

CBJ Docks and Harbors Board
REGULAR BOARD MEETING MINUTES
For Thursday, June 27th, 2013

I. Call to Order.

Mr. Kueffner called the Regular Board Meeting to order at 5:31 p.m. in the Assembly Chambers

II. Roll Call.

The following members were present: John Bush, Tom Donek, Kevin Jardell (via phone), David Logan, Budd Simpson, Scott Spickler, Michael Williams and Eric Kueffner.

Absent: Greg Busch

Also present were the following: Carl Uchtyl – Port Director, Gary Gillette – Port Engineer, Dwight Tajon – Harbormaster, Loren Jones- Assembly Liaison, Dixie Hood – PRAC Liaison, and Amy Mead – Assistant City Attorney.

III. Approval of Agenda.

MOTION By MR. LOGAN: TO APPROVE THE AGENDA AS PRESENTED AND ASK UNANIMOUS CONSENT.

Motion was approved with no objection.

IV. Approval of Previous Meeting Minutes.

Hearing no objection, May 23rd Special Board Meeting Minutes and the May 30th, Regular Board Minutes were approved as presented.

V. Public Participation on Non-Agenda Items - None

VI. Items for Action

1. Norway Point Beach Access Use Agreement

Mr. Uchtyl said Docks and Harbors was approached by the Catamaran sailing members in Juneau and asked for consideration to use the beach adjacent to Norway Point. With their unique circumstance, they need an uplands beach area to use. This was approved by the Operations Committee. The Finance Committee also approved this use with compensation being half the rate of a skiff annual use. Mr. Uchtyl proposed this rate because only half the year is left. The Catamaran users felt this was fair and reasonable.

Board Questions-

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Mr. Kueffner asked if this was for using the beach to launch and keeping the Catamaran at that location?

Mr. Uchytel said there would be a sand or upland anchor above the high water line and use a dolly to get the catamaran to the water.

Mr. Kueffner asked how much room was there for the catamaran's?

Mr. Uchytel said 10 to 12 catamaran's would be able to fit in this area.

Public Comment – None

Board Discussion/Action

Mr. Uchytel said this action item would allow the catamaran users to use this area without having to do a regulation change.

Mr. Kueffner said Docks & Harbors has this area and this is a good way to respond to the user's needs.

MOTION By MR. LOGAN: TO APPROVE THE 2013 NORWAY POINT USE BEACH AGREEMENT AND ASK UNANIMOUS CONSENT.

Motion passed with no objection.

2. Results of Statter Harbor Conditional Use Permit

Mr. Uchytel said the Statter Harbor Conditional Use Permit results were favorable and **No Action or Motion is required.**

3. Tram Appraisal Methodology

Mr. Uchytel said in the packet is a memo based on an action item from the Finance Committee meeting on Tuesday. At the request of the Committee, he put together a time line of where the Tram review is at. This is a very complex issue. The action voted on at the Finance Committee was to send to the full board the Horan appraisal for adoption and reinstate royalty payments. Ms. Mead has been reviewing historic documents on the tram lease and has uncovered some important information pertaining to the Assembly's approval of the lease. With this new information, a different course of action should be taken other than the Finance Committee recommendation from Tuesday.

Board Question –

Mr. Kueffner said summarizing this action item, this is a dispute over the rental rate for the lease managed by Docks and Harbors with Mt. Roberts

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Tramway. At the Finance Committee meeting on Tuesday, the Committee made a recommendation that the Full Board would adopt the Horan appraisal. After the meeting, Ms. Mead found information that affects the facts. This issue before the Board is the appropriateness of the lease appraisal provided by Goldbelt and Docks & Harbors concern about whether that appraisal meets the standards set out in the lease for determining the value of the lease.

Ms. Mead said she found a very relevant document. The issue for determining rent value is section 05(d)(4) of the Goldbelt lease which talks about the appraisal process for the recalculation of the rent every three years. This is first done by CBJ appraiser and if this is disputed then Goldbelt can have an appraisal completed and if no agreement still, then there is a duty to negotiate a resolution. If that is not successful, then a third appraisal will choose between the first two appraisals. Section 05(d)(3) of the lease lays out the methodology that the appraiser is to follow. That is the fair market value is to be set based on consideration of the unimproved lot at its highest and best use. Where the two appraisers disagreed was Goldbelt, with the legal opinion by Mr. Spitzfaden, directed its appraiser to define highest and best use within the limiting context of the use that the lot is currently being used, or the use that is defined by the lease. In other words, this would be solely as a tram property. Mr. Horan who provided the appraisal for Docks & Harbors did not have that opinion. There has been a lot of discussion back and forth trying to figure out what happens now and about a third appraiser being retained. The problem with that would be that third appraiser would determine who's legal opinion was correct. That is not really the role of an appraiser. When Ms. Mead was looking for a copy of the ordinance where the Assembly approved the entering into this lease, she found a number of drafts in the file with different lease language. The first draft was from November of 1994 and in that lease the language pertaining to highest and best use read that the appraisal shall consider the lease premises as unimproved land and that the highest and best use of the lease premises is the use for which the lease is then utilizing the land, and this is Goldbelt's opinion. The next draft dated December 9th, 1994, contained hand written strike through of all of that language. It ends up with the language that is currently in the lease which states that the appraiser shall consider the lease premises as unimproved land at its highest and best use. Ms. Mead said during the research to figure out how the final lease came about, she found at the December 19th Assembly meeting where the ordinance and lease was adopted, there was a lot of public testimony and this was a very contested issue. There was a comment from the public directly relating to the limitation language relating to highest and best use. Later on in the discussion there was a question from an Assembly member

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to the CBJ attorney regarding the same language. The CBJ attorney said that the provision has to do with highest and best use being made at the property at the time of the appraisal regardless of what the highest and best use could conceivably be in some other context, in other words limited to tram. This is a negotiated term with the developer, Mt. Roberts Tramway limited partnership, who would like this included, but there is no legal reason to have it included. An Amendment was made by the Mayor that there be no limitation on the definition to highest and best use, which was adopted by the Assembly by unanimous consent. With this new information, it eliminated the question of what was intended by the definition of highest and best use. Ms. Mead suggested she provide this new information in a memo to Mr. Uchytel for his use and distribution. She suggested to provide this to Goldbelt for reconsideration of their position.

Mr. Kueffner said this does bring more facts to be considered in terms of how to proceed with this appraisal methodology. The new factual information discovered really has affected what the Board should do.

Public Comment –

Dixie Hood, Juneau, Alaska.

She asked why the appraisal is based on unimproved property?

Mr. Kueffner said that was a negotiated provision of the lease.

Board Discussion/Action

Mr. Simpson said based on his own experience with other property owners in the Tram area, the Horan appraisal is too high and the Goldbelt appraisal based on Ms. Mead's analysis is not sustainable either. Moving forward with the process, a third appraiser would pick between the two appraisals and neither appraisal seem right to him. He said he is not prepared to support something that forces a bad choice on somebody. With the additional information from the CBJ attorney, it makes sense to send Goldbelt back to get another appraisal with just the footprint of the lease as the instructions to the appraiser and not the extraordinary assumptions that were made in the appraisal. That could result in a third appraisal that is sustainable and then if there needs to be a choice between the two, maybe one would be viable.

Mr. Jardell said his recommendation would be to ask Mr. Uchytel to take the information in the memo from Ms. Mead and clearly articulated in writing that Docks & Harbors Board does not believe that the current appraisal from Goldbelt meets the current lease requirements. Goldbelt will need to

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provide an appraiser with the new documents to conduct an appraisal with just the direction contained in the lease and provide that to Docks & Harbors to be able to move forward. If an appraisal is not received that Docks & Harbors believes meets the lease requirements, then it could be a breach of contract action for not meeting their obligation in the contract.

Mr. Williams said this has been going on for a long time. Continuing to exhaust all options for a couple more months before sending this to the Assembly, if a suitable rent adjustment can't be made, is the best thing to do.

Mr. Logan suggested a 30 to 60 day time limit on having Goldbelt provide another appraisal.

Mr. Spickler asked Ms. Mead if there was anything found in the Goldbelt file about waving the royalty payments?

Mr. Mead said she researched to find out how Docks & Harbors ended up administering the Tram Lease. She couldn't find anything that transfers this lease specifically, but that was clearly the intent for Docks & Harbors take over the administration of this lease. The recollection of the Finance Department was sometime in 2006 Docks & Harbors was unhappy with how long rental payments were taking to get to their account and how long the rental adjustment periods were taking and Docks & Harbors asked the Finance Department if they could take over collecting the payments. The Memo from Mr. Stone came shortly after that stating Docks & Harbors was changing how Goldbelt's rent was calculated. There is no authority in the lease agreement for that action on a permanent basis. There was no other discussion on what happened with the royalty rents and whether the change was to be permanent. Regardless, this would require an Assembly action and that is stated in the lease agreement.

Mr. Donek said this new information has changed things from what was discussed at the Finance Committee meeting on Tuesday.

MOTION By MR. DONEK: TO TABLE THIS ITEM AND BRING IT BACK FOR RESOLUTION AT THE REGULAR BOARD'S OCTOBER MEETING AND ASK UNANIMOUS CONSENT

Mr. Simpson seconded the motion.

Mr. Logan suggested a friendly amendment to bring it back to the Board in September if not August.

Mr. Donek accepted September.

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Mr. Simpson accepted also.

Mr. Kueffner said he suggests to add to the motion that this will still move forward, but this is just providing time for Mr. Uchytel and Ms. Mead to provide Goldbelt with instruction's for their appraiser.

Mr. Donek said that is the intent.

Mr. Jardell said a point of clarification is that this Motion is just tabling the recommendation of the Finance Committee.

Mr. Simpson said it is still fair to staff and Goldbelt to give them some sense of direction during that tabling period. This is giving Goldbelt a second chance to get an appraisal that does not contain the extraordinary assumption that is problematic legally and to get an appraisal that Docks & Harbor can work with.

Mr. Logan asked Mr. Uchytel and Ms. Mead if they have received sufficient guidance or do they need additional direction?

Mr. Uchytel said Ms. Mead will write a memo of the historic information found and then she will forward to me. I will send the information to Goldbelt and try to convince Goldbelt they should retract their position on extraordinary assumption and to move toward a similar comparison. Another point was raised by Goldbelt in a letter that Docks & Harbors used Horan & Company and not the CBJ Assessor. It is stated in the original lease as the appraisal needs to come through the CBJ assessor's office, and because it didn't come through the Assessor, it voids the Horan appraisal. Mr. Uchytel said he checked with Ms. Mead and Title 85 allows Docks & Harbors to get the appraisal.

Mr. Kueffner commented that Goldbelt's point had no merit.

Mr. Williams suggested have an outline of the entire process so if this does have to go to the Assembly it is well documented.

Mr. Bush asked if the Port Director or Board could make changes to this lease?

Ms. Mead said no. The Assembly can only make changes.

Motion Passed without objection

VII. Items for Information/Discussion.

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1. Board Discussion on Committee Assignments

Mr. Jardell said Committee members will be appointed at the July meeting. This is really just to let the members know if they want to have a Chair position or serve on a certain Committee to send their preference to Mr. Uchytel. With the Committee member's preference, the newly elected Board Chair can make the Committee Chair and committee assignments fairly quickly. Mr. Jardell said he has talked to Mr. Busch about running for Board Chair because he will be stepping down. Another thought Mr. Jardell suggested, was to have only two committees instead of three. The work load for having three Committee's is a lot. The thought would be to have the Operations and CIP Committee's discuss the Finance issues with the appropriate topics, and twice a year have a Finance Committee go over the budget and review the budget. He suggested send ideas on going to only two Committee's to Mr. Uchytel also.

Mr. Kueffner said he supports the idea of only having two Committee's, and Operations and CIP Committee's deal with their own finance issues.

VIII. Committee and Board Member Reports

1. Operations Committee Meeting – June 18th, 2013

Mr. Logan said at the Operations meeting, Norway Point Beach access use agreement was thoroughly discussed and sent to the Finance Committee.

2. CIP/Planning Committee Meeting – Cancelled

3. Finance Committee Meeting – June 25th, 2013

Mr. Kueffner said at the Finance meeting, Norway Point Beach access and the Tram appraisal methodology were both discussed.

4. Member Reports –

Mr. Kueffner said he received a complaint about Douglas Boat Ramp that only half of it is usable because of debris.

Mr. Tajon said there have been extreme tides that have carried the seaweed and debris on the ramp. Staff has gone to Douglas to clean it off and have been advised to try to keep it clean during the extreme tides.

Mr. Donek presented Mr. Kueffner and Mr. Williams with Docks & Harbors cutting boards for serving on the Board. Their term is up on July 1st.

IX. PRAC Representative Report-

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Ms. Hood said PRAC's June meeting was cancelled. The next meeting is July 2nd.

X. Port Engineer's Report –

Mr. Gillette said his report was in the packet and he wanted to update on other items of interest.

Statter Harbor Phase II – This was approved by the Planning Commission and he anticipates the notice of decision to issue tomorrow, which starts the twenty day appeal period. We will continue to move ahead at this point.

Aurora Harbor Project – There will be a public hearing on July 24th at the Yacht Club. This will be a presentation to the public showing where Docks & Harbors is at in the design phase, and there are some decisions that need to be made. Because there is a fixed breakwater, there are issues of confined space. This will be in a work shop format and staff hopes to receive good input for the designers.

North Douglas Boat Ramp – We have discussed challenges with parking or increasing access to the ramp, but another question was to look into lighting. Staff contacted AEL & P, and Mr. Gillette said there are two options.

Option 1 - There is a high power line across the street that supplies Greenscreek. To get the power to the site without the lights, is \$50,000.

Option 2 – Extend the line that feeds the residences that are on the same side of the street as the launch ramp, and that is \$50,000 also. Mr. Gillette said he would need direction from the Board to pursue this.

Mr. Spickler said at some point of time there is going to be a need for power at that location, but felt \$50,000 was a lot of money.

Mr. Kueffner commented he thought this was a reasonable price.

Mr. Williams agreed that this was a reasonable price.

XI. Harbormaster's Report –

Mr. Tajon said staff worked on the Harris Harbor Launch ramp and filled in holes with cement.

There was a USCG inspection today, and Docks and Harbors had two minor deficiencies.

He had a meeting with the kayak tour groups to discuss safety with their guests. Staff painted lines for the pedestrians so they know to stay out of the main ramp area to prevent getting run over. This will be monitored with a camera to see how it is working.

Mr. Spickler asked how this was going to be monitored with a camera.

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Mr. Tajon said it will be a fixed camera to a pole. It is the time lapse camera that was used during construction at Statter Harbor.

XII. Port Director's Report

Mr. Uchytel said he meant to add the Auke Bay Loading Facility discussion action item on the Agenda. After going through the process with the Planning Commission for the Statter Harbor launch ramp it has become very clear from the members that the Auke Bay Loading Facility is under utilized. Looking at ways to make it more attractive to users and try to relieve some of the congestion at Statter Harbor, staff is looking at ideas. The Boat lift is ready to use, and Deputy Port Engineer Erich Schaal is looking at wash down pads. The regulation and FAQ's aren't always congruent. With this, there is confusion even with staff telling customers who can or can not use the facility. In the packet is a memo that outlines the proposed changes for the rest of 2013. Primarily this is to encourage patrons with Commercial Launch ramp permits to launch and take their boat out at the ABLF. This can be taken up for next month or have a special board meeting.

Mr. Kueffner asked if it was urgent enough to have a Special Meeting?

Mr. Uchytel said yes. This would be under a fee special to encourage use of this facility. Waiving the freight use and allowing recreational users to do small maintenance. This may take regulation changes at the end of the year.

Mr. Spickler asked to have a special meeting early next week.

Mr. Uchytel said summer comes and goes very quickly and there is a demand for this now. Staff wants to encourage a viable commercial activity.

Mr. Logan asked if this is to try to relieve congestion at Statter Harbor?

Mr. Uchytel said yes. He will try to set up a special meeting on Tuesday at noon.

Mr. Uchytel said 10 people talked in favor for the Statter Harbor launch ramp and 21 letters were sent in.

Working with TBMP there were issues with speed at Auke Bay. Docks and Harbors has no authority past the breakwater to enforce speed issues.

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The Tiger V grant was submitted early this month and Docks and Harbors has received letters of support. Staff should know by late July if we are successful with this grant.

Alaska Glacier Seafood sent a thank you for the continued access.

Docks and Harbors hired Miller Construction to place boulders along the launch ramp at Echo Cove to reduce ATV users. The boulders have been removed already. Parks and Rec is in the process of hiring a ranger to patrol some of their areas and Mr. Uchytel said he is looking into buying services to police the area at Echo Cove.

Mr. Uchytel said he received a complaint from the Mt Roberts Tram that vendors were standing in front of the Tram holding up signs and this was deterring customers from entering the Tram. He has been working to stop that activity.

XIII. Assembly Liaison Report

Mr. Jones thanked Mr. Williams and Mr. Kueffner for serving on the Board. John Hartle's last day is tomorrow and four candidates will be interviewed for his position. A decision will be made tomorrow.

XIV. Committee Administrative Matters

- a. Operations Committee Meeting – Next meeting is July 16th, 2013 at the Aurora Harbor at 5:00 p.m.
- b. CIP/Planning Committee Meeting – Next meeting is July 18th, 2013 in CBJ Room 224 at 5:00 p.m.
- c. Finance Committee Meeting – Next meeting is July 23rd, 2013 in CBJ Room 224 at 5:00 p.m.
- d. Board Meeting – Next meeting is July 25th, 2013 in the Assembly Chambers at 5:30 p.m.

XV. Adjournment

The regular Board Meeting adjourned at 6:47 p.m.