

Minutes of Meeting
July 23, 2020
Via Video/Teleconference

Notice is hereby given that in accordance with the order the Office of the Governor issued March 16, 2020, and due to imminent threat to public health and safety and urgent public necessity the Port Freeport Port Commission will conduct a Regular Meeting on Thursday, July 23, 2020 at 1:00 p.m. at the Administration Building, 1100 Cherry Street, Freeport, Texas in part by video/teleconference in order to advance the public health goal of limiting face-to-face meetings (also called "social distancing") to slow the spread of the Coronavirus (COVID-19).

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Commissioners present:

Mr. Shane Pirtle, Chairman
Mr. Paul Kresta, Vice Chairman
Mr. Rudy Santos, Secretary
Mr. John Hoss, Asst. Secretary
Mr. Ravi Singhania, Commissioner
Mr. Dan Croft, Commissioner

Staff Members Present:

Mr. Jason Cordoba, Legal Counsel
Ms. Phyllis Saathoff, Executive Director/CEO
Mr. Rob Lowe, Director of Administration/CFO
Mr. Al Durel, Director of Operations
Mr. Chris Hogan, Director of Protective Services
Mr. Jason Miura, Director of Business & Economic Development
Mr. Mike Wilson, Director of Economic Development & Freight Mobility
Mr. Brandon Robertson, Network Systems Manager
Ms. Mary Campus, Controller
Ms. Marilyn Miller, Public Affairs Assistant

Also, present via teleconference:

Mr. Bob Arroyave, BGE, Inc.
Ms. Jackie Ming, Weeks Marine
Mr. Chuck McFarland, McFarland
Mr. Will Wachel, WSP
Mr. Joe Smith
Mr. Jeff Taylor, Freese & Nickel
Mr. Patrick O'Donnell, McCarthy
Mr. Josh Davis, McCarthy
Mr. Adeel Malik, McCarthy
Mr. Rich Patrick, Ninyo & Moore
Mr. Jonathan Schmaltz, McCarthy
Mr. Jason Foltyn, HDR, Inc.
Mr. Glen Crocker, Cobb, Fendley & Associates, Inc
Mr. David Kaufman, Haskell
Ms. Melanie Oldham

Commissioner Pirtle stated the following information...

Today's date is July 23, 2020, and the time is 1:01 p.m. This is the regular meeting of the Commissioners of Port Freeport. I am Shane Pirtle, Port Commission Chairman. We are conducting this meeting by video/telephone conference pursuant to Governor Abbott's order suspending certain provisions of the Texas Open Meetings Act in order to minimize the impact of the coronavirus outbreak. This meeting is being recorded as required by the Texas Open Meetings Act.

With the posting of today's meeting a toll-free call in number was indicated on the agenda, along with the agenda packet. Both may be found on the Port's website www.portfreeport.com. Additionally, as posted on the agenda, the public may join the meeting from a computer, tablet or smartphone or by phone using the toll-free call in number.

In the event any member of the public is having any technical difficulty during the meeting, please call (979) 233-2667.

Being considerate of all participants on this call today, we respectfully request everyone "mute" their phones unless you are speaking.

As required by law and as a commitment to transparency we continue to include a public comment section with our meeting. If you would like to participate in the public comment section of our meeting the general guidelines and rules still apply.

An Executive Session was noticed on the published agenda. It will be announced prior to this body going into Executive Session. During Executive Session the public will not be permitted to hear the meeting, as is the case under the Texas Open Meetings Act.

1. CONVENE OPEN SESSION in accordance with Texas Government Code Section 551.001, et. seq., to review and consider the following:
2. Invocation – Commissioner Pirtle.

3. Roll Call – Commissioner Pirtle noted that Commissioners Santos, Hoss, Kresta, Singhanian and Croft were present online. He also noted those present in the board room (at a safe distance) included himself, Phyllis Saathoff – CEO and Jason Cordoba – legal counsel. Ms. Saathoff noted additional staff in the room including Al Durel – Director of Operations, Chris Hogan – Director of Protective Services, Rob Lowe – CFO, Jason Miura – Director of Business Development, Mike Wilson, Director of Economic Development & Freight Mobility, Brandon Robertson – Network Systems Manager, Mary Campus – Controller.
4. Public Comment – Ms. Melanie Oldham, resident of Freeport, public health environmental advocate and currently running for Ward A City of Freeport City Council made the following statement to the Port Commission... *“We would like to know in black and white everyday language, not lawyer talk, what is the clear public benefit uses that justify the Port’s case of using eminent domain against the east end citizens of Freeport. I and east end residents were present at the Port Commissioners meeting where Commissioner John Hoss made the motion for Port Freeport to begin taking private and our public land on the east end. When Commissioner Hoss asked Jason Cordoba, Port attorney, what the public benefit use was for the east end, he simply stated some legal jargon that most of us present did not understand. Ms. Saathoff said something to the effect that the exact public benefit use of the East End was yet to be determined. Why is the Port trying to take by eminent domain the last historic church out of six former churches on the east end? We will be closely following this case beginning July 27, 2020. Also, what are the east end benefits to the public? How many permanent jobs are expected from the Port expansion and who made these job projections? Is it the same people/staff who overestimated the need for a new rail line? We the public deserve to know this info about what is the public benefit use so we citizens can hold you to it.”*
5. Approval of minutes from a meeting held July 23, 2020.

A motion was made by Commissioner Hoss to approve the minutes as presented. The motion was seconded by Commissioner Santos with all Commissioners present voting in favor of the motion.

6. Receive reports from Executive Staff on activities and matters related to COVID-19 health safety matters, administrative affairs, financial results, facility engineering matters, operations and vessel activity, port safety matters, port security matters, Port tenant updates, USCOE, and other related port affairs.

Executive Director/CEO

Ms. Saathoff announced that General Feldman was confirmed earlier in the week as new Chief Engineer replacing General Semonite. Additionally, Col. Beck assumed command at the Southwestern Division June 25. Col. Beck indicated in a letter sent to all partners and stakeholders that he will be making visits to all Texas ports. A Change of Command ceremony was held for Capt. Smith who is now the USCG Commander Sector Houston-Galveston and Mr. Donahue is the Deputy Sector Commander for Houston-Galveston. Ms. Saathoff reported that with a signed PPA agreement, the dredging project for Reach 3 is now out for bids with the bid opening to be held August 8. The Corps expects to award contract 30 days after that date. The 408 Permit decision for the stability feature is in the final stages. Ms. Saathoff reported that staff is engaging with Port tenants to review hurricane procedures since the current disturbance has moved into the Gulf. Staff also continues to work closely with the tenants inside the port to identify any situations that may bring in any (COVID-19) exposure to the Port and mitigate those situations. With regard to the recent exposure with a

tugboat crewmember, new procedures will be discussed and implemented to help identify situations that might be existing but not obvious to anyone. In Washington, the WRDA bill is moving and work on a House Energy and Water appropriations bill continues. Van Scoyoc, the Port's federal consultants, continues to monitor and keep the Port apprised of these bills as they moved forward. The American Association of Port Authorities (AAPA) is asking ports to sign a letter in support of legislation that provides COVID relief to ports. Also, in the communication from AAPA, reference is made to infrastructure funds as well should they move forward with an infrastructure package that would support projects at ports. Ms. Saathoff asked the Commission to provide feedback. Ms. Miller gave an update on the Take-A-Child Finishing Virtual Tournament which wrapped up June 30. Over 200 anglers registered for the tournament with 58 photos submitted. The Facebook live prize drawing was held July 1 and over 2,020 canned food items were donated to the Brazoria County Dream Center Dream Pantry Program.

Chief Financial Officer

Mr. Lowe gave a presentation regarding the financial results for June.

Director of Engineering

Mr. Hull shared a picture of a 2.5-acre site acquired for the 45-Foot Project on the Quintana side of the jetty channel. Since the Port is the landowner, Brazoria County asked that material be provided to backfill a hole (erosion) that developed over the years. Mr. Hull also noted the current photo of Berth 8 under construction in his report stating the project is going well. Parcel 14 project is in closeout status now and ready to turn over to a new tenant. Additionally, Mr. Hull noted an opportunity to berth Ro/Ro ships at Dock 5 however an existing (original) bit in the corner of Dock 1 and Dock 5 will need to be replaced. Mr. Hull will design a replacement for the bollard with no impact to the floodwall. Commissioner Pirtle noted that VDD will be bringing in an expert to evaluate the removable floodwall. Mr. Hull stated the consultant is supportive of project but wants to coordinate with the Corps' Sabine to Galveston project.

Director of Operations

Mr. Durel stated staff had a conversation with the Pilots regarding Ro/Ro vessels at Dock 5 who are in favor of utilizing the dock for the vessels (650-foot vessels or less). Staff will try to fast track replacement of the bollard to assist with the full schedule of Ro/Ro vessels. The Port saw 9 Ro/Ro vessels for the month of June and anticipating 12 for July. Mr. Durel shared photos of the Wallenius and Grimaldi vessels that called the Port the first week of June. Additionally, the Port saw 4 LNG vessels in June and expects 1 in July. There were also 2 steel ships in June and 13 container ships in June. Mr. Quilty continues to review and evaluate automobile loading/discharging operation. Mr. Hogan continues to stay active with the Port and all local, state and federal agencies regarding COVID-19. Additionally, with hurricane season here and current storm to monitor, the Port Coordination Team was activated, and Mr. Hogan is keeping staff up to date with latest information. Mr. Durel also reported the ZPMC Gantry Crane transformer that failed has been repaired and installed, and functioning as it should. Lastly, staff has been working on budget for the upcoming 2020/2021 fiscal year.

Director of Business & Economic Development

In addition to his written report, Mr. Miura shared a picture of the second Vulcan train (95 cars) that arrived last week as well as picture of the transloading operation of CEMEX CO2

to empty tank cars. The gantry transloading system has not arrived but is expected within the week. Additional cars are expected today.

7. Receive report from Commissioners on matters related to:
 - A. July 20 Finance Advisory Committee – Commissioner Singhania reported the committee reviewed the quarterly investment report, discussed the Port Freeport Tax Abatement Guidelines, discussed the proposed budget for the Port Freeport Golf Tournament and reviewed the forecasted revenue for the budget year 2021 and discussed the diversified cargo in the Port.
 - B. July 23 Strategic Planning Advisory Committee – Commissioner Santos reported the committee discussed the Freeport Harbor Levee Stabilization project and is on the agenda for action today.
 - C. Meetings and conferences attended, Port presentations, Rail District and other related Port Commission matters.

Commissioner Hoss reported participating on several virtual meetings including Matagorda and Lake Jackson budget meetings.

Commissioner Kresta reported attending the July 22 Working Group meeting along with Commissioner Pirtle and Ms. Saathoff.

Commissioner Singhania gave an update on the Brazosport hospital stating they are getting their own testing machine for COVID, which will arrive within the week. He also gave an update on the hospital's protocol for COVID patients. Additionally, Commissioner Singhania attended the Hispanic Chamber virtual luncheon as well as the Indo-American Chamber of Commerce of Greater Houston meeting. Commissioner Singhania thanked staff for their work on the Port website.

Commissioner Croft reported participating on The Alliance teleconference. He also shared relayed information from the Greater Fort Bend Economic Development Council on speaker, Casey Conway. He also gave an update on the Sweeny Community Hospital stating they are in the process of capital campaign for new hospital and also has the rapid COVID test available. He also has been very active in participating in payroll protection activity and community loans for local businesses to help retain their business.

Commissioner Pirtle reported participating on the Greater Fort Bend Economic Development Council virtual meeting. He also assisted Ms. Saathoff with the Take-A-Child Fishing Tournament drawings held July 1 and participated on the Angleton Chamber of Commerce virtual meeting held July 8.

8. Approval of financial reports presented for the period ending June 30, 2020.

A motion was made by Commissioner Singhania to approve the reports. The motion was seconded by Commissioner Hoss with all Commissioners present voting in favor of the motion.

9. Public Hearing to discuss and consider adoption, amendment, repeal or reauthorization of the Port Freeport Tax Abatement Guidelines and Criteria pursuant to Section 312.002 of the Texas Property Tax Code.

Chairman Pirtle opened the public hearing and asked Mr. Low to make his presentation. Mr. Lowe stated the Port's tax abatement guidelines are due to expire July 31, 2020. The port's guidelines typically align with those of Brazoria County which were newly adopted in June. Mr. Lowe has revised the port's guidelines to reflect the updates as well as any legislative updates. Mr. Lowe briefly explained the updates which will take effect August 1, 2020 continuing through July 31, 2022. Staff discussed the updates with the Finance Advisory Committee and recommends the proposed changes.

Mr. Cordoba reminded the Commission this was a public hearing and should anyone from public have any comments, they will be given the opportunity to speak.

Ms. Melanie Oldham spoke to the Commission regarding the guidelines and questioned who monitors the tax abatements to ensure guidelines are met. Mr. Lowe responded stating the abatement includes an annual report requirement that includes # of employees, life of abatement, demonstration of local suppliers/vendors, etc. Additionally, Ms. Oldham questioned if there was a guideline requiring companies to agree to have good environmental stewardship. There is no current guideline with this requirement.

Chairman Pirtle closed the hearing.

Discuss and consider the adoption, amendment, repeal or reauthorization of the Port Freeport Tax Abatement Guidelines and Criteria.

A motion was made by Commissioner Singhania to approve the guidelines as presented. The motion was seconded by Commissioner Hoss with all Commissioners present voting in favor of the motion.

10. Approval regarding the 2020 Port Freeport Golf Tournament budget and benefactor.

Mr. Lowe stated the 2020 golf tournament is scheduled for October 19, 2020. With the event taking place in FY 2021 and certain preparations that need to be made, staff is requesting approval of a total budget amount of \$26,000 and no increase in the Port Freeport contribution of \$3,000. The increase in budget accounts for the Wilderness increased player fees by \$2/player, food/drinks, promotional items and new signage. Staff also recommends Texas Port Ministry as the benefactor of the 2020 golf tournament. Texas Port Ministry provides transportation when USACE personnel or other government officials are given tours of the Port.

A motion was made by Commissioner Singhania to approve the budget and benefactor. The motion was seconded by Commissioner Santos with all Commissioners present voting in favor of the motion.

11. Discussion and possible approval of Resolution pursuant to Section 26.04(c-1) of the Texas Property Tax Code and related to manner of calculating tax rate in an area declared a disaster by the Governor.

Mr. Lowe stated that Senate Bill 2 made significant changes in the terminology and processes with regard to the tax rate setting process. Mr. Lowe gave a presentation explaining the changes but first reviewed where the Port currently stands. The annual rate setting process includes debt service and maintenance and operations with the tax rate. The 2020 I&S rate will include 2019 GO Bond issuance payments as well as planned 2021 GO Bond issuance payment. The tax rate is applicable to the industrial and residential tax bases within the District and updated every year. The 2020 tax roll is not available at this time but expected soon. He reminded the Commission that the Port's tax base is comprised of approximately 71% industry and 29% residential and expects to be the same when the final tax roll comes out. The bonds were approved at the May 5, 2018 election by the voters with the first issuance in 2019 at \$35 million and the planned 2021 issuance is modeled at \$39 million. These numbers are tied to the Freeport Harbor Channel Improvement project as well as debt service. The port's current tax rate is set at \$0.0401 with 3 cents for M&O and 1 cent for debt service. As the entire bonds are issued, it's anticipated the relationship will change with 1 cent for M&O and 3 cents for debt service. Mr. Lowe then discussed the specifics of the Texas Property Tax Reform and Transparency Act of 2019 (SB2) that changed the processes and terminology regarding the process of setting the tax rate.

*Effective Tax Rate is now known as the **No New Revenue Tax Rate***

*Effective Maintenance & Operations Tax rate is now known as the **No New Revenue Maintenance & Operations Tax Rate***

*Rollback Tax Rate is now known as **Voter Approval Tax Rate***

He explained that the No New Revenue Tax Rate is the total tax rate that would provide the same amount of revenue in the year before on properties taxed in both years, and is generally equal to last year's taxes divided by the current taxable value of properties that were also on the tax roll last year. Excluded from this is new additions (new property) and properties coming off of abatement. The Voter Approval Tax Rate is the required I&S Tax Rate plus either a 3.5% or an 8% (Special Taxing Unit) increase in the No New Revenue M&O Tax Rate. To qualify for the 8% taxing unit rate, you must be a taxing unit with no new revenue M&O rate of less than 2.5 cents, a Junior College or a Hospital District. Currently, Port Freeport is at .029485 and would not be considered a special taxing unit and would be calculating the 3.5% addition for the voter approval tax rate. Mr. Lowe went on explain the agenda item and how its related to SB2 which provides for relief during a disaster declared by the Governor or the President. The Port and other taxing entities in Brazoria County received a notice from the tax office stating that if we want the calculation utilized to 8% vs. 3.5%, a resolution must be adopted by the Board with notification made to the tax office no later than July 25. Mr. Lowe noted that in either case the voter approval tax rate does not set the actual adopted rate, but provides the upper limit allowed before a November general election ballot would be required. Once the Port notifies the County how to proceed (8% disaster declaration or 3.5%) the County will establish a calculation to determine the Port's voter approval tax rate. The Port would publish the rate under requirements provide by the Tax Office. Staff will then present the budget and calculations to the Board who will determine the tax rate to adopt. If the rate is above the voter approval rate, this would require a November election. Mr. Lowe expects the Port Freeport M&O rate to decrease based on new debt issuance which will increase the I&S rate (by default). Staff does not anticipate needing the 8%. Mr. Lowe then presented key dates and reporting requirements to the Commission as well as potential dates to hold the budget workshop, tax rate hearings and budget adoption.

After a lengthy discussion, Commissioner Hoss made a motion that Port Freeport resolve to avoid taking advantage of Section 26.04(c-1) of the Tax Code that allows an increase in the M&O rate (above the 3.5% cap up to 8%) due to the disaster declaration related to COVID. The motion was seconded by Commissioner Singhania with all Commissioners present voting in favor of the motion.

12. Adoption of a Resolution approving the acceptance of the Port's portion of proceeds received from high bidders on delinquent tax property held in trust by Brazoria County, Texas and authorizing the Chairman to join in conveyance to high bidders.

A motion was made by Commissioner Santos to approve the resolution. The motion was seconded by Commissioner Kresta with all Commissioners present voting in favor of the motion.

13. Adoption of a Resolution approving amendments to the Port Freeport Investment Policy.

Mr. Lowe stated that Policy 9.1 - Investment of Surplus Funds requires annual review by the Port Commission. Staff reviewed the Texas Public Funds Investment Act and summary of the 2019 amendments in relationship to the Port's current policy and finds the current policy to meet the requirements with the exception of one enhancement to item 6 under eligible investments. Staff recommends adding the following language, "*and is compliant with the requirements of Texas Government Code Public Funds Investment Act Section 2256.016*". This policy was previously reviewed with the Finance Advisory Committee and the committee supports staff's recommendation.

A motion was made by Commissioner Singhania to approve the amendments. The motion was seconded by Commissioner Croft with all Commissioners present voting in favor of the motion.

14. Approval of a Construction Contract with McCarthy Building Co., Inc. for the Freeport Harbor Levee Stabilization Wall project, for an amount not to exceed \$29,085,000.00

Mr. Hull stated the that bids for this project were opened May19. Seven contractors submitted proposals that met all requirements of the proposal. McCarthy Building Companies, Inc. submitted the lowest bid in an amount not to exceed \$29,085,000.00. It is staff's recommendation and that of the Strategic Planning Advisory Committee to accept this bid and award the contract to McCarthy.

At this time, Mr. Hull gave an update on the status of the 408 permit stating that as of today, the Port has received another commitment from the Corps to work diligently to get the permit pushed through Southwestern Division. Mr. Hull read an email from the Corps stating the following... "*the Freeport Harbor 408 package will be sent from the Galveston District to the Southwestern Division by close of business tomorrow, Friday, July 24, 2020. I am coordinating with Southwestern Division staff to request an expedited review. My goal is to have Division approval by the end of next week.*" Mr. Hull further explained the contract will not be signed until the 408 is received. A Notice of Award will be signed today for the contractor to obtain the bonds (and other paperwork) for the project which will take some time. Mr. Hull is confident that when the bonds are in hand, the Port will have the 408 permit and the contract can then be signed by the Chairman.

A motion was made by Commissioner Santos to approve a construction contract with McCarthy Building Companies for the Freeport Harbor Levee Stabilization Wall for an amount not to exceed \$29,085,000.00 as presented by staff. Contract will be signed after the 408 Permit is approved. The motion was seconded by Commissioner Croft with all Commissioners present voting in favor of the motion.

15. EXECUTIVE SESSION in accordance with Subchapter D of the Open Meetings Act, Texas Government Code Section 551.001, et. seq., to review and consider the following:

A. Under authority of Section 551.071 (Consultation with Attorney) for discussion regarding:

1. Consultation with attorney to discuss potential litigation.
2. Consultation with attorney and discussion regarding the Port's creation under Section 59, Article 16 of the Texas Constitution.
3. Consultation with attorney and discussion regarding Special District Local Laws Code Title 5 Transportation, Subtitle A Navigation District and Port Authorities, Chapter 5002 Subchapter A.

B. Under authority of Section 551.072 (Deliberation Concerning Real Property Matters) for discussion regarding:

1. Discussion regarding the potential exchange, lease, or value of real property located in Freeport, Texas, including but not limited to the are known as the East End of Freeport and bordered by or adjacent to the following streets: FM1495; East 2nd Street; Terminal Street and East 8th Street in Freeport, Texas.
2. The potential purchase, exchange, lease or value of real property located at Port Freeport, including but not limited to the real property located at and contiguous to Berths 1, 2, 5 and 7.
3. The potential exchange, lease, or value of real property located at Port Freeport, including but not limited to Parcels 4, 5, 14, 30 and Surfside lots.

C. Under authority of Section 551.074 (Deliberation of Personnel Matters) for discussion regarding:

1. Discussion regarding the appointment, employment, evaluation, reassignment, duties of a public officer or employee, including but not limited to: Executive Director/CEO.

D. Under authority of Section 551.076 (Deliberation of Security Matters) for discussion regarding:

1. Discussion regarding issues related to the deployment, or specific occasions for implementation of security personnel or devices or security audit and services.

16. RECONVENE OPEN SESSION to review and consider the following:

17. Approval of a First Amendment to Reservation Agreement between Port Freeport and Trammel Crow Company.

This item was tabled.

18. Adjourn.

With no further business before the Commission, the meeting adjourned at 7:37 PM.