

The Governor's proclamation 20-28 regarding the Open Public Meetings Act and Public Records Act temporarily prohibits in-person public attendance at meetings subject to the OPMA.

A GoToMeeting will be arranged to enable the public to listen and make public comments remotely.

To participate remotely, please use the following call-in information:

Via GoToMeeting: 1-866-899-4679, Access Code: 985-288-645

## **REVISED AGENDA**

### ***Port of Kennewick***

### ***Regular Commission Business Meeting***

*Port of Kennewick Commission Chambers (via GoToMeeting)*

*350 Clover Island Drive, Suite 200, Kennewick, Washington*

April 27, 2021

2:00 p.m.

**I. CALL TO ORDER**

**II. ANNOUNCEMENTS AND ROLL CALL**

**III. PLEDGE OF ALLEGIANCE**

**IV. APPROVAL OF AGENDA**

**V. PUBLIC COMMENT** *(Please state your name and address for the public record)*

**VI. CONSENT AGENDA**

- A. Approval of Direct Deposit and ePayments Dated April 19, 2021
- B. Approval of Warrant Register Dated April 27, 2021
- C. Approval of Regular Commission Meeting Minutes April 13, 2021

**VII. EMERGENCY DELEGATION UPDATE** (TIM/AMBER)

**VIII. NEW BUSINESS**

- A. Request for Letter of Support - The Nineteen by Andrew Klein (TIM/AMBER)

**IX. REPORTS, COMMENTS AND DISCUSSION ITEMS**

- A. Columbia Gardens Wine & Artisan Village (TIM)
- B. Port Logo Signage (TANA)
- C. 2021 Staff Project Overview (TIM)
- D. Commission Meetings (formal and informal meetings with groups or individuals)
- E. Non-Scheduled Items  
(LISA/BRIDGETTE/TANA/NICK/LARRY/AMBER/LUCINDA/TIM/TOM/SKIP/DON)

**X. PUBLIC COMMENT** *(Please state your name and address for the public record)*

**XI. ADJOURNMENT**

***PLEASE SILENCE ALL NOISE MAKING DEVICES***





# PORT OF KENNEWICK REGULAR COMMISSION MEETING

**DRAFT**

**APRIL 13, 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 Novakovich moved to approve the Agenda; 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 April 2, 2021***

Direct Deposit and E-Payments totaling \$89,961.14

***B. Approval of Warrant Register Dated April 13, 2021***

Expense Fund Voucher Number 102809 through 102852 for a grand total of \$174,054.40

***C. Approval of Regular Commission Meeting Minutes March 23, 2021***

***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.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

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## EMERGENCY DELEGATION UPDATE

Mr. Arntzen and Ms. Hanchette had nothing to report for Emergency Delegation.

## REPORTS, COMMENTS AND DISCUSSION ITEMS

### A. *Community Project Direct Appropriations Funding*

Ms. Bader Inglima stated the Port submitted projects for Build Back Better (BBB) which included: The Willows Infrastructure, electrical vehicle charging stations for Columbia Gardens and Vista Field and the J. Lieb project. Ms. Bader Inglima submitted the projects to the Washington Public Ports Association (WPPA) as well. Separate from the BBB, Congressman Newhouse and Senator Murray asked jurisdictions to submit requests for direct appropriations for community projects.

Congressman Newhouse indicated he will be putting forward 10 possible projects from throughout the 4th congressional district. Ms. Bader Inglima outlined the requirements for the appropriations:

- Each project must be for fiscal year 2022 funds only and cannot request multi-year funding;
- Each project should include letters of support or press articles highlighting the need for the requested community project funding;
- Each project will require matching funds;
- Each project must be included on a state intended use plan, a community development plan, or other publicly available planning documents, or resolutions.

Ms. Bader Inglima inquired if the Commission would like to submit an appropriations request to the Congressman and Senator's offices. If the Commission desires staff to submit a request, which projects would they like to submit and what would be the prioritization of the projects.

Commission and staff discussed potential projects for the appropriations requests.

*It is the Consensus of the Commission to submit appropriations requests for The Willows (#1) and the Electrical Vehicle Charging stations (#2).*

### B. *Governance Audit Update*

Mr. Arntzen presented the draft scope of work for Jim Darling, which outlined the three tasks he will be working on for the Governance Audit. Mr. Arntzen stated Mr. Darling's objective is to define the scope for the full Governance Audit. Once the scope is completed, staff will put out Request for Qualifications/Proposals and the Commission will choose a firm to conduct the full Governance Audit. Mr. Arntzen inquired if the Commission had any questions or any revisions to the draft scope.

Commissioner Barnes stated on page three of the draft scope, he suggested adding "port counsel" to the checkmark "Evaluation of the alignment of the Commission and staff".

Commissioner Moak sees Port Counsel as part of the staff even though she is not technically staff.

Commissioner Novakovich stated he too sees legal counsel as staff and does not believe it needs to be added. That could open it up to other consultants and contractors who work for the Port.

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Mr. Arntzen will ask Mr. Darling to add “port counsel” and inquired if the Commission would like to see the scope one more time before moving forward. The Commission agreed that they do not need to see the revised scope.

Mr. Arntzen stated on page four, under assumptions fourth bullet point, the scope states that the Port will provide any necessary legal support and review. Mr. Arntzen would like to keep this process neutral and inquired if the Commission is agreeable to using outside counsel for this project. The Commission supports using outside counsel.

## **C. Vista Field – Suggested Marketing Areas**

Mr. Peterson presented a memo for a suggested marketing plan for Vista Field. DPZ recommends concentrating on seven acres of phase 1 from the Azure Drive node, extending from the hangars along Deschutes Avenue to Vista Field Boulevard. Additionally, DPZ suggested focusing on going vertical, not how many acres are sold.

The Commission and staff discussed the potential of clustering phase 1 and focusing on 7.3 acres of land and agrees with the recommendation made by DPZ.

## **D. Real Estate Policy – Art Policy**

Ms. Hanchette stated to streamline the Real Estate Policy, the Commission opted to offer a flat rate commission of 4% for land sales at the March 23, 2021 Commission Meeting. The next portion of the Real Estate Policy for discussion is the Art Policy, which was established in 2016. The Art Policy allotted a percentage of land sales to go towards fostering artistic interests in the community; however, the language does not state specifically the method of collection for the Art Policy on a real estate transaction. Ms. Hanchette inquired if the Commission could discuss the following language regarding the Art Policy:

- Remove the language unimproved to follow the commission schedule;
- Fixed rate versus the current tiered structure;
- Is the percentage in addition to the purchase price or included in the purchase price.

*It is the Consensus of the Commission to remove the word “unimproved” from the Art Policy.*

Ms. Hanchette inquired if the Commission desires a fixed percentage versus the current tiered structure.

Commissioner Novakovich is in favor of eliminating the tiered structure and adding 3% to any property sales.

Commissioner Barnes stated the Commission reduced the commission from 6% to 4%, therefore he supports a flat 2% across all transactions, as to not overburden the buyer.

Commissioner Moak would like to see a 3% flat rate on all property sales.

*It is the Consensus of the Commission to remove the tiered rate structure for a 3% flat rate on all land sale transactions (2-Commissioners Moak and Novakovich; 1-Commissioner Barnes).*

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Ms. Hanchette stated in a recent land sale transaction, the Commission discussed adding the percentage to the purchase price or if it was in addition to the purchase price. In that particular transaction, the Commission determined to include it in the purchase price. Ms. Hanchette inquired if the fixed 3% flat rate should it be included in the purchase price or if it is added to the price.

Commissioner Moak and Commissioner Novakovich agree it should be added to the purchase price. Commissioner Barnes believes in pricing a property, the Port can build the price from the bottom up to net a certain amount, which would include the 3% for art. Then they buyer does not see it as an additional fee. Commissioner Barnes prefers to see it taken out of the proceeds.

Ms. Hanchette stated the buyer may have a difficult time financing if the fee is added to the purchase price because there is nothing to collateralize for the bank. Ms. Hanchette stated Commissioner Barnes is correct and we could possibly achieve the same objective by building up from the bottom and how we factor in the art policy into the pricing. Ms. Hanchette will refer to this discussion when she brings back price determination.

Commissioner Moak would like to see more clarity in how the art policy is written and that staff and the Commission have the same understanding and intention of how and when to apply the rate to the land sales.

Ms. Hanchette stated Commissioner Moak is correct and if she could get a clear consensus that it is automatically charged unless the Commission chooses to remove it, then that would remove the uncertainty.

Commissioner Barnes stated Commissioner Moak's point is well taken and he would rather see it applied uniformly across the board unless there is an exception made by the Commission.

## ***E. Kennewick Historic Waterfront District***

Mr. Peterson presented the proposed timeline to wrap up the Master Planning efforts of the Kennewick Historic Waterfront District.

Commissioners Novakovich and Barnes are supportive of it and believe it is a reasonable timeline. Commissioner Moak stated it appears as though the Port will conduct a formal Public Hearing on June 8, 2021 regardless of public comment. Commissioner Moak asked if we hear something from the public regarding the Master Plan, how do we process the Public Hearing. Furthermore, is there a possibility that it could be an evening meeting to allow for more participation.

Mr. Peterson stated if there are comments brought up at the Public Hearing the Commission can direct changes be made based up on the public input. The public input has been refined through this process and remained consistent. Mr. Peterson stated regarding an evening meeting, he suggested not having it on a Tuesday night because the City of Kennewick City Council meets on Tuesdays.

Commissioner Barnes stated there has been more than ample opportunity for public comment during this entire process.

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Mr. Peterson stated through this process, we have seen a significant number of comments through the on-line format, which may garner more public input than an evening meeting.

Commissioner Moak is open to the idea of creating opportunities for comments online as opposed to an evening meeting. Commissioner Moak's biggest concern is that not everyone is available on a Tuesday afternoon.

## **1. CTUIR Joint Meeting**

Ms. Bader Inglima sent the draft Master Plan to the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) for their consideration. Ms. Bader Inglima stated there has been several staff turnovers and new Board of Trustees members at the CTUIR, and suggested a joint meeting when things open up more.

*It is the Consensus of the Commission to send a letter to the CTUIR inviting them to have a joint meeting.*

## **2. Ron Swanby, unsolicited proposal at Columbia Gardens Wine Village**

Mr. Arntzen stated the Port received an email from Ron Swanby, requesting the Port consider his proposal to purchase property at Columbia Gardens to expand Swampy's BBQ. Mr. Arntzen considers Swampy's to be a flagship of the food truck plaza and Mr. Swanby usually sells out. Mr. Arntzen stated staff is not authorized to discuss Mr. Swanby's proposal or any other proposal that shows interest in Columbia Gardens. There are a few procedural impediments:

- Staff cannot discuss expansion of Columbia Gardens until the Kennewick Historic Waterfront District Master Plan is completed;
- Columbia Gardens does not have current pricing available;
- Owners Association needs to be established for Columbia Gardens.

Mr. Swanby understands that the Port has procedures that need to take place; however, it is imperative that his business grow and he cannot wait a year and a half to take the next step. Mr. Swanby loves the location, and if he could purchase the property, Swampy's would be able receive deliveries, store more food, and offer the use of the commissary kitchen to the other food trucks and wineries. Everything that Mr. Swanby is trying to do ties in with the vision of Columbia Gardens and he cannot see a better fit for his business or Columbia Gardens and the Port of Kennewick.

Commissioner Novakovich believes this is an example of the Port stifling progress when our mission is economic growth and redevelopment by helping businesses grow and creating jobs. Commissioner Novakovich suggested staff produce a list of projects with time frames, and the Commission prioritize that list, because he would hate to see losing our flagship because Mr. Swanby finds another location where he can expand his business.

Commissioner Moak stated according to our calendar, the Master Plan will be approved in June. Commissioner Moak inquired if those items need to be completed before staff can move forward on this.



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Mr. Arntzen stated yes, but as Commissioner Novakovich alluded to, staff resources are a factor as well. Even if every impediment were removed, Mr. Arntzen would need to allocate staff resources to move forward on this project. The biggest hurdle in Mr. Arntzen's mind is the owner's association, which could be a very lengthy project.

Commissioner Barnes stated this is an unfortunate situation and believes the Port needs to be a uniform, consistent, dependable partner across the board. Commissioner Barnes understands what Mr. Swanby is saying; however, even though the Master Plan is almost complete, and pricing should be straightforward, we do not know if the owner's association will be a fairly simple process.

Mr. Arntzen stated if the Commission would like to have an owner's association in place at Columbia Gardens, that will take time and will take potential sales off the table for quite some time. Mr. Arntzen stated it would be a policy decision if the Commission were to dispense of an owner's association for Columbia Gardens. Then, the Commission would work with staff to reshuffle the tasks. Mr. Arntzen stated it is not just Mr. Swanby making these requests, the Port has had requests from a service club and a few builders.

Further discussion commenced regarding the owner's association at Columbia Gardens. It was concluded that staff will research further and bring back additional information for the Commission regarding the owner's association.

### **3. Columbia Gardens Summit Debrief**

Ms. Hanchette reported that the Port held a virtual meeting for the tenants of Columbia Gardens where the wineries and several food truck operators attended. Ms. Hanchette stated this was the Port's way of giving our tenants an opportunity to share their COVID experiences and discuss the future. Ms. Hanchette thought the meeting was very productive and our tenants have a very positive outlook for 2021.

Mr. Arntzen appreciated the job that Ms. Hanchette did gathering the tenants together. Mr. Arntzen stated our tenants understand that they are neighbors and have committed to picking a day where they are all open at the same time. Mr. Arntzen praised the food truck operators, for they helped keep Columbia Gardens alive during the past year.

***Commissioner Barnes called for a Recess at 4:16 p.m. for three minutes.***

***Commissioner Barnes reconvened the Meeting at 4:20 p.m.***

### **F. 2021 Staff Project Overview**

Mr. Arntzen provided the Commission with a brief overview of staff projects for 2021 (EXHIBIT A).

Commissioner Moak stated a lot of effort went into Mr. Arntzen's memo and Commissioner Moak asked that it be placed on a future Agenda to discuss further.



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## ***G. Citizen Complaint – Request for Reimbursement of Legal Fees***

Ms. Luke introduced Port Special Counsel, Steve DiJulio who provided his legal analysis regarding the Port reimbursing Commissioner Barnes for his legal fees for the citizen complaint process. Since that Meeting, Commissioner Barnes' counsel provided the Port with the unredacted copies of the legal invoices for review.

Mr. DiJulio provided the Commission with his analysis and recommendation of the invoices (EXHIBIT B). Mr. DiJulio evaluated the reasonableness of the attorney fees and takes no exception to the hourly rates charged by Francis Forgette and Joel Comfort. However, the services provided by Mr. Forgette are unclear and show little indication of what representation Mr. Forgette contributed to the defense of Commissioner Barnes. Therefore, the amount of \$2,986 was discounted.

In further evaluation of the detailed billings, Mr. DiJulio stated there were billings that did not appear to be related to investigation or hearing or findings, rather than, related to ancillary issues that had nothing to do with the citizen complaint. Therefore, the amount of \$1,870 was discounted.

In preparation of the hearing process corresponds roughly to the period of March 2020 through the December 4, 2020 Public Hearing, and the request for legal fees. Invoices for the period total approximately \$23,758. For the time expended previously, which was essentially discovery and Public Records Act interaction, it was concluded that of the balance of \$24,408.75, an amount of \$20,000 should be recognized as reasonable for that preliminary work.

Our conclusion is that reasonable attorney fees in the matter should be \$41,888 (\$23,758-\$1,870+\$20,000).

Commissioner Barnes stated the actual unredacted invoices were submitted via email by Mr. Comfort. The email included invoices from Mr. Forgette, when he provided legal counsel from May 2019 through August 2019 for the investigation process. Commissioner Barnes stated the last invoice from Mr. Forgette was dated August 14, 2019, where it states client changed representation. Commissioner Barnes stated he retained Mr. Comfort's counsel beginning August 16, 2019, therefore there was no overlap. Additionally, Commissioner Barnes disagrees with Mr. DiJulio's analysis that the work commenced March 2020. In September 2019, Mr. Comfort prepared for the hearing and selection of a neutral. Lastly, Commissioner Barnes does not understand why Mr. DiJulio took a \$4,000 discount for the discovery and public records act. Commissioner Barnes appreciates Mr. DiJulio's analysis and the counsel he has provided to the Port; however, he respectfully requested that the charges to Mr. Forgette be added and the discovery discount reversed, to total \$49,282.75.

Mr. DiJulio stated with respect to Mr. Forgette's charges, the Commission could reimburse \$2,986 since it was part of the investigation. Mr. DiJulio stated a distinction may be made, with respect to the participation in an investigation with respect to the actual prosecution of the appeal. As discussed previously, the ambiguity of the Port's policies in this regard, the Port could determine the \$2,986 is an appropriate charge and part of the defense process.

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Mr. DiJulio stated this is his evaluation, but certainly it is the Commission's decision, under the Port's policies determinant of these issues. Our recommendation is \$41,888, the \$2,986 may be appropriate for recognition if the Commission recognizes that legal counsel during an investigation is appropriate. With respect to the discount of \$4,008 for the discovery, that is simply an amount that we determined was higher than what would be normally justified for the period of substantial discovery. There was substantial time taken to get ready for this proceeding and we know in certain circumstances, delays do cost additional time and effort. Mr. DiJulio reiterated the recommendation, but stated it is the Commission's decision to award \$41,888; or \$44,874 to include Mr. Forgette's invoices; or \$49,282.75 as requested by Commissioner Barnes.

Commissioner Novakovich would like to put this behind us by a making motion to reimburse Commissioner Barnes legal fees when we can be assured we are abiding by all the laws detailed in RCW 53 which governs ports, abiding by the Port's own policies and procedures, and assurance that we will not receive an audit finding for taking this action. Commissioner Novakovich stated the Port has received 24 years of clean audits and he would like assurance from Mr. DiJulio or someone else that the Port of Kennewick will not receive an audit finding for reimbursing Commissioner Barnes legal fees. Commissioner Novakovich expressed his concerns based on the language in RCW 53, Section 18 of the Port's Rules Policies and Procedures, and prior precedence regarding the payment of legal fees set by this Commission.

Commissioner Novakovich reiterated his concern over a potential finding by the State Auditor's Office (SAO) and asked if someone can provide notice in writing that Port of Kennewick will not receive any adverse consequences including the issuing of an SAO finding for taking action to approve the reimbursement. Furthermore, the person or entity providing notice agrees to assume all consequences if the notice they provide is incorrect. And further that we receive assurance that the Port of Kennewick, staff, as well as all three Commissioners, will not be subject to any negative consequences by a decision of this Commission to reimburse Commissioner Barnes legal fees.

Mr. DiJulio stated he addressed section 18 of the Port's Rules of Policy and Procedure in his prior correspondence and analysis, and it was discussed it at the March 23, 2021 Commission Meeting. Mr. DiJulio is prepared to put in writing for Mr. Kooiker's benefit and file, in the event an audit issue would ever arise.

Mr. Arntzen understands the reimbursement of legal fees is a policy matter solely within the discretion of the Commission; however, he advised the Commission to be 100% certain they are following the correct process and abiding by RCW 53 and the Port's Rules of Policy and Procedure, because the Port has 24 years of clean audits. Mr. Arntzen stated if there is additional scrutiny that the Commission would like to engage in to make sure it is following all proper procedures, he would recommend that.

Commissioner Moak inquired if staff wants to take another look at this from a legal standpoint to protect the Commission and if there are other legal issues that need to be addressed. Commissioner Moak was under the impression that Mr. DiJulio's recommendation was the due diligence that needed to be done.

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Mr. DiJulio stated the Port can reach out directly to SAO to get its reaction to this issue or seek either the auditor or state representative's request for an Attorney General's opinion on the subject. There are ways to have the State weigh in on this issue if there is any disagreement with respect to the conclusions that we have set out in our previous analysis for the Port.

Commissioner Barnes stated Mr. DiJulio is special counsel to the Port and is offering to write a letter and document, so that it is permissible and allowable to reimburse the legal fees if the Commission chooses to do so.

Commissioner Novakovich reiterated his concerns and asked if Mr. DiJulio could guarantee that the Port would not receive a finding from the SAO.

Mr. DiJulio stated he cannot guarantee the action of the SAO. Mr. DiJulio stated, as indicated in his previous correspondence, that the Port has the authority to recognize and reimburse reasonable attorney's fees under state statute and the Port's policies.

## PUBLIC COMMENTS

No comments were made.

Commissioner Barnes appreciates Commissioner Novakovich's comments; however, the Port is receiving sound advice from Mr. DiJulio. Commissioner Barnes stated his fees are fair and reasonable and the allegations were unsubstantiated in its entirety. Commissioner Barnes was doing his job as a Commissioner and was not given an opportunity to address the complaint which triggered the investigation and then hearing.

**MOTION:** *Commissioner Moak moved that the Port of Kennewick reimburse Commissioner Barnes in the amount of \$50,729.35 for his legal work associated with his defense; Commissioner Barnes seconded.*

## ***Discussion:***

*Commissioner Novakovich stated that he would like some assurances that the Port will not receive a finding and unfortunately, he cannot support this motion.*

*Commissioner Moak believes Mr. DiJulio said that no one can provide a guarantee, he would like a guarantee that a bunch of things might happen, but those things are not guaranteed in life. Commissioner Moak would have been prepared to hope for a different motion that was less than he stated. He agrees with Mr. DiJulio's perspective, but the more Commissioner Moak heard, and the more objections, it seemed to put stumbling blocks in the way of getting to the end of this. This made Commissioner Moak believe we need to pay the question price, there is no question that Mr. Barnes expended that money. Was it all appropriate, in some way or manner it was. Commissioner Moak just thinks it is about time that we finish this and it is justified. Mr. DiJulio has offered to write a letter and he has provided great counsel to the Commission and previous Commissions over the years. Mr. DiJulio thinks his way through his analysis, and we could spend time between Mr. Comfort and Mr. DiJulio going over invoices, but Commissioner Moak thinks*

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*what needs to happen is to move on and move on to a different plain and that is why he made the motion.*

**MOTION:** *Commissioner Barnes moved to amend the main motion in the amount of \$49,282.75; Commissioner Moak seconded. With no further discussion, Motion to amend carried. All in favor: 2 Ayes (Commissioners Moak and Barnes), 1 Abstain (Commissioner Novakovich). 2:0:1.*

***Commissioner Barnes restated the Amended Main Motion:***

***the Port of Kennewick reimburse Commissioner Barnes in the amount of \$49,282.75 for his legal work associated with his defense.***

***Further Discussion:***

*Commissioner Novakovich believes we are subjecting ourselves to a finding, depending on who the auditor is. Additionally, the Commission is saying our policies and procedures do not mean anything and they do not need to be followed in any manner, to arrive at a settlement. Commissioner Novakovich thinks that is something the Commission needs to consider seriously and take a close look at ourselves for doing this. Commissioner Novakovich does not mind paying the legal fees if the Rules of Policy and Procedure are followed the way that they are supposed to be, but he sees this Commission not following our own policies and procedures, and it is really disappointing. Commissioner Novakovich wanted to be on the record that he made those statements.*

***With no further discussion, Motion carried. All in favor: 2 Ayes (Commissioners Moak and Barnes), 1 Abstain (Commissioner Novakovich). 2:0:1.***

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

*Commissioners reported on their respective committee meetings.*

***I. Non-Scheduled Items***

*Commissioner Barnes hopes we are getting closer to the conclusion of the anonymous citizen complaint as there were several discussions today about allocation of staff resources and time. Commissioner Barnes believes the Port of Kennewick has some work to do to restore our credibility with our jurisdictional partners, tenants, and constituents. We discussed not having time for important projects when the Port spent over two years and over \$400,000 on this issue. We are looking to prioritize and looking for an order of preference to apply our resources. Commissioner Barnes thinks we need to go to work and restore the credibility we lost and finally put an end to this and work to see that it never happens again.*

## **PUBLIC COMMENTS**

*Ken Hohenberg, 3900 South Green Street, Kennewick. Mr. Hohenberg encouraged everyone to stay focused on the good work that the Port has done in the past. Mr. Hohenberg knows all three Commissioners and understands the passion each of them have when it comes to the important work that the Commission and Port has done. Mr. Hohenberg is encouraged that this will be put behind the Port,*

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when it comes to this bill, so that the Commission can focus on the mission, and continue to focus on what's important for the taxpayers and that's the great work that the Port has done in the past and is going to do in the future.

No further comments were made.

## COMMISSION COMMENTS

No comments were made.

## ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 5:31 p.m.

**APPROVED:**

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

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*Don Barnes, President*

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*Skip Novakovich, Vice President*

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*Thomas Moak, Secretary*

## *Memorandum*

To: Port Commission

From: Tim Arntzen, CEO

Date: April 13, 2021

Re: 2021

With this memo I hope to brief the commission on what your CEO and his staff believe their focus will be this year. It will be interesting to see how accurate my predictions will be. As usual, I anticipate unforeseen circumstances and changing conditions along the way.

### 2020 RECAP

#### COVID-19:

2020 was one of the most unusual years I have experienced both personally and professionally. Most of the uncertainty was related to COVID-19. I am confident its effects will continue to impact us throughout 2021 in some fashion. For those of us who did not endure the Great Depression or WWII, perhaps COVID-19 is our major lifetime event. We have experienced lockdowns, rent relief requests, business closures, community illness, loss of cost-effective labor, increased fear and anxiety, a tremendous uptick in recreation and demand for quality public spaces; and a host of other unforeseen impacts resulting from the pandemic and state and federal mandates.

We currently live in a time where the future is very uncertain. Having said this, given our traditionally conservative approach to budgeting, the port has so far navigated the COVID-19 pandemic well. Staff is healthy, and port finances are sound. And we have responded as best we could to the situation. Most of our port tenants are still with us. We are in a position, as a port, to move forward in a constructive manner in 2021 to accomplish many of the things the public has asked us to do. However, it is good to remember that while functioning through the COVID-19 pandemic, operational challenges did substantially impact progress. Meetings, sometimes with multiple agencies, needed to occur remotely in a somewhat disconnected world rather than collectively around the table where all involved would feel a sense of ownership. And project scheduling and coordination was also impacted by illness and/or lack of material availability, and local, state, and federal requirements.

#### Cyber Event:

In addition to dealing with a global pandemic, the port experienced a cyber-incident which limited access to port computer files for over a month. Both before and after our incident, we learned that similar nefarious cyber-attacks had also targeted and affected schools, hospitals, businesses, media, cities, and state agencies. Indeed, the US government and its agency branches were also hit with significant cyber-attacks. The Port's November 2020 cyber security incident further complicated productivity due to both losing electronic access for a period and then needing to rebuild the computer network. However, having to reestablish the network



while operating was quite challenging, as even the simple task of connecting to a printer had to start from scratch. Although seemingly turned off with the “flick of a switch” the computer network was, of necessity, brought “back to life” in a carefully sequenced manner that rightfully prioritized the finance department first. Thus, planning and development activities basically lost six weeks from mid-November thru December 2020; and the backlog this incident created is still having a ripple effect on activities previously planned to occur January thru March of 2021. The entire impact has yet to be assessed but this ‘incident’ was far greater than a simple inconvenience. Thankfully, we were successful in retrieving nearly all the files and data. What a year!

## 2021 Look Ahead

Looking forward here is what I see:

### KENNEWICK WATERFRONT

#### Waterfront Master Plan:

The Waterfront Master Plan will be finished in early 2021. It will be interesting to see what emerges from that process. Many elements of the master plan will likely be unfunded, so the commission would need to review the plan’s objectives while keeping budget and funding considerations in mind. Outside of the master plan, the port may look forward to the culmination of more than a decade of administrative and planning work as the 1135 project may be ready to bid, with construction planned for late 2021 and into the winter of 2022. As we have witnessed, however, patience and caution with respect to this project will serve us well.

#### Traffic Calming:

Included in the master plan is review of Columbia Drive and SR-397 intersection along with Columbia Drive traffic calming concepts, and evolving plans for City of Kennewick Washington Street enhancements. Traffic calming will have a major positive impact on the wine village, making both sides of the street more pedestrian friendly, and creating additional parking and connectivity across Columbia Drive. These are important elements articulated by Professor Gary Black in the Pattern Language document that was developed via an extensive public process.

#### Wine Village:

Work slated for the wine village is likely to include installation of amenities that benefit our tenants and their guests, such as pond improvements to reduce algae buildup, additional restroom facilities, and shade structures for the wineries. Subject to available staff time, I also anticipate working with the Kiwanis Club and perhaps others to begin planning for the proposed playground area, with anticipated construction (provided feasibility is established and partnering is in place) in 2022.

#### Sales/Leasing Lead Follow Up:

Staff is receiving some interest in acquiring land for development in the wine village area. However, current port policy directs that staff wait for completion of the Waterfront Master Plan and the establishment of land values prior to moving forward. However, decisions will soon need to be made so that staff can address inquiries related to a potential tenant expansion, and



both a new business and a service group proposal.

Washington Street:

I anticipate the port working with the city on planning and implementation of the Washington Street improvements. As Professor Black noted, the connection of Clover Island to downtown is critical and finally linking the two improvement areas will be a major accomplishment. This connection was first identified in the Bridge to Bridge plan many years ago.

Clover Island Marina:

Staff will continue to provide regular maintenance work and respond as needed to the Clover Island Marina. Staff is already working to install rub rails for the fuel dock and guest moorage areas, and to prepare the marina for a busy recreational boating season. And the marina is nearly full—several months sooner than previous years—which is likely a continued result of the COVID-19 pandemic which prompted the highest volume of people visiting, biking, boating, and recreating on Clover Island in the port's history.

## VISTA FIELD

Implementation Team:

Now that the port's New Urbanism town center site has basic infrastructure, with parcels soon ready to be sold, I am implementing the team for Vista Field administration (the Team). The Team will respond to nearly all Vista Field related issues, including fielding all inquiries related to the site; property purchases; information requests; property tours; media information; processing of development proposals for commission consideration; additional planning and site revisions, etc. Some of the tasks in support of creation of the Team, including our internal staff reorganizations and associations with contractors, identified below, have been implemented. Some have not. The Team approach and composition is familiar to the commission, so not a lot of information needs to be added here. It will be significant, however as the Team moves from theoretical to action, getting the team in place and ready will permit the commission to move toward the milestone first land sale at the site. As discussed before, the team will be assembled as follows:

Project Manager. The project needs a "Point Person" to meet with realtors, builders and others expressing interest in the project. As of fall 2020, Amber Hanchette is serving as the point of contact related to Vista Field inquiries. This addition to her duties now requires her to spend more time on Vista Field matters. It also limits the time she can spend pursuing her existing duties which include all phases of port operations and maintenance. Thus, this change in Ms. Hanchette's duties created a need for "backfilling" to cover duties transferred to other qualified individuals within the organization. Specifically, Ms. Hanchette has transferred some of her duties to current Maintenance Supervisor Mike Boehnke. This phased transfer began in fall 2020 and is now nearly complete. In administering her Vista Field related tasks, Ms. Hanchette will utilize the services of other staff and contractors as necessary (planning, marketing, administrative services, etc.) and would not be viewed a stand-alone asset assigned solely to Vista Field. Rather she would be a part of a team as described below.

Maintenance Supervisor. Current Maintenance Supervisor, Michael Boehnke has assumed tasks from Ms. Hanchette, effective mid-February 2021.

Maintenance Technician(s): New Hire or Temporary Workers. Because of the overall increase in the number of port-owned/maintained properties (including Vista Field), and further compounded by the loss of the Coyote Ridge labor crews, I have identified a need to hire an additional entry-level maintenance technician or part-time workers. Even though the port will eventually contract out much of the Vista Field maintenance to a private management firm, utilizing funding from the Property Owners Association (POA), staff will still be needed to provide oversight (i.e., ensuring contract compliance) and perform emergency and priority maintenance matters on site, which is in addition to the generally increasing overall maintenance demands from other port development properties.

Project Planner/Coordinator. Larry Peterson, port Director of Planning and Development would serve as the project planner/coordinator for engagement with the port's long-standing architectural advisors, DPZ, as well as Town Architects and Town Engineers (referenced below) related to the development of Vista Field.

Architectural Advisory Team/Town Architect. Lizz Plater-Zyberk (DPZ Founder) and DPZ partner Senen Antonio are currently under contract to fulfill the role of the advisory team. Vista Field will be one of the few projects worldwide which continues to have a DPZ founder as active team members. The port has been unusually successful in keeping these two highly qualified individuals on the Vista Field team; and the benefit of continuing this partnership through at least buildout of Phase I, and continued counsel from these two leaders is priceless. DPZ will also assist with the Request for Proposals (RFP) process for identification of project interest and evaluation of proposals via the collaborative design process.

Property Owner's Association Managers. The port is currently in a contractual relationship with Ben Floyd (planner) and Doris Goldstein (New Urbanism attorney) to provide for set-up of the property owner's association. This is anticipated to be a multi-year task with initial set up and continued monitoring and implementation advice and assistance (through a portion of Phase I).

Project Manager Assistant. Ms. Hanchette will need part time administrative support. There is potential for these duties to be supported internally by the port office assistant/marina manager, likely two days per week.

Office Support. Additional office support will be needed, and this could be accomplished by internal realignment or an outside part-time person.

Town Engineer(s): Gary Hall, Hall Engineering; Sam Nielson, Parametrix. Gary and Sam will provide engineering support for review of private sector projects and integration into established and planned infrastructure. They will bill on an hourly basis.

Construction Management. I will contract with on-call construction management services on an as-needed basis to assist the port in review of construction proposals and to assist with review of construction progress.

Town Architect Protégé. It has been noted by several outside sources that the port seems to rely too heavily on out-of-town contractors. To offset this, I will consider contracting with a local architect who has the ability and desire to learn “New Urbanism”. This person could sit in as the port progresses through the collaborative design process and obtain some on-the-job training as they assist the Team in processing Vista Field development proposals. In a few years, this person could play a more extensive role as needed and as situations warrant. This person would work as an independent contractor, billing on an hourly basis for time expended on each task assigned.

Vista Field Policy Decisions & Operational Mechanics: Prior to the first land sale, the Port Commission needs to set land pricing; revise the port’s realtor commission policy for land sales; establish concise development guidelines for builders; and put in place a rudimentary administrative structure for the owner’s association. These and other related tasks will be time consuming.

Vista Field Corporate Hangars:

This project consists of identifying potential uses, opportunities, cost impacts and funding avenues. This process will include DPZ participation as well as participation of local architects and engineers. It would also dovetail with the COVID-19 Related Economic Impacts Analysis the commission authorized. Staff have been tasked with considering current and near-future COVID-19 economic impacts to Vista Field as well as analyzing what types of uses, if any, the hangars could facilitate, as well as viability/potential for selling or ground leasing as appropriate. And of course, the funding for any hangar-related project, should the commission choose to move towards implementation, would likely require Rural County Capital Funding (RCCF) and working closely with the county as a funding partner. Other funding partners would also be explored/invited to discussions.

It should be noted that the consulting team will focus on “lean” alternatives for the hangars; including uses that would complement the early stages of Vista Field project vibrancy, and which uses might be viable under current COVID-19 conditions. It is anticipated that future potential uses for the hangars will be identified in 2021, with funding and potential implementation taking place in 2022.

The hangar evaluation was recently placed in the hands of a consultant and it is anticipated that a draft report would be circulated in August. The final report could be presented to the port commission (with remote attendance by the consultant) by fall.

Vista Field Construction Closeout/Right of Way Dedication:

Staff is working to close out the \$5,000,000+ contract with Total Site Services which involves dedication and formal acceptance of most roadways to the City of Kennewick and project acceptance by the Commission. This work is underway.

Perimeter Fencing/Site Clean-Up:

When the question is asked, “when will the streets be opened for public use?” part of the answer is that the port needs time and staffing to perform some critical housekeeping matters related to a Vista Field “unveiling”. Those matters include cleaning weeds and debris from the site and restricting public access to other portions of the site. This means building fences and installing ecology-blocks to keep the public from driving onto areas that are not yet meant for automobile access. In the past, the Coyote Ridge work crews were ideal candidates for such projects – many fences were built by the work crews in The Willows, Cable Greens, the Wine Village and other places. However, because labor crews are restricted due to COVID-19, the port has lost that 16-person-strong maintenance team. As a result, we are extremely short handed when it comes to providing our previous and expected level of property maintenance activities. To offset this, we have hired several temporary, part time workers; and the port will surely benefit from the return of our Coyote Ridge workforce whenever that becomes possible.

In addition to maximize publicity and interest in the site, care should be taken to open the site to traffic in alignment with the RFP process; because having an extended time between the opening and RFPs risks casting a pall on the site that could create negative impressions and raise questions regarding the site’s potential as a vibrant, exciting development opportunity.

A/E, Bid and Construction Management VFDF Building Remodel:

As set forth in the bi-annual budget and work plan, Ms. Hanchette and the maintenance team will be making major repairs and upgrades to the light industrial buildings adjacent to Vista Field.

**WEST RICHLAND**Racetrack Site:

Because the racetrack property was sold to the City of West Richland, little to no port-led development activity was planned to take place in West Richland during the upcoming year. However, the West Richland mayor has requested that the port provide irrigation water to Alexander Farms for the farm to continue working the land. However, the port is no longer in a landlord/tenant relationship with the farmer. Once the port sold the land to the city, the prerogative to lease to the farmer rested with the city rather than the port. In discussions at the time of the land sale to the city, the port offered additional water rights to the city, however the city only purchased a limited amount of water to assist with the 12 acres for the police station. Therefore, port staff is now reviewing the water rights issue and will brief the commission when more information is available. Port staff could suggest a one-year lease of water rights to the city for the farmer’s use while the larger issue is determined.

**OAK STREET**Verbena Tenant Matters, Land Auction:

Port Director of Operations and legal counsel have spent countless hours to get the unauthorized holdovers at the Verbena property to vacate the premises. While it appears that the holdovers have no legal right to the property, the Governor’s office has issued directives that protect the holdovers and require additional actions on the part of the port to acquire the property in a condition to sell via the auction process. Thus, this part of the equation has taken

substantially longer than anticipated. Once the land is free from holdovers, it is the intent of the port, by commission directive, to sell the three associated parcels via the auction process. It is anticipated that the property could be ready to auction by late spring, barring additional unforeseen difficulties.

## **RICHLAND**

### Center Parkway Follow-Up:

The commission recently committed to paying the city \$400,000 to assist with the multi-jurisdictional issue related to extending Center Parkway to create passage over the railroad tracks. The port's involvement will be focused on establishing the MOU, offering planning advice, updating commissioners, and reviewing and processing payment requests.

### Columbia Park Trail Follow-Up:

Several years ago, the commission committed to paying the city \$800,000 to assist with the redevelopment of utilities and roadway in the Island View area. That city-led project is now under construction; and the port's involvement will be focused on offering planning advice, updating commissioners, and reviewing and processing payment requests.

## **GENERAL MATTERS**

### COVID-19 Related Economic Impacts Analysis:

I have reviewed the credentials of several economists and have selected a PhD level economist with substantial experience in state, local and regional economies. The consultant is also an esteemed professor at Eastern Washington University.

I anticipate that I will have significant involvement in working this issue with the professor and anticipate it will be a major issue for the port CFO as well. This project consists of the consultant providing a report detailing the past, present and near-term future economic impacts related to the COVID-19 Pandemic. It is understood that no one can accurately predict what the future holds. However, the port CEO hopes that the consultant can offer facts and insights which might provide some realistic prediction related to future actions which may be prudent for this port district to consider as it continues its mission of economic development activities. In short, some analysis related to national, state and regional impacts experienced due to COVID-19 would be appropriate, especially if impacts upon the Port of Kennewick are addressed.

The consulting team may consider the following questions:

- The immediate effects of the virus on local economic activity
- What sectors have been hardest hit, and which are the ones that are thriving?
- State and local government reaction; will income and sales tax revenues plummet? Will demand for rent relief and other programs increase? Will governments cut spending—mostly by cutting employment—or raise taxes?
- Businesses—bankruptcies and lower investment
- Household economic viability
- Ability and willingness to spend

- Vulnerable jobs by sector
- Work from Home (anywhere) Policies and their impact and effectiveness
- What a recovery might look like
- What will determine the shape of the recovery?
- What industries are poised to make the biggest comeback following coronavirus?
- Which industries appear COVID-19 resistant?
- What strategies will help local economies recover more quickly from the COVID-19 pandemic?

For this project, the port CEO has asked the consultant to focus on suggested courses of action the port may undertake to position itself appropriately as it continues its economic development mission.

Together with the economic impact analysis, the port is contracting with a planning firm to offer suggestions for viable reuse/redevelopment/sale/lease of old aircraft hangars at the port's Vista Field town center site. The consultant will familiarize itself with the Vista Hangar Reuse Project and overall Vista Field master plan, to better understand the port's economic development intentions.

The CEO would like to assign the project to the consultant in early spring and it is anticipated that a draft report would be provided by summer 2021, with a final report presented to the port commission (with remote attendance by the consultant) by fall 2021.

#### Governance Audit:

The commission has directed the CEO to prepare a governance audit, which has been formalized as a goal. The process would be divided into two main parts. First, the creation of a quality scope of work (SOW). Second, formulation of an RFQ/RFP; solicitation and production of the work. A third party (consultant) would provide a SOW which would form the basis of an RFQ/RFP. The RFQ/RFP process is where the firm providing the actual project work is selected.

As part of the SOW, the consultant would interview each commissioner, which would allow each commissioner's objectives to be identified and folded into the SOW. Staff could also be interviewed. Once the SOW is formalized, staff will work up an acceptable RFQ/RFP to publicly solicit consultant firms interested in that work. From there, the commission would review qualifications and select the firm best suited to perform the work described in the SOW. While the commission has directed that I fast-track this process, I believe the port should not go so fast that other important projects suffer, and not so fast that transparency and impartiality are jeopardized.

#### IT Analysis; Path Forward:

In the wake of the cyber incident, I have directed our IT consultant to conduct a post event review with other cyber security experts to provide the port with critical information we can use to strengthen security into the future. Port staff and our IT contractors have already enacted additional protocols and security redundancies; and this review will further advise us with respect to emerging technologies and constantly-evolving best practices.



COVID-19 Reopening Plan:

I am working with port HR consultant, Ann Allen of Spokane to research and address this issue. Ms. Allen is an attorney and is an adjunct professor at the Gonzaga University School of Law. Ms. Allen will review all past and current port directives as well as the directives of the Governor and health agencies to formulate a best-practice, “Return to Work” reopening plan for the port, with consideration given to both limited and full-return.

Water Rights Analysis:

I have contracted with one of the most respected water rights attorneys in the state who, with the assistance of consultant Ben Floyd and port legal counsel Lucinda Luke, will review the status of port water rights. As Mr. Floyd discussed with commissioners last fall, there is still some uncertainty with respect to port water rights associated with the racetrack. Clarification of this issue will benefit the port’s assessment of its water rights inventory, not only at the Racetrack site, but also at the Verbena site in East Kennewick.

Finance Department Analysis:

The finance department needs additional assistance and Ms. Allen (referenced above) is assisting in evaluating this matter. It is anticipated that her assessment would be completed by mid-summer and implementation, as needed, would follow according to port policy.

Public Records/Information Management/Administrative Systems:

Executive Assistant Ms. Scott is planning to update the 10-year-old public records and information management policy with the assistance of port legal counsel Lucinda Luke for commission consideration. In particular, the process would include revising the process for how requests are received and updating the fee schedule to include fees for electronic documents and media, in accordance with the provisions of RCW 42.56.070 and RCW 42.56.120.

Last year, Lisa Schumacher processed and removed 100 boxes from offsite storage. In 2021, staff will continue working to manage our records inventory to comply with state laws regarding retention and destruction; and begin converting physical files into electronic files in Laserfiche. In addition, Ms. Scott, Ms. Yates, and Ms. Schumacher will work to create Laserfiche workflows and streamline procedures for contract routing, small works & professional rosters, marina and guest moorage forms and applications, expense reports, credit card statements, and facilities work orders.

Marketing Strategies:

Marketing activities will include designing and placing property-specific advertising related to selling parcels at Vista Field as that site is readied; and for other land sales, including auctions, as deemed appropriate by commission. Marketing will also involve refreshing the port website; implementing property-specific signage and wayfinding as appropriate; promoting community engagement for Kennewick’s Historic Waterfront; and collaborating on shared endeavors such as the “shop small”, and “shop downtown” campaigns in partnership with the City of Kennewick and the Historic Downtown Kennewick Partnership. Also planned is a five-year update to the port’s history report (the port history/timeline was last compiled for the 100<sup>th</sup> anniversary in 2015).



State Auditor's Office (SAO) Outside Audit Review:

The finance department will be preparing for the upcoming SAO audit, which requires many hours of staff time (and commission involvement).

Quarterly Budget Reports to Commission:

Since 2020, a new task for the finance department has been the preparation of quarterly budget reports for presentation to the commission. This task takes approximately 32 hours of the CFO's time (8 hours each report x 4 reports). As stated above, the finance department requires additional staff resources to continue meeting state and federal legal requirements, and GASB and FASB guidance; and to ensure appropriate oversight for the expanded complexity of the growing number of port projects/properties and the additional contracting, leasing, and land sales activities that will be undertaken at Vista Field. There is no implication that quarterly reporting is responsible for the additional staffing need, but recognition is warranted of the continued and growing burden being placed upon the Finance Department as they strive to ensure clean audits.



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April 12, 2021

Board of Port Commissioners  
Port of Kennewick  
350 Clover Island Drive  
Kennewick, WA 99336  
By email to: [luke@carneylaw.com](mailto:luke@carneylaw.com)

Re: Defense of Board Members in Investigative Proceedings and Attorney Fees

Dear Commissioners:

The Port of Kennewick ("Port") earlier requested our analysis on the Port's responsibilities with respect to providing certain legal defense to a Port Commissioner, and the payment of attendant attorney fees. By correspondence dated March 22, 2021, we addressed the issue. We concluded that the Port may approve the reimbursement of reasonable attorney fees under the circumstances of that request. We did not evaluate or advise on the reasonableness of the requested attorney fee reimbursement. Subsequently, more detailed billings records for the legal services were submitted. The Port asks for our recommendation on the reasonableness of fees.

## Background

I have previously defended against and asserted claims for attorney fees in the state's courts, including for actions originating within Benton County (for Benton County and others). I have provided expert attorney fee declarations in support of and in opposition to fee claims. For example, I provided expert testimony for the Port of Friday Harbor that was relied upon by a superior court in approving a specific fee request against that Port.

## Standard

We have considered this matter under the standards applied by Washington state courts, the "lodestar" method, to determine the amount of attorney fee awards.

The lodestar method is the starting point for fee calculations. The lodestar fee is determined by multiplying the hours reasonably expended in the litigation by each lawyer's reasonable hourly rate of compensation. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597 (1983). The burden of demonstrating that a fee is reasonable is on the fee applicant, who must provide documentation

sufficient “to inform the court, in addition to the number of hours worked, of the type of work performed and the category of attorney who performed the work.” *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 151 (1997) (“*Fetzer II*”) (internal citation and quotations omitted).

Here, the requesting Commissioner accordingly carries the initial burden of proof to demonstrate that the fees requested are reasonable and not excessive.

Also under Washington law, the reasonableness of rates depends on the prevailing market rates in the relevant community given the experience, skill, and reputation of the attorney. *Wilbur v. City of Mount Vernon*, Case No. 2:11-cv-01100-RSL (W.D. Wash. April 15, 2014). The “relevant community” is typically the forum in which the court sits. *Id.*; see also *Van Skike v. Dir., Office of Workers’ Comp. Programs*, 557 F.3d 1041, 1046 (2009). The Port therefor should evaluate this under Benton County (or, the Tri-Cities) standards.

## Review

Initially, we were provided the March 8, 2021 letter request for fees received by the Port from the firm of Miller Mertens and Comfort PLLC and attorney Joel Comfort (collectively, “Comfort”) providing a summary of billings and requesting reimbursement for fees of \$50,729.85. On March 26, 2021, we received detailed and redacted invoices from the firm Rettig Forgette Iller and Bowers LLP and attorney Francis Forgette (collectively, “Forgette”), and from Comfort. The Forgette billings covered the period May 2019 through August 14, 2019, and total \$2,986. The Comfort billings cover the period August 16, 2019 to March 2021, and total \$48,166.75.

There is no explanation for the discrepancy between the requested amount of \$50,729.85 and the total of the Forgette and Comfort billings of \$51,152.75.<sup>1</sup> But as discussed below, we do not find that difference to be material.

## Analysis

First we note that the hourly rates for the attorneys (Forgette at \$300; Comfort at \$275) do not appear inconsistent with local attorney fee standards. But in evaluating the hours reasonably expended, we find no explanation for the work of two firms, or the relationship or transition of work between the firms. Or, there was duplicated effort in addressing issues early in the process. Whether this is discounting of the Forgette billings, or the Comfort billings, we conclude the starting point of the analysis is the amount of \$48,166.75 – the total of the Comfort billings provided to us for review.

In our review of the Comfort invoices, there is substantial time shown as spent on requests under the Public Records Act, Chapter 42.56 RCW (“PRA”). Such attorney fees normally are not recoverable under the PRA, absent legal action to enforce the PRA. However, we recognize that PRA requests regularly substitute for the discovery process in contested proceedings involving public agencies. As a

<sup>1</sup> March 2021 total is identified as “work in progress” and is an estimated amount.

result, we have evaluated the Comfort invoices to determine whether the extent of that PRA process is consistent with discovery processes in civil litigation. That is, in relation to the proceeding, was the discovery effort reasonable to address the appeal hearing? Or, was such effort excessive and more related to multiple PRA requests? Our conclusion is that most of that work was directly related to the hearing process.

Additionally, we reviewed the details of the Comfort invoices that show time entries for issues that do not appear reasonably related to or material to the hearing. Those include entries on October 8 (1.4) and October 9 (1.3 of 2.6) relating to Arntzen litigation issues; October 14, 2019 regarding “Bostwick” (.6); October 28-29, 2019 relating to “Arntzen” correspondence (1.3); November 6, 2019 regarding “election results” (.2); February 10, 2020 regarding attorney Michael Love payments (.3); December 7-9, 2020 regarding “Incentive” pay (.8); and, the billings for February 2021 (after the decision on appeal but before the attorney fee request (.9). These combined entries total 6.8 hours, or \$1,870.

The preparation and hearing process corresponds roughly to the period March 2020 through the December 4, 2020 hearing (decision issued December 31, 2020), and the request for legal fees. Invoices for that period total approximately \$23,758, or slightly less than 50% of the total billings. For the time expended previously, which was essentially discovery and PRA interaction, we conclude that of the balance of \$24,408.75, an amount of \$20,000 should be recognized as reasonable for that preliminary work (without further discount for the above-identified, specific entries that do not appear warranted).

Our conclusion is that reasonable attorney fees in this matter should be \$41,888 (\$23,758 - \$1,870 + \$20,000). No Lodestar (extra) amount is requested and none appears warranted.

We trust the foregoing is responsive to the Board’s inquiry.

Very truly yours,

FOSTER GARVEY PC



P. Stephen DiJulio  
Principal

cc: Lucinda Luke, Port Counsel



## Memorandum

To: Port Commission  
From: Tim Arntzen, POK CEO  
Date: April 21, 2021  
Re: Columbia Gardens Development

Recently Ron Swanby of Swampy's BBQ presented the port commission with a memo related to the progress of lot sales at Columbia Gardens. A number of procedural issues were discussed, and the commission directed me to look into Mr. Swanby's questions and provide an update. I will address the issues in the same order as referenced in Mr. Swanby's memo.

1. Waterfront Master Plan. The plan will be presented for Commission consideration in May and depending upon citizen and Commission reaction, could be adopted by the Commission in mid-June. If so, the master plan will not remain an impediment to lot sales at the Gardens.

2. Zoning Issues. Zoning compliance issues are city-generated and would need to be addressed directly between Mr. Swanby and the city. The port does not have design standards for the Gardens at this point, yet these standards would be necessary to guide development as envisioned by the master plan. Larry is working with Makers to complete this task as a supplement to the master plan with the unanticipated budget available because consultant travel was curtailed due to COVID-19. Assuming the commission adopts design standards for the Gardens, then the port planner would work with Mr. Swanby to assure his development would be consistent with these guidelines.

3. Lot Pricing. Amber expects the appraiser to have lot pricing suggestions for commission consideration soon.

4. Owner's Association. Larry is working with a local planner to propose a "streamlined" set of covenants for the Gardens, which would include a dues element, similar to those at Spaulding Business Park.

Depending on the discussion related to this memo, staff would proceed as directed by the commission with the objective of moving forward with creation of marketable lots at the Gardens.

Thank you.





## *Memorandum*

To: Port Commission

From: Tim Arntzen, CEO

Date: April 13, 2021

Re: 2021

With this memo I hope to brief the commission on what your CEO and his staff believe their focus will be this year. It will be interesting to see how accurate my predictions will be. As usual, I anticipate unforeseen circumstances and changing conditions along the way.

### **2020 RECAP**

#### COVID-19:

2020 was one of the most unusual years I have experienced both personally and professionally. Most of the uncertainty was related to COVID-19. I am confident its effects will continue to impact us throughout 2021 in some fashion. For those of us who did not endure the Great Depression or WWII, perhaps COVID-19 is our major lifetime event. We have experienced lockdowns, rent relief requests, business closures, community illness, loss of cost-effective labor, increased fear and anxiety, a tremendous uptick in recreation and demand for quality public spaces; and a host of other unforeseen impacts resulting from the pandemic and state and federal mandates.

We currently live in a time where the future is very uncertain. Having said this, given our traditionally conservative approach to budgeting, the port has so far navigated the COVID-19 pandemic well. Staff is healthy, and port finances are sound. And we have responded as best we could to the situation. Most of our port tenants are still with us. We are in a position, as a port, to move forward in a constructive manner in 2021 to accomplish many of the things the public has asked us to do. However, it is good to remember that while functioning through the COVID-19 pandemic, operational challenges did substantially impact progress. Meetings, sometimes with multiple agencies, needed to occur remotely in a somewhat disconnected world rather than collectively around the table where all involved would feel a sense of ownership. And project scheduling and coordination was also impacted by illness and/or lack of material availability, and local, state, and federal requirements.

#### Cyber Event:

In addition to dealing with a global pandemic, the port experienced a cyber-incident which limited access to port computer files for over a month. Both before and after our incident, we learned that similar nefarious cyber-attacks had also targeted and affected schools, hospitals, businesses, media, cities, and state agencies. Indeed, the US government and its agency branches were also hit with significant cyber-attacks. The Port's November 2020 cyber security incident further complicated productivity due to both losing electronic access for a period and then needing to rebuild the computer network. However, having to reestablish the network

while operating was quite challenging, as even the simple task of connecting to a printer had to start from scratch. Although seemingly turned off with the “flick of a switch” the computer network was, of necessity, brought “back to life” in a carefully sequenced manner that rightfully prioritized the finance department first. Thus, planning and development activities basically lost six weeks from mid-November thru December 2020; and the backlog this incident created is still having a ripple effect on activities previously planned to occur January thru March of 2021. The entire impact has yet to be assessed but this ‘incident’ was far greater than a simple inconvenience. Thankfully, we were successful in retrieving nearly all the files and data. What a year!

## 2021 Look Ahead

Looking forward here is what I see:

### KENNEWICK WATERFRONT

#### Waterfront Master Plan:

The Waterfront Master Plan will be finished in early 2021. It will be interesting to see what emerges from that process. Many elements of the master plan will likely be unfunded, so the commission would need to review the plan’s objectives while keeping budget and funding considerations in mind. Outside of the master plan, the port may look forward to the culmination of more than a decade of administrative and planning work as the 1135 project may be ready to bid, with construction planned for late 2021 and into the winter of 2022. As we have witnessed, however, patience and caution with respect to this project will serve us well.

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Included in the master plan is review of Columbia Drive and SR-397 intersection along with Columbia Drive traffic calming concepts, and evolving plans for City of Kennewick Washington Street enhancements. Traffic calming will have a major positive impact on the wine village, making both sides of the street more pedestrian friendly, and creating additional parking and connectivity across Columbia Drive. These are important elements articulated by Professor Gary Black in the Pattern Language document that was developed via an extensive public process.

#### Wine Village:

Work slated for the wine village is likely to include installation of amenities that benefit our tenants and their guests, such as pond improvements to reduce algae buildup, additional restroom facilities, and shade structures for the wineries. Subject to available staff time, I also anticipate working with the Kiwanis Club and perhaps others to begin planning for the proposed playground area, with anticipated construction (provided feasibility is established and partnering is in place) in 2022.

#### Sales/Leasing Lead Follow Up:

Staff is receiving some interest in acquiring land for development in the wine village area. However, current port policy directs that staff wait for completion of the Waterfront Master Plan and the establishment of land values prior to moving forward. However, decisions will soon need to be made so that staff can address inquiries related to a potential tenant expansion, and

both a new business and a service group proposal.

Washington Street:

I anticipate the port working with the city on planning and implementation of the Washington Street improvements. As Professor Black noted, the connection of Clover Island to downtown is critical and finally linking the two improvement areas will be a major accomplishment. This connection was first identified in the Bridge to Bridge plan many years ago.

Clover Island Marina:

Staff will continue to provide regular maintenance work and respond as needed to the Clover Island Marina. Staff is already working to install rub rails for the fuel dock and guest moorage areas, and to prepare the marina for a busy recreational boating season. And the marina is nearly full—several months sooner than previous years—which is likely a continued result of the COVID-19 pandemic which prompted the highest volume of people visiting, biking, boating, and recreating on Clover Island in the port's history.

## **VISTA FIELD**

Implementation Team:

Now that the port's New Urbanism town center site has basic infrastructure, with parcels soon ready to be sold, I am implementing the team for Vista Field administration (the Team). The Team will respond to nearly all Vista Field related issues, including fielding all inquiries related to the site; property purchases; information requests; property tours; media information; processing of development proposals for commission consideration; additional planning and site revisions, etc. Some of the tasks in support of creation of the Team, including our internal staff reorganizations and associations with contractors, identified below, have been implemented. Some have not. The Team approach and composition is familiar to the commission, so not a lot of information needs to be added here. It will be significant, however as the Team moves from theoretical to action, getting the team in place and ready will permit the commission to move toward the milestone first land sale at the site. As discussed before, the team will be assembled as follows:

Project Manager. The project needs a "Point Person" to meet with realtors, builders and others expressing interest in the project. As of fall 2020, Amber Hanchette is serving as the point of contact related to Vista Field inquiries. This addition to her duties now requires her to spend more time on Vista Field matters. It also limits the time she can spend pursuing her existing duties which include all phases of port operations and maintenance. Thus, this change in Ms. Hanchette's duties created a need for "backfilling" to cover duties transferred to other qualified individuals within the organization. Specifically, Ms. Hanchette has transferred some of her duties to current Maintenance Supervisor Mike Boehnke. This phased transfer began in fall 2020 and is now nearly complete. In administering her Vista Field related tasks, Ms. Hanchette will utilize the services of other staff and contractors as necessary (planning, marketing, administrative services, etc.) and would not be viewed a stand-alone asset assigned solely to Vista Field. Rather she would be a part of a team as described below.

Maintenance Supervisor. Current Maintenance Supervisor, Michael Boehnke has assumed tasks from Ms. Hanchette, effective mid-February 2021.

Maintenance Technician(s): New Hire or Temporary Workers. Because of the overall increase in the number of port-owned/maintained properties (including Vista Field), and further compounded by the loss of the Coyote Ridge labor crews, I have identified a need to hire an additional entry-level maintenance technician or part-time workers. Even though the port will eventually contract out much of the Vista Field maintenance to a private management firm, utilizing funding from the Property Owners Association (POA), staff will still be needed to provide oversight (i.e., ensuring contract compliance) and perform emergency and priority maintenance matters on site, which is in addition to the generally increasing overall maintenance demands from other port development properties.

Project Planner/Coordinator. Larry Peterson, port Director of Planning and Development would serve as the project planner/coordinator for engagement with the port's long-standing architectural advisors, DPZ, as well as Town Architects and Town Engineers (referenced below) related to the development of Vista Field.

Architectural Advisory Team/Town Architect. Lizz Plater-Zyberk (DPZ Founder) and DPZ partner Senen Antonio are currently under contract to fulfill the role of the advisory team. Vista Field will be one of the few projects worldwide which continues to have a DPZ founder as active team members. The port has been unusually successful in keeping these two highly qualified individuals on the Vista Field team; and the benefit of continuing this partnership through at least buildout of Phase I, and continued counsel from these two leaders is priceless. DPZ will also assist with the Request for Proposals (RFP) process for identification of project interest and evaluation of proposals via the collaborative design process.

Property Owner's Association Managers. The port is currently in a contractual relationship with Ben Floyd (planner) and Doris Goldstein (New Urbanism attorney) to provide for set-up of the property owner's association. This is anticipated to be a multi-year task with initial set up and continued monitoring and implementation advice and assistance (through a portion of Phase I).

Project Manager Assistant. Ms. Hanchette will need part time administrative support. There is potential for these duties to be supported internally by the port office assistant/marina manager, likely two days per week.

Office Support. Additional office support will be needed, and this could be accomplished by internal realignment or an outside part-time person.

Town Engineer(s): Gary Hall, Hall Engineering; Sam Nielson, Parametrix. Gary and Sam will provide engineering support for review of private sector projects and integration into established and planned infrastructure. They will bill on an hourly basis.

Construction Management. I will contract with on-call construction management services on an as-needed basis to assist the port in review of construction proposals and to assist with review of construction progress.

Town Architect Protégé. It has been noted by several outside sources that the port seems to rely too heavily on out-of-town contractors. To offset this, I will consider contracting with a local architect who has the ability and desire to learn “New Urbanism”. This person could sit in as the port progresses through the collaborative design process and obtain some on-the-job training as they assist the Team in processing Vista Field development proposals. In a few years, this person could play a more extensive role as needed and as situations warrant. This person would work as an independent contractor, billing on an hourly basis for time expended on each task assigned.

Vista Field Policy Decisions & Operational Mechanics: Prior to the first land sale, the Port Commission needs to set land pricing; revise the port’s realtor commission policy for land sales; establish concise development guidelines for builders; and put in place a rudimentary administrative structure for the owner’s association. These and other related tasks will be time consuming.

Vista Field Corporate Hangars:

This project consists of identifying potential uses, opportunities, cost impacts and funding avenues. This process will include DPZ participation as well as participation of local architects and engineers. It would also dovetail with the COVID-19 Related Economic Impacts Analysis the commission authorized. Staff have been tasked with considering current and near-future COVID-19 economic impacts to Vista Field as well as analyzing what types of uses, if any, the hangars could facilitate, as well as viability/potential for selling or ground leasing as appropriate. And of course, the funding for any hangar-related project, should the commission choose to move towards implementation, would likely require Rural County Capital Funding (RCCF) and working closely with the county as a funding partner. Other funding partners would also be explored/invited to discussions.

It should be noted that the consulting team will focus on “lean” alternatives for the hangars; including uses that would complement the early stages of Vista Field project vibrancy, and which uses might be viable under current COVID-19 conditions. It is anticipated that future potential uses for the hangars will be identified in 2021, with funding and potential implementation taking place in 2022.

The hangar evaluation was recently placed in the hands of a consultant and it is anticipated that a draft report would be circulated in August. The final report could be presented to the port commission (with remote attendance by the consultant) by fall.

Vista Field Construction Closeout/Right of Way Dedication:

Staff is working to close out the \$5,000,000+ contract with Total Site Services which involves dedication and formal acceptance of most roadways to the City of Kennewick and project acceptance by the Commission. This work is underway.

#### Perimeter Fencing/Site Clean-Up:

When the question is asked, “when will the streets be opened for public use?” part of the answer is that the port needs time and staffing to perform some critical housekeeping matters related to a Vista Field “unveiling”. Those matters include cleaning weeds and debris from the site and restricting public access to other portions of the site. This means building fences and installing ecology-blocks to keep the public from driving onto areas that are not yet meant for automobile access. In the past, the Coyote Ridge work crews were ideal candidates for such projects – many fences were built by the work crews in The Willows, Cable Greens, the Wine Village and other places. However, because labor crews are restricted due to COVID-19, the port has lost that 16-person-strong maintenance team. As a result, we are extremely short handed when it comes to providing our previous and expected level of property maintenance activities. To offset this, we have hired several temporary, part time workers; and the port will surely benefit from the return of our Coyote Ridge workforce whenever that becomes possible.

In addition to maximize publicity and interest in the site, care should be taken to open the site to traffic in alignment with the RFP process; because having an extended time between the opening and RFPs risks casting a pall on the site that could create negative impressions and raise questions regarding the site’s potential as a vibrant, exciting development opportunity.

#### A/E, Bid and Construction Management VFDF Building Remodel:

As set forth in the bi-annual budget and work plan, Ms. Hanchette and the maintenance team will be making major repairs and upgrades to the light industrial buildings adjacent to Vista Field.

### **WEST RICHLAND**

#### Racetrack Site:

Because the racetrack property was sold to the City of West Richland, little to no port-led development activity was planned to take place in West Richland during the upcoming year. However, the West Richland mayor has requested that the port provide irrigation water to Alexander Farms for the farm to continue working the land. However, the port is no longer in a landlord/tenant relationship with the farmer. Once the port sold the land to the city, the prerogative to lease to the farmer rested with the city rather than the port. In discussions at the time of the land sale to the city, the port offered additional water rights to the city, however the city only purchased a limited amount of water to assist with the 12 acres for the police station. Therefore, port staff is now reviewing the water rights issue and will brief the commission when more information is available. Port staff could suggest a one-year lease of water rights to the city for the farmer’s use while the larger issue is determined.

### **OAK STREET**

#### Verbena Tenant Matters, Land Auction:

Port Director of Operations and legal counsel have spent countless hours to get the unauthorized holdovers at the Verbena property to vacate the premises. While it appears that the holdovers have no legal right to the property, the Governor’s office has issued directives that protect the holdovers and require additional actions on the part of the port to acquire the property in a condition to sell via the auction process. Thus, this part of the equation has taken

substantially longer than anticipated. Once the land is free from holdovers, it is the intent of the port, by commission directive, to sell the three associated parcels via the auction process. It is anticipated that the property could be ready to auction by late spring, barring additional unforeseen difficulties.

## **RICHLAND**

### Center Parkway Follow-Up:

The commission recently committed to paying the city \$400,000 to assist with the multi-jurisdictional issue related to extending Center Parkway to create passage over the railroad tracks. The port's involvement will be focused on establishing the MOU, offering planning advice, updating commissioners, and reviewing and processing payment requests.

### Columbia Park Trail Follow-Up:

Several years ago, the commission committed to paying the city \$800,000 to assist with the redevelopment of utilities and roadway in the Island View area. That city-led project is now under construction; and the port's involvement will be focused on offering planning advice, updating commissioners, and reviewing and processing payment requests.

## **GENERAL MATTERS**

### COVID-19 Related Economic Impacts Analysis:

I have reviewed the credentials of several economists and have selected a PhD level economist with substantial experience in state, local and regional economies. The consultant is also an esteemed professor at Eastern Washington University.

I anticipate that I will have significant involvement in working this issue with the professor and anticipate it will be a major issue for the port CFO as well. This project consists of the consultant providing a report detailing the past, present and near-term future economic impacts related to the COVID-19 Pandemic. It is understood that no one can accurately predict what the future holds. However, the port CEO hopes that the consultant can offer facts and insights which might provide some realistic prediction related to future actions which may be prudent for this port district to consider as it continues its mission of economic development activities. In short, some analysis related to national, state and regional impacts experienced due to COVID-19 would be appropriate, especially if impacts upon the Port of Kennewick are addressed.

The consulting team may consider the following questions:

- The immediate effects of the virus on local economic activity
- What sectors have been hardest hit, and which are the ones that are thriving?
- State and local government reaction; will income and sales tax revenues plummet? Will demand for rent relief and other programs increase? Will governments cut spending—mostly by cutting employment—or raise taxes?
- Businesses—bankruptcies and lower investment
- Household economic viability
- Ability and willingness to spend



- Vulnerable jobs by sector
- Work from Home (anywhere) Policies and their impact and effectiveness
- What a recovery might look like
- What will determine the shape of the recovery?
- What industries are poised to make the biggest comeback following coronavirus?
- Which industries appear COVID-19 resistant?
- What strategies will help local economies recover more quickly from the COVID-19 pandemic?

For this project, the port CEO has asked the consultant to focus on suggested courses of action the port may undertake to position itself appropriately as it continues its economic development mission.

Together with the economic impact analysis, the port is contracting with a planning firm to offer suggestions for viable reuse/redevelopment/sale/lease of old aircraft hangars at the port's Vista Field town center site. The consultant will familiarize itself with the Vista Hangar Reuse Project and overall Vista Field master plan, to better understand the port's economic development intentions.

The CEO would like to assign the project to the consultant in early spring and it is anticipated that a draft report would be provided by summer 2021, with a final report presented to the port commission (with remote attendance by the consultant) by fall 2021.

#### Governance Audit:

The commission has directed the CEO to prepare a governance audit, which has been formalized as a goal. The process would be divided into two main parts. First, the creation of a quality scope of work (SOW). Second, formulation of an RFQ/RFP; solicitation and production of the work. A third party (consultant) would provide a SOW which would form the basis of an RFQ/RFP. The RFQ/RFP process is where the firm providing the actual project work is selected.

As part of the SOW, the consultant would interview each commissioner, which would allow each commissioner's objectives to be identified and folded into the SOW. Staff could also be interviewed. Once the SOW is formalized, staff will work up an acceptable RFQ/RFP to publicly solicit consultant firms interested in that work. From there, the commission would review qualifications and select the firm best suited to perform the work described in the SOW. While the commission has directed that I fast-track this process, I believe the port should not go so fast that other important projects suffer, and not so fast that transparency and impartiality are jeopardized.

#### IT Analysis; Path Forward:

In the wake of the cyber incident, I have directed our IT consultant to conduct a post event review with other cyber security experts to provide the port with critical information we can use to strengthen security into the future. Port staff and our IT contractors have already enacted additional protocols and security redundancies; and this review will further advise us with respect to emerging technologies and constantly-evolving best practices.

#### COVID-19 Reopening Plan:

I am working with port HR consultant, Ann Allen of Spokane to research and address this issue. Ms. Allen is an attorney and is an adjunct professor at the Gonzaga University School of Law. Ms. Allen will review all past and current port directives as well as the directives of the Governor and health agencies to formulate a best-practice, “Return to Work” reopening plan for the port, with consideration given to both limited and full-return.

#### Water Rights Analysis:

I have contracted with one of the most respected water rights attorneys in the state who, with the assistance of consultant Ben Floyd and port legal counsel Lucinda Luke, will review the status of port water rights. As Mr. Floyd discussed with commissioners last fall, there is still some uncertainty with respect to port water rights associated with the racetrack. Clarification of this issue will benefit the port’s assessment of its water rights inventory, not only at the Racetrack site, but also at the Verbena site in East Kennewick.

#### Finance Department Analysis:

The finance department needs additional assistance and Ms. Allen (referenced above) is assisting in evaluating this matter. It is anticipated that her assessment would be completed by mid-summer and implementation, as needed, would follow according to port policy.

#### Public Records/Information Management/Administrative Systems:

Executive Assistant Ms. Scott is planning to update the 10-year-old public records and information management policy with the assistance of port legal counsel Lucinda Luke for commission consideration. In particular, the process would include revising the process for how requests are received and updating the fee schedule to include fees for electronic documents and media, in accordance with the provisions of RCW 42.56.070 and RCW 42.56.120.

Last year, Lisa Schumacher processed and removed 100 boxes from offsite storage. In 2021, staff will continue working to manage our records inventory to comply with state laws regarding retention and destruction; and begin converting physical files into electronic files in Laserfiche. In addition, Ms. Scott, Ms. Yates, and Ms. Schumacher will work to create Laserfiche workflows and streamline procedures for contract routing, small works & professional rosters, marina and guest moorage forms and applications, expense reports, credit card statements, and facilities work orders.

#### Marketing Strategies:

Marketing activities will include designing and placing property-specific advertising related to selling parcels at Vista Field as that site is readied; and for other land sales, including auctions, as deemed appropriate by commission. Marketing will also involve refreshing the port website; implementing property-specific signage and wayfinding as appropriate; promoting community engagement for Kennewick’s Historic Waterfront; and collaborating on shared endeavors such as the “shop small”, and “shop downtown” campaigns in partnership with the City of Kennewick and the Historic Downtown Kennewick Partnership. Also planned is a five-year update to the port’s history report (the port history/timeline was last compiled for the 100<sup>th</sup> anniversary in 2015).

State Auditor's Office (SAO) Outside Audit Review:

The finance department will be preparing for the upcoming SAO audit, which requires many hours of staff time (and commission involvement).

Quarterly Budget Reports to Commission:

Since 2020, a new task for the finance department has been the preparation of quarterly budget reports for presentation to the commission. This task takes approximately 32 hours of the CFO's time (8 hours each report x 4 reports). As stated above, the finance department requires additional staff resources to continue meeting state and federal legal requirements, and GASB and FASB guidance; and to ensure appropriate oversight for the expanded complexity of the growing number of port projects/properties and the additional contracting, leasing, and land sales activities that will be undertaken at Vista Field. There is no implication that quarterly reporting is responsible for the additional staffing need, but recognition is warranted of the continued and growing burden being placed upon the Finance Department as they strive to ensure clean audits.






# MEMO

DATE: 4/22/2021

TO: Port Commission

FROM: Nick Kooiker 

RE: Legal Fee Reimbursement (Commissioner Barnes)

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At the 4/13/2021 commission meeting, the board approved a motion to reimburse legal fees to Commissioner Barnes in the amount of \$49,282.75.

I am prepared to issue this payment as approved by the Commission, but am waiting to receive the following documents:

- 1) Legal memorandum from Steven DiJulio substantiating payment.
- 2) Unredacted invoices, with spreadsheet summing to the amount listed above.

I emailed Mr. DiJulio on April 14<sup>th</sup> requesting these items but haven't received them yet. As a result, this check will miss the cut-off date for our 4/27/21 check run. Once these documents are received for invoice support, the payment will be presented for formal board approval at the following meeting.

This is a standard and customary process for processing any payment, and is required by the State Auditor's Office in the Budgeting Accounting & Reporting Systems (BARS) manual.