

February 27, 2024

6:00 P.M.

Newport, OR

PORT OF NEWPORT COMMISSION MINUTES

This is not an exact transcript. The video of the session is available on the Port's website.

The Port of Newport Commission met on the above date and time at the Administration Building, 600 SE Bay Blvd., and virtually via Microsoft Teams. In attendance were Commissioners Retherford, Ruddiman, Chuck, and Lackey. Commissioner Sylvia was excused. Also in attendance were Executive Director Paula Miranda, Director of Business and Finance Services Mark Brown, Operations Director Aaron Bretz, and Administrative Assistant Gloria Tucker. Visitors included Jennifer King, Richard Allm, and Lorin Williams, representatives of WHA Insurance.

CONSENT CALENDAR

MOTION was made by Lackey, seconded by Ruddiman, to approve the consent calendar as presented. The motion carried unanimously in a voice vote.

PRESENTATIONS

Allm, Williams, and King presented insurance benefits offered to the Port through Special Districts Insurance Services, specifically health insurance, general liability, and workers comp.

OLD BUSINESS

Authorization to Apply for Connect Oregon and RAISE Grants. Retherford introduced the agenda item. Miranda reported the project for Port Dock 7 has been in the Port's Strategic Plan capital improvement list awhile, and the cost has grown to \$34.5 million. She noted there is still a lot of uncertainty at this point. She explained the Port is still doing core sampling. She indicated the max for the US Department of Transportation grant is \$25 million, and the Port is asking for \$25 million. She added the Port will ask \$9.5 million from Connect Oregon.

Miranda reported there are not many awards above \$9 million, but there are some. She stated the Port will give it a shot, even though it is a long shot for RAISE. She explained if the Port doesn't get RAISE, there is PDIP and several other infrastructure grants coming out this year. She noted the Port will keep on trying to get grants. She indicated she talked to Business Oregon and if the Port doesn't get the entire \$9 million, say only \$7 million, then Business Oregon will work with the Port. She added if the Port doesn't get federal grants, the Port may have to go out for bonds. Chuck confirmed with staff the amount the Port will apply for Connect Oregon. Miranda noted Connect Oregon sometimes cuts off a percentage of the ask. She added this is a big enough project that it will get attention from the state and federal side.

Chuck asked what is the timeframe for the Connect Oregon grant. Miranda replied it is due tomorrow and usually takes three months to go through the first level. Bretz added around June or July, they will announce the award list. Chuck clarified with staff that the Port does not yet need to get the transportation commission onboard. Retherford confirmed with staff if other infrastructure grants are available, the Port will apply for multiple at the same time.

Lackey noted he is concerned if circumstances conspire against the Port, and it gets one grant but not another, costs balloon, and suddenly the Port has to come up with \$10 million. Miranda replied that could happen, but if grants fall through, the Port doesn't have a choice but to go for a loan or a bond. She added she was looking at the inspection report on this dock, and they gave the Port five years with a couple hundred thousand dollars of intermediate repairs. She noted it's the end of this dock's life, and the Port turns vessels away all the time. She stated the Port has to make a choice on how critical this is. Brown added the Port will keep applying for more grants. Miranda indicated there may be another opportunity for Connect Oregon in a few years. She added there is not a way to get this completed without grants, general funds, and loans.

MOTION was made by Chuck, seconded by Lackey, to authorize the Executive Director or designee to apply to both the Connect Oregon and RAISE grants as stated. The motion carried unanimously in a voice vote.

Authorization to Apply for Congress Directed Spending Funds. Retherford introduced the agenda item. Miranda reported last year, the Port received an award for the RORO Dock, but unfortunately that's stuck because Congress was not funded. She explained this application will be for Fiscal Year 25. She noted she is hoping this time around things will get funded. She explained the funds would be \$1.5 million toward South Beach dredging. She indicated the Port already has permits. She added Representative Hoyle is working toward changing language for the Water Resource Development Act Bill, adding small marinas to the Army Corps of Engineers dredging.

Miranda reported this funding would be better because it will be quicker. She stated for the RORO Dock, the Port had to contribute 45 percent. She explained the Port will ask for the full amount to dredge but may have to pay a percentage of the project. She indicated this is another project the Port does not have a lot of choice on. She added some areas are very shallow in the marina. Lackey asked for clarification from staff on the motion language.

MOTION was made by Lackey, seconded by Chuck, to authorize the Executive Director or designee to apply to the Congressionally Direct Spending FY 25 as a source of funding for the South Beach Marina dredging as stated. The motion carried unanimously in a voice vote.

Approval of Resolution 2024-05 Authorizing an Application for a Business Oregon Loan for Rogue Seawall. Retherford introduced the agenda item. Brown reported at the last meeting, Commission discussed creating a reserve account and borrowing from Business Oregon if the interest rates are low. He noted the rate is lower right now, and Business Oregon approved the Port's pre-application. He indicated the next step is to get a Resolution, and then staff will have all the materials ready to submit. Miranda confirmed with staff the interest rate is not finalized until they approve the loan. Brown added the rate may be even better.

MOTION was made by Ruddiman, seconded by Chuck, to adopt Resolution 2024-05 and authorize the Executive Director to insert the appropriate interest rate and agreement number, once known. The motion carried unanimously in a voice vote.

Approval of Resolution 2024-04 Regarding Fiscal Year 24-25 Rates, Fees, and Charges. Retherford introduced the agenda item. Brown reported, historically, January through March staff bring the rates to Commission. He stated Lackey pointed out the rates regarding labor vary, but they should all be the same. He explained this year staff put each division into its own rate sheet, and that number didn't transfer correctly. He indicated the rates are typically approved

or moved to the next meeting. He added, in general, the rates have gone up 4.5 percent, based on a CPI of 3.7 or 3.8 percent in December.

Brown reported in the future, some experts say CPI will be up, and some say down. Brown stated if the Port doesn't keep rates in line with inflation, the Port will lose spending power and can't maintain facilities. He indicated last year the CPI was higher than expected. Miranda explained there are a lot of factors influencing the rates. She stated one is inflation got crazy after COVID, and the other part of it is the Port has to stop providing service at a loss. She indicated a lot of indirect costs of the Port are not included in rates. She gave the Port Dock 5 pier as an example where the Port is building in maintenance and replacement costs. She added some areas are so low that the Port would be paying people to use the service. She noted staff get complaints about what the Port doesn't provide, but then those people complain when the Port tries to collect the revenue to provide those services. She stated most people don't understand the Port receives very little tax money.

Brown reported the Port added parking at the International Terminal. He noted staff are discussing internally about the wash down stations in South Beach. Miranda reported there are complaints about people causing delay by washing their whole boat, and then others compliment the Port for providing that service. Ruddiman clarified with staff the labor rates are the same across the Port. He asked why the annual moorage rates for Commercial and Recreational marinas are different. Brown replied it has always been that way. He explained the rates for the Recreational marina are all higher than the Commercial. He added he doesn't know why. Bretz replied there is some confusion. He explained some people expect a cheaper rate because they are commercial, but where infrastructure is concerned that doesn't have an impact.

Miranda reported there are things the Port is trying to make equitable and bring up to par, but that is difficult to do all at once. Bretz added people will say the Port gets grants, which is publicly funded. He explained that pays for construction but does not pay for maintenance. He indicated once the Port builds a brand-new facility that has the utilities and access people want, that will be a good time to adjust rates. He noted those who want to be here can pay extra. Miranda explained most grants ask how the facility will be maintained; that is increasingly a requirement.

Chuck explained when he got on the Commission, they saw the Commercial marina as a business hub with 300 small businesses. He stated the idea was other projects like the Terminal and RV Park would keep the rates (in the Commercial Marina) low to promote small businesses with the idea the Port would bring in new revenue. He noted there is a benefit to the community to have the Commercial marina. Miranda stated she agrees, but the Port needs to make sure those facilities are maintained, and as of right now, the Port doesn't have extra funds to give subsidies. She emphasized the Port has many projects that must be done.

Bretz reported moorage is a lower cost for a fishing vessel, but the Port sacrifices a lot when that is kept low. He stated it is a flawed concept that the Port should offer huge discounts on moorage. He explained those discounts mean the Port can't build the infrastructure everyone demands, and people are not getting that big of a discount. He noted services might be a different story. He explained as much as staff do at the hoist dock, it's not a huge earner, but it means a lot to the boats who are delivering. He noted the Port is supposed to work like an incubator so Seawater Seafood and Living Pacific can grow and effect changes in fish rates for the better. Miranda stated the Port doesn't want to make money, but also doesn't want to be at a loss either.

Lackey stated a few years back the Port handled things very well. He explained when the Port needed to do electrical upgrades, the fishermen understood the rates would be higher. He noted everything requires subsidy because the Port can't charge everyone on Port Dock 7 what it

costs to build. He indicated comparing the last full year before the pandemic, mid- 2018-2019, to these proposed rates, most are 30-40 percent higher, and commercial moorage is 68-75 percent higher. He added the Terminal rates are 128 percent higher. He stated within six years, there are serious increases. He noted he understands inflation is crazy and rates may have not been where they needed to be to maintain the facility. He indicated there are boats, commercial or recreational, or RVs, where people's spending dollars haven't gone up 35-40 percent, 70-100 percent. He added their dollars may have stayed the same or gone down.

Lackey stated it would be good to pause. He noted these are real interesting times, and the CPI could go up or down. He explained some say the economy is between waves of inflation, and others that this is like the Great Depression. He indicated in the fish world, weird things are going on worldwide across different species. He added Trident gulf plants are shutting down, and Russia has been dumping cheap pollock. He stated what's going to happen in summer 2024 and 2025 is anybody's guess. He asked will there be a point where the Port raises prices, and it does affect South Beach, small fishing, or the distant water fleet. He indicated he is not saying this to say no on raising rates. He added he would like to have a discussion on anything raised above CPI.

Lackey stated he understands how it feels to see increases every year. He noted, overall, the cost of moorage isn't as big as fuel, however, as all costs go up, every little increase feels magnified. He indicated the connection with customers could get more strained and impact commercial, recreational, and RV.

Miranda stated staff will take a further look at the rates. She explained while working on the budget, staff cut more projects then added. Retherford stated she has been in this industry for years and seen many ups and downs, but something has hit this winter that she's never seen before. She explained fish plants are not filling their freezers. She noted she is not here to say yes or no, and she understands the Port has so many projects. She indicated she is concerned it's not just Newport, but it's the whole coast from Alaska to California. She added when processors shut plants down and don't want fish, fishermen don't know what is ahead.

Retherford stated there isn't anything she hasn't navigated over the last 40 years, and there is something happening now that is bigger than what anyone can understand. She noted she does not know if a lot of boats will be fishing this year. Lackey stated both ports and boats are delaying maintenance. He noted in Toledo a bunch of people canceled repairs in 2023, and it may be worse in 2024. He emphasized it might be a hunkering down time, but he hopes it's not. Miranda requested if there are specific changes to the rates to let staff know. She stated staff would bring this back in March.

Brown stated he can bring a couple of proposals forward. Retherford stated she thinks the Port can find common ground. She noted she wanted to give a warning and confirm Lackey's comments. She indicated she is not against rates changing, and the Port has to survive too. Lackey stated he is not saying don't raise rates and not singling out moorage. He added because times are tough, the communication from a few years ago is more important.

This item was tabled until the next meeting.

Approval of Resolution 2024-03 Regarding Elimination of the Construction Fund.

Retherford introduced the agenda item. Brown reported state law requires review of special funds periodically. He stated the Port hasn't used this fund, and even with new Port Dock 7, the Port won't use this fund. He explained if the Port doesn't get the money in advance, but as reimbursement, there is no need to establish a fund. He noted this fund creates extra work for staff.

He recommended eliminating the fund. Miranda added staff will keep tracking monies by project rather than fund.

MOTION was made by Chuck, seconded by Lackey, to adopt Resolution 2024-03, Eliminating the Construction Fund. The motion carried unanimously in a voice vote.

[Rejection] of Bid Protest for Rogue Brewery Seawall Repair Project. Retherford introduced the item. Bretz reported the Port received four bids on this project. He stated there were three bids around the \$3 million range and responsive to the bid criteria. He noted one was 30 percent lower, Ballard Construction. He indicated staff ruled it was not responsive to the bid criteria. He explained in Ballard's protest, they made several claims.

Bretz reported one of their claims is that any irregularity in their bid is immaterial, basically not important. He stated they claim the Port has the discretion to be able to determine that they do meet the criteria in the technical terms of the RFQ. He noted they claim a slight delay did not matter, and what they submitted was substantially complete. He indicated they recognize the Port can reject a proposal if it is in the public interest. He added they claim the Port didn't require the submittals that were used to determine their bid was not responsive.

Bretz reported they reiterate that they submitted material shortly after the bids were due. He stated they point out, in their estimation, the required materials were buried in the specs. He noted they said it wasn't important information to evaluate the bid. He explained they protest the fact the Port determined their bid was unresponsive.

Bretz reported the Port does have the grounds to determine their bid was unresponsive, and that is the correct thing to do. He stated he recognizes their point that the Port could choose to go the other direction. He emphasized that that would open another set of problems. He noted their bid was unresponsive because it was absent requirements included in Section 5 of the RFQ. He indicated Ballard knew these were required, and they did not dispute that in phone conversations. He added they didn't get their information together quickly enough, and they didn't meet the deadline.

Bretz reported some points about it being required by bid submittal was further clarified in Amendment No. 2 Specifications in the bid documents. He explained the bid process and addendums. He stated the engineers clarify the polymer injection soil stabilization in section 313200 of Amendment No. 2 Specifications. He quoted, "The presence of a water insoluble diluent and the characteristics and properties listed above must be certified by the manufacturer. The certification shall be submitted with the bid documents." He stated the addendum further discusses the toxicity and chemical elements in the polymer itself. He quoted, "Testing must be performed by an independent laboratory. The certification shall be submitted with the bid documents... The polymer must pass the NYSDOT Panel Test for hydro-insensitivity and the Contractor must submit a certificate from an independent testing lab under the supervision and review of a licensed Professional Engineer certifying that the polyurethane material meets or exceeds the limits set forth in the panel test specification. The certification from the third-party testing lab shall be submitted with the bid documents."

Bretz reported he thinks it was very clear, and every effort was made to make it clear. He stated the Port referred to these things as requirements in the RFQ itself; the RFQ directs to these documents. He noted Ballard tried to meet these requirements, but they ran into what was, and what will continue to be, the biggest challenge, which is time. He indicated they had a little bit of time to get all this information together and submitted. He added they determined the Port had

more time than it did. He explained they didn't think it would be a big deal to be late on this stuff when they characterize it as a slight delay.

Bretz reported he can't be clear enough, the documents they didn't submit are vital to making the bid evaluation. He stated it's in the specs under bid document submittals a, b, c, d, e, f, g, h, i, and j. He noted at the time they submitted their bid document, none of those were in their package. He indicated they are the only contractor who failed to submit these documents; everybody else got it done. He added staff extended the bid opening from January 19 to January 22 because there was an ice storm and people's connectivity was disrupted. He explained there is a lot of scrambling at the last minute, and to be fair, staff delayed the opening.

Bretz reported 49 minutes after the bids were due, he got from Ballard what looked like the proposal from their subcontractor to them on the work, but it didn't include a, b, c, d, e, f, g, h, i, or j. He noted everyone else's submittal did. He emphasized these things were required, staff told them, and they knew it. He indicated on January 23, he contacted them again to see if they had more information, and they said they are working on sending the required submittals. He added at 9 a.m. on January 24, he got the last submittal from them to date.

Bretz reported he still did not receive a resume for the engineer for the project as well as listing of the vehicles, VIN numbers, and people attending the job site. He explained the RFQ said staff would evaluate this bid with four main points. He stated first is approach and evaluation of the past experience of the individuals who would be performing the work for the Port. He noted second is compliance with personnel qualification requirements and resume documentation found in the project specifications. He indicated third is responsiveness to proposal specifications and required information by the responsible bidder. He emphasized they were being evaluated on their ability to give the information asked; that was part of the evaluation.

Bretz reported their claim this was immaterial is completely wrong. He stated staff can't evaluate any other way. He noted their claim that they didn't get a competitive advantage is incorrect. He explained the Port gave the bidders homework and a due date, knowing it would be a tight schedule. He stated everyone else got it done on time, and Ballard did not. He noted now, after the fact, they want to turn in more information, get full credit, and attempt to use other people's homework such as using someone else's contractor. He indicated he doesn't think the Port can say there is a level playing field if the Port goes with Ballard.

Bretz reported folks may say it's in the public interest because the Port would save 30 percent. He stated there are jobs out there that someone paid public money and didn't get the product the public was looking for. He noted contractors are part of the public, and it is in the public interest to maintain a level playing field in the contracting process. Miranda stated she doesn't think it is in the public interest to reverse this and have other contractors who did provide the requirements sue the Port. She explained then the project would be delayed, and the Port could lose funding and permits.

Ruddiman stated the problem he sees is companies who try defining what is in someone else's best interest end up costing more. He explained the next thing you know, there are extra costs popping up, and they end up costing more than the other guys. Bretz stated in this instance, he wouldn't make the claim that will happen, but they were not responsive on multiple levels. He noted he doesn't think it's wise to entertain their protest and recommended rejecting their protest. Retherford asked if there are legal ramifications for rejection of the protest. Miranda replied staff have been working with the attorney the whole time. Bretz stated they could always protest further, but the attorney doesn't think they have a case here.

MOTION was made by Lackey, seconded by Ruddiman, to reject the attached protest from Ballard Marine Construction. The motion carried unanimously in a voice vote.

STAFF REPORTS

Executive Director. Miranda presented the report included in the packet. Tucker confirmed with Commission the Budget Committee meeting could be held noon on March 19, 2024.

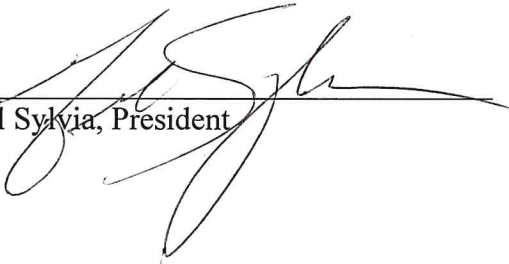
COMMISSIONER REPORTS

Chuck reported on his attendance to the Special District Association Conference. He noted the Port of Bandon recently built a dock and has tips on permitting.

ADJOURNMENT

Having no further business, the meeting adjourned at 8:09 p.m.

ATTESTED:



Gil Sylvia, President



Walter Chuck, Secretary/Treasurer

