



# PORT OF KENNEWICK SPECIAL COMMISSION MEETING

AUGUST 27, 2019 MINUTES

Commission President Thomas Moak called the Special Commission Meeting to order at 2:00 p.m. in the Bechtel Board Room located at 7130 West Grandridge Boulevard, Kennewick, Washington 99336.

## The following were present:

**Board Members:** Thomas Moak, President  
Don Barnes, Vice-President  
Skip Novakovich, Secretary

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

## PLEDGE OF ALLEGIANCE

Commissioner Moak led the Pledge of Allegiance.

## APPROVAL OF THE AGENDA

***MOTION:*** Commissioner Novakovich moved to approve the Agenda as presented; 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 August 19, 2019***

Direct Deposit and E-Payments totaling \$58,397.13

***B. Approval of Warrant Register Dated August 27, 2019***

Expense Fund Voucher Number 101348 through 101379 for a grand total of \$251,776.96

***C. Approval of Special Commission Business Meeting Minutes August 13, 2019***

***MOTION:*** Commissioner Barnes moved for approval of the Consent Agenda as presented; Commissioner Novakovich seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

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## NEW BUSINESS

### A. *Dave Mitcham, Cedars Lease Agreement*

Ms. Hanchette introduced Dave and Darci Mitcham, owners of Cedars Restaurant. The Mitcham's own the building; however, they lease the land and the east parking lot from the Port of Kennewick. Ms. Hanchette stated the Mitchams would like to update the Commission on the restaurant and discuss some lease items they would like to offer for Commission consideration.

Dave Mitcham thanked the Commission for the opportunity to speak today and introduced Carrie Lundgren of River Realty. Mr. Mitcham has worked with the Port for over four decades and is ready to sell Cedars and retire. Mr. Mitcham stated Carrie and Doug Lundgren would like to purchase Cedars; however, there is an issue with the lease escalation of approximately 30%, which could be a potential deal breaker. Mr. Mitcham stated regardless of the deal going through, he would face the same issues in the future as Mr. and Ms. Lundgren. Mr. Mitcham asked Ms. Lundgren to outline the details of the lease.

Ms. Lundgren thanked the Commission for allowing her the opportunity to speak and stated this is an opportunity to discuss the current land lease. The Mitchams and Lundgrens would like to re-open negotiations with the Port regarding the current ground lease. Ms. Lundgren understands the Port's mission is to provide sound economic growth opportunities and create jobs and improve the quality of life in the Port district. This current lease causes a hardship and threatens the economic vitality of keeping Cedars opened or operated by future owners. The current lease has a negative impact and this is why we are asking for an opportunity to discuss re-negotiations. The land that Cedars occupies is currently in an opportunity zone, by definition, an opportunity zone is an economically distressed area of the community designated by the federal government. It was determined by a licensed appraiser within the last year, on behalf of the Mitchams and their efforts to sell, that the property is being negatively impacted by lease increases. Ms. Lundgren read the appraiser's statement:

*"Weakness of the property: land lease continues for 42 years and 8 months to February 28, 2061; however, the lease options have exceptionally large lease increases in rent, which negatively affects the value of the property."*

In addition to that, when you are dealing with a lender and financing a property, they are looking at the short term and long term of the lease and the vitality of the company. Currently the business has no indication of economic growth or growth sales that would increase at this level of percentage of the lease. Therefore, in financing, this could become a very negative impact in trying to finance the property with the significant lease increase in two years. Ms. Lundgren asked if the Lundgrens and Mitchams can sit down with staff to see if we can make something beneficial to both parties and maintain the jobs, and the growth and vitality of Clover Island.

Commissioner Moak appreciates the comments and thanked the Mitchams for the work that Cedars has put in on the island for many years. Commissioner Moak asked Ms. Hanchette how the lease terms are determined for tenants.

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Ms. Hanchette stated the Port moved to a standard lease several years ago; however, the Cedars lease was signed in 2006, and she believes the terms worked for both parties at that time. Ms. Hanchette stated Cedars Restaurant has been on the island since the 1970's, and the Mitchams took over the lease from Ray Gillette, the previous owner. The Mitchams entered into their own fifteen year lease with the Port in 2006; and in 2018, the Commission approved a lease amendment which added four, five year options. The lease has a built-in escalation clause, and when the 15 year lease expires March 2021, the rate increases for five years (2021-2026) and then increase again in 5 years (2026-2031). Their lease is different from the standard lease agreement which offers a flat escalation.

Commissioner Novakovich pointed out that at year 15, the lease increases a \$1,000 a month, from \$3,500 to \$4,500, and then after five years, the lease increases from \$4,500-\$6,000 per month. Commissioner Novakovich stated as a small business owner, he could not sustain a business with those kinds of escalations. Commissioner Novakovich agrees that the Port needs to look after their tenants and after small businesses, and he is willing to look at the lease to keep the business viable; however, with these kind of escalations, he does not see how anyone can stay in business with those increases.

Commissioner Barnes is familiar with various ways of adding escalations to leases and inquired if there has been any thought or consideration to tying the increases to the Consumer Price Index (CPI).

Ms. Hanchette stated the Port has had a number of leases that were tied to the CPI, but because the CPI varied so much over time, it created a burden to the accounting department to calculate the increases. Staff opted, through the lease amendment, to set the escalation at a standard flat percentage rate, rather than averaging the CPI over five years.

Commissioner Novakovich stated the lease started out reasonable and inquired if there was a goal the Port was trying to achieve with the escalation.

Ms. Hanchette stated not to her knowledge.

Mr. Arntzen assisted with the negotiations between Mr. Gillette and Mr. Mitcham and if memory serves, Mr. Gillette picked some numbers, and we were unaware of how he got to choose those particular numbers. Mr. Arntzen reiterated Mr. Mitcham's request of continued discussions with staff to come up with a reasonable proposal for the lease. Mr. Arntzen stated staff will work with the Mitchams and Lundgrens and report back to the Commission regarding the process and a potential proposal.

Commissioner Moak stated at that point of negotiations, the rate was deemed fair by everybody that was involved; however, with the escalation, those numbers may not work or be fair. Commissioner Moak supports the idea of re-negotiations but believes we need to protect the best interests of the Port. Commissioner Moak hopes that the negotiations can be tied into the sale of Cedars. The Mitchams have done a great job for four decades, and Commissioner Moak has no

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objections to staff working with Mitchams and the Lundgrens to come up with a number that is fair to all sides.

Commissioner Barnes agrees with Commissioner Moak's comments and stated staff is capable of negotiating a fair lease. Commissioner Barnes does not believe this is just a just dollars and cents issue. Commissioner Barnes believes it is in the best interest of the Port to have Cedars, an iconic restaurant on the island, surviving, and creating vibrancy, because it helps surrounding businesses on Clover Island and Columbia Drive. Commissioner Barnes does not believe the Port should be looking at achieving a specific lease amount, but more in terms of a mutually beneficial, long term relationship. Commissioner Barnes mulled, what is a fair and reasonable rate for the land at that particular location for this business. Commissioner Barnes wants to make sure this business is surviving and creating that vibrancy and creating a gathering place at Clover Island and Columbia Drive that the Port hopes to achieve. Commissioner Barnes would like see staff work with Mitchams and the Lundgrens to negotiate something that is mutually beneficial, for a good long term healthy relationship.

Commissioner Moak inquired if staff has enough direction.

Ms. Hanchette stated yes.

Mr. Arntzen noted, if the Port creates a very workable deal for one tenant on the island, others may ask for a lease review as well.

## OLD BUSINESS

### B. Citizen Complaint

Ms. Luke stated there are two items on the Agenda: selection of the neutral and sanctions for Commissioner Moak. Prior to that, however, there has been a recent development Ms. Luke would like to address to the Commissioners. Ms. Luke distributed copies of a letter she received late this morning, via email, from Joel Comfort of Miller, Mertens, and Comfort, addressed to her, referencing Commissioner Barnes and her response to the letter. Ms. Luke stated because she received the letter late this morning, she had little time to go into an in-depth response, but addressed some of the issues raised in the letter. Ms. Luke read the letter she received and her responses into the record.

*Mr. Comfort:*

*"I write to you on behalf of Commissioner Don Barnes, whom I will be representing in the hearing related to the so-called "citizens" complaint against him. Since Commissioner Barnes and Commissioner Moak have been drug through the mud in the public eye, it seems only fair that the public should also know the full context, so they can judge for themselves regarding the motivation of the Complainant. To the end, I am aware that the Port is providing access to the redacted complaint on its website, along with the investigator's report. There are no exemptions to the Public Records Act that permit continued redaction of the complaint. Moreover, I understand that the Port has already released the unredacted complaint to at least one third party, several months ago, in response to a records request. Presumably,*

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*this is because the Port already recognizes there is no basis for continued redaction. Since this whole affair appears to be attracting enough public and media attention to justify the Port putting a special link on their website to the report and the complaint, please direct Port staff to update the website to include the unredacted complaint."*

*Ms. Luke's response:*

- 1. It has been the Port's policy to maintain the confidentiality of complainants (see Port Rule 5.2). I anticipate that you will refer me back to the "except to the extent required to complete any investigation and in event that an action is taken" language included in Rule 5.2. The Port stands by its position to maintain the confidentiality of complainants as disclosure of the name of complainants has a chilling effect on having misconduct reported.*

Ms. Luke noted that that is a standard used throughout legal and Human Resources industry, as far as a chilling effect. You want to have complainants come forward and therefore, the complainants name is maintained confidential to the degree possible.

*Mr. Comfort:*

*At the Special Commission Meeting on August 13, 2019, Commissioner Barnes advised that he disagreed with the investigator's findings, and that he was exercising his right under Port policies to request a hearing to clear his name. I have reviewed your August 27, 2019 Agenda Report concerning this issue, and your proposed Resolution No. 2019-17. Please be advised that the proposed resolution violates the current version of the Port of Kennewick's Rules of Policy and Procedure, Section 5.7. The current policy states that the neutral shall be mutually decided by the Complainant and the Respondent. In this case that would be Commissioner Barnes and the Complainant. This is not a matter that can be submitted to the Commission as a body. The proposed resolution should not be part of the Agenda.*

*Ms. Luke's response:*

- 2. Ms. Luke disagreed with that assertion. The proposed resolution does not violate Port Rule 5.7 which states that "...as agreed upon by the Complainant and the Respondents". Because any such action involving two or more commissioners constitutes a meeting under the Open Public Meetings Act, such action must be taken by the Commission as a whole in an open public meeting. If you disagree that the OPMA applies to this action, please point me to the authority upon which you are relying.*

*Mr. Comfort:*

*My client received the draft Agenda packet late last Friday, containing your recommended neutrals. Commissioner Barnes and I will give due consideration to those neutrals, however, before doing so, please provide us with the hourly rates*

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*and expense to be charged by each of those you recommend. Considering the fact that “port officials” were quoted in the Tri-City Herald that a hearing will cost “at least \$50,000,” along with your fiscal impact statement that a hearing will cost \$75,000, my client believes that it is important to consider what each of these proposed neutrals charge, alongside their qualifications. I have handled innumerable matters in front of private neutrals, and I have never seen one cost anywhere close to \$50,000-\$75,000. At most, this is a two-day hearing (and more likely one day), with limited pre-hearing procedural issues to account for. There’s simply no reason this hearing would cost anywhere close to those numbers, unless the neutrals at JDR or JAMS charge an unreasonable rate. If that is the case, then we suggest that the parties look at selecting a neutral from Eastern Washington instead. There are a number of qualified neutrals located in Yakima, Wenatchee, Spokane, or Walla Walla that we can propose, and who undoubtedly charge substantially less than a neutral from Seattle. Once you provide the requested information, we will identify neutrals my client is agreeable to, or propose alternates, and the Complainant can do the same.*

*Ms. Luke’s response:*

- 3. The Port Rules also indicate that the neutral shall determine the hearing process. Because that process may take the form of an arbitration hearing, I have estimated fees and costs accordingly. I have had arbitration processes cost in excess of \$50,000. It is possible that a hearing will take longer than the two days you estimate, therefore the numbers provided are truly estimates. Additionally, the process leading up to a hearing may involve additional costs. As you know the typical hourly rates for most neutrals range from about \$350 – \$525 per hour. There may be some that charge less, and there are certainly many that charge more. Whether they are from Eastern or Western Washington or elsewhere. The estimates provided are based on Ms. Luke’s experience, and Mr. Comfort has other experiences. Ms. Luke does not discount this.*

*Mr. Comfort:*

*Additionally, I have reviewed the policies adopted by the Commission and those policies do not permit the Commission to sanction an individual Commissioner in the manner you have recommended. Specifically, the policies permit a censure or a reprimand as a sanction, and further permit the Commissioner’s committee assignments to be rescinded. The policies do not, however, allow the Commission to sanction an individual Commissioner with mandatory training, and certainly not at their own expense. I suspect you will rely upon the catch-all provision of the sanctions section (“additional action”) of the policies to justify the recommendation. This provision, however, is so vague that it is not enforceable. The Commissioners are individually elected officials who have been chosen by their constituents to represent them on the Commission. If the vague “additional action” language is read broadly it would clearly have a chilling effect on the democratic process. This would permit two Commissioners to effectively impose any sanction*

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*they wanted against a political opponent. BY way of example, a majority of the Commission could hamstring or punish the Commissioner for acting in oppositions to the majority. In contrast, a censure or a public reprimand (or removal from a committee post) gives notice to the Port's constituency that the Commission as a body disagrees with a particular Commissioner's behavior. From there, the constituents can decide if they want to recall the elected official (pursuant to RCW 29A.56 et seq.), or elect a new Commissioner at the next election.*

*Ms. Luke's response:*

4. *Does not agree with Mr. Comfort's assertions regarding what remedial actions may be taken pursuant to the Port Rules and will provide him with a more in depth response. Ms. Luke stated the catch-all phrase "additional action" does give broad authority on Port Counsel to determine appropriate remedial action, in order to curtail misconduct and to hopefully prevent it in the future.*

*Mr. Comfort:*

*On another matter, at the August 13, 2019 Special Commission Meeting, you inaccurately represented that Commissioner Barnes' term as the reviewing Commissioner for Mr. Arntzen's yearly review had expired, and that it was time to appoint a new Commissioner to the CEO Evaluation Committee. That was untrue. Please review the Commission minutes from October 10, 2017 which clearly document that the Commission voted to appoint Commissioner Barnes as the reviewing Commissioner until December 31, 2019. Commissioner Barnes' term had not expired. What is also concerning is that you made it a point to recommend that Commissioner Novakovich be appointed to the committee after your "careful review of various matters pending before the Port Commission and the potential liability that could arise from the recently completed citizen complaint investigation." Considering all of the circumstances surrounding the citizen complaint investigation I would submit that Commissioner Novakovich has no less conflict than Commissioner Barnes or Commissioner Moak when it comes to evaluating the CEO.*

*Ms. Luke's response:*

5. *Ms. Luke did not inaccurately state that Commissioner Barnes' term on the CEO Evaluation Committee was coming to an end, it was. The Port Commission meeting minutes from October 10, 2017 do not dictate the term of Commissioner Barnes' appointment to the CEO Evaluation Committee. Resolution 2017-16 appointed Commissioner Barnes to the CEO Evaluation Committee and adopted the new Section 15.0 of the Rules. Rule 15.1.1 states that the Commissioner appointed to the committee is to serve a two-year term. Commissioner Barnes has served through two years of CEO evaluations. If he were to serve a full two calendar years (until October 10, 2019,) his term would have ended early in a third annual CEO evaluation cycle.*

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*Mr. Comfort:*

*In summary, please direct the Port to post the unredacted complaint on the Port's website within the investigative report. Commissioner Barnes looks forward to the opportunity to address the conclusions made in the report through the hearing process. However, he will not be pushed into selecting a neutral, nor will he concede his mutual right (with the Complainant) to select a neutral. Resolution No. 2017-17 should not be part of the agenda. Additionally, please provide me with the additional information concerning the rates charged by the neutrals you proposed in the agenda. Clearly, cost is an issue, and one that should be considered by all parties before a decision is made.*

*Ms. Luke responded that she looks forward to working with Mr. Comfort to move this matter toward resolution.*

### **1. Selection of Neutral**

Ms. Luke stated the Port Commission has been provided a packet of information related to neutral panels that are available under Judicial Arbitration Mediation Services (JAMS) or the Judicial Dispute Resolution Service (JDR). Ms. Luke narrowed the search with JAMS to neutrals to those with public agency experience and provided a list of 11 neutrals, with various backgrounds, all of which have been judges, retired from bench or lawyers or both. All which have a number of years ruling from the bench, and ruling from a position of being a neutral. Ms. Luke provided, in addition to the JAMS and JDR rosters, and information on each agency, a copy of the Port Commission Rules of Policy and Procedure Section 5, which was amended June 11, 2019. As stated in Mr. Comfort's letter, Ms. Luke estimated fees and costs for a hearing process to be \$75,000, not including Port CEO and staff time. Ms. Luke stated this is an estimate, without yet knowing what the hearing process may look like. Ms. Luke would be happy to provide a revised estimate once we know what that hearing process will entail.

In the August 13, 2019 Commission meeting, Commissioner Don Barnes reported that he did not accept the Recommended Action resulting from Tara L. Parker's August 6, 2019 Report of Independent Investigation determination that Commissioner Barnes A) violated Port Rules when he contacted DPZ and the State Auditor's Office regarding business matters, and B) created a hostile work environment for Port CEO in violation of Port policies. Commissioner Barnes disagreed with these findings and requested a hearing before a neutral, as provided in Port Policies and Procedure.

Pursuant to Port Rule Section 5.7, when a complaint is made by one or more of the Commissioners against one or more Commissioner, the determination and recommended action of Port counsel shall be submitted to a mutually agreeable neutral selected from the panel of neutrals available at the Seattle office of Judicial Arbitration and Mediation Services ("JAMS") or Judicial Dispute Resolution ("JDR"), or other similarly qualified third party neutral as agreed upon by the Complainant and the Respondents.



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Ms. Luke provided the panels of JAMS and JDR panels for consideration and review to the Commissioners and specifically provided biographies of certain neutrals who came highly recommended from both inside her office as well as outside from other attorneys who have utilized their services. Ms. Luke focused the JAMS list by searching for experience with governmental and public agencies. JDR has a smaller panel of neutrals and did not offer that search option. You will note that most of the neutrals available on these rosters are retired judges with extensive courtroom, arbitration, and mediation experience. Additionally, most neutrals practiced law for many years prior to becoming a judge. Any of the neutrals on these panels will be qualified to handle the hearing process contemplated by the Port Rule Section 5.

Ms. Luke provided biographies from JAMS neutrals Hon. Sharon Armstrong (\$525 per hour), Hon. Ronald E. Cox (\$400 per hour) Hon. Helen L. Halpert (\$450 per hour), Lawrence R. Mills, and Hon. Thomas McPhee (\$450 per hour) and JDR neutrals Hon. George Finkle, Hon. Paris K. Kallas, Hon. Steve Scott.

Ms. Luke stated in her experience, these rates are consistent with neutrals not only in Western Washington, but neutrals that have been retained recently in Eastern Washington. It is always possible to find neutrals that are less expensive; however, she would consider them less experienced, less qualified or equally qualified. Ms. Luke is willing to entertain other ideas, however, she has not heard back from the Commissioners about other proposals as to alternative neutrals that they would propose at this point in time.

Ms. Luke recommends that the Commission consider Hon. Sharon Armstrong, who came highly recommended, if available. Alternatively, either of the other two retired judges from JAMS (Judge Halpert or McPhee) or Hon. Steve Scott from JDR for the neutral to conduct the hearing contemplated by Port Rule Section 5. Ms. Luke also recommends that an alternate neutral be selected in the case that the first choice of neutrals is not available. Ms. Luke asked for Commission feedback, and if they would like to proceed with selection of a neutral today.

Commissioner Barnes respectfully disagrees with the interpretation of our Port Counsel of this selection process. Commissioner Barnes believes that since Commissioner Moak has not opted for a hearing before a neutral that the neutral is supposed to be a mutual selection between himself as a singular respondent and the claimant. Commissioner Barnes received this package after 5:30 on Friday afternoon and has not had time to go through this in a manner that would be sufficient to make a selection. This is a lot of material and it is an important decision. Commissioner Barnes thinks that more than a day, less than a day, or a day and a half is not a reasonable period of time for one to make a selection for an important matter like this. Commissioner Barnes disagrees with the resolution that is prepared. Commissioner Barnes thinks the selection of a neutral to be made mutually between the respondent (himself) and claimant. Commissioner Barnes respectfully disagrees that Commissioner Moak does not have a part in this, he did not ask for a hearing before a neutral, he was named as a respondent in the original complaint,

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but he is no longer a party to the neutral process. Commissioner Barnes is not in favor of this resolution, he is not in favor of this process until, as Mr. Comfort pointed out in the letter, until we have received information requested regarding potential neutrals, had sufficient time to evaluate that, and then respond.

Commissioner Novakovich inquired if the motion is to be made, should it also include the selection of an alternate neutral, in case the first neutral is not available.

Ms. Luke stated the motion could add the adoption that included an alternate neutral, in case the first choice is unavailable, which has happened before.

Commissioner Moak inquired if this decision needs to be made today.

Ms. Luke stated it is something to move the hearing process forward. That is the only consideration is the timeliness of the hearing process and not dragging it out.

Commissioner Moak stated that it has already dragged out and does not believe another two weeks will make a difference. Commissioner Moak expressed his concern and it is the one expressed by Mr. Comfort and Commissioner Barnes, is that he does not think he is a party to this. He is either a complainant or a respondent and so he does not know that it is his duty to impose a resolution because clearly Commissioner Barnes does not support, that it is Commissioner Moak's rank to impose that. Commissioner Moak asked Ms. Luke, as either a complainant or the respondent, to respond.

Ms. Luke stated Commissioner Moak is a respondent, the complaint was against both...

Commissioner Moak stated not enough for this particular incident, excuse me for interrupting, but what Commissioner Barnes is being accused of or adjudicated or whatever you would like to use. It's not anything that Commissioner Moak is a party to, he is party to a separate charge, which we will deal with next. Commissioner Moak is not a party to the issues that Commissioner Barnes is appealing.

Ms. Luke stated the complaint was against both Commissioner Moak and Commissioner Barnes, and you were both respondents. Some of the allegations of the complaint are closely intertwined. Ms. Luke stated that Commissioner Moak has not requested, but he still a respondent. Ms. Luke apologized that she has not given an in-depth response, because the issue was raised shortly before the meeting today.

Commissioner Moak understands that and we are trying to deal with things very quickly that have come from Mr. Comfort's letter and your response. Commissioner Moak asked if Ms. Luke and Mr. Comfort or Commissioner Barnes, or anybody else work things out to make a smoother process in two weeks that people might feel more comfortable with an answer, than for Commissioner Moak to make a decision today on something that he is very uncomfortable making. That in fact, one of the respondents has said that he has not had time to review and Commissioner Moak understands that.

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Ms. Luke stated the Commission does not need to make a decision today regarding a neutral and the Commission can certainly decide to wait two weeks. Ms. Luke does not believe she can work out the details with Mr. Comfort, and believes this is an issue that the Port has to comply very clearly with the Open Public Meetings Act (OPMA) as to a selection of a neutral. And so it will need to come back before the Commission, however, as Ms. Luke stated in her response to Mr. Comfort, if she is wrong, if there is something out there that she is unaware of, she is willing to hear it from Mr. Comfort, just so that we ensure compliance with OPMA and any other rules or regulations that might be applicable to this process. Ms. Luke is certainly trying to do the best that she can in order for the Port to comply with all applicable laws.

Commissioner Moak agrees with a lot of points that Mr. Comfort made, but Ms. Luke is our attorney. His job as president of this Commission, as a Commissioner, is to listen to because he has not retained counsel, Ms. Luke is counsel for the Commission. Commissioner Moak would make that decision, but he does not think he can make that decision today, to appoint either Ms. Armstrong or anybody else, when he thinks one of the respondents feels like, would like a little bit more information.

Commissioner Novakovich stated it obviously appears that if he were to make a motion to approve this resolution, it would go down 2:1.

***MOTION: Commissioner Novakovich moved to table the discussion on Resolution 2019-17 to September 10, 2019 meeting. Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.***

Commissioner Barnes stated Mr. Comfort has requested information, so he hopes that we will receive some information so that we can make an evaluation and make a determination. Commissioner Barnes thinks it was pretty presumptuous that he would just agree with the person recommended here when he just received the information Friday night, after 5:30 p.m. Thank you very much for giving him more time to make a reasonable selection.

### ***2. Sanctions for Commissioner Moak***

Ms. Luke stated this item follows the Special Business Meeting of August 13, 2019 where Commissioner Moak indicated that he accepted the recommended action.

Ms. Luke stated the fiscal impact, as referenced earlier in the meeting, fees and costs for the investigative process to August 13, 2019 were \$52,000, not including Port CEO and staff time. Fees and costs associated with training to be conducted with Commissioner Moak are to be borne by Commissioner Moak pursuant to the Recommended Action. Additional fiscal impact is cost of publication and other fees and costs incurred to fully enact the Recommended Action accepted by Commissioner Moak. Although difficult to estimate, Ms. Luke believes the Port will incur an additional fiscal impact of \$10,000.

In the August 13, 2019 Commission meeting, Commissioner Tom Moak reported that he accepted the Recommended Action which includes:

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- A. Verbal reprimand reported in Commission meeting minutes.
- B. Satisfactory completion by Commissioner Moak of training identified by Port Counsel covering the following topics:
  - Professional communication skills
  - Port Commission Rules and Policies.
  - All costs and fees for all such training shall be paid by Commissioner Moak.
- C. Cooperative participation in team building activities and trainings with Port CEO and staff. Such activities shall be identified by Port Counsel with the assistance of consultants, Port CEO and staff.
- D. Publication of the above sanctions is to be made in the *Tri-City Herald*.

Ms. Luke recommended the Commission adopt the proposed Resolution and upon adoption, Ms. Luke will read the verbal reprimand into the record. The verbal reprimand is attached to the proposed Resolution 2019-18 and should be read into the record today. Training and team building steps will be conducted over time as directed and scheduled by Port counsel.

Commissioner Moak stated that he did agree to accept that and he did want to move on, and he still believes that is the right thing to do. He still believes that the sanctions are harsh, compared to a single incident that the investigator found that he yelled at the CEO. Commissioner Moak thinks all of this that is being expected, for one single incident, if that is the way we are going to play the game, he thinks its escalating issues rather than diffusing issues. Commissioner Moak agreed to do it and he will, and he looks forward to the cooperative participation and team building with the CEO and staff. Commissioner Moak really does think there's a lot of issues related to Port Rules and what the job of this Chair, is to deal with, conduct that is outside the bounds. And learn about that and what sanctions that the president needs to take for that. Commissioner Moak thinks all of this was good, but he thinks it seems a little over the top, to think that he is the only one that needs that, but yet, he is the one who is being sanctioned for that. But Commissioner Moak agreed to accept it and he does, and his conduct needs to be better, and he will continue to exercise his role as a policy making role here with this Commission, along with his two colleagues, because he thinks that policy role, along with the work of staff, and our consultants has resulted in a great Vista Field project and a great Columbia Gardens project and he thinks if we can get back to working together as a team, to continue that work, that we will hear about more later, he thinks that's good. Commissioner Moak looks forward to his participation in that.

Commissioner Barnes appreciates Commissioner Moak's comments and he has a concern about this resolution as it is prepared. This portion of our policies and procedure was recently adopted in January 2019. This is the first action of the sanction or censure under this provision of these policies. Commissioner Barnes concern is that we are establishing a very dangerous precedent going forward by enabling or allowing say two Commissioners, to sanction or penalize one commissioner in a way that has financial impact to require training at his own expense, for a single outburst, and he was there. Commissioner Barnes agrees, he thinks it's a bit harsh, but he respects the fact that

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Commissioner Moak wants to accept this and move forward. But Commissioner Barnes cannot support this resolution as it is written, because he thinks it establishes a dangerous precedent going forward, that will enable two Commissioners to impose financial hardship on a minority, disagreeing Commissioner, and he can't accept that, and he does not think it is fair, he does not think it is the right precedent to establish, this section of the policy was just adopted this year. For those reasons, Commissioner Barnes cannot support the resolution as written.

***MOTION: Commissioner Novakovich moved to approve Resolution 2019-18, adopting the Recommended Action of Port Counsel for Commissioner Moak's violation of the Port Rule requiring civil and respectful treatment of others; Commissioner Moak seconded.***

## PUBLIC COMMENT

No comments were made.

### *Discussion:*

***MOTION: Commissioner Barnes moved to amend Resolution 2019-18, by striking provisions B and C on page one; Motion dies for lack of second.***

***With no further discussion, motion carried. All in favor 2 (Commissioners Moak and Novakovich):1 Nay (Commissioner Barnes).***

Ms. Luke read the verbal reprimand into the record:

*On March 25, 2019 a citizen complaint against Commissioners Moak and Barnes was received by the Port and an investigation of the complaint was conducted by independent legal counsel, Tara L. Parker.*

*Tara L. Parker issued her Report of Independent Investigation on August 6, 2019 wherein she found that Commissioner Tom Moak violated the Port Rule requiring civil and respectful treatment of others on one occasion. More specifically she found that in the February 19, 2019 Commission meeting executive session Commissioner Moak yelled at Port CEO "I blame you" in reference to the Ivy property matter.*

*Commissioner Moak is hereby reprimanded for yelling at the Port CEO which action violated the Port Rule requiring civil and respectful treatment of others.*

Commissioner Moak inquired if this ends this particular discussion today.

Ms. Luke stated yes.

# PORT OF KENNEWICK

## SPECIAL COMMISSION MEETING

AUGUST 27, 2019 MINUTES

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### REPORTS, COMMENTS AND DISCUSSION ITEMS

#### A. *City of West Richland Update*

Ms. Hanchette updated the Commission on the City of West Richland's offer for the former racetrack property consisting of 93 acres. Ms. Hanchette has been working to initiate the appraisal process; however, this is a very active climate and appraisers are 4-6 weeks out. Additionally, Ms. Hanchette connected Port and City legal counsel together, who have been discussing the Purchase and Sale Agreement (PSA) and other terms. Ms. Hanchette stated this is an ongoing discussion and asked Ms. Luke to walk through the intricacies of the proposal.

Ms. Luke connected with City of West Richland Counsel, Bronson Brown to discuss the proposed transaction. Ms. Luke laid out her thoughts about what the transaction should look like in order to meet the City's main priority of a police station which would require a 4 to 5 acre parcel. Ms. Luke offered her thoughts about single transaction with the City that carved out a 5 acre parcel of the total 92 acres. The transaction would be a cash sale with a closing as soon as the City required, in order to meet its bond obligations. Then, that parcel would be sold with a pro-rated parcel of 18 acre feet with water rights that was set out in the Port's Master Plan. In addition, under the same transaction, the Port would sell the balance of the 87 acres to the City, with the transfer of the City's Rural Capital County Funds (RCCF) to the Port, through an Interlocal Agreement with Benton County, with a closing to occur at later date. Ms. Luke stated the City indicated an interest in purchasing the excess water rights, which is estimated at 80 acre feet at the rate of \$6,000 per acre foot. This would be a cash sale as well, but dealt with sequentially to the closing on the 87 acre parcel. Ms. Luke stated Mr. Brown had a meeting scheduled with the City and would get back to Ms. Luke after the meeting. Ms. Luke received a call from Mayor Brent Gerry, Roscoe Slade, and Mr. Brown, who wanted to offer their thoughts about the transaction. Ms. Luke updated the Commission on the City's proposal.

The City would like to close on the entire 92 acres, not just the 5 acre parcel related to the police station, to meet the deadline. The purchase price is still \$1,250,000 via transfer of the City's RCCF funding to the Port. The City has offered to provide security in the form of a deed of trust and note. The backstop for that, if, for any reason the full purchase price is not received through the RCCF fund process, that the City will pay the balance and do so by April 2023. In a separate transaction, the City would consider the purchase of the excess water right once the Department of Ecology confirms the amount available. The City would then have 90 days to determine whether to proceed with that purchase. Ms. Luke will continue to work with Mr. Brown to prepare a draft agreement pursuant to what the City is proposing to bring back to the Commission for consideration.

Commissioner Barnes asked staff what the Port paid for the 93 acres.

Ms. Luke believes it was \$1,750,000.

Commissioner Barnes confirmed that the Port paid \$1,750,000 in 2008.

Ms. Hanchette stated that is correct.

# PORT OF KENNEWICK

## SPECIAL COMMISSION MEETING

AUGUST 27, 2019 MINUTES

Commissioner Barnes reiterated that the Port paid \$1,750,000 in 2008 and did additional work on the Master Plan with Oneza and Associates. Commissioner Barnes confirmed that the Port is now contemplating a sale for \$1,250,000.

Ms. Hanchette stated that is correct, that is the City's offer.

Commissioner Barnes cannot support this transaction and does not see anything that makes sense from the Port's point of view.

Commissioner Novakovich stated there are issues with the water rights, and speculates, the water rights alone that the Port would transfer to Vista Field and the fairgrounds are worth somewhere over \$500,000. So if you add that \$500,000 to the \$1,250,000, the Port is back up to what we paid for the former racetrack property.

Commissioner Moak inquired what is the timeframe to get additional information to the Commission.

Ms. Luke hopes that staff is able to bring additional information back at next meeting, but she is not certain because we are still drafting the terms.

Ms. Hanchette believes within the next couple of meetings.

Commissioner Moak would expect that the 1% for arts would be included.

Ms. Hanchette provided the Art Policy to the City. Ms. Hanchette stated the Art Policy stipulates 2% for sales in excess of \$500,000 and read Section 3A, of the Art Policy:

***Section 3. Artwork required as part of Port Land Sales:***

*A. "When the Port sells unimproved real property, at the discretion of the Port Commission, the Port may require that a sum (as determined below) be paid by the purchaser and deposited with the Port to purchase artwork to be installed in a public area within the Port of Kennewick district boundaries. The selection of the site of the artwork shall be at the discretion of the Port Commission.*

- 1. For the first \$500,000, of sales price, a sum equivalent to 3% shall be assessed for artwork; and;*
- 2. For sales in excess of \$500,000, a sum equivalent to 2% shall be assessed for artwork."*

Commissioner Moak looks forward to seeing that in the agreement, because he would like to support the agreement.

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

# PORT OF KENNEWICK SPECIAL COMMISSION MEETING

AUGUST 27, 2019 MINUTES

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## ***C. Non-Scheduled Items***

1. Commissioner Novakovich attended the Washington State Department of Transportation meeting (WSDOT) with Mr. Peterson in Union Gap last week and spoke with WSDOT representatives regarding the Red Mountain Interchange. Commissioner Novakovich relayed that the representatives indicated that that project was dead and WSDOT is looking at possibly using the funds to instead improve State Route 224 and Keene.

## **PUBLIC COMMENTS**

No comments were made.

## **COMMISSION COMMENTS**

No comments were made.

## **ADJOURNMENT**

With no further business to bring before the Board; the meeting was adjourned 3:12 p.m.

## ***APPROVED:***

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**



Thomas Moak, President



Don Barnes, Vice President



Skip Novakovich, Secretary



# **PORT OF KENNEWICK**

## **Resolution No. 2019-18**

### ***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK ENACTING RECOMMENDED ACTION FOR COMMISSIONER MOAK***

**WHEREAS**, on March 25, 2019 a citizen complaint against Commissioners Moak and Barnes was received by the Port; and

**WHEREAS**, an investigation was conducted regarding the complaint by independent legal counsel, Tara L. Parker; and,

**WHEREAS**, Tara L. Parker issued her Report of Independent Investigation on August 6, 2019 wherein she found that Commissioner Tom Moak violated the Port Rule requiring civil and respectful treatment of others on one occasion; and,

**WHEREAS**, in the August 13, 2019 Commission meeting, Tara L. Parker's August 6, 2019 Report of Independent Investigation findings were reported and the Recommended Action resulting from Ms. Parker's findings was also reported; and,

**WHEREAS**, Commissioner Tom Moak stated that he would accept the Recommended Action; and,

**WHEREAS**, Pursuant to the Port Legal Counsel's August 6, 2019 Recommended Action memorandum, the recommended actions for Commissioner Moak's violation are:

- A. Verbal reprimand reported in Commission meeting minutes.
- B. Satisfactory completion by Commissioner Moak of training identified by Port Counsel covering the following topics:

- professional communication skills
- Port Commission Rules and Policies

Costs and fees for all such training shall be paid by Commissioner Moak.

C. Cooperative participation in team building activities and trainings with Port CEO and staff. Such activities shall be identified by Port Counsel with the assistance of consultants, Port CEO and staff.

- D. Publication of the above sanctions in the Tri-City Herald.

**Resolution No. 2019-18**

**Page 2**

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby adopts and initiates enactment of the above-referenced recommended actions for Commissioner Moak's violation, including reading the attached verbal reprimand into the minutes of today's Commission meeting.

**BE IT FURTHER RESOLVED** that all actions by Port Counsel and port employees in furtherance of enactment and completion of the recommended actions for Commissioner Moak are ratified and approved; and further, the Port Counsel is authorized to take all actions necessary in furtherance hereof.


**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 27th day of August, 2019.

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

By:

  
THOMAS MOAK, *President*

By:

  
DON BARNES, *Vice President*

By:

  
SKIP NOVAKOVICH, *Secretary*

## **VERBAL REPRIMAND OF COMMISSIONER TOM MOAK**

On March 25, 2019 a citizen complaint against Commissioners Moak and Barnes was received by the Port and an investigation of the complaint was conducted by independent legal counsel, Tara L. Parker.

Tara L. Parker issued her Report of Independent Investigation on August 6, 2019 wherein she found that Commissioner Tom Moak violated the Port Rule requiring civil and respectful treatment of others on one occasion. More specifically she found that in the February 19, 2019 Commission meeting executive session Commissioner Moak yelled at Port CEO "I blame you" in reference to the Ivy property matter.

Commissioner Moak is hereby reprimanded for yelling at the Port CEO which action violated the Port Rule requiring civil and respectful treatment of others.