

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
January 15, 2020

Meeting Began At: 2:30 P.M.

Meeting Ended At: 3:37 P.M.

Members Present: Leirion Gaylor Baird, Tim Clare, and Tammy Ward

Item 1 - Introductions and Notice of Open Meetings Law Posted by Door

Gaylor Baird advised that the open meetings law posted at the entrance to the room is in effect.

Item 2 - Public Comment and Time Limit Notification

Gaylor Baird advised individuals from the public are given a total of five-minutes for public comment on specific items listed on today's agenda and those testifying should identify themselves for the record.

Item 3 – Approval of the minutes from the JPA meeting held November 25, 2019

Ward moved approval of the minutes as presented. Clare seconded the motion. Motion carried 3-0.

Item 4 - Approval of October and November 2019 Payment Registers and Review of October and November 2019 Expenditure Reports (Brandon Kauffman)

Brandon Kauffman, JPA Treasurer, stated in reviewing the October 2019 payment register the operating budget had \$1,777,789.82 in operating expenditures with the major payments consisting of a payment for \$54,072.29 for servers at the arena that were approved by the Board; annual insurance payments for general liability of \$25,743.00, public official bonds of \$33,150.00, and property insurance of \$176,702.00; \$83,510.69 payment for arena repair/maintenance/CIP for general maintenance on items such as food and beverage equipment, IT, escalators, etc.; \$800,195.73 to SMG to pay off the reopening loan four years early saving around \$3,600 in interest; two months' worth of parking garage management for a total of \$286,524.07; and a payment to the DEC of \$208,833.50 for thermal heating and cooling of which 69% or approximately \$144,000.00 is billed to West Haymarket private customers and the JPA pays about \$65,000.00.

There were minimal payments made in the capital budget for a total of \$161,973.97. The primary payment was for \$160,000.00 to the City for reimbursement of the completion of the rail canopy as approved by the Board.

Kauffman stated the financial reports for the JPA for the period ending October 31, 2019 reflect revenues of \$5,008,333.35 and expenditures of \$2,573,363.39, for a surplus of \$2,434,969.96 and an ending balance of \$47,081,389.65.

Kauffman stated the Pinnacle Bank Arena Income Statement for the two months ending October 31, 2019 shows total revenues for Pinnacle Bank Arena of \$954,701.00 and total expenditures of \$855,169 for a surplus of \$99,532.00, and an ending balance of \$982,078.00 in retained earnings.

In reviewing the November 2019 payment register, the operating budget had \$10,489,427.11 in operating expenditures with the major payments totaling \$9,880,612.32 for the bond refunding approved by the Board. Clare commented that the net savings far outweighs these costs. Kauffman stated on the 2011 bonds over 12% was saved or around \$12.15 million net present value through 2042, saving around \$850,000 annually. The blended rate was around 5% and when the bonds were sold, they came in at 3.8%. With this refunding the interest rate dropped to 3.4%. He explained they will continue to monitor if an opportunity to save is available by refunding the 2013 bond. Kauffman stated of the \$9 million, \$1,254,000.00 was the good faith deposit received so it was returned to the escrow agent; the JPA's cash contributions were \$8,550,812.37; the smaller payments of \$70,500.00, \$4,000.00, and \$1,300.00 were for costs to issue the bonds.

Other major payments consisted of payments to National Concrete Cutting totaling \$97,600.00 for the demolition of the Jacobsen building on Block 5; \$114,568.47 payment for arena repair/maintenance/CIP for general maintenance on items such as food and beverage equipment, IT, escalators, etc.; \$41,552.50 payment for the removal and replacement of the heating loop glycol approved by the Board; \$148,098.87 for one month of parking garage management; and a payment to the DEC of \$205,261.50 for thermal heating and cooling of which approximately \$141,000.00 is billed to West Haymarket private customers and the JPA pays about \$64,000.00.

Kauffman stated the financial reports for the JPA for the period ending November 30, 2019 reflect revenues of \$8,760,552.85 and expenditures of \$11,815,513.84, for a deficit of \$2,985,049.49, and an ending balance of \$41,688,370.20.

Kauffman stated the Pinnacle Bank Arena Income Statement for the three months ending November 30, 2019 shows total revenues for Pinnacle Bank Arena of \$1,319,305.00 and total expenditures of \$1,296,239.00 for a surplus of \$23,066.00, and an ending balance of \$905,612.00 in retained earnings.

As of November 30, occupation taxes were up 3.6% and remain ahead of the original projections by 27% corresponding with the year 2032.

Jane Kinsey, Watchdogs of Lincoln Government, asked if the original loan was paid off. Kauffman confirmed it was and explained there was an original loan of \$2,000,000.00 from SMG to help with startup costs. The \$800,000.00 paid off all of the JPA's obligation to SMG for this loan. Kinsey asked what the risk management payments are for. Kauffman explained they are for insurance for general property liability. Kinsey asked what fund the bond payment will come from. Kauffman explained it will come out of the operating account for the JPA which will show up on the January payment register for next year.

Clare commented that the \$41 million is 27% ahead of where they thought it would be when the initial budget was put together. Occupation tax was at 3.6% for the month and 2% was budgeted for so the fact that the finances are where they predicted for 2032 shows that there is enough money to make the first principal payment and subsequent principal payments as well.

There being no further discussion or public comment, Clare moved approval of the resolution. Ward seconded the motion. Motion carried 3-0.

Item 5 – WH 20-1 Resolution to approve an Addendum to the Construction Management Services Consultant Agreement between the West Haymarket JPA and PC Sports Inc. for an extension of project management services for a final term of January 1, 2020 through December 31, 2020. (Adam Hoebelheinrich)

Chris Connolly, Law Department, stated that this agreement is the last extension of the original agreement approved in 2017. By the end of this year the Board will need to decide what to do going forward.

Adam Hoebelheinrich, PC Sports, stated this agreement will continue their agreement with the JPA and on behalf of PC Sports they appreciate the opportunity to continue to work with the West Haymarket JPA. He explained this is an hourly not to exceed agreement which is based on an estimate of the time spent doing various tasks for the West Haymarket JPA when managing projects such as the Oscar streetscape, Canopy streetscape, Block 4 project, and general maintenance that is not covered by the DLA agreement.

Clare stated he appreciated the work they have done from the start and commented they have been transparent to the community, have been responsive to the Board's questions, and have been proactive on issues.

Kinsey, asked if this contract was bid. Hoebelheinrich stated this is an extension of a current contract. Connolly stated when the original contract was entered into it was done pursuant to state statutes and the county purchasing act that the JPA follows. Clare asked what the terms of the extension are since this was an extension of an existing contract with PC Sports. He further asked what did the original contract say with respect to the ability to extend the contract and does the JPA have to go through the bidding process? Connolly stated the original contract called for three extensions. Clare commented that the JPA is following the original contract put through the proper process to begin with. Connolly confirmed this to be correct. Clare asked if any subsequent extensions after this contract will have to go through the bidding process. Connolly stated it will have to go through a competitive process.

There being no further discussion or public comment, Clare moved approval of the resolution. Ward seconded the motion. Motion carried 3-0.

Item 6 - WH 20-2 Resolution to approve a Unit Price Contract with Commonwealth Electric Co. for an amount not to exceed \$2,901.20 to convert 21 exterior lights to LED at the Pinnacle Bank Arena to be paid out of the endowment fund. (Caleb Swanson)

Hoebelheinrich stated this is in response to several pedestrian plaza lights in the arena that are starting to fail. He explained about a quarter of them are out right now and based on the assessment of the rest of them going out shortly they looked at switching out all of the lights to LED. County purchasing was used to find the unit price contractor and Commonwealth was the lowest responding contractor. Clare asked if this is paid for out of the endowment fund. Hoebelheinrich confirmed yes and stated the endowment fund was set up for maintenance above and beyond typical day to day maintenance for the West Haymarket JPA area. Kinsey asked if this was bid. Hoebelheinrich stated this was done through county purchasing. They have a list of unit price contractors, the list is used to procure quotes as they are requested to bid and awarded to the lowest respondent. Kinsey asked if Commonwealth is a subcontractor for PC Sports. Hoebelheinrich explained PC Sports is the management overseeing the project and that the agreement is with the JPA. There being no further discussion or public comment, Ward

moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 7 - WH 20-3 Resolution to approve Amendment No. 1 to the Canopy Park Project Redevelopment Agreement between the City of Lincoln, Nebraska, West Haymarket Joint Public Agency, Canopy Park, LLC, and West Haymarket Holding Company, LLC for the redevelopment of property generally located at the northwest corner of South Canopy Street and “N” Street, including the sale of real estate from the West Haymarket JPA to West Haymarket Holding Company in the amount of \$1,836,466.00. (Chris Connolly)

Connolly stated this is an amendment of the agreement approved in May of last year. Since that time there has been a change in players. Canopy Park LLC is replacing Lincoln Haymarket Development Corporation in the project. The amended agreement will go before the City Council next Monday. The JPA will receive the proceeds from the sale of the land and land will still be sold to the City for the parking garage. Clare commented that the key to this is that one of the parties was not able to perform so the other two parties stepped up and are going to be able to provide affordable housing to the City. Ward thanked the partners who stepped up and stated it is key as we move forward as a city to have affordable housing and thanked everyone for their efforts. Gaylor Baird commented that housing is critical for growing the community, both market rate and affordable units, and this project will help to achieve that goal. She stated she is grateful for the collaborative work of the partners, Urban Development department, and City Law team. She expressed that she is looking forward to this being built.

Kinsey commented this is a feel good resolution that has a lot of caveats for the tax payers and for the people of Lincoln who want to live down there. The use of TIF for façade enhancements is not the intent of the original TIF. It was for infrastructure only and stated she is not in favor of this. She stated there are PCB pollutants in the soil and even though there is a remediation plan for that, which was approved by the NDEE, no one can assure that some human damage might not be done over a period of time for people who live there for many years. She commented that the diesel plume under the soil is extremely difficult to get rid of. She feels this has put the taxpayers in the future in jeopardy from all of these situations. She commented if you want low income housing, use other land in the West Haymarket that is free from these kind of caveats. She stated this is a good idea, it's just in the wrong place.

Dan Marvin, Urban Development, stated this was presented to City Council earlier in the week. The amendment provides for 252 units with 41 affordable housing units, modifications in the TIF resulting in an increase with some of it going to Block 5, the park across the street, and some for improvements in Block 4. The issues relevant to the JPA are that this project ties into the DEC which will lower DEC costs as the number of square feet served grow as well as the land sale for about \$1.8 million. There being no further discussion or public comment, Ward moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 8 - WH 20-4 Resolution to approve Customer Energy Service Agreement between the West Haymarket JPA and Canopy Park LLC. (Chris Connolly)

Connolly stated this is another step in the Block 4 process. With the change in participants in the Redevelopment Agreement we need to change the Energy Service Agreement approved last July by the Board. Although Canopy Park was the main customer in that agreement, there were a number of references to WHDC, which is no longer participating, so it is prudent to adopt a new contract. The terms are all the same. The number of square feet is being lowered which will eventually have an impact on the rate when it comes on line. Other than that, it is the same

agreement. Kinsey asked if the JPA surcharge is included in this. Connolly asked what surcharge she is referring to. Kinsey explained tenants who live down in the Haymarket have a surcharge on their electric bill that says JPA surcharge and asked if this will continue for the Canopy Park tenants. Connolly stated he is not familiar with a JPA surcharge. Kinsey said it is labeled by their landlord as a JPA charge. Connolly stated the JPA is not charging this and that he is not aware of how the landlord is displaying this to the tenants. He stated the only charge is what the JPA pays to the DEC for the energy. Gaylor Baird asked Kinsey to bring in a copy of one of the bills so that they can clarify and answer her questions. Marvin stated in regard to the Block 4 development, the affordable housing units rent will include the district energy costs. He explained in order for them to be classified as affordable housing, the rent and utilities needs to be 30% of a 60% area median income. There being no further discussion or public comment, Clare moved approval of the resolution. Ward seconded the motion. Motion carried 3-0.

Item 9 - WH 20-5 Resolution to approve Agreement to Terminate Customer Energy Service Agreement between the West Haymarket JPA and Canopy Park Condominium Association. (Chris Connolly)

Connolly stated the purpose of this resolution is to make a clean record by terminating the agreement that was approved in July of 2019. There being no further discussion or public comment, Ward moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 10 - WH 20-6 Resolution to approve an Agreement between the West Haymarket JPA and Carbonhouse for website design, development, hosting, and support services for the Pinnacle Bank Arena for a term of February 3, 2020 through February 2, 2023 upon the terms and conditions as set forth in the Agreement. (Tom Lorenz)

Bob Walla, City/County Purchasing Agent, stated this is a new contract being done as a sole source contract for a period of three years. An RFP was done four years ago and Carbonhouse was hired to do the website design for Pinnacle Bank Arena. At the end of the contract term, it was requested that this company remain in place because of the excellent job they are doing, but also for consistency and continuity of working with the public through their ticketing and other services. Kinsey asked if this was bid out. Walla explained this was originally done as an RFP four years ago. Walla explained they want to keep consistency for what the public sees on the website, ticketing, and the way the website is used for different events. Walla further stated the rates Carbonhouse offered remain the same as the original contract and a lower increase per year was negotiated than what was in the original contract. Instead of a 5% increase every year there will only be a 5% increase after 3 years. Walla explained the Pinnacle Bank Arena staff contacted other arenas that have different web designers and this contract was at a better rate than what they could find for similar services. This contract was done through purchasing and coordinated with Tom Lorenz. Clare asked Connolly if they have a legal obligation to get bids. Connolly stated he understands this was sole sourced which is an indication that there is a lack of a competitive market to get bids. He also stated this is a subscription on an “as needed” basis. Connolly said there is always a need for a competitive process, but it doesn’t have to be bidding. Clare asked if he was satisfied with how they awarded this contract and Connolly confirmed he was. Clare asked if it violated any rules and Connolly stated it did not and that the JPA is in compliance with the County Purchasing Act. There being no further discussion or public comment, Clare moved approval of the resolution. Ward seconded the motion. Motion carried 3-0.

Item 11 - WH 20-7 Resolution to accept the financial audit and management letter and report from BKD CPAs & Advisors LLP for the period ending August 31, 2019. (Chris Lindner, BKD)

Kauffman stated BKD was hired through a competitive process in 2015. That contract went before the City Council and was approved. There was an option to extend the original contract for four years. The extension was approved by City Council last year. BKD will be the auditors for the next four years.

Chris Lindner, BKD CPA, stated he will discuss the 2019 JPA financial audit statement. He started by thanking the City for all of their help in this process, specifically Mark Leikam, Brandon Kauffman, and the rest of the City Finance team. He stated they did a fantastic job of having the records ready in order to complete the audit. Lindner stated there are two documents that will be discussed, the financial audit and management letter and the audit report. Lindner stated within the audit report there are two opinions noted. The first is the opinion stating the financial statements are in accordance with the governmental accounting standards. This is a clean or unmodified opinion. The second is the opinion that the JPA is operating in accordance with the government auditing standards. Nothing was noted as there were no items of non-compliance found and no audit adjustments were made. This is also a clean or unmodified opinion.

Lindner further stated on page 3 is the management discussion and analysis that gives a high-level summary of the financial statements of the fiscal changes from 2018 to 2019 and any future concerns that could have an impact on the JPA. He discussed the balance sheet on page 7 and explained that the JPA is structured as a component of the City therefore it essentially has two presentations within one statement. There is the JPA Fund column looking at the current focus showing cash investments, short-term receivables, and short-term liabilities. The column on the right, Statement of Net Position, looks at everything on a full accrual encompassing all assets and liabilities. Looking at page 8, the Board will find the income statement showing the assets and liabilities activity that change from year to year. He stated page 18, footnote 5, is a summary of the long-term liabilities that discusses what debt is outstanding, the repayment terms for the debt and when certain obligations will become due and contractual arrangements with future payment and receipt terms. He explained page 23, footnote 9 shows the related party transactions between the University and the City. There are some payments going back and forth for various items that are disclosed in the report. Finally, at the end of the report is a brief summary of the bond refunding that took place last fall. He stated from an accounting standard standpoint there were several accounting standards affecting a variety of entities, however, with the JPA's activities none of those standards had an impact on the JPA financial reporting and no new line items or disclosures are required. Looking at the communication letter, there was one adjustment proposed as part of the audit process for capital assets. Management was open to that adjustment. Throughout the year they make inquiries of management and staff, testing internal controls to determine if the segregation of duties in place are being followed and if the checks and balances, reviews, and reconciliations are being done. No problems were reported.

Clare asked if, from a process standpoint, the correct checks and balances are being followed to ensure there are no fraud issues detected. Lindner stated this is correct and explained there are controls put in place to ensure there is no fraud or error. He again confirmed that they did not identify anything that they felt was a risk or control issue. Clare asked if he felt like the JPA was in a good position to make the principal payments. Lindner stated this a decision for

management and explained his objective and role is to look at the financials for the fiscal year and determine if the balances presented by management are accurate and in accordance with accounting standards.

Gaylor Baird asked if there was anything about the process that gave him a pause. Lindner stated absolutely not as everyone at City Finance had everything ready when they arrived and was accessible during the audit process. There were no issues or disagreements.

Kinsey asked what percentage of BKD's business is with government. Lindner explained BKD as a whole is a national firm, being the 12th largest firm in the United States. In Lincoln there are around 65 professionals and the mix of services is about 50/50 between audit and tax. Out of the 50% of audit services, government audit services are around 20% and the team he works with serves only government sector clients. Kinsey asked if BKD has a contract with the City. He stated BKD performs audit services for the City. Kinsey asked if they found anything different. Lindner stated there are always going to be changes that happen because of changes in accounting standards, changes in audit standards, and what he is required to look at and test is always going to change. He stated from the control of checks and balances standpoint, in early years they made suggestions to City Finance to tighten those controls and at the time management accepted those suggestions. Since that point, there have been no issues or findings nor any reason to have those changed. Kinsey stated she feels there needs to be an outside look and is preparing to ask the State Auditor's office to check on the program.

Gaylor Baird requested clarification from Kauffman with regard to the audits. Kauffman explained that the JPA will always pay someone to come in and perform an audit because it is required by state law. However, there are independence requirements placed on auditors and hiring them as independent auditors. Lindner explained from the audit standards there are very strict independence rules. He is very cognizant of those rules and making sure that they are followed. He explained in addition to the review that his team conducts they have another partner in their firm who is not in the Lincoln office who looks at everything they have done from a documentation standpoint and deliverable standpoint to make sure that they are not trying to squeeze something under the rug. It's a second set of eyes which they consider to be their objective or independent review of their work.

Clare commented there is a reason why BKD is a national firm and that is because they are an outstanding firm. He stated he appreciated their ethics and integrity they bring to the JPA to ensure that everything is done right.

There being no further discussion or public comment, Ward moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 12 - Set Next Meeting Date

The next meeting date will be Thursday, February 27, 2020 at 2:30 p.m. in the County-City Building, Council Chambers, First Floor.

Item 13 – Motion to Adjourn

Clare moved to adjourn. Motion seconded by Ward. The meeting adjourned at 3:47 p.m.

Prepared by: Kasey Simonson, City Law Department