

**Board of Directors Business Meeting**

**Tuesday, May 12, 2020, 7:00 a.m.**

**Location: Idaho Falls Auditorium District Office/Zoom Videoconference**

**467 Constitution Way, Idaho Falls, Idaho 83402**

**Attendees:** Terri Gazdik, John LoBuono, Bob Nitschke, Steve Vucovich, Doug Swanson, Rob Spear, Mark Fuller, Salem Thomas, Mike Clements, Blake Davis, Kevin Greene, Kevin Bruder, Kevin DeKold

**Minutes**

1. **Action Item** - Call to Order – at 7:02 a.m.
2. **Action Item** - Accept the Consent Agenda – Nitschke suggested changing the Centennial Management (CM) contract item to a discussion item. He said there are still outstanding comments that have not been addressed. Gazdik said she believes the Board is prepared to take action but explained that the Board is not required to make it a discussion item in order to only discuss it. Action Items do not require actions. LoBuono moved to approve the agenda. Vucovich seconded.
   1. Meeting Minutes – 4-24-20, 4-28-20 - Spear, Fuller, Vucovich, and LoBuono said they have all reviewed the minutes.
   2. Review of the Payables/Financials - The total for payables was $74,511.59. No Board members requested any additional information beyond what was listed. No financial statements were available, but the State Tax Collection did give the Board an amount for total collections. Spear said that the Board received 68% of what was budgeted in March.

LoBuono moved to accept the consent agenda. Vucovich seconded. Motion passed. Nitschke said he would like to review the minutes before they are approved. Spear said he would review the minutes with Nitschke and if the changes are significant then he will bring the minutes back to the Board for approval.

1. **Discussion Item** –Public Comment (Any member of the public is welcome to take three minutes and share concerns or questions with the Board) - None.
2. **Action Item -** Centennial Management Contract and Pro Forma Acceptance for Event Center operations - Gazdik reminded the Board of the last meeting in which she encouraged them to address any concerns they had with the pro forma given by CM. She said the concern at this point with the contract is that Gilmore Bell has raised questions regarding the affiliate contracts for hockey and concessions being under CM. Because of the related parties’ issue this may negatively increase private usage that would impact the selling of tax-exempt certificates of participation. Gilmore Bell offered three alternatives to resolve this issue. Gazdik reminded the Board that an approved management contract is a necessary part of the financing package. Gilmore Bell suggested several alternatives need to be discussed with CM. Gazdik stated that this does not mean the Board can’t choose to approve the management contract today.

Spear gave the Board a quick update on the issues. Because the three agreements are between separate companies but under one parent company, this presents an IRS related party issue. The result is that this could increase the private use and potentially impact the tax-exempt sale of the certificates of participation. Gilmore Bell offered three solutions. One would be having IFAD entering into three separate agreements. Second is IFAD could take all revenues from the operation and then compensate the operator as long as no expenses are taken into calculation because that could trigger a “net profit” issue. Third is hiring a third party to evaluate whether the parties were all contracting at a fair market value. Spear emphasized a point that Gazdik had made previously that if the ownership of the concessionaire and the hockey team were at 79% and somebody else had 21% then the IRS related party concern could be avoided.

The only change in the contract presented today from the last one that the Board approved in principle are the dates. It moves the start date from August 2020 to August 2021. Spear pointed out that the District still needs to achieve financing before the contract can move forward. Gazdik added in discussions with Kevin Bruder of CM, he indicated that the Board could accept the contract with the condition that the Board correct the affiliate contracts to be in line with the IRS standards which would allow the Board to sell tax-exempt financing. This could be set up to be approved as long as those affiliate contracts were corrected by a date certain or the management contract would be null and void.

Fuller added that he had previously suggested approving the management contract today, then approving the affiliate contracts as they were completed. Gilmore Bell responded that they would like all the contracts to be a package deal. They requested that the management agreement not be approved until the other contracts are also prepared to be approved.

Bruder said that things have been changed due to timelines which created this hurdle, but he is confident they will be able to clear it. Bruder agrees that everyone needs to be comfortable with how the IRS issues are addressed and that if they can’t, the management contract could be terminated. Gazdik asked if Bruder’s preference would be to approve the management agreement today or if he would rather follow the direction from Gilmore Bell and approve all the contracts together in one package. If the second is to happen then the MOU with CM will have to be extended again as it expires May 19,2020. Bruder said he is confident that approving the management package today would be helpful rather than harmful as the framework for the other two contracts is already outlined. Then, the Board can proceed as needed because they will have their contract with a management company in place.

Gazdik asked for Gilmore Bell’s reasoning for suggesting approving all the contracts at the same time. Fuller said their concern follows the same issue that has been brought up by Nitschke before. It is difficult to determine from the framework whether net profits are being conveyed to CM through the ancillary agreements. Although it is clear through the management contract that this will not be happening, it needs to be evident in the other two contracts that CM is not receiving those funds through the hockey or concessionaire agreement instead. Nitschke has asked a number of times for the amount of funds that are conveyed to CM. The concern if the Board approves this is that the future contracts will not follow the correct guidelines which means Gilmore Bell is unwilling to write the letter stating that IFAD is eligible for the tax-exempt status which is just as necessary as the management contract for sale of certificates of participation.

Spear said that it is his understanding that Gilmore Bell didn’t discourage approving the management agreement but indicated that they wanted the other agreements in place in order to issue their opinion letter.

Nitschke asked for a reason behind the urgency for the Management Agreement if the Board isn’t going to the financial markets for a while. Nitschke requested that Spear make sure all the questions that have been taken to CM be properly addressed before the Board approves the contract. He also wants to see the plan for operation a few years down the road because the building shouldn’t be built if the Board won’t be able to afford operating it. He said he hasn’t seen that information yet and said he would like to see this decision postponed until all those issues have been addressed.

Fuller said that Spear’s explanation of the three options offered by Gilmore Bell was good. In his understanding, if the Board approves the contract today than they are overruling one of the options which would be to have IFAD form the contracts directly with the hockey team and the concessionaire. Under the current management agreement that option would not be available. Gazdik didn’t think that was right. She understood that if they accepted the agreement today and it caused an issue, then the Board would have to nullify the contract and they could reword it as necessary to make it work. That’s the option that she is proposing: The Board accept the management contract with the condition that the Board has to have those affiliate contracts structured in such a manner that they will meet the criteria for tax-exempt status or the management contract becomes null and void.

LoBuono said he agrees the Board should proceed in that direction. Vucovich asked what Fuller thought of what Gazdik was proposing. Fuller said that generally the contract should be fully negotiated and agreed upon before it is signed, but in this instance with the MOU expiring May 19th, it could be done as Gazdik proposed. They would have to make sure that CM knows there will be a clause added indicating that if the two affiliate contracts do not meet the requirements of tax-exemption then the management agreement would become null and void. It is possible but is not the way contracts are normally negotiated.

Nitschke asked again what the rush was besides the MOU which can be extended. Why not make sure everything is right? Gazdik said she thinks it will take much longer than a couple weeks to make sure the contracts are set up properly. Nitschke said he understands that and would still like to take the time to make sure everything is correct before the contracts are signed. Spear explained that Raymond James requested information about IFAD. The information presented included a copy of the management agreement because that is a critical piece when Raymond James takes the project to the rating agencies. Nitschke pointed out that it will be months before the Board goes out for financing. Spear said that the next meeting with the Raymond James is on June 11, 2020. Spear just wants to be prepared to move as soon as

necessary so there is no delay. Nitschke said he would rather do this major contract correctly than do it like other things have been done where the Board decides they will fix it if something goes wrong. He mentioned the comments he made on the contract that have yet to be resolved. He said this will actually become an issue later on because if it has been approved then it is a lot harder to change. He also brought up the issues with the pro forma, indicating that he is still uncertain if the event center will be profitable, especially with the effects of Covid-19 on the economy. To proceed without factoring these things into the pro forma is irresponsible.

Vucovich asked if anyone had set a date as to what would need to be done to approve the other two contracts. Spear stated, it would need to be done before going out to sell certificates of participation in the fall. Gazdik said they had discussed aligning the date with the hockey team lease which would be August 18, 2021 just to provide enough time. It is correct that it would need to be done sooner than later. LoBuono said he thinks it needs to be done 60 days prior to going out for certificates of participation. He would like it to be done August 1, 2020 so there is plenty of time to prepare. Fuller responded to Vucovich’s question by saying that they realized there had been a disconnect between parties discussing the contracts. They have now planned to set up a meeting with CM, Gilmore Bell, Spear, Gazdik, and IFAD’s legal counsel so everyone is on the same page. There is not a meeting date and time set, but it is in the plans for later this week.

Gazdik asked if Spear would share about the questions on the issues with the pro forma. Nitschke said that the pro forma should be able to stand alone, be well documented, well-reasoned, and be defensible. The Board should be able to arrive at the same results to what CM gives them. Spear walked through the questions Nitschke raised previously. There are no issues with taking the pro forma from a 15 month to a 12-month time span. Spear referred to a comment made by Bruder that the Covid-19 pandemic would affect the pro forma if it were written today because income would be at zero. However, moving forward, Bruder expects the pro forma to remain the same. Especially as they begin looking toward the 2022 timeframe. Nitschke said the WSJ reported it was 10 years after the 2008 financial crisis before event industry returned to their previous profits. Spear explained that that Bruder stated that the financial crisis of 2008 didn’t impact Utah and Idaho like the rest of the country. Nitschke said the Covid-19 isn’t going anywhere until there is a vaccine or herd immunity. Until that time there will be social distancing and other things in place that make gathering in large groups difficult so he would like to see it addressed in the pro forma. There is likely to be a percentage decrease in attendance at large events. There will have to be an added cost for not just cleaning materials but for disinfectants and the added time for the regular disinfecting. All those things should be reflected in the pro forma. Gazdik said she doesn’t think it is fair to assume anyone knows what will happen in the future.

Spear indicated that if Bruder were to open the Maverik Center right now only 1,400 people would be allowed in and it would not be viable. Bruder was more concerned with being able to attract some artists because of the high demand once Covid-19 is under control. Bruder indicated that there would be a “honeymoon” period for the Mountain America Center when it first opens in which artists will be excited to perform there. Spear said that things will have to change because of Covid-19 like there may need to be thermal cameras at the entrances to see if people have a temperature as they enter the building.

One of Nitschke’s other concerns is minor league baseball being taken from Idaho Falls. Green explained that Major League baseball is changing a few things, but there will still be a team in town. The only major change is that the players that come here to play will not be from one Major League Club.

Spear brought up the issue regarding the pro forma that CM claimed was created in 2016. That pro forma was created differently because the Board at that time was not trying to get the tax-exempt funding. This makes it likely that the said pro forma is no longer relevant. Nitschke mentioned in his questions that the pro forma only addressed 800 paid attendance for junior hockey league games. Green said junior hockey leagues that average 400-500 in attendance are from arenas more like the rink at Tautphaus Park where it doesn’t have the necessary seating capacity. Greene said that to be viable, you would need to have at least 800 people in attendance. At the Mountain America Center most games will be on the weekends so it shouldn’t be hard to draw the crowds.

In reference to whether the pro forma is conservative, Spear explained that the Board has been told many times that it is conservative but asked for Nitschke’s explanation of how conservative could be defined. Nitschke said the Board needs enough information that the Board would be able to arrive at the same conclusion as CM who put the pro forma together. One example he gave was someone may ask why the ticket price is set at $10. The Board should be able to see on the pro forma whether CM took the average junior hockey league ticket price as the basis or used some other approach. CM hasn’t outlined what all the utilities are and at what season. He would like to see the information they used on each item, so the Board knows how CM came to show these numbers are conservative.

Another question was the minor league hockey team taking up ice time. Spear explained that the hockey team will be practicing at 9 a.m. for a 60-90-minute length of time which will not be competing with other people wanting to use the ice.

Nitschke had pointed out that it is inappropriate to use the West Valley City contract as the basis for the Mountain America Center (MAC) contract for the hockey team because West Valley City is paying professionals to come and play while the MAC will have amateur kids staying in other people’s homes come and play. The revenue sharing percentages may be different than at the Maverik Center because the situation is vastly different. The point is that CM needs to tell the Board why they decided on the amounts they did. Even the concessionaire amount may be different. Bruder explained that what they’ve done is look at industry best practices. Other studies and agreements from other venues are reflected in the presented pro forma. All the numbers they presented whether for concessions or parking are in the standard industry range. Bruder said CM would be willing to drill down those numbers more specifically if needed. Gazdik asked if the development of the pro forma will continue to evolve even after adopting a management contract and if it will continually have to be revised. Bruder said that it would. It turns into a “rolling budget” that helps identify why CM is over or under their projections.

Gazdik asked Greene to talk about his team who has helped Chukars Baseball become what it is. Greene first talked about Paul Henderson who is over the concessions at the park. He has been on the team for 10 years and isn’t planning on moving on. Aaron Madero and Chris Hall are both local and are excited to be part of the Mountain America Center. They are excited and motivated business people.

LoBuono said he watched a show that explained that a cure for Covid-19 will be available in 8 months. He doesn’t think Covid-19 will affect the Center once it is open. Nitschke said that historically the fastest vaccine ever created was 4 years. Swanson said Korea is already open so America will be opening soon enough.

Vucovich asked who identifies how much money is available through the certificates of participation. Does the Board tell the underwriter that they can only afford a 3.5% interest rate, or do they say they can only get the Board so much money? Secondly, if the revenues are still at half over the summer then the likelihood of achieving financing in the fall is slim. Will the Board still have a chance later on to say they haven’t made the necessary funds to begin construction? Vucovich suggested that signing the contract could be good because CM will then be mentally on board to help get the MAC ready to go. He asked Spear if the Board will be the ones to decide if and when to go out and sell the certificates of participation. Spear said the Board will be making that decision. They will be heavily guided by the underwriter and by the municipal markets, but they will be the ones to say whether to move forward or not. Vucovich said then Covid-19's impact on hotel revenue is the defining factor. He doesn’t think there will be a public relations issue if the Board decides to not move forward with construction because the public won’t want to attend the events anyway.

Gazdik explained that everything the Board has done up to this point is to be prepared for the time when the revenue is back up and the underwriter thinks it is a good time to sell the certificates of participation. Making the step to approve the CM contract is another step in being prepared for the day when the Board can “pull the trigger” on selling the certificates.

LoBuono said the Board will make a prudent decision when it has the ability to do so. It may not be this fall due to the lack of revenue, but that doesn’t mean the Board shouldn’t continue in the process. Nitschke clarified that he is more concerned about operating the MAC once it is built.

Fuller said he has reviewed Article 21 which says that IFAD can terminate the contract only if there is a default by the manager. If the Board doesn’t build the building that would change the situation. Fuller recommended if the Board wanted to approve the contract today that it include an addition which includes a condition “allowing IFAD to terminate the agreement upon the inability of IFAD to obtain a favorable tax opinion from Gilmore Bell allowing the tax-exempt sale of certificates of participation after final review of this management agreement, the concession agreement, and the arena agreement as a complete package.” That should be added as an additional basis for termination of the management agreement because if the Board can’t get that tax opinion then they won’t be able to sell the certificates of participation.

Vucovich asked what would happen if Covid-19 does stick around and the Board is forced to build a smaller building at a fraction of the cost. Is there something in the contract that allows either party to end the contract if things end up changing dramatically. Fuller said that this contract is based upon construction of the building as currently designed. If the design changes then CM has the right to terminate the agreement. However, if the contract is signed then CM is entitled to rely on it. For example, if they were offered another location to manage in a different state they would decline and work toward the success of the MAC. If IFAD violates the contract in some way that is not in the contract, then CM can hold IFAD responsible for their damages sustained by that violation. That is the reason Fuller suggested amending the agreement to include an out if IFAD is unable to sell certificates of participation.

LoBuono said he thinks the Board can make a motion to accept the contract with the two discussed caveats.

Gazdik asked Bruder what he thought of the amendment that Fuller proposed. Bruder said he is comfortable with the suggested change.

LoBuono moved to accept the management contract with the understanding that there will be a provision in the contract that allows this contract to terminate if IFAD is not able to obtain favorable tax opinion on the structure of the contract and the affiliate contracts. Swanson seconded the motion. Nitschke said he doesn’t feel there is adequate information to proceed at this time. Gazdik, LoBuono, Swanson and Vucovich voted in favor and Nitschke opposed. Motion passes.

Gazdik asked Spear to put together a meeting with Gilmore Bell and CM to make the change in the contract and discuss what to do with the affiliate contracts.

1. **Action Item -** Discuss and take action on the IE Productions contract - Spear said he had discussed this with Hammond. Spear said that they had come to agreement to move IE Productions to an hourly rate of $85/hour. Hammond agreed. Gazdik clarified that Hammond is willing to move to an “as needed” basis. Gazdik explained that IFAD appreciates IE Productions services but that the monthly retainer does not seem appropriate due to the lack of work the Board requests IE Productions to perform. Hammond said he understands the situation and asks that his video team is able to have their services used at $125/hour. LoBuono said this is standard for the industry. He also said he is expecting that once IFAD gets moving forward on the project that there is a possibility to put IE Productions back on a monthly retainer. Hammond said he would love to continue in that way if the Board needs that later on.

LoBuono moved to terminate the current IE Productions agreement effective May 1, 2020 and that an hourly basis be utilized until the Board has the financing to reconsider. Vucovich seconded. Motion passes.

Gazdik reiterated that IE Productions has been a great team player and she looks forward to working with them in the future.

1. **Discussion Item –** CRSA rendering review of revised exterior design - DeKold said that a logo has been added since the last meeting. He met with Snake River Landing to discuss the gray brick. They said the dark gray could be used for accents, but not for the field color. They will have to work further with SRL to get a dark gray color scheme. DeKold suggested having a dark red brick with the gray accents. DeKold wanted to know the Board’s opinion on trying to persuade SRL to change their mind, find a different scheme with the gray with lighter tones, or go with a color that is already approved.

DeKold said they had asked about an all gray color scheme and SRL shut it down. LoBuono said he likes the red as well as the gray.

Gazdik suggested creating a rendering using the dark gray accents and a lighter gray combination over the rest of the building. DeKold said the lighter gray contrast could look great and that it could fall under SRL requirements. Gazdik said she would like to stay away from the beige color palette and would like to see the gray option. Vucovich agreed and said the light brick seems too old fashioned. He would like to see something more dramatic and less dated. Gazdik reminded the Board that playing with color doesn’t change the price any. She suggested to DeKold to not have so many color changes but keep it more consistent.

DeKold asked construction representatives if it would be possible to get two different brick manufacturers and who they should look at. Clements said it would be possible, but the pricing they have right now isn’t the same across the board. Clements said he could talk with their subcontractor to see what they have right now. LoBuono reminded them that they would have to get the approval from SRL for the colors before they can move forward so they may as well not ask the contractors yet. Davis said that Interstate brick is the most competitive in the area and they have the largest amount of options available. His only concern is that there might be mixed pricing if they reach out to another manufacturer. Davis suggested looking at local companies if he doesn’t want the price to go out of control. DeKold said he would continue to explore these options.

1. **Discussion Item** – Discuss the alternatives if there is delayed construction of the Event Center – Nitschke said he would like to have Spear write out a schedule that would identify key points in time for developing an alternative design or scenario which will have to influence design somewhat so the Board can take a step to having a plan B. Gazdik asked Spear how he envisioned putting this together. Spear said he is not clear on what that plan would look like. He is committed to seeing the original project get to a stage where it can be completed but understands the necessity of a plan B. Gazdik asked him to identify trigger points in the project necessary for a plan B. Nitschke agreed that the Board doesn’t need to move toward plan B yet, but wants to have it ready if needed. Later on, it will be necessary to add more detail to the time matrix that Spear creates now. Spear said he would give this some thought and present it at the next meeting.

**Report and Updates**

1. **Discussion Item** - Executive Director Report
   1. Fundraising Campaign and status of prospects - Spear shared some of the entities that he has maintained contact with. These are all in play, but the Board needs to be patient throughout the pandemic. The range here is anywhere between $6-9 million that could be raised from the listed entities. Spear is still optimistic that there are sponsors willing to support the arena. LoBuono asked what the status of the Pathways contract was. Spear said it is expired.
   2. Pioneer Road Construction progress report - Event Center Drive is waiting for the large soft spot to dry out before resuming work. Pioneer Road has identified 5 or 6 additional soft spots. HK removed them without approval from the owner or Bateman Hall. Spear reminded the Board that they had approved a “Not to Exceed” amount on the soft spots. Clements said they are done removing soft spots and have started doing fill. Clements stated that HK didn’t use all the funds budgeted for unsuitable soil removal and these funds would be utilized for the soft spot removal. As for the additional soft spots found, they will have to be submitted as a separate item. They completed it as they were going. Clements estimated this will be about $10k more than the not to exceed number. Spear said this has caused the Board some discomfort because HK was so certain they would not exceed the amount recently approved. Spear asked if they could complete the project without the extra funds. Clements said no because these later-identified soft spots are outside the map that HK originally presented. Once MTI exposed these, they required HK to fix. Clements said, in the grand scheme of things it made more sense to let HK do the work while all the equipment necessary was already there. Gazdik asked if all of the issues are now done. Clements said yes. Spear said he would like to not be surprised like this again. The subcontractors should not be moving forward without the correct change order process.
   3. Event Center Phase I progress report - Clements made some comments on the Phase II of the event center. Bateman Hall has started meeting with subcontractors to make sure things are ready to go. They will be doing a deep dive on schedule and submittals. Clements asked if the Board would be willing to accept submittals between now and September. Gazdik suggested Clements and Spear discuss that and bring a suggestion back to the Board. Spear said he would utilize the Building Committee as well.
2. **Discussion Item** - Legal Report - None.

C**alendar and Announcements**

1. Upcoming IFAD Meeting – **Next Meeting on May 26, 2020**
2. **Discussion Item** - Announcements and Minor Questions
3. **Discussion Item** - Agenda Items for May 26, 2020 meeting
4. **Action Item** - Adjournment to Executive Session - Gazdik moved to adjourn to executive session at 8:58 a.m. LoBuono voted in favor. Vucovich voted in favor. Swanson voted in favor. Gazdik voted in favor. Nitschke had to leave the meeting did not participate in the executive session.
5. **Executive Session -** Idaho Code Section 74-206 (1) (b) To consider the evaluation of an employee.
6. **Adjournment from Executive Session**
7. **Action Item –** action taken on matters discussed in Executive Session **-** Gazdik explained that they had discussed the evaluation of the executive director. She asked for discussion concerning a performance bonus. LoBuono said they didn’t need more discussion and moved to increase Spear’s salary by five percent for next year and give him a seven percent performance bonus structured as necessary to meet all IRS regulations. Gazdik clarified that it would be a $7,000 performance bonus and a $5,000 raise for the upcoming year effective immediately. Vucovich seconded.

LoBuono mentioned that Spear is now an at-will employee. He asked if the Board would like to write another contract for him or keep his employee status at will. Fuller responded that Spear’s contract status is not on the agenda and will have to be discussed at a later time.

Gazdik called for a vote. All present members voted in favor.

1. **Action Item -** Adjournment from Public Session - LoBuono motioned to adjourn. Vucovich seconded. Meeting adjourned at 10:10 a.m.

**Action Items**

Spear put together a meeting with Gilmore Bell and CM to make the change in the contract and discuss what to do with the affiliate contracts

Spear create “Plan B” time matrix

Building committee talk with Clements about accepting phase II construction bids