

JAMS

ARBITRATION

RIVERWALK ON THE COLUMBIA, LLC,)
a Washington limited liability)
company,)

Claimant,)

No. 1160017152

vs.)

THE PORT OF CAMAS/WASHOUGAL, a)
Washington municipal)
corporation,)

Respondent.)

VIDEOTAPED DEPOSITION OF JIM L. CARROLL

Taken in behalf of the Claimant

September 17, 2008

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EXAMINATION
BY MR. MEHLHAF:

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REQUEST for production

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EXHIBITS PREVIOUSLY MARKED AND REFERRED TO

Exhibit No. 1

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JIM L. CARROLL,

having first been sworn by the Certified Shorthand Reporter, testified under oath as follows:

EXAMINATION

BY MR. MEHLHAF:

Q. Mr. Carroll, we've been introduced before the deposition today. My name is Bill Mehlhaf. I'm a lawyer. I represent RiverWalk on the Columbia, LLC, in connection with the matter that's pending before the JAMS Arbitration Service.

13:00:50

We're here today to take your deposition so that I can ask you some questions regarding the issues surrounding the dispute between the parties.

Let me ask you first, have you had any prior experience giving a deposition?

13:01:02

A. Yes.

Q. On how many occasions?

A. Two.

13:01:11

Q. When was the most recent occasion?

A. I think two. It might have been three or seven. I can't remember. Uh, I had two of them, and the latest one was, uh, on a court case where it was a lawsuit against someone that had a trailer house.

13:01:30

Q. Okay.

1 A. And, uh -- uh, that was -- they wanted to know
2 the value of it.

3 Q. Okay. Have you had a chance to speak with
4 Mr. Courser and Mr. MacPherson before the deposition today
13:01:43 5 to explain to you what's going to happen?

6 A. Just for a few minutes in there.

7 Q. How many meetings have you had with either
8 Mr. Courser or Mr. MacPherson in preparation for your
9 deposition?

13:01:56 10 A. Just one that I know of.

11 Q. When did that take place?

12 A. Um, Monday. Monday. I was back from fishing.

13 Q. Just this last Monday?

14 A. Yes.

13:02:12 15 Q. How long did you spend with Mr. Courser and
16 Mr. MacPherson?

17 A. It was probably about two hours.

18 Q. Did you look at any documents during that
19 period --

13:02:19 20 A. No.

21 Q. -- of time?

22 Have you looked at any documents other than in
23 the presence of Mr. Courser or Mr. MacPherson in
24 preparation for your deposition today?

13:02:28 25 A. Just the information that I've been given over

1 the last years, if I looked at anything. I just have a
2 briefcase full of stuff.

3 Q. And what does the briefcase full of stuff
4 relate to?

13:02:40 5 A. The Port business.

6 Q. So what would it involve? Give me some
7 examples of the types of documents that would be in there.

8 A. Well, it has items about, um, the development
9 of our east property; it has, uh, just the general stuff
13:02:59 10 that's at our meetings each -- uh, every two weeks. I just
11 keep it all in one file, and I just have it broke down into
12 like airport, industrial park, east county, marina,
13 RiverWalk, had a -- I have a file on RiverWalk, you know,
14 just so I'd have it if I had to look -- look it back up
15 again.

16 Q. Did you look at the RiverWalk file in
17 preparation for --

18 A. No, I did not look at the RiverWalk file.

19 Q. Okay. Did you read the option agreement that
13:03:28 20 RiverWalk and the Port entered into?

21 A. Yes, I have.

22 Q. Did you do that in preparation for your
23 deposition today?

24 A. Well, I couldn't remember how much -- how much
13:03:39 25 of the report was, um, written and how much of it was legal

1 descriptions.

2 Q. So how much time did you spend perusing the
3 option agreement?

4 A. Probably about, uh, five minutes just flipping
13:03:56 5 through it, because I had read it once before or maybe
6 twice before or ten times before, whatever, when we were
7 talking about it.

8 Q. Okay. How old are you today?

9 A. Can I ask her that question?

13:04:12 10 Q. We'll get to her off the record, but it's your
11 turn now.

12 A. Okay. I'm 69.

13 Q. Okay. Can you tell me what education you've
14 had since graduation from high school?

13:04:23 15 A. Yeah, I have about six or seven years of
16 college; three at Clark and three at Western Washington,
17 Portland State, Oregon State.

18 Q. Did you receive a degree?

19 A. Yes. Yes, I did.

13:04:36 20 Q. From what institution?

21 A. I taught school for ten years.

22 Q. What is your degree in?

23 A. Uh, math and science.

24 Is that what you're talking about?

13:04:48 25 Q. Yeah.

1 A. Yes, it's what I taught.

2 Q. Do you still serve as a commissioner for the
3 Port?

4 A. Yes.

13:04:55 5 Q. Do you have an occupation aside from that?

6 A. Sort of.

7 Q. What would that be?

8 A. Well, I used to be a real estate salesman and
9 be the part owner and the broker, but I'm training my wife
13:05:08 10 to do all of that so I can, uh, retire.

11 Q. Good.

12 Other than that are you engaged in any other
13 occupation?

14 A. No.

13:05:21 15 Q. Do you consider yourself to have a pretty good
16 memory?

17 A. Um, that depends on -- sometimes, because
18 sometimes it's very good; sometimes it's not very good.

19 Q. How do you think it will be today?

13:05:37 20 A. Probably excellent.

21 Q. That's what I wanted to hear.

22 A. Good.

23 Q. Are you taking any medications at the present
24 time that you think might impact your ability to recall
13:05:49 25 events?

1 A. No.

2 Q. Do you have any physical condition that you
3 think might impact --

4 A. No, I'm a diabetic; just take certain things.

13:05:57 5 Q. All right. When did you first become a
6 commissioner for the Port?

7 A. Sometimes in July, I think, in 2005.

8 Q. Had you had any public service experience
9 prior to that?

13:06:14 10 A. Yes.

11 Q. Just tell me briefly what type of --

12 A. I was on the school board for eight years at,
13 uh, Camas.

14 Q. How long is a commissioner's term?

13:06:30 15 A. Four years.

16 Q. So you've been on -- what, you're in your
17 second term now?

18 A. Uh, no, still the first one.

19 Q. Still the first, that's right.

13:06:38 20 A. I have another year and a half. I have the
21 rest of this year and then next year.

22 Q. Do you have any plans to continue after that?

23 A. No idea.

24 Q. Has Mr. MacPherson ever represented you
13:06:55 25 personally?

1 A. Yes.

2 Q. On how many occasions?

3 A. Just one.

4 Q. Can you just describe generally what the
13:07:05 5 nature of that situation was?

6 A. Uh, yes. He had to check on a, uh -- um, we
7 had a service station, and we sold it to some Vietnamese,
8 and he had to check on a problem that was created with that
9 uh, that couple.

13:07:23 10 Q. How long ago was that?

11 A. I don't know, five, six years ago, seven years
12 ago. I don't remember.

13 Q. How long have you known Mr. MacPherson?

14 A. Didn't you ask me about my memory?

13:07:41 15 Q. I did.

16 A. Okay. Well, time isn't a good thing for
17 memory. Um, I don't know, 15 years. Good enough guess for
18 me.

19 Q. What is the name of the business that you have
13:07:54 20 that is engaged in the real estate brokerage activity?

21 A. I'm just a salesman there right now. It's,
22 uh, Century 21, Cascade Pacific.

23 Q. Has Mr. MacPherson ever represented Cascade
24 Pacific?

13:08:15 25 A. No.

1 Q. When did you first learn of RiverWalk's
2 interest in developing a mixed-use development on Port
3 property?

4 A. Uh, I can't remember. Uh, I guess it would
13:08:27 5 have to be sometime after July, since that's when I was
6 appointed.

7 Q. Do you recall how you first became aware of
8 that?

9 A. Uh, no, I don't. I was -- I don't remember
13:08:44 10 how I became aware of it. Probably from the executive
11 director. If somebody was -- you know, property
12 disposition or acquisition, just mentioned that something
13 was going on. That's probably how I heard it.

14 Q. That would be Sheldon Tyler?

13:09:05 15 A. Yes.

16 Q. You have in front of you what's been marked
17 and identified as Deposition Exhibit No. 1 to
18 Mr. Gunderson's deposition.

19 A. Um-hmm.

13:09:13 20 Q. Can you identify that document for me? Do you
21 know what it is?

22 A. What, this option agreement?

23 Q. Yes.

24 A. Yeah, I guess it's the same one. It's got
13:09:27 25 about this much writing and this much legal description

1 (indicating).

2 Q. Okay. Do you recognize that as the option
3 agreement between the Port and RiverWalk on the Columbia?

4 A. Yes, that's the one I've got my name on.

13:09:51 5 Q. What happened between the time that you first
6 learned of RiverWalk's interest in developing a mixed-use
7 development and the time that the option agreement was
8 actually signed by the parties?

9 A. Well, I don't know, because it says November
13:10:13 10 8th on there, and that was a pretty short time.

11 Q. What do you mean by that?

12 A. Well, that's when -- I came on board in July.

13 Q. So can you recall anything that happened with
14 respect to the project between the time you came on in July
15 of 2006 -- '5?

16 A. And what?

17 Q. And the time that the document was actually
18 signed.

19 A. Signed? No, I just -- I met a guy by the name
13:10:43 20 of Rick Bowler. I suppose that would be the only thing I
21 know about.

22 Q. Where did you meet him at?

23 A. He came to a -- he came to one of the
24 meetings, uh, Port meetings. I guess it was an executive
13:10:58 25 meeting. We were talking about a purchase, sale, or

1 whatever.

2 Q. And what did he do, make a proposal or explain
3 what RiverWalk was intending to do with regard to the
4 development?

13:11:12 5 A. Yeah, I think so.

6 Q. What kind of reaction did he get?

7 A. I don't know. We listen to a lot of things,
8 and we have to review them later.

9 Q. Did the Port engage in any due diligence
13:11:26 10 before it executed the option agreement?

11 A. I don't know. I don't know what you mean.

12 Q. Did it explore any aspects of the proposed
13 development before it signed the option agreement?

14 A. Um, I don't really know what we did, if we did
13:11:52 15 something.

16 Q. Did you have any particular concerns with
17 regard to the agreement?

18 A. Um, the only thing I -- I saw was that, uh --
19 did I have a concern?

13:12:06 20 Q. Yes.

21 A. Well, yeah, I did.

22 Q. What was your concern?

23 A. We didn't own some of the property.

24 Q. Did you have any other concerns?

13:12:16 25 A. No, it was pretty -- just -- I was kind of

1 waiting to find out what was going to happen.

2 Q. What do you mean by that?

3 A. Well, what -- all -- all I remember was what
4 Rick Bowler said, and there were some things that he said
13:12:33 5 he was going to do, so I think we were just waiting around
6 to find out if he was -- you know, what to do, what he was
7 going to do.

8 Q. Did you read the document before you signed
9 it?

13:12:44 10 A. Yes.

11 Q. Did you feel like you understood it?

12 A. Like my insurance policy, yes.

13 Q. What do you mean by that?

14 A. Some of the things are very vague if you
13:12:56 15 haven't had to do it more than once.

16 Q. Do you recall asking any questions of anybody
17 regarding any of the content of the option agreement?

18 A. What do you mean "anybody"?

19 Q. Do you recall asking questions of anybody?

13:13:17 20 A. No, I don't remember asking questions, because
21 I knew it was -- I sell real estate, and it looked like it
22 was an earnest money with conditions. That's how I
23 accepted it.

24 Q. What did you understand the conditions to be?

13:13:34 25 A. Um, money each party was to put in, talking to

1 the people, talking to the owners, talking to the renters,
2 and, uh -- I think there were a number of things, but I can
3 only remember those three right now. There was one more
4 that was important, but --

13:14:02 5 Q. With regard to money to be paid, what was your
6 understanding of that?

7 A. Uh, we would, uh -- we would, uh, put in
8 \$200,000, or up to \$200,000.

9 Q. For what? For what?

13:14:25 10 A. Oh, for any, uh -- any work that needed to be
11 done to clarify the land use, shoreline management,
12 drilling, environmental, archeology; those things.

13 Q. You mentioned that one of the conditions, as
14 you understood it, was talking to renters.

13:14:55 15 A. Yes.

16 Q. What did you mean by that?

17 A. Well, he was supposed to talk to, uh, the two
18 renters, uh, Randy Dickerson and Walt, uh, Guetter.

19 Q. How does Walt spell his last name?

13:15:16 20 A. I have no idea.

21 Q. Say it again for me, if you would.

22 A. Guetter.

23 Q. Cooter?

24 A. I think it's Walt Guetter. He has Riverside
13:15:30 25 Repair.

1 Q. What does Riverside Repair do?

2 A. Repairs boats.

3 Q. What was he renting from the Port?

4 A. The, um -- Westlie Ford rents two-thirds of
13:15:49 5 the building and Guetter rents one-third of the building
6 that's north of the Port.

7 Q. Is Randy Dickerson connected with Westlie
8 Ford?

9 A. Yes, he's the owner, him and his brother.
13:16:00 10 Well, they're in charge now that their dad is in a nursing
11 home.

12 Q. I think you also mentioned as a condition
13 talking with other landowners.

14 A. Um-hmm.

13:16:12 15 Q. What were you referring to there?

16 A. Jim Hambleton, Victor Espinoza, um -- oh, one
17 other one was Roberta Tidland. She's not a landowner. She
18 just was a lady of importance.

19 Q. In what respect?

13:16:40 20 A. The historical park.

21 Q. Who did you understand to have had
22 responsibility for negotiating the terms of the option
23 agreement on behalf of the Port?

24 A. Well, we get our information and, uh -- um,
13:17:04 25 facts from the executive director, and then we vote on

1 things.

2 Q. Did you have any understanding as to who
3 negotiated that document on behalf of the Port?

4 A. With --

13:17:16 5 Q. With RiverWalk.

6 A. Um, no, I'm not sure who did negotiate all the
7 written words, no.

8 Q. Did you have any involvement in the
9 negotiations?

13:17:30 10 A. No.

11 Q. Do you know whether or not Mr. Hargrave had
12 any involvement in the negotiations?

13 A. No, I don't think any commissioners did.

14 Q. Would it have been Mr. MacPherson then?

13:17:44 15 A. And, uh -- probably. He's our legal counsel
16 for making sure that it's, uh, written.

17 Q. Did you have any understanding of whether or
18 not Mr. Tyler had any involvement in the negotiation of its
19 terms?

13:18:01 20 A. No, I don't know if he does. His -- his job
21 is to feed us information, and, uh, we use it accordingly.

22 Q. So your best understanding would have been
23 that it was Mr. MacPherson's responsibility to do the
24 negotiations?

13:18:17 25 A. Um, well, to look at the -- look at the, uh --

1 to look at the option agreement.

2 Q. Did the Port assume any responsibilities or
3 obligations under the option agreement?

13:18:41

4 A. No, the 200 -- 200,000 was all that I
5 remember.

6 Q. Other than the payment of up to \$200,000, is
7 it your belief and understanding that the Port didn't have
8 any other obligations or duties under the option agreement?

13:18:59

9 A. No, on the option agreement there was a number
10 of things that the other party had to do.

11 Q. What causes you to believe that it was all
12 things that RiverWalk had to do?

13 A. Well, we weren't developing the property.
14 Developers have that responsibility.

13:19:20

15 Q. Were you aware that the option agreement
16 contemplated a long-term ground lease?

17 A. Yes.

18 Q. Did you feel that the Port had any
19 responsibility to work with RiverWalk in order to
20 accomplish the creation of that document?

13:19:36

21 A. If they did the other things.

22 Q. What other things?

23 A. Talking to the other people.

24 Q. You're referring to the landlords -- or the
25 landowners and the --

13:19:49

1 A. The renters.

2 Q. -- tenants?

3 A. Yes.

4 Q. Describe for me in general terms what you
13:19:58 5 thought was going to happen after the option agreement was
6 executed in order for this project to come to fruition.

7 A. Well, just had the facts in there of what,
8 uh -- what would need to be done, and then later on, why,
9 we would have -- what they gave us was the, uh -- a master
13:20:20 10 agreement plan. That's what it was supposed to do. To me,
11 it's just like an earnest money, the option agreement.
12 It's an option.

13 Q. What did RiverWalk have the option to do?

14 A. You mean on the -- this option agreement?

13:20:37 15 Q. Yes.

16 A. Well, it said in there -- set forth some
17 principles -- some division or dividing of the -- I guess
18 it would be dividing or the costs associated with
19 development and the lease -- the lease costs, who would get
13:20:59 20 what.

21 Q. But if RiverWalk exercised the option, what
22 would it get?

23 A. What would it get?

24 Q. Yes.

13:21:07 25 A. Depends on if we agreed on the other side of

1 it.

2 Q. What do you mean by that?

3 A. Well, they wrote this. They were supposed to
4 do some things, and then if -- if it was signed by both
13:21:19 5 parties, then -- then it would be the contract that we had
6 that came later, but that's it. It's just an option. It's
7 like anything else to me.

8 Q. I understand --

9 A. An option is an option.

13:21:33 10 Q. Okay. But it gave them the option to do what?

11 A. You mean after they exercised it, or what?

12 Q. I'm just asking for your understanding of --

13 A. Their option was to do -- their option was
14 that we would work with them and -- and, uh, do the leases
13:21:51 15 on a percentage basis if they -- their option was to go
16 ahead and do some other things, then we would work with
17 them. But that's all they had, was an option. They were
18 supposed to do some things, and we --

19 Q. What things?

13:22:03 20 A. -- weren't going to exercise it until they did
21 them.

22 Q. What things?

23 A. I told you, talk to the other people.

24 Q. So talk to the tenants of the Port and talk to
13:22:13 25 the other landlords -- landowners?

1 A. Yes, the owners.

2 Q. And that's your memory of what they were to
3 do?

4 A. Um-hmm.

13:22:21 5 Q. You have to answer audibly, I'm sorry.

6 A. Yes.

7 Q. Okay. Did anybody ever take the position that
8 the Port had acted inappropriately in entering into the
9 option agreement with RiverWalk?

13:22:43 10 A. Now, say that again.

11 Q. Did anybody ever take the position that the
12 Port had acted inappropriately in entering into the option
13 agreement with RiverWalk?

14 A. You mean within the Port or anybody outside
13:22:59 15 the Port?

16 Q. Well, let's start with anybody inside the
17 Port.

18 A. No.

19 Q. How about outside the Port?

13:23:06 20 A. Don't know.

21 Q. You never became aware of any suggestion that
22 anybody had made that the Port hadn't followed proper
23 protocol in executing the option agreement?

24 A. No. It -- the people that were -- that did
13:23:23 25 come a lot, lot later than November 8th.

1 Q. But at some point in time somebody expressed
2 opinion?

3 A. It was after the, uh -- after the -- sometime
4 afterwards. I don't know what for or what they had read,
13:23:39 5 but it was later, a year later.

6 Q. Who was it that expressed that opinion?

7 A. Nothing. I just -- that was just a rumor that
8 I heard.

9 Q. Did the commissioners ever ask for a legal
13:23:59 10 opinion on that issue?

11 A. If they were -- if it was a legal document,
12 you mean?

13 Q. Right, if proper protocol had been followed
14 prior to its execution.

13:24:14 15 A. No, not that I know of.

16 Q. You mentioned Roberta Tidland earlier.

17 A. Um-hmm.

18 Q. Who is Roberta Tidland?

19 A. She's a lady that's been in charge of the, uh,
13:24:39 20 Historical Society's, uh, historical park that we have
21 there. It's -- it's a small area, or is right now.

22 Q. Did she ever raise any concern with regard to
23 whether or not proper protocol had been followed by the
24 Port?

13:24:56 25 A. No.

1 Q. Did she ever express any criticism of the
2 project?

3 A. Yes.

4 Q. What kind of criticism?

13:25:06 5 A. Well, we own the property that the park's in,
6 and, uh, we could do what we wanted to with it. She just
7 didn't want to lose it.

8 Q. Okay. Tell me what concern that she
9 expressed.

13:25:22 10 A. Well, it's -- it's zoned -- it's just zoned,
11 uh, highway commercial, and it's part of the rest of the
12 property to the west of, uh, Westlie's, and she just didn't
13 want to lose the Historical Society historical park area.

14 Q. Was she opposed to the development?

13:25:45 15 A. You know, I really don't know, because, uh, I
16 never attended one WAC meeting, which was when they talked
17 about it, and she was a committee member of that. She --

18 Q. What was Sheldon Tyler's position at the time
19 that the option agreement was executed?

13:26:12 20 A. Um, like a lot of things, he was -- he was
21 just there to give us information, point out things
22 positive and negative, and then, uh, we'd make the
23 decision.

24 Q. Was he in favor of the RiverWalk proposal?

13:26:31 25 A. You know, I'd be -- he was, and then he was

1 quiet, so it -- I don't know how you'd put that, but I
2 would say that, uh, he was not against it.

3 Q. When you say he got quiet, what do you mean by
4 that?

13:26:49 5 A. Well, sometimes there's -- the commissioners
6 have things that they're concerned about or thinking about
7 and, uh, he just let us do our own thinking.

8 Q. Did he ever express any criticism with regard
9 to any part of the project?

13:27:08 10 A. Well, not criticism. Facts.

11 Q. Did he ever express concern about anything?

12 A. About what?

13 Q. About anything having to do with the RiverWalk
14 project.

13:27:23 15 A. Um, let me think. It would probably be, uh,
16 only that, you know, we're talking about all this acreage,
17 just like I did; some of it wasn't ours. He was to point
18 that out to us. Some of us didn't know what was ours and
19 what wasn't in the 65 acres or how much.

13:27:44 20 Q. At any point in time did you ever come to
21 understand that Mr. Tyler's support for the project had
22 diminished in any way?

23 A. I never saw that per se.

24 Q. Did you have that feeling, though?

13:28:04 25 A. No. I felt that his job was to inform us on

1 things that we might not be able to see because his
2 experience should give him some knowledge that I didn't
3 have. Um, that's what I -- that's what I look forward to,
4 is what did he see or didn't see that -- to point out to me
13:28:27 5 so I could use that in any evaluation that I wanted to
6 make.

7 Q. Did he ever express any negativity with regard
8 to the project?

9 A. Are you asking that about him or me?

13:28:42 10 Q. Well, we'll start with Mr. Tyler --

11 A. Oh.

12 Q. -- then we'll get to you.

13 A. Um, I -- I couldn't say that it was a -- to
14 me, no. To me, no.

13:28:54 15 Q. Did he ever express negativity to anybody else
16 about the project?

17 A. Not that I heard from anybody else that talked
18 to me. Sometimes -- you know, I was new.

19 Q. Um-hmm.

13:29:07 20 A. And sometimes you don't see the whole picture.
21 I just saw what I -- I knew, my experience.

22 Q. At any point did you begin to develop any
23 negative thoughts with regard to the development?

24 A. No.

13:29:36 25 Q. Did you feel that Mr. Tyler kept the

1 commission fully informed with respect to all issues that
2 it might need to know about concerning the project?

3 A. I thought so, yes.

4 Q. Were you ever critical of anything that
13:30:02 5 Mr. Tyler did with regard to the RiverWalk project?

6 A. Um, there may be one thing.

7 Q. What was that?

8 A. Um, sometimes he talked to someone that, uh, I
9 didn't think that, uh -- it shouldn't have been talked
13:30:30 10 about. That's what.

11 Q. So he was releasing information that you
12 thought --

13 A. But not negative. Just he released some
14 information, and I didn't think that was, uh, right.

13:30:41 15 Q. Can you recall a specific instance of that?

16 A. Hmm, just that he told someone else that
17 worked for the City of Camas something, and I didn't think
18 it should have been exposed. That's all.

19 Q. Who did he have a conversation with?

13:30:58 20 A. It was probably the city manager.

21 Q. And what was the topic of that conversation?

22 A. Just -- just what was going on, and I --
23 sometimes I don't think that you do that until you get a
24 final -- you know, until, um, all the commissioners know
13:31:13 25 first.

1 And I guess we did know that, too, come to
2 think of it.

3 Q. Did you ever talk to Mr. Tyler about that?

4 A. Yes.

13:31:22 5 Q. Tell me what you can recall of that
6 conversation.

7 A. I just told him I didn't think that, uh, that
8 was the right thing to do.

9 Q. How did he respond to that?

13:31:33 10 A. He said, "Probably not."

11 (Mr. Benson entered the room.)

12 Q. When did the commissioners first begin to talk
13 about the possibility of Mr. Tyler's employment
14 terminating?

13:31:54 15 A. Hmm, gee, I don't remember the exact time.

16 Um, I just can't remember the exact time, because we -- we
17 have a lot of things going on at the meetings, so I don't
18 remember when we talked about it. Um --

19 Q. Can you remember generally the time frame in
13:32:24 20 which that first came up?

21 A. No, I can't. I can't -- I just can't see it.
22 I don't remember if it was brought up or how it was brought
23 up or -- the only reason it was brought up was there was a
24 lot of work that was being done, and we, uh, needed some
13:32:38 25 help.

1 Q. What do you mean "a lot of work that was being
2 done"?

13:32:50

3 A. Well, there was a lot of things that were
4 involved with RiverWalk that took his time away from
5 running the Port area, so we were just looking for help in
6 that area.

7 Q. So why was his employment terminated?

13:33:08

8 A. Uh, I really don't know why because he didn't
9 have to do anything about that. He -- there was an offer
10 made to him at that time, and, uh, he chose not to take it.

11 Q. What was the offer that was made to him?

12 A. I don't know, something like a year and a half
13 or two years to continue on, but he didn't take that.

13:33:26

14 Q. Did you believe that things weren't getting
15 done that should have been getting done?

16 A. No, I didn't think there was enough attention
17 on all of the things that needed to be there; the airport,
18 the marina, the industrial park. It just got -- it's just
19 like we needed a president and a vice president, a
20 principal and a vice principal; uh, we needed two people
21 instead of one. We were getting overloaded. We were
22 growing.

13:33:42

23 Q. Why was there an ending date proposed to
24 Mr. Tyler as opposed to just getting more help?

13:34:04

25 A. Um, I don't know. I wasn't in on that. I

1 wasn't in on the final, uh, decision.

2 Q. Who was in on that?

3 A. Pardon?

4 Q. Who was in on that?

13:34:12 5 A. Uh, a meeting that they held at, uh,
6 Mr. MacPherson's office.

7 Q. Who attended that meeting?

8 A. Uh, I think it was Alan and Rich.

9 Q. Did Alan or Rich ever discuss with you what
13:34:29 10 went on?

11 A. No.

12 Q. And you never asked?

13 A. We don't talk about those things, uh, out of
14 executive session or in executive session.

13:34:38 15 Q. Would you expect Mr. Gunderson to have a
16 memory of that meeting and what happened?

17 A. He could have. I have no idea. I -- I think
18 he was there. I don't -- you know, you asked that
19 question. I said he might be there, but I'm not positive
13:34:53 20 he was. That's -- but I wasn't -- I wasn't there.

21 Q. What was it about the two-year proposal that
22 was unacceptable to Mr. Tyler?

23 A. The what? The two-year?

24 Q. Yes.

13:35:06 25 A. Um, I don't know that either. He, um -- oh, I

1 think he didn't think we needed -- he didn't need any help.
2 That was what I think the main cause was.

3 Q. Need any help doing what?

4 A. He -- you know, he thought he could handle
13:35:25 5 most of what was going on.

6 Q. And was it your opinion that things weren't
7 getting done?

8 A. Well, it was that I didn't think that it was
9 getting to a point. It's -- it's kind of like running your
13:35:37 10 own business, and there comes a point when you have to hire
11 somebody else because there's too much for you but not
12 really -- sometimes not enough for two.

13 And so that's how I felt it was going, is that
14 we were expanding, uh, we had finished some projects that,
13:35:52 15 uh -- um, William Clark Park. We just had a lot of things
16 that were going on. And I had taught school for a lot of
17 years and been involved in some of the administration, and
18 sometimes you need two people to segregate some of the
19 responsibility, jobs.

13:36:09 20 Q. So what was the Port's plan in terms of
21 providing assistance to Mr. Tyler to take up the slack?

22 A. We hired a gentleman by the name of Scot
23 Walstra.

24 Q. Did the involvement of Mr. Hanke take some of
13:36:32 25 the load off Mr. Tyler?

1 A. I think it did.

2 Q. Was it your impression that despite
3 Mr. Hanke's involvement in conjunction with Mr. Tyler, that
4 things still weren't getting done?

13:36:46 5 A. No.

6 Q. Did Mr. Tyler's termination have anything at
7 all to do with the RiverWalk project?

8 A. Not for me.

9 Q. For anybody else?

13:37:04 10 A. I have no idea. I think you have to ask them.

11 Q. At any point in time did you become aware that
12 the principals of RiverWalk were critical of Mr. Tyler?

13 A. Yes.

14 Q. How did that come to your attention?

13:37:23 15 A. They told me.

16 Q. What was it that they told you?

17 A. Um, they felt it was better to talk to
18 commissioners than Sheldon, so --

19 Q. Did they explain why?

13:37:38 20 A. No, they didn't really explain why. They just
21 felt that maybe, uh -- you know, he had a lot of things,
22 too, on his mind, and -- and he would -- and then he would
23 give it -- tell us about it, so that was probably why.

24 But --

13:37:58 25 Q. Mr. Tyler had a lot of things on his mind?

1 A. No, we had a lot of things going on at the
2 Port, not -- not about RiverWalk but just a lot of -- a lot
3 of things going on.

4 Q. Did the RiverWalk principals ever tell you
13:38:10 5 that they believed that Mr. Tyler was impeding the progress
6 of the development?

7 A. Yes, they did.

8 Q. Did they explain to you why they felt that
9 way?

13:38:20 10 A. They just couldn't get answers from him.

11 Q. Did you ever look into that?

12 A. No, I waited until it came to the executive
13 meetings.

14 Q. What was it that came to the executive
13:38:32 15 meetings?

16 A. Well, whatever we were -- you know, what we
17 had to talk about or property disposition or acquisition.

18 Q. Did you ever speak with Mr. Tyler about the
19 complaints or criticisms that you heard from RiverWalk?

13:38:45 20 A. No. I didn't think I had to.

21 Q. How come?

22 A. I felt he already -- he already knew.

23 Q. Was it at all a concern to you that RiverWalk
24 thought that -- that the project wasn't proceeding with the
13:39:03 25 kind of speed that they wanted because of Mr. Tyler's

1 involvement?

2 A. Did it bother me?

3 Q. Uh-huh.

4 A. No, it did not bother me.

13:39:12 5 Q. Is there a reason why it didn't bother you?

6 A. I've been in real estate 35 years.

7 Q. And?

8 A. And you know how many things go back and forth
9 in real estate. So I figured it would work its way out, if
13:39:26 10 it was going to.

11 Q. Did RiverWalk ever communicate with the
12 commissioners in writing with respect to complaints it had
13 with Mr. Tyler?

14 A. To me, not that I know of. I don't think I
13:39:43 15 got any memos. I'd usually talk to them in person if there
16 was something.

17 Q. Have you ever heard that the Port ever
18 destroyed any documents that related or pertained to the
19 RiverWalk development?

13:40:02 20 A. I never did, no.

21 Q. Did anybody else make any mention of that --

22 A. No.

23 Q. -- in your presence?

24 Has Mr. Tyler ever threatened any claim
13:40:21 25 against the Port?

1 A. Not that I know of. I -- he never did say
2 anything to me.

3 Q. When was the last time that you saw Mr. Tyler?

4 A. You like dates. I don't even remember when.

13:40:43 5 I just -- it was an executive -- at a regular meeting.

6 Q. So at some time before his employment
7 terminated?

8 A. Um-hmm.

9 Q. Did your view of the RiverWalk project ever
13:40:59 10 differ from the view held by Mr. Tyler?

11 A. I know I'm more on the positive side of
12 development where other people are -- are not sure, but,
13 no.

14 Q. Who wasn't -- who wasn't sure about this?

13:41:20 15 A. Well, I just said a lot of people that were
16 negative about the whole RiverWalk, uh, that talked up and
17 said things at the WAC meetings and that, from what I
18 understand, they just didn't understand development, and
19 they didn't know all the things that go with it. But I did
13:41:35 20 not have a problem with it; just do the conditions.

21 Q. Other than the circumstance that you alluded
22 to before regarding the conversation that Mr. Tyler had
23 with the City of Camas representative, was there ever any
24 other occasion that you can recall where your view of the
13:41:56 25 RiverWalk project in any respect differed from Mr. Tyler's?

1 A. Yes, it did. He wanted to go with RiverWalk
2 on buying a residence, and I was against it.

3 Q. Which residence was that?

4 A. It was called, uh, Corbett's.

13:42:21 5 Q. Did the Port acquire the Corbett property?

6 A. Yes.

7 Q. And you were opposed to that?

8 A. Yes.

9 Q. Did you vote against it?

13:42:29 10 A. No.

11 Q. What was it about that purchase that you were
12 opposed to?

13 A. They wanted too much money for the place.

14 Q. The seller did?

13:42:39 15 A. Yes.

16 Q. And did you feel that the Port overpaid for
17 it?

18 A. No, because we negotiated it down.

19 Q. What was the source of the disagreement?

13:42:54 20 A. It was just too much money.

21 Q. Tell me what Mr. Tyler's position was and what
22 your position was.

23 A. Well, he didn't know comparable values. He
24 had not been in real estate. He just thought that it would
13:43:09 25 be -- that was an okay value, and I didn't. Some of the

1 RiverWalk thought it was okay, and I said, "No, I'm not
2 paying that."

3 Q. Did the Port end up paying a price with which
4 you agreed?

13:43:21 5 A. Yes.

6 Q. How much less than --

7 A. 40,000 less.

8 Q. Do you recall any aspect of the RiverWalk
9 project with which you had a different opinion than

13:43:40 10 Mr. Hargrave?

11 A. No.

12 Q. How about Mr. Gunderson?

13 A. No.

14 Q. Were you involved in the formation of the
15 Waterfront Advisory Committee?

13:43:56

16 A. No.

17 Q. And I think you testified earlier that you
18 never attended any of its meetings.

19 A. I never attended one meeting.

13:44:05

20 Q. Did you ever speak with members of the
21 committee?

22 A. Not really, no.

23 Q. Were there any conclusions that the Waterfront
24 Advisory Committee came to with which you disagreed?

13:44:24

25 A. No.

1 Q. Did you ever have any interaction with the
2 Concerned Citizens in Action?

3 A. No.

4 Q. Were you aware of some of the public comment
13:44:46 5 that those folks made?

6 A. Yes.

7 Q. What was your view of their -- the concerns
8 that they expressed?

9 A. I guess, uh, I didn't like some of the people,
13:45:09 10 so I didn't put much value or stock in what they said.

11 Q. Were you in any way ever influenced by the
12 CCIA?

13 A. No.

14 Q. Do you know whether or not the commission was
13:45:30 15 ever in any way influenced by the CCIA?

16 A. They were not -- to me, no.

17 Q. What is your understanding of the length of
18 the ground lease that the parties contemplated when the
19 option agreement was entered into?

13:45:46 20 A. I don't know.

21 Q. You have no memory at all?

22 A. No. I just knew that it wasn't -- it -- it
23 would come up later. I wasn't -- I wasn't concerned about
24 it.

13:46:00 25 Q. What do you mean it would come up later?

1 A. All I can give you is a reference. I do real
2 estate, and if there's options and there's leases, they
3 usually aren't in the original draft. There's usually some
4 changes by the time it's finalized. So that's what I'm
13:46:18 5 saying. I wasn't concerned about it because there may be
6 some more changes in the master development agreement. So
7 I didn't --

8 Q. So was it your impression that the subject of
9 the option agreement was more or less just a subject of
13:46:34 10 ongoing negotiation between the parties?

11 A. Between us and them?

12 Q. Yes, the Port and RiverWalk.

13 A. No, I felt like it was an earnest money.
14 There were conditions they had to meet before it was ever
13:46:47 15 going to be completed.

16 Q. Let me ask you to turn to Page 6 of the option
17 agreement that you have in front of you.

18 Do you see Paragraph 25.2 at the bottom of the
19 document --

13:47:25 20 A. Um-hmm.

21 Q. -- that page?

22 It states that, "RiverWalk and Port
23 contemplate entering into a 50-year ground lease with a
24 30-year option to extend for that property which
13:47:37 25 development can occur under existing zoning designations

1 for the property."

2 A. Um-hmm.

3 Q. Was it your understanding that at the time
4 that the option agreement was executed that the parties
13:47:49 5 were contemplating a 50-year ground lease?

6 A. Um, I guess I would -- if it says it in here,
7 why, then that's probably what it meant if all the other
8 things were met. I have no idea if they can -- to me it
9 could change if the -- if the developers didn't meet all
13:48:09 10 the conditions we had, the whole thing would be null and
11 void, just like it is on a real estate contract.

12 Q. So did you believe that the 50-year ground
13 lease was something that was subject to change after the
14 option agreement was executed?

13:48:27 15 A. Could be. I had no idea what it would do.

16 Q. What other terms of the option agreement were
17 subject to change?

18 MR. COURSER: Objection.

19 He didn't -- that was not his testimony.

13:48:39 20 BY MR. MEHLHAF: (Continuing)

21 Q. You can go ahead and answer.

22 MR. COURSER: Go ahead if you can.

23 A. All of it. They changed some in the master
24 agreement, so --

25

1 BY MR. MEHLHAF: (Continuing)

2 Q. Did you ever become aware that RiverWalk had
3 submitted a lease for consideration by the Port?

4 A. They had submitted a lease?

13:49:07 5 Q. Yes.

6 A. To who?

7 Q. The Port.

8 A. No.

9 Q. That was never brought to your attention?

13:49:15 10 A. It was -- not that I know of.

11 Q. Did it ever come to your attention that
12 RiverWalk submitted a proposed MDA to the Port for
13 consideration?

14 A. You mean the one we received?

13:49:35 15 Q. I'm talking about a master development
16 agreement.

17 A. Yeah. The last thing we received from them,
18 is that what you're talking about?

19 Q. Well, all I'm asking is did you ever become
13:49:46 20 aware that RiverWalk submitted an MDA to the Port for its
21 consideration?

22 A. I saw one, yes.

23 Q. How was it that you came to see one?

24 A. It was -- it was given to the commissioners.

13:50:01 25 Q. By whom?

1 A. The executive director, Byron, whoever.

2 Q. Okay. Approximately when in point of time did
3 Byron --

13:50:14

4 A. I have no idea. I don't remember some of the
5 dates exactly. It was just the sequences that I remember.

6 Q. Was the MDA that was submitted by RiverWalk a
7 subject of discussion among the commissioners?

8 A. Not that I know of, no.

13:50:33

9 Q. So what was your understanding of why the
10 commissioners were given a copy of that document?

11 A. I guess to take a look and see what was in it.

12 Q. Did you do that?

13 A. Yes. I read it.

14 Q. And after you read it, what did you do?

13:51:02

15 A. Nothing.

16 Q. How come?

17 A. Because all the other conditions hadn't been
18 met.

13:51:22

19 Q. Were the commissioners asked to do anything in
20 connection with the proposed MDA that was submitted by
21 RiverWalk?

22 A. To read it.

13:51:38

23 Q. I'm trying to figure out what the purpose of
24 that was, because that's not making sense to me, given your
25 other testimony.

1 Were you supposed to comment on it?

2 A. We never got to that. But if it did come to
3 that point, we -- we should know what -- if it -- you know,
4 see if it was something we didn't like, and we never got to
13:51:55 5 that point.

6 Q. Who did you understand to have responsibility
7 on behalf of the Port to work with RiverWalk towards the
8 preparation of an acceptable MDA?

9 A. Probably our legal counsel.

13:52:10 10 Q. Mr. MacPherson?

11 A. Um-hmm.

12 Q. Did you feel that that was your responsibility
13 as a commissioner?

14 A. No.

13:52:19 15 Q. Why not?

16 A. Because that's why we have legal counsel.

17 Q. Do you have any idea what kind of feedback
18 Mr. MacPherson provided to RiverWalk regarding the MDA?

19 A. No, I don't. He may have told us that -- at
13:52:41 20 the executive meeting, but I don't remember.

21 Q. Did you have any understanding of why
22 RiverWalk wanted a long-term lease?

23 A. I guess I'd have to say no, I'm not sure why.

24 Q. Do you have a general understanding of why?

13:53:16 25 A. Well, you want to tie up something as long as

1 you can. The amount of money that you would receive, the
2 longer the term, the more money you'd receive. That's
3 normally the way it is on leases. So, I really don't know
4 other than that.

13:53:32 5 Q. Was RiverWalk going to have to spend some
6 money after the long-term lease was entered into with
7 respect to the development of the property?

8 A. I'm not sure there were -- I'm not positive
9 what they would have to spend, but I expected them to spend
13:53:48 10 some, yes.

11 Q. Did you ever become aware of the fact that
12 RiverWalk was going to require financing in order to do the
13 development?

14 A. Um-hmm. I did.

13:53:59 15 Q. Did that shock or surprise you?

16 A. No.

17 Q. You would have expected that, would you not?

18 A. Yes.

19 Q. And did you understand that RiverWalk was
13:54:11 20 going to acquire that financing, that loan from a lending
21 institution based, at least in substantial part, on a
22 ground lease?

23 A. Um, I'm not positive that would have to be the
24 case, but it could be. And I -- I've seen that happen, so
13:54:34 25 I'm just not sure where it worked with RiverWalk.

1 Q. So you have no memory at all of whether
2 RiverWalk ever put the Port on notice of the fact that its
3 lenders were going to require a long-term ground lease?

4 A. No, I don't remember anything about it. I
13:54:52 5 just remember something about long-term leases usually from
6 a lender requires a long-term lease rather than a
7 short-term. That's all I know.

8 Q. Do you have an understanding of why that is?

9 A. Um-hmm.

13:55:10 10 Q. What is your understanding?

11 A. Well, the lender likes to be guaranteed a lot
12 of things.

13 Q. Such as what?

14 A. Making sure the principals pay them.

13:55:26 15 Q. And if it's to be repayment over a period of
16 time, they want to know that the lease is at least as long
17 as the payback period?

18 A. If they set it up that way.

19 MR. MEHLHAF: Let's go ahead and take a break
13:55:44 20 now.

21 (Recess taken: 1:55 to 2:05.)

22 BY MR. MEHLHAF: (Continuing)

23 Q. Mr. Carroll, I can't remember if I asked you
24 this before. If I did, I apologize, but were you ever
14:05:43 25 personally critical of RiverWalk at any point in time

1 during this entire process?

2 A. Hmm, I might have been.

3 Q. What do you recall?

14:06:03

4 A. That I told the other commissioners and Shawn
5 that they weren't meeting their obligations; they weren't
6 meeting the conditions that they were supposed to do.

7 Q. When did you have that conversation?

14:06:24

8 A. I don't remember. Probably when -- oh, it
9 might have been when they -- if they were talking about
10 the, um, master agreement, and I said, you know, if they
11 don't meet their conditions, I don't give a dang what it is
12 in that master agree -- master agreement. They aren't
13 doing their job. They had four conditions, and they
14 weren't meeting any of them.

14:06:40

15 Q. Now, do you have a specific memory of this or
16 are you speculating --

17 A. You mean the date I said it?

18 Q. No, whether or not you actually said it.

19 A. That I said that?

14:06:49

20 Q. Yeah.

21 A. Yes, I said that.

22 Q. Okay. And what's your best memory of when
23 that conversation took place?

14:07:06

24 A. Um, probably when they were talking about that
25 master agreement, the conditions in there that they wanted

1 us to follow.

2 Q. What do you mean by that?

3 A. Well, whatever is in there, the you know,
4 different steps of what we agree to. But they wanted us to
14:07:21 5 agree to things, and they gave us a list of stuff, but they
6 wouldn't follow and do their conditions.

7 Q. Was this the master development agreement?

8 A. I think it was, yeah.

9 Q. Well, earlier you testified that you were

14:07:31 10 given that document but no conversation took place with
11 regard to it.

12 A. Right, I didn't talk about it because that was
13 my answer. I don't need to talk about it until they get
14 some of their stuff done.

14:07:41 15 Q. But yet you do now recall that you had a
16 conversation.

17 A. Just -- no, that's just the comments that I
18 made. The other people may have discussed it.

19 Q. Who did you make those comments to?

14:07:51 20 A. I think I made it to Shawn MacPherson.

21 Q. And that was in the context of what? Where
22 were you?

23 A. Probably at the executive meeting.

24 Q. And what was the conversation that was going
14:08:13 25 on that caused you to make that statement?

1 A. Well, if they talked about anything that had
2 to do with what they wanted to do. I mean, if they had
3 something that they wanted done in the master agreement, I
4 said, "Until they do some more things, to me it just isn't
5 there."

14:08:32

6 Q. What did RiverWalk need to do in your mind in
7 order for the Port to give any consideration to the
8 proposed MDA that RiverWalk submitted?

9 A. The -- they had talked to some of the
10 people -- the owners, and, uh, the owners didn't want to
11 deal with them at all. They screwed it up, the fellow that
12 talked to them. They, uh -- they had not talked to Victor
13 Espinoza; they had not talked to the people who owned the
14 Parker House; they had not, uh -- uh, only talked to Jim
15 Hambleton one time, and it was a real negative experience,
16 uh, and Jim wanted nothing to do with them; and they hadn't
17 paid all their bills at that time. Sometimes they
18 hadn't -- they didn't pay their bills on time. And, uh,
19 the agreement said they would send us a bill, and they'd
20 pay half and we'd pay half, and that didn't happen.

14:08:48

14:09:08

14:09:26

21 And they hadn't seen the City of Washougal,
22 and they gave us the worst picture you ever saw of what
23 their development might be. They didn't have a boat launch
24 or that, and I told them I wouldn't -- I wouldn't do
25 anything until you get that straight.

14:09:41

1 So that's why I said I didn't personally talk
2 probably about the master agreement because I didn't feel
3 they had done those four things. And they had no -- to me,
4 they were pie in the sky until they did their job. They
14:09:59 5 agreed to do that in the option agreement.

6 Q. Were you ever critical of either of the
7 principals of RiverWalk at any point in time?

8 A. Hmm, not necessarily. Not any more than
9 questioning timelines, stuff like that.

14:10:32 10 Q. And what criticism did you have with regard to
11 timelines?

12 A. Well, it was getting later and later, and they
13 weren't saying what they said they'd do, and that was part
14 of their option, and they weren't doing it. They never
14:10:47 15 gave us a second -- I asked for it, a plan of showing what
16 they were going to do with the -- they gave us a plan and
17 there was nothing for the -- the marina parking and nothing
18 for the boat launch.

19 And that's what a lot of the people, that's --
14:11:06 20 that's part of our biggest -- that's what we're there for.
21 They had a terrible diagram, and I told them whoever their
22 architect was was a loser. They ought to find somebody
23 else. And they never did give us another one, and they
24 never gave one to the City of Washougal.

14:11:22 25 Q. Was this a plan that was submitted during a

1 commission meeting?

2 A. I think so, or either that or in an executive
3 meeting.

4 Q. Well, did RiverWalk attend executive meetings?

14:11:38

5 A. I know the one they did when they were talking
6 about the --

7 Q. Would you expect that the minutes that were
8 maintained by the Port would reflect the fact that
9 RiverWalk had made some presentation with regard to a plan
10 at that meeting?

14:11:50

11 A. Uh, to what?

12 Q. Would you expect that the minutes maintained
13 by the Port with regard to commission meetings would
14 reflect the fact that this presentation was made on a
15 particular date?

14:12:07

16 A. I don't know. I mean, I -- if they did, it
17 should be in the minutes. But they also gave it to -- I
18 know that some of the people saw it also at one of the open
19 meetings. That's where the diagram came from.

14:12:25

20 Q. Let's talk a little bit about the Parker House
21 situation.

22 A. Okay.

23 Q. What was it about the Parker House issue that
24 you thought -- that was either a concern to you or that you
25 were critical of?

14:12:41

1 A. How do you know I was?

2 Q. Because you brought it up in answering my
3 question about what they hadn't done in order to get to the
4 point where the Port would consider the MDA that was
14:12:55 5 submitted.

6 A. Hmm, they were just supposed to talk to the
7 owners.

8 Q. What did the Port contemplate in terms of what
9 RiverWalk was going to accomplish regarding the Parker
14:13:12 10 House?

11 A. They were to talk to all of the owners of
12 property to explain to them what they wanted to do and to
13 try and get their okay. That was a definite they told us.
14 Rick Bowler told us he would definitely talk to them,
14:13:28 15 absolutely, no questions asked.

16 Q. And were there conversations between
17 representatives of the Parker House and RiverWalk?

18 A. I don't know. Not with Victor Espinoza.

19 Q. How do you know that?

14:13:46 20 A. Because I was the one that talked to Victor
21 Espinoza.

22 Q. What caused you to have that conversation?

23 A. They had it for sale. They wanted us to buy
24 it.

14:14:01 25 Q. Is it your understanding that there was some

1 conversation with Mr. Espinoza and some representative of
2 RiverWalk before that property was placed on the market?

3 A. I don't know.

4 Q. How did you find out that it was on the
14:14:16 5 market?

6 A. Billy is the executive director at the -- that
7 title at the Parker House, in charge of it, the manager, a
8 friend of his.

9 Q. And how did you find out it was for sale?

14:14:33 10 A. That was it, just through the grapevine. Gina
11 Mederes -- Billy Mederes was his -- in charge of the
12 management. Gina Mederes worked in our office.

13 Q. So when you found out that the Parker House
14 property was for sale, what did you do?

14:14:52 15 A. We told the executive director, and he called
16 their attorney, I think.

17 Q. If that was RiverWalk's responsibility, why
18 did the Port assume the responsibility to talk with them?

19 A. Because RiverWalk was always involved in
14:15:09 20 trying to find the different places to buy, houses, that
21 thing.

22 Q. Okay. Let's just focus on the Parker House.

23 A. Okay. I think that -- I think that the
24 executive director, they talked to the executive director,
14:15:28 25 that's all I know, and then he talked to the attorney.

1 Q. Who is "they" that talked to the executive
2 director?

3 A. The RiverWalk people.

4 Q. About what?

14:15:38 5 A. About purchasing it.

6 Q. And that caused you then to initiate a
7 conversation with Mr. Espinoza?

8 A. No. No. I didn't talk to him until it came
9 up and -- and I heard the price.

14:15:51 10 Q. Tell me, without me asking you a couple of
11 dozen questions, from the point that you heard it was for
12 sale, what involvement did you have with regard to the
13 Parker House property.

14 A. We voted on having an appraisal done.

14:16:07 15 Q. And then what happened?

16 A. We got the appraisal.

17 Q. What was the appraisal?

18 A. The amount?

19 Q. Yes.

14:16:14 20 A. Two hundred -- 2,995,000, somewhere in there,
21 or 80,000 -- 800,000.

22 Q. And what was Espinoza asking?

23 A. 4.2 million.

24 Q. Then did you have a conversation with

14:16:29 25 Mr. Espinoza?

1 A. Yes.

2 Q. Where did that take place?

3 A. In our office, in the Port's conference room.

4 Q. Did you call for the meeting?

14:16:42 5 A. I didn't, no. I think the executive director
6 lined it up.

7 Q. Who all attended the meeting?

8 A. Mark Benson; John McKibbin; myself; I think
9 Sheldon Tyler, I think the executive director; and maybe
14:17:03 10 somebody -- oh, Billy was there, his manager.

11 Q. Tell me everything that you can recall of the
12 meeting.

13 A. Easy to do. I went in and I said, "You want
14 to sell the Parker House. Here's the appraisal on it.
14:17:20 15 We'll give you the value of the appraisal."

16 And he pulled it over, and he looked at it
17 like this (indicating), and slid it back to me and said, "I
18 want 4.2 million." And he said, "And if I don't get it,
19 I'm going to keep it, and I'll just run it until it's gone,
14:17:41 20 and then I'll just keep the land."

21 And I said, "Well, if you keep -- and then he
22 said -- and then Billy looked at him like, "Hey, I'm your
23 buddy, and I'm the manager, and you're going to close it."

24 And then he said, "Well, I can -- I can keep
14:17:57 25 it going."

1 Q. And you're referring to the restaurant that
2 was on the property?

3 A. Um-hmm. The restaurant, yes. And so I said,
4 "I think that's great. Fine."

14:18:07 5 Q. And that was the end of the conversation?

6 A. That was it.

7 Q. Did the Port have any further communications
8 with Mr. Espinoza regarding the possible purchase of the
9 Parker House?

14:18:17 10 A. Not him. We usually talked to his attorney.

11 Q. Who was his attorney?

12 A. I don't know his name.

13 Q. What conversations took place after the
14 meeting that you've just described with Mr. Espinoza's
15 attorney regarding the possible purchase?

14:18:31

16 A. I don't know. I didn't talk to him, the
17 executive director did, and I think that's all the people
18 that talked to him. Maybe RiverWalk did. I don't know.

19 Q. Was there ever any offers or counteroffers
20 after that meeting at which you made the proposal to
21 purchase it and he said he wanted 4.2 million?

14:18:46

22 A. Yes.

23 Q. Describe those for me.

24 A. Um, they thought it was too low, and so the
25 executive director called the appraiser, and the appraiser

14:19:03

1 said that he didn't figure in some of the, um, inventory in
2 the building, and so they re-raised -- they raised the
3 price for the cost of the inventory to 3.25 -- 3,250,000.

4 Q. And how did Espinoza respond to that?

14:19:31

5 A. He came back with, "I want" -- his attorney
6 came back. We were never sure if the attorney was always
7 talking to Espinoza all the time. There just seemed to be
8 too many gaps. But he came back at 3. -- 3,720,000
9 dollars.

14:19:51

10 Q. And what did the Port do in response to that?

11 A. Nothing.

12 Q. Is that where it was left?

13 A. That's where it was left.

14 Q. After that did Mr. Espinoza sell any portion
15 of that property?

14:20:04

16 A. Um-hmm. He did.

17 Q. Which portion?

18 A. Well, it's -- it's a piece that's to the north
19 of it, uh, north of the parking lot, and it was -- he sold
20 it to, uh -- and I don't know the fellow's name. I saw it,
21 but I don't remember, but he sold it to a guy who just
22 built a four-story motel there.

14:20:16

23 Q. You think that Best Western motel there is
24 aesthetically pleasing?

14:20:36

25 A. I don't know.

1 Q. Did the Port have an option on the piece of
2 property that was sold upon which the hotel was built?

3 A. Yes.

4 Q. Did the Port ever consider exercising that
14:20:51 5 option?

6 A. No. We would not pay the \$750,000 he was
7 asking for the portion.

8 Q. Did you feel that that was too much?

9 A. Yes.

14:21:02 10 Q. What did you think the fair market value of
11 that property to be?

12 A. Um, I don't know. I didn't think it was worth
13 that.

14 Q. Have you ever looked back upon that with any
14:21:14 15 regret?

16 A. No.

17 Q. Did the Port have the opportunity to provide
18 any comment or input to the City with respect to the
19 development of that piece of property?

14:21:32 20 A. I'm sure they did.

21 Q. Did the Port ever avail itself of that
22 opportunity?

23 A. I don't know.

24 Q. Do you think it should have?

14:21:46 25 A. I don't know. I -- we never -- when you're

1 not getting a -- when you're not getting a plan for what's
2 going to happen, uh -- they could have gone to the City at
3 any time.

4 Q. Who is that?

14:21:57

5 A. RiverWalk. They could have gone to the City
6 and showed them what they were going to do, but they never
7 did.

8 Q. So you were just waiting for RiverWalk to do
9 something?

14:22:07

10 A. That's right. They're the developers.
11 We're -- we work for the people.

12 Q. Did the Port, notwithstanding the RiverWalk
13 project, have any interest in protecting its position out
14 there with regard to the development of that property?

14:22:24

15 A. Say that again.

16 MR. MEHLHAF: Let me ask the court reporter to
17 read it back, please.

18 (The reporter read back as requested.)

19 THE WITNESS: You mean where the motel is?

14:22:42

20 BY MR. MEHLHAF: (Continuing)

21 Q. Yes.

22 A. No.

23 Q. Why do you say "no"?

14:22:53

24 A. Well, we'd -- it -- it belonged to the Parker
25 House.

1 Q. Did you think that the development of that
2 property into a Best Western might have any impact upon the
3 Port's property?

14:23:15

4 A. Well, any development out there is a
5 noticeable change in the area. Anything would make a
6 difference.

7 Q. What was the Port prepared to pay for that
8 piece of property, had it had the opportunity to buy it?

14:23:34

9 A. Hmm, I have no idea. We didn't talk about
10 what we would or wouldn't pay. When they told us 750,000,
11 it was just "no."

12 Q. Let's talk about the Hambleton property.

13 A. The what?

14 Q. The Hambleton property.

14:23:48

15 A. Okay.

16 Q. I think you indicated earlier that there had
17 been some conversation between the owner of the Hambleton
18 property and Rick Bowler.

19 A. Um-hmm.

14:24:00

20 Q. Tell me what you recall of that.

21 A. I wasn't there.

22 Q. Were you told about it?

23 A. Um-hmm.

24 Q. By whom?

14:24:08

25 A. Mike Reinhart.

1 Q. Who is Mike Reinhart?

2 A. He's the broker at Camas Realty. He was
3 there. He usually represents Jim Hambleton.

4 Q. What did he tell you about the conversation?

14:24:32

5 A. I just know Jim Hambleton from the past, but
6 they said Rick had more than his share to drink and was a
7 pushy son-of-a-gun, and Jim Hambleton didn't like that at
8 all.

9 Q. So after that interaction between Jim

14:24:48

10 Hambleton and Rick Bowler, what other efforts were made to
11 see whether or not acquisition of that property could be
12 made?

13 A. Well, uh, the commissioners -- Alan spent
14 time; we went and talked to, uh, a lady about Brownsville,
14:25:04 15 which allows you federal money from 50 to 70 percent, and
16 Alan took time to explain that to Jim and saying he
17 wouldn't have to clean it up if the Port bought it or
18 RiverWalk bought it, just to give him a feeling, a good
19 faith feeling that we would give him information that we
14:25:21 20 had. And, uh, Jim said he appreciated it.

21 Q. Did the Port ever talk with Mr. Hambleton
22 about price at which the property --

23 A. No.

24 Q. -- might be acquired?

14:25:33

25 A. Jim Hambleton wouldn't put a price on it.

1 Q. Did he have any interest in selling it?

2 A. Well, there's a problem with it, because Jim
3 Hambleton only owns half of it, and his dad's brother owns
4 the other half, and both of the -- both of the parents were
14:25:52 5 dead, and, uh, so it was the two families left that were in
6 control of it, and so it had to be two parties that agreed
7 on it, on selling it.

8 Q. Did the Port ever explore that possibility?

9 A. Well, no. Jim just said he wasn't interested
14:26:12 10 in selling it, his half, so -- and the other half, they
11 never agree on anything.

12 Q. Did the Port ever at any point in time propose
13 any trade of properties with Hambleton?

14 A. Hmm, not straight across, no.

14:26:34 15 Q. Did the subject of a trade ever come up?

16 A. Not really. Not with Hambleton.

17 Q. Is there something that is commonly referred
18 to as the Hambleton Industrial Building No. 4 and 5?

19 A. Yes.

14:26:51 20 Q. What do you understand that to be?

21 A. Uh, it's just another entity in the logging
22 industry that Jim has.

23 Q. Was there ever any discussion in which the
24 Port was involved regarding the industrial building?

14:27:07 25 A. Doing what?

1 Q. Was there ever any discussion that the Port
2 had regarding the industrial building?

3 A. His industrial building?

4 Q. Yes.

14:27:19 5 A. Uh, not really. He wanted to buy more
6 property around it. He asked us if we had property to sell
7 him.

8 Q. Did a trade proposal get made during that
9 conversation?

14:27:31 10 A. No.

11 Q. Where did that conversation go?

12 A. What conversation?

13 Q. That Mr. Hambleton initiated with the Port.

14 A. I don't know. He just talked to the executive
14:27:42 15 director and asked if there was five acres around his
16 place. We have different pieces of property around there.
17 Sometimes people want to sell what they have.

18 Q. Have you ever been involved in any decisions
19 made by the Port with regard to any long-term leases of
14:28:09 20 Port property?

21 A. Probably only to okay them.

22 Q. Okay. How many times has that occurred?

23 A. Well, when we talk about people that want
24 to -- whether we have a new building or an old one and they
14:28:28 25 want to lease it for ten years and this is the value,

1 that's what the executive director, uh, comes up with and
2 tells us what the old ones were, and that's about it. And
3 we approve it if it -- if we get a recommendation to do it.

14:28:47 4 Q. During your tenure as a commissioner, has the
5 Port ever entered into a 50-year lease with any tenant?

6 A. I don't know. I don't remember one, no.

7 Q. Is the Port opposed to a long-term lease such
8 as a -- such as a 50-year lease?

9 A. No, not as long as the people meet the
14:29:06 10 conditions we tell them.

11 Q. But you have no memory of ever having been
12 involved in approving any lease that involved a 50-year
13 term?

14 A. No, I don't.

14:29:18 15 Q. At some point in time did the Port make the
16 decision that it did not want RiverWalk to have a 50-year
17 lease?

18 A. I don't think they ever got to that point.

19 Q. That wasn't exactly my question, though.

14:29:34 20 Did the Port ever decide at some point that it
21 didn't want RiverWalk to have a 50-year lease?

22 A. I don't think it came up to me.

23 Q. At some point in time did you become involved
24 in a discussion with regard to a potential lease of
14:30:01 25 property to RiverWalk?

1 A. No, except what was, you know, in this stuff
2 (indicating).

3 Q. "In this stuff" meaning?

4 A. (Indicating.)

14:30:12 5 Q. The option agreement?

6 A. That and the master development agreement.

7 Oh, I -- well, maybe there was one. Uh, let me think. Uh,
8 and I'm a little vague on it, but there was a -- some

9 terminology and some talking, but I don't remember if it

14:30:29 10 was that -- when we were dealing with when they were doing
11 the 14.5 acres in -- in lieu of, you know, the 65 acres.

12 That's all I know. I mean, I don't know if they were going
13 to lease it or buy it, or what, but that was a discussion
14 that went on. That was it, that I remember.

14:30:48 15 Q. How did --

16 A. Maybe that was a lease, maybe it was a sale.

17 Q. Okay. How did the issue of the 14-plus-acre
18 lease proposal come up?

19 A. Uh, I didn't -- I wasn't involved in that.

14:31:03 20 Q. Who was involved with that?

21 A. Hmm, probably, uh -- maybe it was Byron or
22 maybe it was Sheldon or maybe it was -- and Alan and
23 maybe -- and the attorney, our legal counsel.

24 Q. Mr. MacPherson?

14:31:18 25 A. Um-hmm.

1 Q. Were you ever told about those conversations?

2 A. Yeah, that was brought up, but it was brought
3 up that they were looking at that.

14:31:31

4 Q. Well, tell me what discussion ever took place
5 in your presence with regard to a potential lease of
6 14-plus acres.

14:31:44

7 A. Well, I didn't know if it was a lease or not.
8 That's what I'm saying. I don't know whether it was a
9 sale, a lease, or a rent. All I'm saying is that they
10 talked to them about doing that when they hadn't met the
11 conditions that I mentioned to you earlier.

12 Q. In your experience, does the Port have a
13 standard lease form that it uses as a template for
14 preparing leases?

14:32:10

15 A. I think they have different kinds of leases.

16 Q. And in your experience, when the Port needs to
17 enter into a lease as a landlord or a lessor, who typically
18 prepares those leases?

14:32:42

19 A. I think the executive director and, uh, legal
20 counsel go through what's -- you know, what we've used in
21 different situations over the past 50 years.

22 Q. So legal counsel again is Mr. MacPherson?

23 A. Yes.

14:32:55

24 Q. And what did you understand the role of the
25 executive director to be in that process?

1 A. His experience of renting to people. He was
2 like a property manager. That's what he does at the
3 industrial park. We sell half, and we keep half. He is
4 the -- he understands what people have paid and what the --
14:33:15 5 he checks on finding out what the rates have changed in
6 Vancouver in other industrial parks, so a lot of it is on
7 his, uh, knowledge and experience.

8 Q. Were there ever any proposals made by the
9 executive director or Mr. MacPherson with regard to a lease
14:33:35 10 with RiverWalk?

11 A. Only if it would have been with our -- that
12 master development agreement when we were talking about it,
13 whether it was -- was or wasn't going to be.

14 Q. Was there or was there not a proposal?

14:33:55 15 A. Well, it's in their paperwork, isn't it?

16 Q. What I'm asking you is, did the executive
17 director or Mr. MacPherson ever come to the board with a
18 proposed lease to be offered to RiverWalk?

19 A. I believe they did.

14:34:12 20 Q. When was that?

21 A. Sometime after we got that master development
22 agreement.

23 Q. What was the proposal?

24 A. I have no idea. I don't remember. I would
14:34:24 25 assume that it matched what they were trying to say or

1 criticized it and changed it. That's the best I can give
2 you.

3 Q. Was a long-term lease ever proposed by the
4 Port to RiverWalk?

14:34:41 5 A. I don't know.

6 Q. Was a lease longer than three years ever
7 proposed by the Port to RiverWalk?

8 A. I don't know. I don't even know the three
9 year, but that's okay.

14:34:56 10 Q. In order for the Port to make any proposal,
11 would it require the approval of the commissioners?

12 A. Yes.

13 Q. So before any proposal was made, the
14 commissioners would be informed of what the proposal was,
14:35:13 15 there would be discussion on it, and then a vote taken with
16 regard to whether or not to make the proposal?

17 A. I would think so, yes.

18 Q. Do you recall any discussion or a vote having
19 been taken with regard to a lease of 14.7 acres to
14:35:31 20 RiverWalk?

21 A. Um -- uh, are you asking me if they got it and
22 we were talking about it, or what are you -- what are you
23 asking?

24 MR. MEHLHAF: Let me ask the court reporter to
14:35:45 25 read the question back again.

1 (The reporter read back as requested.)

2 THE WITNESS: We talked about the 14.7, but,
3 like I said, I'm not sure it was a lease, sale, or rent.
4 But like I told you before --

14:36:04 5 BY MR. MEHLHAF: (Continuing)

6 Q. What did you vote on?

7 A. I said, there's never -- the conditions have
8 never been met, and I wanted to see if they were going to
9 do it.

14:36:13 10 Q. Did you ever vote on a lease?

11 A. No, I didn't vote on one.

12 Q. And, again, if a proposal was to be made, your
13 understanding would have been that it would have had to
14 require the approval of the commissioners before it could
15 be done?

14:36:36 16 A. Yes.

17 Didn't we sign these (indicating)?

18 Q. We're talking about 14.7 acres now. That was
19 further along in the process, wasn't it?

14:36:49 20 A. Well, I don't know who else would have the
21 authority to do it. The commissioners got to -- are the
22 ones responsible for that.

23 Q. Had you ever been involved with regard to the
24 preparation of a master development agreement?

14:37:13 25 A. No.

1 Q. Did you have any contemplation as to what that
2 document would include as it related to the RiverWalk
3 project?

14:37:29

4 A. Just what they wrote in the master development
5 agreement that I saw or read.

6 Q. Prior to your receipt of that, did you have
7 any contemplation of what the content of that document
8 would be?

14:37:52

9 A. Hmm, I'm not sure, because it's a different
10 type when it's a public, private, uh, type of a ruling.
11 I -- most of my stuff is mostly private that I deal with.

12 Q. Did you have an understanding of what the MDA
13 was intended to address in this particular case?

14 A. I think so.

14:38:12

15 Q. What was that?

16 A. What they wanted on it and what is written on
17 it word for word. Whatever it says, that's what they
18 wanted.

14:38:29

19 Q. So your understanding of what the MDA was
20 intended to address is whatever RiverWalk wanted?

21 A. That's right, whatever they wrote in it.

22 Q. Who did you understand would have the
23 responsibility on behalf of the Port to review the content
24 of the MDA proposed by RiverWalk?

14:39:01

25 A. You're going to have to repeat that again.

1 I'm not quite -- I didn't get the first part.

2 Q. Okay. I'll repeat it.

3 Who do you understand to have had the
4 responsibility on behalf of the Port to review and comment
14:39:17 5 upon any MDA proposal made by RiverWalk?

6 A. That would probably be our legal counsel.

7 Q. Do you know whether or not Mr. MacPherson
8 reviewed and commented upon the MDA that was submitted by
9 RiverWalk?

14:39:39 10 A. I'm sure he reviewed it, and I'm sure he
11 brought it up at -- at some time.

12 Q. Why are you sure of that?

13 A. Because it was brought up, and since he's the
14 one that reviewed it, it would have been him that was the
14:39:56 15 one that we would have questioned.

16 Q. Do you recall any conversation regarding that
17 topic?

18 A. That is the last document that we received
19 from RiverWalk?

14:40:06 20 Q. That's not my question.

21 A. Is that what you're talking about?

22 Q. I'm just asking you if you recall any
23 conversation about the MDA submitted by RiverWalk.

24 A. Okay. That's the one we got.

14:40:17 25 Q. Correct.

1 A. Oh. Um, yes, I'm sure they discussed it.

2 Q. Who discussed it?

3 A. Um, the executive director and the legal
4 counsel and the commissioners.

14:40:37

5 Q. Do you recall having been involved in any
6 discussion regarding the MDA?

7 A. I was probably there, yes.

8 Q. Do you recall any of that discussion?

14:40:48

9 A. Well, if they asked me a question, I said,
10 "I'm not -- I want to know if they're doing what they're
11 supposed to do. Do they have a master development plan
12 that they've turned in to the City of Washougal yet?"

13 And they said, "No."

14:41:02

14 So they didn't do what they were supposed to
15 do, so I was just a listener, pretty much.

16 Q. Can you recall any discussion?

17 A. Not -- not word for word without maybe
18 changing it wrong.

19 Q. Can you recall any discussion?

14:41:21

20 A. Well, we were talking about the different
21 parts of it, you know, and it's -- it's, uh, "This is what
22 the developers want to do," and then they went over the
23 points.

24 Q. Who went over what points?

14:41:41

25 A. Shawn read them off at the executive meeting,

1 yes.

2 Q. Read off what points?

3 A. The points that are in that agreement.

4 Q. Which points?

14:41:55 5 A. I don't remember all of them. They're in
6 there. I just looked at them the other day.

7 Q. Well, what points --

8 A. It's just like a --

9 Q. -- are you referring to?

14:42:04 10 A. It's just like a real estate contract.

11 There's lots of points in there that they wanted us to do.

12 Q. Okay. Take a look at the option agreement
13 now --

14 A. Okay.

14:42:12 15 Q. -- and look through that and tell me what
16 points you're referring to.

17 MR. COURSER: I thought we were talking about
18 the master development agreement.

19 A. That's what he was talking about, I think, was
14:42:22 20 the master development agreement.

21 Weren't you?

22 BY MR. MEHLHAF: (Continuing)

23 Q. Right.

24 A. Okay. I don't see it here. This is the
14:42:30 25 option agreement only.

1 Q. All right. Well, I misspoke myself, then.

2 Let's go back to the points. Can you remember
3 even one point that was the subject of discussion?

4 A. Special to me?

14:42:46 5 Q. No, that came up during the course of whatever
6 meeting you attended where this conversation took place.

7 A. No, I just -- I just remember it's like going
8 over any points in a contract. That's what -- that's what
9 they talked about, was each one or if somebody had a

14:43:04 10 question about any of them, and I don't remember exactly
11 what happened on them.

12 Q. After that conversation took place, what was
13 your understanding of what was going to happen next?

14 A. Well, I think we were supposed to -- I think
14:43:21 15 they were supposed to -- I think Shawn was supposed to get
16 back to them and ask them what they had been doing.

17 Q. Been doing in terms of what?

18 A. The conditions they were supposed to meet.
19 Where's the master development plan? Where's the diagram?

14:43:34 20 The one that they did -- did before, did they get another
21 one? They never did.

22 Q. I thought it was the master development
23 agreement that you had in front of you that you were going
24 over.

14:43:44 25 A. That's right, but we were -- the conditions --

1 I asked him, I said, "They haven't met the conditions yet.
2 Where's their stuff?"

3 Q. It's the conditions that got me off track the
4 last time.

14:43:55 5 Is it the conditions in the option agreement?

6 A. Well, yeah, that's right, it was.

7 Q. All right. Okay.

8 A. And they hadn't done their part on the option
9 agreement so the option was -- to me, it was just there.

14:44:05 10 Q. Let's go back, then, to the option agreement.

11 A. Okay.

12 Q. What conditions had they not met at the time
13 that the MDA was under consideration?

14 A. They hadn't talked to, uh, Mike Dickerson or
14:44:16 15 to Maryanne or to Roberta Tidland or -- Jim Hambleton had
16 gone sideways, and we were all involved in talking to
17 Espinoza. And there had been no master plan, there was
18 nothing gone to the City of Washougal. That was one of the
19 conditions, one of the big ones.

14:44:33 20 Q. What involvement was the City of Washougal to
21 have in the project?

22 A. Well, I think it says in one of them that they
23 would go along with the City of Washougal with the demands
24 and the zoning and the conditions that they had for -- it
14:44:49 25 was in one of the agreements, either in the option or in

1 the other one.

2 So they had a -- the City -- that's city
3 property, city-controlled, the infrastructure. And they
4 had to do that.

14:45:04 5 Q. Did you attend any meetings with the City of
6 Washougal as it related to --

7 A. No, I didn't.

8 Q. Okay. You've got to be patient with me. I
9 know I talk slowly, but let me complete my question before
14:45:14 10 you start to answer.

11 Okay?

12 A. Okay. I will.

13 Q. Did you understand that there was going to be
14 any change in the zoning required in order to accommodate
14:45:25 15 the mixed-use development?

16 A. Uh, yes.

17 Q. What change did you understand would have to
18 take place?

19 A. Hmm, I don't know. The -- it's zoned highway
14:45:37 20 commercial right now.

21 Q. Do you know whether or not that zoning would
22 have to be changed in order to accommodate a development on
23 Port-owned property?

24 A. Some of it would have to be.

14:45:48 25 Q. What part and why?

1 A. Well, mixed use only has certain things that
2 you can have there. And, uh, so if you're going to change
3 the -- if you're going to change what goes in, there's a
4 list of things that go into a, uh, highway commercial, and
14:46:04 5 we were -- I think that we were going to have to change it
6 to business commercial.

7 Q. Did you mean to say that the highway
8 commercial designation would not accommodate the
9 development on Port-owned property?

14:46:19 10 A. I don't know what they would have. All I saw
11 was what they said they might put in there or what the WAC
12 committee said they wanted in there.

13 Q. Who did you understand to have the
14 responsibility to discuss these issues with the City of
14:46:38 15 Washougal?

16 A. You're kidding.

17 Q. No, I'm very serious.

18 A. The developers do that. That's their --
19 that's their -- they're the ones that talk to the City.

14:46:49 20 Q. Why are you so incredulous?

21 A. Probably should have been an attorney,
22 shouldn't I?

23 Q. I'm not so sure.

24 A. Good.

14:47:05 25 Q. I think you found your calling.

1 Let me ask you to take a look at Page 7 of the
2 option agreement.

3 A. Okay.

4 Q. Do you see Paragraph 26?

14:47:30 5 A. Yes.

6 Q. That reads, "For portions of the property
7 currently owned by another party proposed to be developed
8 with retail and residential uses, Port and RiverWalk shall
9 request that the City of Washougal form a community renewal
14:47:44 10 area pursuant to RCW 35.81."

11 In reading that language, isn't it apparent to
12 you that both RiverWalk and the Port were to work with the
13 City of Washougal and make the required requests?

14 A. If we had ever gotten to that, yes.

14:48:11 15 Q. Do you know what an interlocal agreement is?

16 A. Hmm, sometimes the Port and the City do things
17 together. Uh, not in a lot of cases. We're kind of
18 individual. But if we have to do something with the City,
19 uh, like we did, uh, Captain William Clark Park, we have an
14:48:42 20 interlocal agreement with that with the City of Washougal
21 and Clark County. We each have different responsibilities,
22 so --

23 Q. Is it your understanding that an interlocal
24 agreement was contemplated by the RiverWalk development?

14:48:59 25 A. No. No, it wasn't.

1 Q. So an interlocal agreement, in your mind, was
2 not one of the conditions of the deal?

3 A. No, I don't know if it was or not. I'm not
4 saying it wasn't. I'm just saying that the City of
14:49:40 5 Washougal -- as it says in here, the infrastructure, uh,
6 comprehensive plan, the zoning ordinances, all of that
7 stuff has to be considered when anybody develops any of the
8 Port property.

9 Q. And after the sentence that I read to you
14:49:55 10 before, do you see in that paragraph where it says, "In
11 forming the community renewal area the City of Washougal
12 will be requested to form a Community Renewal Authority
13 that includes all three Port commissioners as members of
14 the board of the Authority."

14:50:11 15 A. Um-hmm.

16 Q. What was the Community Renewal Authority going
17 to do?

18 A. I don't know what they would ask of us.

19 Q. Does it say anything in that paragraph about
14:50:23 20 any representative of RiverWalk being on the Community
21 Renewal Authority?

22 A. Hmm, I don't see that in that paragraph, if
23 that's what you're asking.

24 Q. If there was an interlocal agreement to be
14:50:57 25 entered into as part of the RiverWalk development, who

1 would the parties to that agreement be?

2 A. I don't know. I just assume that it would be,
3 uh, like what happened on the William Clark Park; it would
4 be people who were representing the County, the City, and
14:51:14 5 us, so I'm not sure.

6 Q. Well, doesn't an interlocal agreement by its
7 very definition involve two or more public entities?

8 A. Okay.

9 Q. Wouldn't you agree with that?

14:51:29 10 A. I'll accept it, yes.

11 Q. Do you quarrel with that?

12 A. Don't know.

13 Q. Do you think that RiverWalk would have been a
14 party to any interlocal agreement?

14:52:01 15 A. I don't know what they would do, uh -- I don't
16 think they would do anything until they got the -- what
17 they were going to do to the property, their -- I'm not
18 even sure what we called them, but it was the layout that
19 they had, kind of what they were going to do to the
14:52:18 20 property if they got it. And so the City would have to see
21 that. The City has a lot of requirements, if that's what's
22 going to happen. I'm --

23 Q. Did you understand that the Port was obligated
24 to use its continuous best efforts to negotiate and
14:52:33 25 document the contemplated transaction between the Port and

1 RiverWalk?

2 A. Between who?

3 Q. The Port and RiverWalk.

4 A. Yes.

14:52:43 5 Q. Do you feel that that obligation would require
6 the Port to timely respond to any documents proposed by
7 RiverWalk?

8 A. I don't know if that would be what you'd call
9 timely, but, uh, I would assume they would do something as
14:53:04 10 long as they weren't held up by doing it for lack of the
11 other party.

12 Q. Well, let me ask it this way: Do you believe
13 that that obligation would require the Port to reasonably
14 respond to any document proposed by RiverWalk?

14:53:33 15 A. I don't know what "reasonably" means. I
16 suppose you could say our conditions should have been
17 reasonably met, and they weren't.

18 Q. Is that kind of the theme of your testimony?

19 A. You're darn right.

14:53:59 20 Q. Pardon me?

21 A. Yes. I only have a real estate background,
22 but when you put conditions down, whether it's fixing the
23 roof or inspecting the roof or inspecting the septic or
24 inspecting the siding, it's got to be done.

14:54:21 25 And if the developers make offers and say

1 they'll do this, and they don't do it, then they're the
2 ones that you talk to. And they had a reasonable amount of
3 time.

4 Q. Didn't you believe, sir, that the obligation
14:54:34 5 that the Port had to use its continuous best efforts to
6 negotiate and document the contemplated transaction
7 required the Port to also act in good faith to see that
8 progress was made towards the contemplated transaction?

9 A. Hmm, I think they did that.

14:55:02 10 Q. So you agree with me that that was the Port's
11 obligation?

12 A. To talk to them?

13 Q. To use its best efforts to negotiate with
14 RiverWalk and document the contemplated transaction.

14:55:16 15 A. Yeah, with the best -- with the information
16 that they had given us.

17 Q. So the obligation to use best efforts in terms
18 of trying to get this project done was a two-way street,
19 wasn't it?

14:55:31 20 A. Always.

21 Q. Did you ever participate in any discussions
22 regarding CC&Rs, shared parking agreements, or easements?

23 A. On what?

24 Q. With regard to the proposed RiverWalk
14:55:55 25 development.

1 A. If there were any, I probably did.

2 Q. Do you have a recollection of having been
3 involved in any such discussions?

4 A. No.

14:56:17 5 Q. So you don't know whether you did or not,
6 correct?

7 A. I don't know what they were doing with
8 easements and all of that on our property, but --

9 Q. Were -- were the issues of CC&Rs, shared
14:56:30 10 parking agreements, and easements of particular importance
11 to you as they related to this development?

12 A. I don't even know if we got to talking about
13 that, because what we talked about, they had their --
14 the -- the map that they gave us was never accurate or
14:56:48 15 complete or anything else, and it had different, uh, things
16 set up.

17 But the only one I talked about was the Parker
18 House property and, uh -- and the sharing of the parking
19 there. That's the only thing that we talked about.

14:57:05 20 Q. Did you ever attend any meeting that was also
21 attended by any representative of the City of Washougal
22 that had to do with zoning?

23 A. No.

24 Q. How sure are you of that?

14:57:22 25 A. Unless they came to our office, I never went

1 to the City of Washougal.

2 Q. Well, do you recall any representative of the
3 City of Washougal coming to the Port's office to have that
4 discussion?

14:57:35 5 A. No, I don't.

6 Q. Do you recall a decision having been made that
7 there was no need to pursue the community renewal area?

8 A. No.

9 Q. Do you believe that, had that decision been
14:57:51 10 made, you would have a memory of it?

11 A. If it was probably explained to me a little
12 better, how it was to be done, what was taken part in it.

13 Q. Was there any movement towards development of
14 a community renewal area at all under this proposed
14:58:16 15 development?

16 A. I couldn't say.

17 Q. Because you have no memory of it?

18 A. I have no memory of it.

19 MR. MEHLHAF: Let's take a brief break.

14:58:57 20 (Recess taken: 2:58 to 3:07.)

21 BY MR. MEHLHAF: (Continuing)

22 Q. Mr. Carroll, do you maintain any records
23 regarding your activities as a commissioner for the Port at
24 home?

15:08:02 25 A. Do I?

1 Q. Yes.

2 A. Yes.

3 Q. What type of records do you have at your
4 house?

15:08:09 5 A. Hmm, I suppose it would be, uh -- as I
6 mentioned earlier, I have some manila files, and I put
7 stuff that's related to the Port, to -- to the industrial
8 park, or to the marina or to the airport in those files.
9 Just a manila folder of whatever comes up at our meetings.

15:08:29 10 Q. Were you in the habit of taking notes during
11 meetings?

12 A. No, I'm not.

13 Q. How come you had to think about that?

14 A. Whether I took notes or not?

15:08:40 15 Q. Yeah.

16 A. Because I usually will write on the paper. I
17 don't take notes on a legal file.

18 MR. MEHLHAF: Okay. We'll follow it up with a
19 more formal request, but I'm going to ask that both Mr.
15:08:57 20 Carroll and the other commissioners make sure that they
21 have produced to counsel for the Port all Port-related
22 documents that involve the RiverWalk project to counsel for
23 production.

24 (REQUEST for production.)

25

1 BY MR. MEHLHAF: (Continuing)

2 Q. Mr. Carroll, who is Mark Henshaw?

3 A. I don't know.

4 Q. That name doesn't ring any bells with you?

15:09:28 5 A. Mark Henshaw does, but I don't place no face
6 or I don't place any activity, uh, where I was around him
7 right now.

8 Q. Who is he?

9 A. I don't know.

15:09:40 10 Q. Did the Port ever retain an expert from
11 Seattle to involve itself with regard to any activity
12 connected with the RiverWalk project?

13 A. I don't know.

14 Q. To your knowledge was there anybody that
15:09:59 15 prepared drawings and documents regarding specifications of
16 various things that involved the RiverWalk project?

17 A. Diagrams and that, no.

18 Q. Did you ever have any conversations with any
19 representative of the City of Camas regarding the RiverWalk
15:10:58 20 project?

21 A. No.

22 Q. To your knowledge did the City of Camas have
23 any interest in the RiverWalk project?

24 A. Most everybody kept pretty quiet both from
15:11:18 25 Washougal and Camas, so I didn't hear it from either one

1 specifically.

2 Q. Did you ever talk to anybody that was a
3 representative of the City of Washougal about the RiverWalk
4 project?

15:11:33 5 A. No.

6 Q. And, as I understood your testimony before,
7 you don't recall having attended any meetings that were
8 also attended by any representative from the City of
9 Washougal?

15:11:45 10 A. Not that I can remember at all, and I didn't
11 go to their meetings, and they may have gone to the -- to
12 the WAC meetings, but I didn't go to any.

13 Q. Do you recall any involvement by
14 Georgia-Pacific in the RiverWalk project?

15:12:08 15 A. Hmm, I remember something, yes.

16 Q. What do you remember?

17 A. That, uh, Georgia-Pacific was, uh, contacted,
18 and it had to do with Lady Island.

19 Q. What did it involve?

15:12:29 20 A. It involved looking for a place on Lady Island
21 that might be a, uh -- a place that you could develop a
22 marina and boat launch and enough space, uh, using the
23 power lines that are not -- can't be built under, uh, for
24 another, um, area for boat launching and marina facilities.

15:12:55 25 Q. Was anybody designated to interface with

1 Georgia-Pacific?

2 A. Um, the only person I know of -- that I know
3 of was Sheldon Tyler.

15:13:13

4 Q. What do you know of any communications that
5 Mr. Tyler may have had with Georgia-Pacific?

15:13:37

6 A. Um, nothing. Just the lady that -- I went to
7 a meeting where this lady showed up, uh, not Carol Curtis
8 but Carol something, and, uh, where she told us that they
9 didn't want anything to, uh, do with selling or giving away
10 any of their property on Lady Island at that time.

11 Q. What involvement did Byron Hanke have with
12 regard to the RiverWalk project?

13 A. I'm not a -- I'm not exactly sure. I -- I
14 don't -- I don't know.

15:14:15

15 Q. What were his duties and responsibilities?

16 A. Um, pretty much the same as Sheldon Tyler's
17 was.

18 Q. So did he assume any responsibility with
19 respect to the RiverWalk project?

15:14:31

20 A. Well, I suppose in the talking and the, uh,
21 meetings that they, uh, had with different, uh, RiverWalk
22 people, he probably passed that information on.

23 Q. The Port hired Mr. Hanke as a consultant,
24 correct?

15:14:48

25 A. Right.

1 Q. And they paid him \$90 an hour for his time,
2 correct?

3 A. I understand that if that's what you say.

4 Q. Whose decision was it to hire Mr. Hanke?

15:15:02 5 A. Hmm, I can't remember. I think it was, uh --
6 I think that at the time -- I'm not sure how -- how we came
7 about hiring Byron.

8 Q. My question is who hired him.

9 A. I'm not sure. Uh, it was probably a group.

15:15:29 10 Q. Would it have been the commissioners?

11 A. Well, we probably agreed on it, yes.

12 Q. It wouldn't have happened without approval of
13 the commissioners, would it?

14 A. That's right.

15:15:42 15 Q. So what was Mr. Hanke going to bring to the
16 table as it related to the RiverWalk project?

17 A. Well, it brought in the -- it brought in the
18 fact that, uh, he could concentrate on the RiverWalk.

19 Q. What do you mean by that?

15:15:57 20 A. Well, Sheldon had the day to day running of
21 the Port, and so Byron had -- could concentrate on some of
22 the parts of the RiverWalk and take it off of Sheldon's,
23 uh, back, so to speak.

24 Q. Did Mr. Hanke assume responsibility from
15:16:16 25 Mr. Tyler for the RiverWalk project?

1 A. I don't know.

2 Q. Do you consider yourself as a commissioner to
3 be fairly well informed with regard to Port business and
4 activities?

15:16:29 5 A. Some of it, very informed.

6 Q. Did you believe that you were fully informed
7 with regard to the RiverWalk project?

8 A. I was informed about the principals, and I
9 know pretty much about them, yes.

15:16:49 10 Q. Explain that answer, please.

11 A. Well, I think I know who the principals were,
12 and I think I knew some information about them, and, uh, I
13 knew the things that they were supposed to do and the
14 conditions and things like that, and, uh -- and I
15 concentrated on that.

16 Q. What did you know about the RiverWalk
17 principals?

18 A. Well, I saw a change. I saw it go from a
19 Bowler-Benson to a Benson to a McKibbin-Benson and then a
15:17:20 20 Bowler back again, so that's what I -- I saw. I saw a
21 change of leadership.

22 Q. Anything about that that you considered to be
23 significant?

24 A. Yeah, I never -- I never saw any paperwork
15:17:37 25 that asked me to accept a change in the leadership.

1 Q. Were you expecting that?

2 A. Yes, I did. When somebody takes in -- a third
3 party comes in, I think you should have a paper
4 representing that.

15:17:54 5 Q. Well, was there any representation made at the
6 time that the option agreement was entered into as to who
7 would remain the principals of RiverWalk on the Columbia,
8 LLC?

9 A. No, but there was no mention of any assigning
15:18:07 10 either.

11 Q. Did you believe that that was somehow wrong?

12 A. No. I didn't know. Uh, if you take credit
13 for the first principals, and then another principal comes
14 in, it would be nice to know the background and the things
15:18:23 15 about him because you were doing a business with the
16 original people. How do you know about the -- the third
17 party?

18 Q. You said that Mr. Bowler left and then came
19 back again.

15:18:37 20 What do you mean by "came back again"?

21 A. Well, I just meant that he had talked -- he
22 was -- he was still talking about it all the time.

23 Q. In what context?

24 A. Hmm, just when you ran into him.

15:18:54 25 Q. Did you come to understand that Mr. Bowler was

1 no longer involved as a principal of RiverWalk on the
2 Columbia?

3 A. I was never sure.

4 Q. Did your uncertainty with regard to who the
15:19:10 5 principals were at any one point in time in any way impact
6 any decision that was made with regard to the RiverWalk
7 development?

8 A. No.

9 Q. Did you consider the RiverWalk project to be a
15:19:28 10 substantial factor in the decision to bring Mr. Hanke in?

11 A. Mainly from experience that he had, yes, it
12 was a -- a good move.

13 Q. Did you consider the RiverWalk project to be a
14 substantial factor in the decision to bring Mr. Hanke in?

15:19:59 15 A. Oh, I see.

16 Well, we needed the help, and he was a -- a
17 good man for the job. We needed time -- we needed somebody
18 with more time to spend just on RiverWalk and some things
19 which gave Sheldon the time to concentrate on a lot of the
15:20:25 20 Port things. So it was a good move to bring him in, as far
21 as I was concerned.

22 Q. Can you answer that question with a "yes" or a
23 "no"?

24 A. Let me hear it again.

15:20:35 25 Q. Okay. Was the RiverWalk project a substantial

1 factor in the decision --

2 A. Oh.

3 Q. -- made by the Port to bring Mr. Hanke in as a
4 consultant?

15:20:51 5 A. It played a big part. I -- I can't say it was
6 the only thing because there were too many -- we were
7 trying to position ourselves where we had a principal and a
8 vice principal. In case anything should happen to Sheldon
9 or anything should happen to anybody, we didn't have just
15:21:12 10 one person having all the information. That's the reason
11 we brought in somebody like Scot Walstra. We weren't -- we
12 were looking for -- I taught school, I spent time in a lot
13 of positions, and there's usually two people, not just one,
14 that has all the knowledge. And it was better to have it
15:21:26 15 diversified in case anything happened to either one of
16 them.

17 So whatever way you want to take that. I'd
18 say substantial and nonsubstantial both.

19 Q. Was it a significant factor?

15:21:41 20 A. Well, on the things he did or talked about on
21 RiverWalk, yes, but he also had them on other things, so it
22 was substantial on that also.

23 Q. We seem to be having a difficult time
24 communicating.

15:21:57 25 A. Yes, we do.

1 Q. When the decision was made to hire Mr. Hanke,
2 bring him in, pay him \$90 an hour, and consult for the
3 Port, was the RiverWalk project a significant factor in the
4 Port's decision to bring Mr. Hanke in?

15:22:15

5 MR. COURSER: Okay, objection; asked and
6 answered.

7 I think he's done the best he can.

8 A. Yeah, I -- it would -- you would probably have
9 to give me a 1 to 10 on that.

15:22:29

10 BY MR. MEHLHAF: (Continuing)

11 Q. All right. What was it that you thought --
12 strike that.

13 Did you consider Mr. Hanke to be supportive of
14 the RiverWalk project?

15:22:45

15 A. Yes, I did.

16 Q. Were there ever any differences of opinion
17 between Mr. Hanke and any of the commissioners with regard
18 to the RiverWalk project?

19 A. Not that I can recollect.

15:23:12

20 Q. What is Mr. Hanke doing for the Port now?

21 A. Um, nothing that I know of.

22 Q. Did Mr. Hanke submit billings to the Port for
23 payment regarding his services?

24 A. I'm sure he did.

15:23:34

25 Q. Did you ever review those?

1 A. Just in -- just in reviewing all of our, uh,
2 consulting by everybody, yeah. It was there. It was there
3 every two weeks or every month, whatever we paid him. It
4 was in our, uh, voucher list.

15:23:58 5 Q. Did you ever question any description or item
6 that Mr. Hanke had included in his billing?

7 A. No, I didn't. Mary, our secretary, usually is
8 pretty -- pretty careful on those things.

9 Q. What was the level of description that
15:24:14 10 Mr. Hanke provided regarding the services?

11 A. The level of what?

12 Q. Description that he provided regarding what
13 he'd actually done on a day-to-day basis.

14 A. I don't know. Usually -- usually the, uh,
15:24:33 15 secretary that covers the vouchers has it in a stack of
16 papers.

17 Q. So what did you see, just a bottom-line
18 number?

19 A. We just saw it in the vouchers, the payment.
15:24:41 20 But she has a stack of them, same as the things that
21 Riverview gave us a billing for it, it was in the vouchers,
22 and she had the, uh, original papers.

23 Q. Is a mixed-use development on Port property
24 still a project of interest to the Port?

15:25:06 25 A. Uh, do you mean to all the commissioners, or

1 how do you mean that?

2 Q. I mean to the Port. Is a mixed-use --

3 A. To the Port.

4 Q. -- project, development on Port property still
15:25:24 5 of interest to the Port?

6 A. Well, as far as I know, yes.

7 Q. Why is that?

8 A. Because that's what we have, is that we have
9 property there. We thought it was -- we thought that any
15:25:41 10 development of the Port property is valuable.

11 Q. Has there been any discussion among the
12 commissioners in 2008 regarding a mixed-use development on
13 Port property?

14 A. Hmm, uh, do you mean the original 65 acres, by
15:26:00 15 any chance, or do you mean just Port property?

16 Q. Just Port property.

17 A. Yes, they've talked about it.

18 Q. Tell me of those discussions.

19 A. Well, just people that have applied for
15:26:09 20 acreage.

21 Q. Did those involve mixed-use developments?

22 A. Um-hmm.

23 Q. Give me an example.

24 A. Hmm, a Christian group, I'm not sure exactly
15:26:24 25 what kind of -- they, uh -- they have classes and seminars

1 and that, uh, for people in the Christian world, and they
2 wanted to buy five acres at the east of the fourteen five
3 to develop that, not take the waterfront, leave it for us
4 to do something else with it. Um, I think that's the main
15:26:47 5 one that I've -- that I know about.

6 Q. What was the Port's reaction to that proposal?

7 A. Uh, nothing until, uh -- we just put them off
8 for a while because we're involved in this.

9 Q. Have any developers approached the Port with
15:27:06 10 regard to any proposals for mixed-use development?

11 A. Not to me.

12 Q. To anybody that you're aware of associated
13 with the Port?

14 A. No.

15:27:23 15 MR. MEHLHAF: All right. Let me take another
16 short break, and we're getting close to the end.

17 (Recess taken: 3:27 to 3:33.)

18 BY MR. MEHLHAF: (Continuing)

19 Q. I don't have any further questions for you,
15:33:09 20 sir.

21 A. None at all? I was beginning to like it down
22 at this end of the table.

23 Q. Were you? Sorry to disappoint.

24 MR. COURSER: I have no questions.

15:33:19 25 MR. MACPHERSON: No questions.

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MR. COURSER: We will read and sign.

(Deposition concluded at 3:33 p.m.)

1 STATE OF OREGON)
)
 2 COUNTY OF MULTNOMAH) ss.

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I, Kimberly J. Allen, RPR, CSR, CRR, hereby certify that, pursuant to the Rules of Civil Procedure, JIM L. CARROLL personally appeared before me at the time and place set forth in the caption hereof; that at said time and place I reported in stenotype all testimony adduced and other oral proceedings had in the foregoing matter; that thereafter my notes were reduced to typewriting under my direction; and the foregoing transcript, Pages 1 to 4, both inclusive, constitutes a full, true, and correct record of such testimony adduced and oral proceedings had and of the whole thereof.

Witness my hand and CSR seal at Portland, Oregon, this 25th day of September, 2008.



Kimberly J. Allen

Kimberly J. Allen, CSR, RPR, CRR
 Oregon CSR #93-0272
 Washington CCR #2758
 Idaho CSR #743