

WASHINGTON SUPREME COURT DECISION AMOUNTS TO A WIN FOR PORT DISTRICTS

A recent decision by the Supreme Court brought important environmental and leasing issues to light that we should all pay attention to. In *Columbia Riverkeeper et al v. Port of Vancouver USA, et al*, the plaintiff (Riverkeeper) brought claims against the Port alleging, among other things, that one of its leases violated the State Environmental Policy Act (SEPA).



The Port leased vacant land to a lessee who planned to develop a petroleum-based energy export facility. The lease required the lessee to obtain all necessary permits before occupying the land. Riverkeeper alleged that execution of the lease prior to issuance of permits violated SEPA's "reasonable alternatives" requirement.

WPPA submitted an amicus brief to the Court, arguing that the established interpretation of SEPA allows conditions on occupancy to satisfy SEPA requirements. The Court agreed. It held that the lease contingencies satisfied the Port's SEPA obligation and plans could be



permitted after the lease was executed and before the lessee occupied the property.

TAKE-AWAYS

In sum, the Court explained that SEPA's environmental review process could be deferred so long as the lease contains proper language. This decision clarifies how to structure "condition precedent" clauses.

First, leases must be conditioned on obtaining necessary permits. The Port's lease was conditioned on obtaining "all necessary licenses, permits and approvals...for the Permitted Use," prior to occupying or developing the property. Second, ports must reserve the right to shape a final project in response to environmental review. Here, the Port's lease expressly reserved its authority to "approve... construction plans, specifications and designs." Third, ports need to reserve their right to terminate the lease if the conditions precedent are not met.

If you'd like to hear more about approaches to lease language, please join the WPPA Legal Committee meeting on May 18 from 9:00-12:00 at the WPPA Spring Meeting. For details about the Spring Meeting at Suncadia Resort, visit washingtonports.org/events. ■

MARINA SPOTLIGHT

PORT OF BREMERTON IS ENHANCING ITS COMMUNITY

The Port of Bremerton completed two projects as part of its effort to enhance the local community. An aviation-themed playground at the Bremerton National Airport was complete in August, 2016, and in October, the Port presented a covered pavilion to the Port Orchard Marina Park community.



The airport-themed playground was appropriately built next to the Bremerton airport terminal. Its play

equipment is modeled after planes and helicopters. The park's surface mimics an airport runway, where kids can climb a structure that resembles an air traffic control tower (complete with windsock).

The new playground has undoubtedly encouraged kids to dream of careers in aviation. It was completed just in time for the Aircraft Owners and Pilots Association annual fly-in, which drew record numbers to Bremerton National Airport in August, 2016. The Port then went on to construct an overlook pavilion at Port Orchard Marina Park. The pavilion provides an overlook of Sinclair Inlet and a venue

Continued on next page



KNOWING THE WATERS

By Frank Chmelik of Chmelik Sitkin & Davis P.S. - WPPA Counsel

This month's topic is public comment at commission meetings. The advice below is largely non-legal but may be helpful as one sees the trends around the state.

Although not required by any law, public comment is an important tradition to encourage comments from the public at public meetings. Here are some public comment topics and trends to consider:

It is "public comment" and not "public debate." It is difficult (and I think a bad idea) for the commission or individual commissioners to get drawn into answering "questions" or engaging in a "debate" with public commentators. Once engaged, there is no easy endpoint and every other speaker will demand the same rights. I think a best practice is for the

commission to listen, and only listen politely and not respond beyond a "thank you for your comment." If a commissioner needs more information or would like further discussion, ask the staff to follow up with a public commentator or offer to meet at some other time with the speaker.

Public comment is not a time for rude behavior. It seems that rude or boorish behavior is on the rise. People come to the meeting with the idea that they can engage in ad hominem attacks, speak with a lack of common civility, have people cheer and yell, appear at multiple meetings to repeat the same comments and/or come to the meeting with the purpose of disrupting the meeting. I think this trend is a consequence of similar televised actions at the national level and the fact that more local governments,

including ports, are broadcasting their meetings.

If a meeting looks contentious, the president of the commission ought to remind everyone to be polite *before* the public comment period starts. Thank everyone in advance for coming and being civil, and ask the audience not to clap, cheer or interrupt. Once the speaking starts, *never* allow bad behavior to go unchecked, because once it starts it is hard to contain. With the support of the other commissioners (no matter how a commissioner feels on the issue), the commission president ought to speak up politely and clearly to stop such behavior at the first instance, especially ad hominem attacks. Focus on the behavior and not the substance of the comments. Above all, commissioners should always respond politely. ■

SPRING 2017

Infrastructure Funding Programs FREE Webinar

Thursday, May 4, 2017 • 9:30 am to 11:00 am

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This webinar gives information and updates relating to a variety of state and federal resources available for you! It provides the latest infrastructure funding information on: Economic Development, Water Quality, Complete Streets, Brownfields, and many more programs.

For more information, please contact Isaac Huang at 360-725-3162, or isaac.huang@commerce.wa.gov

MARINA SPOTLIGHT

Continued from page 1



for community events. Last month, a wedding was held at the new pavilion.

The overlook project was funded by Port Orchard's Soroptimists and the City of Port Orchard. The Port thanked the local Soroptimist chapter for its continuous support by naming the pavilion, "Soroptimist Overlook." The 30x34 foot structure was built with laminated beams and galvanized metal connectors. It features a metal roof and polycarbonate skylight panels. Other improvements to Port Orchard Marina Park have been proposed for 2017, including paving, landscaping, and adding a new playfield matting. ■

UPCOMING EVENTS

Spring Meeting

May 17-19, 2017

Suncadia Resort, Cle Elum

Directors Seminar

July 13-14, 2017

Adrift Hotel, Long Beach

Finance & Admin. Seminar

June 14-16, 2017

Semiahmoo Resort

Commissioners Seminar

July 24-25, 2017

Alderbrook Resort, Union

EMPLOYMENT OPPORTUNITIES

Asst. Manager/ Maintenance Supervisor

Port District No. 1 of
Wahkiakum County

Accountant

Skamania County PUD No. 1

Marina Office Assistant – LaConner Marina

Port of Skagit

Port Auditor/Treasurer

Port of Walla Walla

Senior Manager, Planning

Northwest Seaport Alliance

Airport Manager

Port of Bremerton

Executive Director

Port of Coupeville

Executive Director

Port of Friday Harbor

Sr. Mgr. Communications - Aviation Marketing

Port of Seattle

Airport Duty Mgr. - Airfield Operations

Port of Seattle

Senior Accountant

Port of Seattle

Contract Administrator - Construction

Port of Seattle

Director, Engineering

Port of Tacoma

Senior Real Estate Manager

Port of Tacoma

Assistant Director, Facilities

Port of Tacoma

If you would like information on any of these positions, visit washingtonports.org/washington-ports/employment-opportunities