

Port of Skamania County
Minutes of the Board of Commissioners
November 22, 2016
Regular Meeting, 3:00pm

Call to Order: Commissioner Collins called the meeting to order at 3:00pm.

In attendance: Commissioners Gail Collins, Todd Kingston, and Kevin Waters, Attorney Ken Woodrich, Director Pat Albaugh, Facilities Manager Doug Bill, Auditor Monica Masco, Minutes Taker Somer Meade. Guests: Philip Watness (*The Pioneer*), Larry Krug, Don Stevens, Lynn Richards, Thelma and Dave Gorgas, Mary Repar, Sandy Bacus, Julie Mayfield, and representatives of Simply Grows

Public Comment:

Sandy Bacus: Stevenson resident. Sandy is asking that the attorney fees discussed in previous meetings not be paid for Commissioner Kingston. Sandy cited the RCW that states that the Commission needs to approve outside counsel before counsel is obtained. Sandy also stated that Fran Breeding was a Commissioner during the time that Commissioner Kingston would have had 2 commissioners to appeal to. She also asked that the Commission consider waiving their salaries considering the financial situation of the Port per the RCW that says if the agency is making less than a million dollars, the Commissioners can go without pay. Auditor Monica Masco also clarified that it is \$1 million in revenue the previous year. Auditor Masco and Commissioner Collins clarified that the monthly salary is \$254 and the meeting compensation is \$114. With that information, Sandy encouraged the Commissioners to forego their salaries.

Mary Repar: Regarding health insurance- as people are being laid off, or fired in her view, they are losing their coverage. If the Port is cutting costs by eliminating positions, and the Commissioners have other ways to obtain health insurance like through their spouse's work, she believes that the Commissioners should all decline health insurance through the Port. With regards to a Conflict of Interest and Commissioner Waters, last week he voted to maintain docking fees and mentioned that it is good for business. While Mary appreciates Commissioner Waters' talents and what he brings to the Port, she believes that this is an example of a conflict of interest because Commissioner Waters' company would benefit from having the tours come through Backwoods, creating an incentive for Commissioner Waters to vote that the docking fees stay the same. Regarding indemnification, Mary believes that no one should hire their own attorney without permission from the Port Commission, especially when no law suits have been filed. Mary would also like to see the Commission give 3 minutes for public comment as other local agencies provide. Mary will write a formal letter and file a formal complaint regarding the conflict of interest.

Commissioner Waters responded to the concern over a conflict of interest. He explained that his previous comments regarding the docking fees related to the experience he had as a Commissioner when the companies were not paying their docking fees. He also clarified that he was in favor of keeping in line with what other Ports were charging. Commissioner Waters explained that the cruise ships affect Skunk Brothers and Jester & Judge, who hold tours and tastings. Commissioner Waters sees no financial benefit for Backwoods because there is no tasting room at Backwoods. Attorney Woodrich clarified that according to RCW 42.30.030 the conflict of interest has to be direct by virtue of the contract itself, not an incidental benefit. While she can file a complaint, based on the RCW Attorney Woodrich does not believe she will be successful. Commissioner Waters also encouraged members of the Public to come to his office and discuss any of their concerns, he is an open book.

Commissioner Kingston wanted to follow up on the statement regarding health insurance. Commissioner Kingston asked Mary how she had come to know what Commissioner's spouse's workplace health insurance circumstances are. Mary explained that she went to the bank where his wife works (not a bank she is a customer of), asked to speak with a manager, and then asked if the bank provides health insurance that covers the spouse of the employee, and she was told they do. Commissioner Kingston asked why Mary would go to his wife's workplace instead of just calling him to discuss the matter. Commissioner Kingston stated that he too has made himself available to talk with members of the public regarding any issue, and no one has contacted him. Commissioner Kingston explained that by not talking to him directly, important information was not being heard. Mary stated that she didn't need to talk to him privately and that she attends the public meeting so that it is a matter of public record.

Dave Gorgas: Dave wanted to ask why the Commission has a town hall format? He wondered whether a newsletter could suffice in response to letters of concern from the public? Dave explained that he sometimes detects that these sessions are colored by personal grievances and a vendetta against a particular commissioner. Dave feels like perhaps there are bigger problems to be tackled than the \$2000 legal fees or the health insurance of a Commissioner. Dave admits that he doesn't know a lot about the situation, but it seems like there are no charges, lawsuits, or continuing concerns regarding the legal situation of Commissioner Kingston. Dave believes it is a legitimate expectation that both of these fees be paid for by the citizens of the county. Dave is happy to write in with his questions and concerns and doesn't understand this town hall concept. Dave encouraged people to speak with their votes.

Commissioner Collins explained that the Commission invites the public because they want public feedback on matters of the Port. Auditor Masco clarified that the meetings have to be open to the public, but not open to public comment. Attorney Woodrich agreed.

Don Stevens: As Mayor of North Bonneville, Don wanted to attend the meeting and praise Director Albaugh for his work on the easement at the Cascade Business Park in North Bonneville. His efforts have been important, helpful, and appreciated.

Commissioner Collins closed Public Comment at 3:14pm.

2017 Budget Hearing:

Director Albaugh took the Commission through the budget summary, as reviewed previously in both the Commission meetings and in individual meetings with the Commissioners. The shortfall has been decreased to \$54,549 which is a significant change from the previous years. The Port has not budgeted for Wind River Business Park income, new leases, or anyone leaving. On the project side, there is a significant deficit with expenses exceeding the revenues by \$505,922. Commissioner Collins asked Director Albaugh to go through the projects that may not be completed. Director Albaugh listed: The waterfront enhancement project for \$700,000 and the North Bonneville Cascade Business Park. There are no revenues to pay for new construction if the easement there is approved. Director Albaugh is hoping to be able to do some work for less than budgeted, like the street lights. The WRBP waterline project also needs to be finished and the goal is to bridge the gap with .09 dollars.

Commissioner Collins opened the meeting to public comment for the Budget hearing at 3:19pm.

Mary Repar: If people are being fired and the budget is so poor, she advocates that the Commissioner salaries should be cut or wiped out according to whatever the RCW is that will allow for this, at a minimum. Mary said the Port should cut all available corners, starting with the commissioners.

Sandy Bacus: Since the revenue will fall below a million dollars, the Commissioners should not qualify for their salaries. Auditor Masco and Director Albaugh clarified for Sandy that the revenue from the

previous year (2015) qualifies the commissioners for their salary if over \$1,000,000. Loan income is backed out of the equation and grants are included in the equation.

Larry Krug: The mechanism of this budget is not what is going to be spent, but an outline of the projected. He just wanted to clarify that if there is no money, than there would be nothing to be spend on projects.

Commissioner Collins closed the public hearing at 3:22pm.

Meeting and Seminars Reports:

The WPPA meeting was last week, no one attended. There were no other meetings to report on.

Approval of the Minutes:

---MOTION--- Commissioner Waters moved to approve the Minutes of the November 8th, 2016 Meeting as presented. Commissioner Kingston seconded; the motion carried.

Voucher Approvals:

---MOTION--- Commissioner Kingston moved to approve the pre-issued General Fund Vouchers numbered 17576 through 17584 in the amount of \$13,210.22 dated November 16, 2016. Commissioner Waters seconded; the motion carried.

---MOTION--- Commissioner Kingston moved to approve the General Fund Vouchers numbered 17585 through 17595 in the amount of \$44,446.68 dated November 23, 2016. Commissioner Waters seconded; the motion carried.

Administrative Approvals:

---MOTION--- Commissioner Waters moved to approve Resolution 16-2016 establishing defense and indemnification for District officers, employees, and agents. Commissioner Kingston seconded; the motion carried.

Commissioner Kingston clarified that there has not been a lawsuit filed, nor formal complaints filed, and no policy or procedure of the Port was followed. Because he was open and offered up his personal computer, he incurred fees for processing that would not have happened had he not been open and transparent. Commissioner Kingston also explained that if he had been found guilty of anything, there would be nothing to talk about. Attorney Woodrich said this is just a policy to vote on, and is not in regards to the issue of the legal fees. This policy has been borrowed from the PUD, and is fairly standard for public agencies. Per RCW 4.96.041, this makes it clear that the Commissioners are covered, but also all agents and particularly the employees are covered to ensure that they are able to participate in the world. He clarified the terms defense vs. indemnification. Defense means that no matter what the circumstances are, legal counsel will be provided to defend the individual until the final ruling. Indemnification covers beyond the loss of a ruling, unless the individual did something outside of the scope of their job. Commissioner Kingston asked for clarification whether or not it would affect the current discussion over the legal fees, Attorney Woodrich explained that it would be effective the date it is adopted.

---MOTION--- Commissioner Waters moved to adopt Resolution 17-2016 Accepting and approving the 2017 Port Tax Levy over the 2016 amount of \$250,447.13. Commissioner Kingston seconded; the motion carried.

It was noted the Port did not take the allowed 1% tax levy increase.

---MOTION--- Commissioner Waters moved to adopt Resolution 18-2016 Accepting and approving the 2017 Budget. Commissioner Kingston seconded; the motion carried.

---MOTION--- Commissioner Waters moved to approve Resolution 19-2016 to amend the by-laws to change the time of the regularly scheduled meetings. Commissioner Kingston seconded; the motion carried.

Staff Reports:

Auditor's Report: October 31, 2016 Cash Balance was \$847,237.11. Total revenue for October was \$123,616.15 and expenditures were \$97,906.45: netting excess revenue over expenditures in the amount of \$25,709.70; year-to-date excess expenditures over revenue \$276,724.77.

Attorney's Report: Nothing to report.

Unfinished Business/Manager's Report:

- ***Cascade Business Park- USACE easement:*** Director Albaugh explained that several individuals including Steven Hassan and his staff at the City of North Bonneville, including an engineer on retainer with the city have done a great job, pulling at least 100 different documents for the Army Corp of Engineers. The Port has a report as well as the City of North Bonneville's report and they are ready to submit the week after the holiday. It is being sent without letters of support at this time.
- ***Holiday Open House:*** Director Albaugh asked if the Commission would be okay combining efforts with the Chamber and the EDC and the Commission agreed. This means that Holiday Open House will be on Dec 15th at the Chamber office from 11:30-2:30pm.
- ***Wind River Business Park (WRBP) MOU Update:*** Attorney Woodrich shared that there is an MOU and the Port is currently in negotiations. Director Albaugh is working to edit it to meet the needs of the Port so that legal authority rests with the Port. Commissioner Waters asked for clarification on the authoring of the MOU. The partnership is still in the works, but everyone is closer to being on the same page.
- ***Bob's Beach Parking- Surveyor:*** The results were surprising. The property owner thought he had more space than he did. Director Albaugh will coordinate a meeting for next month to review what options there are for his guest parking. The property line does not go perpendicular to the road and goes through the 2 of the cabins.
- ***Wage Increases:*** Commissioner Kingston wanted to invite Facilities Manager Doug Bill to speak to the Commission about his concerns with the decision at the last meeting to not give cost of living increases to the staff without much discussion. Facilities Manager Bill was not anticipating being asked to speak and would prefer to do so at the next meeting.

Director Albaugh mentioned that no wage increases are accounted for in the budget that has been approved.

- **Legal Fees:** Commissioner Waters addressed the public, as someone who is being put in a tough position. He has to be the one to make a difficult decision despite not having been here and is upset it falls to him. Commissioner Waters spoke with Attorney Woodrich to get brought up to speed. Commissioner Waters intends on voting yes to pay for the legal fees for Commissioner Kingston. He believes that passing Resolution 16-2016 will make sure that this never happens again. He clarified this is not an admission of guilt or non-guilt. If this happens again, if anyone seeks out legal counsel again, Commissioner Waters promises he will be up front with the public. Commissioner Collins asked Attorney Woodrich to speak to the legality of paying for the legal fees (or not paying for the legal fees) per the RCW's brought forward by the public. Attorney Woodrich explained that there is quite a bit of leeway in the interpretation of the RCW's and because the Commission knew about the outside counsel informally. It remains up to the discretion of the Commission. Commissioner Kingston is not allowed to vote on the issue. Commissioner Collins explained that he is not happy being in the position of having to vote on this either but he understands the position that Commissioner Kingston is in. He doesn't want to see Commissioner Kingston to have to pay for an attorney as a result of not knowing otherwise or feeling threatened in his job. Commissioner Waters summarized that moving forward that the Commission would appoint/approve the attorney if outside legal counsel is necessary. Commissioner Kingston clarified that he sought out Attorney Woodrich to do this work and Attorney Woodrich turned him down because of how overwhelmed he was with his workload. Commissioner Kingston was forced to hire outside counsel as a result. The fees were not known until September of 2016. The prior policy was not in place and if it had been Commissioner Kingston says he would have followed it. Commissioner Waters explained that he felt the Port was negligent in its handling of the situation. Commissioner Collins expressed that in this one instance he will vote in favor of covering the fees, but no more moving forward.

---MOTION--- Commissioner Waters put forth a motion to approve the bill from Kilmer, Voorhees, and Laurick, P.C. in the amount of \$2,070.00. Commissioner Kingston abstained. Commissioner Collins stepped down to second; the motion carried.

New Business:

- **WAVE use of Port conduit under rail road tracks:** WAVE is in need of the conduit for the dark fiber optics underneath the rail road tracks. WAVE owns both of the pedestals at the end of each conduit. Right now there is one fiber optic cable down there. The railroad company will only let you run two cables under the railroad. There are a couple of things to consider: if approved, you would have a private company using public property for their gain so some fee would need to be negotiated. Also, if the space in the conduit was requested by another agency at another time, all available space would be taken up. Director Albaugh is looking into more details about the original agreement to help in understanding the circumstances. Commissioner Kingston suggested looking at a month to month agreement and why the Port owns it. Commissioner Waters believes it is because of a grant, and that was the portion the Port covered. Attorney Woodrich

remembers that the Port put a bunch of fiber down there and it was meant to be high capacity because of the switch to dark fiber from the light fiber. Director Albaugh explained that WAVE is in need of more bandwidth to deal with the increase of mobile devices. Attorney Woodrich suggested the Port bring in an engineer to look at it. Commissioner Collins asked if this was recently discussed and it was last year. As of right now, the Port owns the line and WAVE pays \$60 month for it.

- **Meeting at Hedgewald next week:** Director Albaugh shared for the Commissions information that there will be a meeting next week to discuss a phase 2 environmental assessment of the County owned property across from Rock Cove. Property may be available for purchase and development, which would be great for the Port acquire. They will do a visioning workshop to determine what the community wants to see and how it fits into the bigger vision with the museum and Skamania Lodge.

Executive Session: Commissioner Gail Collins called for Executive Session including the Commission Attorney Ken Woodrich, Commissioner Todd Kingston, and Director Pat Albaugh from 4:07pm to 4:32pm for 25 minutes and from 4:33 to 4:55 for 18 minutes. **RCW 42.30.110(c)** To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public.

No decisions were made.

Adjournment: The Chairperson adjourned the meeting at 4:55pm.

Next Meeting: The next scheduled meeting of the Board of Port Commissioners is December 13, 2016 at 3:00pm at the Port office conference room: 212 SW Cascade Avenue. Stevenson, Washington.

APPROVED BY:

Commissioner Kevin Waters, Secretary (District 1)

Commissioner Gail Collins, President (District 2)

Commissioner Todd Kingston, Vice-President (District 3)

ATTEST:

Somer Meade, Minutes Taker

Executive Session Checklist, RCW 42.30.110

On 12 / 13 /, 2016, the Port of Skamania County Commissioners announced an executive session, specifically Section _____.

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(a) To consider matters affecting national security;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

in 3:56 out 4:06
(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library
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Checklist.docxmission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026;

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(n) To consider in the case of a health sciences and services authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(o) To consider in the case of innovate Washington, the substance of grant or loan applications and grant or loan awards if public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

[2011 1st sp.s. c 14 § 14; 2010 1st sp.s. c 33 § 5; 2005 c 424 § 13; 2003 c 277 § 1; 2001 c 216 § 1; 1989 c 238 § 2; 1987 c 389 § 3; 1986 c 276 § 8; 1985 c 366 § 2; 1983 c 155 § 3; 1979 c 42 § 1; 1973 c 66 § 2; 1971 ex.s. c 250 § 11.]