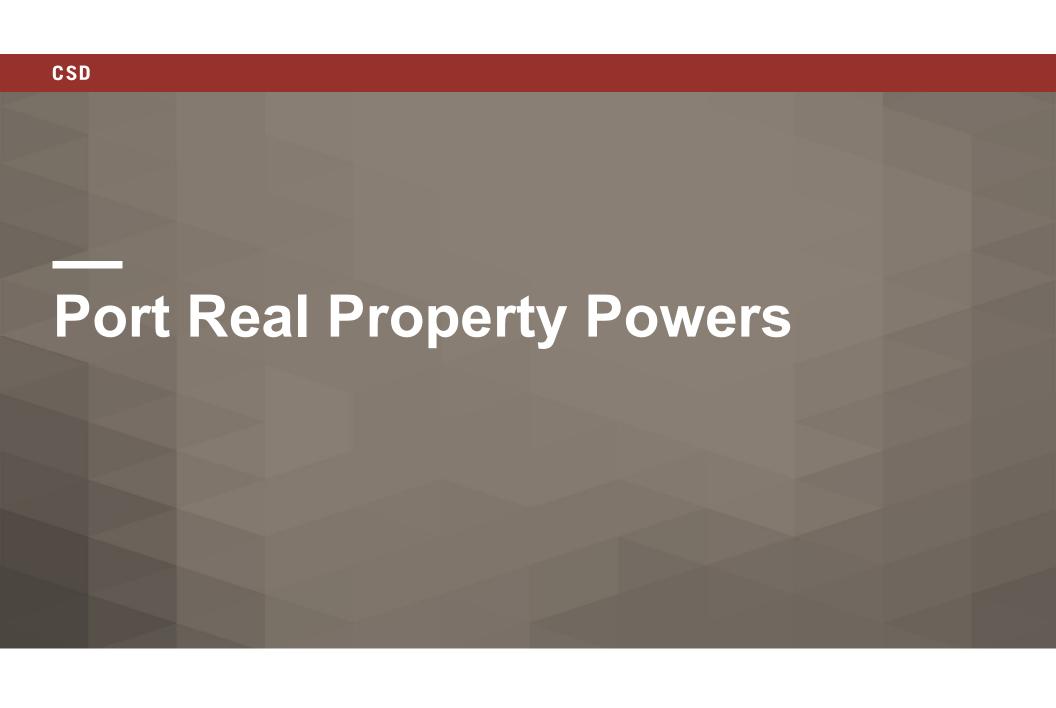


PORT REAL PROPERTY POWERS OVERVIEW

Port of Port Townsend Seth A. Woolson May 19, 2022 Seth A. Woolson Chmelik Sitkin & Davis P.S. 1500 Railroad Avenue Bellingham, WA 98225 (360) 671-1796 swoolson@chmelik.com www.chmelik.com



- Directly Own and Operate Facilities
 - Specifically enumerated Port operations:
 - Extensive list in RCW 53.08.020 (harbor improvements, warehouses, grain operations, cold storage, oil tanks, ferries, subways, admin buildings, fishing terminals, freight/passenger traffic, belt line railways...
 - Water/sewer utilities and pollution control facilities (RCW 53.08.040)
 - Tourism related facilities (RCW 53.08.255)
 - Park and recreation facilities (RCW 53.08.260)
 - Moorage facilities (RCW 53.08.310)
 - Telecommunications facilities (RCW 53.08.370)

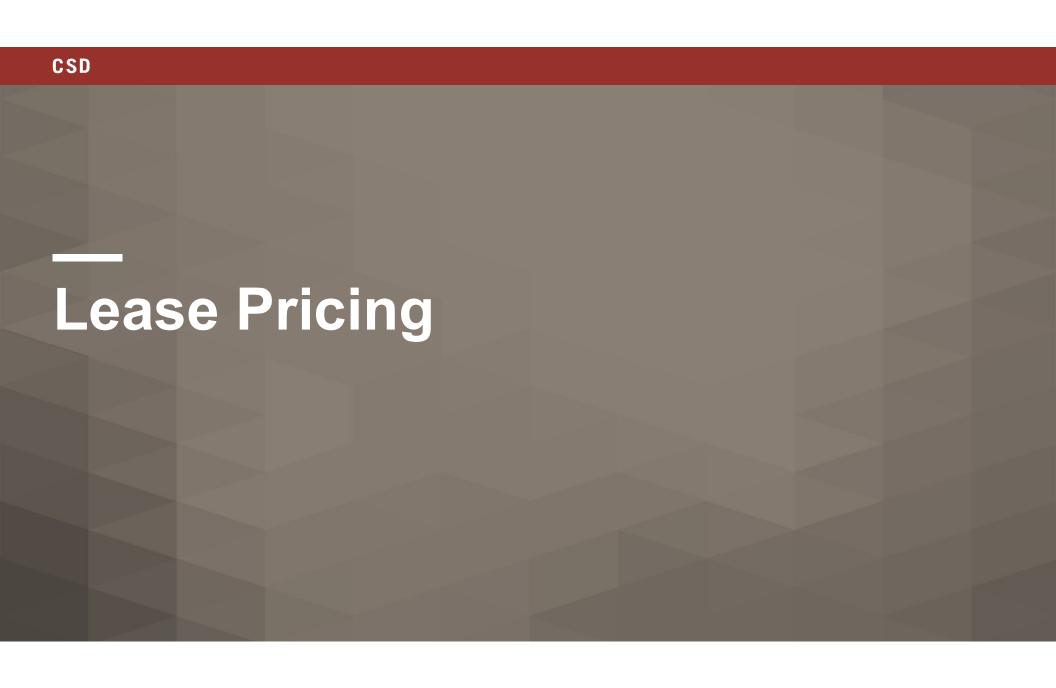
- Sell Port property and facilities
 - Non I.D.D. Property (RCW 53.08.090):
 - Commission can sell to any party, for any purpose, on any terms
 - Must declare property surplus to needs and remove from Comprehensive Plan of Harbor Improvements
 - I.D.D. Property (RCW 53.25.110-.170):
 - Public hearing
 - Average of two appraisals
 - Title restrictions on use

- Lease Port property and facilities
 - A district may lease lands...for such purposes and on such terms as the port commission deems proper (RCW 53.08.080)
 - VERY broad power
 - Restrictions on time
 - 50-year initial term, up to 30 years of renewals on non-airport
 - 75 years / useful life of improvements on airport

- Common lease types:
 - Raw land lease:
 - Generally requires construction within defined period
 - Avoids "land speculators"
 - Build to suit:
 - Port constructs building specifically for tenant's needs
 - Increased development cost (prevailing wages)

- Common lease types:
 - Speculation build:
 - "Build it and they will come"
- Most Ports?
 - Some mix of all three





Common Lease Pricing Methodologies

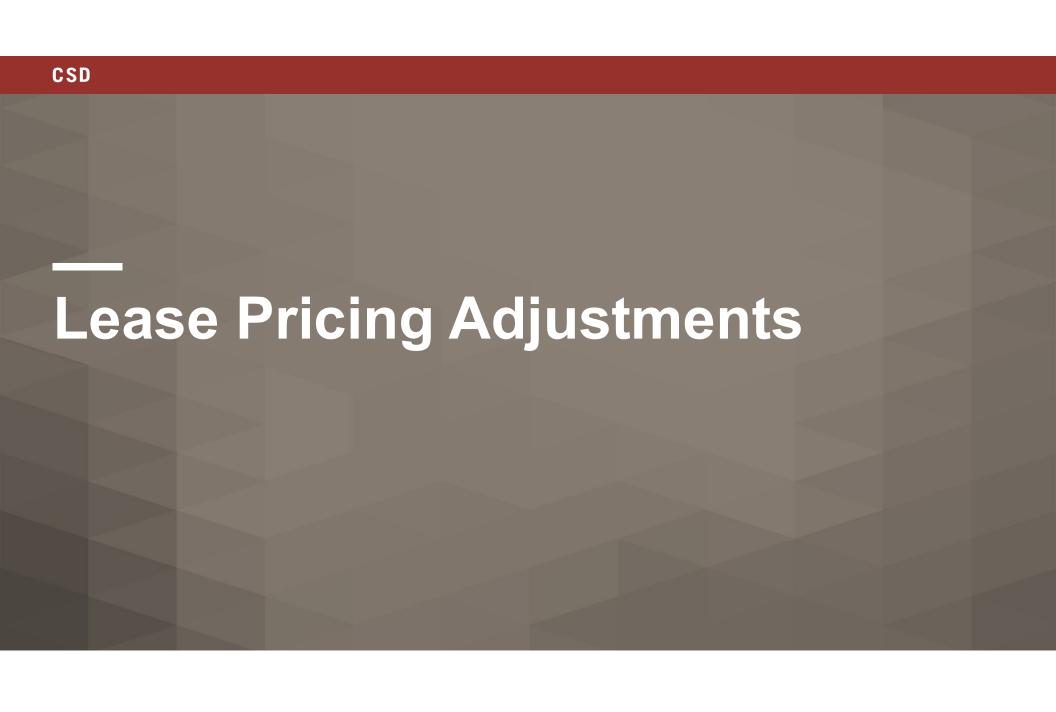
- Fair Market Rental Value: What is the rental rate for similarly situated property throughout Washington State?
 - Formal Determination by Appraisal
 - Expensive and time consuming
 - Informal Survey/Assessment by Port staff
 - Other public ports
 - Private facilities
 - Negotiation by parties

Common Lease Pricing Methodologies

- Standard Rate of Return: Fair Market Sale Value of property, multiplied by a Consistent Rate of Return.
 - Best Practice: Negotiation of FMV by parties
 - If Negotiation fails, then Appraisal of FMV
 - Parties share expense of Appraisal
 - Expense of Appraisal incentivizes parties to negotiate an Agreeable FMV
 - Other Options:
 - FMV established by Appraisal or BPO (Expensive and time consuming)

Port of Port Townsend Lease Pricing Methodology

- Port's Lease Policy:
 - Standard Rate of Return of 9.5% of FMV
 - May utilize MAI Appraiser for Market Analysis/Rental Surveys
- Good practice:
 - Equalizes rent across Port assets

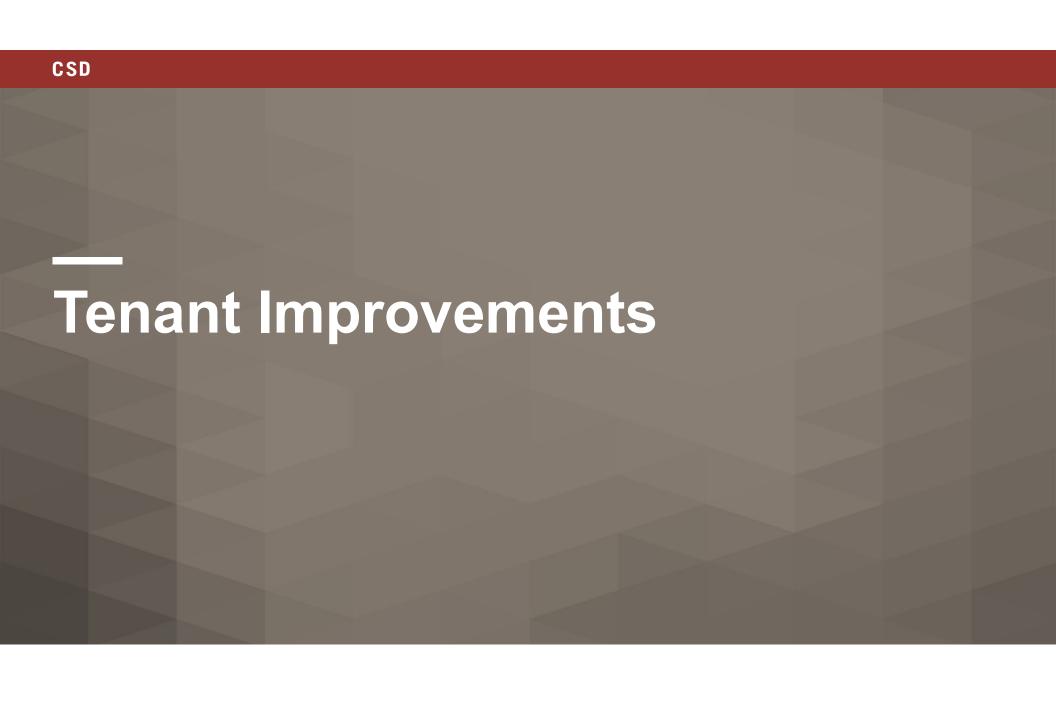


Common Lease Pricing Adjustment Methodologies

- Set annual percentage increase
 - Unusual in Port leases
- Annual CPI-only Adjustments
 - Standard in short-term Port leases (less than 5 years)
- Annual CPI Adjustments with Periodic (usually 5 year) FMV Adjustments
 - Annual CPI Adjustments <u>approximate</u> real property change
 - Periodic Adjustments to "catch up" to FMV prevents Port from "losing ground" to actual FMV

Port of Port Townsend Pricing Adjustment Methodology

- Port's Lease Policy:
 - Annual CPI Adjustments
 - 5-year Periodic Adjustment of FMV
 - BUT, Periodic Adjustment capped at 5% of prior year's rent
 - Not standard in Port leasing
 - Artificially depresses FMV Rental Rate
 - Can lead to <u>drastic</u> under market Rent over long-term leases

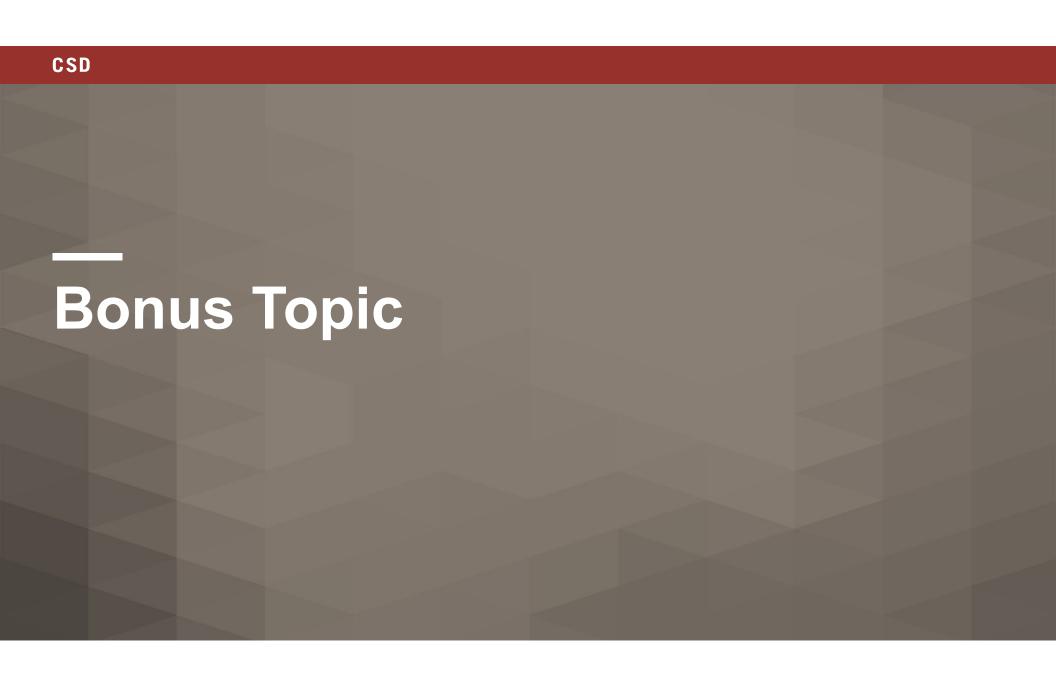


Common Tenant Improvement Requirements

- Require Tenant construction and require Tenant to leave in place at end of Lease:
 - Not standard in Port leasing
 - L.E.T. and Prevailing Wage issues
- Allow Tenant construction and require Tenant to leave in place at end of lease:
 - Not standard in Port leasing:
 - L.E.T. issue
 - Future Port needs/plans may change
 - Condition of building = potential liability

Common Tenant Improvement Requirements

- Allow Tenant construction and Port option to allow Tenant to leave in place or require Tenant to remove at end of Lease:
 - Standard in Port leasing
 - Lease value should derive from Rent, not structures
 - Allows Port maximum future flexibility
 - Prevents Port from getting stuck with a liability
 - Avoids L.E.T. issues



Conflicts Between Lease and Port's Lease Policy

- Lease language prevails
- If Port desires old leases to reflect Port Lease Policy, amend old leases
 - Bring standard form language (indemnification, assignment, insurance)
 current when amending
 - Provides Tenant benefits of Port Lease Policy while also modernizing Port's protections under Lease

CHMELIK SITKIN & DAVIS P.S.

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