PORT OF CENTRALIA
Established 1986

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Minutes
Regular Meeting of the
PORT OF CENTRALIA
July 20, 2022
Port of Centralia Administrative Office & Via Teleconference
3:00 PM

Attendees: Commissioners: Kyle Markstrom, Julie Shaffley, Peter Lahmann
Executive Director: Kyle Heaton
Port Counsel: Ray Liaw, Van Ness Feldman
Press: Susan Delaire, Business to Business (via teleconference)
Public: Gary Odegaard; David Nunn; Bob Jackins; Jan Banevich; Brian Dow; Paul Crowner; Chad Taylor; and Coralee Taylor
Teleconference: Justin Baker and six unknown callers

1) **Call Meeting to Order/Introductions:** Commissioner Markstrom called the meeting to order at 3:00 p.m.

2) **Approval of Agenda:** Commissioner Shaffley made a motion to approve the July 20, 2022, agenda as submitted. Commissioner Lahmann seconded the motion.

   Commissioner Lahmann made a motion to delete (6)(c) from the agenda and table (6)(d) to the next regular meeting. The motion was not seconded. The motion failed.

   Commissioner Shaffley made a motion to approve the July 20, 2022, agenda as submitted. Commissioner Markstrom seconded the motion. Commissioner Lahmann opposed the motion. The motion carried.

3) **Good of the Order/Public Comment:** Gary Odegaard, of Centralia, Precinct 10, said that he had been in Lewis County since 1962. He said that someone said at the previous meeting during public comment that the public comment section should be at the end of the meeting if there is only going to be one time to do it and that Commissioner Markstrom had stated that a constituent had requested that it be held at the beginning. He said that he had spoken to Commissioner Markstrom about it after a meeting and that it was not what he suggested. He had suggested that the Port allow public comment as they go through like a lot of other public entities do. He said that it seems to work quite well and he wanted to clear that up. He also said that Lewis County Commissioner Swope had stated at a previous meeting that he liked the collaboration between the County and the Port. He said that he asked Lewis County Commissioner Swope what that collaboration was and he had replied that it was the Port was being represented at meetings with the County sitting in. He asked who the Port representative was at those meetings. Commissioner Markstrom replied that Commissioner Lahmann represents the Port at the mayors' meeting at the courthouse. Gary Odegaard asked if they occur often. Commissioner Markstrom replied that the meetings were held monthly.

   Paul Crowner, of Centralia, said that there has been discussion as Gary Odegaard mentioned about the placement of the public comment on the agenda, whether it is at the beginning or the end. He said that he has noticed that the agenda the Port puts out is just one page with just one-line items, not

necessarily even a full sentence. He said that the City of Centralia puts out a detailed agenda with line-by-line items and they publish them online so the public has a chance to look at them before the meeting. He added that, granted, the last one was 176 pages so that is a lengthy amount of information, but it is available so the public can look at it and comment at the council meeting. He said that he was interested, on a state level, the Select Committee on Pension Policy because as a retired teacher he is part of the state retirement system. He said that they had a linked full agenda that was only 47 pages and if he wanted to he could speak to the committee through Zoom with those 47 pages in his hand as he spoke. He said that now with the Port of Centralia he has one page with nothing backing it up. He suggested the Port publish online the packet that the Commissioners receive and that way the public would have that information ahead of time so the public and the taxpayers could civically engage the Commissioners at the beginning of the meeting with whatever they were going to be voting on and have an opinion.

Bob Jackins, of Chehalis, said that as he is now retired he gets to do a lot of different things and he looks at Facebook quite a bit. He said that there is a group that is Centralia Citizens for an Open and Honest Port. He said that he does not usually pay much attention to it because what he finds on there is very rarely open or honest from them. He said that he has never commented or tried to post on it, but one of the things that the administrator says is that if anyone were to post anything positive, there would be no need for the group. He read part of a recent post: "…we have been having issues with people infiltrating our group… with the sole purpose of trying to harass members and discredit our group." He said that it is amusing a lot of the time, but the only reason he is bringing it up is that in the last few days the group has come up with comments against County Commissioner Swope, saying that he is a minion of Kyle Heaton or claiming that he was brought in to praise the Port, not that he is attending meetings because there is such a thing as Centralia Station or other businesses that operate in Lewis County that he is definitely a part of. Group members have also guessed that two of the Port Commissioners and Kyle Heaton have financially supported Lewis County Commissioner Swope so Commissioner Swope is obligated to give back. Bob Jackins said that if it was slander against himself, he would embrace slander, but this is just an opinion and he thinks that slander against the Port is doing a complete disservice as there are some people that look at Facebook and believe what they see, which is unfortunate for this case here.

Jan Banevich, of Centralia, stated that at the last meeting she had extended an invitation to the Commissioners on behalf of the Facebook group to address members' questions. She said that Commissioner Shaffley had said that someone from the Port had contacted the Attorney General's Office and was told that it is illegal for the Commissioners to do that. She said that even though she knew otherwise, she contacted the Attorney General's Office and they said that there is no law prohibiting the Commissioners from being on Facebook to answer questions from constituents as long as they don't respond to each other or conduct business. She said the AG's Office also gave her a number to call the Legislature Information Center, which she did, and they also said that it was not illegal. She guessed that Kyle Heaton was their Attorney General and while they allowed $50,000 in the budget for community relations, the Port turned down any opportunity to actually relate to the community. She added that she didn't recall that ever being voted on in an open public meeting.

Brian Dow, of Centralia, said that he would like to reserve his comments for later in the meeting. Commissioner Markstrom said that this was the only time in the meeting for public comment. Gary Odegaard asked what Commissioner Markstrom was so afraid of and said that he doesn't understand it. Commissioner Markstrom stated that it was the end of public comment.

4) **Approval of Minutes:** Commissioner Shaffley made a motion to approve the July 6, 2022, regular meeting minutes. Commissioner Lahmann seconded the motion. The motion carried.

5) **Approval of Warrants:** Commissioner Lahmann made a motion to approve warrants 22567 through 22582 with an aggregate amount of $124,756.20. Commissioner Shaffley seconded the motion. The motion carried.

6) **New Business:**

a) **Executive Director Report:** Kyle Heaton reported that although it is a little later in the year than normal the maintenance crew is firing up the irrigation system now that things are drying out. He said that the Port had to replace the control system on Midway Court, which was about 10 years old, but it is back up and running. He said that another issue that is even more noticeable this year is the delay in getting parts to fix mowers when they break down. He said that the maintenance crew has three mowers down at the moment, but Noel and Roberto are hanging in there and doing a great job keeping what they have running.

Kyle Heaton stated that the Port awarded the overhead door improvements project for Linden Comansa to Rognlin's from Aberdeen and said that they should be getting underway the next week. He said the Port is taking a look at other interior tenant improvements and trying to get that work done while the civil engineering work is going on for the new yard. The geotechnical work has been completed on that but the bulk of the submission for the civil work has not been received yet.

Kyle Heaton said that Furgerson Schmidt is in permitting and working their way through SEPA. He reported that the Port reviewed the SEPA with counsel and had no comments to make as they have complied with everything the Port has asked of them.

Kyle Heaton added that Plastic Services and Products, or Genova as they are now known, is working on a submission for a 20,000 sq ft building. He said that the City of Centralia is backlogged with submissions and they are working hard to process as many as they can. Commissioner Markstrom said that Genova is the current tenant and that they own the property and is expanding on their own property. Kyle Heaton said that was correct. He said that they bought Plastic Services 15 years ago and last year they acquired some other companies. To bring it all under one roof, they rebranded to Genova. He said they are based out of Salt Lake City, Utah, and are very similar to a Ferguson or HD Fowler supply with the difference that they do their own manufacturing, so they are vertically integrated. He said that they have been a good company.

b) **Adjournment of Meetings per RCW 42.30.090:** Port counsel Ray Liaw, of Van Ness Feldman, said that she had been asked to help provide some guidance on the questions of the Open Public Meetings Act that have been occurring lately. She said that particularly on the topic of adjournments she wanted to make sure the Commissioners have the guidance that they need in terms of what state law allows and requires under OPMA. She said that she understood that adjournment was not on the table for the meeting, but that it may come up in the future. She explained that under state law, under OPMA, the process of adjournment effectively allows the Port to either continue an existing session to another timeframe or to effectively reschedule an existing scheduled meeting. It can be used for a special meeting, but it is typically used for

regular meetings. She said the requirement for effectively rescheduling an adjournment of a regular meeting is that you provide notice in advance of that rescheduled meeting. She had looked at the meeting minutes and saw that there may have been some confusion about the status of an adjourned meeting, whether it is a special meeting or a regular meeting, and she understood the confusion. She said that when the Commission decides to adjourn a meeting, the notice requirement to effectively reschedule that meeting is the same as what is required for a special meeting, which is that the Port provide 24-hour notice to the public by posting it on the Port's website and issuing it to any media or persons on file that requested that information. She added that the status of that meeting continues on that next meeting, so just because it was noticed in the manner of a special meeting does not convert it to a special meeting. She said that if this meeting, a regular meeting, had been adjourned to the next week at the same time, it would still be considered a regular meeting so long as it had been noticed 24 hours in advance of that meeting. She added that the Commissioners do not have to have started the meeting to adjourn it and that a meeting can be adjourned in advance. Most commonly this occurs when staff or the Commission President knows that there will not be a quorum present, so instead of dragging those persons who are going to be potentially present to the meeting, that meeting can be adjourned and the Commission can have that regular meeting at another scheduled time as long as it has been noticed.

Commissioner Lahmann said that normally at the end of the meetings the Commissioners make a motion to adjourn the meeting. He said that his heartburn on the issue is that if the Commissioners are extending the regular meeting to the next week, he would move to adjourn to extend it to the next week, so that would be the continuance. If the Commissioners adjourned the meeting, it is an adjournment. There is no notice of special meeting, no notice of extending the regular meeting, no notice of adjournment or anything like that. He said that what was in his mind that a meeting is not a continuation if it is not stated that it is.

Ray Liaw replied that if the Commissioners decided to adjourn the regular meeting and come back the next week for an adjourned meeting, the Port would still need to issue written notice in compliance with the same process as a special meeting. She said that the requirement is that there will be a subsequent written notice so the public is aware that the regular meeting will continue on at another date and time.

Commissioner Lahmann asked if the Port had an adjournment it could still be a regular meeting next week as long as there was 24-hours' notice. Ray Liaw said that was correct.

Commissioner Lahmann said the other issue is regarding special meetings. He said that he read the RCW and called the Attorney General's Office about it. He said if the Commissioners adjourn and hold a meeting that is outside of its normal time period, which for the Port is the first and third Wednesday, then it becomes a special meeting.

Ray Liaw read from the RCW: "When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes." She said what that means is that if the Commissioners adjourned at the end of the day, issued the special notice that is required because they have adjourned to the next week, then it is a regular meeting the next week for all purposes. She added that the Attorney General's Office typically does not give out advice and there may have been some confusion there, but it is clearly stated in the statute.

Commissioner Lahmann said that in the past the Port has cancelled meetings and then held them on days that are not a regularly scheduled meeting, and in his mind that becomes a special meeting. Ray Liaw said that if the Port issued a cancellation notice and not a notice of adjournment, then there could potentially be the argument for confusion for the public if the Port came back later and noticed an adjourned regular meeting. She said that it is not necessarily a legal issue that has been addressed in the past, but she would say in terms of best practices to issue a notice of adjournment instead of a notice of cancellation so it is very clear that the meeting will continue to another date and time and there is not that confusion for the public. She said the whole purpose is to ensure the public is aware when the next regularly scheduled meeting will occur.

Commissioner Markstrom said that the Port has noticed meetings as canceled and canceled them and taken them off the calendar. The Port has also noticed meetings as postponed and does not use the terminology 'adjourn,' so maybe that has caused some confusion. He said that effectively the Port has either cancelled or postponed a meeting to another date and noticed it per the RCW, which was the case with the previous meeting that has been the point of contention.

Ray Liaw said that if the term adjournment hasn't been used but the RCW has been cited, it is a helpful backdrop because to be perfectly frank most of the public doesn't understand what the term 'adjournment' means and she barely does herself. She would recommend citing to the RCW so the intent there is very clear if one wants to read it. She added that as long as the Port has given that notice then, in accordance with the statute, and explained clearly that the regular meeting will occur on a different timeline then it is still a regular meeting.

Commissioner Lahmann asked how a meeting can be adjourned if it has not been convened. Ray Liaw said that it is a term of art and does not contain much logic. She said that in terms of legal hearings, there are hearings that are continued that never start. It means that it is going to be moved to a different date and adjournment is similar. She said what is normally thought of as adjournment, which is closing a meeting down as it says at the end of the normal minutes, in the RCW they use the term adjournment for purposes of rescheduling or continuing the meeting to another date.

Commissioner Lahmann said that the Port had rescheduled. Commissioner Markstrom said postponed or rescheduled. Commissioner Lahmann said that he had not seen either term in the RCW. Ray Liaw said that it was unfortunate because the RCW did not use a layperson term and that it does not compute whether the meeting is being adjourned, rescheduled, or postponed. She said that the bottom line is how the meeting is treated and as long as the Port provides notice and there is a clear date and time on it, then it is continued to be treated as a regular meeting.

c) **Amendment of June 22, 2022, Meeting Minutes:** Commissioner Markstrom said that for the June 22, 2022, meeting the Commissioners were given information as it related to an amendment to a purchase and sale agreement. In the meeting, Commissioner Lahmann stated that he had not received the information. Commissioner Markstrom said that he had clarified it after the meeting with Port staff to ensure that all of the Commissioners had received that information because it was pertinent that they all had. He said that Port staff shared that the information had been sent to Commissioner Lahmann and he had been met with after that meeting to make sure that he did have it. The information was in his packet, he just had not opened it. Commissioner Markstrom

said that he was asking to amend the minutes to reflect that and the amendment is attached at the bottom of the minutes.

Commissioner Shaffley made a motion to have the amendment of the June 22, 2022, meeting minutes to include that staff confirmed with Commissioner Lahmann after the meeting adjourned that the amendment was in his packet, but he did not open it prior to the meeting. Commissioner Markstrom seconded the motion. Commissioner Lahmann opposed the motion. The motion carried.

Commissioner Lahmann said that he would like to discuss it because the amendment says that it was after the meeting was adjourned so it was not part of the minutes of the meeting and it was not done during the meeting. He said that he saw no need to reopen a previously approved set of minutes.

d) **Disclosure of Confidential Information and Censure Resolution:** Commissioner Markstrom stated that he would like to address the unauthorized disclosure of confidential information shared with the Commissioners during an executive session. He said that he recently learned the confidential information related to the Port's purchase of the Dulin property had been posted on the Facebook group called the Centralia Citizens for an Open and Honest Port and occurred on May 26, 2022, and again on May 31, 2022. The confidential information that was posted concerns the future use of the Dulin property by Sierra Pacific. Prior to the Facebook posts, only a limited number of persons were aware of the potential use of the Dulin property by Sierra Pacific. He said that Kyle Heaton was the only Port staff member who knew about it and Commissioner Markstrom understood that Kyle Heaton had only shared the information with persons on a need-to-know basis to facilitate negotiations, such as Port counsel and Port Commissioners. He said the during the May 18, 2022, Commission meeting, the Commissioners went into executive session to discuss the acquisition of the Dulin property as is allowed by RCW 42.30.110(1)(b). During that executive session, Kyle Heaton had explained that portions of the property would likely be used by Sierra Pacific if the Port purchased the property. Commissioner Markstrom said that this confidential information was relevant to the Commissioners' understanding of the price negotiated for the Dulin property. The closing date for purchasing the Dulin property was scheduled for May 31, 2022. He said that public disclosure of confidential information prior to that date could have jeopardized this closing and he understands very well that that could have occurred. He said that on the day of closing, the owners of the Dulin property refused to sign and deliver the deed and the Port threatened legal action if the owners did not change their mind. He stated that Kyle Heaton has confirmed that none of the persons working with the Port who had knowledge of the Sierra Pacific transaction shared this information with third parties outside of the executive session. Commissioner Markstrom said that he himself had not discussed the Sierra Pacific transaction with anyone other than Kyle Heaton and the Port's attorney. He said that he was concerned and believed that this information may have been disclosed by one of his fellow Commissioners. Disclosure of confidential information pertaining to Port business is a violation of the Port's code of ethics and the state code of ethics. He said that, as Port Commissioners, they were legally prohibited from discussing or disclosing confidential information, which is especially true about information they learn during executive session. He said that most of the information about Port business is not done to remain confidential forever, but the Commissioners have a duty to preserve confidentiality until public disclosure is determined necessary and appropriate. That determination is made by either the Commission as a whole or by authorized Port staff. He said

that before May 26, 2022, potential future use of the Dulin property by Sierra Pacific remained confidential and if any Commissioner shared this information with third parties, it would violate the Port's and state codes of ethics. He said that the ethics violations are grounds for censure by this Commission.

Commissioner Markstrom stated that, for the record, he would like to ask each Commissioner whether the discussed future use of the Dulin property by Sierra Pacific outside of the executive session. He said that he had already stated that he himself did not. He asked Commissioner Shaffley if she had. Commissioner Shaffley replied that she did not. Commissioner Markstrom asked Commissioner Lahmann if he had. Commissioner Lahmann replied that he did not.

Commissioner Markstrom addressed Commissioner Lahmann and said that he understood that organizers of the Facebook group regularly express support for him as a Commissioner. He asked Commissioner Lahmann if he was sure that he did not discuss the information with anyone outside of the Commission. Commissioner Lahmann replied not to his knowledge and said that he honored the sanctity of executive session and never knowingly violated its trust. Commissioner Markstrom thanked Commissioner Lahmann for answering his question.

Commissioner Markstrom said that he had asked the Port's attorney to draft a resolution censuring the Commissioner who may have disclosed the information pertaining to the Dulin property and the Sierra Pacific transaction. At this time, he does not have evidence that a Commissioner disclosed information about the potential Sierra Pacific transaction so he is not going to introduce a motion to censure any member of the Commission. He said that he wanted to make sure that each Commissioner is aware that disclosure of confidential information that they have learned through executive session, or by any other means in your position, or as a Commissioner, is a violation of the Port and the state ethics laws. He said that it will be subject to censure. He added that he also wanted to make the Commission aware that if this becomes a pattern, it may be necessary to conduct an investigation in to who is leaking confidential Port information.

Commissioner Lahmann asked when the confidentiality of executive session expires and told Commissioner Markstrom that he would like the Port's attorney to answer.

Ray Liaw replied that it depends on the purpose for executive session. She said that there are two lenses: the Commissioners' code of ethics and the municipal code of ethics that is adopted under state law. For real estate transactions, for instance, for public records purposes, once the transaction has concluded and the information is public. She said that in this instance, the purpose for keeping the information confidential has to do with the price of the real estate and then the closing of the deal. Once the deal is closed and that information has become part of the public record, at least in the State of Washington under public records laws, anything confidential at that point is in the public and no longer shielded. She said that for the purposes of the Port Commission, there is an additional layer of their own code of ethics that specifies that any information that they learn, whether it is in executive session or not, remains confidential until the Commission decides that that information should be released to the public. She said that it is tricky and recommended that if the Commission has learned about information in executive session, such as the price of real estate that may already be public, to consult with their fellow Commissioners on whether or not they can speak publicly about it because it is a Commission-based decision, and maybe bring in the Port's legal counsel in consultation with the executive

director. She said that there will be instances where the Commissioners will have learned information in executive session that Port staff is doing from a business perspective, so it may be appropriate to discuss with staff as well about the appropriate time in terms of completing a transaction.

Commissioner Lahmann said that he asked because when he got his packet and, looking at the timeline, he thought that since they made the motion on May 18, 2022, to buy that property and signed the contract, everybody sitting in the meeting heard it.

Commissioner Markstrom said that the potential seller knowing of other interested parties prior to closing jeopardized the Port and the taxpayers. He asked if Commissioner Lahmann did not understand the issue. Commissioner Lahmann said that he understood.

Commissioner Shaffley thanked Commissioner Markstrom for bringing the issue to the public's attention. She said that it was very disconcerting for the Commission and it also should be very disconcerting for the public. She said that she is not going to speak for anyone else, but she does not feel that she can speak freely in executive session because of distrust. She doesn't know what information will be shared and it is basically breaking down the trust of the Commission and the trust of the Commission with the public. She feels that it is a disservice to the public and the Commission. She said that when they were elected they were elected to do their job and do it ethically. They all signed the code of ethics. She said that she is not pointing fingers, but for anyone in any public office to violate this trust smears all of them and she takes precedent to that.

e) **Committee Reports:** Commissioner Shaffley reported that the past weekend was the Seattle to Portland bicycle rally. She said that the weather was good and that there were 6,200 riders. She said it was great to see so many riders witness the community's hospitality and it was a great opportunity for the community to put its best foot forward. She also said that she attended the Economic Alliance of Lewis County's lunch and the speaker was the Lewis County Autism Coalition and Morningside was also there speaking on the hiring benefits for people with disabilities.

Commissioner Lahmann stated that he attended the City Council meeting and a couple of the Lewis County Board of County Commissioners meetings.

Commissioner Markstrom reported that he didn't attend any committees since the last meeting but he will be attending the Washington Public Ports Association Commissioners conference in the Tri Cities next week. He added that there will be a spaghetti feed fundraiser at 5:00 pm on Saturday at the Moose Lodge to raise money for Mary Bridge Children's Hospital. It will include a silent auction and dessert auction.

Commissioner Lahmann thanked the Port's attorney for attending the meeting.

Brian Dow said he had not had a chance to speak yet. Commissiner Markstrom replied that the meeting was going to be adjourned and that public comment was at the beginning of the meeting.

7) **Adjourn:** Commissioner Shaffley made a motion to adjourn the meeting at 3:37 p.m. Commissioner Lahmann seconded the motion. The motion carried.

COMMISSIONER

COMMISSIONER