

## **PORT OF NEWPORT MINUTES**

August 22, 2017

Regular Commission Meeting

### **I. CALL TO ORDER**

Commission President Patricia Patrick-Joling called the Regular Commission Meeting of the Port of Newport Board of Commissioners to order at 6:02 pm at the OSU Extension Office, 1211 SE Bay Blvd, Newport, OR.

**Commissioners Present:** Walter Chuck (Pos. #1); Sara Skamser (Pos. #2); Stewart Lamerdin (Pos. #3), Secretary/Treasurer; Jeff Lackey (Pos. #4), Vice President; and Patricia Patrick-Joling (Pos. #5), President.

**Management and Staff:** Aaron Bretz, Interim General Manager; Mark Harris, Staff Accountant; Jim Durkee, NOAA Facilities Manager; Bill Hewitt, RV Park Manager; and Karen Hewitt, Administrative Assistant.

**Members of the Public and Media:** Doug Cooper, Hampton Lumber; Tim Miller, Miller Farms; Robert Smith, F/V Raven; Mike Storey, F/V Pegasus; Steve Beck, Newport Resident; Dustin Capri, Capri Architecture; Lisa Lackey; Mark Cooper, F/V Perseverance; Rex Capri, Newport Resident; Kiera Morgan, KYTE/KNPT Radio; Heather Mann, Midwater Trawlers Cooperative (MTC); Fred Yeck, F/V Sea Dawn; Yale Fogarty, ILWU; Pat Ruddiman, ILWU; Judy Pelletier, Oregon Small Woodlands Association.

### **II. CHANGES TO THE AGENDA**

Item VI(D) General Manager Selection Process was replaced with Increasing Pay for General Manager Pro Tem, Aaron Bretz.

### **III. PUBLIC COMMENT**

Rex Capri said he recently returned from Alaska. He asked for a review of the change in management and the standing on the Newport International Terminal (NIT) project. The users group had asked for exclusive use, which was not part of the bond measure. Patrick-Joling said that Kevin Greenwood resigned last month and Bretz is filling in. The Commission sent out notice to fill the Pro Tem position and received 4 – 5 applications and interviewed two applicants. Neither candidate was voted in. At the noon meeting, Bretz was named and the General Manager Pro Tem and the Commission will start the process for a selection for the General Manager (GM). The Users Group has not been discussed by the Commission yet.

Fogarty asked about the manager issue with a transition, and proposals for amendments to the contracts. He asked if the Port had spoken with Teevin and Silvan to improve the Port's position in the contracts. Patrick-Joling said that Bretz had spoken with them. Bretz said he had taken a tour of Teevin's facilities with Lamerdin and Chuck, but the contracts were not discussed. Fogarty asked if the Port was planning on changing its position on the contracts or waiting until a General Manager was in place. Patrick-Joling said this was talked about at the noon meeting, and the Commission will see how things go.

Mann read a statement into the record regarding their stance on NIT and the contracts, which is appended to the minutes.

Miller, a Lincoln County resident and small woodlands owner, said he has been attending Commission meetings regarding exports at NIT. The infrastructure at the rest of the Port is deteriorating and needs to be fixed, and the Port needs money. The debt on NIT is not being met and is being helped by the South Beach Marina. He remembers when the Marina and RV Park were built and losing money. The terminal has to start somewhere. He said the agreements weren't good, but not really bad – it is the only agreement the Port has, and needs to take what is has. He understands the fishermen's position and has many fishing friends, but they want exclusive use of NIT for four months. Shipping would use 8 days to load a log ship, which for 7 shipments would be 56 days, or two months. There would still be six months. Miller said this is just a scheduling problem. He said he had been on a few boards and a lot of groups, and had attended retreats on board training. He suggested the Commission take board training in order to be viable. They serve the tax payers who footed the bill for the NIT bond.

Beck said NIT was built for commercial fishing, not lumber. He appreciates lumber and that they want to save money on fuel, but asked if that was helping the Port. Beck said that Chuck said the initial grant was to replace the east dock for barging, and the Port may have an opportunity for barging and may not have to bring in handy-sized vessels.

Yeck said he was an NIT user and has been at this for a while. He said it was time to face the fact that the proposals were defective and put the Port in a bad position. No-one knows who Silvan is and if they have \$2.5MM. There is \$4.5MM debt overall. The contracts do not insure enough loads to break even. Yeck suggested it is time to put it to bed and pass a motion to end consideration of these proposals. There is a good chance for the new GM to start fresh. Yeck said Smith, who used NIT, commented that Chuck said the Port will need help getting grant money. The deals are putting the Port at risk and don't make sense. Yeck said this would not be the only shipping deal to come along.

#### IV. CONSENT CALENDAR

- A. Minutes
  - 1. Special Commission Meeting & Executive Session July 25, 2017
  - 2. Regular Commission Meeting July 25, 2017
  - 3. Special Commission Meeting & Executive Session July 31, 2017
  - 4. Special Commission Meeting & Executive Session August 7, 2017
  - 5. Special Commission Meeting & Executive Session August 9, 2017
- B. Financial Reports
- C. Good Sam Renewal
- D. Vacation of a Undeveloped Portion of SE Ferry Slip Road
- E. Resolution (2017-11) Amending the Port of Newport Facilities Code to Add a Violation for Unauthorized Trash Removal
- F. Contract with all-ways painting for painting the NOAA MOC-P common area

#### **A motion was made by Chuck and seconded by Lackey to approve the Consent Calendar.**

Lamerdin asked why the item IV(D) was coming up now. Bretz said this was to clean up the right of way which was not done when developed. The City is required to confer with Ports, but this does not affect Port operations. Dustin Capri said he was working with the Aquarium. He said that where Ferry Slip Road turns it doesn't line up. This is leased from the City of Newport. The City Council initiated the vacation on behalf of the Aquarium. This is a small swap between the City and itself. Lamerdin confirmed that the Port just has to approve the vacation but it doesn't involve Port land.

**The motion passed 5 – 0.**

**V. OLD BUSINESS**

**A. Items Removed from Consent Calendar**

There were no items removed from the Consent Calendar.

**B. Accounts Paid**

Lamerdin asked about the \$1000 for fuel dock repair. Bretz said this was for a fuel valve for leased equipment. Lackey asked about \$1100 for pens. Hewitt advised these were promotional pens.

**A motion was made by Chuck and seconded by Skamser to approve the Accounts Paid. The motion passed 5 – 0.**

**C. Mildred C Progress Report**

Bretz referred to the staff report. Lamerdin asked if there was a survey for hull thickness. If there are holes in the hull it might be dealt with now. Bretz said the worst damage was to the lazarette. Lamerdin said since there was not recorded history, it would be good to check the hull, at least the area below the waterline. Skamser said Tom Curry is skilled, but there is a concern about the cost. Bretz said he would get an estimate and if it exceeds this year's budget for vessel maintenance he will first inform the Commission before authorizing.

**D. International Terminal Shipping Facility Report**

Bretz referred to the staff report. Bretz said the main purpose was to gather information and extend the TIGER grant for the Commission to make a choice. The details were based on a conversation Bretz had with Bob Bouchard of MARAD. Bouchard was not aware the Port was experiencing difficulty with the plan. He asked Bretz to relay to the Commission the opportunity cost of rescinding the grant, that the money is hotly contested for, and the State of Oregon had received a couple of TIGER grants in recent years. Applicants in other areas would get to say the Oregon got a grant and didn't use it. Chuck asked about permits and if Bretz had spoken with the Halls. Bretz said they spoke about an expired permit that the Halls would pursue. They are also considering building floating docks to ease the congestion at NIT. The floating docks would have no hoists but could be used for staging and moorage.

Lackey made reference to a letter from Commissioners at the time regarding the bond measure. He stated he had a potential conflict of interest because he manages two vessels for his father-in-law that use NIT. The bond measure listed commercial fishing as the primary user. The bond was made to fund essential mitigation for hazardous substances, to rebuild the docks used primarily by commercial fishing, and remove broken dock to get shipping to return, all providing economic benefit to Newport. The current deals potentially violate the second promise. The current deals have significant economic risk rather than benefit.

**A motion was made by Lackey and seconded by Skamser that the shipping agreements in their current form be rejected and not receive future consideration, and contract negotiations between**

**the Port and shipping related entities not include Commissioners serving as liaisons.** (This motion was later amended.)

Lackey said to move forward with shipping deals that benefit the Port and the community, the Commission needs to put these deals behind them. To move forward on a good deal, the first step is to put these deals behind them. The second part of the motion addresses the process for moving forward. Beck had suggested hiring professional negotiators who could facilitate more unity and information for the Commission. They would work with Bretz now and the new GM in the long run to find a deal that works for everyone and fulfills the promises of the bond measure. Lamerdin said the motion bundled two things that aren't appropriate to be bundled. The suggestion for the process binds the Commission and he could not support that. It would hamstring the Commission on all future deals; Lamerdin sees this as the Port Commission losing the control the Commissioners were elected to use. The shipping discussions have been going on for a long time. The current deals have only been around since the beginning of this year. He asked if the Commission has worked to see if changes can be made. The agreements are for the development of the site, development of the area, and economic gain in the long run. Is the Commission going to vote no and hope something comes along in the future or to try to develop what is more viable for the Port and address the scheduling issue? Lamerdin said he is not sure he is ready to do that right now. Skamser said this is a tough decision. At a previous meeting the GM said that these contracts were it, and asked why no-one has come back. Lamerdin said this is the question the Commission should be asking. Why not go back to see if modifications can be made to protect the Port interests? Chuck said there have been no contract negotiations since that meeting. He asked Bretz hypothetically if barges were to come in would they need to negotiate a contract or just schedule. Bretz said the tariff is set, there would be a wharfage fee and stevedore needed, but would not be bound by contract. Chuck would not want the second part of the motion. Lackey said that portion of the motion would apply to future shipping contract negotiations of this size, not other issues. He was not saying the Port couldn't use any components of the agreements, but should start anew with outside legal, financial and negotiating help. The current process has not resulted in a good deal. Chuck asked Lackey if the motion could be split into two motions.

Patrick-Joling said this has been going on for some time and she has been going over the numbers. She has been getting different answers. The Port can't enter into a deal if the Commission doesn't know what the finances are. There is no certainty of the Port's financial and debt capacity. Patrick-Joling looked at this as a business proposition. Debt and income have to balance out. The Port should not enter into a deal that subsidized other parties. These agreements show no return for 10 – 15 years. She had been told this is a final deal. Patrick-Joling had asked if there was any way to get changes so the Port wouldn't be subsidizing the shipping and get guarantees, and had been told no. Patrick-Joling said that Brown said if Silvan did not get what it required from the fishing industry they would back out. Patrick-Joling said the Port has a valuable product that may interest other entities. Lamerdin asked if Patrick-Joling had sat down with Steve Larrabee, Port Director of Finance to address the financial concerns. Patrick-Joling said she had addressed all of this in public meetings. Lamerdin said the Port is going through the audit process and Larrabee would likely have a response. Patrick-Joling said she had submitted questions 3 – 4 months ago to Greenwood which he and Larrabee worked on answering. Not all of the questions were answered correctly. She followed up with more questions, but was not getting a clear picture. She was suspect when Beck asked about income and expenses at the terminal, and three weeks later got a three line response from Greenwood. That was the beginning of "what's going on here?" Patrick-Joling said she questioned the Port's finances enough that she would say no to a risky deal.

Lamerdin said there is a common point here that “Greenwood told us” or “I was told” in terms of the ability to continue with negotiations. If we say the contracts are DOA we can’t negotiate. If the Port did not first address the parties involved, have they really pursued the options enough to walk away? There will be impacts to people outside of the Port, not just the Port stakeholders. Patrick-Joling said she has a fiduciary responsibility to the Port. She will not commit to these deals and she can defend that. Grants come and go. If the Port has a viable plan, they would have a great chance of getting something. Lackey addressed Lamerdin’s comment about closing negotiations if the contracts are DOA, and said that is not the intent of the motion. It is to not throw good money after bad. The Port could go forward, whether it would be a version of this deal or another deal. The Port needs a deal that makes sense, and needs to change the process. Chuck said that at the June meeting a resolution was passed to put windows in for shipping, which should be in the tariffs if at times NIT would not be open to other users. In the negotiations, Teevin and Silvan were asked for their business plan, which they showed to Chuck and Brown but did not want made public. They would only say that Teevin would require that there would be a minimum number of shipments.

**An amended motion was made by Lackey and seconded by Skamser that the shipping agreements in their current form be rejected and not receive future consideration.** (This motion was later amended.)

Lamerdin asked if Lackey was open to negotiations, why a motion was needed to reject the contracts. Lackey said the June 27<sup>th</sup> meeting left the community wondering what would happen now. Lackey said this motion would be the Commission saying these deals, as they are, are not satisfactory. The agreements are beyond a tweak. Patrick-Joling asked Lackey about a second motion. Lackey said this would preclude the current process. He is not ready to offer a third motion about defining the process. Chuck asked if Lackey meant all six documents would be rejected. The lease option, originally signed 18 months ago, still has six months remaining. There are also easements with Rondys and the state IFA loan. The motion needs to address specific agreements.

**An amended motion was made by Lackey and seconded by Skamser that the three shipping agreements in their current form with Teevin, Silvan, and the 3-party agreement be rejected and not receive future consideration.**

Patrick-Joling said this is tricky because there are some intertwining agreements. Lamerdin said more analysis is needed into what the Commission is rejecting; the six agreements are linked. It would not be appropriate to reject the agreements without understanding what is already committed. He suggested a dedicated Work Session to consider how they are intertwined then consider whether to accept or reject. Skamser said she thought this exhibits part of the problem. She agreed that the Commission had to move forward, and this motion would show the Commission is able to move on and not continue to put it off to the next meeting. Lackey said the Teevin lease option online ended in 2016. Chuck said an extension was signed. Lackey asked for a copy, which Bretz said staff would provide. Lamerdin said he agrees the Commission owes it to the stakeholders, and to everyone who has put a lot of time into this, to do something. He wants to understand what they would be closing the door on because there are a lot of moving parts. Lackey said he would think the Commission would want to put this chapter behind then discuss how to move forward. Skamser said part of the reason the current agreements are not a good product is because they are intertwined, and it is hard to understand why the Port can’t start anew. Skamser passed out a draft resolution which is appended to the minutes. She would like to first deal with Lackey’s motion to protect everyone from having to go through this again.

Bretz asked before a vote to clarify this is for the three log yard/shipping agreements not the lease option. The Silvan agreement would be a piece of the financing included in the TIGER grant. Lamerdin said if the Commission doesn't have agreements the grant would essentially go away, which Bretz said was his understanding given the one of the first question from Bouchard was about the other financing. Lamerdin said this motion would kill the TIGER grant. Bretz said not necessarily the agreement, but there would certainly be a different conversation. Lamerdin said this would be part of the discussion with MARAD. If the agreements are not there, the Port would not be able to show progress. Bretz said the Commission knows what it doesn't like about the deal and what it would want fixed. He would ask MARAD for 45 days to come up with solutions. Renegotiations would be needed. Lackey said the TIGER grant would be in jeopardy with or without the motion. The Port could not be less than honest at the meeting on Monday.

**The motion passed 3 -2 with Chuck and Lamerdin dissenting.**

**A motion was made by Lackey and seconded by Skamser that future negotiations between the Port and shipping related entities shall not include Port Commissioners serving as liaisons.**

Lackey said no offense to Commissioners, but the Port needs legal review, financial help and negotiating assistance. The GM would be the point man with oversight by the Commission. Chuck said he would not want to hamstring future Commissions; this would be taking away some of their authority. This would be taking the President out of the process, who he thinks should be involved. Patrick-Joling said when she first came onto the Commission these negotiations were already in progress, with Chuck and Jincks involved not the full Commission. Patrick-Joling thought this was odd, because in her experience a third party would negotiate and bring information to the Commission. This avoids a bias. Skamser said she thought it would be healthy for the Commission to be separated. The Commission is always in charge, and she did not see this motion changing that.

**The motion passed 3 -2 with Chuck and Lamerdin dissenting.**

Bretz referred to the section of his report addressing permits.

**VI. New Business**

**A. Mildred C Exit Plan**

Bretz introduced his staff report and recommended the resolution. He said the Mildred C is getting to the end of her life. He explained that even if there was \$7000 in the budget line item, the resolution would provide for only a total of \$40K in repairs before the end of five years and anything over the line item for the year would require quotes and Commission approval before work would be done. Lamerdin asked what would happen if the survey says the tug is only worth \$5000, Bretz said the tug is not worth much money at this time, but its value is the capability. The Port could money into it and use it for five years. Lamerdin asked why \$40K, and said the Commission needs to approve expenditures greater than \$5K anyway, so he did not see the need for the resolution. Bretz said that was based on \$7K times five with a \$5K cushion. The resolution would be to provide a cap on spending but also to meet the need to address broken pilings. Lamerdin said the Commission had approved the current work and asked for a survey. Skamser said there had been a breakdown in the procedure, so this would help prevent repeating the problem. Bretz said the goal is to provide assurance that this won't continue indefinitely. A plan for

what will happen by the end of the five years has to be developed. There was Commission consensus to wait for the survey before making a decision.

**B. Contract for Port Dock 5 Pier Access**

Bretz introduced the staff report and contract for 30% engineering and permitting with OBEC. Skamser asked if this had been brought to a Committee, and Bretz responded the CFUG Committee had reviewed the project. Skamser confirmed this is just a step in an ongoing project. Bretz said in three years the Port will need funding for the actual construction. Bretz recommended approving the contract.

**A motion was made by Chuck and seconded by Lamerdin to approve the professional service contract with OBEC as presented. The motion passed 5 – 0.**

**C. 6-Month Priority List**

There was no discussion on this item.

**D. Increase in Pay for Bretz**

Patrick-Joling referred to the documents included in the meeting packet. A proposed contract was presented for Bretz to serve as Interim General Manager, with a 20% increase in salary during his term in that position, retroactive to July 20<sup>th</sup> when he began serving as Interim General Manager. Lackey commented that the amount looked appropriate based on the steps.

**A motion was made by Chuck and seconded by Lackey to authorize the Commission President to sign the contract with Bretz as presented. The motion passed 5 – 0,**

**VII. STAFF REPORTS**

**A. Director of Finance**

**1. June Occupancy Report**

Harris introduced the staff report. He said the finance staff is preparing for an annual required audit, and will be finished within the next month. Patrick-Joling asked how the eclipse went at the RV Park. Bretz said he spoke with Bill Hewitt, who said the park was at capacity except for dry camp. He is not aware of any issues.

**B. Director of Operations/Interim General Manager**

- 1. Activities for the Month**
- 2. NOAA Report**
- 3. NIT Report**

Bretz introduced the staff report. He added that Rondys is curious how the Port may help with permitting or planning of their floating dock project. Bretz is working with John Van Staveren. Bretz recommended that a Commissioner be a liaison to the Parking District Committee; Lackey is the liaison but the City needs to know he replaced Greenwood. Bretz said the repair to the hillside at the Maritime Center will begin on August 28<sup>th</sup>. The asphalt repairs have been done at South Beach for a cost of approximately \$2300.

**VIII. COMMISSIONER REPORTS**

Lamerdin said he had attended the tour at the Teevin facilities.

Skamser said she wanted everyone to know that it was a hard decision made at this meeting.

Chuck said he also went to Teevin, where they also expressed an interest in shipping finished lumber out of here March.

Patrick-Joling said she went to CWAC in Toledo and met with Representative Gomberg, and has been staying in touch with Bretz.

**IX. CALENDAR/FUTURE CONSIDERATIONS**

- A. 8/25 Joint Meeting Port Commissioners & Newport City Council
- B. 9/4 Labor Day, Port Office Closed
- C. 9/19-9/22 Pacific Coast Congress of Harbormasters and Port Managers Annual Conference
- D. 9/26 Regular Commission Meeting
- E. 10/5-10/6 OPPA CONFERENCE
- F. 10/7–10/8 Columbus Day Regatta
- G. 10/24 Regular Commission Meeting

There were no changes to the Calendar/Future Considerations.

**X. PUBLIC COMMENT**

Beck thanked the Commission for getting to the point and getting past “paralysis by analysis.”

**XI. ADJOURNMENT**

Having no further business, the meeting adjourned at 7:50 pm.

ATTESTED:

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Patricia Patrick-Joling, President

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Stewart Lamerdin, Secretary/Treasurer

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