

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. )

DEPOSITION OF ALAN F. HARGRAVE  
VOLUME II - Pages 85 to 173

Taken in behalf of the Claimant

November 4, 2008

1 BE IT REMEMBERED that the deposition of ALAN  
2 F. HARGRAVE was taken before Kimberly J. Allen, RPR, CSR,  
3 CRR, on November 4, 2008, commencing at the hour of 9:00  
4 a.m., in the conference room of the law firm of Stoel  
5 Rives, LLP, in the City of Vancouver, County of Clark,  
6 State of Washington.

7 -:-

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ALSO PRESENT: Mr. Joel Rice, Mr. Mark Benson, Mr. John  
McKibbin

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1 ALAN F. HARGRAVE,  
2 having first been sworn by the Certified Shorthand  
3 Reporter, testified under oath as follows:  
4

5 EXAMINATION

6 BY MR. MEHLHAF:

7 Q. Mr. Hargrave, when we were last together on  
8 September 10th we broke for a couple of reasons, one of  
9 which was you were experiencing a medical difficulty of  
10 sorts.

09:11:06

11 How are you feeling today?

12 A. Good.

13 Q. Okay. Are you taking any medication at the  
14 present time that you think would impact your ability to  
15 recall and recite events?

09:11:16

16 A. No, I'm not.

17 Q. Do you have any physical condition at this  
18 point in time that you think would impact your memory?

19 A. No.

09:11:26

20 Q. As you sit here right now, are you feeling  
21 like your memory is pretty good?

22 A. Yes.

23 Q. Okay. When we broke the last time we were  
24 talking about Sheldon Tyler.

09:11:41

25 And what I want to ask you first is, did

1 Sheldon Tyler ever destroy any documents that related to  
2 the RiverWalk project?

3 A. Not that I'm aware of. No.

4 Q. Have you heard from anybody that they believed  
09:11:54 5 that that had happened?

6 A. Um, yes. I -- I heard from, uh -- Shawn last  
7 night mentioned it, but that's the first I'd heard of it,  
8 yes.

9 Q. Do you have an understanding of what that  
09:12:09 10 reference was to?

11 A. I'm not sure if I understand the question.  
12 Reference to the --

13 Q. The destruction of documents by Mr. Tyler.

14 A. No, I'm not aware.

09:12:22 15 Q. So nobody has told you with any specificity  
16 what documents he may have destroyed?

17 A. Correct. No.

18 Q. Did Sheldon Tyler ever withhold any document  
19 from RiverWalk?

09:12:41 20 A. Uh, there was accusations that he did, but I'm  
21 not -- I'm not aware that he did.

22 Q. Who made those accusations?

23 A. Um, RiverWalk.

24 Q. Anybody in particular?

09:12:53 25 A. Probably John and Mark.

1 Q. Did they tell you what they thought that he  
2 had hidden or withheld?

3 A. Uh, there was a reference to a -- excuse me --  
4 a reference to a study that was done on the, uh, eastern  
09:13:11 5 portion of the property, I believe, uh, that showed a  
6 potential development there.

7 Q. Did you have an understanding of why the  
8 RiverWalk principals thought that documentation of that  
9 nature would be helpful to them?

09:13:30 10 A. Um, only that it might -- excuse me -- only  
11 that it might have helped in the, uh -- through the WAC  
12 process, the public process.

13 Q. When in point of time do you recall that that  
14 accusation was made?

09:13:48 15 A. Oh, gosh, I don't recall. I mean, I'd be  
16 guessing.

17 Q. What's your best memory?

18 A. Um, I -- late '06, early '07.

19 Q. And what was your position at that point in  
09:14:13 20 time?

21 A. My position at the Port?

22 Q. Yes.

23 A. Got to think of the time frame. In early --  
24 let's see, this is -- this is '08. I would have been the  
09:14:38 25 vice president, I believe, at that time.

1 Q. Do you know whether or not the Port engaged in  
2 any investigation in response to the accusation that was  
3 made by RiverWalk?

4 A. Not that I'm aware of.

09:14:54 5 Q. Did anybody talk to Mr. Tyler about it?

6 A. Not that I'm aware of, no.

7 Q. Is there a reason why that conversation didn't  
8 take place?

9 A. No, I'm not -- I'm not aware of why we didn't.

09:15:12 10 Q. Did you take that accusation seriously?

11 A. Well, it -- sure, but I'm -- I'm not sure how  
12 that document actually related to the overall project, the  
13 scope of the project.

14 Q. Was there any point in time that you were  
09:15:33 15 critical of Mr. Tyler and his views and expressions of  
16 those views relative to the RiverWalk project?

17 A. Um, there was a couple times, uh, yes, uh, he  
18 made some comments to, uh, I think other public officials  
19 that, um, I talked to him about.

09:15:59 20 Q. What comments had he made?

21 A. One was related to a confidentiality, um --  
22 uh, in some negotiations that were going on with, uh,  
23 Georgia-Pacific on potentially relocating the boat -- the  
24 boat launch ramp.

09:16:20 25 Q. Did you ever take issue with Mr. Tyler with

1 respect to whether or not he was supportive of the  
2 RiverWalk project?

3 A. Um, I believe Sheldon made the comment that he  
4 was, um, neutral on the project. Um, I can't remember  
09:16:39 5 specifically if I talked to him about that, but, uh -- um,  
6 that was his comment, I believe, to another public  
7 official, whether it was City of Camas, City of Washougal;  
8 something of that nature.

9 Q. Did that trouble you at all?

09:16:54 10 A. Yes.

11 Q. Why was that?

12 A. Well, the -- the, uh, commission leads the,  
13 uh, Port, and the executive director needs to follow the  
14 wishes of the commission.

09:17:06 15 Q. And you believed that Mr. Tyler was  
16 demonstrating a lack of support and commitment to the  
17 project by saying that he was neutral rather than being  
18 fully supportive of it?

19 A. I'd -- I wouldn't say a lack of support. I  
09:17:22 20 mean, I -- it was -- it was -- it was his way of -- of,  
21 uh -- um, trying to stay neutral and -- and, uh, be what he  
22 called the devil's advocate of the project. But, uh, I  
23 just said -- the only reason that I -- that I said anything  
24 to Sheldon, I didn't think that was appropriate to say in  
09:17:46 25 a -- in a public setting.

1 Q. How did Mr. Tyler react to that?

2 A. I think he took it under consideration. I,  
3 um -- you know, there wasn't a, um, adverse reaction or  
4 anything of that nature.

09:18:02 5 Q. Well, did you feel like at that point in time  
6 that the commissioners had the power to tell Mr. Tyler what  
7 to do?

8 A. Commissioners direct the executive director,  
9 correct.

09:18:13 10 Q. And did the commissioners make any direction  
11 to Mr. Tyler in that regard?

12 A. Uh, yes, we expressed -- we expressed our  
13 concern about, uh, that kind of comment.

14 Q. Has Mr. Tyler ever made any claim against the  
09:18:34 15 Port?

16 A. Not that I'm aware of, no.

17 Q. Has he threatened to make any claim against  
18 the Port?

19 A. Not that I'm aware of.

09:18:43 20 Q. When was the last time you spoke with him?

21 A. Oh, gosh, um, he received an award from the  
22 WPPA at the spring meeting, I believe, so I did, uh, talk  
23 to Sheldon briefly up there. That's the only time.

24 Q. What kind of award did he receive?

09:19:08 25 A. Um, outstanding service to the industry, I

1 believe.

2 Q. Who made the decision to do that?

3 A. He was nominated by, um, the board of  
4 Camas/Washougal for that and, uh, was awarded that through  
09:19:25 5 the WPP -- Washington Public Ports Association.

6 Q. Did anybody in particular come up with that  
7 idea?

8 A. I think it was kind of a mutual agreement. I  
9 don't know that anybody in particular came up with that.

09:19:42 10 Q. Were you supportive of it?

11 A. Yes.

12 Q. Did you feel that it was at all disingenuous  
13 when you had effectively terminated him because of poor  
14 performance?

09:19:58 15 A. No.

16 Q. You actually prepared one of the evaluations  
17 or reviews toward the end of Mr. Tyler, did you not?

18 A. Yes. That was usually the -- the president of  
19 the commission usually, uh -- I mean, we met and talked  
09:20:18 20 that over between the three commissioners, and then the  
21 president of the commission usually presents that to the  
22 executive director, yes.

23 Q. And that review is based upon a scoring system  
24 of sorts where he's given so many points for different  
09:20:35 25 things?

1 A. Correct.

2 Q. And do you recall what the highest score would  
3 be possible on the evaluation that you filled out?

09:20:53

4 A. On the total evaluation or on any individual  
5 item?

6 Q. Total.

7 A. Oh, I don't recall.

8 Q. Does 32 points out of a possible 65 points  
9 sound familiar to you at all?

09:21:12

10 A. That could be correct, yes.

11 Q. And that would have to be considered a poor or  
12 below satisfactory performance, would it not?

09:21:34

13 A. I'm not sure. The evaluation form sets up,  
14 uh -- uh, you know, spacing or, uh, a term of numbers there  
15 that says poor, average, or -- so I'm -- I'm not sure that  
16 that's poor.

17 Q. It wasn't good, though, was it?

18 A. What was it, 32 out of --

19 Q. Sixty-five.

09:21:47

20 A. Sixty-five? I don't -- I don't -- I would  
21 guess that may be average. I don't know without looking at  
22 the document.

23 Q. Were you supportive of giving Mr. Tyler an  
24 award?

09:21:59

25 A. Yes.

1 Q. Why was that?

2 A. Because of his service, his long-term service  
3 to the, uh, Washington Public Ports Association, 20 --  
4 whatever it was, 22 or 23 years.

09:22:13 5 Q. Did the Port have any other motive in making  
6 that award to him?

7 A. No.

8 Q. Was Mr. Tyler's involvement in the RiverWalk  
9 project a factor in the termination of his employment?

09:22:30 10 A. No.

11 Q. Had no involvement at all in that decision?

12 A. No.

13 Q. Did your views with respect to the RiverWalk  
14 project vary at all from those held by Mr. Carroll?

09:23:01 15 A. Specifically I -- I don't know. Uh, I'm sure  
16 each one of the commissioners has a different view on any  
17 given topic, but --

18 Q. Well, the three of you would get together from  
19 time to time in executive session and discuss the project,  
09:23:20 20 would you not?

21 A. Yes.

22 Q. And do you recall during any of those meetings  
23 Mr. Carroll expressing any view with regard to the  
24 RiverWalk project that was different than your own?

09:23:43 25 A. Um, Jim expressed maybe some personal

1 relationships that he had had with, uh -- uh -- um, you  
2 know, partners or whatever in the RiverWalk -- or, uh,  
3 RiverWalk, LLC, but, um, I don't believe his overall view  
4 of the project was different than mine.

09:24:04

5 Q. What issues did Mr. Carroll have in that  
6 respect?

7 A. He had had some previous dealings with  
8 Mr. Bowler, and it didn't sound like they went very well,  
9 but -- I don't know the details of that, but --

09:24:22

10 Q. What do you recall Mr. Carroll having said  
11 about that?

12 A. He mentioned, um, something about a house, a  
13 sale of a house, um, around the church there in Camas. Um,  
14 what would that be, like 3rd and Garfield? Some sale of a  
15 house relating to that property. That's kind of what I  
16 remember.

09:24:45

17 Q. What was it about that situation that caused  
18 Mr. Carroll to make any comment at all?

19 A. As far as I know, the deal didn't go well.  
20 I'm not sure what the -- the details were or anything like  
21 that.

09:25:01

22 Q. Can you think of anything else that  
23 Mr. Carroll said in your presence that suggested to you  
24 that his views of the RiverWalk project may be different in  
25 any respect from your own?

09:25:16

1 A. No.

2 Q. How about Mr. Gunderson?

3 A. No.

4 Q. Did you believe that Mr. Carroll was  
09:25:31 5 supportive of the project?

6 A. I believe so, yes.

7 Q. And do you believe that he held that view all  
8 the way to the end?

9 A. I can't answer that.

09:25:45 10 Q. Do you believe you were supportive of the  
11 project?

12 A. Yes.

13 Q. Do you believe that you held that view all the  
14 way to the end?

09:25:51 15 A. Yes.

16 Q. How about Mr. Gunderson?

17 A. I can't recall speak for him. I -- (Shook  
18 head.)

19 Q. How was the Waterfront Advisory Committee,  
09:26:13 20 otherwise known as the WAC, formed?

21 A. That was, um, formed, um, by the Port. Um,  
22 there was a -- a process there that, um, selected a number  
23 of people to sit on a -- an advisory committee that would  
24 look at, uh, the potential, um, aspects of this, uh,  
09:26:34 25 particular development.

1 Q. Did you attend any of their meetings?

2 A. I attended, um -- I attended the majority of  
3 the meetings, I believe. I don't think I missed too many.

4 Q. Why did you attend those?

09:26:55 5 A. Just to kind of keep a feel of the pulse of  
6 what was going on in those meetings.

7 Q. Did you think it was important that the WAC  
8 undertake and complete a report in connection with the  
9 RiverWalk project?

09:27:16 10 A. I guess I don't understand the question.

11 Q. Did you think it was important that they  
12 undertake and complete a report with respect to the  
13 project?

14 A. Yes.

09:27:27 15 Q. Why was that?

16 A. Well, I think it was part of the, um -- kind  
17 of the public, um, involvement in the project that, um --  
18 uh, would kind of call out or -- or look at certain aspects  
19 in what could potentially be done on the waterfront.

09:27:53 20 Q. What was the intended use to be of the WAC  
21 report once it was complete?

22 A. We would -- we were going to attach that to  
23 the, um -- uh, master development agreement as kind of a  
24 guideline of, uh, things that should be completed and -- on  
09:28:16 25 the -- on the waterfront.

1 Q. What do you mean as a guideline?

2 A. Well, it was a -- it was going to be a related  
3 document to that, um, master development agreement that  
4 would, uh -- um, continue to, uh, support the -- the  
09:28:36 5 recommendations of that committee.

6 Q. I'm not understanding that.

7 What do you mean that it would continue to  
8 support the recommendations of that committee?

9 A. Well, that the -- the development, that --  
09:28:55 10 that could potentially happen on the waterfront would keep  
11 in mind those -- those, um, I guess kind of goals or -- or  
12 wishes of the Waterfront Advisory Committee.

13 Q. Who came up with the idea that the WAC report  
14 would be attached to the master development agreement?

09:29:21 15 A. I believe the commission; that was a request  
16 of the commission.

17 Q. Did you ever take the position that the option  
18 agreement between the Port and RiverWalk was null and void?

19 A. Yes.

09:29:47 20 Q. When did you first take that position?

21 A. When it expired on the first part of November.  
22 I don't remember the exact date.

23 Q. Did you ever take that position before it  
24 expired?

09:30:02 25 A. No.

1 Q. Did anybody on behalf of the Port ever take  
2 that position before the option agreement term expired?

3 A. Not that I'm aware of.

09:30:17

4 Q. You don't recall anybody having made that  
5 statement in your presence?

6 A. No, I don't.

7 Q. Do you recall attending a meeting on or about  
8 August 29th, 2007, that was attended by representatives of  
9 the Port and RiverWalk at Riverview Bank?

09:30:49

10 A. Give me the date again, August --

11 Q. I think it was August 29th, 2007.

12 A. And there was a meeting at the Riverview Bank?

13 Q. Right.

14 A. I -- I didn't attend.

09:31:05

15 Q. All right. Maybe I've got the date wrong, so  
16 let me just ask you a more general question.

17 Do you recall ever attending a meeting at the  
18 Riverview Bank that was attended by representatives of the  
19 Port and RiverWalk?

09:31:21

20 A. No.

21 Q. Do you recall attending a meeting at the River  
22 Tech Center -- Riverview?

23 A. No.

24 MR. MEHLHAF: Let's take just a brief break.

09:31:47

25 (Recess taken: 9:31 to 9:36.)

1 BY MR. MEHLHAF: (Continuing)

2 Q. Okay. Since we've been on our break,  
3 Mr. Hargrave, have -- has your memory come back at all with  
4 respect to the meeting that I was asking you about?

09:37:09 5 A. Yes.

6 Q. What do you now recall?

7 A. Um, there was -- you said on or about August,  
8 of --

9 Q. Towards the end of August --

09:37:22 10 A. '07.

11 Q. -- 2007. Yes.

12 A. Okay. I think the Port and RiverWalk  
13 principals met at -- uh, it's the Riverview Tech Building  
14 there on, uh, Mill Plain and about 172nd.

09:37:35 15 MR. COURSER: Actually, he previously  
16 indicated he thought the date might be wrong and asked you  
17 to disregard the date.

18 THE WITNESS: Well --

19 MR. COURSER: Unless you have a recollection  
09:37:43 20 of the date --

21 THE WITNESS: I -- no, not specific date, no.

22 BY MR. MEHLHAF: (Continuing)

23 Q. Who called that meeting?

24 A. I don't recall.

09:37:58 25 Q. Who attended the meeting?

1 A. Um, I believe I was there, Shawn was there,  
2 um, Byron Hanke was there, and then John and Mark.

3 Q. Was anybody with John and Mark as a  
4 representative of RiverWalk?

09:38:26 5 A. Um, could have been Bill Eling.

6 Q. All right. Do you remember if Tim McMahon was  
7 there?

8 A. Uh, there's been too many attorneys on this.  
9 Um, you know, I -- I don't recall.

09:38:48 10 Q. Do you remember if Scot Walstra was there?

11 A. I don't recall.

12 Q. What was the subject of discussion?

13 A. Well, if it's the meeting I was talking about,  
14 we were talking about the, uh -- uh, where the project was  
09:39:11 15 and the potential -- the -- for the, uh, development of the  
16 14.7.

17 Q. Had the prospect or proposal of a 14.7 acre  
18 lease come up before that meeting?

19 A. Not that I'm aware of.

09:39:33 20 Q. Who first raised that?

21 A. That was, um -- I don't know that either  
22 party. It was kind of a mutual agreement, um, between the  
23 parties.

24 Q. So are you saying that both parties  
09:39:51 25 simultaneously and spontaneously both came up with a 14.7

1 acre proposal?

2 A. Well, yes, through those discussions, because  
3 the 65 acre par -- was not, uh, you know, moving in the --  
4 in respect; property acquisitions hadn't happened and --  
09:40:14 5 and things like that, so --

6 Q. Had there been any discussion among the  
7 commissioners with respect to a 14.7 acre lease proposal  
8 before that was shared with RiverWalk?

9 A. Not that I'm aware of.

09:40:31 10 Q. Were you surprised to hear the 14.7 acre  
11 proposal at that meeting?

12 A. No, because, as I said, things were not  
13 moving, uh, forward. Property acquisitions hadn't happened  
14 and -- and such, uh, for the 65 acre development, so it  
09:40:49 15 was, uh, pretty logical that something else would happen.

16 Q. But is it your best memory that that's the  
17 first that you had heard of the proposal?

18 A. Yes.

19 Q. Who was it that put that on the table?

09:41:07 20 A. Oh, gosh, you know, I -- I don't recall.

21 Q. Did anybody on behalf of the Port take the  
22 position at that meeting that the option agreement and a  
23 long-term lease of greater than 14.7 acres was null and  
24 void?

09:41:33 25 A. No.

1 Q. Did you believe at that point in time that  
2 there was still viability to the option agreement and the  
3 prospect of a longer lease for more property at that point?

09:41:53

4 A. Well, the option agreement expired on -- like  
5 I say, the first part of November, so --

6 Q. So what?

09:42:17

7 A. So if that meeting happened before that, I was  
8 still, uh -- you know, the option agreement expired on its  
9 own. It's not, uh -- it -- I had no -- there was no  
10 thought in my mind that -- that, uh, the option agreement  
11 wasn't valid at that point if the meeting was before that.

09:42:41

12 Q. Did you believe that the parties continued to  
13 have an obligation to use their continuous best efforts to  
14 try and negotiate and document the transaction contemplated  
15 by the option agreement up until the date that the option  
16 agreement expired?

17 A. Yes.

18 Q. And do you believe that the Port did that?

19 A. Yes.

09:42:52

20 Q. What did the Port do in furtherance of that  
21 obligation between the date of the meeting that we've been  
22 discussing in August of '07 and the time that the option  
23 agreement expired?

24 A. Well, cooperation.

09:43:19

25 Q. And what did the Port do to cooperate?

1           A. Well, the Port did its best efforts and, uh --  
2           um, making sure that they cooperated. Uh, you know, we --  
3           we put in a sum of money. I'm sure we were paying those,  
4           um, billings as we needed to, and -- and such. Uh, that  
09:43:46 5           was the obligation of the Port.

6           Q. Do you feel that there was any cooperation by  
7           the Port after that meeting in August with respect to the  
8           creation of a master development agreement?

9           A. Yes.

09:44:05 10          Q. Tell me everything that the Port did in terms  
11          of cooperation in the utilization of its continuous best  
12          efforts after that meeting with respect to the development  
13          of an MDA.

14          A. Well, I know the, uh -- we had discussions  
09:44:24 15          about it in, um, executive session. There was, uh,  
16          attorneys working on the, uh -- uh, legalities of that,  
17          uh -- uh, document and stuff, so --

18          Q. Which attorneys were working on the  
19          legalities, as you've called it?

09:44:41 20          A. Um, it would have been Shawn and, excuse me,  
21          Tim McMahon.

22          Q. When you reference the term "legalities," what  
23          is it exactly that you're referring to?

24          A. Well, to the, um, substance of the, um,  
09:45:00 25          document, uh, the terms and conditions of that agreement.

1 Q. If the 14.7 acre proposal was a mutual  
2 proposal, both supported by the Port and RiverWalk, why  
3 didn't that get done?

4 A. Well, because those negotiations broke off  
09:45:33 5 eventually.

6 Um, I guess it would just be important for me  
7 to -- to kind of state a time frame here. The 14.7 started  
8 before the option agreement expired, but those negotiations  
9 on the 14.7 went -- continued on after the, um, option  
09:45:54 10 agreement expired.

11 Q. And, in your mind, why did those discussions  
12 ultimately break down?

13 A. Well, neither party could come to an agreement  
14 on the -- on the development of that property.

09:46:12 15 Q. What do you mean by that?

16 A. Couldn't come to terms. I --

17 Q. What were the stumbling points?

18 A. Uh, well, RiverWalk still felt that they had,  
19 um -- um, rights according to the option agreement, and,  
09:46:36 20 um, the Port didn't feel like they did at that particular  
21 time. Now, that's -- again, time frame, that's after the  
22 option agreement had expired.

23 Q. So RiverWalk was, in your mind, still  
24 insisting that it had continuing rights under the option  
09:46:54 25 agreement?

1 A. Yes.

2 Q. And did RiverWalk make it known to you that  
3 they had not waived any of those rights?

09:47:09

4 A. They, um -- I believe Bill Eling sent a letter  
5 to the, uh -- you know, that they were exercising the  
6 option before it expired.

7 Q. Was it your understanding that RiverWalk was  
8 not waiving any of its rights under the option agreement?

9 A. Yes.

09:47:30

10 Q. Was it your understanding that RiverWalk had  
11 taken the position that it was not releasing any of its  
12 rights under the option agreement?

13 A. Yes.

09:48:00

14 Q. So apart from the fact that RiverWalk  
15 continued to insist that it had rights under the option  
16 agreement, what were the other stumbling blocks, if there  
17 were any, that prevented an agreement based upon a 14.7  
18 lease -- acre lease?

19 MR. COURSER: Objection.

09:48:18

20 Mr. Hargrave has not testified that  
21 RiverWalk's refusal to waive any rights under the option  
22 agreement was a stumbling block.

23 MR. MEHLHAF: So the objection is asked and  
24 answered or it's assumes facts not in evidence or  
09:48:31 25 mischaracterizes his testimony.

1 MR. COURSER: Indeed the latter. Thank you.

2 MR. MEHLHAF: Thank you.

3 Would you please repeat the question.

4 (The reporter read back as requested.)

09:48:56

5 MR. COURSER: Same objection. It distorts  
6 Mr. Hargrave's testimony.

7 BY MR. MEHLHAF: (Continuing)

8 Q. You get to answer.

09:49:18

9 A. Um, I'll say the terms of the agreement. I --  
10 the, um -- whether it was a land lease or, uh -- um, profit  
11 sharing or whatever, that the, uh -- we couldn't come to  
12 terms, uh, for that, uh, particular parcel.

13 Q. Well, that's what I'm trying to figure out.

09:49:37

14 What were the terms over which the parties  
15 were unable to reach a meeting of the minds?

16 A. Basically the, uh, lease agreement for that  
17 property.

18 Q. Were there any particular terms that prevented  
19 the parties from reaching agreement?

09:50:00

20 A. Um, I believe, um -- um, length of. Um, they  
21 wanted something in the neighborhood of -- of 30 -- or 50  
22 with a 30-year option, or something like that. And the --  
23 and the Port was, um, sticking to more in the term of  
24 three- to five-year, I believe, something of that nature.

09:50:31

25 Um, show us what you can do; then we can move on from there

1 into a -- a longer term lease if possible. But --

2 Q. Other than the term of the lease -- I mean the  
3 length of the lease, were there any other stumbling points  
4 that prevented the parties from reaching agreement on a  
09:50:57 5 14.7 acre lease?

6 A. Um, the only other one I can think of would be  
7 a, um -- a ground lease. Um, the -- the Port really wanted  
8 to do strictly a ground lease, um, for that property, much  
9 as we do in the industrial park, um, and such.

09:51:19 10 Q. I'm not understanding that.

11 "The Port wanted to do a -- strictly a ground  
12 lease," what do you mean by that?

13 A. Well, it was just a -- a, um -- um, a lease  
14 for the, um, bare ground, you might say; the, um, ground  
09:51:40 15 underneath the, um, development that would take place on  
16 that, uh, parcel.

17 Q. As opposed to what?

18 A. Um, more of a, uh, kind of a profit-sharing,  
19 um, scenario where the Port would be more involved in  
09:52:02 20 the -- in the, uh -- um, project.

21 Q. So if I understand your testimony correctly,  
22 at that point in time the Port was moving towards a simple  
23 ground lease as opposed to some development and  
24 revenue-sharing type of arrangement.

09:52:26 25 A. Correct.

1 Q. Why was that?

2 A. The, um, revenue sharing piece was very  
3 complicated, um, and I don't -- I don't know that, um,  
4 RiverWalk had provided enough information that, um -- uh,  
09:52:47 5 made the Port feel comfortable with that arrangement. Um,  
6 that's why we, um, talked about strictly a ground lease.

7 Q. Did the Port take the position that it no  
8 longer wanted to have a relationship with RiverWalk based  
9 upon a revenue-sharing relationship?

09:53:11 10 A. Uh, well, in the negotiations as they went  
11 through, the -- the final negotiating point with the Port  
12 and RiverWalk was strictly a ground lease.

13 Q. Can you explain that answer?

14 A. It -- it just meant that there would be a -- a  
09:53:30 15 ground lease for that and -- and no revenue sharing.

16 Q. So that was a departure from the option  
17 agreement language, correct?

18 A. Yes, I believe the option agreement spoke to,  
19 uh -- a revenue-sharing piece.

09:53:54 20 Q. Why was it that the Port no longer wanted to  
21 do the revenue-generation arrangement?

22 A. Well, I think I stated before, it was a  
23 complicated issue and -- and, uh -- um, I know I did not  
24 have a good, uh, comfort level of what that would be and  
09:54:17 25 how that would work and how that would protect the Port and

1 my constituents that I have to answer to.

2 Q. What was it about a straight ground lease that  
3 provided the Port with greater comfort?

09:54:41

4 A. That's what the Port does. We do that in the  
5 industrial park all the time.

6 Q. So the fact that it had entered into those  
7 types of transactions before just tended to additional  
8 comfort to the Port because of familiarity with that, or  
9 what?

09:54:57

10 A. Well, no. I think -- it's more of a -- I  
11 don't want to use the word "standard," but it's more of  
12 what ports do in general, ground-type leases. I think the  
13 revenue sharing is, uh, very unique. I'm not sure if any  
14 Port that -- that's doing any of those. So very  
15 complicated.

09:55:18

16 Q. Had there been a decision by the commissioners  
17 that the Port was going to move away from the revenue  
18 division with RiverWalk?

09:55:44

19 A. Only -- I -- commissioners, no. I think  
20 that -- those negotiations were done, uh, when, um, I was  
21 kind of representing the commission, uh, so as president of  
22 the commission, I attended those meetings and stuff, so  
23 that's when those -- that took place.

09:56:04

24 Q. So the commissioners were all together and a  
25 discussion was had with regard to moving away from the

1 division of revenue to a straight ground lease?

2 A. Well, yes. I'm -- those discussions probably  
3 took place in executive session, and -- and information was  
4 shared with the other two commissioners. So, yes, um, the  
09:56:28 5 commission was --

6 Q. And that -- that meeting and that decision  
7 would have taken place before the August meeting at the  
8 Riverview Bank that we've been discussing?

9 MR. COURSER: Objection. It hasn't been  
09:56:40 10 established there was any meeting in August.

11 A. No, they -- they couldn't have -- through the  
12 negotiations on the 14.7, it would have only come up after  
13 that. Uh, it couldn't come up before that.

14 BY MR. MEHLHAF: (Continuing)

09:56:59 15 Q. Well --

16 A. Again --

17 Q. -- wasn't that decision made before the  
18 discussions began with respect to a 14.7 acre straight  
19 ground lease?

09:57:14 20 A. Well, I guess I'll -- I'll clarify time frame  
21 again. I mean, the -- the discussions on the 14.7 started  
22 before the option agreement expired and then continued on  
23 afterwards. Um, so I guess I'm missing the point of your  
24 question.

09:57:32 25 Q. Okay. Let me see if I can help you.

1           What is your best memory in terms of timing of  
2 the meeting that we've been discussing that was attended by  
3 you, Mr. MacPherson, Byron Hanke, Bill Eling, John  
4 McKibbin?

09:57:50 5           MR. COURSER: Objection. That's been asked  
6 and answered.

7           We just spent several minutes trying to figure  
8 out when this meeting occurred. He didn't recall.

9 BY MR. MEHLHAF: (Continuing)

09:57:57 10          Q. What's your best memory?

11          A. I'm -- I don't know at the time. I -- (Shook  
12 head.)

13          Q. Okay. In any event, you recall that at that  
14 meeting there was a discussion of a 14.7 ground lease,  
09:58:17 15 correct?

16          A. Correct.

17          Q. And at that point in time the Port was taking  
18 the position that it was going to be a straight ground  
19 lease without a revenue-sharing component?

09:58:29 20          MR. MACPHERSON: I'll object. That  
21 mischaracterizes the testimony.

22          MR. MEHLHAF: One of you gets to object. Make  
23 a decision who's it going to be.

24          MR. COURSER: Oh, really? You're telling us  
09:58:42 25 what to do, Counsel?

1 MR. MEHLHAF: Yeah, that's how it goes. You  
2 guys know that.

3 MR. COURSER: No, that's not how it goes. All  
4 right. Let's take a break.

09:58:54 5 MR. MEHLHAF: Wait a minute. Wait a minute.  
6 Wait a minute. Is there a pending question?

7 (The reporter read back as follows:)

8 Question: And at that point in time the  
9 Port was taking the position that it was going to  
09:59:07 10 be a straight ground lease without a revenue-sharing  
11 component?

12 MR. COURSER: Go ahead and answer.

13 THE WITNESS: I believe that came up towards  
14 the end of it. We had a -- a couple of meetings or so, but  
09:59:17 15 I think that was in the last meeting, so --

16 MR. MEHLHAF: Okay.

17 (Recess taken: 9:59 to 10:05.)

18 BY MR. MEHLHAF: (Continuing)

19 Q. Okay. Mr. Hargrave, since you've been a  
10:05:27 20 commissioner, has the Port entered into any ground leases  
21 with other third parties?

22 A. Yes.

23 Q. On approximately how many occasions?

24 A. I -- numerous. I don't know how many.

10:05:49 25 Q. More than ten?

1 A. Yes.

2 Q. More than 20?

3 A. Yes.

4 Q. More than 30?

10:05:59 5 A. I'd have to say yes. I've been there for 11  
6 years.

7 Q. During your tenure has the Port ever approved  
8 any 50-year ground leases?

9 A. Um, yes.

10:06:13 10 Q. Can you recall who the tenants were?

11 A. Uh, the one that comes to mind is, um, Waste  
12 Connections or -- I'm not sure if that name is correct.

13 Q. What does that lease involve, just in general  
14 terms?

10:06:33 15 A. Um, it just involves a long-term ground lease  
16 with, uh, Waste Connections, who is going to build a, uh,  
17 transfer station, so --

18 Q. Are there any other 50-year ground leases that  
19 you can recall?

10:06:53 20 A. Not that I'm aware of in my term.

21 Q. Has the Port entered into any leases that had  
22 a revenue division component in it since you've been a  
23 commissioner?

24 A. No.

10:07:06 25 Q. Does the Waste Connections lease have a

1 revenue-generation division component to it?

2 A. Well, it has a revenue, but it's based on a  
3 ground lease.

10:07:23

4 Q. And is there any opportunity under that lease  
5 for the Port to share in revenue that's generated?

6 A. There is a, um, a clause, I believe, in that  
7 lease that, um, talks about, um, if they go over  
8 anticipated tonnage, then the Port, um -- um, gets a  
9 portion of that.

10:07:48

10 Q. How long ago has it been since that lease was  
11 executed?

12 A. Um, it was just executed, uh, recently. Um, I  
13 want to -- maybe six months ago.

10:08:05

14 Q. Why did the Port believe in that case that a  
15 revenue-generation division provision was appropriate?

16 A. Um, it's -- the -- the basic thought there is  
17 that if they -- they were successful, then the Port would  
18 share in some of that, uh, additional tonnage that would be  
19 brought into that, uh, facility.

10:08:28

20 Q. Did the Port have any reservation in terms of  
21 entering into a lease that had that type of provision?

22 A. No.

23 Q. Has the Port entered into a lease with respect  
24 to space at the airport?

10:08:49

25 A. Um, we have an Engleman Hangar, uh, lease

1 going on out there, but I -- I'm not sure of the terms of  
2 that particular lease.

3 Q. Was that a long-term lease?

4 A. I'm -- I'm not sure.

10:09:15 5 Q. When you say you have a lease going on out  
6 there, what do you mean by that?

7 A. Well, they're in the process of -- of building  
8 that facility, so, um, I -- I can't remember if we've  
9 finalized that lease agreement or not.

10:09:33 10 Q. Who's in the process of building?

11 A. Um, Engleman Hangars. Uh, it's a hangar  
12 facility.

13 Q. Wouldn't it make sense to you that before they  
14 started construction out there that they'd have a lease  
10:09:47 15 document?

16 A. Well, they haven't started construction.

17 Q. And at this point in time you're saying you  
18 don't know whether or not a lease has been executed with  
19 them?

10:09:58 20 A. I'm not sure, no.

21 Q. What type of construction is it that they  
22 intend to do?

23 A. Uh, build hangars.

24 Q. How extensive a project is it?

10:10:13 25 A. It's, uh, I want to say 13 hangars.

1 Q. Any idea of what that might cost?

2 A. No idea.

3 Q. Whose money is going to be used to build the  
4 hangars?

10:10:30 5 A. It will be their money.

6 Q. Do you know whether or not they're going to  
7 acquire financing in order to fund that construction?

8 A. I'm not aware of that.

9 Q. Did they ask for a long-term lease?

10:10:50 10 A. You know, I just -- I don't recall what the --  
11 the terms at this particular time.

12 Q. Do you know whether or not there's a  
13 revenue-generation division component in that lease or  
14 under discussion?

10:11:10 15 A. Uh, I believe that is just strictly a ground  
16 lease.

17 Q. In your experience, does the Port have a  
18 standard form of lease that it uses as a template?

19 A. Yes.

10:11:24 20 Q. And on behalf of the Port since you've been a  
21 commissioner, who has had responsibility for negotiating  
22 those leases?

23 A. Um, Sheldon Tyler, the executive director  
24 would have, uh, done that originally, and now, uh, Scot  
10:11:46 25 Walstra has, uh -- has that position.

1 Q. Has Mr. MacPherson had any involvement in the  
2 negotiation process?

3 A. Well, in -- in terms of discussing, uh, what  
4 the conditions of that lease would be, yes.

10:12:15 5 Q. Describe for me, please, your understanding of  
6 what Mr. MacPherson's role has been in connection with the  
7 negotiation or documentation of leases.

8 A. More in terms of the, uh -- uh, documentation.  
9 The leases were usually, uh -- you know, if they were  
10:12:34 10 ongoing leases, they were, um -- uh, negotiated by the ED  
11 or -- or now Scot Walstra, and then, uh -- um, Shawn would  
12 have completed the, uh -- uh, documentation for that  
13 agreement. If there was ab -- abnormalities or changes  
14 that the client wants, then those would have been brought  
10:13:03 15 to the commission for approval.

16 Q. You used the expression "ED."

17 Is that short for --

18 A. Executive director.

19 Q. Okay.

10:13:10 20 A. Executive director.

21 Q. Okay. With respect to the ground lease that  
22 was contemplated by the option agreement that the Port and  
23 RiverWalk entered into, who did you understand was going to  
24 have responsibility for creating that document on behalf of  
10:13:29 25 the Port?

1 A. Would you repeat that? Make sure that I've  
2 got it.

3 Q. Certainly. Let me ask the court reporter to  
4 read that back.

10:13:53

5 (The reporter read back as requested.)

6 THE WITNESS: Um, I -- I think that would be,  
7 uh -- um, kind of a joint effort. I'm sure there would be  
8 communications between, uh, Scot at this point and -- and  
9 Shawn.

10:14:14

10 BY MR. MEHLHAF: (Continuing)

11 Q. When did Scot Walstra come on?

12 A. Approximately a year ago, I think.

13 Q. So sometime in early November 2007?

14 A. I believe so. I -- boy, I don't -- I don't

10:14:45

15 know exactly.

16 Q. Did Scot Walstra come on before or after the  
17 expiration date of the option agreement?

18 A. I'd have to say before.

19 Q. How long before the expiration of the option  
20 agreement did he come on?

10:15:10

21 A. I'm not sure.

22 Q. Before Mr. Walstra became involved with the  
23 Port, who did you understand to have had responsibility on  
24 behalf of the Port to put together a long-term ground lease  
25 with RiverWalk?

10:15:29

1           A.    Again, kind of a combination of the executive  
2 director and -- and Shawn and legal staff.

3           Q.    So that would have been, excuse me, Mr. Tyler  
4 before he was terminated?

10:15:49

5           A.    Correct.

6           Q.    And then after he was terminated who would  
7 have had that responsibility, other than Mr. MacPherson?

8           A.    Um, Dave Ripp is the executive director now,  
9 replaced Sheldon Tyler, and then, uh, of course Scot is

10:16:12

10 the -- what I'll call kind of the property manager.

11          Q.    When did Dave Ripp come on?

12          A.    January, I believe, January of '08.

13          Q.    So he wouldn't have had any involvement in  
14 terms of preparation of a ground lease involving RiverWalk,  
15 would he?

10:16:39

16          A.    No.

17          Q.    So between the time that Mr. Tyler left and  
18 Mr. Ripp came on, who had responsibility other than

19 Mr. MacPherson for putting together a ground lease with  
20 RiverWalk?

10:17:00

21          A.    Well -- you know, interim executive director  
22 isn't correct, but, uh, Byron Hanke, uh, was involved with  
23 the Port.

24          Q.    What involvement did Byron Hanke have in terms  
25 of the preparation of a ground lease?

10:17:22

1           A. Uh, he may have made comments about, uh, a  
2 ground lease or ground leases or something, but that would  
3 have been, again, a cooperative effort between him and --  
4 and Shawn.

10:17:41 5           Q. Do you know for a fact that Mr. Hanke had any  
6 involvement at all with respect to the contemplated  
7 long-term ground lease that's referenced in the option  
8 agreement?

9           A. I don't know.

10:17:57 10          Q. Other than Mr. MacPherson, do you have any  
11 personal knowledge that anybody on behalf of the Port had  
12 any involvement in terms of the preparation of a long-term  
13 ground lease as contemplated by the option agreement?

14          A. No.

10:18:23 15          Q. Can you tell me any effort at all that the  
16 Port made in terms of the creation of a long-term ground  
17 lease as contemplated in the option agreement?

18          A. Well, no, the Port didn't make any effort.  
19 That was -- RiverWalk was supposed to make that effort.

10:18:42 20          The Port's not the developer. RiverWalk is the developer.

21          Q. So is the answer that you're unaware of any  
22 effort that the Port made in terms of the preparation of a  
23 long-term ground lease as contemplated by the option  
24 agreement?

10:18:59 25          A. The Port didn't -- I mean, that wasn't our

1 job. We weren't supposed to create this long-term ground  
2 lease.

3 Q. I understand that answer, and I'm going to  
4 accept it for the purposes of this question, but my  
10:19:13 5 question is a little bit different.

6 Are you aware of any effort that the Port made  
7 towards the completion of a long-term ground lease as  
8 contemplated by the option agreement?

9 A. I'm not aware, no.

10:19:33 10 Q. Are you aware of any discussions in which  
11 the -- any representative of the Port was involved that  
12 involved the preparation of a long-term ground lease as  
13 contemplated by the option agreement?

14 A. No.

10:19:59 15 Q. What is the basis for your answer that it was  
16 RiverWalk's responsibility to create a long-term ground  
17 lease as contemplated by the option agreement?

18 A. RiverWalk was the developer; the Port wasn't.

19 Q. Is that just your basic understanding of how  
10:20:17 20 things work?

21 A. Yes. Well, that was what -- that was  
22 contemplated from this whole project to begin with.  
23 RiverWalk was supposed to do the legwork and -- and do the  
24 things that were appropriate to get this project up and  
10:20:32 25 rolling, and the Port was supposed to provide cooperation

1 and money.

2 Q. Is there any particular provision in the  
3 option agreement that you rely upon as support for that  
4 position?

10:20:53 5 A. The entire agreement. I mean, that's the way  
6 it was supposed to be, period.

7 Q. End of story?

8 A. Thank you.

9 Q. So under your understanding, the Port was  
10:21:13 10 entitled to simply sit there and wait for RiverWalk to  
11 submit something for its consideration?

12 A. Yes. Again I'll state, the Port cooperation  
13 and money. I mean, there was an extensive dog-and-pony  
14 show that went on to begin with in this doggone project.  
10:21:37 15 Everybody kept getting thrown under the bus. You know,  
16 RiverWalk hired a high-shot PR firm, uh, that got dumped.  
17 Then it was JD White, and they got dumped. I think  
18 potentially you're the third or fourth attorney that  
19 they've had on this darn thing. Then they went after  
10:21:52 20 Sheldon Tyler, they went after Shawn MacPherson. I mean,  
21 Jiminy Christmas.

22 Q. Are you upset?

23 A. Yeah, I'm getting there.

24 Q. Why are you upset?

10:22:08 25 A. Because you -- you want to point your finger

1 at the Port and the Port is supposed to supposedly do all  
2 these things. That's what they're supposed to do. That's  
3 what developers do. They make stuff happen.

4 Q. You said everybody got thrown under the bus.  
10:22:24 5 What do you mean by that?

6 A. Well, they were constantly, I mean, shoot  
7 phone call after phone call to me trying to get somebody  
8 out of there they didn't like or didn't quite agree with  
9 what was going on.

10:22:37 10 Q. Who did they want to get out of there, as  
11 you've put it?

12 A. Well, like I said, they dumped their first PR  
13 firm, they dumped JD White. Uh, I don't know how many  
14 different attorneys they've had. They surely got rid of  
10:22:51 15 those for some reason that I'm not aware of. They tried to  
16 get rid of Sheldon Tyler. They tried to get rid of Shawn;  
17 they wanted him off the project. I mean, that was kind of  
18 their MO; anybody that doesn't agree with us, we'll get rid  
19 of them.

10:23:09 20 Q. You say that they tried to get Shawn off the  
21 project?

22 A. Numerous phone calls to me, "Shawn's not doing  
23 his job, Shawn's not doing this, Shawn's not doing this,  
24 taking too much time," one after the other. I was  
10:23:25 25 bombarded with phone calls from these two guys.

1 Q. At some point in time did you just simply say,  
2 "Enough is enough"?

3 A. Well, at some point in time I gave up  
4 listening to them because it was obvious that -- that, uh,  
10:23:44 5 all they were after is to -- to remove somebody so they  
6 could get their -- move on with their agenda, whatever that  
7 might have been.

8 Q. When did that time come for you?

9 A. You know, honestly, after the option agreement  
10:24:05 10 expired, I was -- I was fed up at that particular time.

11 Q. Who was it that made the phone calls that you  
12 referenced relative to Mr. MacPherson?

13 A. Uh, from what I remember, John and Mark.

14 Q. Do you recall when in point of time you  
10:24:31 15 received those calls?

16 A. No.

17 Q. Was it before or after the meeting at  
18 Riverview Bank that we've discussed?

19 A. You know, there was so many of them, I don't  
10:24:49 20 recall.

21 Q. So many of what, telephone calls --

22 A. Telephone calls.

23 Q. -- regarding Mr. MacPherson?

24 A. Telephone calls, yes.

10:24:55 25 Q. Specifically what were the complaints that

1 were being made with regard to Mr. MacPherson's  
2 involvement?

3 A. I think I already answered that. That -- that  
4 his, um, not doing his job, not -- you know, not being  
10:25:09 5 reactive enough or -- or whatever.

6 Q. I remember that testimony. What I'm asking is  
7 were they specific in terms of what it was that they felt  
8 he was doing or not doing as part of his job?

9 A. Um, the biggest one I remember is, um, slow  
10:25:28 10 on, uh -- slow on the, uh -- uh, MDA, the master  
11 development agreement.

12 Q. Why was Mr. McMahon brought on?

13 A. Because he had expertise in what a development  
14 agreement -- agreement should look like.

10:25:50 15 Q. When was the decision to bring him on made?

16 A. Shortly after we received the master  
17 development agreement.

18 Q. Was it provided to Mr. McMahon then at that  
19 point in time for his review?

10:26:08 20 A. Boy, I don't recall the -- I don't recall the  
21 time frames.

22 Q. Wouldn't you imagine that he'd have to look at  
23 the proposed MDA in order to express any opinion on it?

24 A. Oh, correct.

10:26:23 25 Q. And wouldn't you think it reasonable that the

1 Port would give that to him as soon as possible if they  
2 were going to utilize his expertise?

3 A. Yes.

10:26:42

4 Q. Did Mr. McMahon ever express any opinions with  
5 respect to the MDA?

6 A. Basically that it did not come up to snuff.  
7 There was too many holes in it, too much risk to the Port.

10:27:02

8 Q. Was there ever any discussion that Mr. McMahon  
9 would prepare a red-line redraft of the MDA or otherwise  
10 articulate with any specificity what deficiencies he may  
11 have thought existed?

12 A. Uh, I'm sure he did. I believe, um -- I  
13 believe Shawn wrote a letter, um, stating in general what  
14 those -- what the problems were.

10:27:39

15 Q. Did the Port ever complain that RiverWalk was  
16 not moving fast enough to get matters completed?

17 A. I mean, we didn't control RiverWalk. I mean,  
18 that's, again, their job. They -- they've got to  
19 understand the process.

10:28:00

20 Q. Did the Port ever complain that RiverWalk was  
21 not moving fast enough with respect to documenting the  
22 transaction or moving it forward?

23 A. Not that I'm aware of. But, again, not our  
24 job. They're the developers. We don't have to hold their  
25 hand.

10:28:19

1 Q. But you do agree that the Port had an  
2 obligation to use its continuous best efforts in order to  
3 get the project documented, correct?

4 A. Cooperation and money, yes.

10:28:38

5 Q. Do you recall any discussion at all with  
6 respect to the creation of covenants, conditions, and  
7 restrictions?

8 A. No.

10:28:56

9 Q. Do you recall any discussion at all with  
10 respect to shared parking agreements?

11 A. No.

12 Q. Do you recall any discussion at all with  
13 respect to any easements that may need to be created as  
14 they related to the RiverWalk project?

10:29:13

15 A. No.

16 Q. Were those issues of concern to you?

17 A. Well, the issues of concern were to me with  
18 a -- and here I'm sure you're talking about the master  
19 development agreement, correct?

10:29:27

20 Q. No.

21 A. Oh.

22 Q. So were the CC&Rs, shared parking agreements,  
23 and easements of concern to you as it related to the  
24 RiverWalk project?

10:29:41

25 A. Well, as it relates to the master development

1 agreement, there was -- I guess I don't understand your  
2 question.

3 Q. You've told me that you don't recall any  
4 discussion with respect to CC&Rs, shared parking  
10:29:58 5 agreements, or easements.

6 A. Correct.

7 Q. And I'm asking you as -- as those issues  
8 related to the RiverWalk project, did you have any concern  
9 with regard to the creation of those documents?

10:30:16 10 A. Well, I would have concern in the creation  
11 of -- of a number of documents, and those would be a part  
12 of a site plan, part of infrastructure, part of water,  
13 sewer and storm. Uh, I would think those documents would  
14 be a piece of, uh, the bigger picture of that which would  
10:30:42 15 be a site plan, something that I could -- which we never  
16 received, something that I could take to the public,  
17 something that I could show to the public, "This is the  
18 project." Never got it.

19 Q. What did you believe was going to be  
10:31:02 20 encompassed within the site plan that you've referred to?

21 A. Well, a typical site plan would show building  
22 envelopes, it would show, um, roadways, it would show, um,  
23 utilities that were, uh, supposed to be in those roadways,  
24 um, it would, uh -- it would give you a complete look at --  
10:31:27 25 you know, it could be viewing corridors in there to -- to

1 still visualize and see the river. I mean, that site plan  
2 would really go into the details of what this project would  
3 consist of.

4 Q. Okay. .

10:31:39

5 A. And that's what I would need to do to take to  
6 the public to say, "This is the project." Never got it.

7 Q. Why do you say that you needed to take that to  
8 the public?

10:31:51

9 A. Well, that's my job. That's who I answer to,  
10 is the public, and how am I going to sell a project of this  
11 magnitude to anybody when I've got nothing to show? I  
12 mean, how --

13 Q. What approval did you believe that the Port  
14 needed from the public in order to complete the project?

10:32:08

15 A. Well, the Port had to have the buy-off of the  
16 project. I think I testified earlier at the last  
17 deposition that -- that there was never -- if the Port --  
18 if the public didn't buy off on this project, this project  
19 wasn't going forward.

10:32:21

20 Q. How was the public going to buy off on the  
21 project?

22 A. They'd have to have their input, they'd have  
23 to decide and help to determine what was going to happen on  
24 this particular project.

10:32:31

25 Q. Wasn't that what the WAC was doing?

1           A.    They had concepts.  Um, yeah, those concepts  
2    were a piece of the development, but you got to put those  
3    concepts down on a piece of paper that -- that's going to  
4    show you what this darn thing looks like.  Those concepts  
10:32:52 5    aren't going to show the public -- the public is never  
6    going to understand what this project looks like until you  
7    put something on paper; renderings, drawings, anything like  
8    that.

9           Q.    How did you expect that the public was going  
10:33:06 10   to express its approval?  Was there going to be a vote?  
11   Was there going to be a mail-in campaign?  How was that to  
12   happen?

13          A.    Well, no.  You -- through public outreach, uh,  
14   meetings, uh, people expressing their opinions and views  
10:33:22 15   and stuff, which, again, these guys were supposed to do.  
16   The Port had to step up to the plate and -- and create WAC  
17   to even kind of get a public process moving on this darn  
18   thing.

19          Q.    And do you believe it was the Port that put  
10:33:41 20   WAC together?

21          A.    Yes.  That was a -- a measure on the Port's  
22   part to try and, uh, bring some semblance of public input  
23   into this project, which they didn't do.  They were  
24   supposed to do.  They didn't do it.

10:34:03 25                I mean, that's why they got rid of the -- and

1 I can't remember the name of the high-powered PR firm, but,  
2 you know, we were told from the get-go, "Hey, don't worry  
3 about a doggone thing. These guys will take care of  
4 everything. They know their business. They know what  
5 they're doing." Well, they're gone in a short period of  
6 time.

7 Then JD White all of a sudden, they're gone.  
8 So I don't think there was ever any intent of RiverWalk to  
9 have any public involvement.

10 The other part that I don't understand, it's  
11 kind of dumb to me, I don't know of any developer in the  
12 world that would want the public telling them what they  
13 were going to put on the doggone property. I mean --

14 Q. Explain that for me.

15 A. Well, my gosh, there's got to be a revenue  
16 stream here that's going to finance this doggone project.  
17 But yet WAC is involved in this thing as part of the public  
18 input, but yet now they're kind of determining what  
19 potentially could happen on that piece of property.

20 And what if they came back and said, "Well,  
21 gee, we want 30 acres to be in an amphitheater"? Does that  
22 pencil out? I don't think so.

23 Q. Well, that's kind of consistent with the  
24 questions I was asking before, which was, what were you  
25 expecting the public to do in terms of acceptance or

1 approval of the project? I mean, did you actually believe  
2 that that was a condition to this going forward?

3 A. Oh, I did. Believe -- yes, I did. It's  
4 public money. And if the Port is going to extend monies or  
10:35:38 5 time or all that kind of stuff, we can't gift of funds, you  
6 know.

7 Q. But ultimately isn't it the commissioners'  
8 decision?

9 A. Well, ultimately, yes, but I'm elected by the  
10:35:50 10 public. They're my boss.

11 Q. When did you expect this site plan that you've  
12 referred to to be completed as it related to this project?

13 A. Before the option agreement expired.

14 Q. Is the site plan, as you envisioned it,  
10:36:11 15 provided for in the option agreement?

16 A. Well, yeah, a master development agreement,  
17 which would have all those pieces in it.

18 Q. So you're -- you're equating this site plan to  
19 the MDA?

10:36:27 20 A. Yeah. That was part of the -- one of the  
21 conditions of the, uh -- the, uh -- uh, site plan, is that  
22 you'd have a -- excuse me -- of the master development  
23 agreement that you would have a site plan, something that  
24 would show people what they were getting.

10:36:43 25 Q. When did it become apparent to you that you

1 were not getting all the information from RiverWalk in that  
2 regard that you thought was required in order for the  
3 project to go forward?

10:36:58

4 A. Oh, I probably had feelings a year ahead of  
5 time. I mean, I didn't see the things happening that --  
6 that I thought should be happening, uh, in regards to this  
7 project.

8 Q. "A year ahead of time," what do you mean?

10:37:12

9 A. I mean a year ahead of time. You know, the --  
10 I mean, these guys did a great job running around and  
11 talking to all the people, the city officials and anybody  
12 they thought that had any clout within Camas and Washougal,  
13 but they didn't buckle down and -- and -- and put pencil to  
14 paper and start making things happen. And, I mean, like I  
15 say, I saw that probably a year ahead of time.

10:37:29

16 Q. A year ahead of what?

17 A. A year ahead of the, uh -- the, uh -- uh,  
18 expiration of the option agreement. I had questions in my  
19 mind at that particular time.

10:37:43

20 Q. Did you ever express those?

21 A. No.

22 Q. Why not?

10:37:55

23 A. Why would I? I'm not the developer. I'm not  
24 going to tell them what supposedly they know how to do. I  
25 mean, why would I? There's no obligation on my part.

1 Q. In the spirit of cooperation? You -- you  
2 wanted it to move forward, didn't you?

3 A. Well, yeah, I did. But it's got to be those  
4 guys making it happen. It's not my job to make it happen.  
10:38:11 5 It's not my job to tell them how to do their business.

6 Q. And so on that basis you harbored these  
7 thoughts but never shared them?

8 A. Hey, thoughts in the back of my mind. But,  
9 yeah, you're right, I never shared them.

10:38:29 10 MR. MEHLHAF: All right. Let's take a break  
11 and change the tape.

12 (Recess taken: 10:38 to 10:43.)

13 BY MR. MEHLHAF: (Continuing)

14 Q. Okay. Mr. Hargrave, does the option agreement  
10:44:05 15 make mention of the formation of a community renewal area?

16 A. Yes, I believe it does.

17 Q. What is that?

18 A. I guess my limited understanding would be  
19 that, uh, it's an area that, uh, would be considered kind  
10:44:32 20 of a blight and -- and can go through a, uh, process of  
21 renewal. Uh, I'm not so sure that it doesn't include, uh,  
22 potential condemnation of that property.

23 Q. Does the Port have the power of imminent  
24 domain or condemnation?

10:44:54 25 A. Yes, we do.

1 Q. Has the Port ever exercised that power?

2 A. Uh, not in my, uh, term.

3 Q. Has it ever been a subject of discussion while  
4 you've been a commissioner?

10:45:11 5 A. Oh, sure.

6 Q. In connection with what?

7 A. Oh, um, different projects that we might have  
8 been looking at or different -- maybe a parcel of property  
9 or something like that, but I don't remember any specifics,  
10:45:29 10 but --

11 Q. Did the subject of condemnation ever come up  
12 in connection with any of the properties that were  
13 contemplated under the option agreement with RiverWalk?

14 A. I don't -- I don't recall. I don't believe we  
10:45:48 15 ever got to that point where we actually -- actually talked  
16 about condemnation.

17 Q. In the event that a property owner was  
18 unwilling to sell or was asking what the Port considered to  
19 be too much money as it related to any property that was  
10:46:10 20 contemplated by the option agreement, did you understand  
21 that the Port had the power of condemnation in order to  
22 acquire that property?

23 A. The Port has the right of eminent domain.

24 Q. Do you recall any discussion as to whether or  
10:46:29 25 not that power would be utilized in connection with the

1 option agreement?

2 A. The basic -- the Port has always said that  
3 they wouldn't use eminent domain -- I mean, only as a last  
4 resort.

10:46:45 5 Q. I'm confused. The Port has always said that  
6 as a general policy or in connection with this particular  
7 project?

8 A. As long as I've been a commissioner and the  
9 commissioners that I've been on the board with, uh --

10:47:01 10 Q. So you're saying that that was a general  
11 policy before the execution of the option agreement?

12 A. There was conversations about eminent domain.  
13 The basic -- basic premise of the commission is that we  
14 wouldn't exercise eminent domain. Uh --

10:47:23 15 Q. But did that conversation come up in the  
16 context of the RiverWalk project?

17 A. Uh, no.

18 Q. So are you saying that as a general matter  
19 that discussion had come up and the Port had developed a  
10:47:41 20 general policy that it would not use condemnation?

21 A. The Port -- there was no general policy.  
22 There's no -- nothing written. Um, it was conversations  
23 between commissioners that that would be a last resort if  
24 the Port was going to use eminent domain, as -- when I'm  
10:47:58 25 on the commission, for the 11 years that I've been there.

1 Q. So did that conversation take place before the  
2 option agreement was signed?

3 A. Well, that conversation has taken place a  
4 number of different times depending on different projects.  
10:48:14 5 But, again, I think I -- I testified that not to -- in a  
6 matter of this project.

7 Q. Okay. Why was the creation of a community  
8 renewal area mentioned in the option agreement?

9 A. Well, because that's what we were told by,  
10:48:37 10 let's see, who was your attorney then? -- Hornstein.  
11 That's what we were told, um -- the Port was led to believe  
12 that that's how these things happen.

13 Q. Was a community renewal area necessary with  
14 respect to land already owned by the Port?

10:49:00 15 A. Not that I'm aware of, no.

16 Q. How was the property that was owned by the  
17 Port that was within the contemplation of the option  
18 agreement zoned?

19 A. Um, commercial, I believe.

10:49:32 20 Q. Would that zoning accommodate the development  
21 that was contemplated by the option agreement?

22 A. I believe it would, yes.

23 Q. Were you ever told that a community renewal  
24 area need not be formed in connection with the RiverWalk  
10:49:50 25 project?



1 THE WITNESS: I don't think -- none.

2 BY MR. MEHLHAF: (Continuing)

3 Q. Did you ever attend any meetings with any  
4 official from the City of Washougal concerning a community  
10:51:53 5 renewal area?

6 A. Uh, regarding community -- no.

7 Q. Did you ever attend any meeting with any  
8 official from the City of Washougal with respect to the  
9 issue of zoning as it related to the RiverWalk project?

10:52:17 10 A. No.

11 Q. Do you know whether or not any representative  
12 of the Port ever attended any meeting with any official  
13 from the City of Washougal with respect to the issue of a  
14 community renewal area?

10:52:33 15 A. Not that I'm aware of.

16 Q. Do you know whether or not any representative  
17 of the Port ever attended a meeting with any official from  
18 the City of Washougal with respect to zoning as it related  
19 to the RiverWalk project?

10:52:47 20 A. Not that I'm aware of.

21 Q. Did anybody ever tell you that the City of  
22 Washougal had come to the conclusion that no zoning change  
23 was required to accommodate the development contemplated by  
24 the option agreement?

10:53:11 25 A. Could you repeat that?

1 (The reporter read back as requested.)

2 A. I think there was some discussion, but that  
3 was only related to property that the Port owned. It  
4 didn't relate to any other properties. And this thing  
10:53:45 5 was -- the entire 65 acres, there -- there would have to be  
6 a zone change for the entire 65 to happen, some sort.

7 Q. What about the approximately 38 acres that the  
8 Port owned? Would any zoning change have to take place  
9 with regard to that property in order to accommodate the  
10:54:06 10 transaction contemplated by the option agreement?

11 MR. COURSER: Objection; asked and answered.

12 A. Not that I'm aware of.

13 BY MR. MEHLHAF: (Continuing)

14 Q. Do you know what an interlocal agreement is?

10:54:25 15 A. Yes.

16 Q. What is it?

17 A. It's an agreement between two public agencies,  
18 uh, that would, um, create some understanding, I guess,  
19 is -- relating to -- I suppose it could be a number of  
10:54:46 20 issues, but, uh --

21 Q. Incidentally, Mr. Hargrave, what documents did  
22 you review before your deposition today?

23 A. Uh, just my deposition, the previous  
24 deposition.

10:55:02 25 Q. And that's it?

1           A.    Um, well, I did look over the, uh, option  
2 agreement and the MDA and those.

3           Q.    Anything else?

4           A.    No.

10:55:20 5           Q.    As an elected official, have you ever had any  
6 experience with interlocal agreements?

7           A.    Gosh, I'm -- I can't remember if we've done an  
8 interlocal agreement between -- while I've been -- I don't  
9 think so, no.

10:55:45 10          Q.    Do you know whether or not the option  
11 agreement contemplated an interlocal agreement?

12          A.    I'm not sure.

13          Q.    Did the discussion of an interlocal agreement  
14 ever come up in the context of the RiverWalk project?

10:56:07 15          A.    Uh, not that I'm aware of, no.

16          Q.    Did you believe that any interlocal agreement  
17 was necessary in the context of the RiverWalk project?

18          A.    Well, in speaking to an interlocal agreement,  
19 I -- I'm not sure there would be one. I'm not sure.

10:56:41 20          Q.    In the context of the RiverWalk project, if  
21 there was to be an interlocal agreement, who would the  
22 parties to that agreement be?

23          A.    Well, it would have to be the -- the Port and  
24 the, uh, City of Washougal and probably RiverWalk.

10:57:00 25          Q.    Why do you think RiverWalk would have been

1 involved in an interlocal agreement?

2 A. Because they would be the developer of record  
3 for that project.

10:57:14

4 Q. Isn't an interlocal agreement an agreement  
5 between two governmental -- two or more governmental  
6 entities?

7 A. Yes.

8 Q. And RiverWalk is not a governmental entity, is  
9 it?

10:57:22

10 A. Well, I -- no, but I -- I'm not sure how that  
11 relationship would be, is if they were the -- if they were  
12 successful in moving forward with the project, uh, I'm not  
13 sure what the -- how the relationship between the Port and  
14 RiverWalk, uh, might tie that into -- them into the

10:57:38

15 interlocal agreement. I -- I guess I don't know that.

16 Q. Do you know whether or not the Port ever had  
17 any discussions with the City of Washougal with respect to  
18 an interlocal agreement?

19 A. Not that I'm aware of.

10:57:53

20 Q. If an interlocal agreement was contemplated by  
21 the option agreement, who do you think would have had the  
22 responsibility to initiate the discussions concerning an  
23 interlocal agreement?

24 A. I'm not sure.

10:58:25

25 Q. Prior to the expiration of the option

1 agreement, were the commissioners of the Port ever told  
2 that the option agreement was null and void?

3 A. No.

4 Q. Do you believe that you would have remembered  
10:58:46 5 that if it had occurred?

6 A. Yes.

7 Q. Did any of the commissioners ever express any  
8 concern as to whether or not the option agreement was  
9 enforceable prior to its expiration?

10:59:09 10 A. Uh, not that I'm aware of.

11 Q. Did the Port ever request an opinion from a  
12 lawyer with respect to whether or not the option agreement  
13 was enforceable prior to its expiration?

14 MR. COURSER: Objection. I'll instruct the  
10:59:27 15 witness not to answer. It's privileged information.

16 (INSTRUCTION by counsel.)

17 BY MR. MEHLHAF: (Continuing)

18 Q. Did the Port ever get an opinion from a lawyer  
19 with respect to whether or not the option agreement was  
11:00:11 20 enforceable?

21 MR. COURSER: Objection; privileged. I'll  
22 instruct the witness not to answer.

23 (INSTRUCTION by counsel.)

24 MR. MEHLHAF: Well, I'm not asking what the  
11:00:20 25 opinion was.

1 MR. COURSER: Don't care. Objection. It's  
2 privileged information. If the Port solicits an opinion  
3 from a lawyer about a particular subject, that is  
4 privileged.

11:00:35

5 BY MR. MEHLHAF: (Continuing)

6 Q. Did you ever have any concerns personally with  
7 respect to whether or not the option agreement was  
8 enforceable prior to its expiration?

9 A. No.

11:00:51

10 Q. Did you believe it was enforceable?

11 A. Yes.

12 Q. Did you ever discuss that belief with anybody  
13 else?

14 A. No.

11:01:03

15 Q. Did any of the other two commissioners ever  
16 express an opinion with respect to the enforceability of  
17 the option agreement before the expiration of that  
18 document?

19 A. Not that I'm aware of.

11:01:18

20 Q. Did Sheldon Tyler ever raise that issue?

21 A. Well, Sheldon always liked to play the devil's  
22 advocate, but I -- I don't -- I don't -- I can't -- I can't  
23 say that -- that he did, no.

24 Q. In connection with the 14.7 acre proposal, did  
11:01:58 25 the Port make as a condition to that proposal that

1 RiverWalk give up any rights that it might have under the  
2 option agreement?

3 A. No. The option agreement expired. Talks were  
4 going on -- I guess just a clarification again, uh, talks  
11:02:19 5 were going on on the 14.7 before the option agreement  
6 expired, so when the option agreement expired, their rights  
7 to the 65 acres expired. Talks continued on after that  
8 regarding the 14.7.

9 Q. Before the expiration of the option agreement  
11:02:36 10 and in connection with the 14.7 acre proposal, did the Port  
11 ever take the position that in order to avail itself of  
12 that opportunity, that RiverWalk would have to give up any  
13 rights that it might have under the option agreement?

14 A. No.

11:02:56 15 Q. Do you believe that if that was expressed as a  
16 condition, that you would remember it?

17 A. Yes.

18 Q. What did the Port propose as the length of the  
19 14.7 acre lease?

11:03:25 20 A. Uh, three to five years, I believe, if I  
21 remember right, initially.

22 Q. Whose idea was that?

23 A. Well, I think it was agreement by the, uh,  
24 Port to move forward with that, uh -- uh, scenario and  
11:03:49 25 actually show us what you can do.

1 Q. Specifically, though, what individual first  
2 came up with that idea?

3 A. I'm not aware of who that was. I don't know.

4 Q. Did you think that that was a good idea?

11:04:04

5 A. Yes.

6 Q. Why was that?

7 A. Well, from the lack of performance that I'd  
8 seen, uh, previous, I thought it was a very good idea.

9 Q. Why?

11:04:16

10 A. Well, the proof is in the pudding. Show me  
11 what you can do; we can move forward.

12 Q. Are you saying, then, that a short-term lease  
13 would be given to put RiverWalk in a position that they  
14 could demonstrate by their performance whether or not they  
15 were capable of the development of the project?

11:04:36

16 A. Yes.

17 Q. Yet the 14.7 acre proposal was going to be  
18 strictly a ground lease, correct?

19 A. That's what it ended up as, yes.

11:04:53

20 Q. And --

21 A. Again I'll clarify that there was a number of  
22 meetings that went on that happened in relation to this  
23 14.7. Um, more than one meeting.

24 Q. That you attended?

11:05:05

25 A. Yes.

1 Q. Okay. We've talked about one that took place  
2 at Riverview Bank.

3 What other meetings do you recall?

4 A. I believe they all took place at Riverview  
11:05:15 5 Bank. I think that was the -- the meeting place. I -- but  
6 I -- I don't remember exactly. There had to be at least  
7 four or five meetings at least, maybe more.

8 Q. Earlier this morning I asked you if you  
9 attended a meeting at Riverview Bank, and you told me "no."

11:05:33 10 And now are you telling me that you recall  
11 having attended as many as four or five meetings --

12 A. Yes.

13 Q. -- at Riverview Bank?

14 A. I guess my confusion there is Riverview Bank.  
11:05:43 15 I didn't, uh -- I mean, it's the operations center. Uh, I  
16 think there was made mention of the tech center. I didn't  
17 pick up on that either. The operations center is what I  
18 know. It's out there on Mill Plain and 172nd.

19 Q. Okay. When did the first meeting take place?

11:05:59 20 A. Gee, I have no idea.

21 Q. Who attended the first meeting?

22 A. Probably the same people that attended all the  
23 meetings. I think I've already stated for the record who  
24 those people were, who I remembered they were.

11:06:15 25 Q. Is it your testimony that all of the people

1 that you identified earlier that attended the meeting that  
2 we discussed attended all four or five of these meetings?

3 A. I believe so, yes, best of my recollection --  
4 recollection, yes.

11:06:32 5 Q. So tell me, when was the second one?

6 A. I have no idea.

7 Q. How about the third one?

8 A. I have no idea.

9 Q. Fourth one?

11:06:42 10 A. (Indicating). There was a series of meetings.  
11 I don't remember the dates.

12 Q. Over what period of time did these meetings  
13 take place?

14 A. I don't know.

11:06:57 15 Q. Over what length of time did they take place?

16 A. You're asking the same question. I don't  
17 know.

18 Q. No, the first question was really designed to  
19 have you tell me when in point of time from August to  
11:07:11 20 November.

21 You can't tell me that, right?

22 A. No.

23 Q. And, likewise, you can't tell me over what  
24 length of time in terms of weeks or months those meetings  
11:07:21 25 took place?

1 A. No.

2 Q. And can you tell me anything at all about the  
3 discussions that took place at those meetings?

11:07:32

4 A. Well, they were related to the 14.7 acres  
5 and -- and, you know, how the project was moving along.  
6 Uh --

7 Q. So tell me of the discussions. What happened?  
8 What was talked about?

11:07:48

9 A. Well, I think, uh -- wasn't it -- well, let's  
10 see, had Bill Eling at that particular time, another one of  
11 the attorneys. Um, he had written a -- I don't know. He  
12 sent some sort of deal that -- that basically said both  
13 parties agree that they couldn't, uh -- that the project  
14 wasn't moving forward, the 65 acres wasn't moving forward  
15 as anticipated, property acquisitions hadn't been made, and  
16 thus there -- there would have been talk about something  
17 else.

11:08:09

18 And that -- that's how the 14.7 acres came up,  
19 uh, the discussions related to the 14.7 acres. We were  
20 trying to -- the Port, to the best of its ability, was  
21 trying to help these guys make something happen on that  
22 doggone property down there.

11:08:28

23 But, you know, they chose not to -- not to go  
24 along with that. In fact, I think it was John McKibbin's  
25 words that, "Oh, gee, uh, this isn't what the public

11:08:41

1 wants," uh, when we talked about a strict ground lease, you  
2 know. I -- as far as I'm concerned, it could be related to  
3 their financial backing. I don't know. Who knows if they  
4 got the money to pull anything off. I don't know that.

11:09:01

5 Q. Well, your speculation aside, what I really  
6 want to know is what you recall having transpired at those  
7 meetings.

8 A. We discussed the 14.7, the possibilities of  
9 doing something on the 14.7 acres.

11:09:14

10 Q. And are you now telling me that that subject  
11 came up in response to a letter that Mr. Eling sent?

12 A. Mr. Eling -- and I don't remember the exact  
13 sequence of that letter, but Mr. Eling sent a letter  
14 that -- well, I don't know if it was technically a letter,  
15 sent a document that basically said the parties could --  
16 could see that the 65 acre project wasn't going to happen,  
17 and thus talk about something else, some other, uh, part of  
18 the project. That's the 14.7.

11:09:30

19 Q. I just want to make sure I understand. Are  
20 you saying that the 14.7 acre proposal came up in response  
21 to whatever communication Mr. Eling provided?

11:09:54

22 A. Well, I just remember the document and the --  
23 and the -- you know, and the discussion that related to  
24 that. I -- I would have to say "yes."

11:10:22

25 Q. At some point in time did the Port ever take

1 the position that whatever it had proposed or offered was  
2 as far as it was willing to go?

3 A. Well, I think the negotiations were  
4 negotiations. They were just that. We were trying to work  
11:10:41 5 out the details of what that could be, uh --

6 Q. Let me ask the court reporter to read the  
7 question back again, because I don't think your answer was  
8 responsive.

9 (The reporter read back as follows:)

11:11:02 10 Question: At some point in time did the  
11 Port ever take the position that whatever it had  
12 proposed or offered was as far as it was willing  
13 to go?

14 THE WITNESS: No.

11:11:04 15 BY MR. MEHLHAF: (Continuing)

16 Q. So your best memory is all the way up until  
17 the time that the option agreement expired, the Port  
18 continued to be willing to negotiate and listen to whatever  
19 proposal that RiverWalk might make?

11:11:21 20 A. Well, there was terms and conditions of the  
21 option agreement that they had to fulfill, so the option  
22 agreement, in my opinion, was valid up until that point of  
23 when it expired, and it expired on -- upon itself because  
24 they didn't perform, period.

11:11:46 25 Q. Did the Port ever take the position that

1 whatever proposal it made was its last and best offer?

2 A. Well, as part of the negotiations, I don't  
3 think the Port's the one that backed out on the deal. I  
4 think it was RiverWalk. They're the ones that declined.

11:12:06 5 We made our best efforts through that whole damn process.

6 Q. And what was it that you think that RiverWalk  
7 declined?

8 A. Well, I think I've already stated; John  
9 McKibbin's response in the meeting was "that's not what the  
11:12:21 10 public wants." They had a meeting of minds out in the hall  
11 or something like that, and it was a done deal.

12 Q. Didn't you understand that the primary  
13 sticking point in those discussions was the length of the  
14 lease?

11:12:33 15 A. Well, that might have been a part of it, but  
16 what John's statement was, and that's what I've already  
17 testified to, is that "this isn't what the public wants."

18 And to me, I was totally taken aback by that.  
19 I mean, how can you pass up a simple ground lease to do a  
11:12:49 20 development on a doggone project? I don't get it. I mean,  
21 any developer in their right mind would jump at the chance  
22 to get a deal like that. I mean, this whole  
23 revenue-sharing thing and all this kind of -- I think it  
24 was a bunch of hogwash. I think they were throwing stuff  
11:13:06 25 out there that they couldn't produce, they couldn't do, and

1 yet pass up a simple ground lease. I don't get it.

2 Q. What was hogwash?

3 A. Maybe I'm just a dummy.

4 Q. What was hogwash?

11:13:19 5 A. What do you mean what was hogwash? I said it  
6 was hogwash that the -- the, uh -- uh, shit, I don't know.  
7 I don't know what I related it to.

8 Q. You said it was hogwash in reference to  
9 something that RiverWalk did or said or a position that  
11:13:36 10 they took.

11 A. Yeah, the simple ground lease, hogwash that  
12 they didn't bite on that doggone simple ground lease and  
13 get a project going.

14 Q. Wasn't the WAC supportive of the RiverWalk  
11:14:21 15 development?

16 A. I can't speak for them. I'd say "yes."

17 Q. And didn't the WAC, members of the WAC express  
18 real frustration over the fact that things were not going  
19 to be moving forward with regard to the development that  
11:14:42 20 was originally contemplated?

21 A. Yes, they did. That was all perpetuated by  
22 these guys.

23 Q. What do you mean by that?

24 A. I mean only part of the WAC people showed up  
11:14:51 25 that night. That was all a big ta-do. I mean, you knew

1 dang good and well these guys had been talking to every one  
2 of them. Same words out of their mouth was coming out of  
3 the WAC committee's mouth. I mean, that was a -- that was  
4 just a total joke, in my opinion.

11:15:05

5 Q. What --

6 A. I mean, they -- they expressed all these  
7 doggone concerns about these project, and you knew doggone  
8 good and well that these two guys are right there prompting  
9 them and telling them what to say. They didn't know what  
10 was going on behind the scene, and of course these guys  
11 aren't going to tell them.

11:15:17

12 And it was in a public setting, so what are we  
13 supposed to do as commissioners? Are we supposed to jump  
14 up and say, "You know what, these guys aren't doing what  
15 they're supposed to be doing. They're feeding you a bunch  
16 of B.S."?

11:15:28

17 Q. You earlier told me that it was the Port that  
18 put the WAC together, correct?

19 A. Yes.

11:15:37

20 Q. And the Port went out into the community and  
21 it identified people that had an interest in serving on the  
22 committee --

23 A. That's right.

24 Q. -- correct?

11:15:46

25 And it selected people that the Port thought

1 would be appropriate in terms of their background and  
2 experience and would provide opinions that would have some  
3 value to the Port?

4 A. Represented the public. (Nodded.)

11:16:02 5 Q. And are you suggesting now that Mr. Benson and  
6 Mr. McKibbin got into their heads and got them to believe  
7 something that wasn't true?

8 A. Well, exactly. They were telling their side  
9 of the story, Benson and -- and then got with those guys --  
11:16:24 10 the members that showed up and -- and got them to believe  
11 that the Port was the big bad Port and it was the Port's  
12 responsibility this didn't move forward.

13 Well, excuse me, they're the developer.

14 Q. What involvement did the City of Camas have in  
11:16:46 15 the RiverWalk project?

16 A. They made comments about the -- I mean, really  
17 no involvement, that I'm aware of.

18 Q. What comments did they make?

19 A. Whether they supported the project or thought  
11:17:02 20 the project was worthwhile.

21 Q. Who on behalf of the City of Camas made those  
22 comments?

23 A. I -- I don't know.

24 Q. What comments were made?

11:17:15 25 A. I don't remember.

1 Q. You just remember there was some negative  
2 comments?

3 A. I don't know that there was negative comments,  
4 no.

11:17:27 5 Q. Did you ever attend a meeting with any City of  
6 Camas representative when the RiverWalk project was  
7 discussed?

8 A. Oh, not that -- not that I remember.

9 Q. Did you ever personally have any discussion  
11:17:50 10 with any representative of the City of Camas regarding the  
11 project?

12 A. Not specifically to that project, no.

13 Q. Why do you say "not specifically to that  
14 project"?

11:18:09 15 A. Because I met with, um, the mayor and Lloyd  
16 Halvorson, but that was in -- that was in general -- we  
17 discussed a number of different things; a potential of what  
18 might happen with Georgia-Pacific, um, things that were  
19 going on about the -- with the Port, working together,  
11:18:30 20 those kind of things, but not -- like I say, not  
21 specifically to the RiverWalk project.

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

24 A. Well, I think my curiosity is still there. I  
11:18:54 25 can't speak for the other two commissioners, but --

1 Q. Have there been any discussions among the  
2 commissioners in 2008 on that subject?

3 A. None.

4 Q. Is there a reason why not?

11:19:13 5 A. I don't think it would be appropriate, would  
6 it?

7 Q. In light of this proceeding?

8 A. Yeah. The market is not very good right now  
9 either.

11:19:29 10 Q. Since the option agreement expired, has any  
11 other development made -- or excuse me -- any other  
12 developer made any proposal to the Port regarding a  
13 mixed-use development?

14 A. No.

11:19:43 15 Q. Do you recall any discussion at all that the  
16 Port was not going to generate as much revenue from the  
17 RiverWalk project as it believed it should get?

18 A. No.

19 Q. Did anybody at any time on behalf of the Port  
11:20:03 20 ever express the view that there wasn't enough juice in the  
21 deal for the Port?

22 A. No.

23 Q. Did anybody on behalf of the Port at any point  
24 in time ever suggest, before the option agreement expired,  
11:20:24 25 that the deal with RiverWalk should be renegotiated?

1 A. No.

2 Q. Okay. Do you believe that if that had  
3 happened, you would remember it?

4 A. Yes.

11:21:33 5 Q. Do you remember any discussion among the  
6 commissioners before the option agreement expired regarding  
7 possible litigation with RiverWalk?

8 A. No.

9 Q. Had that taken place, do you believe you would  
11:21:54 10 recall that?

11 A. Yes.

12 Q. Do you still say you have a pretty good memory  
13 with respect to RiverWalk related events?

14 A. Yes.

11:22:45 15 MR. MEHLHAF: Let's take a short break.

16 (Recess taken: 11:22 to 11:36.)

17 MR. MEHLHAF: I don't have any further  
18 questions. Thank you.

19 THE WITNESS: Okay.

11:36:58 20

21 EXAMINATION

22 BY MR. COURSER:

23 Q. Mr. Hargrave, just a couple real quick  
24 questions.

11:37:02 25 I'm handing you what's been marked as

1 Deposition Exhibit 1. I believe this was a document that  
2 you previously referred to in your earlier testimony.

3 Do you believe that Exhibit 1 is a true and  
4 correct copy of the option agreement?

11:37:22 5 A. Yes.

6 MR. COURSER: Would you mark that for me,  
7 please.

8 (EXHIBIT No. 3, Option Agreement with  
9 highlighted 65 acres, marked.)

11:37:37 10 A. Um, although -- although the area in that 65  
11 acres in question is not highlighted on this particular  
12 one.

13 BY MR. COURSER: (Continuing)

14 Q. Okay. Let me hand you what's been marked as  
11:37:46 15 Exhibit 3, Deposition Exhibit 3.

16 If you would examine that for a moment and  
17 indicate to me if it is a true and correct copy of the  
18 option agreement that was executed between the parties.

19 A. Yes.

11:38:02 20 Q. And why do you say that?

21 A. Well, because it has the 65 acres that are  
22 highlighted there and it has, um, Sheldon Tyler's, um,  
23 writing on it.

24 Q. What does Sheldon Tyler's writing say?

11:38:14 25 A. "Area subject to option."

1 Q. So you believe that Exhibit -- Deposition  
2 Exhibit 3 is a true and correct copy for that reason and  
3 Deposition Exhibit 1 is not?

4 A. Correct.

11:38:29 5 MR. MEHLHAF: Do you have another copy of  
6 Exhibit 3 for me?

7 MR. COURSER: I will make you one, Counsel.

8 MR. MEHLHAF: Let me see 1.

9 Okay.

11:39:19 10 MR. COURSER: Those are all the questions I  
11 have.

12 MR. BENSON: Bill, could we take a break for a  
13 minute?

14 MR. MEHLHAF: Yeah. Let's take a break here  
11:39:32 15 for a second. I'm going to have one or two questions for  
16 you.

17 (Recess taken: 11:39 to 11:43.)

18

19 FURTHER EXAMINATION

11:44:09 20 BY MR. MEHLHAF:

21 Q. Okay. Mr. Hargrave, you have Exhibit No. 3 in  
22 front of you?

23 A. Yes.

24 Q. And Mr. Courser asked you a question with  
11:44:26 25 respect to a document that's attached to that option

1 agreement, the version that is represented by Exhibit  
2 No. 3, and it appears that that was Exhibit A.

3 Can you tell me when the outline and the  
4 writing was placed on Exhibit A?

11:44:55 5 A. I would assume that it was when --

6 Q. Don't assume.

7 A. Well, November 8th --

8 Q. Do you know?

9 A. -- 2005.

11:45:07 10 Q. And how do you know that?

11 A. Well, all of the exhibits would have been  
12 attached to the document at that particular time.

13 Q. Well, what is the basis for your testimony  
14 that this Exhibit A that's attached to Exhibit 3,

11:45:19 15 Deposition Exhibit No. 3 is the document that actually  
16 appeared in the original executed version of the option  
17 agreement?

18 A. Because this is the one that I remember seeing  
19 with the option agreement.

11:45:38 20 Q. What is the significance of this Exhibit A  
21 with the outlining on -- and the handwriting, in your  
22 opinion?

23 A. It represents the 65 acres that the  
24 development was supposed to entail.

11:45:52 25 Q. Whose writing is that?

1 A. Sheldon Tyler's, it looks like.

2 Q. And when did Mr. Tyler write the words that  
3 appear on Exhibit A to Deposition Exhibit 3?

4 A. It would have to be when the document was put  
11:46:11 5 together.

6 Q. Mr. Tyler was not a signatory to the option  
7 agreement, was he?

8 A. No.

9 Q. Where were you when you signed the option  
11:46:23 10 agreement?

11 A. I believe that was a public meeting when we  
12 actually signed it.

13 Q. Was Mr. Tyler there?

14 A. Yes.

11:46:37 15 Q. Do you know how many duplicate originals of  
16 the option agreement were executed?

17 A. No, I don't.

18 Q. Would you expect, then, that this Exhibit A  
19 with the handwriting and the outline would be on the  
11:47:09 20 version that RiverWalk had of this document?

21 A. Yes.

22 Q. What causes you to believe that?

23 A. Well, it would be the original document.

24 Q. And you're testifying today that you have a  
11:47:23 25 specific recollection that this Exhibit A to Deposition

1 Exhibit No. 3 was actually attached to the document when  
2 you signed it?

3 A. Yes.

4 Q. When did you first come to that belief?

11:47:48 5 A. I guess I don't understand the question.

6 Q. Have you come to that understanding since your  
7 deposition was taken in this matter on September 10th,  
8 2008?

9 A. Well, it's -- it's -- I remember this  
11:48:05 10 particular drawing because this is what -- I remember  
11 signing and looking at this drawing. So it's always been  
12 my understanding that this is the correct Exhibit A for  
13 this document.

14 Q. Were you of that belief on September 10th,  
11:48:22 15 2008?

16 A. Yes.

17 Q. Have you had any conversation with respect to  
18 this Exhibit A since your deposition was taken on September  
19 10th, 2008?

11:48:36 20 MR. COURSER: He's not asking about  
21 interactions with legal counsel.

22 A. No.

23 BY MR. MEHLHAF: (Continuing)

24 Q. How come you didn't point out this discrepancy  
11:48:54 25 that you now say appears on Exhibit 1 when your deposition

1 was earlier taken?

2 A. Well, I don't know that I was in the best of  
3 health at that particular time.

4 Q. Have you ever seen a copy of the option  
11:49:26 5 agreement that was produced by the Port in connection with  
6 this arbitration?

7 A. A copy of the option agreement -- well, yes.  
8 I mean, I've -- I've looked over that document.

9 Q. And is it your belief that Exhibit A to that  
11:49:49 10 document has the outlining and the handwriting on it?

11 A. Yes.

12 Q. How do you know that?

13 A. Because it's the one I've got at home.

14 MR. MEHLHAF: Okay. Thank you.

11:50:04 15 MR. COURSER: Uh, just a moment.

16

17

#### FURTHER EXAMINATION

18 BY MR. COURSER:

19 Q. A couple of follow-up questions.

11:50:10 20 Following your deposition on September 10,  
21 Mr. Hargrave, did you undergo a medical procedure?

22 A. Yes, I did.

23 Q. Okay. And was that medical procedure related  
24 to a medical condition that you had on September 10th?

11:50:25 25 A. Yes.

1 Q. Okay. And did you obtain resolution and  
2 relief from that medical condition through that procedure?

3 A. Yes.

4 Q. Now, in terms of the documents that the Port  
11:50:41 5 has produced to RiverWalk, you have not personally reviewed  
6 all the documents, have you?

7 A. No.

8 Q. Okay. So, in terms of the copy or copies of  
9 the option agreement that the Port produced to RiverWalk in  
11:50:56 10 this dispute, you've not personally reviewed those?

11 A. No.

12 Q. Do you have a specific recollection of Sheldon  
13 Tyler being present when the option agreement was signed by  
14 the Port commissioners?

11:51:17 15 A. No.

16 MR. COURSER: I have nothing further.

17

18 FURTHER EXAMINATION

19 BY MR. MEHLHAF:

11:51:26 20 Q. Mr. Hargrave, are you now saying that whatever  
21 medical condition you had on September 10th, 2008, in some  
22 way impacted your memory or your ability to recollect and  
23 recite events relative to the RiverWalk project?

24 A. I -- I think I was under stress, yes. I --  
11:51:52 25 and I didn't realize to what extent until I got the problem

1 taken care of.

2 Q. So do you believe that that condition affected  
3 your memory on September 10th, 2008?

4 A. Well, I think it affected my whole physical  
11:52:09 5 being.

6 Q. Did it affect your memory?

7 A. I'd have to say "yes," to a certain extent.

8 I -- you know --

9 Q. That's what I'm trying to find out. To what  
11:52:24 10 extent did it affect your memory, do you believe?

11 A. You're looking for a percentage or something?  
12 I don't know. I -- I -- I don't know. Physically I was in  
13 distress, uh, and how much that affected my memory, I -- I  
14 guess I can't answer that. But I think I did --

11:52:46 15 Q. Well, you've had an opportunity to review the  
16 deposition transcript of your earlier deposition --

17 A. Yes.

18 Q. -- correct?

19 A. Yes.

11:52:53 20 Q. Were there any questions that I asked that you  
21 did not have a memory of at that time that you now do?

22 A. I made some -- yes, I went through it, and I  
23 made some, uh, comments on that document, yes.

24 Q. What do you mean you made some comments?

11:53:11 25 A. Well, I read through the document, and things

1 that -- that, uh -- uh -- that I felt that I said in here  
2 that were incorrect, uh, I've corrected those, uh, in  
3 looking through that document.

4 Q. Did you change your testimony at all?

11:53:32 5 A. Did I change it?

6 Q. Um-hmm.

7 A. I guess I don't understand.

8 Did I change the testimony in here?

9 Q. Yeah. When you went through and you made your  
11:53:40 10 notes, did you make changes to your testimony?

11 A. Yes.

12 Q. And are you saying that that was on the basis  
13 that your memory is better now than it was then?

14 A. I believe so, yes.

11:53:52 15 Q. Were you under any medication for the  
16 condition that you had at the time your deposition was  
17 taken before?

18 A. I was -- there was painkillers that I was  
19 taking, yeah.

11:54:04 20 Q. What?

21 A. I don't remember.

22 Q. You have no recollection of that?

23 A. Well, they're -- I mean, they are different  
24 types of painkillers. I don't -- I wasn't paying any  
11:54:17 25 particular attention what particular kinds they were. I

1 think I've still got the bottles at home.

2 Q. And do you believe that the testimony that you  
3 gave on September 10th, 2008, was truthful and honest?

4 A. Uh, the majority of it. I just found some --  
11:54:34 5 some things in here that, uh, that I made notes on and --  
6 and corrected in my own mind in looking through this  
7 deposition.

8 Q. At the time that you gave the testimony did  
9 you believe that it was truthful and honest?

11:54:49 10 A. Not on those particular items, no.

11 Q. At the time that you gave the testimony did  
12 you believe it was truthful and honest?

13 A. Oh, okay. Yes.

14 Q. And you told me at that time that you had no  
11:55:03 15 condition that you felt would impact your memory, didn't  
16 you?

17 A. Well, yeah. But the -- the health issue -- I  
18 don't -- I don't think I understood the effect that it was  
19 having on me until after I had the procedure and got that  
11:55:19 20 taken care of.

21 Q. That's what you told me, right?

22 A. Yes.

23 Q. And you wanted me to rely upon the  
24 truthfulness and the honesty of the answers that you gave,  
11:55:29 25 didn't you?

1           A.    Yes.

2           MR. MEHLHAF: Thank you. No further  
3 questions.

4           MR. COURSER: Nothing else.

11:55:41

5                            (Deposition concluded at 11:55 a.m.)

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1 STATE OF OREGON )  
2 COUNTY OF MULTNOMAH ) ss.  
3

4 I, Kimberly J. Allen, RPR, CSR, CRR, hereby  
5 certify that, pursuant to the Rules of Civil Procedure,  
6 ALAN F. HARGRAVE personally appeared before me at the time  
7 and place set forth in the caption hereof; that at said  
8 time and place I reported in stenotype all testimony  
9 adduced and other oral proceedings had in the foregoing  
10 matter; that thereafter my notes were reduced to  
11 typewriting under my direction; and the foregoing  
12 transcript, Pages 85 to 172, both inclusive, constitutes a  
13 full, true, and correct record of such testimony adduced  
14 and oral proceedings had and of the whole thereof.

15 Witness my hand and CSR seal at Portland,  
16 Oregon, this 6th day of November, 2008.



17  
18 

19 Kimberly J. Allen, CSR, RPR, CRR  
20 Oregon CSR #93-0272  
21 Washington CCR #2758  
22 Idaho CSR #743  
23  
24  
25