

Minutes of Port Commission Regular Meeting
August 11, 2022
In Person & Videoconference

A Regular Meeting of the Port Commission of Port Freeport was held August 11, 2022, beginning at 1:05 PM at the Administration Building, 1100 Cherry Street, Freeport, Texas.

This meeting agenda with the agenda packet is posted online at www.portfreeport.com

The meeting will be conducted pursuant to Section 551.127 of the Texas Government Code titled "Videoconference Call." A quorum of the Port Commission, including the presiding officer, will be present at the Commissioner Meeting Room located at 1100 Cherry Street, Freeport, Texas. The public will be permitted to attend the meeting in person or by videoconference.

The videoconference is available online as follows:

Join Zoom Meeting

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Commissioners present in person:

Mr. John Hoss, Chairman
Mr. Rob Giesecke, Asst. Secretary
Mr. Ravi Singhania, Commissioner
Mr. Shane Pirtle, Commissioner

Commissioners present by videoconference:

Mr. Rudy Santos, Vice Chairman

Staff Members Present:

Mr. Peter Nemeth, Interim Legal Counsel
Ms. Phyllis Saathoff, Executive Director/CEO
Mr. Rob Lowe, Director of Administration/CFO
Mr. Al Durel, Director of Operations
Mr. Mike Wilson, Director of Economic Development & Freight Mobility
Mr. Jason Hull, Director of Engineering
Mr. Chris Hogan, Director of Protective Services
Mr. Jason Miura, Director of Business & Economic Development
Mr. Brandon Robertson, Network Systems Manager
Ms. Missy Bevers, Executive Assistant
Ms. Mary Campus, Controller
Ms. Tricia Vela, Public Affairs Assistant

Mr. Nick Malambri, Engineering Specialist
Ms. Christine Lewis, Safety Coordinator

Absent:

Mr. Dan Croft, Secretary

Also, present:

Mr. Bobby Fuller, Texas Port Ministry
Ms. Andrea Johnson, Kane Russell Coleman Logan
Mr. Grady Randle, Randle Law Office
Ms. Megan Mikutis, Randle Law Office
Mr. Brandon Morris, Randle Law Office
Mr. James Nash, WGMA
Mr. Keith Stumbaugh
Ms. Melanie Oldham
Ms. Kim Voigtlander
Mr. Sammy Chambless

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

Commissioner Hoss made an announcement regarding agenda items 7 and 8, public comment vs. public testimony. He clarified that public comments are on any matter not on today's agenda and will be limited to 5 minutes per participant and can be completed in person or by videoconference. Item 8 is public testimony which is testimony on any item on this agenda and will be limited to 3 minutes per participant and can be completed in person or by videoconference. The participant shall identify in advance the specific item or items to be addressed. He also noted the Port's agenda is not constructed the same as the City's agenda. Public testimony is up front. Additionally, anyone wanting to comment to or testify, should sign in with full name and address.

2. Invocation – Mr. Bobby Fuller, Texas Port Ministry.
Mr. Fuller also expressed his appreciation to Port Freeport for their generosity and participation in his recent retirement party.
3. Pledge of Allegiance – U.S. Flag and Texas Flag
4. Roll Call – Commissioner Hoss noted that Commissioner Croft was absent, and Commissioner Santos was participating by videoconference. All other Commissioners were present in the Board Room
5. Safety Briefing – Ms. Christine Lewis provided a safety moment regarding back-to-school safety.
6. Call to identify and discuss any conflicts of interest that may lead to a Commissioner abstaining from voting on any posted agenda item.

There were no conflicts noted from Commissioners.

7. Public Comment – There were no public comments.
8. Public Testimony – Ms. Melanie Oldham addressed agenda item 13 regarding Vulcan’s electrical easement and their request for the asphalt plant become permanent vs. temporary.

Mr. Keith Stumbaugh addressed agenda item 13 regarding Vulcan’s request for a permanent asphalt plant vs. a temporary plant.

Commissioner Giesecke inquired whether the details of Vulcan’s proposal will be discussed in open session vs. closed session. Commissioner Hoss noted the item is on the agenda as an action item after executive session. It will be addressed in executive session and open for discussion and vote in open session. Commissioner Giesecke suggested the item be discussed in open session even though it may relate to amending a lease agreement. Mr. Nemeth commented that the Port Commission is allowed to go into executive session to discuss any item on the agenda. The fact that it’s on the agenda before and after executive session, indicates there may be discussion in executive session. Commissioner Singhanian asked for clarification regarding discussion on everything or just what the Commission thinks should be discussed in executive session. Mr. Nemeth stated the Commission can discuss items to the extent allowed under the government code exceptions for closed sessions. The government code provides what can be discussed and what can’t be discussed in executive session. The scope of the discussion in executive session should be limited to those items that are reasonably related to the scope of the exception.

9. Approval of minutes from the Special Meeting held July 21, 2022, and the Regular Meetings held July 28, 2022.

Commissioner Giesecke suggested a correction on the supplemental minutes for July 28 on agenda item 21, stating the item was not tabled as a discussion was held in executive session. Commissioner Hoss noted that no action was taken, therefore it was tabled. He also noted a consultation with attorney took place in executive session. Commissioner Singhanian asked for a correction to the July 21 minutes on page 4 regarding his question to BB&K being a full-service firm and partnering with Olson & Olson, his question was, why are they partnering with Olson & Olson if they are a full-service firm.

A motion was made by Commissioner Santos to approve the minutes in aggregate with a correction to the July 21 minutes as noted by Commissioner Singhanian. He also noted that Commissioner Giesecke did not have any conversation in reference to the legal counsel discussion in executive session, Port Commission came out and no action was taken on the item. The motion was seconded by Commissioner Singhanian with all Commissioners present voting in favor of the motion.

10. Receive report from Executive Director/CEO and/or Port 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.

Ms. Saathoff reported on her recent participation in the Texas Ports Association meeting held in Austin. Mr. Hull reported on the TxDOT meeting held earlier in the week noting the

Highway 36 project expected completion is second quarter 2024, no permits have been issued on Pine Street Bridge and the FM 1495 project has been awarded to Triple B contractors, who will mobilize this month to begin work. He also noted that the section of Business 288 in front of Hopper Field (Second Street) to the sewer plant will begin diamond grinding night work. Commissioner Pirtle noted the upcoming Highway 36A Coalition meeting to be held August 18 at Prairie View A&M. Ms. Saathoff reminded the Port Commission that August 25 is the next board meeting as well as the Angleton Chamber Legislative Update with Congressman Weber and Representative Vasut stating there may be a later start to the board meeting that day. She also noted that staff will present budget workshop and a possible lengthy discussion on potential business in executive session may also take place. Staff will be checking schedules to see if a morning budget workshop can be accommodated.

11. Discussion regarding the 2022 Tax Rate Calculation Worksheet, the 2022 No New Revenue Tax Rate and the tax rate setting process and upcoming budget workshop.

Mr. Lowe walked through the tax rate process which includes debt service (I&S) and maintenance and operations (M&O). The 2022 I&S rate will include the 2019 and 2021 General Obligation Bond issuance payments and an estimated payment for a 2023 bond issuance. The industrial and residential tax base in Port Freeport is updated every year and provided by Brazoria County Tax Office but new data has not been provided at this time. Exemptions include the homestead exemption and the exemption for those 65 or older or disabled. Based on the 2021 tax roll, 13,687 accounts qualified for the 65 or older or disabled exemption. In August 2020, the Port Commission adopted a resolution increasing the 65 or older or disabled exemption from \$150,000 to \$175,000. Based on the 2022 tax roll, it is estimated that approximately 8,419 accounts would qualify. Combined with the homestead exemption, a resident with a home value of \$218,750 who qualifies and has filed for the age 65 or older or disabled exemption would pay no taxes to Port Freeport. He reminded the Commissioners that the exemption could be increased again to offset the increase in residential taxable values. Mr. Lowe reminded the Commission the Bond Election took place May 2018, and the Port has issued \$74.2 million of the \$130 million authorized in the bond election, with \$55.8 million available remaining. Staff anticipates going to market later this year or early 2023. Mr. Lowe noted that since 2011, the Port has reduced the tax rate 25% with it being held at 0.0401 2016 through 2020 and lowered to 0.04 last year. Mr. Lowe noted the Port had a significant increase in its roll taxable valuation, from \$16.2 billion to \$19.3 billion. He noted the allocation of value between non-residential and residential in 2021 was approximately 70% non-residential and 30% residential and does not anticipate the ratio changing very much for 2022. Commissioner Giesecke inquired whether staff could obtain the amount of increase in the overall appraised values for the residential (percentage increase) in that particular component vs the increase in non-residential. Mr. Lowe stated he will look into it and come back with the information. The process to fund the Freeport Harbor Channel project started with 1 cent to debt service and 3 cents applied to M&O. Staff anticipated the inverse to take place with approximately 1 cent toward M&O and 3 cents toward debt service as the bonds are issued however, as of right now, because the first \$74 million was issued at lower rates, staff does not anticipate reaching 3 cents but rather between 2.6 and 2.7 cents of debt service. This will also depend on when staff goes to market and what rates are locked in. Mr. Lowe then shared the following proposed tax rate and budget schedule and noted the tax rate must be adopted by September 20th...

August 9 – Publication of Tax Rates on Tax Office, Appraisal District and PF Website
August 11 - Review 2022 Tax Rate Calculation Worksheet results

August 25 – Conduct Budget Workshop
August 25 – Take a record vote to propose 2022 tax rate

August 26 – Report proposed rate and results of vote to BC Tax Assessor-Collector
September 1 – BC Tax Assessor-Collector will publish either:

- *Notice of voting on tax rate if proposed rate is at or below NNRTR**
- *Notice of hearing on tax increase if proposed rate is above NNRTR**

September 1 – Conduct 2nd Budget Workshop if needed

September 8 – Hold tax rate hearing if proposed rate is above no new revenue rate
September 8 – Adopt 2022 tax rate
September 8 – Conduct Budget Workshop and Adopt Budget

**Requires seven-day public posting in local newspaper*

Mr. Lowe reminded the Commission that there are two basic rates involved. 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. It's generally equal to last year's taxes divided by current taxable value of properties that were also on the tax roll last year.

The Voter Approval Rate is the required I&S Tax Rate plus either a 3.5% or an 8% increase in the No New Revenue M&O Tax Rate. The 8% is for Special Taxing Units. Taxing units with a proposed No New Revenue M&O Tax Rate of less than 2.5 cents, Junior Colleges and Hospital Districts. The Port is currently a special taxing unit because the No New Revenue M&O Tax Rate is below 2.5 cents. The current 2022 No New Revenue M&O Tax Rate is .022996. Lowe then shared the 2022 tax rate calculation worksheet as provided by the County Tax Assessor-Collector. The No New Revenue Tax Rate (NNRTR) is 0.035909 and the Voter Approval Rate is 0.039852. The current tax rate is 0.04. Staff recommends proposing a rate not to exceed the Voter Approval Rate of \$0.039852. Proposing a rate at or below the NNRTR would require a notice of voting to be published at least seven days prior to the vote. Proposing a rate above the NNRTR and not exceeding the Voter Approval Tax Rate, would require a notice of hearing on tax increase to be published at least seven days prior to the hearing. At this time, Commissioner Singhania noted that for the last several years, the Port Commission has set aside monies for the FHCIP, more or less trying to run without using M&O money in operations. The Port's revenue from operations has gone up \$16-\$17 million to over \$40 million, for M&O, the Port really doesn't need any money.

Commissioner Singhania suggested a rate as low as 2.5 because it still covers the contingency of the bond issues and the project. It's already included in projections the \$14.4 million we have in reserve for the channel deepening that has been accumulated every year adding the port has an obligation to get it started and get to the minimum M&O tax that we can live with. Mr. Lowe responded saying the Port's debt service will eventually reach 2.6–2.7 on its own. At that point, maintaining revenue for additional coverage and additional considerations for revenue bond would be what your CFO prefers. Mr. Lowe shared a breakdown of the 2022 vs. 2021 budgeted tax revenue components. If the NNRTR is adopted, the 2022 total levy would be \$6,958,402 vs. current of \$6,491,223. If the Voter Approval Rate is adopted, in 2022 it would generate \$7.722 million of tax revenue vs. \$6.491

million in 2021. If the Commission adopts the rate at the NNRTR of \$0.035909, there will be a decrease in M&O revenues of \$96,747 and an increase in debt service of \$576,883. If the Voter Approval Rate is adopted at \$.039852, an additional \$667,323 of M&O revenue will be brought in and \$576,883 of debt service revenue. Mr. Lowe reminded the Commission that he has presented the specific numbers and the statutes that go with them, but the Commission's actual proposal in relationship to those numbers will dictate what happens. Commissioner Pirtle inquired about increasing the Age 65 and Older or Disabled exemption to \$250,000 as well as increase the Homestead exemption from 20%. The Homestead exemption is capped at 20% by the tax code and cannot be increased. With respect to the Age 65 or Older or Disabled, it currently covers 62% of the taxpayers in that category. A 20% bump would take the exemption from \$175,000 to \$210,000 and raise the appraised value of a homeowner to \$262,500 and increase to 10,118 or 74% of the taxpayers. If increased to \$250,000, it would take the appraised value to \$312,500, and to 11,471 owners or 84% of the taxpayers.

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

13. Approval of an Electrical Easement to CenterPoint Energy of Houston Electric, LLC to serve the Vulcan Materials lease area.

Mr. Hull stated this easement will be to CenterPoint Energy in order to serve the Vulcan Materials lease area with electrical power. Mr. Hull shared a map showing where the Vulcan lease area exists and where the easement will run. He also showed the area (pole within TxDOT's right of way) CenterPoint will tie into to extend power, then set a new pole on existing Port property and with the easement granted, they would have permission to extend power to the Vulcan lease premises. It was noted that their office is currently being powered with generators.

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

14. Discuss and reapprove an Advance Funding Agreement with the State of Texas for construction of the Velasco Terminal Access Project.

This item was tabled.

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 under Government Code Section 551.071(1) (to seek or receive attorney's advice on pending or contemplated litigation or a settlement offer).
 2. Consultation with attorney under Government Code Section 551.071(2) (to seek or receive attorney's advice on legal matters that are not related to litigation).
- B. Under authority of Section 551.087 (Economic Development Negotiations or Incentives):
- C. 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 14, 19, 27, 34 and property on Quintana Island.
16. RECONVENE OPEN SESSION:
17. Discuss and consider engaging outside General Counsel to provide legal services.

Commissioner Hoss stated that Port Freeport has been looking for outside general counsel services, requested proposals several months ago, interviewed three firms and has now narrowed it down to one firm. Staff is prepared to engage the services of Randle Law Office under the terms of a drafted engagement letter. Commissioner Hoss noted that while the process took longer than expected, the Commission did use special counsel at different times to guide them in the evaluation process and education in Open Meetings as well. Commissioner Pirtle thanked the special committee and staff for working through the process to pull all the information together. He also thanked Mr. Nemeth for stepping in as interim counsel and looks forward to a continued relationship. Mr. Nemeth thanked the Port Commission for the opportunity. Commissioner Singhania thanked all six firms who applied for the position. All firms were well-qualified making it difficult for the Commission to make a decision. Commissioner Giesecke also thanked Mr. Nemeth for his services during the interim period and registered his dissatisfaction with the process and the fact that all deliberations have taken place in executive session as he believes it has been in direct contravention to the Open Meetings Act. An attorney was brought in (not Mr. Nemeth) to sit in on the meetings. Attorney General discusses at length that if you're discussing financial considerations, policy or things unrelated to actually getting legal advice, you can't just have an attorney in the room and say all this is subject to attorney-client privilege and you get the exception under the Open Meetings Act. Additionally, he stated that the fact that they are here (open session) and there hasn't been any deliberations in open session at all but have decision made that we're hiring a particular firm. That's clear evidence the decision was made in closed session. Commissioner Hoss disagrees. He stated that every time concerns and questions were raised about deliberation behind closed doors, the Port Commission went to outside special counsel and investigated whether or not what they were doing was correct. He is satisfied the Commission was

within the boundaries of the law as they received opinions from multiple attorneys who responded and have consensus.

Ms. Megan Mikutis with Randle Law Firm thanked the Commission for their consideration, time and attention made to the process. RLO is looking forward to working with the Port, Port Commission and staff.

A motion was made by Commissioner Santos for Port Freeport to engage general counsel services with RLO Law Firm (Randle Law Office). The motion was seconded by Commissioner Pirtle with all Commissioners present voting in favor of the motion and Commissioner Giesecke abstaining.

18. Discuss and consider the request for a Third Amendment to the Second Lease Agreement between Port Freeport and Vulcan Construction Materials, LLC.

Commissioner Hoss stated that Vulcan has requested an amendment to their lease agreement to allow them a revision in the permitted use. Since the lease is contingent on the TECQ permit, staff has pulled the permit and sought opinions from legal counsel. The permit is a temporary permit that expires in 2032 however, further in the permit in Section 3, Subsection C it states, *“For the purpose of this section, a temporary hot mix asphalt plant is one that occupies a designated site for not more than 180 consecutive days or supplies asphalt for only a single public works project (single contract or same contractor for related project segments), and not to other unrelated projects.”* Commissioner Hoss noted that it appears the temporary permit issued by TECQ restricts this facility and since it has not produced any asphalt at this time, we have no track record and do not know its impact on the community. Commissioner Singhania suggested that when Vulcan resubmits request for consideration, they present to the Port Commission in person to explain exactly what they want so there is no confusion. It will also give the public an opportunity to hear directly what they are planning to do. Commissioners Santos, Pirtle and Giesecke all noted that Vulcan will need (at a minimum), to come back with a specific project and what they want to revise the permit for before the Board would consider something permanent. Commissioner Pirtle noted for the record that he does believe that Vulcan bringing rock in by rail and dropping it off at their site is more cost effective, lower emissions and less traffic, if they had a plant there that does not interfere with the environment. Commissioner Santos also noted for the record that he personally visited the plant in Houston which is a more permanent plant, adding that their means and methods for making asphalt now is much different than their generation. He also noted that if Vulcan had been given the opportunity to fire up the plant and produce asphalt, the Commission would not be having this discussion. They have to get it started and they have to commit to the Port what they told us they would do. Commissioner Singhania noted that he would also have to consider the additional truck traffic. Commissioner Giesecke noted that he also visited the plant and reached out to nearest neighborhood and could not find anyone that seemed to know there was an asphalt nearby. Commissioner Hoss noted that consensus among the Board was that Vulcan needs to produce asphalt before the Board will consider amending the lease, in the interest of being a good neighbor.

No action was taken on this item.

19. Adjourn.

With no further business before the Commission, the meeting adjourned at 5:15 PM