

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF MASON

IN RE THE MATTER OF:            )  
  ) NO. 05-2-01083-9  
THE PORT OF TAHUYA DISSOLUTION, )  
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VERBATIM REPORT OF PROCEEDINGS

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BE IT REMEMBERED that on the 1<sup>st</sup> day of May, 2006, Mason County Cause No. 05-2-01083-9 came on for motion hearing before the Honorable Toni A. Sheldon, Judge of the Superior Court sitting at the Mason County Courthouse, in the City of Shelton, County of Mason; and the parties being represented by their respective attorneys as follows:

SUSAN R. SAMPSON, Attorney at Law, Susan R. Sampson, Inc. PS, 1400 Talbot Road S., Suite 400, Renton, Washington 98055-4282 and JERRILYNN HADLEY, Attorney at Law, 901 S. 3<sup>rd</sup> Street, Renton, Washington 98055-2735, appearing on behalf of Brad Carey;

ROBERT I. GOODSTEIN and RALPH U. KLOSE, Attorneys at Law, Robert I. Goodstein Law Group, PLLC, 1001 Pacific Avenue, Suite 400, Tacoma, Washington 98402-4440, appearing on behalf of the Port of Tahuya.

Court convened with all parties  
present on Monday, May 1, 2006 at 4:28  
p.m.

THE COURT: Please be seated. The next matter is with regard to

the Port of Tahuya, item number 11.

MR. GOODSTEIN: Judge, if you'd prefer to take the other matter, if it was quicker than we, you can —

THE COURT: Nothing is quick today. I took the quick ones that I could early this morning that didn't have argument —

MR. GOODSTEIN: Very well.

THE COURT: — or this afternoon. This is the intervener Brad Carey's motion to direct compliance with a previous court order.

MS. SAMPSON: Yes, your Honor. Can you hear me okay?

THE COURT: It doesn't amplify, it just records into our recording system. If you —

MS. SAMPSON: Okay. Then I will speak up and project. May it please the Court, my name is Susan Sampson. Co-counsel with me is Jerrilynn Hadley. And we represent Brad Carey who is the intervener in the matter of the dissolution of the Port of Tahuya.

And just to be clear that we are all on the same page, all parties are in favor of this dissolution. But there is a disagreement as to how that work should be wound up.

In the end of January the Court signed an order directing that the business of the Port be promptly wound up. Among other details there was transfer of a parcel of real property, publishing a notice of a new claims period. The Port was also required to consider all pending claims, consider additional claims that come in, address outstanding requests for public disclosure, close out leases, collect and marshal assets, organize, assemble and prepare for archiving public records.

Our concern is that that has not been done in an orderly and prompt manner. And so we brought a motion to compel compliance with the Court's order focusing

on three discrete elements of that order. One was to schedule — or is to schedule a hearing to consider all claims pending. Two is to comply with the request for public disclosure. The third was to marshal assets. And specifically we mentioned that the Port should collect its bill from its attorney. That has been done, so we don't need to both Mr. Goodstein for a copy of his bill today.

But of serious concern remains the condition of documents that are supposed to be collected for archiving. There are several practical problems with those records; (a) the condition of the records; (b) the custody of the records; and (c) the collection of those records. As to their condition, the documents through those generated through 2005 are contained in 13 bankers boxes. The archivist came in and made a very rough list of what was contained in those banker boxes. That list from the archivist has been added to the Court's papers in Mr. Goodstein's responsive motion. However that index is virtually unusable. It shows that there are envelopes, files, folders and loose documents. Once in awhile a name is given to the contents of the document; envelope of old vouchers. However, documents on a single subject are scattered through many different boxes. Of interest to the intervener is a public access plan that was developed at one time. Public access documents are spread over three or four documents.

Probably more importantly, correspondence. Most of the 13 boxes contain files, folders or envelopes labeled simply correspondence. There is no organization as to topic. Much of the index does not include any date of this correspondence. A sample entry from the list prepared by the archivist is a plastic bag of documents with a letter from Jim; does not suffice to state the nature of the documents, their dates, or anything else.

If you were to ask this Port Commission what is its system for organizing this document, it would have to answer that it has none. So that goes to the condition of

the documents.

The second concern is the custody of the documents. Brad Carey, the intervener, also happens to be a commissioner now. And shortly after his election he was appointed by the chairman of the Commission to become the secretary of the commission. The practical problem with that is he is now responsible for assembling, organizing these documents, and responding to requests for public disclosure. But he has not been permitted reasonable access to the documents. He has continually tried to work on getting access to the documents and organizing them in an -- in an orderly manner to respond to public disclosure requests.

The Court signed its order in this case in January. February was its next regular meeting which was canceled and there was a special agenda meeting only. Under the Public Disclosure Law — or excuse me, the Open Public Meetings Act, a commission may consider only those issues that are announced on an agenda ahead of time at a special meeting. Brad asked to have items added to the agenda. It was denied. That was the meeting at which he did talk for a long, long time. And he has called that a filibuster, and others have called it a filibuster. Actually a filibuster is irrelevant. He was on point trying to bring order, trying to have the commission adopt policies and procedures, trying to have the commission bind itself by such a thing as Robert's Rules of Order to no avail. He saw it didn't work, and he hasn't tried filibustering again. That's not to say he isn't intense and argumentative about trying to make his point.

In March, the second month after the Court's order, there was only one item of business handled at the Port's meeting. That was the 2<sup>nd</sup> of March. March 15<sup>th</sup> was the first regular meeting following the Court's — following the Court's order. That meeting involved no old business, no new business, no modifications of the agenda,

no Robert's Rules. And when the discussion turns to public documents, and whether or not

e-mails possessed by the commissioners were public records, the meeting was adjourned. There were no further meetings until this motion was filed, and then a meeting was scheduled on April 19<sup>th</sup>.

During this period of winding up Port business, twice the records have been impounded so that no person could see them. Between November 25<sup>th</sup> and December 29<sup>th</sup>, the chairman locked up the records and left so he could sell Christmas trees. Between the 21<sup>st</sup> of March and 19<sup>th</sup> of April this year when the chairman was unavailable, once again the records were impounded so no person could have access to them.

Last week the commission allowed a special meeting at which Brad Carey could examine documents. He was allowed two hours Wednesday, two hours Thursday, and two hours Friday. The third date was one he could not meet. At the — the meeting he attempted once again to date stamp the documents, to put a control number on them, to organize them. He was prohibited from doing that. And now the documents are in the possession of the attorney. So that goes to the custody of the documents.

Regarding the collection of further documents. Until the documents are in some sort of usable order, nobody will know what should be there, what might be missing, what further collection activity might be required.

What Mr. Carey needs is access during reasonable business hours, all day during the business day, for time to reasonably order — inspect those documents. He also needs authority to organize those documents by type, by subject, by date. I anticipate that the Court is going to argue, as it did in its reply brief, that Mr. Carey shouldn't be allowed access to these documents because he has been contentious,

obstreperous, and difficult. But that does not reflect on his rights as a citizen, nor as a commissioner, to have access to those documents. Not that we're conceding he's wrong. He has just persistently tried to create an agenda, encourage the Port to have a plan, to follow the plan, to implement the plan to wind up its business. And the other commissioners have quit trying. They want the Court to assume these responsibilities.

The other concern that has been expressed is that Brad might try to use the access to the documents just to substantiate a claim of his own. Maybe that's the case, maybe it's not. But even if it were, that is no reason for him to be denied access to the records.

The Court might contend that Brad has been offered reasonable access with these two hour meetings. But given 13 bankers boxes, bad condition, and inconvenient hours, it is not adequate. If the Port has any concern for the integrity of the records, he has always expressed his willingness to be supervised while he looks at the records, or to have a clerical person hired to organize the documents before he goes in to try to pull copies in response to public disclosure requests. He doesn't need to deal with this personally. The Port has the budget. The Port could pay a clerical person to organize the documents, then to allow public access.

Because of the condition and the custody of the documents then, and the failure of the Port to convene enough meetings to get its work done, what we have asked the Court to do is to have meetings. At this point, since the claims period ends next Monday, the 9<sup>th</sup>, to have specially noticed public meetings to consider claims and other unfinished business until the work of the Port is done. And to have the Port direct letters to its former land use consultant and -- for its public access plan and to its insurer to ask for copies of their files containing documents that they have sent to the Court, since it appears their documents might not be in court records. It's hard

to tell. And to allow the organization and inspection of these public documents to prepare them for archiving. Thank you, your Honor.

MR. GOODSTEIN: Good afternoon, your Honor. I'm Robert Goodstein. I am appointed counsel for the Port of Tahuya. With me is Ralph Klose. I'd like to point out that in the audience today are numerous Tahuya residents, including Commissioner Carey, Commission Christen, and Commissioner Smith, all of whom are affiants in the pleadings. Also present I believe are the interests of Gene Gall (sp.), who if you will review the records, also filed a response and is a party to this cause, although not present with attorney today. So I believe all the parties in the -- in the gallery are here on behalf of the Port of Tahuya.

I just want to reconfirm what I think are agreed upon points. The first agreed upon point is that we are all here seeking something from the Court. I think the difference in the positions is what we are seeking from the Court at this point in time is for the Court to finalize the dissolution of the Port of Tahuya and to direct the winding up process as the Court sees fit, whereas Mr. Carey's position seems to be that the Port of Tahuya has to continue on in existence until business is completed as Mr. Carey sees fit. In this regard we would suggest, as the affidavit suggests, that this is the bringer of chaos, asking for clarity as he sees it.

Now we know this. We know that on January 9<sup>th</sup> the Court ruled that it was in the best interest of all concerned to dissolve the Port of Tahuya. We also know that because of concerns primarily with regard to the disposition of Menard's Landing, that the Court set aside entering the actual order of dissolution, although indicating it was dissolving the Port for 120 days. The reason for doing that was that if the Court then and there -- Judge Sawyer then and there had declared dissolution, then under RCW 53.48, all of the assets would have been liquidated by sheriff's sale. And the remaining assets, if any, distributed to the school system. And that seemed to be

inapposite to the will of the group which was to ensure the continuation of Menard's Landing.

So the order contemplated several things. It contemplated that the Port would attempt to transfer Menard's Landing and make progress in other things, as the order illustrates. I need not go over the order in great detail. But it asks to make progress in terms of marshaling the records to such a condition that they would be accepted by the archivist's office. It suggested that a claims period ensue. It suggested that public records request be responded to, if possible; the litany of things that are in the order, your Honor.

To this the Port would argue that it has tried to make progress as best it can in these matters and has accomplished many of those matters. And it cannot make progress further without continuing harm and expense. The Port successfully transferred Menard's Landing. This is the only thing that is solely within the province of the Port to accomplish. It now belongs to the county. That has been done. The county has taken over. And my understanding is that they've taken over to the point of handling the Port-a-Potty duties out there and so on and so forth.

The court order itself contemplates returning without completion of the tasks. And if the — I refer the Court to the order itself, which says in pertinent part, section 3.5, all claims filed against the Port, and any and all other issues arising in connection with the dissolution of the Port after the date of this order that cannot be resolved by agreement, shall be finally resolved by this Court in this dissolution action, except as otherwise expressly ordered by the Court.

Our belief is that the existing commission was dysfunctional at the time that we petitioned for dissolution. It has become radically more so since the time this motion was filed. With regard to progress, it is not the hopeless seed that has been suggested by Mr. Carey. There have been numerous records requests. Most of

those record requests are either from Mr. Carey or his father, Harold Carey. And most of those records requests are duplicates of one another, in great number. At meetings there's continued reference to the other two commissioners being in criminal conspiracy. There is this so called filibustering activity. These are not filibustering activities, so much as they are activities designed to disrupt the meeting and disallow those things from occurring. One need only look at the videos that we've provided as Exhibits to — of the Port's pleadings. If one wanted to look at one of them, I would suggest the March 15<sup>th</sup> meeting as illustrative of what occurs at those meetings, which are essentially designed as a refusal to conduct business unless business is done Mr. Carey's way.

So long and short of it is that what the Port is asking for at this point is to recognize what it recognized on — on the 9<sup>th</sup> of January; dissolve the Port, and direct the parties as to how to complete a wind up. We have suggested at the June 9<sup>th</sup> hearing that the Court may be instructed by corporate dissolution rules. We're suggesting now that the Court may wish to produce a special master.

I think there's a fundamental misunderstanding here about what happens on May 9<sup>th</sup>. The only thing that occurs on May 9<sup>th</sup> under this order is the claims period is closed. Then the Court, in essence, will instruct as it should pursuant to the Statute, how the Port needs to wind up its business under the direction of the Court, not under the direction of a dysfunctional commission.

You know, I want to go on for just another minute, Judge, about dysfunction. Let me suggest to you this. This commission cannot pass minutes. Instead of minutes that are being produced in the form of motion, second and vote, they become an editorial and a comment on personal appearances. They cannot agree on an agenda. When an agenda is published, Mr. Carey overwrites the agenda in handwriting. We've illustrated that in the pleadings we've submitted to the Court.

They can't conduct an agenda item without countless points of order, objections, asides, filibustering. Mr. Carey has been offered complete copies of the record.

Let me talk about the records for a moment for your edification, Judge. The records of the Port of Tahuya since 1922 are confined to a four drawer file cabinet. This is not a room like Montezuma's room full of gold to the ceilings. It's a very discrete set of documents. In January Mr. Carey was offered full access to those documents and refused them. He was offered full access to those documents as late as last week and has refused them. And in fact believes them to be in such emergency state that they now repose in my office under tape seal at his request.

So we can't seem to come to an acceptable method of dealing with records when they're offered. There are letters to the editor that are quite personal. There's

is occurring at taxpayer expense, mind you. And it's all designed in the mind of the other commissioners, to serve

a determination of personal claims under the guise of a good government process.

Mr. Carey has filed a notice of intent to bring a claim. He cannot articulate the claims. He claims he cannot articulate the claims until he sees the records. He refuses to see the records until he sees them in the fashion that he deems appropriate.

All of this in furtherance — and understand Judge, that you know, part of the difficulty here in my job as representing the Port Commission which includes Mr. Carey, and Mr. Carey being here in an individual capacity.

So we cannot respond to information requests. The issue of risk; the only thing that Mr. Carey has been advised is that it's inappropriate for him to see the records on his own without somebody else being present because he has in fact engaged in

legal actions against the Port. And there is some concern on the part of the commission as to the integrity of the records. So he's not been denied access to the records. His access to the records has been conditioned on somebody else's presence, which is why these special meetings are continually set, all of which are thwarted at the meetings themselves.

So my suggestion, your Honor, is that this particular motion be denied. The Court may consider now or after May 9<sup>th</sup> taking over, ordering the dissolution, and coming up with the Court's process for winding up these claims. The claims, by the way, as we've illustrated on our pleadings, are not voluminous. They largely consist of claims by previous commissioners who were themselves required to obtain counsel and claim they should be indemnified by the Court. There's a claim by the group that appeared here last time with attorney Ahlf for their legal fees; there's a claim by an individual who was hired apparently by Mr. Carey to produce minutes which was not authorized by the Court. These are not, you know, terribly intricate claims for the Court to deal with.

In any event, we believe this motion was brought because at an earlier meeting in March, I believe, Commissioner Smith, pursuant to his affidavit as he states, suggested that upon the disposition of Menard's Landing, that the commission apply to the Court to take over the dissolution proceedings because of the dysfunction. This motion essentially beats that motion to the punch. But nonetheless, I think what we're seeking here is a clarification by the Court. The difference is whether the Court wishes to allow this taxpayer cost dysfunction to continue. And hopefully cure the dysfunction with some order. Or whether the Court simply wishes to fulfill the January 9<sup>th</sup> order, dissolve the Port and give instructions as to how to wind up the claims process. Thank you.

We'd also suggest if you need to Judge, that you could take this under advisement to review the video, if you feel it to be necessary and appropriate.

THE COURT: Thank you. Ms. Sampson.

MS. SAMPSON: Thank you, your Honor. Just briefly in rebuttal.

Whether Brad Carey is requesting documents, or Harold Carey is requesting documents is irrelevant. They are both citizens. They're each entitled to make a request for access to public records. It doesn't matter that their records might be duplicative of one another. And that is no proper part of an analysis of whether or not access to the document should be permitted.

With respect to whether or not Brad Carey tries to overwrite agendas to be obstreperous, he has not been permitted to add items on the agenda. And if this item were explored in further detail with affidavits, which it isn't, he would explain that when he found out an agenda was too short, not containing consideration claims, access to public documents and so on, he contacted counsel. He found out the rules, that you have to announce an agenda item 24 hours ahead of time. He found all the posted notices. He added what he would like to see on the agenda. And those agenda items were not considered at the special meeting.

With respect to the offer to Mr. Carey of a complete record, that's interesting because the resolutions of the commission do indicate that the commission voted a long time ago, approximately February I think, I'm not sure of the date, to make two complete copies of the record. That was carried by a two-to-one vote. The person voting against making a complete copy was Brad Carey because he wanted to see some organization to the records first rather than duplicate two whole sets of a great deal of duplicative disorderly messy material, including for example, envelopes of old vouchers. Despite that resolution by the commission to make two copies so Brad

Carey could have one, that has never been done. And he has never received his copies.

Regarding letters to the editor, that's irrelevant to the issue of whether or not a citizen has access to public documents. Whether or not Mr. Carey has accused people of crimes, some people believe that it is a violation of the Open Public Meetings Act and a misdemeanor to have issues decided outside of the public meeting. He has been criticized for acting under the guise of good government. But one person's guise is another person's sincere intent. And he is interested in proper governance, compliance with the Open Public Meetings Act, and with the Public Disclosure Law.

If Mr. Carey has filed a claim that is inadequate for the Port to respond, then all they need to do is have a meeting, vote on it, and decide whether or not they are going to turn it down or not. That doesn't relate to his application for access to the documents in this case. Whether or not he has engaged in legal actions against the Port of Tahuya in the past, yes indeed he has. He has made public disclosure requests and he has prevailed in that request.

So by and large there is no coherent argument presented as to why Mr. Carey should not have reasonable access to the Port's documents. Why he or a competent clerical person should not put them in a decent order so that responses to public disclosure requests, whether his or somebody else's, could be made.

Thank you.

MS. GOODSTEIN: Response, your Honor?

THE COURT: Anything new come up?

MR. GOODSTEIN: Well, you know, just one or two items if you'll indulge. If not —

THE COURT: If something actually new came up, you can respond.

But you had your opportunity already. If a totally new issue came up, then I'll certainly listen to you. But if not, you had your opportunity.

MR. GOODSTEIN: I — I think — I'll try to restrict myself to the one or two items that I believe are new.

THE COURT: What is new?

MR. GOODSTEIN: There was a reference made to the notion that the Port was authorized to make a set of copies for Mr. Carey. In fact I believe the tapes will reveal that what was authorized was for the Port to go get bids for the cost of making those copies, which was in fact done.

And the rest I suppose would be argument. And I'll respect your wishes for me not to make it.

THE COURT: Well the Court is saddened by the fact that adults can't work together in order to resolve issues such as these. But needless to say, that does happen on occasion and that's why we have the court process to be able to resolve those types of situations.

What I look at primarily today is the order that was entered by Judge Sawyer on January 9, 2006, which did allow for the dissolution of the Port of Tahuya. And specifically under paragraph 3.2, a timetable is set out. An order of dissolution shall not be entered in this case until the expiration of 120 days from the date of this order, or until the Menard's Landing facilities have been transferred to Mason County or another qualified entity for maintenance, in accordance with the Menard's Landing Aquatic Lands Enhancement Account Program Grant Agreement and the deed of right to use land for public aquatic lands access purposes, whichever should be the later.

So unfortunately we're not here on a motion to reconsider Judge Sawyer's ruling. He set out a timetable. It is the later date of either the transfer of the property to Mason County, which has already occurred, or 120 days. So today the Court is not able to enter an early order because 120 days has not expired. Quickly doing the math, I see that that would come to pass on May 23, 2006. My math may be wrong, and I'd ask if you could correct that. And again, I did it fairly quickly.

But what I would propose is setting on for hearing at 8:30 in the morning on the date that the 120 days is met. That the Court at that point sign an order that dissolves the Port of Tahuya, in accordance with this earlier order. Until then, the Port and its constituents will need to bump along in a dysfunctional fashion, as has been described to the Court today.

I will deny the requests that are made by the intervener, Mr. Carey, today in all but one respect. And that is Mr. Carey, as secretary for the Port, needs to be provided with reasonable access to the documents that are held by the Port. And that would mean access during regular business hours. And that will also mean that the Port's concern with regard to having another individual present should also be in place as well. So reasonable access will include access

during normal business hours, provided that an agreeable third party is also present.

And I'll set it on then for hearing. Actually it's the expiration of 120 days. So I think it needs to come on on the 121<sup>st</sup> day, which then by my math anyway, is going to be May 24<sup>th</sup>. Has anyone else calculated that date so that we can have a double check?

And I'll also note that the order that Judge Sawyer signed is replete with a provision that the Port shall immediately commence the winding up affairs; shall

work on the winding up affairs. But it doesn't say that the Port needs to get finished with them. Hopefully it could, but in a dysfunctional situation, things don't move along as they might normally move along. So Judge Sawyer's order in at least two locations contemplated that although the winding up needs to be commenced, it may not yet be completed at the point that the order to dissolve is entered, at which point then the Court would take over that balance of what would be needed to wind up.

So the Court will set the matter on May 24, 2006 at 8:30 in the morning for entry of an order dissolving the Port of Tahuya. And if you want to handwrite an order today that would specify the access that I've also ordered, I'd be happy to sign that as well.

MR. GOODSTEIN: May I ask for a point of clarity, your Honor?

THE COURT: Go ahead.

MR. GOODSTEIN: On the access issue, I understand the Court quite clearly with regard to reasonable access during business hours, essentially with a supervision component. By that does the — I take that to mean that the Court does not necessarily authorize a re-authorization — a reorganization at a cost with an employee?

THE COURT: No, I have not authorized that.

MR. GOODSTEIN: All right.

THE COURT: Simply access.

MR. GOODSTEIN: Very good.

THE COURT: As secretary he should have access to those documents.

MR. GOODSTEIN: Thank you, your Honor.

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CERTIFICATE OF COURT APPROVED TRANSCRIBER

STATE OF WASHINGTON )  
                                  : ss.  
COUNTY OF MASON    )

I, SHERI K. ESCALANTE, Notary Public and Court Approved Transcriber for the Superior Court of the State of Washington in and for the County of Mason, do hereby certify as follows:

THAT the foregoing REPORT OF PROCEEDINGS, numbered from Page One through and including Page Twenty-Two, is a true and correct transcript of the hearing heard on 1 May 2006 **In the Matter of: The Port of Tahuya Dissolution**, Mason County Cause No. 05-2-01083-9 before the Honorable Toni A. Sheldon, Judge, of the Superior Court of Mason County, sitting at the Mason County Courthouse, Shelton, Washington, on the date hereinbefore mentioned.

DATED at Allyn, Washington this \_\_\_\_\_ day of May, 2006.

\_\_\_\_\_  
SHERI K. ESCALANTE  
Notary Public and Court

Approved Transcriber

Certificate