

Session 11-03 A Regular Meeting of the Lease Committee was called to order at 3:05 pm on April 14, 2011 by Chair Shelly Erickson at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMITTEEMEMBERS ERICKSON, HAWKINS, ABOUD, MAURAS,
ZIMMERMAN AND YAGER

STAFF: CITY MANAGER WALT WREDE
ADMINISTRATIVE ASSISTANT TERRY FELDE
ADMINISTRATIVE SUPERVISOR LISA ELLINGTON
DEPUTY CITY CLERK RENEE KRAUSE

APPROVAL OF THE AGENDA

Chair Erickson requested a motion to approve the agenda.

ZIMMERMAN/MAURAS – MOVED TO APPROVE THE AGENDA.

The agenda was approved by consensus of the Committee.

PUBLIC COMMENT REGARDING ITEMS ON THE AGENDA *(3 Minute Time Limit)*

There were no public comments on the agenda.

RECONSIDERATION

There were no items for reconsideration.

APPROVAL OF MINUTES

(Minutes are approved during regular meetings)

- A. Meeting Minutes for the Regular Meeting of January 13, 2011
- B. Meeting Minutes for the Special Meeting of February 9, 2011

MAURAS/HAWKINS - MOVED TO APPROVE THE MINUTES AS PRESENTED FOR JANUARY 13, 2011 AND FEBRUARY 9, 2011.

There was no discussion.

The minutes were approved by consensus of the Committee.

VISITORS

There were no visitors scheduled.

STAFF & COUNCIL REPORT/COMMITTEE REPORTS/BOROUGH REPORTS

(Chair set time limit not to exceed 5 minutes)

- A. Staff Report – Status of Rental Agreement, Rental Fee documents

Terry Felde provided a verbal report on the Short Term Agreement and a draft was provided for the Committee's review in the packet. The rental rate is set at \$2.00 per square foot amounting to the monthly cost of \$500.00 based on the recommendation of the 250 square foot lot. The research conducted in determining this rate was comparable to other rental rates for short term rental periods. Appraisers, real estate agents, and the Seward Harbor were contacted for comparison rates. Upon notification on a recent inquiry by a possible tenant they did not "blink an eye" at the cost.

Mr. Zimmerman requested clarification on parking requirements for the rental kiosks. He was referring to Item #1 Grant of License – The last sentence starting with “Other than access to...”

Ms. Felde responded that this was not directed to parking requirements for customers; it was directed at the tenant using additional space outside the square footage that they rented for storage, parking, etc.

Mr. Zimmerman stated that the two week notice requirement on the City’s part for termination of the rental agreement was too short in his opinion. Chair Abboud questioned whether this followed the State of Alaska regulations.

Staff noted that they will have to verify that requirement.

Mr. Yager responded that a full 30 day notice must be given according to the Landlord Tenant Act. He was not sure it applied to land lease/rental agreements. He questioned if the tenant would be required to fill out itinerant merchant license packet that included fingerprinting that is distributed by the Police Department.

Staff responded that there will be two different types of business permits one is a food service permit and there is an application packet; the Police Department issues the permits. There is another packet for a retail service permit. If the business is a short term, seasonal business they do not have to fill out the itinerant merchant license or permit. That permit is designed for a business that will be in place 60 days or less.

Staff further noted that this agreement was created from a council approved document issued in 2006 and some items from a document used by the City of Seward. It was confirmed that the document was not submitted to the City Attorney as they wanted to keep it simple.

There were no additional comments, questions or discussions.

PUBLIC HEARING *(3 minute time limit)*

There were no public hearings scheduled.

PENDING BUSINESS

There were no pending business items.

NEW BUSINESS

A. Review and Recommendation of the Base Lease Documents

Mr. Yager stated that he would prefer to see the changes within the document.

Staff responded that due to the number of amendments they felt it would be simpler to provide the new document and the old document.

Mr. Yager commented that he was not sure what to study and not study prior to a meeting and was wondering if a worksession could be held a couple of days or just prior to the scheduled meetings.

Chair Erickson requested clarification on the document and if this has been to council for approval.

Staff responded that it is scheduled for council review and it is desired to have the Lease Committee’s input on the requested document. Staff further noted that depending on the nature of the tenant’s business will determine the content in the lease document.

Chair Erickson noted for the record some of the changes that the Economic Development Commission (EDC) recommended.

Discussion ensued on some of the negative issues that would put you out of compliance of the lease. The possibility of opening the City up to liability using specifics for non-compliance. It was countered that not

using specifics can be the beneficial due to the fact that you could not be removed for inconsequential issues. Further discussion pointed out that there were currently three leases waiting to be executed using this document and the following specific:

Mr. Zimmerman inquired about Article 2 Property, page 3 (page 24 in the packet), Section 2.03, Property Accepted "As Is", regarding environmental conditions of the property such as a statement of condition prior to the lease negotiations. The new base Lease document on Article 10, Environmental Matters, page 17 (page 36 of the packet), Section 10.10, Inspection at Expiration of Term - the Tenant was required to obtain a Phase I environmental inspection at their expense but upon entering the Lease the City was not required to provide any proof of the environmental condition of the property. He opined that in fairness the City should provide a document that certifies the condition of the property and that there is or is not any environmental concerns.

Further discussion on the City sharing responsibility to provide or certify the condition of the proposed land to be leased, when this should be conducted or provided by the City and what the insurance carrier requires for risk management.

Mr. Wrede stated that the Committee can make a motion to address this concern and it would be forwarded to the Council.

Ms. Mauras stated that besides those few issues she felt that staff did very well revising the document and her only concern was the wording used in Article 14, General Provisions, Section 14.18, Governing Law and Venue. Specifically State of Alaska for the Third Judicial District at Homer. She questioned it should read "in Homer."

Clarification that this was standard legal wording was provided by Mr. Wrede.

There was no further discussion on this topic.

Mr. Zimmerman next questioned Article 9, Liability, Indemnity, and Insurance, Section 9.04 Insurance Requirements, he expressed concern over requiring comprehensive auto coverage and Chair Erickson agreed that she read it as a requirement. Further concern that the requirement is over the top and adding the City of Homer as additional insured. There was further discussion on the conditions being considered usual and customary.

Chair Erickson requested a motion to forward a recommendation to council on this document or to hold for further review.

Mr. Wrede stated that they could submit no recommendation if they chose to or that they recommended further review. He reiterated that his concern was for the three lessees waiting on executing the new leases and are currently on a month to month basis.

Mr. Zimmerman had one additional concern regarding Article 6, Use and Improvement of Property, Section 6.08, Disposition of Improvements at End of Term (a.)

Discussion on the paragraph needing more clarification and believed to be ambiguous. It was noted that the following paragraphs offer further clarifications. Mr. Wrede noted that was not the intent of the paragraph and this will be revised prior to submittal to the City Council.

Chair Erickson requested Mr. Yager to read through this document due to his expertise and experience in property management and then meet with the City Manager to point out discrepancies. Mr. Yager agreed but did acknowledge it would take him the weekend to review.

Chair Erickson requested a motion to submit to council or reserve recommendation for further study.

MAURAS/HAWKINS - MOVED TO FORWARD THE BASE LEASE DOCUMENT RECOMMENDING THAT THE CONCERNS EXPRESSED BY THE COMMITTEE DURING THE REGULAR MEETING OF APRIL 14, 2011 SPECIFICALLY SECTION 2.03, SECTION 6.08, SECTION 9.04 AND THE SECTIONS NOTED BY COMMITTEE MEMBER YAGER TO THE CITY MANAGER AFTER HIS INDEPTH REVIEW OF THE REVISED BASE LEASE DOCUMENT, TO BE PRESENTED TO COUNCIL AT THE NEXT REGULAR MEETING OF COUNCIL.

There was discussion on insurance requirements for a company auto and listing the City as Additional Insured.

ZIMMERMAN/MAURAS – FRIENDLY AMENDMENT TO STRIKE SECTION 9.04 FROM THE MOTION AS CONCERNS PREVIOUSLY EXPRESSED HAVE BEEN RESOLVED.

There was no discussion.

The amendment to the motion was approved by consensus.

VOTE. (Main) YES. HAWKINS, ERICKSON, MAURAS, ZIMMERMAN, ABOUD.

VOTE. NO. YAGER.

Motion carried.

Chair Erickson would like to continue moving through this document. She would like to see this on the agenda at another meeting. Mr. Zimmerman inquired if this will be approved by Council. City Manager Wrede stated that Council can pass it or mark it up and even send it back for further review by the Lease Committee. It was noted that this document can be on a future agenda that will allow a more in-depth review to be performed by the Committee if they desire. City Manager Wrede noted if this document is approved by Council he will be immediately getting the lease documents to the three lessees.

There was no further discussion.

B. Discussion on Leasing to Non-Profits

Chair Erickson gave a background summary on her request to have this item on the agenda. She expressed her concern regarding the Pier One Theater lease coming up at the end of the year and with the application of the Wooden Boat Society another Non-Profit requesting a substantial long lease term for an extremely low rental amount. She further explained that she did not want to have decisions based on emotional or political reasons. She stated she would be more comfortable establishing a minimum rate and then Council can take the responsibility to reduce it if they desire. There should be additional options. She would like to hold a very frank discussion on this besides \$1.00 per year. She acknowledged the value that non-profits offer or give back to the community but these entities do make money. She wants to be fair to all parties.

Mr. Wrede commented that this was very timely and explained that contact has been attempted with Pier One and there has been no response at this time.

Mr. Abboud commented that it is a political decision of council on who the community supports, whether museum or whatever organization they support and he is very uncomfortable making the decision on who the Committee show support and gets a dollar lease and it should be based on some minimum qualifications and it should be Council who decides to entertain giving a dollar lease. The committee's decision should be based on some set criteria.

Chair Erickson when they received the proposal from the Wooden Boat Society for one dollar a year was a big thing and there are no criteria in the Lease Policy on leasing to non-profits for the reduced fee and she does not want to address this on an emotional basis. She acknowledged that the Mayor supports Pier One and that's good but she wants to establish something more.

Mr. Wrede noted the requirements outlined in the Lease Policies, there is a requirement to consider fair market value, and Council can approve a lease that is less than that amount but there must be cited reasons to lease for less than fair market value and the benefits to do that.

Mr. Abboud reiterated again that the issues are political and the organizations that get a dollar a year lease usually is a result of strong favor from Council.

Continued discussion on the need to establish a set minimum and criteria for non-profits ensues covering suggestions of charging ten percent of the gross revenue, establishing criteria such as how much tax revenue, how many jobs, investment in the property, how do Foundations judge non-profits, how does the non-profits affect the community, impact on the community, take the feel good out of the equation, the non-profit needs to build their case, a top consideration should be considered that the Harbor is an Enterprise Fund and there is not a lot land remaining on the Spit and does the non-profit add more value to the City than a commercial business would. It was noted that parkland should be considered also. A question to ask would be does the entity need to be on the Spit. The Spit Comprehensive Plan recommendation should also be reviewed and if most non-profits were required to pay market rates they would not last. Comments made were that it will be a moot point in a few years there will be no more land available on the Spit non-profit or otherwise and they could take a hard-nosed look and make if fair market value or nothing. Mr. Wrede brought up the decision council made to have staff develop a plan regarding that parcel since there are so many uses for the parcel. Then they should issue the portion for competitive bid.

Chair Erickson requested that the committee take the next few months before the next regular meeting and think of different, creative things that can, such as half the fair market value, incentive-cise it but allowing them to still get something for the parcel.

Mr. Yager inquired if the Spit Comprehensive Plan expressed a percentage that should be designated for non-profits and then require the non-profits to submit a proposal on why they deserve the opportunity. He commented that if a percentage is designated it would take away the ambiguity, emotion and add meat to the thing; he stated that 10% would not be good because another entity could come and offer 20%. A set amount such as 20,000 square feet could be designated for non-profits as an example.

Mr. Abboud explained that during the draft of the Spit Comp Plan it was acknowledged that the Port & purchased the property for a substantial amount and it was determined that they did not want to take away the opportunity to get a return on their investment and they did not want to force the Enterprise Fund to absorb a charitable work. So they did not designate any required amount for parkland, non-profits, etc.

Chair Erickson requested this on the agenda for July meeting and asked the Committee Members to consider and get information on how to develop a plan to handle this in the future. It allows them think of ideas.

There was no further discussion.

INFORMATIONAL MATERIALS

There were no informational materials.

COMMENTS OF THE AUDIENCE

There were no comments.

COMMENTS OF THE CITY STAFF

City Manager Wrede stated that the Request for proposal has been requested on the Homer Education Recreation Center (HERC) Building and the EDC was tasked with the review of proposals received however the EDC is having difficulty in coming up with a quorum to review the proposals received so this committee would be requested to review the proposals and a special meeting would be required.

Ms. Felde commented that the proposals review and recommendations are required to be completed by May 30, 2011.

Deputy City Clerk Krause commented that due to the heavy use of the Council chambers she strongly recommended the committee to set up a meeting date today. She proceeded to outline the process requirements and noted that if available during the day what dates were available to schedule the special meeting.

It was agreed to meet at 2:30 p.m on May 17, 2011 to review and proposals received on the HERC building. Staff will provide reviews and score sheets so the committee can have all score sheets filled out prior to the meeting.

COMMENTS OF THE COUNCILMEMBER *(If one is appointed)*

There were no councilmembers present.

COMMENTS OF THE CHAIR

Chair Erickson commented they are making progress.

COMMENTS OF THE COMMITTEE

Mr. Hawkins commented that the Wooden Boat Society presented to the Port and Harbor Commission who supported them, and they have presented to the Lease Committee who also supported the idea. It was agreed by both to let the portion for RFP. He said that it appears they are having second thoughts about letting this portion for RFP, and he believes that they should prepare for that emotional testimony if it does not go to RFP.

Mr. Abboud, Mr. Zimmerman, and Ms. Mauras had no comments.

ADJOURN

There being no further business before the Lease Committee Chair Erickson adjourned the meeting at 4:45 p.m. A Special meeting is scheduled for May 17, 2011 at 2:30 p.m. The next regular meeting is scheduled for 3:00 p.m. July 14, 2011 at City Hall, Cowles Council Chambers, 491 E. Pioneer Avenue, Homer, Alaska.

RENEE KRAUSE, CMC, DEPUTY CITY CLERK I

Approved: _____