

TOPIC	DISCUSSION/ASSESSMENT/FINDINGS	ACTION
Attendance	Commissioner/Staff Present: Port Commissioners (PCs) James Herman, William Schmitt, Wayne Vinyard; Executive Director (Exec.D) Marc Thornsbury; and Administrative Assistant/Port Auditor (AA/PA) Margie Ziegler. PC/Staff Absent: None. Guests Present: Mary Margret Evans, Insitu; Scott Pimley, Insitu; Jenny Taylor, Insitu; Steve Wells, Trammell Crow; Brad Roberts, Rivermile 172 and Denny Newell, Klickitat County Economic Development.	Meeting called to order at 4:35 pm.
Administrative Matters Resolution No. 7-2012 Regular Tax Levy Resolution No. 8-2012 Adoption of 2012 Budget Resolution No. 9-2012 Amendment of Comprehensive Scheme of Harbor Improvements and Industrial Developments	(Exec.D) Thornsbury said information has been discovered that strongly suggests the Port had a previous IDD tax levy and advises the PC to adopt the regular tax levy and not extend the IDD levy.	PC Schmitt M to approve Regular Tax Levy Resolution No 7-2012, PC Herman S, MP PC Herman M to approve 2013 Budget Adoption Resolution No. 8-2012, PC Schmitt S, MP PC Schmitt M to approve the Amendment of Comprehensive Scheme of Harbor Improvements of Industrial Developments Resolution No. 9-2012, PC Herman S, MP
Old Business Lot 24 Lease	Steve Wells, Trammel Crow, presented a list of items that need to be resolved after his discussions with Lexington. The following items were discussed: Sublease Document – (Exec.D) Thornsbury said comments regarding the proposed document went out last Wednesday and no response or additional information has been received to date.	

Old Business continued...
Lot 24 Lease continued...

Lot 23 – Leasing Lot 23 in tandem with Lot 24 or under its own lease. Wells noted Lexington prefers one lease for both lots, arguing that splitting them will complicate financing. Mary Margret Evans, Insitu, said they prefer one lease and believe two leases would slow down the process. Thornsbery noted Port Counsel’s position that two leases would make it easier to handle Lot 23 as the Port could simply terminate its lease in the event development does not take place.

Section 1.2 – Defining “known conditions”, for which the lessee’s remedy is limited, as only those items disclosed in specific reports resulting from investigations conducted on behalf of the lessee. Thornsbery noted this could allow the lessee to trigger the lease with knowledge of a condition not disclosed in one of the reports and then compel the Port to remediate the condition at its own cost.

Section 2.1.1 – Removing the Port’s ability to terminate an exercised extension option if the lessee becomes in default before the start of the extension option.

Section 3.4(d) – Removing the prohibition on any use that forces adjacent properties to change their operations. Thornsbery offered an example and noted that the language holds the lessee to the same standard as imposed by the lessee on the Port with respect to changes to the CC&Rs.

Sections 3.6.1 & 3.6.2 – Altering the limitations on the use of Lot 23. PC expressed its desire to have Lot 23 used for job creation. PC Vinyard stated he does not want Lot 23 simply planted with trees. PC Herman said he does not want the area used as a park because the Port already maintains green space and the lot is valuable for development. Wells stated Lexington has interest in developing the property and possibly expanding the facility on Lot 24.

<p>Old Business continued... Lot 24 Lease continued...</p>	<p>Section 8.9.1 – Reducing the period in which Port may disapprove revised plans to 15 days. The shorter period would apply to plans resubmitted after disapproval and without substantial changes. Thornsbery noted the PC only meets twice a month.</p> <p>Section 12 – Making escorts mandatory regardless of lessee. Wells noted that the lessee’s vetting requirements are contractual, not governmental.</p> <p>Section 13.1 – Allowing assignment, without release, without requiring Port consent.</p> <p>Section 13.1.1 – Alter limitations on assignment when lessee is in default or been notified of breach and failed to commence cure.</p> <p>Section 13.1.2 – Removing Port’s ability to increase the security amount required upon assignment of the lease. Make Boeing a pre-approved assignee.</p> <p>Section 13.1.3 – Limiting the period for Port to object to an assignment to 20 business days and deem approved if such objection is not made within 10 additional calendar days after.</p> <p>Section 13.2.1 – Limiting the period for Port to object to a sublease to 30 calendar days and deem approved if such objection is not made within 10 additional calendar days after.</p> <p>Section 13.2.2 – Removing Port’s ability to recover any additional costs above the base Sublease Fee it may incur in reviewing a sublease.</p> <p>Section 13.2.4 – Allowing use of an acceptable alternative to the Subordination, Non-Disturbance, and Attornment agreement.</p>	
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Old Business continued...
Lot 24 Lease continued...

Section 14(a) – Changing the definition of a default to any breach not cured within thirty days of Port’s notice of breach.

Section 14.3 – Adding a notice period (in addition to the existing lessee notice and identified lender notice periods) and prevent Port from pursuing any remedy for default if it is cured or lessee commences to cure it within ten days of such final notice.

Section 15.2 – Removing provision requiring lessee to indemnify Port against damage to the premises and any existing improvements. Thornsbery stated that the provision simply protects the Port from an act by the lessee that resulted in damage to the property or any of the improvements on it at the time the lease commenced.

Section 15.5 – Exempting situations in which the waiver of subrogation is applicable from the concurrent negligence provisions.

Section 16.2.2 – Providing only a certificate of insurance noting the Port as an additional insured. Thornsbery stated that an endorsement is the only guarantee that the insurance carrier agrees the Port is an additional insured.

Section 16.7 – Removing Port’s ability to require additional insurance coverage is there is a material change in the condition of the leasehold improvements.

Section 18.1 – Eliminating personal liability for intentionally making false statements or providing false information as to environmental compliance and only requiring the statement to be based on an individual’s personal knowledge without additional inquiry. Wells stated that there should be no personal liability. Thornsbery noted that these provisions prevent the Port from being told the lessee is in compliance

<p>Old Business continued... Lot 24 Lease continued...</p>	<p>when they are not, whether through intentional deceit or willful ignorance.</p> <p>Section 18.3.3 – Eliminating Port’s ability to restrict invasive or destructive environmental testing. Wells said their preference is to remove this.</p> <p>Section 18.4.1 – Excluding pre-existing conditions from those for which the lessee must indemnify the Port.</p> <p>Section 18.4.2 – Requiring Port to indemnify the lessee for preexisting conditions that are not known or discovered during the license period and limit known conditions to those appearing in one or more formal reports. Thornsby noted this could require the Port to indemnify the lessee for a condition that was known by the lessee but was not included in a formal report.</p> <p>Section 18.5 – Limiting the Port’s ability to inspect and/or monitor for environmental contamination and add the ability for the lessee to institute its own environmental contamination monitoring or testing program instead of the Port. Thornsby noted that self-monitoring and self-inspection are an invitation to abuse and that, as Port Counsel had previously pointed out, the Port has a reasonable interest in protecting its property from contamination.</p> <p>Section 18.6 – Eliminating the rebuttable presumption that any contamination discovered during, and not identified before, the lease period is the responsibility of the lessee. Wells stated he felt this was unfair. Thornsby pointed out that once the lease period starts, contamination is more likely to be caused by the lessee (and should be its responsibility) since it then controls access to the premises and is in a better position to have knowledge of what takes place on the premises.</p>	
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Old Business continued...
Lot 24 Lease continued...

Section 18.10 – Clarifying what constitutes “evidence of lessee’s compliance”. Wells questioned the need for submitting all reports, manifests, and identification numbers to the Port. Thornsbury noted he will discuss it with Port Counsel, but believes both can be easily addressed.

Section 21 – Elimination of the requirement that the assignment be unconditional. Wells states he sees no reason to use it. Thornsbury noted that according to Port Counsel, at times Washington courts have ruled an assignment was actually conditioned on certain events and was deemed of no effect because the events did not take place. Thornsbury stated the Port does not want to get into a situation where there is a question as to who has the right of first refusal in the event there is a conditioned assignment, whether it is by design or court order. Wells suggested considering explicitly stating who gets the right of first refusal when any assignment takes place.


Section 24.1 – Add guarantee lessee has access to, and use of, roads and stormwater facilities (see 24.15 and 24.17 below). Thornsbury noted that the Port has never provided the kind of guarantee requested and stated that in obligating itself to accept stormwater, it is also obligating itself to the long-term operating and maintenance costs of handling stormwater. He further stated this would be an unprecedented step for the Port and represents an on-going uncompensated cost to the Port.

Section 24.4 – Preventing the Port from modifying the CC&Rs without lessee’s approval, eliminating language preventing the lessee from unreasonably withholding or delaying approval of a reasonable change to the CC&Rs, and removing limits on Port’s liability for a change deemed unreasonable. Wells stated the Port should not be able to amend or materially change the CC&Rs. Thornsbury stated that Port Counsel objected to the Port having no ability to modify the CC&Rs without


<p>Old Business continued... Lot 24 Lease continued...</p>	<p>obtaining permission. Thornsbury noted that it is difficult to predict what circumstances will be like in forty or fifty years and this would limit the Port's ability to adjust to changing conditions. Wells remarked that he believed this would be a sticking point between the parties.</p> <p>Section 24.15 – Allowing lessee to record a memorandum of the agreement itself and to record the memo against all property at Bingen Point Business Park to assure its right to use all Port roads. Wells said the lease language covers such access, but the lessee wants it on title.</p> <p>Section 24.17 – Add a guaranteed right by lessee to discharge its stormwater to Bingen Lake or Port's drainage system.</p> <p>Section 24.19 – Allowing lessee to delegate its rights, in addition to its obligations. Thornsbury noted that Port council will likely object to this. Wells stated that rights are going to be an issue.</p> <p>Wells said a lot has been cleaned up in the lease, but there is still a little more work to be done. He stated a draft document with proposed language will be delivered to all the parties by Friday. Thornsbury said he will meet with Port Counsel to discuss any questions or concerns.</p> <p>Thornsbury noted he has been working on establishing an ordinary high water mark for use in updating the binding site plan. Wells said the issue of including Lot 23 with Lot 24 or having a separate lease will need to be resolved soon.</p> <p>Mary Margaret Evans, Insitu, said it is important to get the lease signed to retain internal project funding and that Boeing will be closed after December 17th for the holidays.</p> <p>Discussion took place regarding a possible special meeting on December</p>	<p>By consensus, the PC agreed to meet at any reasonable time to get the last issues resolved and the lease signed.</p>
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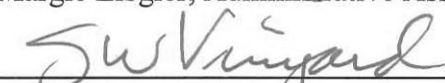
Old Business continued... Lot 24 Lease continued...	6 th with representatives from Boeing, Insitu, Lexington, and Trammel Crow. Thornsburly confirmed that Port Legal Counsel would be able to attend. Possible locations for the meeting were discussed including Insitu's conference room in Building 1D. Jenny Taylor, Insitu, said members of the public attending the meeting would have to be escorted to the conference room.	
New Business	None	
Executive Director's Report	None	
Commissioners Reports	None	
Public Comment	None	
Adjournment	PC Vinyard adjourned the PC Meeting at 7:10pm.	

Approved on May 7, 2013

 (Date)


 Marc Thornsburly, Executive Director



 Margie Ziegler, Administrative Assistant


 Wayne Vinyard, President