THE CITY AND BOROUGH OF JUNEAU, ALASKA

Meeting Minutes – March 24, 2014

MEETING NO. 2014-10: The Special Meeting of the City and Borough of Juneau Assembly, held in the Assembly Chambers of the Municipal Building, was called to order at 6:00 p.m. by Mayor Merrill Sanford.

I. ROLL CALL

Assembly Present: Mary Becker, Karen Crane, Loren Jones, Jesse Kiehl, Jerry Nankervis, Merrill Sanford, Carlton Smith, Kate Troll and Randy Wanamaker.

Assembly Absent: None.

Staff Present: Kim Kiefer, City Manager; Rob Steedle, Deputy City Manager; Amy Mead, City Attorney; Laurie Sica, Municipal Clerk; Beth McEwen, Deputy Clerk; Hal Hart, Community Development Director; Rorie Watt, Engineering Director; Greg Chaney, Lands and Resources Manager; Myiia Wahto, Recreation Superintendent.

II. SPECIAL ORDER OF BUSINESS

A. Tides Complex, Inc. Dragon Inn Chinese Cuisine d/b/a Chinese Restaurant & Motel Liquor License #4405 Renewal

Administrative Report: By letter dated February 24, 2014, Tides Complex, Inc. was notified of its obligation to satisfy unpaid utility fees in the amount of $39,234.08. Tides Complex, Inc. was given until March 20, 2014 to either pay the past due bill, or contact the CBJ to make payment arrangements. Around this same time, the CBJ was notified that the ABC Board had before it a license renewal application from Tides Complex, Inc. If left unpaid, the Tides Complex, Inc., back-bill would be cause for the CBJ to protest the renewal application (CBJ 20.25.025(b)(3)). Because this back due billing issue coincided with the CBJ's deadline to protest the renewal application to the ABC Board, the Clerk's office sent notification to Tides Complex, Inc., that its liquor license renewal would be before the Assembly Human Resources Committee (HRC) at its meeting on Monday, March 17 and then the Assembly for final action at its meeting on Monday, March 24.

The HRC passed a motion to recommend the Assembly protest the renewal of liquor license #4405 Tides Complex Inc. d/b/a Dragon Inn Chinese Cuisine Inc. d/b/a Chinese Restaurant & Motel based on the outstanding water/sewer bill owing in the amount of $38,754.08 plus $480.00 for lock boxes, unless Tides Complex, Inc., pays, or makes arrangement to pay, the past due bill.

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The Manager recommended the Assembly protest the liquor license renewal according to the HRC motion from its March 17, 2014 meeting, unless Tides Complex, Inc., has contacted the CBJ to make payment arrangements or has paid its bill in full. If Tides Complex, Inc., has not paid its bill in full, but made payment arrangements, I recommend the Assembly ask the ABC Board to place conditions on license #4405 requiring the licensee to stay current with its payment arrangements.

As of close of business today, Tides Complex, Inc., had not paid nor made payment arrangements to satisfy the unpaid utility fees.

Public Comment:

Mr. Robert Spitzfaden was present to speak on behalf of the Tides Complex, Inc. and Dragon Inn. He said the two companies are owned by Mr. Lam and Mr. Nguyen. Mr. Lam is a naturalized U.S. citizen since 1982 and English is his 4th language. They asked that there be no protest. If there was underreporting of water and sewer usage, they were willing to make the appropriate arrangements to take care of whatever the bill turns out to be. Mr. Lam was the primary business agent for the two companies and did not find out about the water and sewer bill until March 14. He did not get a hold of Mr. Spitzfaden to meet until March 18. He did not realize there was a committee meeting on March 17, or he would have appeared. Mr. Spitzfaden met him on March 18, then left town until this morning when they met. Mr. Lam gave Mr. Spitzfaden some information that led him to believe that given the time to work matters out they could find a resolution to the problem short of protesting the liquor license. What he got on March 14 was the letter in the packet dated March 12 stating the liquor license would be protested if the payment arrangements were not made. Mr. Lam did not get the February 24 letter that staff referenced in the packet until Mr. Spitzfaden advised him to look for it, because the letter was addressed to the prior owners. It did go to his address but it was not addressed to him so he did not open it. That is why, until March 14, he did not open the letter from February 24. Mr. Spitzfaden did not see the letter until today.

There were two accounts involved in this matter, one was for the Dragon Inn and one was for the Tides Complex. The Tides Complex was the company that owned the liquor license. As Mr. Spitzfaden understood, half of the $38,000 was the Tides Complex and half was the Dragon Inn, so if there were a protest, it would be proper to protest only what the licensee owes. In looking at the code sections that staff had cited, there were two types of errors – under-reporting and over-reporting, or a meter not registering – not showing usage, even if there was. If it was under –reporting the remedy was to go back three months and figure out what the under-reporting was. If it was non-registering, the remedy was to go back and estimate for the periods in which there was no registration of usage and estimate what the customer's prior use was during the same season. The money being sought went back all the way to 2009. It appeared that there was both under-reporting and non-registering. Since there were two types of errors, he said there was a question about how to measure – either go back three months or to 2009. It appears the staff used the same methodology and said they had solid numbers for a period of time, for May to November 2013, so they took those numbers, estimated it for that period of time and then took a monthly estimate and applied that all the way back to 2009, and took the usage that showed up on the bill and deducted that usage from what the actual usage was and billed for the difference. Questions he had included whether it

was under-reporting, could it go back three months or all the way to 2009, and if it was non-registering, wasn't there solid data to break down by the season. Mr. Spitzfaden could not tell from the letters the answers to his questions. He said it was not unreasonable to give them some time to work this out with staff. He understood the timing of the protest of the liquor licenses, but there were other ways to collect this money and given the situation, it seemed that it would be equitable to get this worked out with staff and not put their liquor license at risk. They had paid all of their bills when they got them, and it wasn't until the February 24 letter addressed to the former owners that the city said they owed $38,000…even though the city must have known since May of last year that there was a problem. He did not know why someone didn't get a hold of them before now. This was not a situation that they were aware of or could do something about. They were paying when they got a bill. CBJ did not get hurt if it didn't protest the liquor license and it would be good to give his clients some time to remedy this.

Mr. Wanamaker asked when the legal change of ownership occurred and what steps were taken to notify CBJ and the state? Mr. Spitzfaden said they purchased the business in 2005. The old company was called Tides Complex, Inc. and they created a new corporation that was called Dragon Inn, Inc., in 2005 and Dragon Inn had been their operational entity, although the land and the license were held by Tides Complex, and as far as he knew, the city had both addresses since 2005 because they had been getting bills for both Tides and Dragon.

Mr. Wanamaker asked when the new owners took ownership. 2005 per Mr. Spitzfaden, when they purchased the business, which from a legal standpoint had two portions – Dragon Inn which was the operational entity that ran the motel and restaurant, and Tides Complex, a second entity which owned the liquor license and the land. There was one business and two legal entities. The bills came for both Tides and Dragon and there was a dollar figure associated with the two usages.

Ms. Crane said the manager's recommendation said if payment arrangements were made conditions could be placed on the license. She asked if there was a middle ground to give them time to work things out and to ask the ABC board to place some conditions on the license without denying it while things are worked out. Ms. Mead said yes there was.

Mayor Sanford asked about the timeline for the ABC Board. Ms. Mead said the CBJ's 60th day for response to the ABC Board was Saturday, March 29.

Mr. Kiehl said that was the city's deadline to potentially protest, but the ABC Board did not meet to review the license until April 29. The standard practice was that at any point between a CBJ protest and the ABC Board meeting, if the situation which led to the protest was resolved, CBJ generally delegated to staff the authority to lift that protest on the Assembly's behalf.

Ms. Troll asked if CBJ records showed that the Tides Complex as well as the Dragon Inn had paid all of their past bills to the city. Ms. Mead said it had not been a question of paying bills when received, it was a question of approximately a period of 240 days when the meter was not registering any usage, and that is why Public Works put a lock box on the meter so no one could touch the meters and the usage then went up quite a bit. That is when Public Works

went back and estimated the amount. The other thing was that account had been in Mr. Tang's name, but the checks since however long have been received from Mr. Lam. The problem with the name, license and account, was that Ms. McEwen noted that the name Tides Complex name was not a registered name with the ABC Board and she did not know what happened with that, if they just issued it anyway, but we are aware that there is a problem in that the license was not in a registered name in Alaska.

Ms. Troll asked if prior to this situation, the owners consistently paid other bills. Ms. Mead was not aware of anything other than the utility bills.

Mr. Smith asked Mr. Spitzfaden what a reasonable time frame was to take care of the matter. Mr. Spitzfaden suggested three to four weeks. If you just condition the license so that they have to pay their bills, that would be fine, but they understood that they were being required to pay $38,000 and they were not in a position to agree that was the correct number. Mr. Spitzfaden said there were periods of time when the meter was not registering, but it was inconsistent, and it was not a straight 240 days, but periods in which it was working and not working.

Mr. Kiehl asked if Mr. Spitzfaden's clients brought good cause or evidence that the amount upon which the Assembly's protest was based was not accurate, were the staff's hands bound in terms of the protest to seek only that amount or would staff have the authorization to say that their evidence was compelling and their payment agreement to pay amount X satisfied the city's protest. Ms. Mead said it would be up to CBJ to monitor compliance with any condition as far as the ABC Board was concerned, the condition could be drafted to say they agree to stay current with any stipulated payment agreement with respect to their outstanding bill. It would be up to CBJ to let the ABC Board to know when that had been satisfied.

Mr. Kiehl asked if that would be sufficient language if an agreement was not reached by April 29. Ms. Mead asked if the question was if CBJ could protest if we couldn't reach an agreement, in which case the answer would be no, as we would be time barred. Mr. Kiehl asked for clarification. Ms. Mead said if CBJ wanted to protest it would be with the dollar amount Public Works provided – the entire back story was not in the materials provided to the Assembly but Public Works was confident in their number. CBJ could protest based on that number and if the amount was satisfied before the ABC Board hearing we would let the Board know. I don't know if at that time they would allow us to switch it to a condition to be placed on the permit, if there were a payment plan in place, but that was a possibility.

Mr. Kiehl asked, if in the event the Assembly chose to protest, as a matter of law for the ABC Board, did the Assembly need to protest a specific amount, or could it protest the owing amounts or unpaid amounts, thus leaving staff the opportunity to consider any evidence Mr. Spitzfaden's clients brought forward to staff. Ms. Mead said yes, and CBJ would participate in the hearings, and CBJ could protest without a dollar amount.

Mr. Wanamaker said he recalled that the Dragon Inn was protested once before in approximately 2005, with sales tax and fire violations, but an agreement was worked out and they got everything done before the deadline so the Assembly pulled its protest before the hearing. CBJ had done that on more than one occasion. The other thing CBJ had done was

give the parties the opportunity to sit down with the staff and negotiate a payment plan with a confession of judgment and then the protest was not filed. There are ways to protest but not have it go forward if they use the time between now and the ABC Board hearing to resolve issues.

Ms. Troll asked about formulating conditions, and would a protest need to be filed in order to request that conditions be placed on a license. Ms. Mead said no.

Mayor Sanford asked if the CBJ had to ask the ABC Board to place the conditions. Ms. Mead said yes.

Assembly Action:

The Assembly discussed the form of the motion to be made.

MOTION, by Kiehl, to protest Restaurant Eating Place License #4405, based upon unpaid water and sewer bills currently owed, the protest will stand and the parties have until the ABC Board hearing to work out a payment plan suitable to the city manager and city attorney, and if that occurred the protest would be waived, no other action on the license would be requested by the ABC Board unless other issues arose.

Ms. Kiefer asked if there was a Confession of Judgment, did the Assembly want to request a condition by the ABC Board that the license holder needs to stay current on the payment plan. Mr. Wanamaker said yes, that was past practice, that the license holder must stay current with their COJ plan, and the CBJ could file the protest, but the CBJ could also withdraw it once the conditions were accepted as satisfactory. Ms. Mead said, but not make it a condition placed on the license. Mr. Wanamaker said no, not after that.

Hearing no objection, it was so ordered.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None.

IV. ASSEMBLY COMMENTS AND QUESTIONS – None.

V. ADJOURNMENT

There being no further business to come before the Assembly, the meeting adjourned at 6:34 p.m.

Signed:_____ Signed:_____
Laurie Sica, Municipal Clerk Merrill Sanford, Mayor