

**OCEAN HIGHWAY AND PORT AUTHORITY  
ATTORNEY REPORT  
02/2018**

1. City of Fernandina Beach & Port Operations/Facilities:

a. Customs House - Commissioner Franklin and I planted azaleas, Egyptian iris, and a sago palm at the Customs House on January 12. Somewhere there are pictures to prove it. One of the previous sago plantings had a scale infection which I've treated. All the palms have been fertilized. Included in your meeting packet is a letter from Steven Parrott of US Customs regarding our long term plans, to which I have responded. We still need to develop a plan to address the matter of the continued presence of US Customs/Border Protection at our facility. I suggest we wait until after we see how the new port operations and cash flow shape up. I still have not received the promised minutes to the meeting that took place months ago.

**Information only, no action required. I suggest that Commissioner Franklin and I continue to stay in contact with US Customs.**

b. Nassau Terminals - The transfer of ownership of Nassau Terminals by Kinder Morgan has taken place, effective on Tuesday, February 6, I believe.

**Information only, no action required. Welcome to Mr. Ragucci.**

c. Bond Redemption - As part of that transaction the redemption of the bonds has been initiated. I expect that to be completed around March 9, which should be the week prior to the March regular meeting.

**Information only, no action required. Upon closing the bond trustee will wire funds to the account established at First Federal to receive the same. Secure wire transfer procedure has been provided to the trustee and our chairman.**

d. Attorney Fees - Regarding the amount of time I've spent on the bond redemption, I have records, but have not compiled the total amount of time spent. However, my estimate is that it is that I am in well over 100 hours. That equates to over \$35,000.00. I've detailed a fair amount of that time in my previous two reports, but simply have not had time to even start on what has happened since our last regular meeting. I will put together a compilation and circulate it to you before our March meeting.

**Information only, no action required. However, I would like to be paid for services upon receipt of sufficient funds allowing for the same.**

e. Business Planning - As I pointed out to you in the transaction outline I circulated to you in December, the consequence of paying off the bond debt is that the functions of the bond trustee will cease. There needs to be a practical discussion by OHPA with Ms. Cason about shifting and increasing duties. The same is true for our Mr. LaPorte, perhaps even more so.

**Action Required:** I suggest that three (3) or more meetings be arranged between now and our next meeting so that:

i. **Meeting #1: Meeting of OHPA staff and Chairman.** First, we need to know that we are all comfortable with our own financial procedures moving forward.

ii. **Meeting #2:** Next, a meeting between OHPA staff and Chairman with corresponding individual(s) at Nassau Terminals needs to be arranged so that we are able to work in coordination with each other.

iii. **Meeting #3:** Finally, a third meeting will probably be necessary to estimate how much additional time, energy and effort will be required by Ms. Cason and Mr. LaPorte so that the business runs smoothly, the bills get paid and get paid on time, and, most importantly, how much additional compensation is appropriate; then

iv. If appropriate, a budget amendment needs to be prepared and a Resolution adopting the same be presented at our March meeting.

f. **Fendering Replacement Project** – Included in your notebook is material related to the sale of Hal Jones Contractor. They have the contract with us on the fendering system project. they've sold all of their assets, including contracts, receivables, and work in progress, to Vecellio and Grogan. This is a very large company with significant interests in the paving industry. However, through its Ranger subsidiary, they also have already entered the Florida seaport construction arena with projects at Port Everglades (Dania) and Port of Palm Beach. They outline their qualifications and licensing in the letter found in your notebook.

**Action Required:** I request a Motion be made to approve their requested transfer of the dock fendering contract from Hal Jones Contractor, Inc., to Hal Jones Contractor, a Division of Vecellio and Grogan, Inc.

2. Callahan - Nothing to report.
3. Hilliard - Callahan Corridor: Nothing to report.
4. Yulee – Nothing to report.
5. Nassau County – Nothing to report.
6. Camden County – Nothing to report;
7. Other than continuous, almost daily work on the bond redemption and handling of the Customs House and Hal Jones matters, there is nothing else to report.

Respectfully submitted,

CLYDE W. DAVIS /s/



# *Ocean Highway & Port Authority*

## *Nassau County*

CLYDE W. DAVIS, GENERAL COUNSEL

February 8, 2018

Steven Parrott, Port Director  
U.S. Customs and Border Protection  
403 North 3<sup>rd</sup> Street  
Fernandina Beach, Florida 32034

Re: Customs House

Dear Mr. Parrott,

I have in hand your letter received on February , 2018, and directed to Commissioner Carrol Franklin of OHPA. It has been provided to me for reply.

1. Minutes of Previous Meeting: It has literally been months since our initial meeting at the Customs House located at 403 No. 3<sup>rd</sup> Street. Although we've been promised a list of those who attended, along with "minutes" or notes of our discussion, we still have not received the promised documents;

2. Free Space: Regarding the request by your agency for free space or space for which only a nominal charge is made - Please be advised that we are not in a position to provide free space to you in the manner outlined in your letter. At least we cannot do so at this particular time. My advice is that, were we to do so, we could create avoidable liability for ourselves.

Let me explain, once again, the dilemma:

A. OHPA has significant issues related to debt and cash flow. In addition, we do not have the power to tax in order to pay for anything. All expenses must be met from existing cash flow;

B. The two (2) most significant burdens of debt carried by OHPA relate to:

- i. the outstanding bond debt of approximately \$6.6 million; coupled with
- ii. approximately \$4.4 million of additional and unsecured debt.

Both of these sums will mature within approximately five (5) years;

C. On the other side of the ledger, OHPA has been paying, on the average, about \$1.1 million per year toward the retirement of its debt. Applying the rate of repayment against the mountain of debt, the math gets pretty simple. Unless we do something we will hit a point where

the debts mature, payment is due, and there is a default

D. As we've indicated, OHPA is doing all that it can to address the issues presented. Included in their program are on-going efforts to restructure the debt. Also included are things such as OHPA port commissioners drawing only one-half (½) their salary. As you know, Commissioner Franklin and I installed the latest round of landscaping, as well as the previous round. The plants we installed were not purchased with OHPA funds, but were donated.

It is in this context that I advise that we not extend unduly favorable treatment to a tenant, even a government agency, when there is even a slight possibility of a future default. We know that the space provided to US Customs and Border Protection at the Port of Fernandina is provided by OHPA at approximately the carrying cost of the same. In other words, we do not make any attempt to show a profit from the use of the facility by your agency. I say this to you knowing that there certainly have been years where you have paid more than the actual amounts expended by OHPA on the space. On the other hand, I know that there certainly have been years where OHPA has expended far more money on the space than received from GSA. As my Dad taught me, a good deal needs to be a good deal for everybody. The current relationship works in both directions. Some months we are "up" and some months "down" but the goal is to be close to "even" at year end. In the current arrangement, we have all of the risk, but we manage and we've been pretty adept in making improvements by utilizing some facets and funds from grants to accomplish larger projects.

This structure is certainly not the only way to arrange matters. For instance, if you seriously desire a "dollar a year" arrangement, and if we rented the building to you/GSA for a dollar and year and you, in turn, assumed all responsibility for utilities, lawn service, maintenance, and the like, then we're on the same page. Under that structure GSA has all of the risk, but knows that there is no positive cash flow for OHPA. I have no problem recommending such a transaction to OHPA. However, this is not what I understood you wanted. My understanding is that you not only want us to provide you space, but you want us to cover all of your expenses incurred in using that space. It is my understanding that you want us to pay for all water, sewer, garbage, electricity, lawn service, cleaning, maintenance and the like, and in addition to providing you with space necessary for inspections, you also want us to provide space for offices, bathrooms, reception and waiting areas, as well as requisite parking.

If you are talking about a transaction where we let the building for a dollar a year, but continue to pay all of the expenses, then what you're asking for is not workable. We do not have the funds to do so and we cannot provide such favorable terms to you at the additional risk to creditors. We cannot do so when our own people are not even getting paid at a level to which they are entitled. I don't think that the OHPA Commissioners would buy it and I doubt that I could sell it to a judge and jury if we ever get dragged into court by a creditor.

I am happy to explore all the available alternatives. Let me throw out some ideas. Here are four (4) different one:

A. Keep the existing lease structure. We can keep it as it is or we can provide some type of "even-up" provision for the end of each year;

B. Move to a true "dollar a year" format, but one in which GSA pays all expenses related

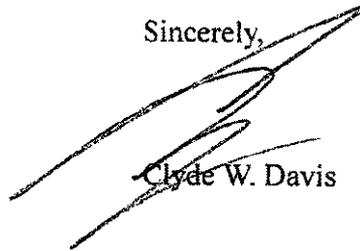
to the use of our facilities;

C. At one time the federal government provided its own space to US Customs at the downtown post office in Fernandina Beach. Perhaps it may be less expensive to relocate offices to that building and just conduct inspections at the port.

D. Perhaps there is grant money available that would allow the construction of a shared facility. If the local Sheriff's Office, Fish and Wildlife Conservation Commission, US Coast Guard, Fernandina Beach Police Department wanted to join in, perhaps we could donate the real estate and some formula developed that allowed you to meet your goal.

Of course, everything is subject to OHPA approval, but I am more than happy to explore all options and alternatives in this situation. Just let me know when and how you'd like to proceed.

Sincerely,

A handwritten signature in black ink, appearing to be 'Clyde W. Davis', written over a printed name.

Clyde W. Davis

CWD/

cc: C. Franklin  
OHPA