



PORT OF KENNEWICK REGULAR COMMISSION MEETING

JANUARY 12, 2021 MINUTES

Commission Meeting recordings, with agenda items linked to corresponding audio, can be found on the Port's website at: <https://www.portofkennewick.org/commission-meetings-audio/>

Commission President Commissioner Don Barnes called the Regular Commission Meeting to order at 2:00 p.m. via GoToMeeting Teleconference.

ANNOUNCEMENTS AND ROLL CALL

The following were present:

Board Members: Commissioner Don Barnes, President (via telephone)
Skip Novakovich, Vice-President (via telephone)
Thomas Moak, Secretary (via telephone)

Staff Members: Tim Arntzen, Chief Executive Officer (via telephone)
Tana Bader Inglima, Deputy Chief Executive Officer (via telephone)
Amber Hanchette, Director of Real Estate and Operations (via telephone)
Nick Kooiker, Chief Finance Officer (via telephone)
Larry Peterson, Director of Planning and Development (via telephone)
Lisa Schumacher, Special Projects Coordinator
Bridgette Scott, Executive Assistant (via telephone)
Lucinda Luke, Port Counsel (via telephone)

PLEDGE OF ALLEGIANCE

Commissioner Barnes led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

MOTION: Commissioner Barnes moved to amend the Agenda by revising the title of Item 8D, *Citizen Investigation and Costs Inquiry*, be renamed as *Citizen Complaint Decision and Investigation Cost Inquiry*, and leading the discussion will be Commissioner Barnes, Ms. Luke and Mr. Kooiker; Commissioner Moak seconded;

Discussion:

Commissioner Novakovich inquired about the reason for the change.

Commissioner Barnes stated the Commission is posed to discuss the Citizen Investigation and Cost later on in the Agenda, and as you may recall, there was a hearing on December 4, 2020. If we are going to discuss Investigation Costs and a Citizen Inquiry, Commissioner Barnes thought it would be prudent to have discussion and announce the decision that was made after the December 4, 2020 Appeal Hearing.

With no further discussion, motion carried unanimously. All in favor 3:0.

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MOTION: Commissioner Novakovich moved to approve the Agenda as amended; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

PUBLIC COMMENT

No comments were made.

CONSENT AGENDA

- A. Approval of Direct Deposit and E-Payments Dated December 17, 2020***
Direct Deposit and E-Payments totaling \$61,196.80.
- B. Approval of Warrant Register Dated December 24, 2020***
Expense Fund Voucher Number 102520 through 102549 for a grand total of \$292,320.63
- C. Approval of Direct Deposit and E-Payments Dated December 31, 2020***
Direct Deposit and E-Payments totaling \$95,284.05.
- D. Approval of Warrant Register Dated December 31, 2020***
Expense Fund Voucher Number 102550 through 102591 for a grand total of \$235,367.13
- E. Approval of Warrant Register Dated January 5, 2021***
Expense Fund Voucher Number 102592 through 102595 for a grand total of \$88,849.96
- F. Approval of Warrant Register Dated January 12, 2021***
Expense Fund Voucher Number 102596 through 102634 for a grand total of \$209,853.76
- G. Approval of Special Commission Meeting Minutes December 3, 2020***
- H. Approval of Special Commission Meeting Minutes December 4, 2020***
- I. Approval of Regular Commission Meeting Minutes December 8, 2020***
- J. Approval of Special Commission Meeting Minutes December 11, 2020***

MOTION: Commissioner Novakovich moved to approve the Consent Agenda as presented; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

EMERGENCY DELEGATION UPDATE

Mr. Arntzen shared his recent discussion with a tenant about his business and the current and ongoing impacts related to COVID-19. Mr. Arntzen inquired if the Commission would like staff to look at potential economic relief related to tourism and travel, as those businesses have been impacted greatly by COVID-19.

Ms. Hanchette concurred with Mr. Arntzen's comments and stated tenants have expressed their concern to her as well.

Commissioner Barnes understands that the Port is restricted in its ability to simply grant rent concessions to tenants. Commissioner Barnes inquired if the Port can review a lease, on a case-by-case basis, given the conditions of the marketplace, and modify the lease and rent structure.

Commissioner Moak thought the Emergency Delegation authorized Mr. Arntzen to work with the tenants on whatever concessions he thought were necessary or important. And that Mr. Arntzen had the authority either make recommendations to the Commission or move forward with accommodations, based upon the law.

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Mr. Arntzen stated that is correct, however; he would like to meet with Ms. Luke and staff to see if we could come up with a potential remedy that may exceed the Emergency Delegation that the Commission has given.

Additional discussion commenced between staff and the Commission.

It is the Consensus of the Commission for staff to look at potential options to provide additional relief to Port tenants due to COVID-19.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. Vista Field

Mr. Peterson stated Total Site Services was awarded substantial completion of Phase 1A in September 2020; however, there is one outstanding change order for winterization of the fountains.

Mr. Peterson anticipates discussing the Articles of Incorporation for the Property Owners Association at the January 26, 2021 Commission Meeting.

B. Kennewick's Historic Waterfront

Mr. Peterson stated the workplan identified Columbia Drive and Clover Island as the Historic Waterfront and staff will begin the rebranding effort and refer to that area as such moving forward. Mr. Peterson stated Makers urban design and architecture presented the draft preferred concept and phase 2 public feedback to the Commission on December 8, 2020. Makers continues to refine the concept based on the Commission comments and will present that concept to the public for a third open house in February.

Ms. Bader Inglima reported that she is working with Makers on the third public open house advertising.

Regarding the 1135 project, the U.S. Army Corps of Engineers (USACE) is awaiting Pacific Northwest District approval for the additional federal funding. Ms. Bader Inglima stated Walla Walla continues to work on the questions posed and believes a contract will be awarded in early summer.

C. State of the Ports Presentation February 24, 2021

Ms. Bader Inglima stated the Tri-City Regional Chamber of Commerce announced the State of the Ports presentation will be on February 24, 2021 via zoom. The Chamber requested that each port show a video and then they will have a live question and answer session with all three port representatives on screen at once. The Ports of Benton and Pasco representatives will be the executive directors. Ms. Bader Inglima inquired who the Commission would like to represent the Port of Kennewick.

It is the Consensus of the Commission for Mr. Arntzen to represent the Port of Kennewick at the Tri-City Regional Chamber of Commerce for the State of the Ports presentation.

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D. Citizen Complaint Decision and Investigation Cost Inquiry

Commissioner Barnes stated the Port had a Special Commission Meeting on December 4, 2020 and would like to read unedited excerpts from the decision resulting from that meeting. This is a decision on recommended action from the Judicial Dispute Resolution LLC regarding the matter of Port of Kennewick and Port Commissioner Don Barnes.

“This matter comes before the Neutral, Judge Paris K. Kallas, retired, upon Port Commissioner Don Barnes’ request for request for review of the *Recommended Action of the Port of Kennewick*. A public review hearing was held on December 4, 2020.

Procedural History:

On March 25, 2019, Commissioner Skip Novakovich filed a Complaint against Commissioners Tom Moak and Don Barnes. Initially, the Complaint was filed anonymously. The Complaint alleges that both Commissioners Moak and Barnes violated the State Open Public Meetings Act, violated certain Port Rules, and subjected the Port CEO to harassment, retaliation, and a hostile work environment. The Complaint request relief, including that “Commissioners Moak and Barnes be asked to resign their “Commissioner seats and be declared ineligible to ever hold any elected seat.”

Pursuant to Rule 5.4, the Port appointed attorney Tara Parker to investigate the Complaint. On June 18, 2019 Attorney Parker completed her report and forwarded it to Port counsel. On June 26, 2019, Port counsel asked Parker to investigate another alleged violation in which Commissioner Barnes contacted the State Auditor’s Office. On August 2, 2019, Attorney Parker issued her updated investigation report. The investigation exonerated Commissioners Moak and Barnes on multiple complaints of misconduct. Attorney Parker concluded that neither Commissioner violated the Open Public Meetings Act. Nor did either Commissioner violate the Port Rules in their directives to staff regarding Resolution 2019-02.

Regarding Commissioner Barnes, Attorney Parker concluded that he violated Port Rule 12.3 by directly contacting one of the Port’s consultants, DPZ, and by directly contacting the State Auditor’s Office. She also found that Commissioner Barnes exhibited hostility against the Port CEO, Tim Arntzen in violation of Port Rule 3.6.

Based upon Attorney Parker’s report, Port counsel issued *Recommended Action* against Commission Barnes, include formal public ensure and satisfactory completion of training covering various topics. The *Recommended Action* recommends that Commissioner Barnes personally pay for all costs and fees associated with the training. Furthermore, the *Recommended Action* recommends that Commissioner Barnes participate in cooperative team building activities and trainings with the Port CEO and staff. Under *Recommended Action*, all of the foregoing would be published in the local newspaper.

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Commissioner Barnes requested a review of the *Recommended Action*.

On December 4, 2020, a public hearing was conducted, and counsel for Commissioner Barnes and counsel for the Port of Kennewick presented an oral argument. This Decision follows:

Conclusion:

Upon consideration of the arguments presented by counsel, based upon review of the entire investigation report, and for all the reasons stated herein, there is not substantial evidence in the record sufficient to overcome the presumption that Commissioner Barnes acted ethically or to conclude that Commissioner Barnes committed sanctionable misconduct. Accordingly, the Complaint against Commissioner Barnes is unsubstantiated in its entirety and no sanctions shall be applied.

Dated this 31st day of December 2020, signed by Paris K. Kallas, Retired Superior Court Judge.”

Commissioner Barnes concluded reading the unedited excerpts from the decision dated December 31, 2020. Commissioner Barnes asked Ms. Luke and Mr. Kooiker to address the Investigation Costs Inquiry.

Ms. Luke stated related to the inquiry regarding costs, staff is not prepared to provide a detailed breakdown of costs at this time and asked if the Commission could provide additional input as to what information they are seeking.

Commissioner Barnes stated the inquiry regarding costs came from a citizen request at the December 8, 2020 Commission Meeting. Additionally, he requested that an unredacted copy of the complaint and the investigation report be posted on the Port website. Commissioner Barnes would like to see that happen if it is legal and asked for Ms. Luke’s remarks.

Ms. Luke stated there are three separate issues related to the investigative file being placed on the Port website or provided to a citizen via public records request (PRR) or otherwise.

- If there were a PRR made for the investigation file compiled by Ms. Parker, that would be handled in same manner as the PRR’s made by Joel Comfort in 2019. That request would be responded to with a properly redacted version of the investigative file. Ms. Luke stated there are specific reductions required under the law;
- During the hearing and appeal process which Commissioner Barnes referred to, there is a protective order on file. That order between the parties and Judge Kallas, remains in full force and effect. That order dictates how the investigative file, in its unredacted form, may or may not be used.
- There is a statute that overlays some of the material that are part of the file. RCW 42.56.250(6) requires other redaction of witnessing or their authorization to release the materials.

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Those are the three issues related to the release of an unredacted file. Ms. Luke stated those would need to be overcome and handled before placing the investigative file on the Port website or releasing the file to anyone.

Commissioner Barnes inquired if it would be legal to post a copy of the Complaint on the Port website.

Ms. Luke stated the Complaint included employee names; therefore, it is subject to RCW 42.56 provisions referenced earlier.

Commissioner Moak inquired if the decision by Judge Kallas could be placed on the Port website.

Ms. Luke would need to review the decision under the overlay of RCW 42.56 and if it is in compliance, then yes, the decision could be placed on the website.

Commissioner Moak inquired if Ms. Parker's conclusion to the investigation and decision could be placed on the website.

Ms. Luke stated Ms. Scott is working on the PRR made during the December 8, 2020. Ms. Parker's memo and summary of the investigation, including a redacted copy of complaint and other materials related to report that was issued in August 2019 is on the website. The citizen was directed to that specific website page.

It is Commissioner Barnes understanding that the unredacted Complaint has been released, so why can't the Port post the unredacted Complaint on the website.

Ms. Luke would need to review those specific circumstances.

Commissioner Barnes believes it was released to two individuals who made PRR's. Commissioner Barnes would like to see the decision made by Judge Kallas regarding the December 4, 2020 open public hearing, unredacted, be placed on the website. The Port of Kennewick needs to be transparent.

Ms. Luke is not disagreeing with Commissioner Barnes; however, the decision needs to be reviewed under the overlay of RCW 42.56 provision first, and then it can be placed on the website. The Citizen Complaint and PRR's are handled differently than the posting of materials on the Port website.

Ms. Scott stated the redacted Citizen Complaint is on the minutes page of the website under the Agenda Packet and under the public records request page under 2019 Citizen Complaint documents, which includes the redacted Complaint, the independent counsel report, the action memos, and the power point that was presented at the August 13, 2019 Commission Meeting.

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Commissioner Barnes requested the following regarding the investigative costs:

- All fees paid to Carney, Badley, Spellman;
- All fees paid to any other attorneys retained by Carney, Badley, Spellman;
- All fees paid to Tara Parker; and
- All fees to paid to JDR for Judge Kallas' services.

Commissioner Barnes stated once those fees are compiled, he would like them presented to the Commission and placed on the website as well.

Commissioner Moak stated staff has presented cost updates over the last two years and he would like to see a close out document that shows all the costs that the Port incurred, including Commissioner Barnes PRR's.

Mr. Kooiker reiterated Commissioner Barnes request and had a few questions regarding the request. Mr. Kooiker believes there are three separate costs:

- The first cost includes when the complaint was initiated and the initial investigation cost;
- The second cost would include the numbers after August 13, 2019, when Commissioner Barnes requested the appeal;
- The third cost would include the Joel Comfort public records requests.

Mr. Kooiker has some concerns gathering these numbers because some of the invoices blur over the lines. Mr. Kooiker stated he would need to use some discretion and some subjectivity to review individual invoices to determine which column the costs would fall under, whether it is related to the investigation, appeal, or PRR. Mr. Kooiker can present a higher-level overview; however, he is uncomfortable presenting the exact cost number because of the potential overlap. Mr. Kooiker suggested a PRR for all of the invoices or the Port hire a forensic accountant to make the determinations. Mr. Kooiker is concerned about making that final determination and inquired if the Commission had any questions.

Commissioner Barnes believes all of the costs fall under one column and the PRR from Joel Comfort was for Commissioner Barnes to defend himself. Commissioner Barnes would like to see the total amount spent on this effort, that was completely without basis or merit. Commissioner Barnes was on the defensive from day one and he would like Mr. Kooiker to report to the public, the cost of this entire thing. Commissioner Barnes does not think you can separate the investigation costs from the appeal costs, because he maintained from day one, and the Judge found that he did nothing wrong. Commissioner Barnes does not want to make this difficult, he would like the total of all the costs and believes the public needs to have that information. Commissioner Barnes does not think the costs need to be separated and would like to see the total for legal fees related to the anonymous Citizen Complaint. Commissioner Barnes stated that is what Mr. Frost asked for at the last Meeting, in addition to other constituent inquiries he has received. Commissioner Barnes would like to respond to their request in a transparent, comprehensive, complete way and he believes the citizens deserve to get this information.

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Commissioner Novakovich agrees with Mr. Kooiker and believes it puts him in a difficult situation. Commissioner Novakovich agrees with Commissioner Barnes that a total cost is appropriate; however, he also agrees that there are three separate costs. Commissioner Novakovich would like to see the costs separated and understands they will not be dollar for dollar. Commissioner Novakovich believes the Commission should not hold Mr. Kooiker accountable for decisions someone else made. Commissioner Novakovich believes there are three separate costs and a total.

Commissioner Barnes does not believe the public is looking for this to be to the penny, but approximately how much was spent on this effort that was completely without merit. Commissioner Barnes does not want to make it difficult for Mr. Kooiker and requested the total amount spent on this effort, which the public is asking for this information.

Mr. Kooiker has the estimated cost available.

Commissioner Barnes stated if Mr. Kooiker has a figure today, he can present it; however, it is Commissioner Barnes understanding that the Port does not have all of the costs yet. Judge Kallas issued her decision on December 31, 2020 and today is January 12, 2021. Commissioner Barnes inquired if the Port has received the final bill from Judge Kallas.

Ms. Luke stated yes, the Port received an invoice last week from Judge Kallas' office.

Mr. Arntzen inquired if the Commission would give him the opportunity to work with staff and Ms. Luke, to attempt to figure out the best methodology for getting usable information, he believes the Commission would like to see. Mr. Arntzen inquired if that would be acceptable to the Commission.

Commissioner Moak is fine with Mr. Arntzen's suggestion.

Commissioner Barnes would like to turn this back to staff and believes the ask was clear. The public would like to know how much was spent on the Citizen Complaint and Commissioner Barnes does not want to tell you how to do your job or micromanage this. Commissioner Barnes wants to ensure that the ask is clear and tell public how much was spent on the Citizen Complaint.

Mr. Arntzen will work with staff and have a progress report at the next Meeting if we do not have all of the information assemble related to this matter. Mr. Arntzen stated he will present the information to the Commission at the earliest opportunity.

Commissioner Barnes inquired if Mr. Kooiker would like to offer the information he has to date or would he like to hold off on presenting the information.

Mr. Kooiker can share the broad numbers that he has available.

Commissioner Barnes will leave that up to Mr. Kooiker and Mr. Arntzen and wanted to ensure they understand the ask.

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Mr. Arntzen stated, rather than working off some rough numbers, he suggested staff review this request in detail. Mr. Arntzen stated staff reached out to Mr. Frost related to his PRR seeking clarification and have not received a response. Mr. Arntzen reiterated his request, if the Commission would allow him time to work with staff and Ms. Luke to review the information and report back as soon as possible with a detailed and accurate report. If staff is unable to come up with the requested information by the next Commission meeting, Mr. Arntzen will report back on the status and actions taken by staff thus far.

Commissioner Barnes believes he read somewhere that the Port may have insurance to cover the cost incurred for the Citizen Complaint and asked staff to report back to the Commission at a future Meeting if this is a true or incorrect statement.

Mr. Arntzen will research and get back the Commission.

E. Director Reports

Ms. Bader Inglima is working on a 2021-2022 Workplan Executive Summary for the 2021-2022 Workplan. Ms. Bader Inglima stated the Port will have it available in digital format first and then available in printed form. Ms. Bader Inglima reported that the City of Richland has started construction on the Columbia Park Trail improvements.

Mr. Arntzen would like to present a memo to the Commission about what all Port staff will be working on for 2021 and inquired if the Commission would be interested in that.

Commissioner Moak would welcome that memo and believes it is appropriate to hear from Mr. Arntzen and staff regarding 2021 priorities.

F. Commissioner Meetings (formal and informal meetings with groups or individuals)

Commissioners reported on their respective committee meetings.

G. Non-Scheduled Items

Mr. Arntzen met with the Kiwanis regarding the potential playground at Columbia Gardens Wine Village. Mr. Arntzen expressed his excitement and would like to walk the site with Ms. Hanchette and Mr. Peterson regarding location. Mr. Arntzen thanked Commissioner Moak for shepherding the potential project. Additionally, Mr. Arntzen has been thinking about tenant expansion.

Commissioner Novakovich suggested Commissioner Moak look at the City of Walla Walla downtown area for suggestions and ideas for the Historic Downtown Kennewick Partnership.

Commissioner Barnes stated the Port has come through a two-year period with the Citizen Complaint, in which he read excerpts into the record earlier from the decision that resulted in this two-year Complaint and process. Commissioner Barnes has concerns for the health and well-being of the Port of Kennewick. There have been discussions in the past about things that should be considered or reviewed at the Port of Kennewick going forward. Commissioner Barnes recently brought up a governance audit and believes the Citizen Complaint may highlight the shortcomings of the Port Rules of Policy and Procedure; and perhaps the Citizen Complaint is an indication that

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adjustments should be made to the Rules of Policy and Procedure at the Port of Kennewick. Commissioner Barnes requested an Agenda Item titled Governance Audit for the next meeting to discuss this. Commissioner Barnes understands this is not an autocracy, but a three-member Commission, in which policy should be made by all three members.

No further comments were made.

PUBLIC COMMENTS

No comments were made.

COMMISSION COMMENTS

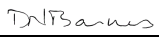
No comments were made.

ADJOURNMENT


With no further business to bring before the Board; the meeting was adjourned 3:40 p.m.

APPROVED:


PORT of KENNEWICK BOARD of COMMISSIONERS

DocuSigned by:


 Don Barnes, President

DocuSigned by:


 Skip Novakovich, Vice President

DocuSigned by:


 Thomas Moak, Secretary

*The January 12, 2021 Commission Meeting Minutes were Approved by the Port of Kennewick Commissioners on January 26, 2021 at the Regular Commission Business Meeting and signed with an Electronic Signature Per Resolution 2021-01, Adoption of Electronic & Digital Signature at the Port of Kennewick.