



PORT OF KENNEWICK REGULAR COMMISSION MEETING

FEBRUARY 27, 2024 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 Skip Novakovich called the Regular Commission Meeting to order at 2:00 p.m.

ANNOUNCEMENTS AND ROLL CALL

The following were present:

Board Members: Skip Novakovich, President (via telephone)
Kenneth Hohenberg, Vice President (via telephone)
Thomas Moak, Secretary (via telephone)

Staff Members: Tim Arntzen Chief Executive Officer
Tana Bader Inglima, Deputy Chief Executive (via telephone)
Nick Kooiker, Deputy Chief Executive Officer/CFO (via telephone)
Larry Peterson, Director of Planning (via telephone)
Amber Hanchette, Director of Real Estate (via telephone)
Michael Boehnke, Director of Operations (via telephone)
Bridgette Scott, Executive Assistant (via telephone)
Lisa Schumacher, Special Projects Coordinator
David Phongsa, Marketing and Capital Projects Coordinator (via telephone)

PLEDGE OF ALLEGIANCE

Commissioner Hohenberg led the Pledge of Allegiance.

PUBLIC COMMENT

No comments were made.

CONSENT AGENDA

- A. Approval of Direct Deposit and E-Payments Dated February 15, 2024**
Direct Deposit and E-Payments totaling \$99,642.44
- B. Approval of Warrant Register Dated February 27, 2024**
Expense Fund Voucher Number 105663 through 105686 for a grand total of \$129,535.34
- C. Approval of Regular Commission Meeting Minutes February 13, 2024**

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

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ACTION ITEM

A. Vista Field Collaboration Design Process

Mr. Arntzen gave a brief history of the Collaboration Design Process and in December 2023, he requested Commission comments regarding the process (*Exhibit A*). Mr. Arntzen received comments and Commissioner Moak submitted several comments in writing. Mr. Arntzen, Port counsel, and staff reviewed the Commission comments and revised the process. Mr. Arntzen asked Commissioner Moak to review his comments with the Commission.

Commissioner Moak presented his comments for the collaboration design process and how staff responded to his comments.

Commissioner Hohenberg believes they are excellent additions to the process.

Commissioner Novakovich likes the additional comments and the clear direction and documentation process.

PUBLIC COMMENTS

No comments were made.

MOTION: *Commissioner Hohenberg moved to approve Resolution 2024-03 amending the Collaborative Design Process as described in the agenda report and as shown in Exhibit “A” attached hereto. Commissioner Hohenberg further moves that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the Port Chief Executive Officer to take all action necessary in furtherance hereof; Commissioner Moak seconded.*

Discussion:

Commissioner Hohenberg reemphasized Commissioner Novakovich’s comments and appreciates the documentation and the added work and thanked everyone for the additional verbiage.

Commissioner Moak appreciates the comments of his fellow Commissioners.

Commissioner Novakovich thanked Commissioner Moak for his work on the process.

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

PRESENTATION

A. Vista Field Lot #15 Proposal

Ms. Hanchette presented the proposal for Lot #15 at Vista Field (*Exhibit B*) by KKI, for a Japanese dining experience.

Commission and staff discussed the proposal for Lot #15.

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Commissioner Moak inquired if the Motion to approve should be the restaurant name or the partners names?

Ms. Hanchette stated should the Commission move forward with the proposal; staff will revise the Resolution to state Yuri Na.

PUBLIC COMMENTS

No comments were made.

MOTION: Commissioner Moak moved to approve Resolution 2024-04 authorizing a ‘90 Day Right to Negotiate’ time-period with Yuri Na for construction of a 3,513 square foot, single story building on Lot 15 within the first phase of Vista Field redevelopment; Commissioner Hohenberg seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. Oak Street DB-D Fire

Mr. Peterson outlined the history of the property at 1328 East 3rd Avenue and the fire in April of 2023. Mr. Peterson stated the Commission approved Resolution 2024-02 to rebuild the structure; however, since that time, staff and Strategic Construction Management have received additional information that is important for the Commission to consider (*Exhibit C*).

Mr. Robinson met with the City of Kennewick, which informed the Port that the structure needed to be restored to its previous 1993 condition, neither improving nor adding to the structure. It was determined that it would be a significant amount of money to return the structure to a simple warehouse. Mr. Robison stated it was determined that there are several different structures and different buildings that are operating differently, furthermore, it is a fire hazard, as there are no exits out the back of the buildings.

Mr. Peterson offered a second option for the Commission to consider, a partial demolition and construction for a Port maintenance facility as outlined in *Exhibit C*.

Mr. Boehnke stated operations is very excited about the possible pivot, as we have been utilizing several locations for storing equipment, tools, personnel, and vehicles. A new maintenance facility has previously been discussed and may cost approximately \$2,700,000. This pivot would alleviate the need for a new facility.

Mr. Peterson stated the Port has two remaining tenants at 1328 East 3rd Avenue. If the Commission provides further directions to proceed, then the tenants would need to be notified of the 60-day lease termination.

Mr. Robison believes this is a wonderful opportunity for the Port.

The Commission, staff, and Mr. Robison discussed the new option for a Port maintenance facility.

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Commissioner Novakovich asked staff to come back with a motion to reconsider Resolution 2024-02 with language about transitioning tenants out of the location.

B. Governor's Smart Communities Award March 12, 2024

Ms. Bader Inglima shared that the Port received the Governor's Smart Partnership award for the 1135 Clover Island restoration project. Jon Snyder from the Governor's office will be presenting the award on March 12, 2024 at 11:30 a.m. at the lighthouse plaza along with our partners: Confederative Tribes of the Umatilla Indian Reservation, US Army Corps of Engineers, the Washington State RCO, Benton County, and the City of Kennewick.

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

Commissioners reported on their respective committee meetings.

D. Non-Scheduled Items

Ms. Bader Inglima stated the Port received an email from Melina Mienke Conover, daughter of Rod Mienke, who was instrumental in working with the Port to rebuild the Clover Island Yacht Club:

"I wanted to reach out to you and thank the Port for the beautiful plant in memory of my dad. I plan to have a celebration of life when the weather gets nicer and have it at the yacht club. Dad was very proud of his work with the Port and the partnership and collaboration on the new yacht club. I will keep you all posted on the date of the celebration. It is hard to believe that my mom passed away 13 years ago. Now dad joined mom which makes me happy."

Ms. Bader Inglima shared that the Tri-Cities Regional Chamber of Commerce will hold their annual State of the Ports event at the Red Lion Pasco, February 28, 2024 at 11:30 a.m.

Mr. Peterson reported that the Port had a pre-bid walkthrough for the Vista Field Southern Gateway project and it was well attended by local contractors.

Mr. Boehnke reported the unusually high winds over the weekend caused some damage to the "Fair Game" artwork on Clover Island. Fair Game is the name of the two large metal eagles fighting over a salmon that were mounted atop basalt columns. The eagles have been removed for safety reasons and we will contact the artist to determine how best to repair/restore that artwork. Additionally, we will work on an engineered solution that better accommodates the impact of severe wind before they are remounted.

Mr. Arntzen reported that Ms. Schumacher searched the Commission Minutes from 2013 to current and found the shortest meeting was on January 23, 2024, for a total of 31 minutes. Mr. Arntzen congratulated the Commission for efficiently moving through Agendas.

Mr. Arntzen will be following up on Commissioner Moak's questions regarding serial meetings and Port business. Mr. Arntzen stated that he will ask Port Counsel to provide a refresher course on serial meetings.

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Mr. Arntzen stated Rod Meineke was a good friend and if it weren't for him, the Clover Island Yacht Club building may never have been built.

Mr. Arntzen reported the Port has been talking to other builders/developers interested in Vista Field and he is hoping to bring more letters of interest to the Commission within the next few months. Mr. Arntzen stated the Vista Field Southern Gateway (Hangar) project will be very helpful to the recruitment at Vista Field because it shows builders/developers that the Port is contributing to the development effort.

Commissioner Hohenberg will attend the State of the Port's luncheon.

Commissioner Moak reported the Blue Bridge will be under construction tomorrow, so take extra time getting to the State of the Port's luncheon.

PUBLIC COMMENTS

No comments were made.

COMMISSION COMMENTS

No comments were made.

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 3:43 p.m.

APPROVED:

PORT of KENNEWICK BOARD of COMMISSIONERS

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Skip Novakovich

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Skip Novakovich, President

DocuSigned by:

Kenneth Hohenberg

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Kenneth Hohenberg, Vice President

DocuSigned by:

Thomas Moak

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Thomas Moak, Secretary

PORT OF KENNEWICK

RESOLUTION No. 2024-03

***A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK APPROVING CLARIFYING
AMENDMENTS TO THE GUIDELINES FOR VISTA FIELD
DEVELOPMENT PROPOSALS (COLLABORATIVE DESIGN PROCESS)***

WHEREAS, Resolution 2022-27 approving the Guidelines for Vista Field Development proposals [aka: Collaborative Design Process (CDP)] was approved by the Commission on September 27, 2022; and

WHEREAS, the Commission has proposed revisions to the Port's CDP, which guides Commission analysis of proposals for development at Vista Field; and

WHEREAS, staff have reviewed those clarifying revisions and have determined the incorporation of the revisions will provide for an enhanced CDP; and

WHEREAS, the proposed clarifying revisions are related to Section III of the CDP, and are set forth in Exhibit "A" hereto.

NOW, THEREFORE, BE IT RESOLVED that the Port of Kennewick Board of Commissioners hereby approves the revisions as an amendment to the CDP.

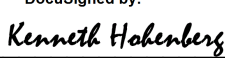
BE IT FURTHER RESOLVED that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the Port Chief Executive Officer to take all action necessary in furtherance hereof.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 27th day of February, 2024.

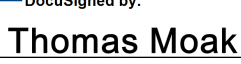
***PORT of KENNEWICK
BOARD of COMMISSIONERS***

By: 
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SKIP NOVAKOVICH, President

By: 
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KENNETH HOHENBERG, Vice President

By: 
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THOMAS MOAK, Secretary

RESOLUTION No. 2024-03
EXHIBIT "A"

Tim

You asked for some feedback on the information provided related to the Collaborative Design Process and the information provided to the Commission. It certainly helped for starters that the first larger proposal seemed to hit all the right buttons and was an easy call for the Commission. You indicated that not all the proposals we review are going to be so cut and dried.

Commissioner Novakovich mentioned that he did not want to see a recommendation from staff on these proposals. Based on that, I believe there should be several drafted motions **(#1)** before the Commission for each proposal: one (such as we had last week) that is a motion to approve, one that is a motion to deny, and maybe one that is a motion to refer to staff to work with the developer. (There could be a fourth one where the Commission tries to amend or provide direction from the Commission table. I'm not sure that's a good thing, but possible.) Whatever the Commission does, it shouldn't be fumbling around for wording. It makes everyone look bad. And whatever direction that comes from the Commission should be clear to staff, the developer, and the public. I don't like trying to create motions on the run. The closer we follow a script, no matter what the outcome, the better.

RESPONSE #1

Yes, this is a promising idea. I have talked with my directors and the suggestion is that we draft two motions: one to approve and another to deny. If denied, the Commission could ask staff to work with the developer to further refine the proposal. The motion for approval, according to the Collaborative Design Process (CDP), adopted by the Commission, grants a 90-day period for port staff and the developer to finalize negotiations. Should the Commission grant the developer the 90-days, it could also attach directives which would guide negotiations. At the conclusion of the 90-day period, the Commission could review the proposal to ensure the Commission directives have been adequately addressed.

I come from a background at the City of Kennewick where we were dealing with land use issues in a quasi-judicial setting and had to create findings if we were going to come up with a different conclusion than staff had. And there were specific legal dos and don'ts. **(#2)** I don't know that we are in a quasi-judicial setting here, are we? **(#3)** Can the Commission just deny a proposal without specific reasons? (I know we can't discriminate on the basis of age, sex, etc.) **(#4)** What are the legal requirements?

RESPONSES #2 - 4:

The Purchase and Sale (PSA) Process and Letter of Intent (LOI) are not bound by quasi-judicial requirements. Thus, the Commission could legally reject a proposal for any number of reasons. However, for good public policy reasons, it would be most appropriate if the Commission identifies objective criteria for a rejection or referral back to staff, such as inadequate price, lack of experience in New Urbanism, failure to follow master plan or design standards, etc. I know that these are not 100% "objective" standards, but they are more solid than rejecting a proposal without stating any reasons. And you are correct, the Commission

would not reject a proposal based on “protected class” criteria, such as race, age, sex, etcetera. In addition, transparency in stating the “why’s” would both: (a) help staff understand what to bring forward in the future and (b) minimize unpredictability, since unpredictability equals risk—and risk can be managed if there is some consistency and predictability to the Port’s actions.

A couple potential scenarios

- The Mayor of Kennewick calls up each Commissioner and says she doesn’t like a particular developer or project and says we should turn it down. (#5) Would this contact be required to be disclosed? Or the content of the communication?
- The developer takes each Commissioner separately to Cedars (high cost) or Starbucks (low cost) to answer questions or just to get to know us (#6) Would this contact, or expenditure be required to be disclosed? Or the content of the communication?

I am thinking it would be helpful (when we don’t have a specific project in front of us) for Carolyn to talk about any legal implications of any of this. (#7) How do we keep away from lawsuits or potential lawsuits or public records requests that could expose the port? What is best practice? What is the law? Are there any other legal-type of issues we need to keep in mind?

RESPONSES #5 - 7:

We would certainly seek to avoid a “serial meeting.”

MRSC notes: A serial meeting occurs when a majority of members of a governing body have a series of smaller gatherings or communications that results in a majority of the body collectively taking action even if a majority is never part of any one communication. Such a meeting violates the OPMA because it amounts to taking “action” — as defined in [RCW 42.30.020\(3\)](#) — outside an open meeting. Serial meetings can occur with or without technology, but the range of communication options available nowadays to members of a governing body increases the risk.

If, for example, the mayor had dinner with the Commission President and talked specifics about a development proposal, then met with another Commissioner to talk specifics about the same proposal, this would likely be considered a serial meeting which is prohibited by law (RCW 42.30.020). If a Commissioner does have a meeting with another elected official, such as the mayor, and even if the circumstances do not create a serial meeting, port policies should be considered. Port policies require the content of the discussion to be shared with the other Commissioners in a public meeting, so that all Commissioners are privy to the same information (see: Commission Policies, Section 3.9). This ensures that each Commissioner has access to pertinent information.

Several comments about the actual document:

I would like to see the report from the Town Architect as a separate document (#8) rather than his comments included or paraphrased in the document. His focus is on certain new urbanism/design issues whereas staff deals with that and more. He may have some perspectives that could be different than staff’s (and that’s OK). Staff may also want to reiterate points of the Town Architect.

RESPONSE #8:

Yes, we will attach a complete, independent review from the Town Architect. Please note that the volume of materials attached will be commensurate with project site—meaning that a 3,500-square-foot building and a 40,000-square-foot five-story building will likely have a different volume of documentation.

It would be nice (not required) in Exhibits (**#9**) if there were newspaper articles about some of their similar projects, such as from a local Business Journal or local paper. The developer may have these. Or even internet links to various similar projects of the developer.

RESPONSE #9:

Staff perform basic due diligence when a LOI is received. We can attach all information we discover as an attachment. Should the Commission grant the proposer the 90-day look-see period, additional due diligence is usually performed and this information as well will be attached. We will strive to not include innuendo or unverified information.

I like how you have broken the report into sections.

As I indicated at the Commission meeting, (**#10**) I would like to see a better map showing where the development is related to the broader identifiable VF area.

RESPONSE #10:

Yes, we will attach a more detailed map.

I guess Section VI: Conclusion and recommendations would go away per Commission Novakovich's suggestion, or at least the recommendation part.

I wasn't sure with the last project whether they had worked with either the Port of Camas-Washougal or Port of Vancouver or whether that was appropriate to ask. If they had, I would have liked to have heard whether those ports had anything to say about them. (I would guess it would be favorable.)

I appreciate your asking the port Commission for feedback. I'm sure if or when we get to something more controversial, we may find different needs, but I think your first stab at providing information to the Commission was good and generally met our needs and was well organized.

Tom

PORT OF KENNEWICK

RESOLUTION 2022-27

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF PORT OF KENNEWICK RESCINDING RESOLUTION 2016-23 AND APPROVING THE AMENDED GUIDELINES FOR VISTA FIELD DEVELOPMENT PROPOSALS

WHEREAS, the Board of Commissioners of the Port of Kennewick approved Resolution 2016-23 on September 27, 2016 amending the procedure by which the Port of Kennewick (Port) shall provide public notice of Vista Field development opportunities and the process by which the Port shall receive, evaluate and accept development proposals; and

WHEREAS, the collaborative design process within the Guidelines needs to be amended to simplify the process and attract investors; and

WHEREAS, the Commission shall continue to evaluate the effectiveness of this policy over time and reserves the right to expand, amend or rescind this policy as appropriate.

NOW, THEREFORE BE IT RESOLVED, that the Board of Commissioners of the Port of Kennewick hereby rescinds Resolution 2016-23.

BE IT FURTHER RESOLVED, that the Board of Commissioners of the Port of Kennewick hereby approves and adopts the amended Guidelines for Vista Field Development Proposals as attached in Exhibit A, and directs the Chief Executive Officer (CEO) to take all action necessary to implement these procedures.

ADOPTED by the Board of Commissioners of the Port of Kennewick this 27th day of September, 2022.

PORT OF KENNEWICK BOARD OF COMMISSIONERS

DocuSigned by:
By: *Skip Novakovich*
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SKIP NOVAKOVICH, *President*

DocuSigned by:
By: *Kenneth Hohenberg*
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KENNETH HOHENBERG, *Vice President*

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By: **Thomas Moak**
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THOMAS MOAK, *Secretary*

PORT OF KENNEWICK

GUIDELINES FOR VISTA FIELD DEVELOPMENT PROPOSALS

These guidelines identify the procedure by which the Port of Kennewick (Port) shall receive, evaluate and accept development proposals.

I. NOTICE OF DEVELOPMENT OPPORTUNITIES

The Port will prepare project information including a description of development-ready site(s); and notify the public of site availability by various methods as appropriate, including making direct contact with potential builders.

II. RECEIPT OF DEVELOPMENT PROPOSALS

A builder wishing to develop available Vista Field property shall submit a Letter of Intent (LOI) describing the builder's experience and the proposed development concept for the site as described in the Proposal Submission Checklist (Attachment "A").

III. EVALUATION OF DEVELOPMENT PROPOSALS

LOIs will be reviewed by the Port CEO. If the LOI demonstrates that the builder possesses the relevant experience, that the development concept is likely to assist with the redevelopment of the property and that the price and terms are reasonable, then the CEO will arrange for the parties to participate in a preliminary collaborative design process described below.

- A. Preliminary Collaborative Design Process. The Port and builder (working through each party's design team) shall meet to refine the development concept described in the LOI. This meeting may be by telephone conference or other preliminary discussion. The preliminary collaborative design process shall consist of:
 - 1. Initial project development concept will be reviewed. The parties will endeavor to produce rough project sketches and assemble photographs and other illustrative materials.
 - 2. Upon successful completion of the initial meeting, a design meeting will be conducted whereby the parties will refine the development concept and the rough sketches in order for the builder to produce a schematic design mutually acceptable to the parties.
- B. Initial Evaluation by Port Commission. Upon successful completion of the preliminary collaborative design process, the CEO shall present all relevant project information to the Port Commission for evaluation. The Port Commission may take any action deemed appropriate with respect to proposal evaluation, including but not limited to requesting the parties to further refine the proposal through final design. In this case, the Port Commission shall grant the builder exclusive negotiating rights with respect to the proposal and site for a period of 90 days. During the exclusive negotiating period, the Port will not accept any other proposal for the site.

- C. Final Collaborative Design Process. Provided the parties enter into the final collaborative design process, the builder, at its expense, shall produce of a set of drawings acceptable to the Port including site and representative floor plans with elevations for the major elements of the project. Schematic drawings shall also include exterior sections reflecting proposed architectural design and building materials. Emphasis will be placed on exteriors and especially, elevations facing streets and public spaces. The plans shall include a conceptual site plan which should include a sample or conceptual planting plan for site vegetation. Additionally, the builder shall describe the proposed schedule of development. Any contingencies that may affect this timeline shall be identified by builder. The Port may request additional project information.
- D. Final Presentation to Port Commission. Upon successful completion of the final collaborative design process, the CEO shall report to the Port Commission related to the overall progress of the project, including a staff recommendation related to the project. The Port Commission shall either reject the development proposal or direct the CEO to negotiate a purchase and sale agreement (or ground lease) with the builder. If the parties are unable to execute a purchase and sale agreement within 60 days, the proposal shall expire, and each party shall be relieved of all further obligations related to the proposed development.

IV. POST PURCHASE AND SALE AGREEMENT MATTERS

- A. Project Refinement. Upon execution of a purchase and sale agreement, the builder shall apply to the City of Kennewick (City) for project review and permitting. Should the City require changes to the project which materially alters the project, the parties will then attempt to negotiate the changes required in order for the builder to receive City approval of its project. If the parties are unable to negotiate changes required in order for the builder to receive City approval within a 60 days, the development proposal shall expire, each party shall be relieved of all further obligations. Any earnest money deposited by the builder shall be refunded to the builder, less any applicable administrative fee.
- B. Construction Progress. The Port will monitor construction and provide periodic updates to the Port Commission.

V. MISCELLANEOUS MATTERS

- A. All discussions between the parties are to explore the builder's qualifications and the viability of a development proposal. A binding obligation shall only be created by a written agreement setting forth all material terms, signed by the parties; and approved by an affirmative vote by the Port Commission;
- B. The Port may arrange for further action including introducing the concept to the Port Commission or appropriate third parties in order to perform due diligence and the parties understand that complete confidentiality cannot be guaranteed;
- C. Each party shall be responsible for all costs it incurs with respect to this matter, including professional and attorney's fees and costs;
- D. The Port makes no representations with respect to the property and the builder agrees to exercise all due diligence it deems necessary;

- E. Development proposals may be subject to disclosure under the Washington State Public Records Act;
- F. The Port reserves the right to verify builder credentials and to request supplemental information; and
- G. The Port Commission may waive any of these requirements for builders where the total project value, including land price, is expected to be less than \$1,500,000.

PORT OF KENNEWICK

RESOLUTION No. 2024-04

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK TO APPROVE A 90 DAY RIGHT TO NEGOTIATE PERIOD WITH ISABELLE “YURI” NA

WHEREAS, the Port of Kennewick (“Port) Commission has authorized port staff to market parcels for sale within the Vista Field redevelopment project; and

WHEREAS, port staff has received a proposal from Isabelle “Yuri” Na for construction of a 3,513 square foot, single story building on Lot 15 for the purpose of operating a Japanese dining experience, within the first phase of Vista Field redevelopment; and


WHEREAS, the proposal has received preliminary staff, legal and design review related to the Vista Field master plan and Collaborative Design Process.

NOW, THEREFORE, BE IT RESOLVED that the Port of Kennewick Board of Commissioners hereby approves a ‘90 Day Right to Negotiate’ time-period with Isabelle “Yuri” Na for construction of a single story building on Lot 15 within the first phase of Vista Field redevelopment.


BE IT FURTHER RESOLVED that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the Port Chief Executive Officer to take all action necessary in furtherance hereof.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 27th day of February, 2024.


PORT of KENNEWICK BOARD of COMMISSIONERS

By: 
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SKIP NOVAKOVICH, President

By: 
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KENNETH HOHENBERG, Vice President

By: 
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THOMAS MOAK, Secretary



AGENDA REPORT

TO: Port Commission

FROM: Tim Arntzen

MEETING DATE: February 27, 2024

AGENDA ITEM: Amendments to the Guidelines for Vista Field development proposals (aka: Collaborative Design Process) Follow Up

I. REFERENCE(S):

1. Resolution 2024-03 and Exhibit "A", clarifying amendments to the Guidelines for Vista Field development proposals (aka: Collaborative Design Process)
2. Resolution 2022-27, Guidelines for Vista Field Development Proposals

II. FINANCIAL IMPACT: N/A

III. DISCUSSION:

In the December 12, 2023 Commission meeting, staff presented the Letter of Intent (LOI) for the Akula Group. The LOI included a report from staff on the Collaborative Design Process (CDP), a process that each proposer participates in with the port team. At the December meeting, Commissioners provided brief comments regarding the reporting of the process by staff to the Commission. Commissioner Moak forwarded written comments to me and I shared those comments with staff and legal counsel for review and comment. Commissioner Moak and I have discussed the input from staff and legal counsel, and staff proposes to include those observations into the CDP reporting. At today's meeting, I would like to share Commissioner Moak's comments with the full Commission for review. Commissioner Moak has agreed to join me in presenting this topic to the Commission.

It is interesting to note that an actual LOI is included in the commission packet for this meeting. And, at the staff level, we have incorporated Commissioner Moak's comments into our reporting of the CDP related to this LOI.

Therefore, the Commission will be reviewing the changes Commissioner Moak suggested, and later in this meeting, the Commission will have the benefit of seeing how the comments fold into a current LOI (essentially a "live-fire drill" for the Commission).

IV. ACTION REQUESTED OF COMMISSION:

Motion: I move to approve Resolution 2024-03 amending the Collaborative Design Process as described in the agenda report and as shown on Exhibit “A” attached hereto. I further move that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the Port Chief Executive Officer to take all action necessary in furtherance hereof.

PORT OF KENNEWICK***RESOLUTION No. 2024-03******A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK APPROVING CLARIFYING
AMENDMENTS TO THE GUIDELINES FOR VISTA FIELD
DEVELOPMENT PROPOSALS (COLLABORATIVE DESIGN PROCESS)***

WHEREAS, Resolution 2022-27 approving the Guidelines for Vista Field Development proposals [aka: Collaborative Design Process (CDP)] was approved by the Commission on September 27, 2022; and

WHEREAS, the Commission has proposed revisions to the Port's CDP, which guides Commission analysis of proposals for development at Vista Field; and

WHEREAS, staff have reviewed those clarifying revisions and have determined the incorporation of the revisions will provide for an enhanced CDP; and

WHEREAS, the proposed clarifying revisions are related to Section III of the CDP, and are set forth in Exhibit "A" hereto.

NOW, THEREFORE, BE IT RESOLVED that the Port of Kennewick Board of Commissioners hereby approves the revisions as an amendment to the CDP.

BE IT FURTHER RESOLVED that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the Port Chief Executive Officer to take all action necessary in furtherance hereof.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 27th day of February, 2024.

***PORT of KENNEWICK
BOARD of COMMISSIONERS***

By: _____

SKIP NOVAKOVICH, President

By: _____

KENNETH HOHENBERG, Vice President

By: _____

THOMAS MOAK, Secretary

RESOLUTION No. 2024-03
EXHIBIT "A"

Tim

You asked for some feedback on the information provided related to the Collaborative Design Process and the information provided to the Commission. It certainly helped for starters that the first larger proposal seemed to hit all the right buttons and was an easy call for the Commission. You indicated that not all the proposals we review are going to be so cut and dried.

Commissioner Novakovich mentioned that he did not want to see a recommendation from staff on these proposals. Based on that, I believe there should be several drafted motions (**#1**) before the Commission for each proposal: one (such as we had last week) that is a motion to approve, one that is a motion to deny, and maybe one that is a motion to refer to staff to work with the developer. (There could be a fourth one where the Commission tries to amend or provide direction from the Commission table. I'm not sure that's a good thing, but possible.) Whatever the Commission does, it shouldn't be fumbling around for wording. It makes everyone look bad. And whatever direction that comes from the Commission should be clear to staff, the developer, and the public. I don't like trying to create motions on the run. The closer we follow a script, no matter what the outcome, the better.

RESPONSE #1

Yes, this is a promising idea. I have talked with my directors and the suggestion is that we draft two motions: one to approve and another to deny. If denied, the Commission could ask staff to work with the developer to further refine the proposal. The motion for approval, according to the Collaborative Design Process (CDP), adopted by the Commission, grants a 90-day period for port staff and the developer to finalize negotiations. Should the Commission grant the developer the 90-days, it could also attach directives which would guide negotiations. At the conclusion of the 90-day period, the Commission could review the proposal to ensure the Commission directives have been adequately addressed.

I come from a background at the City of Kennewick where we were dealing with land use issues in a quasi-judicial setting and had to create findings if we were going to come up with a different conclusion than staff had. And there were specific legal dos and don'ts. (**#2**) I don't know that we are in a quasi-judicial setting here, are we? (**#3**) Can the Commission just deny a proposal without specific reasons? (I know we can't discriminate on the basis of age, sex, etc.) (**#4**) What are the legal requirements?

RESPONSES #2 - 4:

The Purchase and Sale (PSA) Process and Letter of Intent (LOI) are not bound by quasi-judicial requirements. Thus, the Commission could legally reject a proposal for any number of reasons. However, for good public policy reasons, it would be most appropriate if the Commission identifies objective criteria for a rejection or referral back to staff, such as inadequate price, lack of experience in New Urbanism, failure to follow master plan or design standards, etc. I know that these are not 100% "objective" standards, but they are more solid than rejecting a proposal without stating any reasons. And you are correct, the Commission

would not reject a proposal based on “protected class” criteria, such as race, age, sex, etcetera. In addition, transparency in stating the “why’s” would both: (a) help staff understand what to bring forward in the future and (b) minimize unpredictability, since unpredictability equals risk—and risk can be managed if there is some consistency and predictability to the Port’s actions.

A couple potential scenarios

- The Mayor of Kennewick calls up each Commissioner and says she doesn’t like a particular developer or project and says we should turn it down. (#5) Would this contact be required to be disclosed? Or the content of the communication?
- The developer takes each Commissioner separately to Cedars (high cost) or Starbucks (low cost) to answer questions or just to get to know us (#6) Would this contact, or expenditure be required to be disclosed? Or the content of the communication?

I am thinking it would be helpful (when we don’t have a specific project in front of us) for Carolyn to talk about any legal implications of any of this. (#7) How do we keep away from lawsuits or potential lawsuits or public records requests that could expose the port? What is best practice? What is the law? Are there any other legal-type of issues we need to keep in mind?

RESPONSES #5 - 7:

We would certainly seek to avoid a “serial meeting.”

MRSC notes: A serial meeting occurs when a majority of members of a governing body have a series of smaller gatherings or communications that results in a majority of the body collectively taking action even if a majority is never part of any one communication. Such a meeting violates the OPMA because it amounts to taking “action” — as defined in [RCW 42.30.020\(3\)](#) — outside an open meeting. Serial meetings can occur with or without technology, but the range of communication options available nowadays to members of a governing body increases the risk.

If, for example, the mayor had dinner with the Commission President and talked specifics about a development proposal, then met with another Commissioner to talk specifics about the same proposal, this would likely be considered a serial meeting which is prohibited by law (RCW 42.30.020). If a Commissioner does have a meeting with another elected official, such as the mayor, and even if the circumstances do not create a serial meeting, port policies should be considered. Port policies require the content of the discussion to be shared with the other Commissioners in a public meeting, so that all Commissioners are privy to the same information (see: Commission Policies, Section 3.9). This ensures that each Commissioner has access to pertinent information.

Several comments about the actual document:

I would like to see the report from the Town Architect as a separate document (#8) rather than his comments included or paraphrased in the document. His focus is on certain new urbanism/design issues whereas staff deals with that and more. He may have some perspectives that could be different than staff’s (and that’s OK). Staff may also want to reiterate points of the Town Architect.

RESPONSE #8:

Yes, we will attach a complete, independent review from the Town Architect. Please note that the volume of materials attached will be commensurate with project site—meaning that a 3,500-square-foot building and a 40,000-square-foot five-story building will likely have a different volume of documentation.

It would be nice (not required) in Exhibits (**#9**) if there were newspaper articles about some of their similar projects, such as from a local Business Journal or local paper. The developer may have these. Or even internet links to various similar projects of the developer.

RESPONSE #9:

Staff perform basic due diligence when a LOI is received. We can attach all information we discover as an attachment. Should the Commission grant the proposer the 90-day look-see period, additional due diligence is usually performed and this information as well will be attached. We will strive to not include innuendo or unverified information.

I like how you have broken the report into sections.

As I indicated at the Commission meeting, (**#10**) I would like to see a better map showing where the development is related to the broader identifiable VF area.

RESPONSE #10:

Yes, we will attach a more detailed map.

I guess Section VI: Conclusion and recommendations would go away per Commission Novakovich's suggestion, or at least the recommendation part.

I wasn't sure with the last project whether they had worked with either the Port of Camas-Washougal or Port of Vancouver or whether that was appropriate to ask. If they had, I would have liked to have heard whether those ports had anything to say about them. (I would guess it would be favorable.)

I appreciate your asking the port Commission for feedback. I'm sure if or when we get to something more controversial, we may find different needs, but I think your first stab at providing information to the Commission was good and generally met our needs and was well organized.

Tom

PORT OF KENNEWICK**RESOLUTION 2022-27****A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF PORT OF KENNEWICK RESCINDING RESOLUTION 2016-23
AND APPROVING THE AMENDED GUIDELINES FOR
VISTA FIELD DEVELOPMENT PROPOSALS**

WHEREAS, the Board of Commissioners of the Port of Kennewick approved Resolution 2016-23 on September 27, 2016 amending the procedure by which the Port of Kennewick (Port) shall provide public notice of Vista Field development opportunities and the process by which the Port shall receive, evaluate and accept development proposals; and

WHEREAS, the collaborative design process within the Guidelines needs to be amended to simplify the process and attract investors; and

WHEREAS, the Commission shall continue to evaluate the effectiveness of this policy over time and reserves the right to expand, amend or rescind this policy as appropriate.

NOW, THEREFORE BE IT RESOLVED, that the Board of Commissioners of the Port of Kennewick hereby rescinds Resolution 2016-23.

BE IT FURTHER RESOLVED, that the Board of Commissioners of the Port of Kennewick hereby approves and adopts the amended Guidelines for Vista Field Development Proposals as attached in Exhibit A, and directs the Chief Executive Officer (CEO) to take all action necessary to implement these procedures.

ADOPTED by the Board of Commissioners of the Port of Kennewick this 27th day of September, 2022.

***PORT OF KENNEWICK
BOARD OF COMMISSIONERS***

DocuSigned by:
By: *Skip Novakovich*
0E53A30E1C8E442...
SKIP NOVAKOVICH, *President*

DocuSigned by:
By: *Kenneth Hohenberg*
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KENNETH HOHENBERG, *Vice President*

DocuSigned by:
By: *Thomas Moak*
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THOMAS MOAK, *Secretary*

PORT OF KENNEWICK
GUIDELINES FOR VISTA FIELD DEVELOPMENT PROPOSALS

These guidelines identify the procedure by which the Port of Kennewick (Port) shall receive, evaluate and accept development proposals.

I. NOTICE OF DEVELOPMENT OPPORTUNITIES

The Port will prepare project information including a description of development-ready site(s); and notify the public of site availability by various methods as appropriate, including making direct contact with potential builders.

II. RECEIPT OF DEVELOPMENT PROPOSALS

A builder wishing to develop available Vista Field property shall submit a Letter of Intent (LOI) describing the builder's experience and the proposed development concept for the site as described in the Proposal Submission Checklist (Attachment "A").

III. EVALUATION OF DEVELOPMENT PROPOSALS

LOIs will be reviewed by the Port CEO. If the LOI demonstrates that the builder possesses the relevant experience, that the development concept is likely to assist with the redevelopment of the property and that the price and terms are reasonable, then the CEO will arrange for the parties to participate in a preliminary collaborative design process described below.

- A. Preliminary Collaborative Design Process. The Port and builder (working through each party's design team) shall meet to refine the development concept described in the LOI. This meeting may be by telephone conference or other preliminary discussion. The preliminary collaborative design process shall consist of:
 1. Initial project development concept will be reviewed. The parties will endeavor to produce rough project sketches and assemble photographs and other illustrative materials.
 2. Upon successful completion of the initial meeting, a design meeting will be conducted whereby the parties will refine the development concept and the rough sketches in order for the builder to produce a schematic design mutually acceptable to the parties.
- B. Initial Evaluation by Port Commission. Upon successful completion of the preliminary collaborative design process, the CEO shall present all relevant project information to the Port Commission for evaluation. The Port Commission may take any action deemed appropriate with respect to proposal evaluation, including but not limited to requesting the parties to further refine the proposal through final design. In this case, the Port Commission shall grant the builder exclusive negotiating rights with respect to the proposal and site for a period of 90 days. During the exclusive negotiating period, the Port will not accept any other proposal for the site.

EXHIBIT A

- C. Final Collaborative Design Process. Provided the parties enter into the final collaborative design process, the builder, at its expense, shall produce of a set of drawings acceptable to the Port including site and representative floor plans with elevations for the major elements of the project. Schematic drawings shall also include exterior sections reflecting proposed architectural design and building materials. Emphasis will be placed on exteriors and especially, elevations facing streets and public spaces. The plans shall include a conceptual site plan which should include a sample or conceptual planting plan for site vegetation. Additionally, the builder shall describe the proposed schedule of development. Any contingencies that may affect this timeline shall be identified by builder. The Port may request additional project information.
- D. Final Presentation to Port Commission. Upon successful completion of the final collaborative design process, the CEO shall report to the Port Commission related to the overall progress of the project, including a staff recommendation related to the project. The Port Commission shall either reject the development proposal or direct the CEO to negotiate a purchase and sale agreement (or ground lease) with the builder. If the parties are unable to execute a purchase and sale agreement within 60 days, the proposal shall expire, and each party shall be relieved of all further obligations related to the proposed development.

IV. POST PURCHASE AND SALE AGREEMENT MATTERS

- A. Project Refinement. Upon execution of a purchase and sale agreement, the builder shall apply to the City of Kennewick (City) for project review and permitting. Should the City require changes to the project which materially alters the project, the parties will then attempt to negotiate the changes required in order for the builder to receive City approval of its project. If the parties are unable to negotiate changes required in order for the builder to receive City approval within a 60 days, the development proposal shall expire, each party shall be relieved of all further obligations. Any earnest money deposited by the builder shall be refunded to the builder, less any applicable administrative fee.
- B. Construction Progress. The Port will monitor construction and provide periodic updates to the Port Commission.

V. MISCELLANEOUS MATTERS

- A. All discussions between the parties are to explore the builder's qualifications and the viability of a development proposal. A binding obligation shall only be created by a written agreement setting forth all material terms, signed by the parties; and approved by an affirmative vote by the Port Commission;
- B. The Port may arrange for further action including introducing the concept to the Port Commission or appropriate third parties in order to perform due diligence and the parties understand that complete confidentiality cannot be guaranteed;
- C. Each party shall be responsible for all costs it incurs with respect to this matter, including professional and attorney's fees and costs;
- D. The Port makes no representations with respect to the property and the builder agrees to exercise all due diligence it deems necessary;

EXHIBIT A

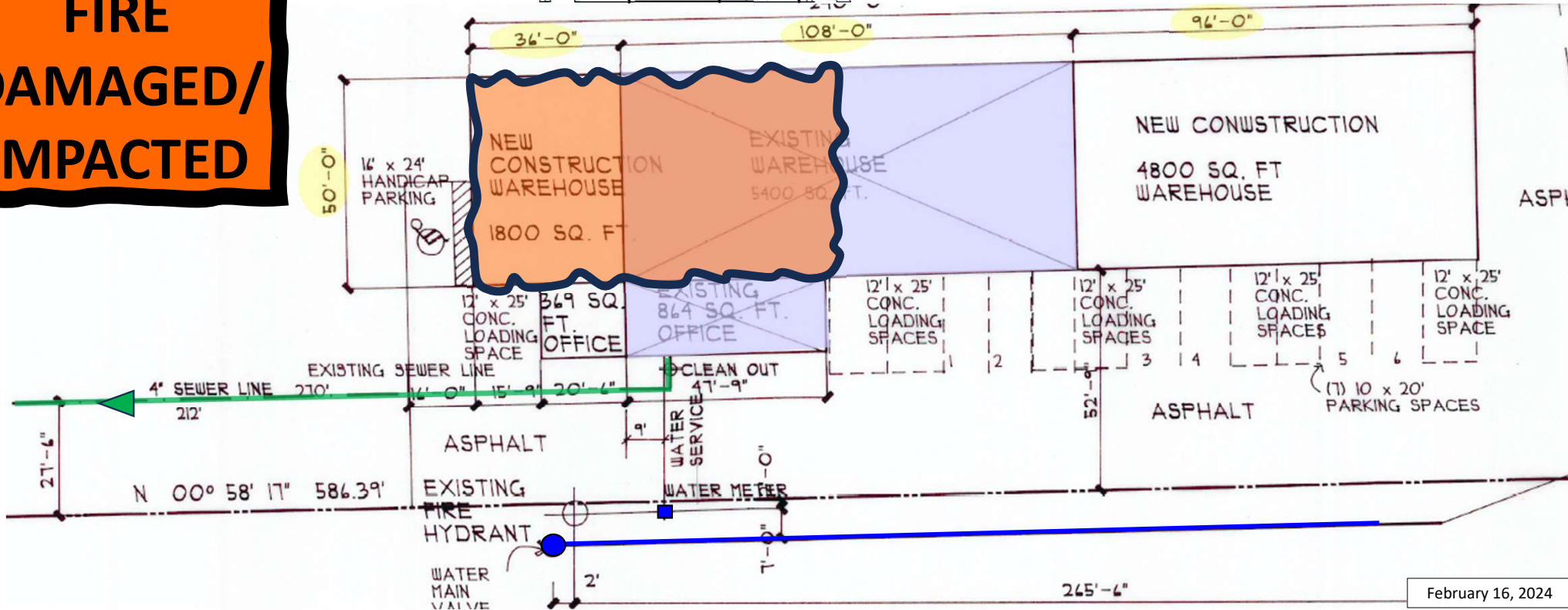
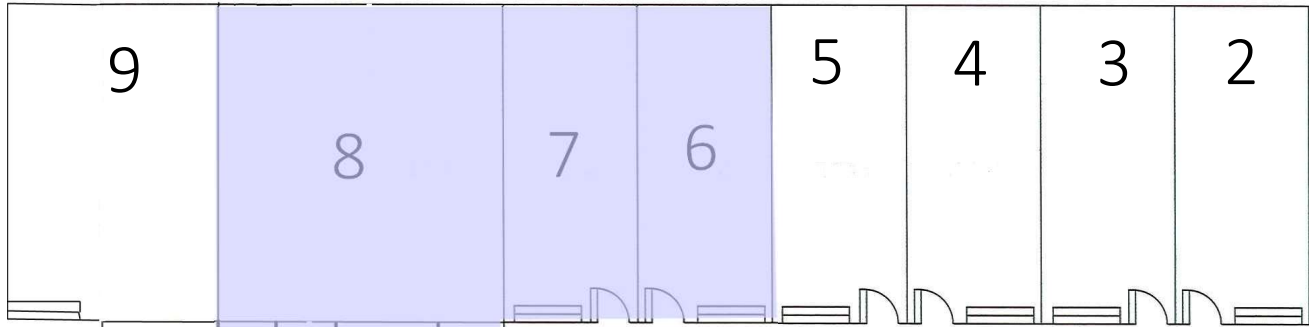
- E. Development proposals may be subject to disclosure under the Washington State Public Records Act;
- F. The Port reserves the right to verify builder credentials and to request supplemental information; and
- G. The Port Commission may waive any of these requirements for builders where the total project value, including land price, is expected to be less than \$1,500,000.



Development Building 3
1328 East 3rd Avenue
Kennewick, Washington

EXISTING

FIRE
DAMAGED/
IMPACTED



Development Building 3
1328 East 3rd Avenue
Kennewick, Washington

Retain/Demo

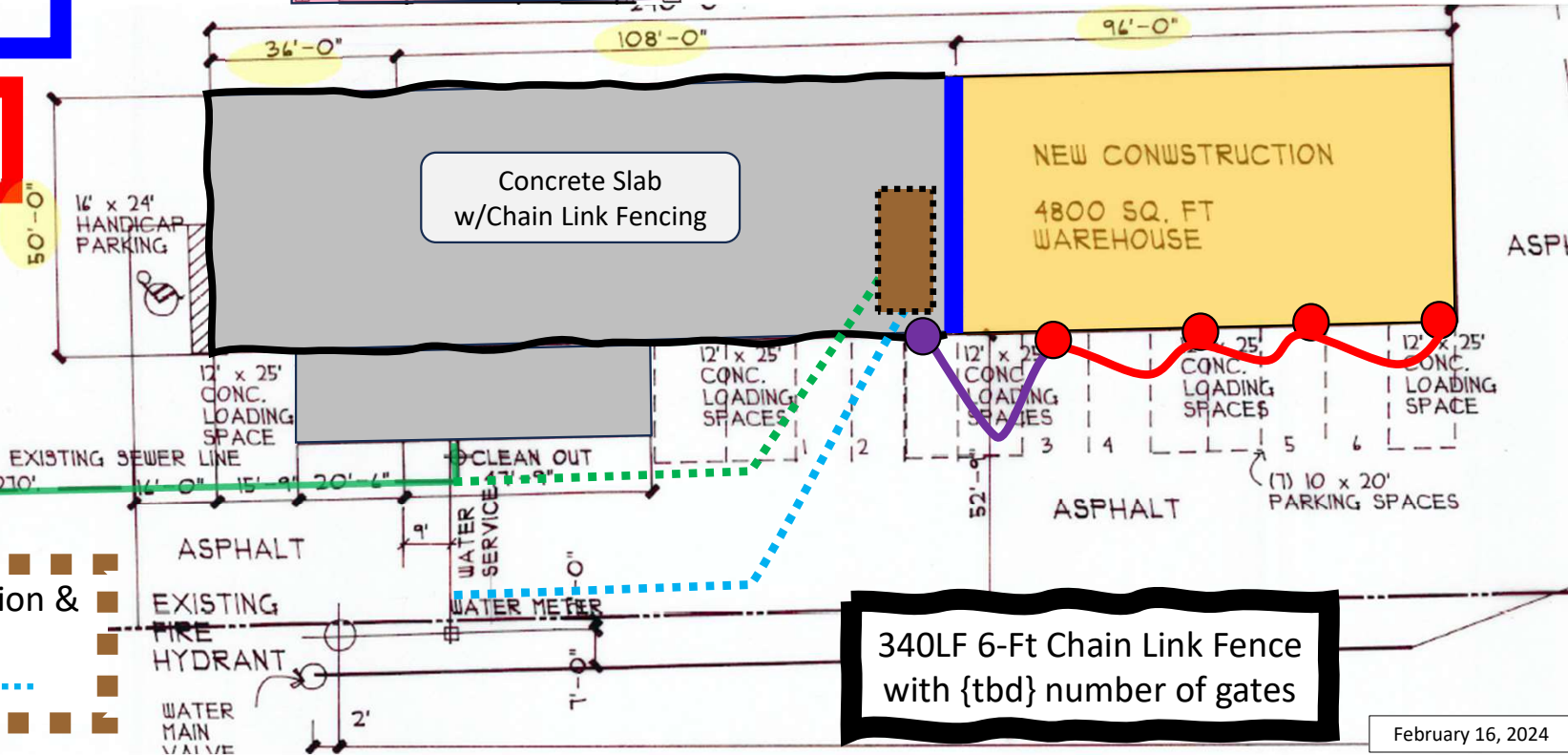
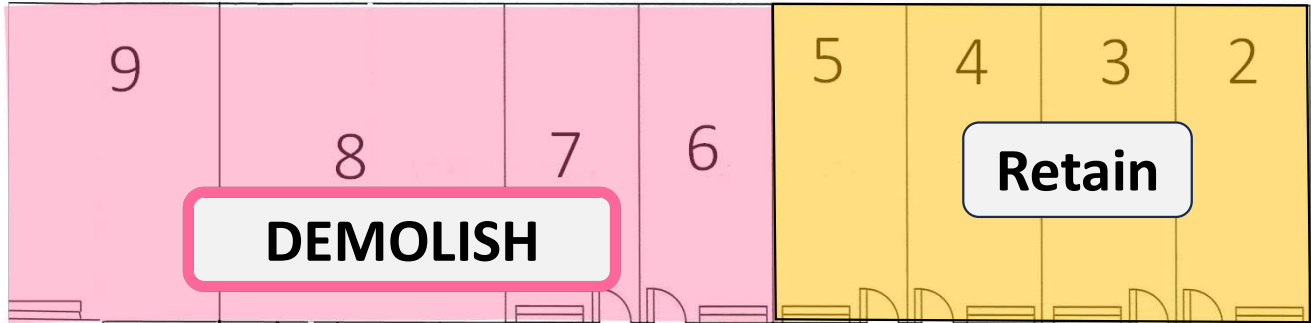
New Exterior Skin & Some
Framing & Man Doors

Retain Existing Electrical
Services to Bays 2-5

Retain Existing Electrical
Service to Bay 6 for
Exterior Power/Lighting
Network

Potential Bathroom Location &
Utility Extensions

..... S.S. H2O



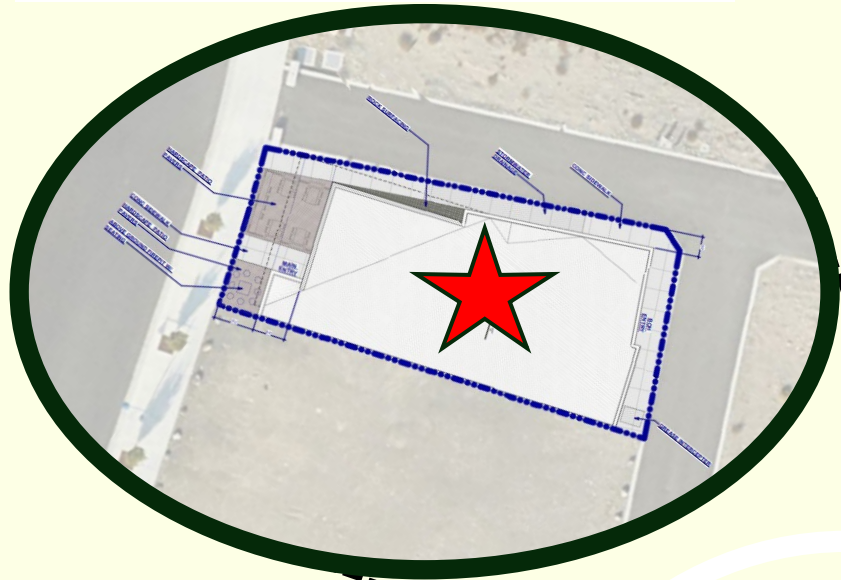
340LF 6-Ft Chain Link Fence
with {tbd} number of gates

Vista Field Lot 15 Proposal

An urban dining experience by
Yoori Nah & Bumki Hong



VISTA FIELD



**VISTA
FIELD**
Phase #1, Lot 15

Kuki Izakaya
Restaurant

*(Yoori Nah &
Bumki Hong)*

SITE LOCATION

Click the yellow parcels to view availability.

-  Parcels for Sale
-  Port Retaining for Future Development
-  Pending/Sold
-  Future Parking



- ✓ LOT 15
- ✓ Phase 1 development
- ✓ Parcel Size: 4,928 sf
- ✓ Single story building: 3,513 sf
- ✓ Proposed Use: Upscale Japanese restaurant
- ✓ Frontage along Crosswind Boulevard with secondary frontage along east/west alley
- ✓ View of water feature and octagonal fountain from outdoor seating area



VISTAFIELD

DEVELOPERS

YOORI NAH & BUMKI HONG

Local entrepreneurs

Owners of two Tri-Cities restaurants:

Ara Sushi, Richland

Chicken & Bowl, Richland

“We will offer food and drink in a pleasing environment so that customers can make unforgettable memories with their friends and loved ones.”



KUKI IZAKAYA



lpr
ARCHITECTURE

lpr
ARCHITECTURE
7525 W. DESCHUTES PL SUITE 2A KENNEWICK, WA 98336
WWW.LPRARCHITECTURE.COM | KYLE@LPRARCHITECTURE.COM

KUKI IZAKAYA RESTAURANT
PERSPECTIVE



VISTAFIELD

Key Points – Lot 15 Proposal:

- ✓ Use and Site Plan
- ✓ Offer Price
- ✓ Team: Real Estate, Architect, Builder
- ✓ Master Plan/Collaborative Design Review
- ✓ Financial & Legal Analysis



Photo by: Kint Farrow

COMMISSION CONSIDERATION

Is the project consistent with the Vista Field Master Plan?

Does the proposed project meet the use envisioned for the parcel/site in Vista Field?

Has the proposed project been reviewed by the Vista Field Town Architect team?

Do you like the proposed project?

90 Day Right To Negotiate?

Thank you!

Amber Hanchette
Director of Real Estate
Port of Kennewick

