



PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 25, 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 as presented; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.*

PUBLIC COMMENT

Marie Mosley, 210 West 6th Avenue. Ms. Mosley, City of Kennewick City Manager thanked the Port for many years of working together in partnership to make our community a better place. Examples of this is the work that has been accomplished and is in process at Columbia Gardens, the Washington Street improvements, and the Clover Island shoreline enhancements. All of those contribute to the vision of connecting the waterfront to the downtown and the City is very appreciative of the partnership. The Port and City have also worked together on Vista Field improvements and many other partnerships throughout the community. Ms. Mosley is very appreciative to have such a visionary and forward-thinking partner as the Port. We have tremendous opportunities in the future to continue our effective partnership. As the Port is aware, there is federal funding that we are all applying, or in the process of applying for, through our federal legislatures. The City and the Port have worked together to include letters of support for our top priority projects. In addition to the federal dollars, the community will be receiving significant funding from the American Rescue Plan Act (ARPA), which we are currently

PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 25, 2021 MINUTES

reviewing regulations to understand the guidelines and restrictions associated with this funding. The City and Port continue to collaborate with our Rural County Capital Funds, as well as public-private development partnership opportunities. The City Council has discussed the importance of continuing to look for ways to leverage our taxpayer investment with other grant opportunities. Similarly, it is important to take a comprehensive approach as we implement a vision for Columbia Gardens, Vista Field, Clover Island, The Willows and other opportunities in our community. For instance, the City knows it is important to incorporate the residential component of our mixed-use development in these areas in order to help spur economic development and make the vision a reality. The Port has been talking to the Kennewick Housing Authority (KHA) about a potential project in The Willows, similarly, the City has been talking with the KHA about a potential project in the location of our 10th Avenue shops area, which may be a more suitable location for a partnership with the KHA. Ms. Mosley requested that the Commission allow the City and Port to work on a comprehensive approach to identify complementary projects that are not competing, and looking at both Kennewick and regionally, which is what the City is doing with the ARPA funding. The City and Port could engage the KHA, the Historic Downtown Kennewick Partnership, and those who have already made investments in these areas and potential private developers. Ms. Mosley believes there is an interest from private developers to invest in The Willows, Cable Greens, Columbia Gardens, and Vista Field. We would have great opportunities and it continues to be important that we are looking together to find the best projects for each of our entities to help implement the vision and compliment the work we have all successfully completed. Ms. Mosley asked the Commission to allow her and Mr. Arntzen to come up with a comprehensive approach, over the next 60 to 90 days, that incorporates the many ideas and visions that are already out there. Ms. Mosley believes we will be able to identify tremendous public-private partnerships that will meet the needs in a collaborative way.

Jeff Gordon, 531 Levy Road, Pasco. Mr. Gordon thanked the Port for investing in the wine industry in the Tri-Cities and stated it has been long overdue and believes it will be successful. Ms. Gordon would like to have highway directional signs installed so the public can get to Columbia Gardens. Mr. Gordon believes Columbia Gardens is not located on a well-traveled road and has discussed installing highway directional signs with the regional manager, who agreed to look at Highway 240 to see how we might be able to do that. The blue and white directional sign would direct the community and visitors to Columbia Gardens and costs approximately \$650-\$700 per year for maintenance. Mr. Gordon stated the department would have placards for each winery, tasting room, or restaurant and additional placards could be installed. Mr. Gordon would like to work with the Port to get these directional signs added.

Commissioner Barnes asked Mr. Arntzen to make note of Mr. Gordon's request.

Mr. Arntzen and Ms. Hanchette will work with Mr. Gordon on this project and report back.

Mr. Gordon would like to put a plan together that would work for the Port and other tenants at Columbia Gardens.

Julia Cunningham, 480 Cherry Blossom Loop, Richland. Ms. Cunningham would like to express her thanks to the Port for their ongoing efforts in and around Clover Island and Downtown Kennewick, which has seen a blossoming in revitalization under the Port's efforts. However, the proposed collaboration with the KHA does not seem to be in concert with her understanding of the Port's Master

PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 25, 2021 MINUTES

Plan and plans for development property that has been outlined in the Makers report. Ms. Cunningham would like to be sure that the focus remains on sustainability of development and those things we all profess to support as taxpayers and as users of the facilities and improvements that have been made to date.

Cal Coie, 705 South Oklahoma, Kennewick. Mr. Coie is concerned about the Port's plan for The Willows. Mr. Coie stated the Port spent many thousands of dollars with Markers, now and in the past, and he does not understand what the Port's plan is for The Willows. Mr. Coie liked Ms. Mosley's suggestion of the location of 10th Avenue and stated there are other areas in the community and Kennewick to have a facility like that. Mr. Coie stated the idea of having a family-oriented area, where kids can play and people can walk, does not believe it is conceivable to have that type of operation in The Willows.

Dennis Poland, 199864 East Game Farm Rd, Kennewick. Mr. Poland is concerned about Resolution 2021-09 regarding Pronghorn LLC/JMAC's request to forgive or change the requirements of their Purchase and Sale Agreement. Mr. Poland does not think the Commission should do away with the buyback clause because in 2017, Pronghorn promised to bring \$4,000,000 in revenue to the Tri-Cities and he believes they need to follow through. Mr. Poland stated this touches on the Vista Field issue and he thinks Pronghorn should not be allowed to get around the buyback clause. Mr. Poland believes it is a very touchy situation.

Ryan Smith, 2908 South Benton Place, Kennewick. Mr. Smith, Commodore of the Clover Island Yacht Club and resident of east Kennewick for the last 50 years, reiterated Mr. Coie's and Ms. Cunningham's comments regarding The Willows. The Clover Island Yacht Club is very interested in the downtown and Clover Island projects and has been following the Master Plan process. Mr. Smith hopes the Port can stick with the Master Plan and come up with something that will keep the island thriving. Mr. Smith stated a lot of people are not aware of this idea and he believes that the public needs to be made aware before it becomes something that happens. Mr. Smith thinks working with Ms. Mosely and the City is a good idea.

Amber Martin, 2105 North Steptoe Street, Kennewick. Ms. Martin expressed her concern with The Willows as well and thinks there are plenty of other places for a KHA partnership with the City other than close to the river, where we can have private properties instead of discounted. Ms. Martin urged the Commission to reconsider that location in partnership.

No further comments were made.

OLD BUSINESS

A. *Reimbursement of Legal Fees*

Mr. Kooiker stated Port Special Counsel Steve DiJulio of Foster Garvey is on the line to answer any questions the Commission may have regarding Resolution 2021-08. On May 11, 2021 Mr. Kooiker presented Resolution 2021-07 to the Commission for approval; however, the Resolution was not approved, and the Commission directed him to work with Mr. DiJulio regarding the approximately \$1,300 in redacted invoices. Mr. DiJulio reached out to Mr. Comfort on May 12, 2021 and issued a memo to Mr. Kooiker. Mr. DiJulio and Mr. Comfort reviewed the charges

PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 25, 2021 MINUTES

and came up with different amount based upon their review. Mr. Kooiker stated Mr. DiJulio prepared Resolution 2021-08 for Commission consideration.

Mr. DiJulio summarized each of his previous analysis of the invoices submitted by Commissioner Barnes and Mr. Comfort, and further evaluated the specific redacted invoices recently requested by Mr. Kooiker. Mr. DiJulio reviewed the redacted invoices with Mr. Comfort and based upon our review, some items were appropriate for deletion. The Commission initially approved an amount slightly higher at the April 13, 2021 Regular Commission Meeting and based upon the review of the redacted invoices with Mr. Comfort, Mr. DiJulio recommended the total amount of the reimbursement should be \$48,815.25. Mr. DiJulio inquired if the Commission had any questions regarding the motion or Resolution.

PUBLIC COMMENT

No comments were made.

MOTION: *Commissioner Moak moved to approve Resolution 2021-08, authorizing the reimbursement of legal fees to Don Barnes in the amount of \$48,815.25; that such Resolution supersede the prior legal fee reimbursement approved by the Board on April 13, 2021; that all action by Port officers and employees in furtherance hereof is ratified and approved; and further, that the Port Chief Executive Officer and CFO/Auditor are authorized to take all action necessary in furtherance hereof; Commissioner Barnes seconded.*

Discussion:

Commissioner Moak confirmed that Mr. DiJulio and Mr. Comfort agreed on the amount regarding the redacted invoices.

Commissioner Barnes stated that is correct.

Commissioner Moak stated it is important to move forward with this Resolution and resolve this issue once and for all. It has hung over this Port for over two years and has taken much too long to be resolved. Commissioner Moak stated we have come to a point where we can resolve this, and he thinks we should. It is time to move on and as Ms. Mosley stated earlier, there are a lot of things to be done, a lot of things we have to do and can do, and Commissioner Moak thinks that is what we need to focus on. One of the best ways to focus on it, is to get things out of the way that are keeping us from focusing on those projects.

Commissioner Novakovich asked if the Commission is comfortable taking this gamble, that the Port's record of 24 years of clean audits may well come to an end. If for no other reason, in reimbursing these fees, Port policy was not followed and perhaps precedence was set when Michael Love's fees were not paid when Commissioners Barnes and Moak voted not to pay them. Commissioner Novakovich believes we are discussing expenditures of public funds that the taxpayers of the Port of Kennewick have a right to know what they are paying for and he believes they have a right to see the complete unredacted invoices attached to the minutes and resolutions that clearly show other moneys being spent. Lastly, Commissioner Novakovich questions if Commissioner Barnes has an ethical and moral right to vote on this Agenda Item. Commissioner

PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 25, 2021 MINUTES

Novakovich asked this question at last Commission Meeting and did not receive an answer. Commissioner Novakovich pointed out that the Washington State Supreme Court at one time ruled “one cannot vote on his own matter.” Commissioner Novakovich stated he was making these comments for the record.

Commissioner Barnes stated some of the questions Commissioner Novakovich raised would have been more appropriately addressed in March of 2019, when an anonymous citizen complaint was authored by one Commissioner against the other two, the minority against the majority. Which resulted, in Commissioner Barnes view, a colossal waste of taxpayer funds. Commissioner Barnes had no other alternative than to defend himself against these accusations that were completely without basis or merit as determined by a judge. Commissioner Barnes is simply seeking to be made whole, to be reimbursed for the funds that he expended. He would also like to note that during this entire time, Commissioner Barnes has been acting within his duties and obligations and responsibilities as a Port of Kennewick Commissioner. Commissioner Barnes stated not once did he receive an outreach from anyone at the Port, including the Port’s legal counsel, asking if he needed any help or assistance defending himself in dealing with this. Commissioner Barnes would like to see this put to rest and stated he could vote to recuse himself; he could vote to step aside and then he would be happy to see everyone in Superior Court. Commissioner Barnes is sure that would result in much higher fees and much higher costs to the Port, and he is very confident that he would prevail; however, he does not think that would be in the best interest of the Port. Commissioner Barnes would like to try to and move forward and put this behind us. Commissioner Barnes stated despite Commissioner Novakovich’s objections, he will be voting as a Commissioner for the Port of Kennewick to reimburse these legal fees.

Commissioner Moak stated these fees have been agreed to by Special Counsel for the Port and are a result of Commissioner Barnes prevailing over the Port in the hearing related to this complaint. Everything that has been done is in accordance with legal counsel, despite the fact that one Commissioner believes he knows more about the law than legal counsel that has been employed as special counsel by the Port. Commissioner Moak stated there have been several different iterations over the last three meetings to rectify this. Commissioner Moak would rather do it right than right now and stated this is the right thing to do. It is very clear that the payment of legal fees for services rendered for prevailing against the Port in this matter is totally entitled by the law, we employed legal counsel to look at that, and learned legal counsel at that. Commissioner Moak believes we should pay attention to legal counsel rather than try to make our own law.

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

B. Kennewick Historic Waterfront District Master Plan Update

Mr. Peterson presented the draft Master Plan for the Kennewick Historic Waterfront District Master Plan (KHWD) and pointed out several policy related items for Commission discussions.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 25, 2021 MINUTES

Commissioner Novakovich offered his thoughts regarding the policy questions:

- It is essential for the Port to evaluate acquiring property around Columbia Gardens;
- Consider partnering with the Port of Pasco than competing;
- Continue to lease property rather than sell property on Clover Island.

Commissioner Moak offered his comments:

- Evaluate the pros and cons of acquiring each individual property;
- The Port should consider building on the NW corner of Clover Island;
- The intent of the Wine Village was to include an artisan market and does not believe the Port is looking to compete with the Port of Pasco and if the private sector believes there is a market for an artisan market in Kennewick, then the Port can move forward with the opportunity;
- Makers advised creating an interim use in Cable Greens and stated the Port needs to find the right interim use for the property;
- Continue building partnerships;
- Continue leasing property on Clover Island.

Commissioner Barnes offered his comments:

- Evaluate opportunities on a case-by-case basis;
- Does not believe parking in the NW corner of Clover Island is the highest and best use for the property;
- Port outlined intentions for Columbia Gardens early on and hopes the Port can be complementary to the Port of Pasco's development;
- Cable Greens interim use should be interim only and for a short period of time and complementary to Columbia Gardens;
- Continue leasing property on Clover Island.

Additional Commission discussion commenced regarding the Draft Master Plan.

Mr. Peterson stated if the Draft Master Plan is acceptable to the Commission, staff will post the document on the Port website for additional public comment. Additionally, Mr. Peterson will forward Commission comments to Makers for review and further Commission discussion at the June 8, 2021 Commission Meeting. Mr. Peterson outlined the schedule for the Draft Master Plan consideration.

CONSENT AGENDA – A

A. *Approval of Direct Deposit and E-Payments Dated May 18, 2021*

Direct Deposit and E-Payments totaling \$65,258.71

B. *Approval of Warrant Register Dated May 25, 2021*

Expense Fund Voucher Number 102925 through 102954 for a grand total of \$76,769.88

C. *Approval of Regular Commission Meeting Minutes May 11, 2021*

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

PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 25, 2021 MINUTES

CONSENT AGENDA – B

A. *Approval of Warrant Register Dated May 25, 2021*

Expense Fund Voucher Number 102955 for a grand total of \$48,815.25

MOTION: *Commissioner Moak moved to approve the Consent Agenda B; Commissioner Barnes seconded. With no further discussion, motion carried. All in favor: 2 Ayes (Commissioners Moak and Barnes), 1 Abstain (Commissioner Novakovich). 2:0:1.*

EMERGENCY DELEGATION UPDATE

Mr. Arntzen and Ms. Hanchette stated there is nothing to report for emergency delegation.

RECESS

Commissioner Barnes called for a recess at 3:24 p.m. for 5 minutes.

Commissioner Barnes reconvened the Regular Commission meeting at 3:30 p.m.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. *Senator Cantwell Appropriations Request*

Ms. Bader Inglima stated Senator Cantwell's office requested applications for appropriations for federal funding. Ms. Bader Inglima stated based on the previous Port submittals for federal funding, she inquired if the Commission would like the Port to submit applications for the Electrical Vehicle Charging Stations and The Willows Infrastructure. Additionally, the Port provided the City of Kennewick with a letter of support for their appropriations application for Senator Murray's office and requested a letter of support for Senator Cantwell's request. Ms. Bader Inglima inquired if the Commission would like staff to provide a letter of support for their application.

Commissioner Moak believes for consistency, the Port should submit applications for the Electrical Vehicle Charging Stations and The Willows Infrastructure.

Commissioner Novakovich believes the Port should submit an application for the Electrical Vehicle Charging stations. He expressed his concern regarding submitting an application in partnership with the KHA for The Willows infrastructure, based on the public comments today. Commissioner Novakovich believes the Commission should let Mr. Arntzen and Ms. Mosley have time to discuss potential projects and develop a plan.

Commissioner Barnes stated the Commission received comments from the public regarding the concerns of adding mixed income housing at The Willows. Commissioner Barnes inquired if this would be a good opportunity to submit an infrastructure request for The Willows that does not include a partnership with KHA.

Commissioner Novakovich would defer to Ms. Bader Inglima's recommendation on that proposal; however, he believes Commissioner Barnes suggestion is a move in right direction. It shows the City that the Port is a good partner, and we are willing to listen to their concerns and willing to see what we can come up in partnership.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 25, 2021 MINUTES

Commissioner Moak stated it does not make sense to have two separate proposals for the same project and believes it would make more sense to remove The Willows application altogether.

Ms. Bader Inglima is concerned with the appearance of inconsistency with the previous submitted applications; however, she is happy to submit the applications as the Commission directs. Ms. Bader Inglima stated the application does not guarantee funding and the Port was cautioned early on that the strength of the proposal was in the partnership.

Commissioners Moak and Barnes support submitting the same appropriations applications to Senator Cantwell's office that the Port submit previously to Senator Murray's office.

It is the Consensus of the Commission for the CEO to submit a letter of support for the City of Kennewick's appropriations request to Senator Cantwell's office.

B. Finley Twin Tracks (Pronghorn/JMAC) Property Update

Ms. Hanchette outlined the history of the Pronghorn LLC/JMAC 2017 Purchase and Sale Agreement (PSA) and stated Resolution 2019-08 authorized a 24-month extension on the obligation to construct. Ms. Hanchette stated Pronghorn saw some setbacks due to COVID-19; however, they are still interested in developing the property. Ms. Hanchette introduced Mike Johnson, a representative of Pronghorn LLC/JMAC.

Mr. Johnson stated the initial use for the property was a cement batch plant business; however, they were unable to get the materials (sand and aggregate) in order to move forward with the project. Mr. Johnson stated Ms. Hanchette offered up helpful suggestions and Pronghorn determined the site may be better suited for warehousing, which they have previously constructed in North Dakota, Texas, and New Mexico. Mr. Johnson stated the current Conditional Use Permit (CUP) states Pronghorn will install an asphalt facility and they have determined that they can move forward with that because there is a quarry across the freeway in Finley. Mr. Johnson stated Pronghorn is prepared to move forward with the asphalt project and once he asphalt plant is established, request an additional CUP to construct a warehouse facility to assist the asphalt plant, with the intention for future warehousing.

Ms. Hanchette stated the Port's deadline to repurchase the property is September 13, 2022.

Commissioner Barnes inquired if the property was appraised in 2017 and if it came with water rights.

Ms. Hanchette stated the property was appraised and sold at the appraised values since there had not been any industrial comps in the last 25 years. Ms. Hanchette stated the property has water rights to the permitted well only.

Commissioner Moak is not in favor of eliminating the buyback clause but he is in favor of allowing Pronghorn to develop the property as described by Mr. Johnson. Commissioner Moak inquired if the dates of the Resolution could be consistent with the extended development time and the right to repurchase.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 25, 2021 MINUTES

Ms. Hanchette would defer to Ms. Luke regarding the language in the Resolution.

Commissioner Novakovich agrees with Commissioner Moak's comments regarding the extension to construct and the Port's buyback date. Furthermore, Commissioner Novakovich disclosed that Mr. Poland contacted him and discussed this issue.

Ms. Luke stated the Port can extend the dates of the construction and the buyback clause. Ms. Luke stated if Pronghorn is going to alter their business model, the Port will need to amend section 10.1 of the PSA.

Additional Commission and staff discussion commenced regarding the Pronghorn extension to construct.

PUBLIC COMMENT

No comments were made.

It is the Consensus of the Commission to extend the obligation to construct and the Port's buyback date. A formal Resolution approving these changes will be presented at the June 8, 2021 Regular Commission Meeting.

C. Interlocal Agreement with the City of Kennewick re: Washington Street

Mr. Kooiker has been working with Dan Legard, Finance Director for the City of Kennewick and Ms. Luke on the Washington Street Improvements Interlocal Agreement (ILA). The Commission approved the \$500,000 payment at the November 10, 2020 Budget Hearing. Mr. Kooiker stated the City Council approved the ILA last week and inquired if the Commission had any questions.

Ms. Mosley appreciated the Port's partnership and stated when the ILA was brought forward, our Council was appreciative. This is another example of working together and finding creative solutions to make our community a better place. The project on Washington Street is just beginning and Ms. Mosley believes once the project is completed, the community will see the connection of the waterfront to the downtown.

PUBLIC COMMENT

No comments were made.

MOTION: *Commissioner Novakovich moved to approve Resolution 2021-10, approving the Interlocal Agreement with the City of Kennewick for the Washington Street improvements and further moves that all action by Port officers and employees in furtherance hereof is ratified and approved; and further that the Port Chief Executive Officer is authorized to take all action and to pay all expenses necessary in furtherance hereof; Commissioner Moak seconded.*

Discussion:

Commissioner Novakovich pointed out some inconsistencies in the ILA:

- *First line states "when recorded return to" but Section 6a reads "recording is not*

PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 25, 2021 MINUTES

required”;

- *First paragraph states “the City of Kennewick....(hereafter “Kennewick”) whereas Section 4a reads “North of Washington Street from Kennewick to Canal Drive”*

Commissioner Novakovich inquired if Kennewick should read Kennewick Avenue.

Mr. Kooiker inquired if the Port can revisit Commissioner Novakovich’s issues with the City. Generally, Ms. Scott records on behalf of the Port.

Ms. Luke stated the Port can move forward with the ILA and Mr. Kooiker is correct regarding recording and stated the Port has the option to record with the County. The Port could clarify Section 4A; however, the agreement itself specifies location and the parties are understanding the location. Ms. Luke stated it has been reviewed by the City and the terms seem to be sufficient for identifying location.

Commissioner Barnes understood that this document in this form has already been approved by the City of Kennewick City Council.

Ms. Luke stated that is correct.

Commissioner Novakovich does not have an argument; he is just expressing his concern that the Section 4a should read North of Washington Street from Kennewick Avenue to Canal Drive.

Commissioner Barnes stated Commissioner Novakovich’s points are clear and asked for a strong recommendation from legal counsel on how to proceed.

Ms. Luke recommended that the Commission should proceed with the form before them if they are going to vote to approve the ILA.

Commissioner Moak stated the City knows what it needs to do, and he does not have a problem with them moving ahead. This is a good project and Commissioner Moak sees the improvements to the area daily and believes it will be beneficial regardless of an error in the paperwork.

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

D. East Kennewick/Verbena Auction

Ms. Hanchette outlined the next steps for the auction for the properties on Oak Street, Third Avenue, and Verbena. Ms. Hanchette stated the Port will be discussing the opening bid price in Executive Session only. Ms. Hanchette stated Scott Musser, the auctioneer, recommended a starting bid price based on several factors.

Commission and staff discussion ensued regarding the details of the auction process.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 25, 2021 MINUTES

E. Governance Audit Update

Mr. Arntzen updated the Commission on the Governance Audit Update and stated Jim Darling has begun working on the project and reviewing Port policies. Mr. Arntzen indicated that Mr. Darling will be reaching out to individual Commissioners at a later date to discuss the process.

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

Commissioners reported on their respective committee meetings.

G. Non-Scheduled Items

Ms. Bader Inglima reported that the U.S. Corps of Engineers (USACE) has officially gone out to bid for the 1135 Shoreline Restoration Project. For more information on the project bid, please go to the Port website at <https://www.portofkennewick.org/contracting/>

Mr. Arntzen is proud of Ms. Bader Inglima's diligence over the last 13 years in getting the 1135 project to the finish line.

Commissioner Moak stated Ms. Mosley provided a very good suggestion related to working with Mr. Arntzen on projects. When the Port and other jurisdictions were made aware of the Biden Build Back Better program and other federal appropriations requests, each jurisdiction had to compile projects and guess what was needed, within a limited time. Commissioner Moak thinks it is an excellent suggestion for Ms. Mosley and Mr. Arntzen to work together. Commissioner Moak finds it interesting the misconception people have regarding the KHA. The KHA did not know anything about The Willows project until the Port broached the subject. The KHA has not been following the Kennewick Waterfront and it is not something that was ever on their radar, nor is it their project. Commissioner Moak thinks it is a good idea for the Port and City to meet and discuss items such as affordable housing, economic development, and amenities to coordinate community projects.

Commissioner Novakovich complimented Ms. Bader Inglima for her work on the 1135 project coming to fruition. Furthermore, he thanked Ms. Mosely for her suggestion of working with Mr. Arntzen to discuss a better plan for affordable housing for the City of Kennewick.

Commissioner Barnes expressed his gratitude for finally winning approval of reimbursement for the legal fees he expended in defending himself against the claims that a judge found to be unsubstantiated in their entirety. Commissioner Barnes has a larger concern for the Port of Kennewick, because the same policies that were utilized to write this anonymous citizen complaint remain in place; the same individuals that wrote those complaints, the same individuals that processed those complaints, the same individuals that moved those through this long, arduous, challenging, two-year odyssey, that turned out to be, in his view, a waste of taxpayer money, now approaching \$500,000. All of these policies and these individuals are still in place with no change, so Commissioner Barnes questioned how any potential partner of the Port of Kennewick will view this, how do they expect to work with us going forward. There must be uncertainty about whether or not another incident like this could raise its ugly head and go forward. Commissioner Barnes has grave concerns for the Port of Kennewick and its leadership and thinks changes are in order.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 25, 2021 MINUTES

He is willing to work to make those changes, but he thinks there is a strategy to run out the clock because his term expires at the end of the year. Commissioner Barnes wanted to be on the record as saying that what happened with this anonymous citizen complaint was not right; what happened with this anonymous citizen complaint was not in the best interest of the taxpayers and the citizens and the voters of the Port of Kennewick, and he thinks there is change that is in order and he is willing to work to make that change, but he needs help.

PUBLIC COMMENTS

No comments were made.

Commissioner Barnes anticipates the Executive Session will last approximately 20 minutes, Real Estate, Minimum Price, per RCW 42.30.110(1)(c) with no action anticipated. Commissioner Barnes asked the public to notify Port staff if they will return after the executive session so staff can advise if the session concludes early.

Commissioner Barnes recessed the Regular Commission Meeting at 4:47 p.m. until 5:10 p.m.

Commissioner Barnes convened the meeting into Executive Session at 4:52 p.m. for approximately 20 minutes.

EXECUTIVE SESSION

A. Real Estate, Minimum Price per RCW 42.30.110(1)(c)

Commissioner Barnes adjourned the Executive Session at 4:58 p.m.

Commissioner Barnes reconvened Regular Commission Meeting at 5:01 p.m.

No action taken by the Commission.

COMMISSION COMMENTS

No comments were made.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 25, 2021 MINUTES

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 5:03 p.m.

APPROVED:

PORT of KENNEWICK

BOARD of COMMISSIONERS

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DN Barnes

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Don Barnes, President

DocuSigned by:

Skip Novakovich

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Skip Novakovich, Vice President

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Thomas Moak

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Thomas Moak, Secretary

PORT OF KENNEWICK

RESOLUTION No. 2021-08

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE
PORT OF KENNEWICK RELATING TO DEFENSE OF OFFICIALS IN ACTIONS
ARISING FROM THE PERFORMANCE OF THEIR OFFICIAL DUTIES;
AUTHORIZING THE REIMBURSEMENT OF
LEGAL EXPENSES INCURRED BY COMMISSIONER DON BARNES***

WHEREAS, State law requires municipalities, including ports, to provide legal counsel at public expense to defend officials in suits arising from the performance of their official duties. RCW 4.96.041(1). The Port carries forward these directives through provisions of the Port Commission Rules of Policy and Procedure (“Rules”), at Section 18; and

WHEREAS, application to the Port was made by Commissioner Don Barnes for reimbursement of legal fees relating to defense of an action arising from his service as a Port Commissioner; and

WHEREAS, under State law and Port policy, the Board is vested with the discretionary authority to determine the reasonableness of the attorney fee application; and

WHEREAS, the Port sought review of the application by outside legal counsel; and

WHEREAS, the Port requested and received correspondence from outside counsel of March 22, 2021 (Exhibit A), April 12, 2021 (Exhibit B), April 28, 2021 (Exhibit C), and May 12, 2021 (Exhibit D), including review and analysis of detailed billing statements (Exhibit E) submitted in support of the application, relating to and in response to the Port’s review of the application for legal fees; and

WHEREAS, during the April 13, 2021 Commission meeting, the Board of Commissioners (“Board”) approved by motion the reimbursement of legal expenses to Don Barnes in the amount of \$49,282.75 (Exhibit F); and

WHEREAS, the Board of Commissioners understands the Port CFO/Auditor has reviewed the invoices presented, but can only account for \$47,990.25 of invoices that are unredacted (see Washington State BARS Manual section 3.1.4.10); and

WHEREAS, outside counsel has examined the redacted invoice entries and represented and recommended to the Board the reasonableness or rejection of such redacted invoice entries (see Exhibit D); and

WHEREAS, pursuant to Washington State BARS Manual section 3.8.5.30, “The certification by the auditing officer in no manner relieves members of the governing body from the responsibility and liability for each voucher approved; and

PORT OF KENNEWICK
RESOLUTION No. 2021-08
Page 2

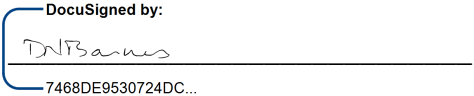
WHEREAS, the Board has reviewed and considered the materials referenced herein, and exercises its discretion consistent therewith.

NOW, THEREFORE, BE IT RESOLVED the Port of Kennewick Commissioners authorize the Port Chief Financial Officer to disburse funds in the amount of \$48,815.25, based upon recommendation by outside counsel and the Board's review of the application.

BE IT FURTHER RESOLVED that all action by Port officers and employees in furtherance hereof is ratified and approved; and further, the Port Chief Executive Officer and CFO/Auditor are authorized to take all action necessary in furtherance hereof.

ADOPTED by the Board of Commissioners of Port of Kennewick this 25th day of May 2021.

PORT OF KENNEWICK
BOARD OF COMMISSIONERS

By: 
7468DE9530724DC...
DON BARNES, *President*

By: ABSTAIN

SKIP NOVAKOVICH, *Vice President*

By: 
A35176A2D2CD413...
THOMAS MOAK, *Secretary*



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Fax: 206.749.1927
steve.dijulio@foster.com

March 22, 2021

Lucinda Luke
General Counsel
Port of Kennewick
350 Clover Island Drive
Kennewick, WA 99336
By email to: luke@carneylaw.com

Re: Defense of Board Members in Investigative Proceedings

Dear Ms. Luke:

The Port of Kennewick ("Port") requested our analysis and comment on the Port's rights and responsibilities with respect to providing legal defense to a Port Commissioner, and the payment of attendant attorney fees. We address these issues in greater detail as follows.

Background

The Port operates under Washington law, including Title 53 RCW. The Port is a municipal corporation with only those powers expressly granted by the legislature; those necessarily or fairly implied in or incident to the powers granted; and, those essential to the declared objects and purposes of a Washington port district. *1959-60 AGO No. 51*. The Board of Port Commissioners ("Board") is the Port's legislative authority. In addition to other authority, the Board may employ and delegate authority to a managing official. Under RCW 53.12.270

The commission may delegate to the managing official of a port district such administrative powers and duties of the commission as it may deem proper for the efficient and proper management of port district operations. Any such delegation shall be authorized by appropriate resolution of the commission, which resolution must also establish guidelines and procedures for the managing official to follow.

Consistent with this statutory authority, the Board adopted resolutions delegating powers and duties to the position of Port Executive Director. *See, e.g., Resolution 2018-26.*

March 22, 2021

Page 2

Additionally, among the implied powers of Washington port districts is the authority to employ attorneys, whether as employees or outside counsel. That authority includes the expenditure of funds for necessary attorneys' fees. *1959-60 AGO No. 51* (1951).

Legal Defense of Port Officials

State law requires municipalities, including ports, to provide legal counsel at public expense to defend officials in suits arising from the performance of their official duties. RCW 4.96.041 (1). And, in some circumstances, that obligation is mandatory. RCW 4.96.041 (2) states:

If the legislative authority of the local governmental entity, or the local governmental entity using a procedure created by ordinance or resolution, finds that the acts or omissions of the officer, employee, or volunteer were, or in good faith purported to be, within the scope of his or her official duties, the request shall be granted. If the request is granted, the necessary expenses of defending the action or proceeding shall be paid by the local governmental entity. Any monetary judgment against the officer, employee, or volunteer shall be paid on approval of the legislative authority of the local governmental entity or by a procedure for approval created by ordinance or resolution.

The Port carries forward these directives through provisions of the Port Commission Rules of Policy and Procedure ("Rules"), at Section 18.

We understand that a Port commissioner filed a complaint against other commissioners under Port Rules at Section 5. We did not consult with the Port on these issues at the time. And, we have not consulted on the substance of the complaint or subsequent investigation (conducted by other legal counsel) and hearings. We subsequently provide separate counsel to the Port with respect to procedural aspects of the complaint and subsequent investigation, including Public Records Act issues and the Port's production of records relating to the process.

Following a determination of commissioner wrongdoing (a violation of the Port's Rules) by an independent investigator, one commissioner challenged that determination. Under the Port's Rules, a hearing officer (a retired judge) was appointed, and a hearing conducted. The hearing officer concluded that the evidence did not show the commissioner committed sanctionable misconduct. That commissioner has now sought payment of his attorney fees incurred in the investigation and hearing process arising out of the complaint. The Board has not yet approved the payment of those fees. In the following we discuss the Port's obligations and risks associated with these present issues.

Analysis

In our evaluation of these issues, it appears the commissioner may have been subject to an "action or proceeding" as that phrase is used in RCW 4.96.041 (1). However, Rule 5.11 creates an ambiguity by stating:

March 22, 2021
Page 3

The Port shall not indemnify or defend any commissioner charged with misconduct except as provided under Section 18.

The Port's Rules otherwise recognize the defense of claims against a Port officer or employee. The Rules at Section 18 state:

As authorized by RCW 4.96.041, there is hereby created a procedure to provide for indemnification and defense of claims of liability arising from acts or omissions of officials and employees of the Port.

Rules at Section 18.1.

We do not see an exception to the obligation to reimburse the commissioner's attorney fees (at the rate that would have been authorized by the Port's General Counsel under Rule 18). Note that an investigation of a complaint regarding a commissioner's conduct may arise internally or externally. There is no basis for a distinction arising because this matter arose internally at the Port.

As a result, the Port's Rules state that approval of defense services requires Board review and approval:

The determination whether an official or employee shall be afforded a defense by the Port under the terms of this chapter shall be made after a determination pursuant to **Section 18** as to whether the official or employee was acting within the scope of his or her duties. The CEO [Executive Director] and Port legal counsel shall prepare a recommendation to the Commission. The decision of the Commission shall be final as a legislative determination and shall be based upon a finding that an official or employee meets or does not meet the criteria of this chapter.

Rules, at Section 18.7. We are not aware of any suggestion that the conduct giving rise to the investigation did not relate to Port activities. The Hearing Officer stated: "substantial evidence does not overcome the presumption that Commissioner Barnes acted ethically and in the Port's best interests when he contacted both DPZ and the State Auditor's Office." As a result, it appears that Rules Section 18 applies and the commissioner's attorney fees may be recoverable upon approval by the Board.

Conclusion

The Port's policies may be seen as ambiguous regarding the application of responsibility for assignment of legal counsel to officers and employees and for the payment of attorney fees. However, upon a finding by the Board of the commissioner acting in good faith and within the scope of his duties, the attorney fee claim may be recognized.

We have not considered and do not comment in this analysis on the reasonableness of the requested fees. We do note that the amount of fees sought, and the lack of detail provided, does not

March 22, 2021

Page 4

provide the foundation that courts employ in approving attorney fee awards. For example, the actual narrative of work performed to support the fee claim is considered by courts in attorney fee applications.

Here, that would be a separate analysis (audit) that should be undertaken by the Port if the request for fees be approved by the Board.

We trust the foregoing is responsive to the Port's inquiry. Please advise if we may be of further assistance in this regard.

Sincerely,

FOSTER GARVEY PC

A handwritten signature in blue ink, appearing to read "P. Stephen DiJulio".

P. Stephen DiJulio
Principal



1111 Third Avenue
Suite 3000
Seattle, WA 98101

Main: 206.447.4400
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Direct Phone: 206.447.8971
Fax: 206.749.1927
steve.dijulio@foster.com

April 12, 2021

Board of Port Commissioners
Port of Kennewick
350 Clover Island Drive
Kennewick, WA 99336
By email to: 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 \$51,152.75.¹ 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

¹ 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



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steve.dijulio@foster.com

April 28, 2021

Nick J. Kooiker
Chief Financial Officer/Auditor
Port of Kennewick
350 Clover Island Drive
Kennewick, WA 99336
By email to: nick@portofkennewick.org

Re: Defense of Board Members in Investigative Proceedings

Dear Mr. Kooiker:

The Port of Kennewick ("Port") earlier requested our analysis on the Port's responsibilities with respect to providing certain legal defense to Port Commissioner and current Board Chair Don Barnes, 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.

Later, the Port Commissioners asked for our recommendation on the reasonableness of the requested attorney fee reimbursement. By correspondence dated April 12, 2021, we provided our written analysis to the Board. Each of our March 22 and April 12 correspondence is incorporated by this reference.

We briefed the Board in open session at its regular, open meetings of March 23 and April 13, 2021 on these issues, and responded to Board questions. The Board considered and then during the April 13 meeting acted on the request of Commissioner Barnes and approved an amount the Board determined to be reasonable. While the amount approved was higher than our recommendation, it was within the discretion of the Board to determine the reasonableness of the fees incurred.

The Port has subsequently sought our summary analysis for inclusion with its records.

Background

We do not repeat in this letter the extensive discussion in our prior correspondence to the Port on these issues. These issues arose out of "citizen's complaint" filed in March 2019 by Commissioner Skip Novakovich. The complaint implicated the other Commissioners, Thomas Moak and Don Barnes while

April 28, 2021

Page 2

acting in their Port Commissioner capacities. An investigator was appointed, and an investigation into the complaint ensued. The investigator concluded that each of Commissioner Moak and Barnes had violated Port policy.

Commissioner Moak determined to not contest the conclusion of the investigator. Commissioner Barnes appealed from the investigators conclusions, triggering the procedures provided by Port policy. Following a hearing before a retired Washington Superior Court judge, Commissioner Barnes conduct was found not to have violated Port policy. Commissioner Barnes then sought reimbursement for the legal fees associated with his defense against the complaint throughout the investigation and appeal process.

Municipal Defense of Public Officials

State law requires that municipalities, including ports, provide legal counsel at public expense to defend officials in suits arising from the performance of their official duties. RCW 4.96.041 (1). And, in some circumstances, that obligation is mandatory. RCW 4.96.041 (2) states:

If the legislative authority of the local governmental entity, or the local governmental entity using a procedure created by ordinance or resolution, finds that the acts or omissions of the officer, employee, or volunteer were, or in good faith purported to be, within the scope of his or her official duties, the request shall be granted. If the request is granted, the necessary expenses of defending the action or proceeding shall be paid by the local governmental entity. Any monetary judgment against the officer, employee, or volunteer shall be paid on approval of the legislative authority of the local governmental entity or by a procedure for approval created by ordinance or resolution.

The Port carries forward these directives through provisions of the Port Commission Rules of Policy and Procedure (“Rules”). As stated in our March 22, 2021 correspondence, this statutory obligation together with the Port’s Rules, and the review and approval by the Board of Port Commissioners, provides the authority for reimbursement of Commissioner Barnes legal fees arising out of this matter.

Subsequent Analysis

A question arose relating to an assertion by Commissioner Novakovich for reimbursement of certain of his attorney fees. The Port did not deny requested fees to the complaining Commissioner. Commissioner Novakovich withdrew the request before the issue reached the Board. However, the issues relating to Commissioner Novakovich and those relating to Commissioner Barnes are distinct under both state law and Port Rules. Complaining about alleged misconduct is different from defending against such allegations. Commissioner Barnes was defending against an “action, claim, or proceeding ... instituted against any person who is or was an officer, employee, or agent of a port district established under this title arising out of the performance or failure of performance of duties for, or employment with any such district.” RCW 53.08.208. Commissioner Novakovich was not subject to an “action, claim, or proceeding,” but the initiator of the complaint.

April 28, 2021
Page 3

We also note that the referenced statute does not limit defense to tort claims. The statute does not use the term “tort” claims, or actions for “damages,” only. For example, a port would not deny defense in a case filed under 42 USC Section 1983 against a port commissioner for conduct within the scope and course of port activities - even if that case did not sound in tort (a common cause of action against local government officials).

Conclusion

Based on our prior correspondence and the foregoing, we find no basis to conclude the Port without legal authority to recognize Commissioner Barnes request for reimbursement of legal fees incurred in defense of the Port’s complaint.

We trust the foregoing is responsive to your inquiry.

Sincerely,

FOSTER GARVEY PC

A handwritten signature in blue ink, appearing to read "P. Stephen DiJulio".

P. Stephen DiJulio
Principal

cc: Lucinda Luke, Port Counsel



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May 12, 2021

Nick J. Kooiker
Chief Financial Officer/Auditor
Port of Kennewick
350 Clover Island Drive
Kennewick, WA 99336
By email to: nick@portofkennewick.org

Re: Further Analysis of Attorney Fee Claim

Dear Mr. Kooiker:

The Port of Kennewick ("Port") Board of Commissioners ("Board") met on May 11, 2021. We understand one of the Board's agenda items was further review and potential approval of the reimbursement of attorney fees incurred by Commissioner Barnes relating to Port matters. This issue has been subject to our prior analysis.

We understand that you advised the Board that you did not believe you had the ability to certify \$1,292.50 of invoices on the billings from Joel Comfort due to redactions on the face of the submitted invoices. You reported that the Board instructed you to reach out to me in an attempt to resolve this issue with Mr. Comfort, the attorney for Commissioner Barnes. As requested, I interviewed Mr. Comfort by telephone calls this date. The invoices that contained certain redactions and for which you sought guidance are as follows: Invoice 148855: \$357.50, Invoice 151947: \$687.50 and Invoice 159056: \$247.50. Based on my interviews of Mr. Comfort and review of the invoices (and an additional redaction), we find and certify the following invoice entries to be supported, or appropriate for modification, as follows

- The invoice entries on September 11 and 12, 2019 are supported. The discussion is reported to be with a Seattle attorney to consider the potential candidate for the Hearing Officer to hear the appeal from the investigations conclusions.
- The invoice entry on March 2, 2020 is unrelated (thereby reduce by \$110.00).
- The invoice entry on March 5, 2020 is partially unrelated (redacted portion of .3 - thereby reduce by \$82.50).

FG:54298520.1

May 12, 2021

Page 2

- The invoice entry on March 6, 2020 is partially unrelated (redacted portion of .2 – thereby reduce by \$55.00).
- The invoice entry on February 10, 2020 (Invoice 158524) is unrelated (thereby reduce by \$110.00).
- The invoice entry on March 19, 2021 is partially unrelated (redacted portion of .4 – thereby reduce by \$110.00).

Based on the foregoing, the additional amount of \$467.50 should be reduced from the attorney fee award. Mr. Comfort has confirmed the above analysis. This reduction is in addition to the amount of reductions previously approved by the Board (\$1,870).

We trust the foregoing is responsive to your inquiry.

Sincerely,

FOSTER GARVEY PC



P. Stephen DiJulio
Principal

cc: Lucinda Luke, Port Counsel

RETTIG FORGETTE ILLER BOWERS, LLP Exhibit E

6725 W. CLEARWATER AVE.
KENNEWICK, WA 99336-1788

509-783-6154

Federal ID No. 91-0988012

ATTORNEYS
DIEHL R. RETTIG 1943-2010
FRANCOIS X. FORGETTE
BRIAN J. ILLER
G. CHARLEY BOWERS

Don Barnes

Statement Date: June 4, 2019
Statement No. 1
Account No. 4819.0000
Page: 1

ACCOUNT - 30 DAYS OVERDUE SHALL BEAR INTEREST OF 1% PER MONTH ON THE UNPAID BALANCE

RE: Port of Kennewick / Vista Field

			HOURS	
05/07/2019	FXF	[REDACTED]	1.00	
05/21/2019	FXF	[REDACTED]	0.30	
05/22/2019	FXF	[REDACTED]	0.10	
05/28/2019	FXF	[REDACTED]	1.50	
05/29/2019	FXF	[REDACTED]	0.50	
	FXF	[REDACTED]	0.25	
	FXF	[REDACTED]	2.00	
05/30/2019	FXF	[REDACTED]	0.40	
		FOR CURRENT SERVICES RENDERED	6.05	1,815.00

TIMEKEEPER	RECAPITULATION	HOURS	HOURLY RATE	TOTAL
Francois X. Forgette		6.05	\$300.00	\$1,815.00

Photocopy charges	1.00
TOTAL EXPENSES THRU 05/31/2019	1.00
TOTAL CURRENT WORK	1,816.00
BALANCE DUE	<u>\$1,816.00</u>

Don Barnes

Port of Kennewick / Vista Field

Statement Date:	06/04/2019
Statement No.	1
Account No.	4819.0000

We now accept *Visa, Mastercard, Discover and American Express*. Please call for additional information.

Credit card payments are not reflected until they clear our bank account.

Payments received after 05/31/19 may appear on your next statement.

Please reference account number on checks to ensure proper credit.

RETTIG FORGETTE ILLER BOWERS, LLP Exhibit E6725 W. CLEARWATER AVE.
KENNEWICK, WA 99336-1788

509-783-6154

Federal ID No. 91-0988012

ATTORNEYS
DIEHL R. RETTIG 1943-2010
FRANCOIS X. FORGETTE
BRIAN J. ILLER
G. CHARLEY BOWERS

Don Barnes

Statement Date: July 3, 2019
Statement No. 2
Account No. 4819.0000
Page: 1

ACCOUNT - 30 DAYS OVERDUE SHALL BEAR INTEREST OF 1% PER MONTH ON THE UNPAID BALANCE

RE: Port of Kennewick / Vista Field

		HOURS	
06/25/2019	FXF		
	FXF	0.50	
		0.10	
	FOR CURRENT SERVICES RENDERED	0.60	180.00

RECAPITULATION			
TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
Francois X. Forgette	0.60	\$300.00	\$180.00

PREVIOUS BALANCE \$1,816.00

TOTAL CURRENT WORK 180.00

06/12/2019 Payment on account. Thank you. -1,816.00

BALANCE DUE \$180.00We now accept *Visa, Mastercard, Discover and American Express*. Please call for additional information.Credit card payments are not reflected until they clear our bank account.
Payments received after 6/30/19 may appear on your next statement.**Please reference account number on checks to ensure proper credit.**

RETTIG FORGETTE ILLER BOWERS, LLP Exhibit E

6725 W. CLEARWATER AVE.
KENNEWICK, WA 99336-1788

509-783-6154

Federal ID No. 91-0988012

ATTORNEYS
DIEHL R. RETTIG 1943-2010
FRANCOIS X. FORGETTE
BRIAN J. ILLER
G. CHARLEY BOWERS

Don Barnes

Statement Date: September 5, 2019
Statement No. 4
Account No. 4819.0000
Page: 1

ACCOUNT - 30 DAYS OVERDUE SHALL BEAR INTEREST OF 1% PER MONTH ON THE UNPAID BALANCE

RE: Port of Kennewick / Vista Field

Effective approximately October 14, 2019, the Law Firm of Rettig Forgette Iller Bowers, LLP, will be moving to 8836 Gage Blvd., Ste #201A, Kennewick, Washington 99336.

Phones, email and office hours will be intermittent from October 1st through October 14th while everything is getting transferred over. Thank you for your patience.

			HOURS	
08/12/2019	FXF	[REDACTED]	0.50	150.00
	FXF	[REDACTED]	1.50	450.00
	FXF	[REDACTED]	1.00	300.00
08/13/2019	FXF	[REDACTED]	0.30	90.00
08/14/2019	FXF	[REDACTED]	0.30	n/c
		FOR CURRENT SERVICES RENDERED	3.30	990.00

RECAPITULATION			
TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
Francois X. Forgette	3.30	\$300.00	\$990.00

TOTAL CURRENT WORK 990.00

BALANCE DUE \$990.00

Don Barnes

Port of Kennewick / Vista Field

Statement Date:	09/05/2019
Statement No.	4
Account No.	4819.0000

PLEASE SEE THE NOTE ABOVE REGARDING OUR UPCOMING MOVE!

Credit card payments are not reflected until they clear our bank account.

Payments received after 8/31/19 may appear on your next statement.

Please reference account number on checks to ensure proper credit.

MILLER MERTENS & COMFORT PLLC
1020 N CENTER PKWY STE B
KENNEWICK WA 99336-7161
PHONE (509) 374-4200 FAX (509) 374-4229
TAX ID#91-1875775

DON & CHRISTINE BARNES
 2616 S KELLOGG ST
 KENNEWICK WA 99338-1930

Page: 1
 August 30, 2019
 Account No: J19304BARNESM
 Statement No: 147980

PORT OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
08/16/2019	JRC	[REDACTED]	275.00	0.30	82.50
08/20/2019	JRC	[REDACTED]			
			275.00	4.50	1,237.50
		For Current Services Rendered		4.80	1,320.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	4.80	\$275.00	\$1,320.00

Total Current Work 1,320.00

Balance Due \$1,320.00

Please Remit \$1,320.00

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Payments received after the 20th are not reflected on this statement. We accept VISA, MasterCard, American Express and Discover.

MILLER MERTENS & COMFORT PLLC
1020 N CENTER PKWY STE B
KENNEWICK WA 99336-7161
PHONE (509) 374-4200 FAX (509) 374-4229
TAX ID#91-1875775

DON & CHRISTINE BARNES
2616 S KELLOGG ST
KENNEWICK WA 99338-1930

Page: 1
September 30, 2019
Account No: J19304BARNESM
Statement No: 148855

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
08/22/2019	JRC	[REDACTED]	275.00	0.90	247.50
08/23/2019	JRC	[REDACTED]	275.00	2.50	687.50
08/24/2019	JRC	[REDACTED]	275.00	0.20	55.00
08/25/2019	JRC	[REDACTED]	275.00	0.20	55.00
08/26/2019	JRC	[REDACTED]	275.00	2.50	687.50
08/27/2019	JRC	[REDACTED]	275.00	2.40	660.00
08/28/2019	JRC	[REDACTED]	275.00	1.90	522.50
08/29/2019	JRC	[REDACTED]	275.00	0.80	220.00
08/30/2019	JRC	[REDACTED]	275.00	0.30	82.50
09/02/2019	JRC	[REDACTED]	275.00	0.40	110.00

DON & CHRISTINE BARNES

Exhibit E
September 30, 2019

Account No: J19304BARNESM

Statement No: 148855

PORT OF KENNEWICK; OUR #J19304

			Rate	Hours	
09/03/2019	JRC	[REDACTED]			
			275.00	1.10	302.50
09/04/2019	JRC	[REDACTED]			
			275.00	0.20	55.00
09/11/2019	JRC	[REDACTED]			
			275.00	1.10	302.50
09/12/2019	JRC	[REDACTED]			
			275.00	0.20	55.00
09/18/2019	JRC	[REDACTED]			
			275.00	0.40	110.00
09/20/2019	JRC	[REDACTED]			
			275.00	0.50	137.50
		For Current Services Rendered		15.60	4,290.00

Recapitulation				
<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>	
Joel R. Comfort	15.60	\$275.00	\$4,290.00	

Expenses

08/28/2019	Photocopies	0.60
08/28/2019	Postage	0.50
	Total Expenses	1.10
	Total Current Work	4,291.10
	Previous Balance Due	\$1,320.00

Payments

09/10/2019	Payment received - Check #4428 - thank you	-1,320.00
	Balance Due	<u>\$4,291.10</u>
	Please Remit	<u>\$4,291.10</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Payments received after the 20th are not reflected on this statement. We accept VISA, MasterCard, American Express and Discover.

MILLER MERTENS & COMFORT PLLC
1020 N CENTER PKWY STE B
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PHONE (509) 374-4200 FAX (509) 374-4229
TAX ID#91-1875775

DON & CHRISTINE BARNES
2616 S KELLOGG ST
KENNEWICK WA 99338-1930

Page: 1
October 31, 2019
Account No: J19304BARNESM
Statement No: 149348

PORT OF KENNEWICK; OUR #J19304

		<u>Fees</u>	Rate	Hours	
09/21/2019	JRC	[REDACTED]	275.00	0.40	110.00
09/23/2019	JRC	[REDACTED]	275.00	0.60	165.00
09/24/2019	JRC	[REDACTED]	275.00	0.10	27.50
09/26/2019	JRC	[REDACTED]	275.00	0.20	55.00
09/27/2019	JRC	[REDACTED]	275.00	0.20	55.00
10/02/2019	JRC	[REDACTED]	275.00	0.20	55.00
10/04/2019	JRC	[REDACTED]	275.00	1.10	302.50
10/08/2019	JRC	[REDACTED]	275.00	1.40	385.00
10/09/2019	JRC	[REDACTED]	275.00	2.60	715.00
10/10/2019	JRC	[REDACTED]	275.00	0.20	55.00
10/11/2019	JRC	[REDACTED]			

DON & CHRISTINE BARNES

Exhibit E October 31, 2019

Account No: J19304BARNESM

Statement No: 149348

PORT OF KENNEWICK; OUR #J19304

			Rate	Hours	
			275.00	4.70	1,292.50
10/14/2019	JRC		275.00	1.20	330.00
10/17/2019	JRC		275.00	0.30	82.50
10/18/2019	JRC		275.00	1.10	302.50
		For Current Services Rendered		14.30	3,932.50

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	14.30	\$275.00	\$3,932.50

Total Current Work	3,932.50
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Previous Balance Due	\$4,291.10
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Payments

10/09/2019	Payment received - Check #4433 - thank you	-4,291.10
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Balance Due	<u>\$3,932.50</u>
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Please Remit	<u>\$3,932.50</u>
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DON & CHRISTINE BARNES
 2616 S KELLOGG ST
 KENNEWICK WA 99338-1930

Page: 1
 November 27, 2019
 Account No: J19304BARNESM
 Statement No: 149835

PORT OF KENNEWICK; OUR #J19304

		<u>Fees</u>	Rate	Hours	
10/21/2019	JRC	[REDACTED]			
			275.00	2.20	605.00
10/23/2019	JRC	[REDACTED]			
			275.00	1.00	275.00
10/24/2019	JRC	[REDACTED]			
			275.00	1.30	357.50
10/25/2019	JRC	[REDACTED]			
			275.00	0.50	137.50
10/28/2019	JRC	[REDACTED]			
			275.00	1.10	302.50
10/29/2019	JRC	[REDACTED]			
			275.00	0.20	55.00
10/30/2019	JRC	[REDACTED]			
			275.00	0.50	137.50
10/31/2019	JRC	[REDACTED]			
			275.00	0.60	165.00
11/01/2019	JRC	[REDACTED]			

DON & CHRISTINE BARNES

November 27, 2019

Account No: J19304BARNESM

Statement No: 149835

PORT OF KENNEWICK; OUR #J19304

			Rate	Hours	
			275.00	0.70	192.50
11/06/2019	JRC		275.00	0.20	55.00
11/07/2019	JRC		275.00	0.10	27.50
11/08/2019	JRC		275.00	0.50	137.50
11/11/2019	JRC		275.00	0.50	137.50
	JRC		275.00	0.50	137.50
11/12/2019	JRC		275.00	0.40	110.00
11/13/2019	JRC		275.00	0.30	82.50
11/15/2019	JRC		275.00	2.80	770.00
		For Current Services Rendered		13.40	3,685.00

<u>Timekeeper</u>	<u>Recapitulation</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		13.40	\$275.00	\$3,685.00

Total Current Work	3,685.00
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Previous Balance Due	\$3,932.50
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Payments

11/12/2019	Payment received - Check #4449 - thank you	-3,932.50
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Balance Due	<u>\$3,685.00</u>
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Please Remit	<u>\$3,685.00</u>
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DON & CHRISTINE BARNES
 2616 S KELLOGG ST
 KENNEWICK WA 99338-1930

Page: 1
 December 24, 2019
 Account No: J19304BARNESM
 Statement No: 150500

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
11/26/2019	JRC	[REDACTED]	275.00	1.00	275.00
12/02/2019	JRC	[REDACTED]	275.00	0.50	137.50
12/03/2019	JRC	[REDACTED]	275.00	2.50	687.50
12/04/2019	JRC	[REDACTED]	275.00	0.80	220.00
12/06/2019	JRC	[REDACTED]	275.00	0.20	55.00
12/09/2019	JRC	[REDACTED]	275.00	0.80	220.00
12/11/2019	JRC	[REDACTED]	275.00	0.50	137.50
12/12/2019	JRC	[REDACTED]	275.00	0.50	137.50
12/13/2019	JRC	[REDACTED]	275.00	0.20	55.00
	JRC	[REDACTED]	275.00	2.30	632.50
	JRC	[REDACTED]	275.00	0.40	110.00
12/20/2019	JRC	[REDACTED]	275.00	2.50	687.50
For Current Services Rendered				12.20	3,355.00

DON & CHRISTINE BARNES

Exhibit E
December 24, 2019

Account No: J19304BARNESM

Statement No: 150500

PORT OF KENNEWICK; OUR #J19304

<u>Timekeeper</u>	Recapitulation	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		12.20	\$275.00	\$3,355.00

Total Current Work	3,355.00
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Previous Balance Due	\$3,685.00
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Payments

12/06/2019	Payment received - Check #4457 - thank you	-3,685.00
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Balance Due	<u>\$3,355.00</u>
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Please Remit	<u>\$3,355.00</u>
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DON & CHRISTINE BARNES
 2616 S KELLOGG ST
 KENNEWICK WA 99338-1930

Page: 1
 January 29, 2020
 Account No: J19304BARNESM
 Statement No: 150972

PORT OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
12/30/2019	JRC	[REDACTED]	275.00	0.30	82.50
01/07/2020	JRC	[REDACTED]	275.00	0.10	27.50
01/10/2020	JRC	[REDACTED]	275.00	1.50	412.50
01/13/2020	JRC	[REDACTED]	275.00	0.90	247.50
01/14/2020	JRC	[REDACTED]	275.00	0.40	110.00
01/15/2020	JRC	[REDACTED]	275.00	0.70	192.50
01/16/2020	JRC	[REDACTED]	275.00	2.10	577.50
01/17/2020	JRC	[REDACTED]	275.00	0.30	82.50
01/20/2020	JRC	[REDACTED]	275.00	0.30	82.50
For Current Services Rendered				6.60	1,815.00

<u>Timekeeper</u>	Recapitulation	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		6.60	\$275.00	\$1,815.00

DON & CHRISTINE BARNES

Exhibit E January 29, 2020

Account No: J19304BARNESM

Statement No: 150972

PORT OF KENNEWICK; OUR #J19304

Expenses

10/14/2019	Photocopies [REDACTED]	<u>42.75</u>
	Total Expenses	<u>42.75</u>
	Total Current Work	1,857.75
	Previous Balance Due	\$3,355.00

Payments

12/30/2019	Payment received - Check #4467 - thank you	-3,355.00
	Balance Due	<u>\$1,857.75</u>
	Please Remit	<u>\$1,857.75</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express and Discover.

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DON & CHRISTINE BARNES
 2616 S KELLOGG ST
 KENNEWICK WA 99338-1930

Page: 1
 February 28, 2020
 Account No: J19304BARNESM
 Statement No: 151445

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
01/21/2020	JRC	[REDACTED]	275.00	0.10	27.50
01/22/2020	JRC	[REDACTED]	275.00	0.10	27.50
01/24/2020	JRC	[REDACTED]	275.00	0.20	55.00
01/27/2020	JRC	[REDACTED]	275.00	3.60	990.00
01/28/2020	JRC	[REDACTED]	275.00	0.70	192.50
01/29/2020	JRC	[REDACTED]	275.00	1.00	275.00
01/30/2020	JRC	[REDACTED]	275.00	0.20	55.00
01/31/2020	JRC	[REDACTED]	275.00	1.40	385.00
02/05/2020	JRC	[REDACTED]	275.00	0.20	55.00
02/10/2020	JRC	[REDACTED]	275.00	1.90	522.50
	JRC	[REDACTED]	275.00	0.30	82.50
02/11/2020	JRC	[REDACTED]	275.00	0.80	220.00
02/19/2020	JRC	[REDACTED]	275.00	0.10	27.50

DON & CHRISTINE BARNES

February 28, 2020

Account No: J19304BARNESM

Statement No: 151445

PORT OF KENNEWICK; OUR #J19304

	Rate	Hours	
For Current Services Rendered		10.60	2,915.00
Recapitulation			
<u>Timekeeper</u>		<u>Hours</u>	<u>Rate</u>
Joel R. Comfort		10.60	\$275.00
			\$2,915.00
Total Current Work			2,915.00
Previous Balance Due			\$1,857.75
<u>Payments</u>			
02/06/2020	Payment received - Check #4478 - thank you		-1,815.00
02/12/2020	Payment received - Check #4479 - thank you		-42.75
	Total Payments		-1,857.75
	Balance Due		<u>\$2,915.00</u>
	Please Remit		<u>\$2,915.00</u>

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DON & CHRISTINE BARNES
 2616 S KELLOGG ST
 KENNEWICK WA 99338-1930

Page: 1
 March 23, 2020
 Account No: J19304BARNESM
 Statement No: 151507

PORT OF KENNEWICK; OUR #J19304

Interim Statement

Fees

			Rate	Hours	
02/21/2020	JRC	[REDACTED]	275.00	0.10	27.50
02/24/2020	JRC	[REDACTED]	275.00	0.70	192.50
02/26/2020	JRC	[REDACTED]	275.00	0.20	55.00
02/28/2020	JRC	[REDACTED]	275.00	1.80	495.00
	JRC	[REDACTED]	275.00	1.50	412.50
03/02/2020	JRC	[REDACTED]	275.00	0.40	110.00
03/04/2020	JRC	[REDACTED]	275.00	0.30	82.50
03/05/2020	JRC	[REDACTED]	275.00	0.60	165.00
03/06/2020	JRC	[REDACTED]	275.00	1.50	412.50
03/09/2020	JRC	[REDACTED]	275.00	0.20	55.00
03/20/2020	JRC	[REDACTED]	275.00	1.50	412.50
For Current Services Rendered				8.80	2,420.00

DON & CHRISTINE BARNES

Exhibit E March 23, 2020

Account No: J19304BARNESM

Statement No: 151507

PORT OF KENNEWICK; OUR #J19304

<u>Timekeeper</u>	Recapitulation	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		8.80	\$275.00	\$2,420.00

Total Current Work	2,420.00
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Previous Balance Due	\$2,915.00
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Payments

03/13/2020	Payment received - Check #4483 - thank you	-2,915.00
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Balance Due	<u>\$2,420.00</u>
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Please Remit	<u>\$2,420.00</u>
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Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express and Discover.

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DON & CHRISTINE BARNES
 2616 S KELLOGG ST
 KENNEWICK WA 99338-1930

Page: 1
 April 29, 2020
 Account No: J19304BARNESM
 Statement No: 152872

PORT OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
03/23/2020	JRC	[REDACTED]	275.00	0.20	55.00
03/24/2020	JRC	[REDACTED]	275.00	0.40	110.00
03/26/2020	JRC	[REDACTED]	275.00	0.60	165.00
	JRC	[REDACTED]	275.00	0.50	137.50
	JRC	[REDACTED]	275.00	0.10	27.50
03/27/2020	JRC	[REDACTED]	275.00	0.10	27.50
03/30/2020	JRC	[REDACTED]	275.00	0.80	220.00
03/31/2020	JRC	[REDACTED]	275.00	0.40	110.00
04/01/2020	JRC	[REDACTED]	275.00	0.20	55.00
04/02/2020	JRC	[REDACTED]	275.00	0.20	55.00
	JRC	[REDACTED]	275.00	0.50	137.50
04/03/2020	JRC	[REDACTED]	275.00	0.40	110.00
04/07/2020	JRC	[REDACTED]	275.00	0.40	110.00
04/13/2020	JRC	[REDACTED]	275.00	0.20	55.00
04/16/2020	JRC	[REDACTED]	275.00	0.10	27.50

DON & CHRISTINE BARNES

Exhibit E April 29, 2020

Account No: J19304BARNESM

Statement No: 152872

PORT OF KENNEWICK; OUR #J19304

			Rate	Hours	
04/17/2020	JRC	[REDACTED]	275.00	1.20	330.00
04/20/2020	JRC	[REDACTED]	275.00	0.50	137.50
		For Current Services Rendered		6.80	1,870.00

Recapitulation		Hours	Rate	Total
<u>Timekeeper</u>				
Joel R. Comfort		6.80	\$275.00	\$1,870.00

Total Current Work	1,870.00
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Previous Balance Due	\$3,052.50
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Payments

04/03/2020	Payment received - Check #4489 - thank you	-3,052.50
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Balance Due	<u>\$1,870.00</u>
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Please Remit	<u>\$1,870.00</u>
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Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express and Discover.

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DON & CHRISTINE BARNES
 2616 S KELLOGG ST
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Page: 1
 May 29, 2020
 Account No: J19304BARNESM
 Statement No: 153516

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
04/24/2020	JRC	[REDACTED]	275.00	0.30	82.50
	JRC	[REDACTED]	275.00	0.80	220.00
05/05/2020	JRC	[REDACTED]	275.00	0.20	55.00
05/06/2020	JRC	[REDACTED]	275.00	0.30	82.50
05/07/2020	JRC	[REDACTED]	275.00	1.00	275.00
05/11/2020	JRC	[REDACTED]	275.00	2.20	605.00
05/12/2020	JRC	[REDACTED]	275.00	0.30	82.50
05/14/2020	JRC	[REDACTED]	275.00	1.20	330.00
05/15/2020	JRC	[REDACTED]	275.00	0.40	110.00
05/19/2020	JRC	[REDACTED]	275.00	0.10	27.50
05/20/2020	JRC	[REDACTED]	275.00	0.20	55.00
For Current Services Rendered				7.00	1,925.00

DON & CHRISTINE BARNES

Exhibit E May 29, 2020

Account No: J19304BARNESM

Statement No: 153516

PORT OF KENNEWICK; OUR #J19304

<u>Timekeeper</u>	Recapitulation	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		7.00	\$275.00	\$1,925.00

Total Current Work	1,925.00
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Previous Balance Due	\$1,870.00
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Payments

05/11/2020	Payment received - Check #4496 - thank you	-1,870.00
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Balance Due	<u>\$1,925.00</u>
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Please Remit	<u>\$1,925.00</u>
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Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express and Discover.

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DON & CHRISTINE BARNES
 2616 S KELLOGG ST
 KENNEWICK WA 99338-1930

Page: 1
 June 25, 2020
 Account No: J19304BARNESM
 Statement No: 154005

PORT OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
05/26/2020	JRC	[REDACTED]	275.00	0.20	55.00
	JRC	[REDACTED]	275.00	0.10	27.50
05/27/2020	JRC	[REDACTED]	275.00	0.60	165.00
05/28/2020	JRC	[REDACTED]	275.00	0.10	27.50
05/29/2020	JRC	[REDACTED]	275.00	0.70	192.50
06/01/2020	JRC	[REDACTED]	275.00	0.30	82.50
06/05/2020	JRC	[REDACTED]	275.00	3.20	880.00
06/11/2020	JRC	[REDACTED]	275.00	0.20	55.00
06/18/2020	JRC	[REDACTED]	275.00	0.20	55.00
06/19/2020	JRC	[REDACTED]	275.00	0.50	137.50
		For Current Services Rendered		6.10	1,677.50

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	6.10	\$275.00	\$1,677.50

Total Current Work 1,677.50

Previous Balance Due \$1,925.00

DON & CHRISTINE BARNES

Exhibit E June 25, 2020

Account No: J19304BARNESM

Statement No: 154005

PORT OF KENNEWICK; OUR #J19304

Payments

06/08/2020	Payment received - Check #4503 - thank you	-1,925.00
	Balance Due	<u>\$1,677.50</u>
	Please Remit	<u>\$1,677.50</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express and Discover.

MILLER MERTENS & COMFORT PLLC
1020 N CENTER PKWY STE B
KENNEWICK WA 99336-7161
PHONE (509) 374-4200 FAX (509) 374-4229
TAX ID#91-1875775

DON & CHRISTINE BARNES
 2616 S KELLOGG ST
 KENNEWICK WA 99338-1930

Page: 1
 July 29, 2020
 Account No: J19304BARNESM
 Statement No: 154497

PORT OF KENNEWICK; OUR #J19304

		<u>Fees</u>			
			<u>Rate</u>	<u>Hours</u>	
06/24/2020	JRC	[REDACTED]	275.00	0.10	27.50
06/25/2020	JRC	[REDACTED]	275.00	0.50	137.50
07/09/2020	JRC	[REDACTED]	275.00	0.20	55.00
07/16/2020	JRC	[REDACTED]	275.00	0.90	247.50
		For Current Services Rendered		1.70	467.50

<u>Timekeeper</u>	<u>Recapitulation</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		1.70	\$275.00	\$467.50

Total Current Work 467.50

Previous Balance Due \$1,677.50

		<u>Payments</u>	
07/06/2020	Payment received - Check #4510 - thank you		-1,677.50
	Balance Due		<u>\$467.50</u>
	Please Remit		<u>\$467.50</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.

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DON & CHRISTINE BARNES
 2616 S KELLOGG ST
 KENNEWICK WA 99338-1930

Page: 1
 August 28, 2020
 Account No: J19304BARNESM
 Statement No: 155005

PORT OF KENNEWICK; OUR #J19304

<u>Fees</u>				
			Rate	Hours
07/24/2020	JRC		275.00	0.10
08/04/2020	JRC		275.00	0.30
08/05/2020	JRC		275.00	0.70
08/11/2020	JRC		275.00	0.10
08/13/2020	JRC		275.00	0.80
08/14/2020	JRC		275.00	1.00
08/17/2020	JRC		275.00	0.40
08/19/2020	JRC		275.00	0.60
For Current Services Rendered				4.00
				1,100.00

<u>Timekeeper</u>	<u>Recapitulation</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		4.00	\$275.00	\$1,100.00

Total Current Work	1,100.00
Previous Balance Due	\$467.50

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Payments

08/17/2020	Payment received - Check #4519 - thank you	-467.50
	Balance Due	<u>\$1,100.00</u>
	Please Remit	<u>\$1,100.00</u>

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DON & CHRISTINE BARNES
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Page: 1
 September 30, 2020
 Account No: J19304BARNESM
 Statement No: 155497

PORT OF KENNEWICK; OUR #J19304

<u>Fees</u>				
			Rate	Hours
08/21/2020	JRC	[REDACTED]	275.00	0.20
08/25/2020	JRC	[REDACTED]	275.00	0.20
08/28/2020	JRC	[REDACTED]	275.00	0.20
09/01/2020	JRC	[REDACTED]	275.00	0.20
09/03/2020	JRC	[REDACTED]	275.00	1.50
For Current Services Rendered				2.30
				55.00
				55.00
				55.00
				412.50
				632.50

<u>Timekeeper</u>	<u>Recapitulation</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		2.30	\$275.00	\$632.50

Total Current Work 632.50

Previous Balance Due \$1,100.00

<u>Payments</u>		
09/03/2020	Payment received - Check #4522 - thank you	-1,100.00
	Balance Due	<u>\$632.50</u>
	Please Remit	<u>\$632.50</u>

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Page: 1
 October 29, 2020
 Account No: J19304BARNESM
 Statement No: 155955

PORT OF KENNEWICK; OUR #J19304

		<u>Fees</u>	Rate	Hours	
09/29/2020	JRC	[REDACTED]			
			275.00	2.50	687.50
10/02/2020	JRC	[REDACTED]	275.00	0.30	82.50
10/13/2020	JRC	[REDACTED]	275.00	0.40	110.00
10/16/2020	JRC	[REDACTED]	275.00	0.20	55.00
		For Current Services Rendered		3.40	935.00

<u>Timekeeper</u>	<u>Recapitulation</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		3.40	\$275.00	\$935.00

Total Current Work 935.00

Previous Balance Due \$632.50

		<u>Payments</u>	
10/14/2020	Payment received - Check #4529 - thank you		-632.50
	Balance Due		<u>\$935.00</u>
	Please Remit		<u>\$935.00</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.

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DON & CHRISTINE BARNES
 2616 S KELLOGG ST
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Page: 1
 December 03, 2020
 Account No: J19304BARNESM
 Statement No: 156405

PORT OF KENNEWICK; OUR #J19304

Interim Statement

			<u>Fees</u>		
			Rate	Hours	
10/27/2020	JRC	[REDACTED]	275.00	0.30	82.50
10/28/2020	JRC	[REDACTED]	275.00	0.70	192.50
11/02/2020	JRC	[REDACTED]	275.00	0.20	55.00
11/03/2020	JRC	[REDACTED]	275.00	2.50	687.50
11/04/2020	JRC	[REDACTED]	275.00	0.10	27.50
11/05/2020	JRC	[REDACTED]	275.00	6.50	1,787.50
11/06/2020	JRC	[REDACTED]	275.00	1.50	412.50
11/08/2020	JRC	[REDACTED]	275.00		
11/09/2020	JRC	[REDACTED]	275.00		
11/10/2020	JRC	[REDACTED]	275.00		
11/11/2020	JRC	[REDACTED]	275.00	0.50	137.50
	JRC	[REDACTED]	275.00		
11/12/2020	JRC	[REDACTED]			

DON & CHRISTINE BARNES

Exhibit E
December 03, 2020Account No: J19304BARNESM
Statement No: 156405

PORT OF KENNEWICK; OUR #J19304

			Rate	Hours	
			275.00		
11/16/2020	JRC		275.00	2.00	550.00
11/17/2020	JRC		275.00	2.80	770.00
11/18/2020	JRC		275.00	0.80	220.00
11/19/2020	JRC		275.00	5.00	1,375.00
11/20/2020	JRC		275.00	7.00	1,925.00
		For Current Services Rendered		29.90	8,222.50

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	29.90	\$275.00	\$8,222.50

Total Current Work 8,222.50

Previous Balance Due \$935.00

Payments

11/04/2020 Payment received - Check #5003 - thank you -935.00

Balance Due \$8,222.50Please Remit \$8,222.50

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.

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DON & CHRISTINE BARNES
 2616 S KELLOGG ST
 KENNEWICK WA 99338-1930

Page: 1
 December 23, 2020
 Account No: J19304BARNESM
 Statement No: 157124

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
11/23/2020	JRC	[REDACTED]	275.00	1.00	275.00
11/30/2020	JRC	[REDACTED]	275.00	0.20	55.00
12/01/2020	JRC	[REDACTED]	275.00	0.50	137.50
12/03/2020	JRC	[REDACTED]	275.00	8.50	2,337.50
12/04/2020	JRC	[REDACTED]	275.00	5.30	1,457.50
12/07/2020	JRC	[REDACTED]	275.00	0.50	137.50
12/09/2020	JRC	[REDACTED]	275.00	0.30	82.50
For Current Services Rendered				16.30	4,482.50

<u>Timekeeper</u>	Recapitulation	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		16.30	\$275.00	\$4,482.50

DON & CHRISTINE BARNES

Exhibit E
December 23, 2020

Account No: J19304BARNESM

Statement No: 157124

PORT OF KENNEWICK; OUR #J19304

Total Current Work	4,482.50
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Previous Balance Due	\$7,947.50
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Payments

12/10/2020	Payment received - Check #5017 - thank you	-7,947.50
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Balance Due	<u>\$4,482.50</u>
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Please Remit	<u>\$4,482.50</u>
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Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.

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DON & CHRISTINE BARNES
 2616 S KELLOGG ST
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Page: 1
 January 28, 2021
 Account No: J19304BARNESM
 Statement No: 157993

PORT OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
12/22/2020	JRC	[REDACTED]	275.00	0.20	55.00
12/24/2020	JRC	[REDACTED]	275.00	0.30	82.50
12/31/2020	JRC	[REDACTED]	275.00	1.40	385.00
01/05/2021	JRC	[REDACTED]	275.00	0.70	192.50
01/06/2021	JRC	[REDACTED]	275.00	0.30	82.50
01/12/2021	JRC	[REDACTED]	275.00	0.40	110.00
		For Current Services Rendered		3.30	907.50

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	3.30	\$275.00	\$907.50

Total Current Work 907.50

Previous Balance Due \$4,482.50

Payments

12/31/2020 Payment received - Check #5021 - thank you -4,482.50

Balance Due \$907.50

Please Remit \$907.50

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Resolution 2021-08
Exhibit E
Page: 2
January 28, 2021
Account No: J19304BARNESM
Statement No: 157993

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.

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PHONE (509) 374-4200 FAX (509) 374-4229
TAX ID#91-1875775

DON & CHRISTINE BARNES
 2616 S KELLOGG ST
 KENNEWICK WA 99338-1930

Page: 1
 March 02, 2021
 Account No: J19304BARNESM
 Statement No: 158524

PORT OF KENNEWICK; OUR #J19304

<u>Fees</u>				
			Rate	Hours
02/03/2021	JRC	[REDACTED]	275.00	0.20
02/09/2021	JRC	[REDACTED]	275.00	0.30
02/10/2021	JRC	[REDACTED]	275.00	0.40
				<u>0.90</u>
		For Current Services Rendered		110.00
				247.50

<u>Timekeeper</u>	Recapitulation	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		0.90	\$275.00	\$247.50

Total Current Work	247.50
Previous Balance Due	\$907.50

<u>Payments</u>		
02/03/2021	Payment received - Check #5053 - thank you	-907.50
	Balance Due	<u>\$247.50</u>
	Please Remit	<u>\$247.50</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

APRIL 13, 2021 MINUTES

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.

PORT OF KENNEWICK

REGULAR COMMISSION MEETING

APRIL 13, 2021 MINUTES

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.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

APRIL 13, 2021 MINUTES

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

PORT OF KENNEWICK REGULAR COMMISSION MEETING

APRIL 13, 2021 MINUTES

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,

PORT OF KENNEWICK

Resolution No. 2021-10

***A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK AUTHORIZING THE PORT CHIEF EXECUTIVE
OFFICER TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE CITY OF
KENNEWICK FOR WASHINGTON STREET IMPROVEMENTS***

WHEREAS, the City of Kennewick is making improvements to the Washington Street Corridor, connecting downtown Kennewick with Clover Island; and

WHEREAS, the Port of Kennewick has allocated \$500,000 in its 2021/22 budget for this project; and

WHEREAS, the Port and City have outlined the general provisions for contract compliance in the Interlocal Agreement; and

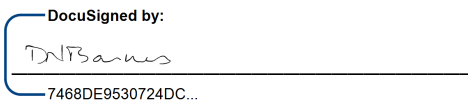
WHEREAS, Port legal counsel has reviewed this contract and approved it as to form.

NOW, THEREFORE; BE IT HEREBY RESOLVED that the Board of Commissioners of the Port of Kennewick approves the Interlocal Agreement and instructs the Port CEO to execute the Interlocal Agreement, and take all action necessary to implement the Interlocal Agreement.

BE IT FURTHER RESOLVED that all action by port officers and employees in furtherance hereof is ratified and approved; and further, the port Chief Executive Officer is authorized to take all action necessary in furtherance hereof.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 25th day of May, 2021.

**PORT OF KENNEWICK
BOARD OF COMMISSIONERS**

By: 
DON BARNES, President

By: 
SKIP NOVAKOVICH, Vice President

By: 
THOMAS MOAK, Secretary