

**Board of Directors Business Meeting**

**Tuesday, September 8, 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, Rebecca Casper**

**Agenda**

1. **Action Item** - Call to Order
2. **Action Item** - Accept the Agenda. Spear suggested that items IV and V be changed to discussion items as the relevant materials were not received to take any action on. LoBuono moved to accept the agenda. Vukovich seconded. Motion passes.
	1. Meeting Minutes – 8-25-20. Changes suggested by Board member Nitschke were discussed. Gazdik instructed Spear to review the recording of the 8-25 minutes and determine what was stated during the discussion of the IFAD media policy and provide that information to the Board. The 8-25-20 meeting minutes were not approved.
	2. Review of the Payables/Financials. The Board reviewed the payables and discussed the past due invoice for IE Productions. Spear indicated that invoice was submitted while IFAD was still under contract with IE Productions. There were no financial reports available. Vucovich moved to approve the consent agenda, LoBuono 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 and make recommendations for changes. Spear referred the Board to the questions produced by Board member Nitschke to see if the Board had any comment. Spear asked Nitschke if he would like to go over his comments with the Board. Nitschke stated his comments were much more detailed and specific than what was captured in the meeting minutes. Nitschke said his comments detailed out what the scope of work requested and outlined the what the Board expects to receive from Krueger. Gazdik asked if Krueger had received the questions and Spear responded that he forwarded the questions to Krueger on Monday. Spear said he would follow up with Krueger to ensure he received the comments and was clear on the direction. Nitschke stated that because Krueger participated in the last Board meeting that he should understand what the expectations are and Krueger knew what comments were coming. No action taken.
5. **Action Item –** Review and adopt HVAC Scope of work from VBFA and CRSA. Spear said that Vucovich and Spear participated in a conference call with Spencer Howell of VBFA and Trenton Saxton of CRSA. Spear said there were adjustments to the scope of work through various email exchanges. Spear referred to the revised scope of work for the study. VBFA will:
* Modify the scope of work for the narrative to include quantitative evaluation of expected increases in IAQ based on the five options
* Measures would place the options in order of magnitude as Filtration, Air Flush, Peroxide Fumigation/misting, increased outside air (this is variable based on how much more outside air), then UV-C lighting

Gazdik asked Vucovich if this was an appropriate scope of work. Vucovich said that at this point in time it is, but things could change in a new COVID era. Gazdik asked if it was possibly too early to pursue this scope of work given the potential for design changes. Vucovich thought that the proposed scope of work was appropriate at this time because we need people in the seats, and this will ensure confidence in the general public. Spear said he is awaiting a revised scope of work from VBFA. Nitschke stated that he would like to add some comments to the scope of work. Nitschke said there are five distinct areas in the arena where the HVAC might need to attain different performance standards. For example, arena vs. luxury box. Nitschke said he would like to see what the current air quality standards are for the current system and whether standards exist for the state-of-the-art processes we want to implement to improve air quality. Nitschke wondered what units of air quality are being evaluated. Nitschke believes this is a very important piece of work, especially if you want performers to come and employees to work. Public safety is important. Spear to follow up with CRSA and VBFA. No action taken.

1. **Action Item –** To review the potential property tax issue for the Event Center and discuss strategies. Gazdik asked what the action item is for this agenda item. Spear explained, that based on the recommendation from Rick Skinner, the Board needs to take action on a process to ensure the actual building is not subject to property tax. Spear then briefed the Board about what was discussed among bond counsel.
	* The counsel discussed the issue of economic compulsion (the concern that IFAD owns the land and will sublease), and whether they are comfortable moving forward with issuance of COPs that are backed with annual appropriations.
	* Stephanie Bonney of MSBT law stated it depends on the details in the language but sees no problems. Brad Patterson of Gilmore Bell said the issue just needs to be described appropriately. Rick Skinner of Skinner Faucet stated, as long as it is structured similar to the Greater Boise Auditorium District (GBAD) and there isn’t any ongoing liability, the concern is the risk that if there is a default, it is covered.
	* The issue regarding property taxes was discussed and that Skinner said we can’t compare to GBAD because GBAD’s COPs were issued by the Urban Renewal Agency (URA). Evidently, URA’s are clearly identified as tax exempt in State statutes. In our current financial plan, the COPS will be issued by IFAD.
	* IFAD has title to the property and will lease the building to a lessor so the actual building could be taxable because the lease holder is not a tax-exempt entity. It was proposed, as an argument, that IFAD could claim that the lessee would never hold title to the building. While Skinner agreed, in his opinion this would not give rating agencies comfort. McDevitt suggested entering into a binding agreement, that aligns with the terms of the COPS, as an alternative with the county instead of a letter.
	* Jim Buie of Raymond James said the possibility of the tax liability (estimated $300k of more) would make the COPs tough to market. Most certainly the possibility of this tax liability would be an issue with the rating agency. Lewis talked about the ability to re-finance after 10 years which would free up cash flow for potential property tax payments. However, the estimated property tax payments could be $3M over the 10-year period. This would derail the project. Spear asked Skinner to send the exact language outlining this property tax issue.

Spear next shared an email from Skinner that outlined the issue and potential solutions. One alternative that might be explored would be to establish or use an existing nonprofit corporation, preferably a 501(c)(3) corporation, to own and hold the leasehold interest and buildings that are being leased back to the district. Spear said if this is not a possibility then pursuing a tax exemption letter from the county is another option.

Spear asked Fuller to comment and Fuller said he agreed with everything that Spear said. Fuller stated the real issue is the political implication of approaching the county and asking the Commissioners to agree that they won’t seek tax payments. The concern here is in the event of a default and someone else owns the building, the county may take the position that the building is subject to property tax. Fuller suggests the Board wait until January of 2021 to approach the County Commissioners. Gazdik asked if this was something that the IFAD Board would need to request annually and asked if we could request a 30-year exemption. Fuller indicted there were no statutes that would allow anything more than an annual exemption.

Spear pointed out that Skinner also noted that Section 67-4902, Idaho Code, states that a district is authorized to construct facilities for “public, commercial and/or industrial purposes…”. Given this, it would be important for the district, by board resolution and other operative documents, to declare that the purposes of this project are for “public” purposes and to promote the “prosperity, security and general welfare of the inhabitants of the district” through “public events.” Although the success of this approach obviously cannot be guaranteed, it could have the benefit of a specific statutory exemption, and if initially granted, there would be reasonable arguments that the exemption should not then be taken away where the nonprofit has met the statutory requirements. This may be a better position to be in than to make the argument that the district is the “equitable owner” of the facilities or is the “real party in interest” since these do not have a specific basis in statute. Spear then asked Fuller if he could research whether the Board has a resolution or needs to establish a resolution. Fuller said he thinks it is appropriate to explain to the county commissioners that we fit under this statute. Fuller said it would be more appropriate to have Skinner give the presentation to the county because of his expertise in this area. Spear asked Fuller if the Board needs to adopt a resolution declaring “that the purposes of this project are for “public” purposes and to promote the “prosperity, security and general welfare of the inhabitants of the district” through “public events.” Fuller said it would be easy to do. Fuller said he would prepare a resolution and send it to Skinner for review. Vucovich asked if there was a way for the district to become a 501(c) 3 organization. Fuller explained that Skinner is not proposing IFAD become a 501 (c) 3 and that he is suggesting we find a path forward like GBAD did when partnering with their urban renewal agency. Because IFAD’s property is not in an urban renewal district, we can’t take that approach. Spear referred to a letter drafted by Parsons, Kinghorn, Harris that recognized IFAD is a political subdivision of the state and does not qualify as a 501(c). The letter went on to state that political subdivisions are tax exempt entities that may receive charitable donations.

Spear recommended having Fuller draft a resolution that covers the items described in Skinner’s email. Fuller agreed to draft a resolution with the intent of having it ready for the next Board meeting. Gazdik asked if drafting a resolution and requesting a letter from the county was a recommendation from Skinner. Fuller responded that Skinner is not requesting the resolution but indicates it is a document that could be provided to the Commissioners to confirm to them IFAD’s entitlement to the tax exemption. Gazdik suggested Spear contact Brad Cramer and discuss the issue and determine if there is any way to involve the Redevelopment Agency in this project. No action was 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 outlined some of unresolved issues of the management contract:
* The assignability clause. The current assignability clause needs to be updated to be mutually assignable. Fuller explained the way the current contract is drafted, Centennial Management can assign the contract, but IFAD can’t. In the event of a default, the trustee would need to be allowed to take over the contract.
* Spear also said we need to circle back on the pro forma. Specifically, how the revenues flow to hockey and then to the operations of the event center. Gazdik suggested a call to Bill Krueger to find out best industry practices.

Gazdik recommended a punch list identifying outstanding items in the contract be developed. Fuller was going to contact Richard Catten about the assignability clause. Nitschke mentioned the payment to Centennial, regardless of performance, was still an issue. Spear asked if Nitschke was referring to the fixed management fee. Fuller said the fixed fee is a “base salary” and is not based on the successful operation of a hockey team or the facility. Gazdik believed the default section of the contract would cover this issue. Spear reminded the Board that Krueger’s study suggested a management fee of $100K seemed like an appropriate starting point.

**Report and Updates**

1. **Discussion Item** - Executive Director Report
	1. Fundraising and Budget Update – Spear communicated that he continues to follow up with some of the outstanding proposals. He has several additional meetings scheduled in the next few weeks. Spear presented a pro forma for what IFAD revenues and expenses would look like once the event center was opened. Spear used the following assumptions when developing the revenue and expenditures in pro forma:

Revenue Assumptions:

• Revenue based on 2019 levels plus the addition of 2 new hotels.

• Interest Income decreased dramatically because fund balance will be invested in Project. If no annual operational subsidy, interest income could increase

• Revenue increase 2% per year

Expenditure Assumptions:

• One IFAD Board meeting per month

• IFAD will not have rent or utility payments

• 2% increase in annual payroll expenses

• 1% increase in annual expenditures

• Debt Service payment is taken from Raymond James’ schedule

Spear explained that the base year expenses were calculated based on 2019 and 2020 expenses. Spear said $2.4M in tax revenues seems like the minimum amount to proceed with financing. Spear said the pro forma indicates the District could have approximately $100k to contribute toward an operational subsidy. Nitschke asked where the management fee that we must pay the operator is located in the pro forma. Spear explained this would be an expense of the operations of the center and that this pro forma is specific to only IFAD expenses, once the event center is open. Gazdik said she likes this pro forma as it reflects how just the District would operate and identifies the dollars the District would have available to subsidize event center operations. Vucovich asked if the HOA fees are covering any property tax expenses. Spear shared the detail of what IFAD is being charged from Snake River Landing. Nitschke also asked if the amounts budgeted for capital repair and replacement were adequate because they were much less than what was listed in the CSL feasibility study. Spear said because capital renewal and replacement should be minimal during the first 5 years of operation, and because these amounts could be carried over, he is confident the amounts budgeted are adequate. Spear indicated over a 10-year period IFAD would have budgeted $800k for capital repair and maintenance. Nitschke said the CSL study indicated more than $800k would be needed. Spear emphasized that the key figure in the pro forma is the revenue figure. Gazdik said that the demand generated from the opening of the facility and the additional room nights is also something that should be considered in the revenue calculation.

* 1. Pioneer Road and Event Center Phase I progress report- Spear briefed the Board on the projects. Pioneer Road is substantially complete with the following items outstanding:
* Pins (center road line) accepted by the City. Need to deliver record of drawings to the City. Horrocks still waiting for landscape drawings.
* City will take approximately two weeks to review

For the Event Center Pad the remaining items and expected completion date are provided below:

* + - Finish pouring light pole bases. Complete by 9/4
		- Sack finish light pole bases. Complete by 9/25
		- Install all connections for the sign. Completed
		- Bevel walking bridge. One side isn’t chamfered. Complete by 9/11
		- Replace bottom ring on fire hydrant and repaint. Complete by 9/8
		- Verify elevation of all storm/sewer locations. Complete by 9/25
		- Change fabric in storm inlets to bags. Complete by 9/11
		- Mark locations of all underground utilities. Completed
		- Remove all rock, wash, and restripe Event Center Drive. Ball Ventures is not requiring it to be re-chipped

Spear said one outstanding issue is how to protect the site until actual construction starts. Bateman Hall is going to provide some recommendations and costs for a fence around the perimeter, blockades at entry ways or other alternatives. Spear will bring those recommendations back to the Board.

Gazdik asked who is responsible for submitting the reimbursement expense to the City for the increased water line size. Spear said that was Bateman Hall’s responsibility but that he would follow up.

* 1. HOA Update – Spear described to the Board the calculation of HOA fees. Spear said he is awaiting a response from Ball Ventures and his concern that the District was over charged by $2,492.52
	2. Action Items – Spear summarized the action items identified during the meeting:
* Clarify comments made during 8-28-20 Board meeting
* Contact Bill Krueger to make sure he is clear on the scope and to inquire about hockey revenue distribution
* Contact VBFA on updated scope of work
* Set up a meeting with Brad Cramer
* Identify punch list for Centennial Management Contract
* Contact Mike Clements about water line reimbursement
* Schedule a meeting for Pepsi contract review
* Contact State Tax Commission
	1. Host Compliance – Spear briefed the Board on a presentation from Host Compliance. This is an entity that specializes in gathering data on short-term rentals in the area. Host Compliance is one of three companies nationally who compile this data. Spear referred to a slide that indicated there are 239 short-term rentals located in the district. Spear explained that the potential return on investment could be around $50k. Host compliance has 5 packages of which the district would need to only purchase two: the address identification and rental activity monitoring. The cost for these two packages is would be $12,721. The estimated revenue is 5% of $1,252,000 or $62,600. Host compliance is offering a six-month money back guarantee. The next steps are for Spear to follow-up with the State Tax Commission and see how this could be enforced. Spear also shared the current State Tax Commission reports with the Board. Based on these reports Spear is confident the State is not capturing these short-term rentals.
1. **Discussion Item** - Legal Report. Fuller said he reviewed the Admiral Beverage contract and will provide comments to the sub-committee.

 C**alendar and Announcements**

1. Upcoming IFAD Meeting – **Next Meeting on September 22, 2020**
2. **Discussion Item** - Announcements and Minor Questions
3. **Discussion Item** - Agenda Items for September 22, 2020 meeting
4. Review CSL Study
5. Review Centennial Management Report
6. Review HVAC Scope of Work
7. Resolution for Property Tax Issue
8. Jireh Contract Renewal
9. Short-term Rental Information

**Meeting adjourned at 8:50a**