



PORT OF KENNEWICK REGULAR COMMISSION MEETING

AUGUST 11, 2020 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 as presented; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

PUBLIC COMMENT

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick stated All Aboard Washington (AAWA) is an effort to restore rail service from Spokane to Pasco, Yakima and the Seattle area. The proposed rail service will run four times a day, two from Seattle and two from Spokane, with an estimated travel time of eight hours. AAWA will be holding a series of Zoom meetings: August 27 (Spokane), September 19 (Ellensburg), October 17 (Tri-Cities), November 21 (Cle Elum) and December 5 (Auburn). Mr. Burdick stated studies show rail service between Seattle to Spokane was technically and financially viable and it is imperative that the preliminary study should be followed up with a full analysis of the economic benefits that will improve the areas served with an east-west passenger service. AAWA is requesting support from local governmental bodies and business groups.

No further comments were made.

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CONSENT AGENDA

A. Approval of Direct Deposit and E-Payments Dated August 4, 2020

Direct Deposit and E-Payments totaling \$84,219.52

B. Approval of Warrant Register Dated August 11, 2020

Expense Fund Voucher Number 102284 through 102309 for a grand total of \$78,433.29

C. Approval of Regular Commission Meeting Minutes July 28, 2020

MOTION: *Commissioner Barnes moved to remove the Warrant Register, dated August 11, 2020, from the Consent Agenda and immediately follow the Consent Agenda for discussion; Commissioner Moak seconded. With no further discussion, motion carried. All in favor 2 Ayes (Commissioners Barnes and Moak); 1 Nay (Commissioner Novakovich).*

MOTION: *Commissioner Novakovich moved to approve the Consent Agenda Items A and C; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.*

Commissioner Barnes asked for additional information about the Foster Garvey warrant for the Declaration for Vista Field.

Mr. Peterson stated Foster Garvey is assisting Ben Floyd of White Bluffs Consulting and Doris Goldstein on the legal aspects of the Vista Field Property Owners Association.

MOTION: *Commissioner Barnes moved to approve the Warrant Register dated August 11, 2020; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.*

EMERGENCY DELEGATION UPDATE

Mr. Arntzen and Ms. Hanchette stated there is nothing to report for Emergency Delegation.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. Vista Field

1. Construction and Task Status Update

Mr. Peterson reported on August 5, 2020, Total Site Services (TSS) requested notice that Vista Field Phase #1A be substantially complete. That triggers a process where staff works with the engineers and City to reach a conclusion as to whether or not it can be deemed substantially complete. Additionally, the contract also allows for the provision of accepting portions of the projects.

Mr. Peterson reported that DPZ Partners Portland and Miami office continue to work through the 73 questions for clarification. Mr. Peterson believes he will be ready to present the first batch of responses at the August 25, 2020 Meeting. The questions and answers will be broken down into three categories: land use, architectural and design, and market approach and suggestions.

Commissioner Barnes inquired if the water feature issue has been resolved.

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Mr. Peterson stated a small issue was found once the water features were filled. The water features were drained and TSS and the subcontractor from California will complete the modification while the water features are dry.

B. Clover Island/Columbia Drive

1. Kennewick Waterfront Master Plan Update

Mr. Peterson stated Makers architecture and urban design are now working on the online information gathering for the Kennewick Waterfront Master Plan with a survey, mapping tool and comment wall, which is available on the Port website. Ms. Bader Inglima has done an excellent job advertising the survey and mapping tool. Furthermore, Makers has nearly completed the telephone interviews and Mr. Peterson stated they plan to report on the initial outreach later this year.

C. Buy Back Clauses

Ms. Hanchette stated Port staff researched the history of buy-back clauses that were used in Purchase and Sale Agreements (PSA) from 2003-2019. Of the 70 resolutions that were researched:

- Thirty-four transactions were perfected;
- Thirteen PSA's did not contain a buyback clause;
- Five transactions either ended in no sale, expired or was part of a land swap; and
- Three PSA's have open buyback clauses (six resolutions).

The intent of the buyback clause is to further economic development based on the significance of development, the contribution of the development and what economic benefits are being derived from the sale of the property. Most of land sale PSA's state a purpose for the property, a specific time for development, and an option to repurchase the property. Ms. Hanchette stated the Port has been using a standard PSA for several years which includes buyback language.

Ms. Hanchette stated the three transactions with an open buyback clause include Three Rivers Acquisition (2019), JMAC/Pronghorn (2017), and Southridge Village (2006). Three Rivers Acquisition and JMAC/Pronghorn have each had the option to repurchase extended; however, Southridge Village has a fifteen-year buyback clause and the deadline to construct in June 30, 2021. Ms. Hanchette stated the Southridge properties have either been subdivided or repurchased by new companies and includes the recent 8.5 acres that the Port sold last fall by auction. Furthermore, when the deed was recorded in 2006, there were no deed restrictions listed on the property.

Commissioner Moak thanked Ms. Hanchette for her thorough report and inquired if there was anything the Port could do to enforce the buyback clause on the Southridge Village properties, if the Port chose to repurchase the land.

Ms. Luke stated yes, pursuant to the contract, it should be enforced; however, she would anticipate that the new owners would challenge and exercise the argument of waiver or the Port not having exercised the buyback sooner.

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Commissioner Moak believes Southridge Village would be problematic; however, he does not feel that the Port should remove the buyback clauses for Three Rivers Acquisition and JMAC/Pronghorn, as it is an incentive to construct.

Commissioner Novakovich inquired if the Port has funds to repurchase the properties.

Mr. Kooiker stated if the Commission wanted to repurchase the parcels, then staff would include that option in the draft 2021-2022 budget; however, there would be a trade-off project.

Commissioner Barnes stated it is really important for the Port of Kennewick to develop a policy that is uniformly consistent, fair, and equitably applied going forward. In addition, Commissioner Barnes believes there needs to be a tracking system, since there will be several buyback clauses included in Vista Field and Columbia Gardens PSA's. Commissioner Barnes agrees with Commissioner Moak's comments regarding Three Rivers Acquisition and JMAC/Pronghorn and would like to discuss the buyback clause closer to their expiration date.

Commissioner Novakovich inquired what the amount would be to repurchase the parcels.

Ms. Hanchette stated Three Rivers would cost approximately \$375,000 and JMAC/Pronghorn would cost approximately \$154,000. Southridge Village is subject to fair market value at approximately \$8.00-\$12.00 per square foot.

Further Commission and staff discussion ensued regarding buyback clauses.

Mr. Arntzen stated because staff is working on the draft 2021-2022 budget, he inquired if the Commission is interested in repurchasing the properties.

PUBLIC COMMENT

No comments were made.

MOTION: *Commissioner Novakovich moved to approve Resolution 2020-15, authorizing the Port's Chief Executive Officer to execute all necessary documentation associated with buyback clauses releases for Southridge Village, JMAC/Pronghorn and Three Rivers Acquisition and to take all other action necessary to finalize these transactions; and further ratifies and approves all action by port officers and employees in furtherance hereof; Commissioner Moak seconded.*

Discussion:

Commissioner Moak agrees that Southridge Village is problematic and should be released; however, he does not believe the other two need to be released.

Commissioner Barnes confirmed that Commissioner Moak release Southridge Village but not Three Rivers Acquisition and JMAC/Pronghorn.

Commissioner Moak stated that is correct.

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Commissioner Barnes agrees with Commissioner Moak's comments and is willing to relinquish the Southridge Village buyback clause and leave Three Rivers Acquisition and JMAC/Pronghorn buyback clauses alone.

MOTION: *Commissioner Barnes moved to amend the proposed motion by striking the JMAC/Pronghorn and Three Rivers Acquisition from the Resolution 2020-15; Commissioner Moak seconded. With no further discussion, amended motion carried unanimously. All in favor 3:0.*

Commissioner Barnes reiterated the main motion on the floor, approving the amended Resolution 2020-15.

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

Ms. Hanchette stated regarding Mr. Arntzen's memo on buyback clauses (Exhibit A) related to Vista Field (philosophy and potential buyback clause provisions), staff suggests the use of buyback clauses with tighter deadlines to encourage faster construction and utilization of the New Urbanism because time is of the essence for Vista Field. Ms. Hanchette asked for Commission comments regarding buyback clauses, to see if staff is moving in the right direction.

Mr. Novakovich read Mr. Arntzen's memo and prosed language for the buyback clause and likes what he read and believes it takes care of our concerns about what we want done at Vista Field.

Commissioner Moak stated the Port needs to take into account the time a developer will spend on the collaborative design agreement for the buyback clause. Additionally, a buyback clause is a good incentive and good leverage on the part of the Port for Vista Field. Commissioner Moak suggested setting aside funds to buyback properties in Vista Field, in case we decide to exercise that option.

Commissioner Barnes stated buyback clauses will be a very crucial tool for the Port to help shape, control, and encourage the type of development we are seeking at Vista Field and Columbia Drive. Commissioner Barnes likes the specified time limit and buyback price, as opposed to market value, and for staff to implement a tracking system.

Ms. Hanchette stated staff has been working on developing new modules within Laserfiche that will track such items as contracts, PSA's and buyback clauses.

D. 2021-2022 Budget & Work Plan Ideas

Mr. Arntzen stated staff continues to work on the draft 2021-2022 Budget and Work Plan and indicated that the Center Parkway project with the City of Richland and the Washington Street improvements with the City of Kennewick will be included in the draft. Mr. Arntzen stated some current items that need to be monitored is the 1135 Habitat Restoration Project and Ms. Bader Inglima has been working with the US Army Corps of Engineers (USACE) on some budget numbers.

Commissioner Moak inquired about City of Richland's request for the Center Parkway project.

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Mr. Arntzen stated a total of \$400,000, \$200,000 per year; however, nothing is official until an Interlocal Agreement is presented to the Commission. At that point, the Commission has every option to not fund the project or approve.

E. Communications with Public

Ms. Bader Inglima has been working on the Kennewick Waterfront Master Planning process with Makers and coordinated a targeted campaign to promote community engagement.

F. Director Reports

Ms. Bader Inglima scheduled a visit on August 17, 2020 with the new USACE Walla Walla District Commander Richard Childers and staff and City of Kennewick staff. Ms. Bader Inglima will be discussing the 1135 Clover Island Shoreline project and Duffy's Pond.

Mr. Kooiker has received a lot of inquiries from other ports asking about how we implemented Laserfiche. Mr. Kooiker stated implementing Laserfiche was a very good decision, because staff has been able to work continuously through COVID-19 and we are working on more processes.

Ms. Luke has a teleconference scheduled with Judge Kallas and counsel on Thursday to discuss the hearing schedule for the complaint appeal process. Judge Kallas confirmed the hearing date for September 29, 2020; however, it is unlikely we will be back to in-person meetings. The purpose of the teleconference is to discuss how we are going to proceed. There are three options for the upcoming hearing: Judge Kallas could offer a short continuance, the hearing could be held remotely, or conduct the process via briefing alone.

Mr. Arntzen inquired if the Commission would like him to present a draft memo regarding additional options for the Vista Field Hangars for further Commission discussion.

Commission consensus is for staff to present further discussion and exploration on the Vista Field Hangars.

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

Commissioners reported on their respective committee meetings.

H. Non-Scheduled Items

Commissioner Novakovich mulled if the Port missed an opportunity with Derrick Stricker and his potential development by having drive-in movies at Vista Field, to gain attention for Vista Field. The cities of Kennewick, Pasco and Richland and the Port of Olympia will be having drive-ins in the upcoming weeks.

Commissioner Barnes seconds Commission Novakovich's comments regarding the drive-in movie theaters; however, he has heard that Walmart would be offering drive-in movies as well. It may have been a missed opportunity or good fortune because of the competition.

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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 4:01 p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Don Barnes, President

Skip Novakovich, Vice President

Thomas Moak, Secretary

*The August 11, 2020 Commission Meeting Minutes were Approved by the Port of Kennewick Commissioners on August 25, 2020 at the Regular Commission Business Meeting.

MEMORANDUM

To: Port Commission

From: Tim Arntzen, CEO

Date: 8/11/20

Re: Buyback Clauses

The commission has asked the port CEO to prepare a brief report related to the port's use of buyback clauses. As part of this review, the CEO will report on those properties the port has sold in the recent past which had buyback clauses and which are developed pursuant to terms of the sale agreement (i.e. those properties whereby the seller has fully complied with the terms of the buyback clause).

The CEO will also report on those properties which have sold in the recent past and the development has not yet occurred (i.e. which are still subject to port repurchase). For these properties, the commission may wish to determine whether it desires to repurchase the property, or to formally waive the buyback provision.

Finally, the CEO will present thoughts from staff and legal counsel related to the current buyback clause language the port inserts into sales agreements; and proposed changes which the commission may wish to consider. Also a discussion related to the commission's philosophy will be encouraged.

Background

A buyback clause is a provision in a land sales contract that allows the seller of property the right or opportunity to repurchase the property under stated conditions. The port has substantial history of inserting buyback clauses in its real estate sales agreements. Because the port usually sells property in furtherance of economic development, part of the port's rationale for selling property is based on the beneficial use of the property by the proposed purchaser. This is usually demonstrated by the significance of the development, the contribution of the development to the local, state or national economy, usually evidenced by the number of jobs created or services offered (or other similar positive economic benefits to be derived by the port selling the property). And the port generally does not sell property for speculative purposes. In short, the port sells the land only if it is of more benefit to the community to have a party other than the port own the land.

As part of most land sales, the port sells for a stated purpose, i.e. a restaurant. The port commission realizes the restaurant use will benefit the quality of life in the community, will create taxable revenue and will create jobs and vibrancy. The port welcomes these perceived benefits and has an expectation that the purchaser will be diligent in developing the project. And the port desires to avoid a purchaser "sitting" on the purchased property rather than immediately developing it. Thus, the necessity of buyback clauses.

However, in a few cases the port has not wanted to repurchase property it sold. One instance included selling land, knowing the party would need to hold it to allow land value to increase over time (Southridge). In this case the port needed the revenue from the sale to fund construction of vital infrastructure at Vista Field. Hence, the commission determined that a buyback clause was not necessary or desirable. In at least one other case, the port commission sold land that no longer fit its mission (Verizon/MS Shemali). Thus land was sold for a positive economic use, but no buyback clause was utilized in that case as the port simply did not want the land back (i.e. the port wanted the revenues for other development projects which would benefit the community and the land being sold was not an important part of the port's portfolio).

Philosophy

The commission likely will want to discuss when to use buyback clauses. As has been the custom in the past, the commission may be judicious in its use of buyback clauses. Perhaps the commission would choose to limit their use to land sales where development according to the sales document is critical. A great example would be in the case of a bare land sale at Vista Field where the developer promises to build a certain type of project, utilizing New Urbanism principles, promising to build according to the design guidelines, etc. and to build in a timely manner. Because of the critical nature of Vista Field, a project that languishes or promises to be inconsistent could be terminated via the port's exercise of a buyback clause, thus protecting community values. Staff would suggest the use of buyback clauses in all Vista Field land sales.

Columbia Drive might be another area for the use of the provisions.

Potential Buyback Clause Provisions

Buyback Clauses should be straightforward so that both the seller and the buyer know exactly what each is required to do. The term for performance should be reasonable. Currently the port provides for 18 months in which to complete a project. The port has, in the past, provided extensions for good cause shown.

It might appear to the commission that a 12 month provision, with a 6 month extension for good cause is supportable. The port should also have a defined time frame in which to exercise its right to repurchase, say 12 months from the

expiration of the time of performance (Exhibit A). In addition, commission may wish to retain proceeds from land sales subject to buyback clauses in order to have funds available should the commission desire to exercise a repurchase.

Recent Port Use of Buyback Clauses

Summary found in attached Real Estate agenda report.

Action

Staff wishes to present this topic to the commission for consideration, direction and possible action. It would be appropriate for this matter to be finalized by this fall in order to prepare for upcoming Vista Field land sales in 2021.

EXHIBIT A

PROPOSED LANGUAGE FOR VISTA FIELD BUYBACK CLAUSE:

10. REPURCHASE OPTION.

10.1 Obligation to Construct [_____]. The parties agree that the Purchaser's use of the Property shall be to construct _____. The _____ will be built in accordance with the following conditions:

10.1.1 Construction is to commence no later than twelve (12) months from the date the deed is recorded transferring the Seller's title to this land to Purchaser;

10.1.2 Commencement of construction will be evidenced by issuance of all required building/construction permits and approvals together with actual commencement of on-site construction; and,

10.1.3 Seller shall have the right to approve all aspects of building design, which approval shall not be unreasonably withheld or delayed.

10.2 Failure to Construct and Right to Repurchase. Subject to force majeure, the parties agree that in the event construction of the _____ or some other mutually agreed upon utilization of the Property, has not begun (evidenced as set forth in 10.1.2 above) Seller shall have the right to repurchase the Property at the same agreed upon purchase price (\$_____) paid by Purchaser, with all closing costs and real estate taxes paid by Purchaser, payable in cash at closing. Seller must give Purchaser written notice of its intent to repurchase the property within thirty (30) months of the date deed is recorded transferring the Seller's title to this land. In the event this repurchase provision is invoked, payment will be made by Seller to Purchaser for improvements made to the Property by the Purchaser which, in Seller's determination and sole discretion, benefit the future development of the Property. Value of improvements which benefit the Property shall be established, unless otherwise agreed by the parties, from the average of two appraisals (one obtained by Seller and one obtained by Purchaser) performed to determine the residual value of improvements made by the Purchaser.

Closing for the repurchase of the Property shall occur in accordance with the terms of paragraph 9 above, except that Purchaser shall bear all closing costs unless otherwise agreed between the parties, and closing shall occur no later than _____ (___) days after delivery of the Seller's written notice. Upon closing, Purchaser shall immediately vacate and redeliver possession of the Property to the Seller. At closing, the Purchaser will execute a statutory warranty deed re-conveying the Property to Seller and this Agreement shall be void and of no further force or effect.