

OPMA GUIDANCE: LEASE PRICES IN EXECUTIVE SESSION, NEW REGULATIONS FOR PORTS

Last year, the state Supreme Court released its decision in *Columbia Riverkeeper v. Port of Vancouver*, which covers discussions of lease price in executive session. The Open Public Meetings Public Act (OPMA) requires that “all meetings of the governing body of a public agency shall be open and public... except as otherwise provided in this chapter.” The first exemption permits a governing body to meet in executive session “to consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause likelihood of decreased price.”

Columbia Riverkeeper v. Port of Vancouver addressed how narrowly to read that real estate exception. The court set new requirements for ports and other public agencies to meet before using this exemption under the OPMA.

The court said: “We now hold that a government entity may enter executive session to discuss the lowest acceptable value to sell or lease property. To the extent that various factors directly alter the lowest acceptable value, the governing body may discuss how these factors directly alter the minimum price. This limited scope does not permit a general discussion of the contextual factors themselves; any such general discussion must occur at an open public meeting. Once the relevant factors have been discussed in public session, then, armed with this knowledge, the governing body may enter executive session; there, the governing body can apply this knowledge to set a new minimum price.”

How does this affect your port? Below, a few points of guidance:

- 1)** Put in place procedures to allow the Commission to discuss factors affecting price in an open meeting, before discussing specific or minimum price in executive session.
- 2)** Port staff should be prepared to explain real estate factors in an open meeting.
- 3)** Consider adopting a general checklist of factors that affect lease price. Because port districts manage diverse assets, these can be tailored to assets such as airports, marine terminals, industrial properties, etc.
- 4)** Commissions should review their Delegation of Authority resolution to ensure it allows the port director to negotiate leases using lease revenue guidelines. This can include basic parameters, lease maximum terms or annual lease revenue amounts.
- 5)** Factors which commonly affect price include: the lease term, the credit-worthiness of the lessee, the number and type of jobs created, wages and compensation for employees, consistency with port vision, likelihood of future growth and likelihood of position ancillary influences. There will be others, which port staff can provide and which the commission should discuss.
- 6)** Not all real estate decision are covered by this case. A government purchasing or leasing real estate is covered by a different, broader section of the law. OPMA also contains a general litigation exemption, that applies when public discussion is likely to result in an adverse legal or financial consequence to the government. The port attorney can advise a commission on these additional allowances.

WPPA has developed a guidance document, which you can download [here](#).

SPOTLIGHT

2017 NUMBERS FOR SEATTLE-TACOMA INTERNATIONAL: 46.9 MILLION PASSENGERS; \$22.5 BILLION IN ECONOMIC IMPACT

For the seventh consecutive year, passenger travel at Seattle-Tacoma International Airport set a record. Demand for air travel at Sea-Tac Airport increased 41 percent the last five years, from 33.2 million passengers in 2012 to 46.9 million passengers in 2017.



Increased demand means more airport-related jobs and local economic activity. A new airport economic impact analysis found that the airport supports \$22.5 billion in total economic activity, 19,100 jobs at the airport and a total of 151,400 jobs directly or through multiplier effects. When all 350 airport employers are combined, the total number of on-site jobs makes Sea-Tac Airport the 5th largest employer in King County.

The airport is currently underway with \$2 billion in construction projects aimed at serving more passengers and improving the travel experience, and expects to spend \$3.2 billion on capital development between 2017 and 2022. On February 8, the airport will begin a new high-profile \$17 million renovation to add 10,000 square feet to the Central Terminal dining area. No taxpayer dollars are used to fund airport projects.

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FROM ERIC JOHNSON



It's tax time for most of us in our personal lives, which is appropriate, because it feels like tax time in Olympia, too. There are a lot of discussions about taxes, which I'm watching with fascination. Below, I'll explain how these tax discussions relate to each other:

First, the Business & Occupation (B&O) tax: This is the tax that businesses love to hate, because it is a gross receipts tax. Most people don't know that it is temporary – it was adopted as an emergency during the Depression but legislators promised that it would be abolished soon (cue the snorts and giggles). Aerospace has a really low tax rate, and last year businesses and Republicans negotiated that same low rate for all manufacturing. The Governor vetoed it, eliciting claims of double-dealing. Interestingly, that low rate was the one thing Airbus had the WTO find as an unfair tax advantage for Boeing. You would think that this would spur legislators to create a level tax rate for all. You would be wrong, because... many Democrats want a carbon tax, and won't bargain on B&O until they get one.

Progressives love a carbon tax, but are vexed because taxing gasoline and natural gas is so regressive – the only tax more regressive would be a food sales tax.

Most businesses don't like it either, and no one who likes it seems able to agree what to spend the tax proceeds on. Environmental efforts? Education? Social Services? Or Transportation, which has a good claim since so much of the tax is on gasoline. Environmentalists say, "watch out; if you don't pass a carbon tax we'll run an Initiative, and pass it that way. That's a big gamble, however, because of ...

The Property Tax. With the exception of car tabs, this is the tax most hated by ordinary citizens. If it wasn't hidden in escrow accounts for most homeowners, there might be a revolt. Property taxes are how the state paid for education responsibilities, and King County took the biggest increase. Those tax statements have been mailed and sticker shock in setting in now in most urban areas. Of course those increases are supposed to be offset by lower local school levies (see above on the 'temporary' B&O tax). This tax anxiety makes a carbon tax Initiative a true gamble even in tax-loving blue precincts.

So, a B&O tax break is unlikely without the corresponding carbon tax. That's tough, because we also just raised property taxes to pay for education – because the Supreme Court told us we had to. It's almost as complicated as the Infield Fly Rule. Which reminds me: yesterday we heard the four happiest words in the English language, "Pitchers and Catchers Report!" This means we can briefly forget the tax headache, and instead imagine the smells of the ballpark.

UPCOMING EVENTS

Spring Meeting May 9-11, 2018

Hilton, Vancouver, WA
(Registration Opens March 2018)

Finance & Administration Seminar June 13-15, 2018

Enzian Inn, Leavenworth

Director's Seminar July 12-13

McMenamins Harbor Lodge,
Kalama

Commissioners Seminar July 22-24, 2018

Suncadia Resort, Cle Elum

Small Ports Seminar October 18-19, 2018

Enzian Inn, Leavenworth

EMPLOYMENT OPPORTUNITIES

Director of Finance and Accounting

Port of Grays Harbor

Facilities Supervisor

Port of Port Angeles

Environmental Planner

Port of Bellingham

Administrative Assistant

Port of Anacortes

Customer Service Rep II

Port of Port Townsend

Accounting Specialist / Accounts Payable

Port of Grays Harbor

Finance Manager

Port of Shelton

Real Estate and Business Development Director

Port of Olympia

Technician I, Accounting

Port of Tacoma

Business Development Manager I or II

Northwest Seaport Alliance

Accounting Manager

Port of Ridgefield

Executive Director

West Plains / Airport Area Public
Development Authority

Executive Director

Port of Othello

SPOTLIGHT (con't)

In addition to increasing economic development programs, the Port of Seattle expanded community development investments in neighborhoods affected by a busier airport.

Recently, the Port of Seattle created a new Airport Communities Ecology Grants program, began offering airport advertising opportunities for neighboring cities, established a local cities stakeholder roundtable, and became an active participant in a University of Washington study to examine the health impacts of ultra-fine particulates from airplanes. The Port of Seattle is also involved in efforts to create a similar study at the federal level.

Read the full release [here](#).

If you would like information on any of these positions, visit:

washingtonports.org/washington-ports/employment-opportunities