

## HUNDREDS GATHER IN MOSES LAKE TO CONTINUE RURAL JOBS DISCUSSION

Last week in Moses Lake 250 people from all over Washington gathered to talk about rural jobs. This event – initiated by the Association of Washington Business – was co-sponsored by the WPPA. It was the follow-up to the initial gathering on rural jobs last winter in Olympia, when nearly one hundred people gathered on a Saturday to discuss the importance of rural areas and brainstorm ideas for creating more jobs in those areas.



Legislative leaders presenting at Rural Jobs Summit 2017

Planners for the event initially did not expect more than 150 attendees, but were overwhelmed when 250 registered and more were added to a waiting list. The event began with a reception at the Port of Moses Lake, and continued the next day at Big Bend Community College. Altogether, eleven panels of speakers presented on a range of subjects.

The lunchtime keynote included remarks by Mark Sweeney, Senior Principal at McCallum Sweeney Consulting, a leading national site-selection firm for companies wanting to expand or relocate. When asked about the precedent of

Washington’s recent regulatory decisions on coal and methanol he said, “You didn’t do yourself any favors.”

Two statewide elected officials – the Commissioner of Public Lands and the Treasurer – both attended, as did 23 legislators, including the Senate Majority Leader and the Speaker of the House. This degree of high-level participation highlights the broad awareness of rural economic development. In addition to those officials, the Department Employment Security and several ports, counties and cities also participated.

Key topics included rural airports, infrastructure, water supply, competitiveness, access to capital and the importance of rural broadband capacity. The day ended with a panel of legislative leaders explaining how their caucus will prioritize rural job creation.

“WPPA should take a bow for its leadership in organizing and encouraging this event” said AWB President Kris Johnson. “Ports have been the earliest and most enthusiastic supporters of working on rural economic development.”

Using ideas presented at the event, as well as continuing staff work, the AWB and WPPA will continue to work with legislators, key agencies and the Washington Association of Counties to address rural economic development in the 2018 legislative session. ■



## KNOWING THE WATERS

By Frank Chmelik of Chmelik Sitkin & Davis P.S. - WPPA Counsel

An executive director asked that this month’s column focus on leases and lease pricing. Coincidentally, I was just talking with a port staffer who was looking at an old and somewhat unusual

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## PORT SPOTLIGHT

### THE RAILROAD RETURNS TO DAYTON

Earlier this month, the oldest train depot in the State of Washington celebrated the arrival of the newest train service in the State of Washington. In historic Dayton, the citizens of the Port of Columbia welcomed the arrival of Frontier Rail’s Columbia Walla Walla Rail Line.

This event was the culmination of years of work by the Port of Columbia – led by their Port Manager Jennie Dickinson – to restore freight rail service to the Southwest Washington community of Dayton. The service was restored after grant funds from WSDOT, matching funds from the Port of Columbia and Seneca, and in-kind work from Frontier Rail fixed bridges between Dayton and Walla Walla that needed repair and upgrades.



The rail line was deeded to the Port of Columbia in 1996, after the Union Pacific Railroad abandoned the line – despite the importance of the line to Seneca, who was a key employer in the community. The Port took over ownership, but inherited a rail operator that was unwilling to make needed improvements and investments in the line. In 2014 a portion of the line was closed, which stopped all rail shipping to Seneca. The port stepped in at this point and worked with partners Frontier Rail,

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## KNOWING THE WATERS

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lease and trying to understand what was intended and why the tenant had received such a favorable below market deal. So, this month's column will focus on lease forms and lease pricing.

**GET, UNDERSTAND AND REVIEW FORM LEASE.** Most ports and your port should have a well-understood standard set of lease documents. I say a standard set (as opposed to one lease form) because the lease forms vary for airports, existing buildings, undeveloped property, marinas and leaseholds that include Department of Natural Resource aquatic lands. These documents are not "rocket science" so the port leasing staff should understand each provision. If it has been a while since these form leases were reviewed and compiled, ask your port attorney to be proactive and sit down with the leasing staff and walk through these leases so they are well understood. This is also a good time to update language and insert new provision. For example, it is becoming common to include a clause waiving a tenant's protection from lawsuits brought by the tenant's employees for personal injury.

**LEASE RATES AND THE STATE CONSTITUTION.** Port commissions have great discretion in setting lease rates because RCW 53.08.080 gives a port commissions wide latitude to lease property "under any terms and conditions" the commission deems proper. Fair market value is not required. The curb line on this authority is Article VIII, Section 7 of our state constitution which prohibits gifting of public funds. A gifting of public funds occurs when there is a lack of governmental purpose to the action. Therefore, if the lease rate is below fair market value the port commission should articulate, on the record, the government purpose for the reduced rate. Note that leases to other governments need not be fair market value but must reflect "true and full value" and that any really cheap lease to a non-profit will draw auditor scrutiny.

**LEASE RATE POLICIES AND "BLINKING."** Before setting a particular lease rate, consider adopting a leasing policy. In a policy, the port commission can articulate its government purpose for renting below fair market value - for example, encourage marine trades, support green jobs, attract tourism or help existing businesses grow. Since lease rates are typically determined by a percentage rate of return applied to the fair market value of the property at "highest and best use," a

reduced rent can be expressed by either a reduced percentage rate of return for particular uses or determining fair market value based only upon a particular use. With tenant and public input, the port commission can set the discounts and under what circumstances those discounts will apply. For example, marine trade tenants or fishing industry tenants may receive a different rate than say - hotels. Moreover, with a policy in hand, a port commission can calculate the revenue impact to the port from the policy's application.

**OTHER ADVANTAGES OF A LEASE RATE POLICY.** A leasing rate policy has several other advantages. First, it provides guidance to staff in negotiating new leases, responding to existing tenants and predicting revenue. Second, it prevents what I call "blinking" which occurs when a tenant comes to the port commission and demands a favorable rent or a reduced rent. The tenant typically argues the value of their business to the community justifies the reduced rent. If the port commission grants the request - it has "blinked." Experience shows that once the port commission "blinks" by agreeing to the reduced rent for one tenant, other current and prospective tenants beat a path to the commission chambers asking for the same treatment. The predictable result is port revenue declines. A policy applied to all leases avoids this problem. Third, it helps the port staff and commission respond to new and existing tenants' requests for leasehold improvements installed by the port or use of adjacent port facilities, like parking lots, without any change in rent. Typically, port investment and use of port facilities result in increased rent but the policy could justify exceptions.

In conclusion, well-drafted and well-understood lease forms are worth the effort to create and the ongoing effort to maintain, because there is no better call for a port to get after a dispute arises than from its attorney saying, "I reviewed the lease and there is no problem." Further the key in making lease rate decisions, like many port commission decisions, is to clearly articulate the commission's thinking, its justification and the government purpose for its action. I think the best practice is to do this in a policy and not on an ad hoc basis.

As always, please contact your port counsel with any questions regarding this topic. And, if you have a particular question for a Knowing the Waters please email me at [fchmelik@chmelik.com](mailto:fchmelik@chmelik.com). ■

## UPCOMING EVENTS

### New Commissioner Seminar

Nov. 14 (12pm-5pm) - Nov.15, 2017 (9am-11:30am)  
Motif Hotel, Seattle

### CLE

November 14, 2017 (1pm-5pm)  
Motif Hotel, Seattle

### Annual Meeting

November 15-17, 2017  
Motif Hotel, Seattle

### Port Day

January 23, 2018  
Olympia

## PORT SPOTLIGHT

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WSDOT and Seneca to make the needed investments and re-open the line. These investments mean that rail service will resume to Dayton, and key jobs will be retained. The rail line also enables the port to market additional properties, as a siding was added at Blue Mountain Station.

One new customer has already signed up for rail service. Concrete Industries will begin shipping rock and gravel to Walla Walla with the first load being moved this week. "We are truly excited to have freight rail service return to our town" said Port Commission President Earle Marvin. ■

## EMPLOYMENT OPPORTUNITIES

### Deputy Executive Director

Port of Port Angeles

### CAD Design Manager

Port of Seattle

### Controller

Port of Port Angeles

### Communication Manager

Washington Public Ports Association

### Senior Cost Engineer Scheduler

Port of Seattle

### Accounts Receivable Manager

Port of Seattle

### Executive Director

Humboldt Bay Harbor, California

### Accounting & Financial Reporting Business

Technology Analyst

Port of Seattle

### Payroll Technician II

Port of Tacoma

### Facilities Management Specialist

Port of Tacoma

### HR Manager, Labor & Employee Relations

Port of Tacoma

### Project Manager II, Engineering

Port of Tacoma

### Director, Port Operations

Northwest Seaport Alliance

If you would like information on any of these positions, visit [washingtonports.org/washington-ports/employment-opportunities](http://washingtonports.org/washington-ports/employment-opportunities)