

**Board of Directors Business Meeting**

**Tuesday, August 25, 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, Rob Spear, Mark Fuller, Kevin DeKold, Trenton Saxton, Rebecca Casper, Kevin Greene, Chad Hammond, Bill Krueger**

**Agenda**

1. **Action Item** - Call to Order at 7:02a
2. **Action Item** - Accept the Agenda. LoBuono moved to accept the agenda. Vukovich seconded. Motion passes.
   1. Meeting Minutes – 8-11-20. Spear discussed some of the clarifications suggested by Board member Nitschke. Gazdik wanted to make sure the information on lease financing came from Stephanie Bonney. Spear confirmed that information did come directly from Bonney and was previously discussed with the board. Nitschke also suggested there be consistency on how individuals are identified in meetings minutes. Spear said he will use last names consistently. Nitschke also wanted VBFA identified as the HVAC consultant and spell out what PERC meant.
   2. Review of the Payables/Financials – Gazdik asked about updated financial statements. Spear shared the updated June financials with the Board that reflected the interest calculation. LoBuono made motion. Vucovich seconded. Motion passes.
3. **Discussion Item** –Public Comment (Any member of the public is welcome to take three minutes and share concerns or questions with the Board). There was no public comment.
4. **Action Item –** Review and discuss CSL study with Bill Krueger and make recommendations for changes. Gazdik asked if the CSL report provided the information that Gilmore Bell was requesting. Spear indicated that based on the comments received from Gilmore Bell, this document was sufficient. Spear asked Fuller to comment. Fuller stated that was correct. Gazdik commented that the report also confirms the concession agreements meet the fair market value criteria. Gazdik said she was not sure about the hockey agreement and asked Bill Krueger of CSL to comment. Krueger stated that he was willing to discuss the summary document and share any industry insights that he may have regarding the scope of work. Krueger stated that the concessionaire and hockey agreements that he reviewed did not have any terms included and wondered if there were updated copies. Gazdik said there were not. Krueger said in his opinion the most important document is the management agreement and is the focal point that allows you to control any other agreements. Krueger believes all the other outside agreements could be managed in the management agreement. Krueger referred to the back page of the report and indicated this provides a summary of his recommendations. Krueger did mention that in the comments received from Gilmore Bell, it seemed like they wanted a more forceful ending and conclusion. Krueger said he is happy to add additional language as a concluding statement. Krueger stated that some of the comments included by Gilmore Bell were outside the scope of his assignment. For example, the number of comparable facilities financed by tax exempt bonds. Krueger said that was not something they keyed into during their research. However, Krueger said he could do more research but wanted to know if Gilmore Bell was comfortable with the information. If so, he could offer an updated email with information to the Board. Gazdik asked if the report contained all the information needed by Gilmore Bell. Fuller responded that the report is on the right path and once there are more definitive opinions at the end, then the report would be acceptable for their purposes. Krueger just wanted to make sure there weren’t any updated documents or new information. Krueger said he has an answer to the question on the number of the facilities that used tax exempt bonds, and that he could do this without much more research. However, if Gilmore Bell wants more than his 10,000-foot answer, then he would need to perform additional work. Krueger said that most of the junior hockey league facilities are not truly comparable to the Mountain America Center and do not have the ability to provide for all the other amenities that the Mountain America Center is designed for. Kreuger said that when you shift to a minor league facility that today are $80-$90M facilities, most are financed with tax exempt bonds. Fuller suggested Krueger not do additional work because the report did satisfy what Gilmore Bell was initially asking. Fuller said Gilmore Bell’s comments were in the category of “it would be nice to have but not required.” Gazdik asked Spear if he was in agreement that the report satisfies what Gilmore Bell was asking, pending a stronger conclusion. Spear said he believes the report fulfills what Gilmore Bell was asking and that any additional information on the number of tax-exempt financed facilities would be nice to have but not necessary. Fuller suggested waiting until after the call next week with the bond counsels to finalize whether or not any other additional information is needed. Gazdik instructed Spear to provide any information from that meeting to Krueger.

Nitschke said he had some additional questions. First, Nitschke said there were several items in the scope of work that were not addressed. The hockey licensing agreement was not addressed and there was no discussion of the attributes appropriate for the assessment. Nitschke said in Krueger’s previous work he had a structured approach getting from a large population of facilities to the facilities he used to compare. Nitschke didn’t see this discussion to determine how Exhibit 1 came into existence. The third item in the scope of work was, based on the risk reward, whether the potential revenues were reasonable. Nitschke then referred to the report and wanted clarification on the statement an Event Centers primary sports tenant (a NA3HL team) is atypical among comparable venues. Also, Nitschke said the report leads from Exhibit 1 to Exhibit 3 without any transition. Under compensation ranges, Nitschke pointed out the inconsistencies of Exhibit 5, that sometimes references the owner and sometimes the manager. Nitschke questioned how Exhibit 5 supports the concession revenue range of 30-45% and what exactly are the industry standards. Nitschke said he is used to standards that are published. Gazdik said we need to give Krueger some time to digest what we are asking and suggested Nitschke communicate his concerns in an email and present to Krueger. Spear said it is important for Nitschke to provide a written document of his questions in order to give Krueger direction. Nitschke agreed to put his questions into a document that would be given to Krueger.

1. **Action Item –** Review and adopt HVAC Scope of work from VBFA and CRSA. Gazdik referred to the scope of work and asked Spear to summarize. Spear said the document was received late Monday afternoon and proceeded to walk the Board through the scope of work. Gazdik asked Trenton Saxton if this proposal was in line with what the Board would need to decide on possible HVAC modifications. Saxton said the proposal basically lists suggestions to the design. Gazdik asked if it was typical to be charging for this kind of work. Saxton said it was because this is determining the direction of the design. Vucovich had a question on investigating the use of hydrogen peroxide and if that would require any change in the design. Gazdik suggested a discussion with Spencer Howell of VBFA would be appropriate. Saxton said he would facilitate a separate phone call with VBFA to discuss hydrogen peroxide and the use of foggers. LoBuono said it makes sense to adopt the minimum upgrades to MERV filters and the inclusion of UV-C lights. LoBuono said we should approve this part of the scope. Nitschke stated that what we really need is to determine what the design requirements are for the revision of the HVAC system and what performance requirements we want. VBFA can then decide how we can meet those standards. Nitschke wants a more inclusive statement of work. Gazdik asked who has the expertise to determine these performance standards and believes VBFA can give us what the impact would be on the air quality. Gazdik does not believe the Board has the expertise to develop performance standards. Nitschke said we are asking VBFA to determine what the performance standards should be in light of a new hazard, but the Board needs to determine the levels we want to achieve. Gazdik asked Saxton if the COVID-19 virus has resulted in standards changing for a higher level of air quality. Saxton responded that he would need to perform more research. Saxton said what Howell is proposing are things that could improve the facility. Gazdik said it would help if we had something that outlined options that would provide, for example, a 50% increase or 80% increase in air quality and also gives us cost parameters. The Board could then decide what air quality we want to adopt. Nitschke agreed with this approach. Vucovich said we must program this facility to allow people to feel safe when coming to events. Saxton said this will be a learning curve for everyone. Vucovich said he can support spending $3k for the study but the Board should be prepared to spend more than what the study will show for these HVAC upgrades. Gazdik said she would like Saxton to go back to VBFA and give us a scope of work that identifies Plan A, Plan B, and Plan C and what change in air quality would be. For example, installation of UV-C lights would increase air quality by x% and would cost $X. The Board can then decide what level of air quality we would accept versus the cost. Saxton said he would meet with VBFA and put together a proposal listing Plan A,B,C and the increased air quality percentages and cost. Vucovich said he would like to be involved in the discussion with Saxton and VBFA. Saxton said he would find a time to discuss and would include Spear.
2. **Discussion Item –** Review and discuss IFAD Board media policy. Gazdik stated this is a follow up discussion based on the 7-14-20 Board meeting. During that meeting the Board reviewed the Board media policy and discussed a recent Op-ed that was written by Board member Nitschke that was in violation of the Board meeting policy. Gazdik asked Nitschke if he would like the opportunity to respond to the discussion that took place at the 7-14-20 Board meeting. Nitschke said in regard to the media policy, he believes he complied with it. Nitschke referred to the private citizen section of the media policy and said he used the Op-ed piece to satisfy that requirement. Nitschke said an Op-ed piece is simply the opinion of the writer. Nitschke said he wasn’t speaking on behalf of the Board and didn’t claim to speak on behalf of the Board. Nitschke said the Op-ed was not a written communication to the media. Nitschke said there were 3 or 4 other items that were brought up that he wanted to address. Nitschke stated, “with regards to disregarding the efforts of others, just because I did not acknowledge the previous board and others for their efforts does not mean I disregard their efforts. I did point out what I believe to be major shortcomings, the idea that passion and hard work are unassailable traits is wrong. Passion has always been a poor indicator of what is right. When doing a task, the wrong way, working hard is not good. I am more interested in competence and focus to accomplish the mission in the most timely and cost-effective manner. With regards to fulfilling my fiduciary duties, I would submit I have done that continually since joining the board. I have kept in mind, at every turn, that this is public facility, funded overwhelmingly with public tax dollars. I have spoken repeatedly about the need to be sure public dollars are spent wisely and that any profits from operational events are to be distributed to public accordingly. Others have explicitly stated that they wanted to see the operator make as much money as possible. While we need an assist from the private sector their share of the rewards should be commensurate with their contributions. There were claims of misstatements, skewed misrepresentations, and errors, but no specifics. I can’t comment on these because there were no specifics. I took great pains to ensure that I accurately reported the facts. The last thing was the motivation behind the Op-ed. The overall message was that I am extremely concerned that the project cannot be successful. Going to extreme measures to gather the funding to construct leaves no room for error. We know the Guaranteed Maximum Price is neither guaranteed nor necessarily the maximum. We also know the likelihood of a profitable events center is slim at best and operational deficits are expected. The magnitudes are a big unknown. Even the slim hope for profitability is based entirely on anecdotal evidence. The pro forma which shows a slight profit is probably 90% anecdotal. Overlay these concerns with the long-term negative impacts from the pandemic, recognition that attendance at sporting events is decreasing, competition from other cultural changes and just getting people out is problematic. How we should address these matters, build more confidence in our decisions should be a topic for the board to discuss further. So, that addresses those four major items that transcended just discussing compliance with the media policy.”

LoBuono asked Nitschke, “so what you did, you feel was appropriate?” Nitschke responded, “Yes”. LoBuono said the purpose of the Op-ed was pretty negative and that Nitschke referenced being a Board member. LoBuono said Nitschke’s comments impact the integrity of the project and the ability of the Board to be cohesive in regard to this project. LoBuono disagreed with Nitschke and wondered what the purpose was of the Op-ed. LoBuono said Nitschke spoke as a Board member when he referenced Nitschke has another three years of a six-year sentence. Nitschke said, “he did not know how to respond to that, you (LoBuono) say you can speak as private citizens as appropriate but then you say that welcome differences of opinion, yet when someone speaks, you go as far as to ask them to leave the Board.” LoBuono said Nitschke made it a public issue and that if he had concerns, he should have just come to the Board. Particularly with items that painted the Board in a negative way. Nitschke challenged LoBuono to point out anything in the Op-ed that wasn’t brought up in Board meetings.

Vukovich stated that Spear has finished many of the items that Nitschke asked for and that the Op-ed sounded like we did not have a lot of the things done and that felt erroneous. Vucovich said another question would be to legal counsel and whether or not the Op-ed communication violated the media policy. Fuller stated that he previously reviewed with the Board, the provisions in the Board policy specific to private communications. Fuller specifically referenced sections, D, E, and F of the media policy. Fuller concluded Board members, when speaking as a private citizen, must make it clear they are speaking as a private citizen. Fuller further explained that any written communication must be reviewed by the Board chair and circulated to other Board members. Fuller said in his review of Mr. Nitschke’s column, there were multiple violations of Board policy. Fuller stated, “a review of Board Member Nitschke's column establishes multiple violations of this Board Policy. Not only does Mr. Nitschke not state that he is speaking as a private citizen, he specifically identifies himself as a Board Member and that he has reached "the middle of my six-year sentence... " This was a clear and direct violation of Subpart D of Board Policy IV. It is also clear that in preparing his written communication, Mr. Nitschke did not allow the final product to be subject to review by the Board Chair, and by failing to do so, prevented the Board Chair from complying with subpart F, the Chair's duty to report on or circulate the nature of media contact with other Board members to facilitate general awareness. This resulted in the Board being completely unprepared to absorb the media and stakeholder fallout.” Fuller said as he reviewed the policy, the most stark example was the reference to the 25-year management agreement, 15 year fixed plus 25-year extensions. Fuller said there is no question that this is completely false. Fuller indicated the Post Register probably made a mistake but also pointed out that the Board was unable to review the Op-ed. Nitschke claims because there is no opportunity to review the Op-ed once submitted, that this mistake could not be addressed. Nitschke said he would be glad to share the document he submitted to the Post Register that shows a 15-year contract with two five-year extensions. Nitschke said he can’t claim any responsibility for that. Gazdik stated, that what Fuller is addressing is that we have a media policy in place for a very good reason, and we are asking Board members to follow that policy. The policy is to ensure we are disseminating information as a unified voice because there has to be confidence in this project. LoBuono acknowledged that Nitschke made his concerns known during Board meetings but to come out with an overall statement condemning the process and project is just wrong. Lobuono suggested that if Nitschke doesn’t believe in the project that he should leave the Board. LoBuono asked for Nitschke to not do this again. Nitschke said he thinks there is a distinction in the media policy between what is a private communication versus what is a formal written media communication. Nitschke said private communications are not subject to a Board review. Gazdik said the error was that Nitschke never stated in the Op-ed that he was speaking as a private citizen and not as a Board member. Nitschke said, “I apologize only in the sense that I assumed an Op-ed captured that point adequately.”

1. **Action Item –** To discuss and identify a landscaping maintenance (mowing, spraying, fertilizing) entity for Pioneer Road. Spear explained to the Board that in his communication with Tana Barney, she explained that the property owners pay for the street landscape strip irrigation and maintenance.

Currently Ball Ventures pays for ¾ of the Event Center Drive and IFAD pays for ¼ of it based on the first set of irrigation meter pits set up last year. IFAD will pay for 100% of the irrigation and maintenance on Pioneer as it is all IFAD road frontage. Spear said Vucovich asked a good question about why the fees we are currently paying wouldn’t cover this. Spear said he still awaiting an answer to that question. Until that information becomes available, Spear recommended that there is no action to be taken. Fuller said generally the City is only responsible to the curb. Fuller suggested that if IFAD is responsible, it may be cheaper to contract with the entity already being used by Snake River Landing and pay them on a square footage basis.

1. **Action Item –** To discuss what the Board will include in the meeting minutes when Public Comments are made. Spear referred to the Board a document that described Idaho Code section 74-205. That statute provides

the Board is not required to include public comment into meeting minutes. Nitschke stated, that in the minutes, the Board agreed to not include the details of public comments and he agrees with that. However, Nitschke believes some description of the public comment is appropriate. For example, identify the person, their affiliation, and the subject. Gazdik asked what the purpose is for including this information. Nitschke stated, it values what the public has to say and captures what subject they are interested in. Gazdik said she does not see a need to include public comments in our meeting minutes because we are not required to do so. Gazdik explained that any items brought to the attention of the Board, during the public comment period, and requiring a future action, could be placed on a future meeting agenda. Gazdik said the Board does not need to take action on this agenda item because we are following the Idaho statute. If the Board wants to include more details in public comments the Board would need to take action. No action taken.

1. **Discussion Item –** To discuss and review current draft of the operating agreement for the Event Center and identify changes and additions that need to be made. Spear summarized the agenda item and stated he wants this to stay on the Board’s agenda because an approved management contract is a vital piece for financing. Spear said ensuring there was an assignability clause in the contract was important. Fuller, said he was aware of three issues; assignment of the contract, length of the agreement – CSL said the 15-year length was atypical, and both the hockey and concessionaire agreement did not have any terms associated with those contracts. Fuller also said there should be some adjustment to the force majeure clause to protect IFAD in the event some COVID related issue does not allow the event center to operate. Spear mentioned that he thinks there is an assignability clause in the contract on page 43 of the management agreement, Article 22. Fuller will verify. Gazdik said we need to schedule a meeting with the parties to the operating agreement after our meeting with the bond counsels.

**Report and Updates**

1. **Discussion Item** - Executive Director Report
   1. Fundraising and Budget Update – Spear reviewed the proposal given to the Board for the non-alcoholic pouring rights. Spear suggested having the pouring rights representatives present at a future Board meeting. Spear said the dollar amount from the agreement would be split evenly between construction and operations. As for signage, the entity would pay for the signage and the signage would not impact naming right areas. Gazdik suggested we get a draft agreement from the entity and then form a committee to review the agreement. This is similar to how the Board negotiated the Mountain America agreement. Once this process is concluded, the agreement would then be brought to the full board for review and approval. Gazdik and LoBuono volunteered to assist Spear in reviewing the agreement. Spear to get a draft agreement and then set up a meeting to discuss the proposal. Spear said he has several important fundraising meetings this week. Spear also mentioned that the Business Advisory Committee felt that it was important to announce the pouring rights gift. Nitschke asked if hot beverages were included in the pouring rights agreement. Spear said they are not.
   2. Pioneer Road Construction progress report and Event Center Phase I progress report. Spear said not much is happening on the projects as both are winding down and should be completed by 9-4-20.
   3. Chamber Golf tournament – IFAD will have a team and will be the closest to the pin sponsor.
   4. Action Items
      1. Report to CSL any changes or additions to report. Awaiting Board member Nitschke’s response.
      2. Schedule a call with Spencer Howell, Trenton Saxton, and Steve Vucovich for HVAC scope of work
      3. Spear to get additional information on SRL HOA fees
      4. Schedule a meeting with Centennial Management
      5. Form committee for evaluation of pouring rights agreement and request a draft copy of the agreement.

Nitschke asked about the status of an IFAD Zoom. Spear said he was still working on it and was having difficulty in getting Zoom to change the email. Nitschke asked about getting an IFAD proforma for when the facility opens in order to capture all the expected costs. Spear said he would prepare a proforma.

A discussion ensued about the potential property tax payments IFAD may have to make. Spear said in his conversation with Pat Rice, Executive Director of the Greater Boise Auditorium District (GBAD), GBAD does not make any property tax payments because they are a tax-exempt entity. Rice explained that their underwriter counsel, Hawley Troxel, has never identified this as an issue. Based on this information, Spear recommended not pursuing a tax-exempt letter from the Bonneville County Commissioners. Fuller agreed that requesting a letter may not be the correct approach. Especially since such a letter would not bind future commissions.

**Action Items:**

* Nitschke to put in writing CSL questions
* Spear Vucovich to discuss hydrogen peroxide with Spencer Howell and Trenton Saxton and get revised proposal
* Follow up on SRL HOA
* Schedule Meeting with Centennial Management
* Spear to Develop Pro forma for IFAD operations after Event Opening

1. **Discussion Item** - Legal Report. No report

C**alendar and Announcements**

1. Upcoming IFAD Meeting – **Next Meeting on September 8, 2020**
2. **Discussion Item** - Announcements and Minor Questions
3. **Discussion Item** - Agenda Items for September 8, 2020 meeting
   * + 1. Discuss HOA fees
       2. Centennial Contract
       3. IFAD Social Media presence

**Meeting adjourned at 9:10a**