CBJ DOCKS & HARBORS BOARD
FINANCE MEETING MINUTES
For Tuesday, September 24th, 2013

I. Call to Order

Mr. Donek called the Finance Committee meeting to order at 5:00pm in CBJ room 224.

II. Roll Call

The following members were present: Greg Busch, Kevin Jardell, Mike Peterson, Scott Spickler, and Tom Donek.
Also in attendance were the following: Carl Uchytil - Port Director; Christopher Orman - Assistant City Attorney; Bob Bartholomew – Finance Director; Loren Jones – Assembly Member; Derek Duncan - Goldbelt; Robert Loiselle - Goldbelt.

III. Approval of Agenda.

MOTION BY MR. SPICKLER TO APPROVE THE AGENDA AS PRESENTED AND ASKED UNANIMOUS CONSENT.

Motion passed with no objection.

IV. Public Participation on Non-Agenda Items – None.

V. Approval of August 27th, 2013 Finance Committee Meeting Minutes.

MOTION BY MR. SPICKLER TO APPROVE THE AUGUST 27, 2013 FINANCE MEETING MINUTES WITH THE CORRECTIONS REQUESTED BY MR. UCHYTIL AS PRESENTED AND ASKED UNANIMOUS CONSENT.

Motion passed with no objection.

VI. Items for Action.

1. Mt. Roberts Tram lease

   Presentation by the Port Director – Carl Uchytil

   Mr. Uchytil introduced Mr. Orman from CBJ Law department. Where we are with the tram is that Ms. Mead recovered original documents of the lease that the assembly wrote and what the intentions were in 1994. She gave her legal opinion that it is not limited to an aerial tram only as the best and highest use of the property. Ms. Mead provided a letter to Goldbelt advising this. Goldbelt responded they disagreed. We remain at an impass. Mr. Uchytil stated his position is that the 10% royalty applies and the lease rent should be based on the Horan & Company appraisal.

   Mr. Orman stated his knowledge is limited on the history but he can give his legal opinion. This based on an ordinance from 1994. There are assembly minutes regarding the writing of this lease. The issue is what the interpretation of how to appraise the land is. There are two choices for the Board to either make a decision then Goldbelt can appeal to the assembly or a new lease agreement through the assembly. This is a rare and difficult lease because of the ordinance and not knowing if the tram would be successful back in 1994.

Committee Questions

Mr. Jardell asked Mr. Orman, you mention making a decision, on what? The right definition for evaluation or the ultimate appraisal value?

Mr. Orman answered he views it as interpretation issue and the Board should decide on which interpretation applies.

Mr. Jardell said if the lease established a method and if there is a disagreement it spells out what to do. It says higher a third party to make the decision.

Mr. Orman stated according to the lease we are assuming both appraisers are reading the methodology the same way. The third party would determine who is right if under those same interpretations they differ on amounts. But the issue is the first two appraisers are using two different methods which becomes a bigger issue of whose interpretation is right. The third appraisers won't work if the first two are not using the same interpretation.

Mr. Jardell responded it is not uncommon to have two appraisers having different views and we could still get a third appraiser make the decision then we move on and Goldbelt can appeal.

Mr. Orman said the concern is that the two appraisers were so different then the third party picks one and it may not agree with what the assembly intended. It is unique and different with the royalty rent and the ordinances. It would make the most sense to decide what the interpretation should be first then the appeal to the assembly would make the assembly decide what they originally intended.

Mr. Jardell said with the help of the law department we decide and then the assembly said we are right then what is the next step if Goldbelt still disagrees.

Mr. Peterson said I see it as the third party being a judge. Can we set that aside and just negotiate figures and see how far apart we are?

Mr. Orman answered yes, do a new lease and new ordinance and set amounts.

Mr. Busch asked if we would bring in a neutral mediator.

Mr. Orman answered no.

Mr. Busch asked how was the appraisal of the property done the last time.

Mr. Uchytil said as far as he knows it has never been right. He asked can we just send a bill and then Goldbelt can appeal. He stated he does not see negotiations going any further.

Mr. Orman said the board should decide on the interpretation then decide which appraisal makes the most sense and then it's up to Goldbelt to appeal.

Public Comment

Mr. Duncan, Juneau, AK
Mr. Duncan said he believes Goldbelt's legal interpretation is correct. It is our belief we have not gotten to the negotiation table and we are prepared to pay more. He proposed a lease amendment and we can set a time to do negotiations at any time even next week.

Mr. Peterson asked given the length of time why is Goldbelt now asking for changing the lease evaluation every five years instead of every three when we are still not in agreement with the current lease.

Mr. Duncan said the process is set to go up for changes again next year already and we have not finished this one.

Committee Discussion/Action

Mr. Donek said he does not see a new lease or amendment in our future because we inherited this lease from the assembly and we are not getting anywhere after two years with the current lease and we need to move on

Mr. Peterson asked who did Goldbelt ask to negotiate with.

Mr. Donek said it is us, the Harbor Board and we had a special committee in the past that already worked on this for several months to a year.

Mr. Jardell said when he was chair, He and Mr. Uchytil met several times with Goldbelt and did try to negotiate the fair market value. The lease only allows negotiation of the fair market value and not the royalty rent. The Board has been trying to negotiate what is the fair market value and negotiating to a dollar amount is not determining it correctly. Through verbal discussions with Goldbelt, we were not successful in agreeing on the value. Maybe it will work out if we get a decision from the assembly.

Mr. Donek stated the decision of the assembly is final and it could go to a court case.

Mr. Uchytil stated it does say in ordinance the assembly is the final decision maker as a dispute resolution.

Mr. Donek said Mr. Uchytil received a recommendation from Ms. Mead for the city to get a second appraisal as a form of dispute resolution. We have two different dispute resolutions set out; one in the lease and one in the regulations so not sure where the board should go.

Mr. Orman stated we can turn to the ordinance and it expresses what processes to take and the lease is not very clear.

Mr. Jardell said the best way forward is to go to a third party for a decision and if Goldbelt disagrees then they are not following the terms of the lease.

Mr. Donek said he is not comfortable with that because then we are interpreting the language of the lease.

Mr. Busch stated the first step is to get the assembly to give us what their position is then we can go forward.

Mr. Donek said it was an assembly lease to begin with and they can interpret what they meant.

Mr. Jardell asked Mr. Orman what the recommendation is for the Harbor Board to do.

Mr. Orman answered to make a determination and then the appeal can go to the assembly to see if it is appropriate.

MOTION BY MR. JARDELL: RECOMMEND THAT THE BOARD TAKE UP THE ISSUE OF INTERPRETING THE PROPER METHODOLOGY FOR DETERMINING FAIR MARKET VALUE AND MAKE AN INTERPRETATION ON THE RECORD AT THE NEXT BOARD MEETING AND ASK FOR UNANIMOUS CONSENT AND LEAVE FOR A FULL DISCUSSION AT THE BOARD.

Mr. Donek asked if Mr. Jardell wanted to make a recommendation to the full board on what that interpretation should be.

Mr. Uchytil said do we ask assembly to set the lease rent based on the Horan appraisal at $3.3 million and 10% of that plus royalty rent to get that on the table as the interpretation of the lease.

Mr. Jardell said the reason he did it that way was if we can get to an agreement on the interpretation, we may still be able to negotiate. It leaves the requirement that we negotiate in good faith if we have difference in opinion they can go out and get another appraisal they may say we give up, adopt it, and go get an appraisal under this that is different than ours and can negotiate. He didn't want to foreclose that too much. If he is reading the recommendation right, it is just on the one issue. Because when it goes to the assembly he doesn't want them to have to adopt the valuation before we negotiate because if we can agree to this.

Mr. Donek asked if he wanted to recommend to the full board which interpretation to use.

Mr. Jardell recommended putting this on the agenda and asking law to come in and provide what they think and their recommendation on what the interpretation should be

and the Board can discuss and make a value judgment based on that without any preconceived notion. He said he would like a memo from them on this specific issue of interpretation of this clause and have them present it to the board and have the board make a decision.

Mike Peterson objected. The purpose of the objection is to keep alive the possibility of working out a negotiation.

Mr. Jardell said he does not think anything we do by putting on there or making a decision would prohibit us from the ability to negotiate, or would it?

Friendly suggestion from Mr. Jardell was to ask law to raise this issue at the board meeting whether to continue to negotiate or not.

Mr. Peterson accepted and withdrew objection.

Motion passed with no objection.

Mr. Jones stated the other question for Law was based on the information they give us, how they would expect it to come to the assembly. Coming as a renegotiation or change in an ordinance that is one issue and coming looking for direction is another issue. And maybe it goes to a committee as a whole and there is more of a discussion. Normally appeals to the board are in a quasi-judicial stance. We listen to both sides and go in to executive session. If the board is looking for back up then we give direction or the assembly acts as the court.

2. Douglas Harbor Parking Agreement

   Presentation by the Port Director-Carl Uchytil

   Mr. Uchytil proposed leasing 40 additional parking spots in the Douglas Harbor Parking Lot to the State of Alaska. The State agrees to pay $42.00 per space with no requirement for Docks & Harbors to do the snow removal. Mr. Uchytil said he will bring the license agreement between Docks & Harbors and the State to the full board for approval.

   Committee Questions

   Mr. Jardell asked why the parking spots by the launch ramp were chosen.

   Mr. Uchytil answered this is the closest area to their building although it will not be reserved signage and the vehicles will use hang tags.

   Public Comment - None

Committee Discussion/Action

MOTION BY MR. SPICKLER TO RECOMMENDED MR. UCHYTIL MOVE FORWARD WITH PRESENTING THE LICENSE AGREEMENT FOR THE DOUGLAS PARKING AT $42.00 PER VEHICLE TO THE FULL BOARD AND ASK FOR UNANIMOUS CONSENT.

Motion passed with no objection.

3. Net Float at Auke Nu Cove purchase

Presentation by the Port Director-Carl Uchytil

Mr. Uchytil advised the memorandum of agreement with Mr. Marion Hobbs for the use of the floating barge at Auke Bay Loading Facility area is set to expire and Mr. Hobbs would like to sell it. Mr. Uchytil would like to know if we are interested or if we should advise him to sell it to an alternate buyer. Mr. Uchytil stated he did receive a letter from the United Southeast Alaska Gillnetters Association in support of the float barge.

Committee Questions

Mr. Donek asked if this has gone to the Operations committee and what did they think.

Mr. Uchytil said everyone wants to support local fisherman but how much use does it get and is $30,000.00 best spent here and should we take it to the full board.

Mr. Busch stated at the operations meeting we did not have any letters of support.

Mr. Peterson stated $30,000 is worth it for supporting local fisherman and asked if it can come from the raw fish tax.

Public Comment

Mr. Paul Swanson asked how much it would cost to build a new one.

Mr. Uchytil answered we have quotes of $50,000 to $100,000.

Committee Discussion/Action

Mr. Peterson stated he went on the barge and stated it is in great shape and worth the asking price. This can be the fish tax at work.

Mr. Spickler advised he spoke to a fisherman who confirmed it is heavily used and he supports it.

Mr. Jardell stated the fish tax is used for the commercial fisherman and the barge is good for the use of working on nets.

Mr. Donek stated we need to find out the liability, operating costs, how long it will last, and the long term costs.

Mr. Uchytil said he will get it surveyed.

MOTION BY MR. JARDELL FOR MR. UCHYTIL TO MOVE FORWARD AND FIND OUT THE BEST WAY TO PROVIDE A FISH FLOAT FOR AUKE BAY.

Motion passed with no objection.

VII. Items for Information/Discussion.

1. Raw Fish Tax – Presentation by Bob Bartholomew

Mr. Bartholomew proposed to defer the recording of the fish tax revenue for a portion of a year. The fish tax amount for last year's bank account is not known until 4-5 months after the close of the fiscal year. In order to make the revenue records current we would need to defer in two amounts over two years so we do not violate a bond covenant. The bond payments require the department to have a certain amount of revenue. With the proposed change in 2015, we would be on track to receive our fish tax on a current year cash basis. The fish tax varies from $290,000-$430,000.

Mr. Bartholomew went over the attached harbor budget details. The FY13 $4.6 million was approved by the assembly for the harbor operating budget. According to the budget and the actuals the finance department will advise what partial amount to defer for the fish tax after the final fiscal year audit.

VIII. Staff & Member Reports.

Mr. Spickler stated he brought to the attention of Carl Uchytil and Dwight Tajon about the June break-ins out at the Douglas Boat Launch parking lot. Two days in a row the tourist buses were broken in to and their personal belongings were all stolen. The Harbor department needs better communication with JPD.

Mr. Uchytil stated our trailer was stolen as well from the ABLF.

Mr. Spickler stated after several months an unsolved crime is published for any leads.

IX. Committee Administrative Matters.

1. Next Finance Committee Meeting October 29th, 2013.

X. Adjournment.

The Finance Committee adjourned at 6:22pm.