

**CHMELIK SITKIN & DAVIS P.S.**  
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# PORT REAL PROPERTY POWERS OVERVIEW

Port of Port Townsend  
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# Port Real Property Powers

# Port's Extensive Real Property Powers

- 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)

# Port's Extensive Real Property Powers

- 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

# Port's Extensive Real Property Powers

- 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

## Port's Extensive Real Property Powers

- 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)

## Port's Extensive Real Property Powers

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



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# Lease Pricing



# 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

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# Lease Pricing Adjustments

# 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 approximate 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 drastic under market Rent over long-term leases

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# Tenant Improvements

## 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

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# Bonus Topic

## 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

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