



PUBLIC MEETING: Port Special Commission Meeting

DATE: Thursday **June 29, 2023, 6 PM**

LOCATION: Cascade Locks City Hall 140 Wa Na Pa St, Cascade Locks, OR 97014

<https://us02web.zoom.us/j/85806615790>

MINUTES

- 1) Commission meeting called to order 6:00 PM
 - a. Pledge of Allegiance
 - b. Roll Call
 - i. President Groves
 - ii. Vice-President Lorang
 - iii. Commissioner Caldwell
 - iv. Commissioner Stipan
 - v. Commissioner Bump
 - vi. Members of the Staff and other Support – GM Jeremiah Blue, Secretary Keriane Stocker, Accountant Chuck Mosher, Attorney Tommy Brooks
 - vii. Members of the Public – Brenda Cramblett of Cascade Locks, Janice Crane of Cascade Locks, Martha Lamont of Cascade Locks, Dave Lipps of Cascade Locks, Albert Nance of Cascade Locks, Gordon Zimmerman of Cascade Locks; Zoom Attendees – Nikki Adler, Diane Amoth, Brittany Berge, Clyde Bruckham, Mindy Caldwell, Paul Cosgrove, Janice Crane, Margarete Curtis, Denise Emmerling-Baker, Randy Holmstrom, Mark Johnson, Carrie Klute, Caroline Lipps, Chris Matlock, Annie McHale, Butch Miller Councilor Cascade Locks, Gary Munkhoff, Rob Peterson, Reginald Tilley IICF, Sofia Urrutia-Lopez, Brenda W. Cascade Locks OR, Owen Zerfing, the following with no last name given: Dave, Jim, Morgan, Scott, Caden's iPhone, and a couple of others identified as "iPhone"
 - c. Modifications, Additions and Changes to the Agenda
 - i. GM Blue requests to reorder Items 3 and 4.
 - d. Declarations of Potential Conflicts of Interest
 - i. C Caldwell declares a potential conflict of interest.
- 2) Public Comment (Speakers may be limited to three (3) minutes)
 - a. On Zoom, Carrie Klute of Cascade Locks states that there are several points about the deal that she wants the community to be aware of and to be noted on public record. First, after AWI deal fell through the Port intended to run the boat themselves. However, there was no money in the budget to do so until the new budget was implemented, which starts July 1st, literally in two (2) days. While this idea sounds risky, we have the budget staff and know-how and are ready to support this endeavor. The reason this would be a great option now is that it would give us the opportunity to collect data and see what kind of revenue this asset we own could bring in. With our goal of replacing toll revenue from the bridge, we should not be signing away revenue opportunities for thirty (30) years, not knowing what we have, we could certainly be

giving away the farm. Additionally, with very little time left on the current Port (Commission), it seems to be a vindictive move to block any chance of AWI coming back, their final revenge on them and the community. There has been lots of talk about this deal having been in the works for months, however, it has only been in the works for a couple of weeks. Her second point that she wants the public to be made aware of is that it is very likely AWI will sue the Port for their unfair proposal practices. Even if [the Port] wins, it would be very expensive and time consuming. There is even a small chance that we could be ordered to not operate the boat at all until a lawsuit is settled. Klute poses the question, "Do we really want to risk setting ourselves up for another lawsuit? Do we have budget to continue supporting avoidable lawsuits?" Thirdly, she states that this new-to-us company seems to have no problem working with recalled commissioners and commissioners who only have one day left in their term. That is very bad optics for the community that they are trying to be a part of for the next thirty (30) years. Klute asks, "Why would we want to work with a company for thirty (30) years that thinks doing this is perfectly okay? Why can't they wait for a few days for the new port (commissioners) to get into the door?" She also states that it is going to start this entire contract off on a bad note with the community. Lastly, her final point that she wants to be very clear for the record, she states that although she cannot speak for the whole Port, she does not want to sell the boat; It is a gem for a community and a potential revenue asset, whatever rumors were going around about that is untrue; We want to keep the boat.

- b.** Denise Emmerling-Baker of Cascade Locks (on Zoom) begins with thanking Carrie (Klute) for speaking, thanking everybody who came here and thanking all of the Port Commissioners that have been here and the new Port Commissioners that are on this meeting. She states that everybody cares about Cascade Locks and is making decisions that are best for the future and appreciates that. She also makes clear that she is speaking for herself and not as a City Commissioner. She states that she thinks that it is probably not the best idea to enter into any contract, tonight. If there has not been an RFP, particularly because AWI is interested and particularly because it is her understanding that [AWI] has filed suit against another city before, it would be really horrible to enter into any decision that might put the Port at financial and further reputation risks with a lawsuit. She restates that they know AWI is interested. The Port may have a fabulous proposal from this other operating company, and yet in her government experience and looking at large proposals, the reason there is an RFP process is for full transparency for everybody, for the people who want to get this contract, for the community. She explains the process of RFPs, asking for proposals, putting a timeline, then talking about which is best and why or even proposing to run [the Sternwheeler] themselves. Emmerling-Baker states that it just does not seem like the wisest decision to take out particular contracts when one was offered before by AWI. It doesn't seem like it is a fair proposition and or the best business decision. She concludes with saying that there is a little bit of time for the Port Commissioners to put out an RFP to get proposals so that no company feels that they were overlooked.
- c.** Paul Cosgrove counsel for American Waterways Inc (identified as "iPhone" on Zoom) first apologizes, reflecting that he should have identified his name on Zoom. He informs that American Waterways has sent a letter about a week ago to the board,

- expressing its interest in resuming negotiations that would hopefully lead to a contract and objects to having a contract decision made tonight on a variety of grounds set forth in the letter that he sent to the board and the board's counsel yesterday, including concerns about compliance with Oregon Purchasing Statutes, which in general, as has been just mentioned by a previous witness, require an open competitive process with limited exceptions. Cosgrove states that they believe none of those exceptions apply in this particular case and so their request would be to defer action until AWI and other interested parties can pose financial terms and operational agreement terms to the board for its consideration and evaluation in a competitive process. He ends by commenting that he would be happy to answer any questions.
- d.** On Zoom, Sofia Urrutia-Lopez from Stevenson Washington expresses her dismay at how this process does not include the chance for community members to have insight on the contract being proposed. She states that it is their right to see and understand the contract. She is dismayed that this is being pushed just a few days before the recalled commissioners make their exit. To her, it appears that these commissioners have only their agenda in mind and not their community members. Urrutia-Lopez says that they all know now how past decisions have led to turmoil in placed the Port in a tough spot financially, along with a bad reputation. Although she does live in Stevenson, she points out that the decisions that are made in Cascade Locks does affect the community in Stevenson. If a decision is made by the court today, there may be another lawsuit which could tie up the Sternwheeler. She comments that the Sternwheeler has been dearly missed in Stevenson, it is a tourist attraction and without the Sternwheeler operating, you know, Stevenson loses those tourist dollars as well.
 - e.** David Lipps of Cascade Locks comments that the process needs to be done right. There was a recall and the people have spoken. [Approving this agreement] during the last minute is just not the best for our community. He thinks that it is best that [the Port] just wait for the new commission and make the right decision in the right way. [The Port] has already had a lot of lawsuits in the past, they do not need any more lawsuits moving forward. He emphasizes the need to just do things the right way. P Groves asks what are all the lawsuits Lipps is referring to? Lipps answers that there is the Puff Factory but there could be more. P Groves replies that he just wanted to make sure he got that straight.
 - f.** Martha Lamont from Cascade Locks states that she is unsure if pushing this (agreement) through is [P Groves'] agenda but there is no reason to make this kind of decision, especially for thirty (30) year period. She turns to address C Caldwell, saying that she and her worked together on a project and they worked well together, when they were listening to the community, and they were not listening to anybody else. If they listened to the community now, they do not want this to happen tonight. Lamont urges the Commission to think independently, then specifically mentioning C Caldwell and C Bump, and not just [...] wherever Jessie (Groves, Commission President) says, "vote". She pleads to not do this now and not to let this be their legacy. She ends by commenting, "It's not very you."
 - g.** Gordon Zimmerman of Cascade Locks comments that, as he understands ORS 279A, the applicability of the Public Contractor Law, is the policy of the State of Oregon, in enacting the Public Contracting Code, that a sound and responsive public contracting

system should among other things, simplify, clarify and modernize procurement practices, instill public confidence through ethical and fair dealing honesty and good faith on the part of government officials and those who do business with the government. He notes that ORS 279A.010 explains that a "local contracting agency" means a local government or special government body authorized by law to conduct a procurement. "Local contracting agency" includes any person authorized by a local contracting agency to conduct a procurement on behalf of the local contracting agency. ORS 279A.010 Paragraph Q defines the "local government" as meaning given that term in ORS 174.116. ORS 174 says local government includes A port organized under ORS 777. Thus, the Port is required to follow public contracting code. Even if this contract, which seems to exceed \$125,000, ORS 297A.P applies. Zimmerman advises that without a public process, the Port may be in violation of the Public Contracting Law, particularly since the boat value exceeds the \$25,000 limit and the application or the authorization to utilize that asset certainly exceeds the amount. The reason for the Port's existence is the Bridge of the Gods. The Bridge of the Gods needs significant refurbishment to the tune of over \$54 million, from the last he heard. That source or the source of much of that funding would be from the Federal government. He believes that this Title 23, that requires total revenue to be restricted to the structure for which the toll is collected. Currently, approximately 50% of the estimated \$3.2 million in total revenue for the next budget year will be spent on non-bridge operations of the Port, that means the Port is not eligible for Federal funding. Dan Yates, the president of AWI, the company that operates the Portland Spirit told him that the Columbia Gorge Sternwheeler was the number one ship in history. As far as revenue generation was concerned, the Sternwheeler revenues approached \$3 million per year. Portland Spirit gave the Port \$65,000 of that \$3 million per year. It should have been \$65,000 per month. Zimmerman asks, "What is the amount which the new operator will pay under the terms new treatment? Does the Port really want to be saddled with an agreement that may look good now that could dramatically restrict its resources in the future like the contract with the AWI appears to do?" He understands that the Port had a bad experience when it operated the Sternwheeler before the Portland Spirit leased the boat, but the times have changed in the intermediary thirty (30) years. The Port now has a talented, successful sailing operation, Heart of the Gorge Sailing that is willing to upscale their operation and teach the Port how to operate the Sternwheeler successfully. The Sternwheeler can generate more than \$1.5 million dollars per year which will be replaced the toll revenues diverted from the Bridge of the Gods and hence the Port will be able to qualify for Federal funding. Zimmerman encourages the Port to not contract for the operation of the Sternwheeler with another cruise line operator who may not operate the boat for the best interests of the community and who will definitely ship the significant revenue the boat can generate to their pockets, not the Port's. He urges the Port not to sell the boat or lease someone else to operate the boat. He concludes by stating that [the Sternwheeler] can generate significant resources for the entire portage.

- h.** GM Blue requests that Matt Miller from Hornblower be given an opportunity to address the Commission. Miller expresses this appreciation to the community for giving him the chance to come out and visit Cascade Locks. He gives an introduction

about himself and about the company, and about how they see this partnership with the citizens of Cascade Locks. He joined the Coast Guard when he was 17 and rose to the rank of Captain for thirty (30) years. He has two graduate degrees while in the Coast Guard. He has commanded five ships, one major short command, worked for the Speaker of the House law office, worked at the White House, he has had tremendous opportunity through the Coast Guard that he would never take back. He points out that the experience in the Coast Guard for 30 years had been nothing but operating and maintaining boats, ships of all sizes. When he retired from the Coast Guard in 2014 he got on with Hornblower and was the vice president at the time of their HMS Ferries, which is a divisional formula that operates and maintains ferry service for government entities, just like Cascade Locks. Those locations are in Pierce County, up in Washington; they operate a car-passenger ferry for Pierce County in a town just like this; they operate in Philadelphia, a passenger vessel very similar to this for the Port of Delaware. In Jacksonville, Hornblower operates a car-passenger ferry for Jacksonville Transit Authority, another government entity. All of these are seasonal or year-round operations. In Pensacola, they operate a passenger-only ferry for the National Park Service. In Dauphin Island, Alabama, another very small community, they operate two car-passenger ferries for the Alabama Department of Transportation. In Oklahoma City, Hornblower operates three ferries for the city of Oklahoma. They also operate a fleet of about 11 vessels for the government of Puerto Rico, for their transportation department. Miller explains that the reason why he is bringing that out is for the Commission to understand the experience of their company, the experiences of his and operating and maintaining boats for government entities that do not have and are not designed to operate and maintain vessels. It is especially not an inherently governmental function to operate an excursion vessel. It is not a slight on anybody, it is just that the government entities are not designed with the expertise and the depth to be able to do that. The concerns community may have with a private operator doing it but our experience has been, all these places Hornblower operates around the US and Puerto Rico, they have had these contract for decades. And the reason they have them is because they have ingrained themselves into the local community in which they operate. They become a partner, they become part of the community. All of their employees, all those locations, are their local census. Generation after generation, the whole of the local citizen, it is their boat, go on those boats, and we become a part of the community. That is why decade after decade, they keep getting their contracts renewed in those locations. Hornblower's view in this situation is no different. Their goal is to be a steward of your vessel. It is the community's boat, it is not Hornblower's boat, it is not AWI's boat, it is not JettyLight's, it is the City's boat and Hornblower is going to be good caretakers of it and continue to ensure that it is a part of the community for the next thirty (30) years or however long the life of the boat. He informs that in the freshwater condition it is in now, they can get to a point where that boat will live another at least fifty (50) years easily. They operate a vessel in New York, it was 65 years old. They took it over from the city of New York and operated it for another ten (10) years, so it was a 75-year-old vessel. It never missed a deployment. Never missed a sailing. Hornblower's goal, in their culture, is to become part of their community. One of the things that they institute is the fact that it is [the community's]

boat. If someone is a resident of Cascade Locks, they should be able to go right down to the boat, anytime you want to ride the boat, and Hornblower is going to allow that to happen. If they have an ID, and are 16 (years old) and above and they are from the community, it's their boat, they should be able to ride the boat data. The local community can go down and be a part of that as well. That is what Hornblower wants and what they are going to continue to build on. Miller assures everybody that, Hornblower is a very big company and with it is the expertise that no other company in the world can match. Last year, they steered 70 million passengers around the world. The city of Cascade Locks is getting the best vessel operator in the world to do their work. Hornblower has been open and transparent about who they are, what they want to do and how they want to be a part of the community. In conclusion, Miller states that they will bring all the expertise that they have. JettyLight will be the ones in operating the Sternwheeler and Hornblower will support them. Public Member Zimmerman asks, if the contract is simply about who will operate the boat, what about the marketing? Who is going to get the profits from the people that come on a boat? Is it a contract to operate the boat on behalf of the Port and the Port reaps the profits. GM Blue replies that they will probably settle contract specifics in executive session. Miller adds that it is first he had heard that the previous operator had revenue of \$3 million because [Hornblower] has not received any of that information from the previous operation but have received shift logs and shift records. Zimmerman comments that he has not either. Miller points out that [the \$3 million] is revenue, and does not mean that it is net income, there are a lot of the operating costs, so although he does not know what part of the \$3 million, they made, what they did not make, he can say that it costs a lot to properly operate and maintain a vessel especially a vessel of that age. P Groves comments that only a couple of people were at the meeting when the Port started operating the vessel in 1983. And they tried to operate the boat for some years and were unable to do that. And that is why it went out to another operator. Miller adds that in his experience, he does not know of any government entity that can that operate a vessel that makes a profit. He explains that Washington State Ferries operates largest ferry system, probably in the US, but the Washington State Ferries does not make money for the state. It provides a public service to the state, but it is heavily subsidized by [...]. Zimmerman asked if there will be no public process. P Groves replies that there has been a public process going on for two (2) years. The Port has put out RFPs for two years and went through two negotiations with AWI, one with the Port's attorney and one with him and Olga [Kaganova, previous Port General Manager]. AWI sent a letter to the Port stating that they wanted out of the negotiations. Zimmerman retorts that, to him, based off his thirty years of experience, that would mean they should start the RFP process over again. P Groves expresses that he appreciates Zimmerman's views but the Port does not do anything without asking the Port attorney, emphasizing that the Port "does nothing, no contracts, nothing" without the Port attorney's approval. Zimmerman requests that P Groves explains how the Port can sign a contract tonight, in violation of [...]. P Groves replies that he does not know if they are in violation of anything. He expresses his gratitude that everyone has kept their comments in check as discussions can become amped up, but points

out that there is a lot of things that people do not know, and the history of the boat is one of them.

- 3)** Executive Session under ORS.192.660(2)(f) Discussion of exempt public records and ORS.192.660(2)(h) Legal counsel regarding litigation or litigation likely to be filed
 - a.** Recess from Regular Session, into Executive Session at 6:32 pm
 - b.** Recess out of Executive, into Regular Session at 8:53 pm
- 4)** Consideration of Special Procurement/Direct Appointment for Operation of Sternwheeler
 - a.** GM Blue cites his findings in support of the approval of the Sternwheeler Operations Agreement, stating:
 - i.** The Sternwheeler is a critical asset of the Port that helps the Port achieve its economic development goals, and that provides a revenue stream to the Port that can be used for multiple public purposes.
 - ii.** The Port prefers to have a private contractor operate the Sternwheeler on behalf of the Port and has had such an arrangement since 2006.
 - iii.** In 2005, the Port adopted procurement rules that exempted concession agreements like the Sternwheeler operations agreement from competitive procurement rules.
 - iv.** In 2006, the Port directly negotiated with and executed an agreement with AWI Columbia Gorge, LLC ("AWI") to operate the Sternwheeler. The contract with AWI concluded, and the Port sought to again negotiate an operations agreement with a private contractor.
 - v.** In order to identify potential operators, the Port issued a Request for Qualifications ("RFQ") asking for potential operators to identify themselves and any specific details they may have for operating the Sternwheeler. The RFQ did not seek bids or otherwise create a right in any responder to negotiate or contract with the Port.
 - vi.** Following the RFQ, the Port determined that AWI remained a viable operator of the Sternwheeler. The Port then began to negotiate an operations agreement with AWI.
 - vii.** The Port and AWI were unable to negotiate an operations agreement satisfactory to both parties. On October 3, 2022, AWI issued a press release stating that it had ended negotiations with the Port. On October 6, 2022, AWI informed the Port that it was rejecting the Port's offer, ending negotiations, and arranging to have the Sternwheeler returned to the Port.
 - viii.** The Port Commission has since considered operating the Sternwheeler itself, but has not decided to pursue that option. The Port Commission instead directed the General Manager to seek to find a new operator.
 - ix.** If the Port does not contract with a new operator immediately, the Port will not be able to operate the Sternwheeler for the 2023 season in a reasonable manner, which could have long-lasting impacts on the boat's operations and the role it plays in the Gorge's tourism industry.
 - x.** The Port Commission finds that there is a substantial public benefit of operating the Sternwheeler for the 2023 operating season and beyond.
 - xi.** The General Manager has negotiated a new contract with JettyLight to operate the Sternwheeler.

- xii.** The Port Commission finds that it has the authority to approve the JettyLight contract without traditional competition procedures, just as it did for the AWI contract in 2006.
- xiii.** The JettyLight contract is a concession agreement that the Port has exempted from competition in its local rules since 2005. The Port's most recent update to those rules in 2022 maintains that exemption and clarifies that it applies to Sternwheeler operations agreements specifically.
- xiv.** The Port Commission further finds that the JettyLight contract complies with the Port's rules for Personal Services contracts. The JettyLight contract allows the Port to contract with an entity that provides services that require specialized skill, knowledge, and resources in the application of technical expertise. Operation of the Sternwheeler also requires professional, artistic, and management discretion of judgment. The Sternwheeler is complex and requires special skills to operate. Knowledge of the marine environment is necessary. Marketing is a key component of Sternwheeler operations, which invokes both professional and artistic judgment. Finally, Sternwheeler operations involve heavy management decisions, from schedules to personnel. The Port may award personal services contracts by direct appointment where the nature of the person service is not project driven but requires an ongoing, long-term relationship of knowledge and trust. The Port Commission finds that the Sternwheeler requires such a relationship and, unlike a public improvement, does not involve a single project, rather an ongoing operation.
- xv.** The Port Commission further finds that the JettyLight contract, on its own, satisfies the requirements of a special procurement. It is unlikely to encourage favoritism or to substantially diminish competition. The Port knows from experience that there are very few operators able to take on operation of the Sternwheeler. The pool of potential competitors is low and, in fact, the Port received very few responses to the RFQ it issued for the purpose of identifying potential operators. Further, the economic terms of the proposed contract are closer to the terms presented to, and rejected by, AWI, and they are more beneficial to the Port than the terms that operator offered. It is also reasonable to expect that the Port will achieve substantial cost savings through this approach. JettyLight is available to operate the boat for the 2023 season. If the Port is unable to proceed with an operator now, the Sternwheeler will either sit idle for the summer, or the Port will need to operate the boat with Port staff, which is not an option the Commission has been willing to pursue. Finally, this procurement promotes the public interest in a manner that is not practical when following traditional procurement practices. Different operators have different considerations based on their workforce, other boats they may operate, and access to maintenance and repair resources. As a result, a typical bid process or request for proposals would result in bids or proposals that are difficult to compare. Further, unlike most procurements where the Port is simply spending money on a good or service, the Port's operation of the Sternwheeler is a separate business line that is intended to create net revenue gains for the Port while also maintaining its physical assets. Over the life of the contract, there

- xvi. is therefore no "cost" to the Port for determining what sort of procurement process is appropriate. For more than two decades, the Port has recognized that the best way to ensure these benefits is to identify a qualified operator with which it can directly negotiate. Port staff have gone beyond that minimum and negotiated now with two operators, and the JettyLight arrangement provides the greater benefit to the Port.
 - b. P Groves states that they took comments earlier and will consider those as testimony but the Commission wanted to open up the opportunity for anyone who may want to say anything else.
 - i. Public Member Zimmerman expresses his appreciation for the additional information on the Port's procurement process and the legal expertise that allows the Port to do so, as it has answered most of his questions. He still thinks that the Port could have done [another RFP] but this is probably the second best option. He encourages the Commission to consider the benefits to the community, adding that, personally, he would like to know more details about what is actually in the agreement. He concludes by thanking the Commission for their consideration.

C CALDWELL MOVES THAT WE ACCEPT THE GENERAL MANAGER'S RECOMMENDATION AND PROPOSED FINDINGS, APPROVING THE SPECIAL PROCUREMENT THAT DIRECTLY APPOINTS JETTYLIGHT TO OPERATE THE STERNWHEELER, THAT WE APPROVE THE OPERATING AGREEMENT THAT HAS BEEN PRESENTED TO US, WITH REVISIONS AND THAT WE AUTHORIZE THE GENERAL MANAGER TO SIGN THAT AGREEMENT AFTER CONSULTING WITH COUNSEL TO MAKE ANY FINAL REVISIONS, AND TO RESOLVE ANY DISPUTES, CONSISTENT WITH THIS APPROVAL; C BUMP SECONDS; Passed 3-2 WITH P GROVES, C CALDWELL AND C BUMP, APPROVING AND VP LORANG AND C STIPAN, OPPOSING.

Port of Cascade Locks

Port Commission President
Brad Lorang

Port Commission Secretary/Treasurer
Albert Nance

Date Signed

Date Signed