

Dear Commissioners,

Port of Astoria Commissioner Stephen Fulton issued a letter dated April 4, 2017 to his fellow commissioners as well as several media outlets too numerous to mention here. The letter made several allegations against fellow commissioners as well as Port staff. Port staff are sensitive to the need for commissioner-staff unity in advancing the mission of the Port of Astoria and we have no desire to further burden the citizens of this county with a deluge of information regarding Port operations. However, the recent letters issued by Mr. Fulton have prompted the need for a detailed response so that the Commission and the citizens of Clatsop County may be fully informed with respect to the issues and allegations raised by Mr. Fulton's letter.

Pier 3 Stormwater Project

750K cost overrun

Mr. Fulton alleges that the Stormwater Project ("Project") is approximately 750K over budget. This number is based on a January 2017 financial report that, among several other purposes, compared budgeted expenses to actual expenses for the 2016-2017 fiscal year. The approved budget for the Project was \$1.5 million; expenses to that date (1/31/17) were \$2,249,955. Taken in isolation and without further facts, a budgetary exceedance such as this would appear rather alarming to the casual and uninformed observer - even more so to a commissioner with a well-documented and intractable distrust of fellow commissioners and Port staff.

As always, the truth is in the details, which can be summarized as follows: the \$1.5 million budget was based on cost projections made with limited information, as is typically the case when cost projections must be put to paper long in advance of obtaining actual contractor bids for the project. After Maul Foster Alongi (MFA), the engineering firm on the Project, completed its scope of work, bids were obtained from two firms. At the July 25, 2016 Commission meeting, the Commission approved a \$1,835,427.50 contract with Conway Construction to build the treatment plant. Although the primary cost, this contract was by no means the only cost associated with the Project. The Commission knew at the time that this contract excluded several items that were included in the original budget for the Project: water pumps, MFA's fees, survey work, bond counsel fees, and Pacific Power costs, among others.

At the July 25th meeting, Mr. Raichl made the motion to authorize the above-referenced \$1.8 million contract with Conway. Mr. Fulton opposed that motion. Such opposition implies sufficient knowledge of the contract on Mr. Fulton's part that he felt justified in taking such a stand and risk the disapproval of his constituents. Surely knowledge of the amount of the contract was the minimum Mr. Fulton possessed in undertaking such opposition. Further, the amount of the two construction contracts was an explicit topic of discussion at that meeting. Therefore it is fair to impute to Fulton the knowledge of the amount of the contract. If Mr. Fulton is going to use the original \$1.5 million Project budget as a basis for his headline-grabbing accusations, then it is only fair to use this same number to show the obvious fact that Mr. Fulton fully knew of a \$335,427.50 "cost overrun" at this meeting as a result of the award of the construction contract - that contract being part of the total "cost overrun" that Fulton accuses others of intentionally concealing from himself.

The balance of the allegedly concealed "cost overruns" are documented by the meeting minutes from various other meetings at which Mr. Fulton was present:

-Stormwater Pumps: June 21, 2016 meeting at which Rob Evert specifically stated that the pumps would not be part of a construction contract

-Maul Foster Alongi: July 25, 2016 meeting at which Ada Banasik of MFA presented certain information concerning the Project and the Commission - upon Motion made by Mr. Fulton - unanimously approved a contract with MFA to provide the primary engineering work, as well as the construction management services, required on the Project.

-Bond Counsel Fees: these were part of the bond financing agreement approved by the Commission on August 16, 2016. The entire agreement, which outlines the requirement for the Port to pay the bond counsel fees, was sent to all commissioners four days prior to the meeting. Mr. Fulton had ample time to review that agreement, was responsible to review that agreement, and voted to approve it at that meeting.

-Pacific Power Costs: these were explicitly pointed out to Mr. Fulton on the Commission Briefing Form sent to him as part of the July 25, 2016 meeting. These costs are listed side-by-side with the Conway Construction contract; no reasonable person would interpret these costs to be included in the construction contract.

All of this is to show, of course, that Mr. Fulton was fully informed of and knew about all of the allegedly concealed "cost overruns" that form the basis of his primary accusation in the April 4 letter. We leave it to the reader to speculate as to Mr. Fulton's motive for making the accusations. Regardless, these accusations take up precious Commission meeting time as well as the staff time required to locate all the necessary information and respond - thereby accomplishing in a most efficient manner the wasting of taxpayer money that he regularly claims to be dutifully and zealously trying to protect.

Improper Motives

What ought to be particularly disturbing to the citizens of Clatsop County about Mr. Fulton's letter are the regular, oblique references to other commissioner's and staff's alleged attempts to conceal all of the above facts from the Commission and/or Mr. Fulton himself:

1. "Port Commissioner James Campbell and Robert Mushen did not properly disclose a \$750,000 cost overrun . . . "
As shown above, public disclosures of the Project costs were ample and regular.
2. "There was no suggestion . . . that cost overruns . . . had occurred . . . "
Mr. Fulton is correct that there was no "suggestion": suggestions of the Project costs are not logically necessary when such costs are explicitly documented through open, public, Commission deliberation and subsequent open, public, Commission approval of contracts to incur the [allegedly concealed] "cost overruns."

3. "Not coincidentally, release of the January Financials Narrative included significant discussion about dockage [,etc.] . . . But there was no discussion whatsoever about the \$750,000 cost overrun."

Absence of coincidence, in the context of this defamatory letter, clearly implies a motive on the part of staff to conceal the "cost overruns." In light of the above, such a charge is ridiculous, of course. But just to further highlight the lack of any basis for this particular avenue of Fulton's attack, it begs informing the non-accountant reader that the "narrative" portion of the financial report is not an officially required portion of the report. Rather, it is an extra service provided by staff for the purpose of emphasizing certain portions of the actual report that staff determine are relevant to the upcoming discussion at which the report will be issued. It has never been used as a comprehensive list of every issue that staff could possibly point out in the report. Further, given Mr. Fulton's penchant for raising issues at the last minute, it becomes near-impossible for staff to anticipate, and incorporate into a narrative, all of the issues raised by a financial report that Mr. Fulton may want additional emphasis on (not to mention the other four commissioners) for that particular meeting and which staff are therefore obliged to anticipate.

4. "Information about the system received was limited to this single cryptic line in a table in the Capital Projects schedule . . ."

It is certainly not clear how Mr. Fulton could find a routine line in a financial report "cryptic." A financial report line item may need clarification but line items in such a report are hardly "cryptic." The numbers there do not encode a different language that only staff can understand. Based on certain assumptions made in his letter, it is apparent that Mr. Fulton needs to clarify for himself the purpose of a financial report. The purpose is to document the numbers - not the multitude of non-economic factors that constitute the status of a construction project. Mr. Fulton has wasted much taxpayer money on staff time spent trying to accommodate Mr. Fulton's misunderstanding of this issue by being peppered with non-financial questions at Commission meetings during the dedicated-financial-report-portion of those meetings. It is clearly evident that Mr. Fulton brazenly uses that portion of the meeting to raise issues not on the agenda - as if the financial-report-portion of the meeting is Mr. Fulton's private gateway to open discussion of any issue he desires to raise outside the duly-approved channels available to him for getting legitimate items on the agenda.

There are more instances of underhanded motive-questioning and implied ethical violations in the letter but the above examples adequately capture the essence of Mr. Fulton's *modus operandi*. It is one thing to question the motives of other elected officials who must expect some degree of mud-slinging in the political process of this country, county, city, and special district; it is quite another to question the motives of un-elected staff members who are working for the Port as part of a job to support themselves and who have no other motive than any other wage earner would have: to earn a paycheck by advancing the interests of the employer in the most proficient and competent manner they can. Such efforts also tend to advance that employee's career - a motive all can perfectly understand. One has to wonder how it is that Mr. Fulton so freely speculates on, and makes charges of, such

nefarious motives when staff would clearly be working against their own self-interest did they actually operate under the motives Mr. Fulton falsely charges them with.

Construction Litigation Attorney

At the April 4th Commission Work Session, Mr. Fulton advised the immediate hiring of such an attorney [presumably] for the purpose of investigating the possibility of MFA mismanagement of the Project. Rooting out hard evidence of mismanagement by a major, reputable engineering firm will be difficult and time-consuming. Pursuing such a potential action against MFA would undoubtedly be very expensive for the Port, regardless of the result. Without citing specific examples of wrongdoing, publicly crying out for an investigation of the Port's contractors endangers the current good relationships between our current and future contractors. Wild and improper accusations may make it difficult to obtain good contractors for future projects. Further, it is curious how a commissioner with such zealous regard for his constituent's money would gladly dissipate it on risky litigation. It is ironic that this is the very commissioner who deemed it such a victory to succeed in severely reducing the Port's 2016-17 budget line item for attorney's fees. As with so much of Mr. Fulton's Port-related public conduct, it is difficult to discern a rational reason for the contradictory conduct inherent in first seeking to reduce attorney expenses and then subsequently advocating a risky and very expensive litigation course for the Port.

Port of Astoria Budget Committee

Mr. Fulton advises that the Budget Committee be convened to address the crises that Mr. Fulton alleges in his letter. The Budget Committee's only statutory-approved purpose is to review the proposed annual budget, hold public hearings, deliberate on and approve the budget, and finally to present that budget to the Commission for ultimate adoption. The budget committee is not an oversight committee, past Port of Astoria self-conceived tradition notwithstanding. The budget committee has no authority to make final decisions as to the ultimate disposition of Port funds, let alone oversee, evaluate, or make determinations as to the construction status of a Port Commission-approved construction project. Mr. Fulton's continual misunderstanding of such basic political functions of the Budget Committee has cost much staff time. This is only one manifestation of Mr. Fulton's misunderstanding of the Budget Committee's role - others abound.

Pier 3 Improvement Fund

Once again, Mr. Fulton is misleading the public. The finance agreement approved by the Commission - and approved by Mr. Fulton himself - on August 16, 2016 (Resolution 2016-03) enabled the Port to obtain a \$1.75 million loan to help finance the Project. As outlined above, Mr. Fulton knew full well that the total project cost would exceed this amount, which begs the question: where does the Port obtain the balance of the funds? The default answer, and the only reasonable one, is from the General Fund.

The General Fund is one fund, consisting of various components that may or may not be "physically" segregated into separate accounts. One component of the General Fund is the Pier 3 Improvement fund ("Pier 3 fund"). These funds are required by the state to be separately accounted for (although not required to be separately maintained) in order to monitor Port compliance with past contractual obligations that arose out of the state funds the Port obtained to construct the Bornstein processing facility ("Bornstein loan"). As part of making payments on the

Project, the Port used funds from the General Fund to pay for those Project costs exceeding the \$1.75 million loan, as the Port would be bound to do in the natural course of commercial operations and in the absence of Commission direction to use other monies.

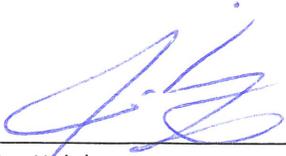
As part of its historical business relations with the state under the Bornstein loan, the state has regularly authorized the Port to use Pier 3 funds for the exact purpose required under the Bornstein loan agreement: Pier 3 improvements. The Project is a Pier 3 Improvement; as such, it falls within the category of Pier 3 fund authorized uses. The use of the Pier 3 funds is governed by the rules of the Bornstein loan contract. Where the Commission has duly approved an expense under its own operating rules and procedures, further authorization from the Commission is not necessary to use the Pier 3 funds - the use of those funds is governed by a separate set of rules in the Bornstein loan contract.

The source of Mr. Fulton's confusion may be the fact that the Port does indeed maintain two separate funds that are subject to Commission discretion in their use, regardless of duly obtained authorizations under the normal operating rules and procedures. These are the Reserve Fund and the Special Revenue Fund. Regardless of Commission approval of various spending provisions, monies from those two funds may not be used without separate Commission approval. But the Commission has never required Pier 3 funds to be used only at commissioner discretion - to require separate Commission approval, in other words.

It is unfortunate that it required four paragraphs to disentangle Mr. Fulton's misrepresentations regarding the disposition and use of the Pier 3 funds from the general background of malfeasance accusations that form the bulk of his letter. But as stated above, as a Port Commissioner Mr. Fulton has very efficient means at his disposal to waste taxpayer money by forcing commissioners and staff to respond to repeated, persistent, false accusations. It is a very effective means of derailing staff time from revenue-producing activities to fruitless argument. But given the semi-personal nature of the attacks as well as Mr. Fulton's sheer persistence in his recent letter-writing campaign, sufficient justification now exists for a staff response.

Conclusion

The mission of the Port is to contribute to the community's and the state's economic development and to be a catalyst for job and business creation in Clatsop County. For too long now certain commissioners have used their position and the associated media attention to attack the credibility and competence of the staff. Such attacks severely interfere with the mission of the Port in several ways. First, these attacks divert staff time away from more productive business pursuits that are critical to the Port's mission. Port staff have less time to focus on business development, marketing, and improving the Port's public image. Second, Port staff have been working consistently to improve the Port of Astoria's reputation within city, county, state and northwest Port circles. Such attacks undermine public confidence in the Port and undo much of the work that staff has accomplished. Third, these attacks are often accompanied by motions to move the Port in directions and otherwise make decisions that are commercially ill-advised, unreasonable, and simply leave staff perplexed. The current staff is fully committed and fully competent to fulfill the mission of the Port. We will continue to actively pursue the success of the Port regardless of behavior by certain commissioners that demand a response like this one.



Jim Knight
Executive Director Port of Astoria