

**MINUTES OF THE PORT OF BELLINGHAM SPECIAL COMMISSION MEETING  
HELD WEDNESDAY, AUGUST 19, 2009  
HARBOR CENTER BUILDING CONFERENCE ROOM  
1801 ROEDER AVENUE, BELLINGHAM, WASHINGTON**

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Present:	Jim Jorgensen Douglas G. Smith	Vice President Secretary
Staff:	Fred J. Seeger Dan Stahl Sylvia Goodwin Lydia Bennett Carolyn Casey Frank Chmelik Mary Matyas	Interim Executive Director Director, Marine Services Director, Planning and Development Director, Real Estate Communications Manager Port Counsel Executive Secretary

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**CALL PUBLIC MEETING TO ORDER AND RECESS TO CLOSED EXECUTIVE SESSION**

At 1:30 p.m., Commissioner Jorgensen called the Commission meeting to order, noting Commissioner Scott Walker's absence due to a death in his family. The public meeting was immediately recessed to a closed executive session to discuss potential litigation pursuant to RCW 42.30.110(1)(i). Commissioner Jorgensen noted that no formal action would be taken during the closed session and he expected the closed executive session to last approximately one and one-half hours at which time the Commission meeting would reconvene.

**RECONVENE PUBLIC MEETING**

The Commission meeting was reconvened at 4:05 p.m. Commissioner Jorgensen noted the closed session regarding the Port's NOAA bid and potential appeal was longer than expected. He reported the Commission was prepared to take action in a public portion of the meeting.

**NEW BUSINESS**

**1. NOAA BID AND POTENTIAL APPEAL**

Mr. Fred Seeger, Interim Executive Director, reviewed that Port staff attended a NOAA Site Selection Debriefing in regards to the Port proposal to bring NOAA facilities to Bellingham on Monday, August 17, 2009, at the NOAA facilities in Sand Point (Seattle, Washington). He reported Federal Acquisition Regulations (FAR) debriefing procedures were followed. Mr. Seeger noted that staff learned there was a technical

evaluation and financial component to the evaluation process with the Port just below Newport in the technical evaluation ranking and in third position in the financial evaluation ranking. The Port of Newport (Newport, Oregon) ranked the highest in the technical evaluation and had the lowest bid price.

Mr. Frank Chmelik, Port legal counsel, then gave an overview of the NOAA selection process; he noted that in this bid procedure technical factors were more important than price in the evaluation. NOAA therefore first evaluated the technical factors. Since the Port of Newport Oregon was deemed to have the best technical offer and the lowest price the NOAA analysis stopped there. If the Port of Newport was not the lowest price then NOAA would have evaluated whether the technical offer warranted paying a price higher than the next highest technical offer. Mr. Chmelik then reviewed the technical scoring of both the Port of Newport and the Port of Bellingham. He reported that staff had been in contact with an expert attorney (Lee P. Curtis of Perkins Coie, LLP in Washington, D.C.) to discuss legal options. Staff noted the technical evaluation process had some errors and it was possible the Port could move up in the technical evaluation ranking if NOAA were to take corrective action of the technical evaluation process. Mr. Chmelik reviewed the protest procedures noting the initial protest must be filed by Monday, August 24 and the initial protest would cost approximately \$15,000 to \$20,000 to produce with the legal costs to complete the protest estimated at approximately \$100,000 to \$200,000. Mr. Seeger noted the estimated cost was for Perkins Coie legal expenses only; the estimated cost for the protest does not include in-house costs or Port local legal counsel expenses. Mr. Chmelik reviewed that the Port of Bellingham has reasonably strong grounds for a protest on the technical grounds. However, he noted, that if the Port of Bellingham was ranked first technically then NOAA would still have the option to conclude that the Port of Bellingham's technical offer was worth paying the Port of Bellingham's \$4 million per year rent versus the Port of Newport's \$2.5 million per year rent. He noted while there was reasonably strong grounds to appeal the award, even if the Port of Bellingham was successful and advanced ahead of Newport on technical merit, NOAA could still select Port of Newport because of the cost differential. Finally Mr. Chmelik noted that an appeal would need to be filed no later than Monday close of business to take advantage of the automatic stay.

Commissioners Smith and Jorgensen reiterated the Port's proposal of approximately \$32 million included a conscious decision not to subsidize the project with taxpayer money. The Port has spent approximately \$300,000 on its bid preparation and Commissioner Smith brought forward a motion that based upon the facts presented by Port staff and Mr. Chmelik the Port should not pursue the appeal or spend additional funds on the NOAA appeal. Commissioner Jorgensen agreed that based upon the presentation, the Port not invest in a protest without any guarantees and noted other alternatives for Port investment in Whatcom County projects can now be explored.

Special Commission Meeting Minutes

August 19, 2009

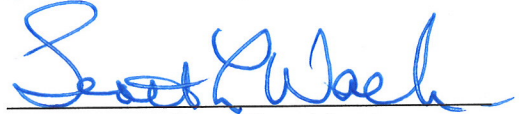
Page 3

Motion: Not to protest the NOAA decision at this time and to cease any further expenditures with regard to the NOAA bid.

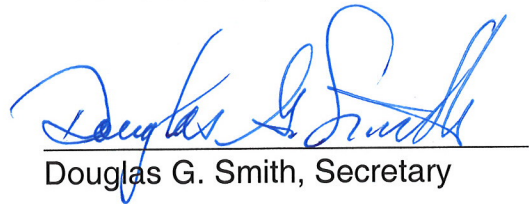
Motion approved with a 2-0 vote.

**ADJOURN**

As there was no further business, the meeting was adjourned at 4:52 p.m.



Scott L. Walker, President



Douglas G. Smith, Secretary