

PORT COMMISSION OF THE PORT OF EDMONDS
MINUTES OF REGULAR MEETING

February 11, 2013

COMMISSIONERS PRESENT

Jim Orvis, President
Mary Lou Block, Vice President
David Preston, Secretary

STAFF PRESENT

Bob McChesney, Executive Director
Tina Drennan, Finance Manager

OTHERS PRESENT

Brad Cattle, Port Attorney
Karin Noyes, Recorder

COMMISSIONERS ABSENT

Bruce Faires
Fred Gouge

CALL TO ORDER

Commission President Orvis called the regular meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

All those in attendance participated in the Pledge of Allegiance to the American Flag.

CONSENT AGENDA

COMMISSIONER BLOCK MOVED THAT THE CONSENT AGENDA BE APPROVED TO INCLUDE THE FOLLOWING ITEMS:

- A. APPROVAL OF AGENDA**
- B. APPROVAL OF JANUARY 28, 2013 MEETING MINUTES**
- C. APPROVAL OF PAYMENTS IN THE AMOUNT OF \$183,687.60**
- D. APPROVAL OF WATERFRONT FESTIVAL – WATER AREAS**

COMMISSIONER PRESTON SECONDED THE MOTION, AND THE MOTION CARRIED UNANIMOUSLY.

PUBLIC COMMENTS

Gary Wallinder, Edmonds, commented that the Port Executive Director's recent editorial in the local newspaper was an excellent media presentation, and more editorials should be published in the future to lay out the facts and talk about the beautiful marina, the promenade, etc. The Port has a good message to share, and they should reach out to the community through the media. He also commented that the detailed minutes provided for each of the Port Commission meetings are excellent and show that the Commission is seriously considering issues of concern and trying to be good stewards of the public asset. However, the Commission's meeting room venue has a few

problems. One particular concern is that the door to the meeting room is sometimes locked before meetings. This problem can easily be addressed, and it would also be helpful for the Port to post a sign on the meeting room door so the public can easily find the location. He also expressed concern that one evening he arrived to a meeting on time, only to find that the meeting had started early. In addition, he suggested that the Port provide a podium for members of the public to use when addressing the Commission.

The Commission agreed with Mr. Wallinder's suggestion that a podium be provided, and Mr. McChesney agreed to look into the issue. Commissioner Preston pointed out that the Edmonds City Council provides a one-page agenda, which lists their meeting procedures on the back. He suggested this could help encourage the public to participate.

MANAGEMENT LETTER FROM THE STATE AUDITOR'S OFFICE

Ms. Drennan reported that the Port just received the final 2010 – 2011 Audit Report from the State Auditor's Office, and a copy was provided to each of the Commissioners. The report will be posted on the Port's website within the next few days. She further reported that the 2012 Finance Committee attended the Exit Conference on January 10th, where the State Auditor's Office presented a preliminary draft of the report. The draft included a Management Letter and four exit items. She noted that the Management Letter was not included in the final report, but was attached to the Staff Report.

Ms. Drennan reviewed that the Port's lease rate with Anthony's Restaurant is base rent plus a percentage of sales. Anthony's provides a letter annually to show the annual revenues, and then makes payment based upon that amount. In the Port's 2008-2009 audit, the State Auditor's Office recommended that staff obtain supporting documentation for the percentage of sales calculations to ensure that the Port is receiving all funds owed. The Commission and Port staff discussed the issue at that time and decided not to ask Anthony's for this documentation. In the most recent Management Letter, the State Auditor's Office once again expressed concern that because the Port does not obtain supporting records from Anthony's, perform an audit or require additional verification of the gross sales figures reported to them, it risks receiving inaccurate information from the tenant and not receiving all the revenue it is entitled to. The letter recommends the Port establish procedures to ensure the information reported by tenants is accurate and it receives all revenues due.

Ms. Drennan reported that that Mr. McChesney and Commissioners Orvis and Faires discussed the issue with the State Auditor's Office, pointing out that the lease allows for an audit but does not require the Port to audit Anthony's records. They explained that, from the Port's perspective, this discretion assumes that the Port will have a reasonable basis for conducting the audit such as a sudden drop in sales or some other observable change that would create doubt as to the reliability of the reporting. They pointed out that an audit could be expensive and asked if there was something that would meet the recommendation without being a full audit. Staff from the State Auditor's Office advised that the Port of Everett obtains excise tax reports. They also noted that a printout from Anthony's accounting system showing their revenue would also be acceptable.

Ms. Drennan advised that Port Staff also asked about the procedure for determining whether an item was a finding, management letter item, or exit item. They requested that the State Auditor's Office downgrade the letter to an exit item. On January 30th, Port staff received a telephone call from the State Auditor's Office, stating that they had reviewed the letter and determined that it should remain a management letter, and the Port's letter would be filed with the Auditor's working papers.

Ms. Drennan summarized that one option for addressing this issue would be for the staff to ask the Commission to waive the documentation requirement each year. However, staff recommends the most appropriate course of action would be to require Anthony's to provide acceptable documentation for the 2012 and future percentage rent reports. This would avoid the potential for an audit finding in the future.

Mr. McChesney advised that this issue was discussed at the Exit Conference. The Staff Report was provided to inform the Commission that staff intends to contact Anthony's with a request that they provide proper documentation. He said he does not anticipate any problems, as it is likely that Anthony's already supplies this information to other Ports where their restaurants are located.

Commissioner Orvis said he attended the Exit Conference. It appears that the reason for the Management Letter is because the Port Commission did not document their decision to not ask for documentation from Anthony's. While the State Auditor's Office might not have agreed with the Commission's decision, it would not likely have ended up as a Management Letter. He agreed with Mr. McChesney that Anthony's would not likely have a problem with the Port's request for documentation.

Commissioner Preston questioned how the Port would ensure that the information provided by Anthony's is accurate. Commissioner Orvis noted that if they require Anthony's to provide excise tax reports, the information must match the numbers that are provided to the State. Mr. McChesney pointed out that the Port's lease with Anthony's includes a provision for an audit, but it is not mandatory or compulsory. The Port interpreted the provision to mean it had some discretion and the decision to ask for the documentation would have some reasonable basis. The Port has an excellent relationship with Anthony's. The Management Letter simply points out that by not exercising the discretion to audit, the Port may have some risk. This risk would be significantly reduced if they were to obtain additional documentation, and staff believes the best approach is to require Anthony's to provide excise tax reports. The Commission concurred, and Mr. McChesney advised that staff would send a written request to Anthony's within the next few days.

EDMONDS CHAMBER OF COMMERCE ARTS AWARDS 2013

Commissioner Block advised that she is the Port's representative on the Edmonds Chamber Arts and Culture Committee, which consists of representatives from various arts organizations in the City. The Committee established an Arts Award program, and they are currently soliciting nominations for the 2013 awards in the following categories:

- Business Leadership – To recognize those who have made a significant impact through various means of support.
- Individual Leadership – To recognize those who have shown exceptional leadership to foster partnerships between arts and culture and business.
- Creative Collaboration – To recognize partnerships that support specific local arts and culture programs or projects.
- Individual Volunteer – To recognize significant volunteer service to the arts and culture community.

Commissioner Block advised that nominations must be submitted by February 14th. The awards will be presented at a public event on March 21st.

Mr. Wallinder suggested that the Port's Sea Jazz program would be an appropriate candidate for nomination. He noted this would be an opportunity for the Port to publicize the program. Commissioner Orvis agreed and said that in addition to nominating the Sea Jazz Program, it would also be appropriate to nominate the individuals who organized and coordinated the event.

Commissioner Orvis expressed frustration that the timeframe for nomination submittal was short. He suggested that one reason the Chamber does not get a variety of input on projects and obtain its full potential is because they wait too long to bring items to the public's attention. The Committee created the award program in November, but the Chamber waited until just a few weeks ago to solicit nominations.

MARINA ELECTRICAL MAINTENANCE

Mr. McChesney advised that the Port's existing electrical system was installed in various phases over the years. Some sections of the marina were replaced in 1996 with the rebuild, but other sections have been in place since the marina was originally developed. The Port recently secured the services of Harbor Power Engineers, Inc. to complete an Electrical Condition Assessment to determine the condition of the electrical system throughout the harbor. The findings have allowed Port staff to develop a plan for moving forward with upgrading, replacing and reconditioning as necessary. He advised that staff is still working to gather information, particularly about cost estimates, and they are preparing to move forward with a phased approach to address the issue. He reviewed the five proposed phases as follows:

- **Phase 1** – Prepare a bid package by the end of February to solicit bids for replacement of all electrical in the guest moorage areas with alternate bids for the fire boat dock and V-Dock. The Port currently has an Interlocal Agreement with Fire District 1 for the existing fire dock. The agreement requires the Port to provide electricity and moorage at no charge, but it is silent on who would provide the required electrical infrastructure. It is likely that the Port and Fire District 1 will share these costs. Also, it is not clear at this time whether power is actually needed on V Dock. Mr. McChesney advised that staff is anticipating that bids will be received and a contractor chosen to perform the work prior to May 1st, before the peak guest moorage season. This would be considered a capital budget item.
- **Phase 2** – The Facilities Maintenance Manager and his staff will proceed as soon as possible with a visual inspection of all pedestals throughout the marina. Staff will be looking for corrosion, wear and tear, proper wire size, tightening of connections, and refurbishing receptacles as needed. A complete reconditioning of every pedestal will be performed. This project would run concurrently with Phase 1 and would be considered a maintenance expense.
- **Phase 3** – Once all pedestals have been inventoried and reconditioned as needed, the maintenance staff will have a clear mapping and picture of all 30 amp and 50 amp services throughout the marina. The map would allow the Facilities Maintenance Manager to provide cost estimates and options for either downgrading the existing 50 amp receptacles back to original 30 amp service or upsizing new tap conductors to maintain the 50 amp service in the existing pedestals. He explained that the marina was designed with 30 amp service. As the market changed and larger boats have come on line, owners of larger boats have requested 50 amp service. The Port has tried to accommodate these requests on a case-by-case basis. Rather than going back to 30 amp service, staff is recommending that the tap conductors in the pedestals be upsized for 50 amp service. This project could be done in house during 2013 as a maintenance expense item. Staff does not have a cost estimate for the project at this time.
- **Phase 4** – Prepare a bid package in the winter of 2014 to address the deficiencies with the fuel dock electrical system. The intent would be to have all electrical repairs done no later than May 2014.
- **Phase 5** – Complete replacement and upgrade of the breakwater lighting system. Staff has been experimenting with different lighting schemes, and one idea is to use solar-powered LED light fixtures. To date, they have been unable to find an LED light that is bright enough without running down the battery too quickly. Staff will continue to work with suppliers to come up with the right approach. He noted that this phase would not move forward until the electrical work in the main marina has been completed.

Commissioner Orvis pointed out that Elliott Bay uses a solar lighting system on their breakwater, but it is not likely LED. Mr. McChesney expressed his belief that solar-powered LED lighting should be an option for the Port's breakwater. It is just a matter of getting the right brightness and the correct solar array. He noted that solar-powered LED lighting would result in less maintenance, and the fixtures should last for over five years and save energy cost.

Commissioner Preston asked if the Port staff has received any feedback from tenants related to electrical failures. Mr. McChesney answered that they have not. However, many of the issues identified in the assessment are not visible problems to tenants. Although there have been no incidents or electrical failures, the Port cannot postpone the recommended improvements any longer without creating some risk that the Port staff is not satisfied with.

The Commission agreed that the electrical work should go forward as outlined by staff. Commissioner Orvis cautioned that the Port should have a formal procedure in place for shutting off the power before any work begins to avoid accidents. Mr. McChesney responded that the Port already has a lock out/tag out system in place, and several members of the maintenance staff have participated in training regarding this concept. Ms. Drennan added that the Port's Safety Committee also provided a one-hour lock out/tag out training session for all Port staff. However, only certain employees are allowed to perform the actual procedure.

Commissioner Preston asked how the City's decision to pull out of further discussions about a potential Regional Fire Authority would impact the fire boat and the Port's agreement with Fire District 1. Mr. McChesney pointed out that the original agreement was between the Port and the Edmonds Fire Department. However, the City of Edmonds no longer has a fire department. The agreement has been redrafted, but it has not yet been finalized. One remaining issue to resolve is who would pay to correct the problems on the fire dock. Again, he explained that, as per the agreement, the Port provides moorage facilities and electricity for the fire boat at no charge. In exchange, the fire department agreed to use the fire boat to spray off the breakwater in July and August when the birds leave an

unpleasant mess. He summarized that the Port has enjoyed working with Fire District 1, but they need to resolve the electrical maintenance issue and finalize the agreement.

Commissioner Orvis explained that Edmonds recently made the decision to pull out of further discussions about a potential Regional Fire Authority, but this should have no impact on the City's current agreement with Fire District 1. At this time, the City of Edmonds pays Fire District 1 to provide emergency fire service to the City of Edmonds.

GUEST MOORAGE (J, K, AND L DOCKS) ELECTRICAL OVERHAUL

As per the Commission's previous discussion, Mr. McChesney recommended the Commission approve the scope of work and budget proposal by Harbor Power Engineers, Inc. in the amount of \$8,100 to provide engineering bid specifications to overhaul electrical service on the Guest Moorage Docks.

Commissioner Preston referred to Item 11 in the proposal from Harbor Power Engineers, Inc. and suggested that the insurance amounts should be increased. Ms. Drennan advised that the contractor doing the actual work would be required to provide \$2 million in liability insurance, but she felt that asking the engineering consultant to provide more liability insurance than the \$1 million proposed would be excessive given that the proposed contract amount is \$8,100. Mr. Cattle agreed that the proposed insurance could be considered low, depending on the nature of the work. However, if the Port raises its insurance requirements too much, it effectively screens out potential contractors and contract prices go up. The Port must balance the risks against its ability to receive competitive bids and determine the appropriate level of insurance on a case-by-case basis. Ms. Drennan added that the electrical project will already limit potential bidders because contractors would be required to have longshoreman's insurance.

Mr. McChesney and Ms. Drennan agreed to review the insurance levels again to ensure that Commissioner Preston's concerns are adequately addressed. Mr. McChesney noted that he has already given Harbor Power Engineers, Inc. verbal authorization within his delegated authority to start the specifications so the project can stay on schedule.

COMMISSIONER PRESTON MOVED THAT THE COMMISSION APPROVE THE PROPOSAL AND SCOPE OF WORK BY HARBOR POWER ENGINEERS, INC. TO PROVIDE ENGINEERING BID SPECIFICATIONS TO OVERHAUL ELECTRICAL SERVICE AT THE GUEST MOORAGE DOCKS IN THE AMOUNT OF \$8,100. COMMISSIONER BLOCK SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE DIRECTOR'S REPORT

Mr. McChesney advised that he has been working closely with the City of Edmonds City Council and Planning Department Staff regarding the Harbor Square Master Plan process, which continues with an uncertain outcome. He and Commissioners Orvis and Block will meet with the Mayor and various City staff in the near future. He summarized that the Port worked hard to come up with something that makes sense for the City and the community, and they believe they have put together a good plan that represents a reasonable compromise and gives the City what it needs without destroying values. However, the plan has met with resistance, skepticism and negativity that is difficult to overcome.

Mr. McChesney reported that Port staff has been working to replace walers and rub strips on the fuel and guest moorage docks. This is an efficient way to use manpower during the winter months. He commended staff for doing a great job with the project during inclement weather.

Ms. Drennan advised that the Port provides medical insurance benefits to its Commissioners; and in 2002, two of the Commissioners indicated they wanted to keep the insurance they already had in place. They requested and were granted cash instead of the medical insurance benefit. During the Port's 2000-2001 State Audit, it was recommended that staff contact the Internal Revenue Service (IRS) to determine whether or not this amount was considered taxable income. The IRS determined that because there are other employees who work only limited hours and do not qualify for plan coverage, the Port could not extend medical coverage to the Commissioners on a tax-free basis. The IRS stated that Commissioners who opted out of the program and received cash should receive

those amounts on an after-tax basis. In response, the Port began withholding and remitting taxes on medical benefits and cash-in-lieu-of medical benefits in June 2003.

Ms. Drennan reported that in mid 2012, staff was asked to review the situation again. An email was sent to IRS Federal, State and Local Government Specialist, Clark Fletcher, who responded that the health plan coverage extends to the Commissioners because they are considered "regular" employees. The Port discontinued withholding and remitting payroll taxes on Commissioner medical insurance in September 2012 and issued revised W-2s for 2009, 2010, 2011 and 2012 so that Commissioners could file amended tax returns.

Ms. Drennan further reported that in anticipation of the April 15, 2013 filing deadline for 2012 taxes, the Port staff was asked for revised W-2s back to 2003. However, payroll records only exist back to 2006, as per the Washington State records retention schedule. Tax records prior to 2006 no longer exist in the Port's archives and are not retrievable by any means within the Port's current capabilities. She said that, most recently, Port staff was asked to investigate how the Commissioners might be able to obtain refunds for overpaid social security and Medicare taxes that were also withheld from their paychecks and remitted to the IRS going all the way back to 2003. Once again, staff contacted Mr. Fletcher at the IRS to find out how this could be done. He advised that the Port could file amended quarterly tax returns back to 2009 to get the taxes refunded from 2009 to 2012, but refunds for taxes paid before 2009 cannot be applied for and are unobtainable by IRS rules. He cautioned there is some time urgency, as the deadline for filing for 2009 refunds is April 15, 2013. Mr. Fletcher attempted to explain the required procedures necessary to complete forms 941X and W-2C, but the process is unclear and the proper solution remains vague.

Ms. Drennan advised that, after reviewing the situation and the process for obtaining refunds, staff believes the Port will have to amend 16 quarterly 941 tax forms to get the social security and Medicare taxes refunded from 2009 to 2012. As the Port does not have professionally-accredited tax accountants on staff and is not qualified to provide tax advice for individual returns to correct the complicated discrepancies, staff is recommending the Port should hire a qualified certified tax professional with experience in correcting quarterly 941 tax forms to complete this project. Staff is soliciting proposals for the project, and a rough order of magnitude probable cost estimate would be in the range of \$15,000 to \$20,000 to fully resolve the matter.

Commissioner Preston asked if the Port is hoping to receive a refund on the FICA taxes it has paid over the years. Mr. McChesney answered that there may be some refund to the Port, but the primary purpose of the project would be to obtain refunds for Commissioners who have overpaid taxes on their benefits. Commissioner Preston expressed concern that the cost of the project may exceed the benefits. Mr. McChesney expressed his belief that the Port has an obligation to pursue correction of the inconsistencies that resulted in overpayment of taxes to the extent reasonable and timely. Commissioners Orvis and Block concurred.

COMMISSIONER'S COMMENTS AND COMMITTEE REPORTS

Commissioner Preston advised that some local Boy Scout troops have expressed an interest in having some joint activities with the Edmonds Sea Scouts. Mr. Blossey pointed out that there is some history of the Sea Scout participating in events with other local scout troops.

Commissioner Block encouraged Commissioners to submit nominations for the Chamber Arts Awards. She said the new award program is expected to generate good public relations and good feelings amongst people in the community involved in arts programs.

Commissioner Orvis provided a report on the following legislative items:

- A bill has been introduced that would allow the sale of surplus property to fund affordable housing.
- There has been some discussion about extending the cruising permit time frame to one year. Currently, owners of large vessels must pay sales tax if they stay in Puget Sound waters more than six months. This has created a situation where many owners take their vessels to Canada. The Department of Revenue is convinced this is not true and that people pay the sales tax, but their conclusion is based on misleading data.
- A bill has been introduced to address the harassing public records requests that are taking place in Tacoma, Olympia, and other jurisdictions in the south. Another bill would require the Attorney General to develop a training course related to the Public Records Act.

- A bill would extend the prevailing wage requirement to anyone who operates on any leased public property, and this would include Harbor Square. Yet another bill would require the Port to certify the payrolls of any contractor working for them to ensure he is paying the prevailing wage. A bill has been introduced that would expand the prevailing wage law to include apprenticeship programs. The bill would require that at least 15% of people hired to do work at private sector businesses located on leased land are apprentices. That means that at least 15% of the workforce must be union labor.
- A bill was introduced that would require that 75% of the people working at mills on the Columbia River must be Washington residents.
- Another bill related to derelict vessels would allow public entities to get rid of derelict vessels, but it does not state who has to pay the scrapping costs.

Commissioner Orvis said it important for the Commission to stay apprised of the current legislation. One way to accomplish this would be for them to attend Port Day in Olympia and schedule meetings with individual local representatives. The remainder of the Commission concurred.

ADJOURNMENT

The Commission meeting was adjourned at 8:10 p.m.

Respectfully submitted,

David Preston
Port Commission Secretary