CBJ DOCKS & HARBORS BOARD
FINANCE MEETING MINUTES
For Tuesday, September 25th, 2012

I. Call to Order.

Eric Kueffner called the Finance Committee Meeting to order at 5:00 p.m. in room 224 of the Assembly building.

II. Roll Call.

The following members were present: Tom Donek, Scott Spickler, Kevin Jardell and Eric Kueffner.

III. Approval of Agenda.

MOTION BY Mr. Donek: TO APPROVE THE AGENDA AS PRESENTED.

The motion passed without objection.

IV. Public Participation on Non-Agenda Items.

There was none.

V. Approval of August 28th, 2012 Finance Committee Meeting Minutes.

Minutes to the August 28th, 2012 Finance Meeting will be approved at the October 23rd, 2012 Finance Meeting with corrections.

VI. Items for Action.

1. Gitkov Lease Renewal for ATS 1170.

Mr. Uchytil said this was originally a 25 year State Tideland Lease expiring today. The Lessee would like to renew the lease. We have had the property appraised by Horan and Company and the recommended lease rent is 15 cent per square foot which is an increase from 11 cents per square foot that they have been paying since 2008. Based on the appraisal, the estimated annual market rent value would be $11,030.00. The property is located next to the Auke Bay ferry terminal and includes tidelands as well as uplands parking area.

Public comment

John Gitkov, Lessee: Mr. Gitkov wanted to point out a couple things that were not brought up in the Horan report. The parking was tidelands that we filled to become uplands and we paid for that work to be done. We have a State lease for the highway right of way. The Commercial Loading Facility is mentioned as one of the improvements to the area. He mentioned that facility has impacted his operations adversely.

VI. Items for Action. (Continued)

Off loading of fish is way down. The Fuel loading is almost zero. The crane work and fish loading does very much effect the revenue coming in at his facility. He laid off one employee due to the loss in business.

Mr. Kueffner asked if Horan did not account for the uplands improvements that Mr. Gitkov added the fill to.

Mr. Gitkov just wanted to point out the lease is for non-improved tidelands. He also pointed out that there is no sewer out there which is a big deal for a commercial facility.

Jane Hawkins, Lessee: She said it is her understanding that they pay for the appraisal to continue the lease with the city. She was a bit disappointed that the appraisal had her husband's name spelled incorrectly and the wrong address. She has found a lot of other mistakes in the appraisal and it made her question it's accuracy. Allen Marine and Glacier Seafoods have a 55 year lease and we have never been able to have one. To her there would be more value in a 55 year lease and she didn't understand why they don't do them any more. Originally their lease was for 30 years.

Mr. Uchytil asked Ms. Hawkins to let Teena know about the errors in the appraisal. He said the City has an ordinance now that set's lease terms at a maximum of 35 years.

Mr. Kueffner said as far as he knows we inherited some leases from the State and they could have been 55 year leases.

Mr. Jardell said he still does not understand how the fill affects the lease. He did not think the sewer makes a big difference. He suggests the Lessees put something in writing stating their concerns that we can take to Mr. Horan and make sure we have things correct.

The Committee asked to have the Port director get in touch with Mr. Riley, who prepared the appraisal, with the two items in questions about the sewer and fill and also fix address and name misspellings.

2. Mt. Roberts Tram Lease Rent Update.

Mr. Uchytil said we had a special lease sub-committee meeting last Tuesday, September 18, 2012, which included Mr. Kueffner, Mr. Jardell, Mr. Donek and myself. He gave a recap of what happened in that meeting. Goldbelt has followed up that meeting with a letter indicating that they are not willing to negotiate using the Horan methodology and asking the city to instead proceed to negotiate a rent compromise. We have asked Amy Mead from the CBJ Law Department to join us today to help us form a strategy to come to a fair and equitable agreement.

VI. Items for Action. (Continued)

We also have Mr. Horan from Horan and Company on the line for comment.

Ms. Mead said she agreed that an adequate appraisal has not been done by Goldbelt. She went back to the enabling ordinance and the original lease and tried to figure out what the original intent of the lease was. The only conclusion she could come to was that Goldbelt is not operating with that intent in mind. The lease did not require that Goldbelt build the tram. The way the lease rent was set up was the base rent would be appraised at an unimproved state. The royalties portion was done later because nobody knew if the Tram would happen and when it would happened or if it would be successful. For Goldbelt now to come in and say the way we are going to read the lease provision now, even though we have acknowledged that the property has significant value and the value has increased, now they are going to take the position that the property is worth nothing is not a good faith position to take for negotiation. There is nothing in the lease that requires the Tram be built. Other CBJ leases are subject to cancellation if the intended project is not built. The applicant drives what the use is as long as it fits within the code. She felt the Horan appraisal was done in the appropriate manner intended in the lease.

Mr. Jardell asked Ms. Mead to clarify the history of the agreed upon valuation of the property originally.

Ms. Mead said it is not a good faith position for to take by presuming the land has no value. The value of the property was originally recognized in 1995 before the Tram was built as a valuable piece of property. In 2006 Port Director, John Stone, suggested since the rent royalties had not been collected, that they use the assessed value of 1.3 million as a base for lease rent. There was recognition that the property had value and that the value of the property had increased.

Mr. Kueffner asked if she felt it was proper for the committee to proceed with negotiations at this point.

Ms. Mead did not advise that they move to step 3 and get a third party appraisal. In this case one party is not negotiating in good faith.

Mr. Kueffner asked if it would be appropriate to negotiate between the two appraisals and using the zero value.

Ms. Mead said the committee could decide to negotiate between the two current appraisals.

Mr. Bush asked if the committee could go back to the original lease and include the royalties in the new lease rent.

VI. Items for Action. (Continued)

Ms. Mead did not know how the royalties portion got eliminated from the current negotiated lease rent. If the royalties were meant to be eliminated, the lease should have been amended. She recommended the committee follow the written document and include the royalties.

Mr. Horan said he read the materials that Goldbelt provided to the Port Director's office and he agreed the property should be used at it's highest and best use.

Derek Duncan, Goldbelt Vice President of operations: He recommended a path forward that the Port Director and negotiation team meet at Goldbelt headquarters and bring legal opinion.

Mr. Kueffner said we have a subcommittee to give direction. He felt Mr. Uchytil could negotiate just fine on the committee's behalf. Goldbelt has just heard the legal opinion of the CBJ in this meeting. He asked Ms. Mead when she gives legal opinions to departments, are they available to display to others.

Ms. Mead said most often the answer is yes. She has not written her legal opinion in this matter and did not intend to. Her legal opinion is most often public record.

John Bush asked if Goldbelt's intention was to pay zero rent.

Mr. Duncan said Goldbelt did not intend to pay zero rent, that was a misinterpretation of the intent of the appraisal which is to determine the fair market value of the unimproved land at it's highest and best use. Using our land residual technique that value was determined to be zero. As written in the lease, the base rent is determined at 10% of the appraised value or $30 per square foot so it was never Goldbelt's intent to pay zero lease rent.

Mr. Kueffner asked Mr. Duncan what his opinion was on the royalties.

Mr. Spitzfaden, Attorney representing Goldbelt, said he did not think it was fair to ask a lay person legal opinion at this time.

Mr. Jardell said if Goldbelt is not willing to go down the path the City suggested, we are willing to hear a path to go down that Goldbelt suggests to help us come to terms.

Mr. Kueffner said I guess we have a path forward so we could meet with Goldbelt on their terms.

Mr. Uchytil said the log jam is accepting the highest and best use appraisal method and if they do not agree with that, he did not see them making much progress.

VI. Items for Action. (Continued)

Mr. Donek said he did not like the idea of even accepting the Goldbelt lease with the different methodology that is not in the lease because it just opens the door for other lease negotiations to come up with different methodology for their appraisal. He felt the Committee needed legal opinion to give them approval to use the Goldbelt appraisal as a basis for negotiation.

Mr. Jardell said he feels discussions are worthwhile to get a better understanding of where the parties are and how they can come together. He felt the meeting on Goldbelt's terms could be worth while.

Mr. Donek said he has no problem with talking; he has an objection to the Appraisal Goldbelt has provided and did not want to use it for negotiation.

Mr. Kueffner said merely looking at the lease from Goldbelt does not mean we accept the appraisal. He did not feel troubled by that.

Mr. Jardell said he thinks there is concern in proceeding to step 3 and take the chance a 3rd party appraiser will accept the zero appraisal.

Ms. Mead said she did not think there was anything in the lease that precludes the negotiation with the zero appraisal in place. If the parties agree they are deadlocked, Mr. Uchytil, the Port Director can make the Lease Rent determination. Mr. Uchytil can come to the Board and they could proceed to the CBJ about how the language is interpreted.

Mr. Jardell said we are a public body so we are expected to be fair. If Goldbelt is in agreement with the comparables, just for the purposes of negotiation, let's consider a lower value. Invite them to criticize our appraisal and offer a fair lease value.

Ms. Mead said the language is rather narrow about step 3. She did think it allowed for negotiation.

Mr. Spickler said it sounds like the lease has changed maybe they need to revamp the lease and have an honest discussion.

Ms. Mead said that would be an ordinance change if you wished to change a lease and that would need to go before the assembly.

Mr. Kueffner asked Mr. Uchytil what else he needed from the board and if he felt he could negotiate with Goldbelt.

Mr. Uchytil said he wanted the leases to be inline and transparent and each one not negotiated in a different way. Based on the lease the royalties need to be in the equation. He would be glad to meet with Goldbelt next week and report back to the Board.

VI. Items for Action. (Continued)

Mr. Bush asked if Goldbelt was willing to discuss the royalty portion of the lease.

Mr. Spitzfaden said this was not the time nor the place for Goldbelt representatives to render legal opinion about the royalty portion of the lease and what happened in 2006.

Mr. Donek said it might be appropriate to send the Chairman of the full board with Mr. Uchytil to help in negotiations.

Mr. Jardell said we will not send Mr. Uchytil by himself.

Amy Mead said the parties do need to agree on an appraisal methodology in order to come up with a reasonable lease rent. She was hearing that Mr. Spitzfaden is disagreeing with a lot of what she was saying and she was sure he will have some things to say at the meeting.

Mr. Kueffner said in 2006 there was a deal made and it didn't involve appraisal value so it simply wasn't done in accordance with the provisions of the lease and that does not amend the lease.

VII. Items for Information/Discussion.

1. Mega Yacht Harbor at ATS 556A

Mr. Lockwood, Manager for Juneau Port Development, LLC said he is here tonight simply with an informative update. He wanted to present how the project was put together and how it will benefit Juneau. The Lease document that governs the Little Rock dump was put together by principles of the original committee and they have all retired and we have a new group. He wanted to bring everybody up to speed on the history of this project and the benefits. He will be giving a power point presentation to the full Harbor Board on September 27, 2012.

PND estimated that the whole project would be a $112 million project for mega yachts from 80ft to 120ft. in length. Mr. Lockwood applied for permits to various organizations. The DEC, EPA, Corps of Engineers and Coastal Zone Control all had several issues with the separation of dredge material.

The Thing that he wanted to go over now is that this is a viable project for the benefit of the City of Juneau. An apposing project has been suggested to dump snow on this piece of land. This Snow dumping would take up 1/3 of the property he needs for his harbor project.

Mr. Jardell said the permits were to be in place within two years. He asked Mr. Lockwood to provide a solution to the City so that maybe they can use the land for snow dumping until the project is ready to move forward.

VII. Items for Information/Discussion. (Continued)

Mr. Lockwood said losing the 35 slips would be a loss in revenues to the City and Docks & Harbors.

Mr. Uchytil said when he reads the lease, Docks & Harbors will get kickbacks from the unimproved tideland lease.

Mr. Lockwood said the Harbor Board needed to read the super yacht report. There is good information in there. Mega Yachts do not have a place to moor right now. He has the mining claim on the property so he has the right to be on the property even without the lease.

VII. Staff & Member Reports.

Mr. Uchytil said he had a monthly FSM report and several Lawson reports to provide to the Committee for review. The CBJ Accounting Department is still in the process of closing the books for Fiscal year 2012.

Mr. Donek asked if the fee for vessel disposal was in a separate fund.

Mr. Uchytil said it was just combined with the other Harbor Revenues and the estimated revenues from the fees were between $6,000 and $9,000.

IX. Committee Administrative Matters.

1. Next Finance Committee Meeting October 23rd, 2012

X. Adjournment.

MOTION by Mr. Jardell: TO ADJOURN THE DOCKS AND HARBORS FINANCE COMMITTEE MEETING AND ASK UNANIMOUS CONSENT.

The Finance Committee Meeting Adjourned at 6:41 p.m.