



**PORT OF WOODLAND  
Meeting Minutes  
August 4, 2016**

A regular meeting of the Woodland Port Commission was held on August 4, 2016 in the office of the Port of Woodland, 115 Davidson Avenue, Woodland, Washington. President Cline called the meeting to order at 3:00 P.M.

Those present were:	President	Paul Cline
	Secretary	Dale Boon
	Commissioner	Gerald Peterson
	Executive Director	Jennifer Keene
	Auditor	Carol Moore
	Legal Counsel	Earl Jackson

Guests present: See List

**CALL TO ORDER**

**OPENING REMARKS**

- A. Pledge of Allegiance**
- B. Approval of Agenda**

**Commissioner Peterson made a motion to approve the agenda, as presented. Secretary Boon seconded the motion.**

**Vote was unanimous. The motion was carried.**

**PUBLIC COMMENT (5-minute limit)**

- A. Items ON the agenda**

None

- B. Items NOT ON the agenda**

None

## **PUBLIC HEARING**

### **A. Comprehensive Scheme of Harbor Improvements**

At 3:02 P.M. President Cline recesses the regular meeting to go into public hearing.

No public comment

At 3:03 P.M. President Cline re-convenes the regular meeting.

## **ACTION ITEMS**

### **A. Schedule for 2017 Budget**

**Secretary Boon made a motion to accept the 2017 draft budget calendar (see exhibit A) with the amendment of adding a budget workshop on August 23, at 3:00 P.M. Commissioner Peterson seconded the motion.**

**Vote was unanimous. The motion was carried.**

### **B. Tree removal at 1608 and 1620 Guild Road Properties**

**Commissioner Peterson made a motion to accept the bid from Behrendsen to remove the trees and grind the stumps. Secretary Boon seconded the motion.**

**Vote was unanimous. The motion was carried.**

## **UNFINISHED BUSINESS**

### **A. Resolution #330**

**Per Staff Report - Direction: Have legal prepare a resolution, for adoption, that states the employee handbook supersedes any previous resolution(s).**

### **B. Community Capital Assistance Program (CCAP)**

Legal Counsel, Earl Jackson, presents to the Commission a list of statutes regarding incentive money to private and non-profit institutions (see exhibit B). He states that the Port does not have a clear statutory authorization to go forward with the Community Capital Assistance Program (CCAP)

**Direction: Have legal draft a letter to the Attorney General office, which will accompany the draft CCAP application. The request to AGO will be to review the application and give an opinion. Legal will have Secretary Boon review the letter before it is mailed.**

## **NEW BUSINESS**

## **A. Southwest Washington Economic Development District (SWEDD) Due Structure**

**Per staff Report – Direction: To arrange a meeting and invite CWCOG/SWEDD Executive Director Bill Fashing, to come and address the Port Commission regarding the idea of an individual agreement with SWEDD, which will have an annual membership fee. Commission would also like Executive Director Keene to invite the other entities listed on the dues structure document.**

### **UPCOMING MEETINGS**

August 25 – Port of Woodland hosts the Chamber After Hours at 1670 Schurman Way  
September 1 – Workshop at 2:00 PM: Introduction to North Fork Composites

### **EXECUTIVE DIRECTOR REPORT**

Review Executive Director's report

- Update: Work on retention pond behind Peri Formworks is completed.
- Update: Arce Nursery has requested more time to vacate the building he has been leasing - lease expired July 31.  
**Direction: Have Legal draft a letter that includes a 90-day notice to vacate and to make appropriate payment to the Port for August, September and October, following the terms of the expired lease. Final day of occupancy will be October 31, 2016.**
- Update: Sunlight Supply has a current lease that expires December 31, 2016. As they are eventually relocating to Port of Vancouver property, they have inquired about a month-to-month lease. Executive Director Keene has made it clear that the Port does not enter into month-to-month leases. Furthermore, the Port has a potential tenant willing to sign a long term lease. Once the Commission gives direction, Executive Director Keene is prepared to draft a letter to Sunlight Supply that the Port will not be renewing their lease.
- Update: Possible project at Austin Point. Executive Director Keene is expecting a draft lease option in the next two weeks, which will basically allow them to enter the properties they are looking to develop and lease.
- Request: Which upcoming meeting the Commission would like to hold upriver.
- Review: Letter from Minuteman Press and why Executive Director Keene has ended the relationship between the Port and Minuteman Press.
- Update: Schnitzer/BNSF property sale. Amanda Smeller, City of Woodland, has determined that a boundary line adjustment is not required - what is required is a legal description of the two lots and markers placed. Once the legal description is completed a track agreement will be drafted between the Port and BNSF.

### **COMMISSIONERS REPORTS**

President Cline gives a short overview of the Commissioner seminar he attended.

**ADJOURNMENT**

**Secretary Boon made a motion to adjourn. Commissioner Peterson seconded the motion. Vote was unanimous. The motion was carried.**

President Cline declared the Regular Meeting adjourned at 4:33 P.M.

WOODLAND PORT COMMISSION



\_\_\_\_\_  
Paul Cline, President



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Dale Boon, Secretary



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Gerald Peterson, Commissioner

Attest:



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Carol Moore, Port Auditor

PORT OF WOODLAND

COMMISSION MEETING

August 4, 2016

GUEST LIST: Please sign your name and the organization you represent.

	<u>NAME</u>	<u>ORGANIZATION</u>
1.	Amanda Smeller	City of Woodland
2.	<del>STEVE WEST</del>	<del>W/DEW</del>
3.	David Simpson	City of Woodland
4.	Shady Temmin	CRRVD, LLC
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### 2017 DRAFT Budget Calendar

The Port of Woodland has determined the following schedule to complete the budgetary process for the 2017 Budget. The Port of Woodland has determined this schedule based on the requirements of RCW 53.35.

#### August

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18	Preliminary Budget Workshop (RCW 53.35.101)	3:00 P.M. - 5:00 P.M.
18	Regular Commission Meeting	5:00 PM
22	Preliminary Budget Available to Public via website and at office	12:00 P.M.
29	First Public Notice; public hearing (RCW 53.35.020)	

#### September

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5	Second Public Notice; public hearing (RCW 53.35.020)	
15	Preliminary Budget Hearing	5:00 P.M.
15	Regular Commission Meeting- adopt preliminary budget (RCW 53.35.030)	

#### October

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3	First Public Notice; Proposed Final Budget Hearing	
10	Second Public Notice; Proposed Final Budget Hearing	
20	Regular Commission Meeting- approval of proposed final budget	5:00 P.M.
31	First Public Notice; Final Budget	

#### November

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7	Second Public Notice; Final Budget	
17	Regular Commission Meeting- approve final budget	5:00 P.M.

#### December

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1	Certify to County Assessor amount of taxes levied; file final budget (RCW 53.35.040)	
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Article 8, Section 7 of the Washington Constitution provides:

**CREDIT NOT TO BE LOANED.** No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

**Constitution Article VIII, Section 8 Port Expenditures—Industrial Development--Promotion.** The use of public funds by port districts in such manner as may be prescribed by the legislature for industrial development or trade promotion and promotional hosting shall be deemed a public use for a public purpose, and shall not be deemed a gift within the provisions of section 7 of this Article. [AMENDMENT 45, 1965 ex.s. Senate Joint Resolution No. 25, p 2819. Approved November 8, 1966.]

**RCW 53.08.049 Community revitalization financing—Public improvements.**

In addition to other authority that a port district possesses, a port district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a port district to otherwise participate in the public improvements if that authority exists elsewhere.

**RCW 53.08.245 Economic development programs authorized—Job training and education.**

(1) It shall be in the public purpose for all port districts to engage in economic development programs. In addition, port districts may contract with nonprofit corporations in furtherance of this and other acts relating to economic development.

(2)(a) Economic development programs may include those programs for job training and placement, preapprenticeship training or educational programs associated with port tenants, customers, and local economic development related to port activities that are sponsored by a port, operated by a nonprofit entity and are in existence on June 10, 2010.

(b) As a contract condition, a sponsoring port must require any nonprofit entity that operates programs such as those described in (a) of this subsection to submit annually quantitative information on program outcomes including: The number of workers trained, recruited, and placed in jobs; the types of jobs and range of compensation; the number and types of businesses that are served; and any other tangible benefits realized by the port, the workers, businesses, and the public.

**Lane v. Port of Seattle, 316 P.3d 1070, 178 Wn.App. 110 (Wash.App. Div. 1 2013)**

¶ 45 In the years since Huggins, the statutory powers of port districts have grown. Notably, port districts now are permitted to acquire land for the purpose of promoting economic development under RCW 53.08.245. Because economic development is a recognized purpose, the trial court correctly ruled that acquisition of the Redmond Spur for economic development is justified under RCW 53.08.010. ¶

46 Plaintiffs argue that a port's involvement with economic development is limited to programs for job training and placement under RCW 53.08.245(2) § a. This argument has no merit. The section

plaintiffs cite was enacted in 2010, after the purchase of the Eastside Rail Corridor, as an amendment to RCW 53.08.245. And the supposed limiting language is simply permissive; it states that economic development programs " may include" job training and placement. The intent of the statute is not to limit a port's activities to job training and placement but rather to resolve any doubt that the term " economic development" is broad enough to include job training and placement.

**178 Wn.App. 132**

¶ 48 We agree with the trial court's conclusion about the Redmond Spur: " Given the record before the Court, it was reasonable for the port commissioners to conclude that purchasing the Redmond Spur would advance trade and commerce, promote industrial growth and stimulate economic development, and was thus ' necessary for its purposes' under RCW 53.08.010."

¶ 49 In summary, the Port acted within the authority provided by statute when it acquired the Eastside Rail Corridor. The trial court properly dismissed the claims of the plaintiffs on summary judgment.

**RCW 53.08.255 Tourism promotion and tourism-related facilities authorized.**

(1) Any port district in this state, acting through its commission, has power to expend moneys and conduct promotion of resources and facilities in the district or general area by advertising, publicizing, or otherwise distributing information to attract visitors and encourage tourist expansion.

(2)(a) Any port district is authorized either individually or jointly with any other municipality, or person, or any combination thereof, to acquire and to operate tourism-related facilities.

(b) When exercising the authority granted under (a) of this subsection, a port district may exercise any of the powers granted to a municipality under RCW 67.28.120, 67.28.130 through 67.28.170, and 67.28.220, but may not exercise powers granted to municipalities under RCW 67.28.180 and 67.28.181 or other powers granted to municipalities under chapter 67.28 RCW. The definitions contained in RCW 67.28.080 apply to the exercise of authority by a port district under (a) of this subsection, and for that purpose the term "municipality" includes a port district.

(c) Port districts may not use this section as the authority for the exercise of the power of eminent domain.

#### **KNOWING THE WATERS by Frank Chmelik WPPA 11-2014**

Willie Sutton (1901-1980) did rather well at his chosen profession. He was a bank robber. When asked why he robbed banks he allegedly retorted, "because that's where the money is." It seems that nonprofits, tenants and local governments frequently ask ports to help out financially. When one reflects on "why" I think the answer is, in part, the same as the one given by Willie Sutton.

One small port manager asked me to comment on this issue, including economic development requests received from other local governments and economic development nonprofits.

Gift of Public Funds. It is not uncommon for worthy nonprofits to approach a port and seek a donation, support for a festival, free use of port facilities, or below market rent. Usually, these organizations can point to a laudable purpose that provides a particularly compelling benefit to the



community coupled with an observation that the port has sufficient resources. In a similar vein, tenants cite a variety of public benefits justifying lower rents. Ports should be cautious here because Article VIII, section 7 of the state Constitution prohibits “gifting of public funds.” But what does that mean? Generally, the State Auditor and ultimately the courts will look to see if the answer to the following three questions are “yes” in order to avoid a finding of improper gifting of public funds.

First, is there statutory authority to make the expenditure? Second, is there a lack of “donative intent”? Third, is the expenditure result insufficient benefit to the public?

The first question recognizes that the authority of a municipal government is limited to the power conferred by statute or implies in such statutes. Here, ports have a wide variety of far ranging powers, including:

RCW 53.08.080 - the ability to lease port property for any purpose and under any terms and conditions the commission deems proper.

RCW 53.08.090 - the ability to sell port property.

RCW 53.08.240 - the ability to jointly exercise powers with another government.

RCW 53.08.245 - the ability to engage in “economic development programs.”

RCW 53.08.255 – the ability to promote tourism.

In each instance where public funds will be, expended one must first identify a statutory authority. Care should be taken to consult with the Port’s legal counsel on this issue.

The second and third questions are interrelated. Our Supreme Court has noted that the purpose of Article VIII, section 7 is to “prevent state funds from being used to benefit private interests where the public interest is not primarily served.” In another case, the Supreme Court noted that “[a]id to individuals is not absolutely prohibited under our law but is only improper where public money is used solely for private purposes.” When an action is taken, a port should be able to clearly articulate how the expenditure of public funds (and this includes below market rent) serves a public interest and that, on balance, the expenditure provides sufficient benefit to the public. In support of this, the port commission may want to hear from staff on these topics or even take public testimony so that the record is clear. In short, can the port answer the three questions with a “yes”?

Interlocal Agreements. Most local governments do not have the income opportunities granted to ports. Therefore, it is not uncommon for these governments to seek the help of a port for a particular activity or project with very similar arguments to those made by nonprofits. A very similar analysis is used when interlocal agreements are considered. First, does the port have the statutory authority to perform the acts required in the agreement? Second, instead of looking at “gifting,” the state auditor will look to see if one government is subsidizing another government. In other words, is the port receiving sufficient benefit to be able to say that the port received true and full value? Here again, a well thought out and articulated rationale is important.

Economic Development Agreements. Various county economic development groups, university programs, chambers of commerce and other non-profits frequently approach ports seeking funding. RCW 53.08.245 provides the statutory basis for ports to engage in programs of economic development

and contract with nonprofit corporations for economic development. Each county in the state has a Washington's Department of Commerce designated associate development organizations ("ADO"). In some counties, a government is the designated ADO in others it is a nonprofit. Ports can enter into an interlocal agreement (government) or contract (nonprofit) for economic development but the statute requires that the agreement or contract provide that the port will receive an annual report of "quantitative information" on program outcomes to show the tangible benefits to the public.

The take-away here is that ports are frequently asked for financial support. No matter who asks – it is important to carefully analyze, justify and document the statutory basis and the benefit to the port district before handing over the money. As always, please contact your port counsel with any questions regarding this topic. And, if you have a particular question for a Knowing the Waters please email me at [fchmelik@chmelik.com](mailto:fchmelik@chmelik.com).

**RCW 53.08.260 Park and recreation facilities.**

A port district may construct, improve, maintain, and operate public park and recreation facilities when such facilities are necessary to more fully utilize boat landings, harbors, wharves and piers, air, land, and water passenger and transfer terminals, waterways, and other port facilities authorized by law pursuant to the port's comprehensive plan of harbor improvements and industrial development.

**RCW 53.08.400**

**District may exercise powers of community renewal agency.**

A port district may enter into a contract with any city, town, or county for the purpose of exercising any powers of a community renewal agency under chapter 35.81 RCW.