and then request a change order. Facilities staff explained that the project engineers meet to discuss all change orders so they are consistent. Change orders must be in writing, are thoroughly documented, and any materials must be bid.

3. Authorize the ED to execute a PSA for legal counsel to the PoB for the redevelopment of the waterfront properties was approved. The fees are the

same as before, which amounted to about \$20,000 through November 2010. The purpose is to seek federal funding for the project.

ADMINISTRATION

4. Resolution No. 1183-H designating the CFO as the responsible official for the purpose of issuing statements of official intent to seek reimbursement of capital project costs through issuing tax exempt bonds was approved. This is an annual federal requirement. The commissioners must still approve the issuance of any bonds.

ENVIRONMENTAL

5. Authorize the Port's legal counsel to contract with Anchor QEA, LLC and other consultants to provide technical expertise for legal work related to the Environmental Department was approved.

This is an annual requirement. The purpose is to provide attorney client protection for proprietary information developed by the consultant, which is required for environmental contamination settlements and actions. The amount is \$152,750, with about \$127,000 spent in 2010. Legal counsel explained that accurate estimates of the cost and chemistry are required and that Anchor's personnel are familiar with the project and have a confidential model that they use for the insurance claims. The insurance company would like to have the model, so this protects Anchor.

The recycling program is run through maintenance, it is being reviewed. Commissioner Walker used to work at ARCO, which computed the income from its recycling program and gave that amount as a grant to a related agency. He will take a look at the issue.

MARINAS

6. Changes to the Port of Bellingham and Squilicum Harbor Rules, Regulations, and Procedures in Resolutions No. 1226F was approved.

This is an annual reauthorization. The return of fees if a slip lessee sublets was discussed. The rate of 10% to 5%, linked to treasury bills, was discussed. Subleases have to go through the marina and the slip owner gets the unused portion of the rent back minus a fee.

Marina fees were discussed and the underlying philosophy that it is a closed loop system. Comments that many people do not understand the system and the difference between direct, indirect, and induced jobs and how they are affected should be part of the analysis.

REAL ESTATE

7. Rental Revenue Standards as guidelines for approval of leases was adopted with minor revisions.
8. Real Estate Liability Insurance Standards were adopted. There were no changes to the standards. This is a requirement for tenants to include the Port in its insurance coverage, which reduces conflict with the tenant in the event of a lawsuit.
9. Meeting Space User Fees. The current schedule of fees for 2011-2012 was cancelled and a new schedule was adopted. The rate was slightly increased for six spots, affecting about 50 customers. Staff explained that these customers are least influenced by the economy and that staff does not want the customer to walk away, so the increase is very small.
10. Write Off Accounts Receivable was approved. This primarily involves the Aluminum Chambered Boats (ACB) account of \$171,125 for rent and damage deposit, which amount was reduced by a recent settlement. Other various delinquent accounts are also included. ACB's bankruptcy affected 216 local investors who lost \$15 million.
11. Interlocal Agreement with the City of Bellingham for reciprocal use of certain public facilities was approved.

Commissioner Walker explained that in the past, the number of uses was unlimited and the City used the Port's facilities often, but the Port seldom used the City's facilities. Because of the costs of cleanup involved, the Port reduced the number to six, then to three. Staff explained that the City is required to provide proof of insurance and to clean up afterwards now.

RECESS TO INDUSTRIAL DEVELOPMENT CORPORATION (IDC) BOARD MEETING

At this meeting, the commissioners approved the minutes of the November 2 and December 7, 2010 meetings, appointed IDC officers and established meeting times for 2011 (as needed), and authorized a budget and the payment of funds according to the budget.

RECONVENE COMMISSION MEETING AND ADJOURN