

MINUTES OF EVERETT PORT COMMISSION
SPECIAL COMMISSION MEETING
October 22, 2019

PRESENT:	Glen Bachman	President
	Bruce Fingarson	Vice President
	Tom Stiger	Secretary
	Lisa Lefeber	Executive Director
	Eric Russell	Chief Finance Officer
	Brad Cattle	Port Attorney

CALL TO ORDER: The Special Commission Meeting of October 22, 2019 was called to order at 4:00PM by Commission President Glen Bachman.

Executive Session

Commissioner Bachman recessed the meeting into Executive Session at 4:02PM and it concluded at 4:20PM. The purpose of the Executive Session was to discuss with legal counsel the acquisition of real estate by purchase when public knowledge regarding such consideration would cause a likelihood of increased price.

At the conclusion of the Executive Session, Staff expected action to be taken by the Commission and announcements to be made.

The Special Commission Meeting resumed at the conclusion of the Executive Session.

1. KIMBERLY-CLARK PURCHASE AND SALE AGREEMENT

Executive Director Lisa Lefeber reported that the Port of Everett has been working to facilitate the adaptive reuse of the Kimberly-Clark Mill site since the mill's closure in 2012. The former K-C mill site provided 700 direct jobs and is in the heart of the Port's federally-secure, urban deep-water maritime complex that's been under significant growth pressure. The protection of port operations is mission critical to the Port and the area's economic stability.

The Port has been consistent since the mill closed in 2012 that its top priorities were to restore the jobs lost because of the mill closure, support maritime job growth on the site and ensure the ongoing success and protection of this public resource for international trade facilities and Naval Station Everett. In 2013, the City of Everett, after a significant review and public process, determined the highest and best use of the site was for urban deep-water Port and maritime jobs.

Over the years, there have been many private attempts to acquire the property, but each transaction failed to meet the environmental and financial requirement to put a contaminated site back into productive use. Some additional complications of the site include the multi-decade investigation and cleanup of the East Waterway and addressing thousands of tons of crushed material that was placed on the site as part of the mill demolition, of which is now the subject of a lawsuit with the City of Everett.

In 2016, after Foss Maritime was unable to transact on the property, the Port announced its intentions to acquire the property by either negotiated means or condemnation. The Port also successfully transacted with Kimberly-Clark on its 2.2 acres of parking lots east of the site.

After nearly two (2) years of negotiations without success, the Port made its intentions known in May 2019 to consider a condemnation action on the property. In May, the City of Everett closed on 8.5 acres of the site to meet its stormwater requirements, bringing the available land for acquisition to 58 acres.

On June 4, 2019, the Port Commission unanimously approved a resolution authorizing the Port to utilize its eminent domain authority to acquire the vacant Kimberly-Clark mill site. The Commission believed it was in the best public interest to retain this deep-water resource in public ownership to support maritime commerce, economic

development, international trade and support to the Department of Defense and other branches of the U.S. government. The property owner, Kimberly-Clark, took no position on the Port's proposed action in a statement read into the record.

The Port Commission stated during deliberations on the action that this property is a prime example why the Washington State Legislature created the Port Districts Act in 1911. The creation of this act, and the Port a few short years later, was a reaction to the private domination of docks and harbors that were critical to the trade-dependent state's economy. The urban deep-water Port is a key public facility that should be open to all types of commerce.

The Commission believed that as a steward of our natural deep-water assets and economic prosperity, the Port had a responsibility to secure this vacant property to assure support for international trade and the needs of our public partners now and into the future. The Port has a track record for bringing jobs and restoring environmentally impaired property. The Port's trade facilities support more than 35,000 family-wage jobs (average salary of \$86,703) in the region and 373 million in state and local taxes. The strategic maritime assets in the urban deep-water Port has attracted and continue to attract, major industries to Snohomish County, making it the most trade-dependent county in Washington state. Nearly 60% of the jobs in Snohomish County are tied to trade and the Port's customs district supported more than \$21 billion in U.S. exports in 2017 alone. The Port's plans for Kimberly-Clark are to provide near-term and long-term job growth which is the key to resolving site's impairments and putting this strategic maritime asset back into productive use.

They also contended that the authorization to use eminent domain provided the Port the flexibility of reaching an agreement on the sale either through negotiated agreement under an eminent domain action, but also reserves the Port's legal authority to acquire the property with payment of just compensation based on the highest and best use of the site.

In July 2019, Kimberly-Clark stipulated to public use and necessity. In August 2019, the Port and Kimberly-Clark started formal negotiations. The Port and Kimberly-Clark have now reached a Purchase and Sale Agreement.

Key Deal Points:

- Port acquires 58 acres of the Kimberly-Clark mill property, which includes 12 acres of in-water tidelands situated in the East Waterway.
- Port acquires 19 acres of Kimberly-Clark tidelands near Jetty Landing and Boat Launch for future river management and potential public access.
- Total value of the real estate transaction is valued at \$33 million.
- Kimberly-Clark is required to conduct the second interim action environmental cleanup as agreed with the Department of Ecology and address the crushed material removal to the satisfaction of the regulatory agencies. The Port will provide clean fill material to backfill the site after the crushed material removal, but Kimberly-Clark will be responsible for the transportation of the fill and performing the work. This work is to be performed no later than December 31, 2020. It is expected that this will conclude the required upland cleanups for the site but in the event additional cleanup is required, the Port would assume those cleanup responsibilities as part of the site's development.
- Closing is expected to occur no later than December 31, 2019.
- Kimberly-Clark will provide the Port of Everett with a \$17 million credit for cleanup that may be required for the 12 acres of tidelands acquired in this transaction. In exchange, the Port will assume all future cleanup liability of the East Waterway, of which the Port of Everett is already a potentially liable party.

Summary of Purchase and Sale Agreement:

- 77 acres acquired for \$16 million (\$33 million, less \$17 million credit for tidelands acquired in the East Waterway) under threat of condemnation

- Closing will be no later than December 31, 2019, with no due diligence period
- Kimberly-Clark to perform all required cleanup of the upland by December 31, 2020
- Current lease is terminated upon closing
- Port to assume future cleanup responsibilities of the East Waterway, of which the Port is already a potentially liable party

Commissioner Stiger asked about the language in the Purchase and Sale Agreement “transaction is exempt from excise tax due to threat of condemnation”, normally the excise tax is the seller’s responsibility. Attorney Kinnon Williams explained the Port proceeded under condemnation and this is a purchase under condemnation so there will be no excise tax pay because of that. The Port has the statutory authority and with the resolution, the Port has actual authority.

Commissioner Fingarson thinks having the milestones going forward to make sure Kimberly-Clark is on schedule is going to be very important for this deal. He appreciates that being in the agreement.

Upon discussion, Commissioner Tom Stiger, with pleasure, authorized the CEO/Executive Director to finalize and sign the Purchase and Sale Agreement with Kimberly-Clark Worldwide Incorporated substantially as presented. Commissioner Bruce Fingarson seconded the motion. A vote was called for:

Vote:	3-0
Yes:	Stiger, Fingarson, Bachman
No:	None
Abstained:	None

Motion carried.

2. SHIPYARD ANNOUNCEMENT

Chief Operating Officer Carl Wollebek reported on the shipyard. The Port has been trying to replace the shipyard since Vigor left roughly two years ago. Nichols Brothers Boat Builders brought in a 500 ft drydock down from Bellingham Fairhaven shipyard. The Port is currently under a Temporary Use Agreement with Nichols Brothers, but they are in the process of negotiating a longer-term lease and the Port will be bring that to the Commission as the terms become available, hopefully by March 2020. Nichol Brothers have been working with all the state agencies to make sure their permits are appropriate. Their company name will be Everett Ship Repair LLC. They will be contracting with the military, the commercial tugs, barges, Coast Guard, and Navy and have committed to getting the certifications to do Coast Guard and military work.

Commission President’s Report

Commissioner Glen Bachman reported that he attended AAPA Annual Conference last week and at that meeting was the company Tote, who currently have a couple green tanks down at the terminals, they had a quick explanation on liquified natural gas. It was an interesting presentation.

On Saturday, October 19, Commissioner Bachman attended the Everett Community Invitational Sail on the Adventuress which is used as a classroom and training ship and based in Port Townsend. Sound Experience is the name of nonprofit that put on this event.

Commission Discussion

Commissioner Tom Stiger announced that the Marina has been awarded the Marina of the Year by Marina Dockage Magazine for their classification of the largest marina and Kate Anderson won the Young Professional in the Marina Industry award. There will be an awards ceremony in Tennessee in December.

Commissioner Bachman announced that Catherine Soper and the Port of Everett received an Award of Excellence for its Centennial Celebration campaign at the AAPA Annual Conference last week as well.

Citizen Comments

There were no citizen comments.

THE SPECIAL MEETING WAS ADJOURNED at 4:40PM.

APPROVED this 12th day of November 2019.

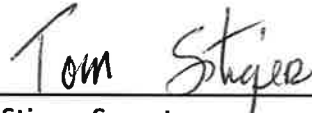
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