



Board of Directors Business Meeting
Tuesday, September 22, 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, Chris Nations, Mike Clements, Kevin Greene, Bill Krueger, Chad Hammond, Trenton Saxton, Kevin DeKold

Agenda

- I. **Action Item** - Call to Order 7:00a
- II. **Action Item** - Accept the Agenda. LoBuono moved to accept the agenda. Vucovich seconded. Motion passes.
 - A. Meeting Minutes – 8-25-20 and 9-8-20. Minutes were approved.
 - B. Review of the Payables/Financials. Spear briefed the Board on the payables:
 - Payment to Liberty Mutual was being held because the builders risk policy has been cancelled
 - Thornton Tomasetti payment was the last payment for all the early steel work.
 - Two utility payments include one for the Event Center property
 - Two payments to Bateman Hall for general conditions and an invoice for Pioneer Road. LoBuono asked why we will still be paying Bateman Hall. Spear explained this invoice was for work performed and the District still owes the retainage that has been withheld. Spear said the District would not paying for any additional general condition expenses moving forward.

Gazdik presented the financials and indicated tax revenues for the year are 60% of normal. Spear explained that the negative balance in the checking account was due to a timing difference because the month was closed before the LGIP transfer was received. LoBuono moved to approve the consent agenda, Vucovich seconded. Motion passed.
- III. **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.
- IV. **Action Item** – Review and discuss CSL study and make recommendations for changes. Gazdik asked Spear to brief the Board on the significant takeaways from the new draft. Spear said Krueger provided an in-depth response to Board member Nitschke’s questions and indicated the current draft includes the established scope of work in the body of the report. Spear said the most significant changes were contained in the last two pages of the document and includes statements strengthening the conclusion that the draft concessionaire and the hockey agreements are consistent with industry standards. However, the revenue sharing from hockey, concessions and rent should be memorialized in the management agreement. Bill Krueger of CSL then addressed the Board. Krueger said he attempted to address all of Mr. Nitschke’s questions and comments and would be happy to discuss in

further detail. Krueger said the takeaway was that there was significant research performed and reference to previous work performed for the Board. Krueger said a lot of this work is based on CSL's professional opinion and believes that professional opinion is why the Board hired CSL. Krueger said this stage in the project, it is common that CSL acts as a third-party advisor rather than performing a ton of additional research. Krueger said because of the impact of COVID-19, and facilities being closed, it was difficult to collect some of the hockey and concessionaire and management agreements. Specifically, Krueger said they were unable to gather these agreements from entities where there was a NA3HL franchise. To offset this, they embellished the study with minor league hockey agreements that Krueger believes are more comparable because the facilities are more comparable. NA3HL franchises do not normally play in modern, state of the art facilities like the Mountain America Center. Most NA3HL franchises play in older, high school style facilities. So Krueger didn't think it was appropriate to look at concession, hockey and management contracts for those facilities, especially since most don't have those contracts anyway. Krueger said minor league contracts are more relevant when thinking about best practices, as they relate to contract terms, structure, and stakeholder revenue splits. So, the takeaway is that CSL is still bullish on their opinion that the contract terms for hockey, concessions and rent need to be built into the management agreement to provide protections. Krueger said the pro forma and assumptions provided by Centennial are reasonable and are consistent to what CSL found in the feasibility study. However, it is important to get these assumptions into the management agreement. If not, the Board is relying on contracts (food and beverage, hockey) that you are not signing. Even though you may have copy of these contracts, the real control is in the management agreement. Gazdik said it is important that IFAD set up a meeting with Centennial to discuss and incorporate the details of the concession and hockey agreements into the management contract. Krueger added, the fair market value that he would concur with relates to the assumptions that are not memorialized into the management agreement. In order for Krueger to say that IFAD and the public sector are protected, the assumptions must be included in the management agreement. Nitschke said he has not had time to review the new draft report in detail and would like to have until the next board meeting to review and respond. Nitschke said he questions why Gilmore Bell said we don't need to look at the hockey and concessionaire contracts, yet Krueger is recommending that we do. Nitschke said in the previous report there wasn't much detail on hockey, and he looks forward to reviewing the current draft. Gazdik asked that Gilmore Bell review this agreement and ensure it meets their needs and to note if they have any questions and concerns. Fuller agreed to forward to Gilmore Bell. It was agreed that this topic would be on the next Board agenda. No action taken.

- V. **Action Item** – Review and adopt HVAC Scope of work from VBFA and CRSA. Gazdik asked Board member Vucovich if he was involved in putting this scope of work together and whether it meets his expectations. Vucovich stated that he was involved in general and that it does meet his expectations. He said he would like to see the fees be as low as possible. The relative improvements in the increases in the IAQ will most likely be guesses but it gives us a good start in moving forward. Gazdik said we need to move forward and understand the impacts on cost and air quality.

Vucovich agreed and stated that in today's world we have no choice. Gazdik asked if CRSA would like to comment and Trenton Saxton said they have sent the questions from Bob Nitschke to Spencer Howell but that he has not heard a response yet. Spear thought it is important to wait until Howell responds before moving forward. Gazdik asked if the questions were about expanding the scope or changing the scope. Nitschke said he would say the questions were more expansive than what was in the scope provided by VBFA, but he was comfortable waiting to receive Howell's response. Gazdik said based on these questions, it was likely we would see an expanded scope and a higher fee. Saxton agreed because the questions were asking for quite a bit more information. Gazdik asked Spear to follow-up with Howell about when he will respond to Nitschke's questions. Nitschke said he would be willing to participate in a phone call. Gazdik asked if Nitschke's concern was that the current options presented are not exclusive of one another? Nitschke said that captured some of his thoughts but felt some of the proposed strategies were far superior to others. For example, preventative strategies should take precedence over mitigative strategies, introducing clean air is much better than filtering air. He wants these strategies to be viewed collectively not independently. Gazdik asked if there was a timeline for getting this data. Nitschke said it was important that we receive before issuing the next bid package. The Board agreed to wait until VBFA responds and to discuss at the next Board meeting.

VI. **Action Item** – Review and approve contract from Admiral Beverage for Event Center Phase II construction support and non-alcoholic pouring rights. Gazdik introduced the contract and said that there has been a considerable amount of negotiation between the two parties. Spear reviewed the key negotiated items of the contract:

- Added language to exclude hot brewed beverages
- Modified the consideration areas for support funds and marketing dollars to eliminate the unearned funds language
- Modified the Remedies section to eliminate section 6 B (i)
- Modified the liquidated damages calculation for 24-pk case equivalents
- Alerted Board that the governing law was Wyoming and not likely to be changed

Spear recommended approving this contract because it would provide fundraising momentum for the project. Spear asked Gazdik and LoBuono for any comments as they were part of the subcommittee that reviewed the contract. Gazdik asked Fuller if his changes were included in the document. Fuller said the changes made were very beneficial and changed the document from a sales agreement to a donation agreement. Spear also pointed out the non-disclosure section in the contract and how that coincides with a later agenda concerning confidentiality. Spear thought it was important for the Board to have a confidentiality policy to lessen the chance that any important terms and conditions of a contract be inappropriately communicated. Gazdik pointed out that this is a ten-year contract and that the District must exceed a volume threshold. If the volume threshold is not achieved, then the contract could extend beyond ten years. Nitschke said he had two major issues, where those numbers (gallons) came from and the likelihood we would meet them. Nitschke stated that if those volumes are high the District could end up with a 20-year contract. If the contract were extended, they wouldn't be paying the annual costs and would be getting exclusivity for nothing. Nitschke also said he didn't know how those volumes

correlated with the Centennial pro forma. Gazdik asked Kevin Greene to respond. Greene stated, that based on the numbers they do at the ballpark over a three-month period, these volume numbers when projected over 12 months seem to be very realistic numbers. Nitschke asked about a comparison to the Maverick Center. Greene said he would visit with Kevin Bruder to get the Maverick Center numbers. Nitschke expressed concern that if the facility closed after three years, IFAD would be on the hook for seven years of lost sales. Nitschke suggested the damages be limited to one year. Fuller stated that on page 5 of the contract the liquidated damage provision is very similar to liquidated damage clauses in other contracts. Admiral is making a commitment to IFAD and if the facility were to close, Pepsi would be entitled to recover loss of profits. Fuller said if the scenario Nitschke described were to happen, the Pepsi contract would be the least of IFAD's worries. Nitschke said these were just his comments but he thinks the liquidated damages are excessive and we should attempt to limit our liability to only one extra year. Gazdik said it was important to note that the remedies do not apply to the support funds and marketing dollars. Gazdik asked for a motion to approve the agreement. LoBuono made the motion to approve the agreement. Vucovich seconded. Motion passed unanimously.

- VII. **Action Item** – To review proposed Board resolution for the potential property tax issue for the Event Center. Gazdik presented the topic and asked if Fuller has reviewed the declaration. Fuller stated that he prepared the declaration and that it was reviewed by Rick Skinner of Skinner Fawcett who recommended the Board more vigorously declare its position that it exists to serve specific public purposes. Skinner suggested more emphasis be placed on the public purpose aspect. Fuller said that Skinner recommended that this action be a regular occurrence for the Board and whenever significant actions are taken, that these actions should address that the Board is serving a public purpose, rather than benefiting any private business. This is important as the Board pursues selling certificates of participation. Gazdik asked Fuller to read the declaration. Declaration of Official Intent to Promote the Prosperity, Security and General Welfare of the Inhabitants of the District

WHEREAS The Idaho Falls Auditorium District ("IFAD") prepares to construct an event center (The "Project"); and

WHEREAS Idaho Code Section 67-4901 provides that the purpose for organization of an auditorium district is to serve the public need and use and to promote the prosperity, security and general welfare of the inhabitants of the district; and

WHEREAS, Idaho Code Section 67-4902 provides that an auditorium district is organized to build, operate, maintain, market and manage for public, commercial and/or industrial purposes by any available means, public auditoriums and sports arenas and facilities of a similar nature; and

WHEREAS, IFAD did in 2013 request an opinion letter from Parsons Kinghorn Harris, Attorneys in Salt Lake City, Utah, and that such firm issued a letter dated April 3, 2013 providing the opinion that IFAD is a political subdivision of the state, operating for public purposes, including, among other things, to receive donations which shall be considered charitable donations pursuant to the provisions of the Internal Revenue Code; and

WHEREAS IFAD expects to issue or incur debt in a principle amount not exceeding \$50 million for purposes of financing, refinancing or reimbursing costs of the public project pursuant to the purposes set forth in Idaho Code Section 67-4901 and 4902.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of IFAD hereby declares its official intent to promote the prosperity, security and general welfare of the inhabitants of the district by constructing commercial and/or industrial purposes and in all respects to comply with the provisions set forth in Idaho Code Section 67-4901 and 67-4902, et. seq, and to take full advantage of such provisions for the benefit of the citizens of the district.

Dated this 22nd day of September 2020

Gazdik asked how often the Board should adopt this declaration. Fuller said the Board will adopt it once, however, when future contracts or agreements that are drafted, language should be included emphasizing that IFAD's primary goal is to serve the public's purpose. Fuller explained that it is important to notify any purchasers of the certificates of participation that none of the funds will be utilized for any non-public purposes or serve any private interests.

Gazdik asked for a motion to adopt the declaration. LoBuono made the motion to adopt the declaration. Vucovich seconded. Motion passed unanimously.

VIII. Action Item – Adopt new office space lease agreement from JIREH.

Spear indicated this was a one-year extension of the current lease with the only change being that IFAD cannot sublet any space. Fuller said he reviewed the agreement and noted the monthly rent payment was not increased. Vucovich wanted to know if IFAD paid a security deposit. Fuller said IFAD did not pay a security deposit. LoBuono moved to approve the lease agreement, Vucovich seconded. Motion passed unanimously.

- IX. Action Item – Review and adopt a confidentiality policy for IFAD employees and Board members.** Gazdik asked Spear to read the policy. "It is the policy of the Idaho Falls Auditorium District that board members and employees of the Idaho Falls Auditorium District will not disclose confidential information belonging to, or obtained through their affiliation with the Idaho Falls Auditorium District to any person, including their relatives, friends, and business and professional associates, unless the Idaho Falls Auditorium District has authorized disclosure. This policy is not intended to prevent disclosure where disclosure is required by law. Board members, volunteers and employees are cautioned to demonstrate professionalism, good judgment, and care to avoid unauthorized or inadvertent disclosures of confidential information and should, for example, refrain from leaving confidential information contained in documents or on computer screens in plain view. Upon separation of employment and at the end of a board member's term, he or she shall return, all documents, papers, and other materials, that may contain confidential information. Failure to adhere to this policy will result in discipline, up to and including separation of employment or service with the Idaho Falls Auditorium District." Gazdik asked if by

signing this, Board members acknowledge that they have reviewed Board policies and understand what they say. Fuller, said this not an adherence provision and the best example is the Pepsi contract. The Pepsi contract includes a provision that the terms of the contract not be disclosed. This provision could be breached by any member of the Board. Gazdik asked how we memorialize this policy and accept adherence to the policy. Fuller said he had not anticipated that the confidentiality agreement would be signed by the Board. Fuller said, simply the adoption of the policy by the Board is sufficient. Gazdik asked that when Board members are sworn in, if they assume the responsibility for following all Board policies. Fuller stated that was correct. Nitschke asked if confidentiality was included in the Project Management Plan and secondly, how is the Board going to identify what is confidential and what isn't in all documents. Fuller said the Board should be proactive identifying those things which are confidential. Nitschke stated that the Pepsi contract is not confidential but that the pricing may be. Unless confidentiality pieces are specified to Board members, it is unrealistic that Board members can be held responsible for disclosing that information. Fuller stated this discussion reestablishes the importance of media policy. Spear referenced the Project Management Plan and said that on page 39 of the document, under the communications section, there is a confidentiality section that states, "Matters of a sensitive or proprietary nature, as well as those matters discussed in Executive Sessions, shall not be discussed or shared with the news media or any persons outside of the Board except as directed by legal counsel or by an express action of the Board." Nitschke responded and asked what part of the Pepsi contract is confidential, and what part isn't and how would I know that. Gazdik stated the non-disclosure section in the Pepsi contract makes the entire contract confidential. Nitschke said that according to the Project Management Plan, the contract should have been discussed in executive session. Fuller offered the scenario that if IFAD received a public records request from Coke, wanting a copy of Pepsi's contract, that would require disclosure according to law. However, the statute would allow us to postpone that response until the Board could convene in Executive Session. This would allow Board counsel to contact Pepsi and ask them how they would like to proceed to prevent disclosure. Pepsi could file litigation to fight that disclosure and would need to protect IFAD if it was sued for not providing the contract information. Fuller went on to state that if a Board member provided this information, the courts could allow for that Board member to be removed for violating Board policy. Fuller said he would favor that the Board adopt the confidentiality policy. Nitschke said his big concern is that you could say everything is confidential. That is not what confidential information should be and it would be a nightmare to control. So, we need a process that identifies what confidential information is and how it is to be controlled before we adopt a policy that is so open-ended. For example, the Pepsi contract, I couldn't even say we had a beverage contract. LoBuono moved to accept the policy and Gazdik seconded. Gazdik stated she assumes the non-disclosure does not prevent disclosure when required by law. This policy is only indicating to our own employees, board members, and volunteers that we need to be cautious when disclosing information that could be confidential. The specifics of the contract are what Pepsi does not want disclosed. Fuller stated that nothing in the contract prevents the Board from saying that Pepsi products will be sold. It does prevent someone from the Board from providing the pricing schedule and if someone from the Board provided that detail it would be a violation of the contract. This would subject

the District to liability to Pepsi. Fuller explained, we don't want one member disclosing things that the Board as a whole has agreed to keep confidential. Nitschke said the issue is, why is the document not stamped confidential? How is a Board member to know that Exhibit B is confidential? Nitschke said he is not objecting to confidential information and understands the appropriateness. Nitschke said in his experience confidential information was stamped as confidential so people knew what part of the document needed to be protected. Nitschke said there is nothing to his knowledge that exists for the Board to control and protect confidential information. Lobo said there needs to be some common sense applied to these situations and people should understand what things should not be disclosed. Gazdik asked Nitschke if it was his recommendation to get a stamp to mark certain documents as confidential when the documents are entered into IFAD's permanent record? Nitschke stated, there needs to be some type of method that should be identified in the Project Management Plan. The Project Management Plan should outline how certain documents will be controlled. It is insufficient to assume everyone knows what confidential information is. Gazdik asked Spear if this could be done. Spear agreed that it could. Vucovich suggested future contracts should have language protecting a group from our inadvertent disclosure. Nitschke asked if the contract was 10 years of confidentiality and Fuller stated it was. Nitschke wondered if stating IFAD has entered into a ten-year contract violated confidentiality. Fuller suggested the best way to resolve this was to get Pepsi to agree on an announcement. Spear referred to the Document Control Section of the Project Management Plan, section 8.6.5 Confidential and Exempt Records. "Certain information contained in reports generated by this office must remain confidential (i.e. vendor identification numbers, social security numbers, etc.). Make certain all confidential information is deleted, redacted, blocked out or otherwise not visible before releasing to the public." LoBuono made the motion to adopt the confidentiality policy. Gazdik seconded. Motion passes 3-1 with Nitschke dissenting.

X. **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. Gazdik said this is an ongoing agenda item and the Board was awaiting the final CSL study before scheduling a meeting with Centennial Management. Spear outlined for the Board the following items that needed to be addressed in the management agreement.

1. Assignability – IFAD needs the ability to assign the contract
2. Pro Forma Questions
 - a. Does pro forma include pouring rights revenue?
 - b. Contracts for hockey and concessionaire
 - c. Need cleaning cost estimate for COVID-19 impact
 - d. Future year projections
 - e. Revenue share for hockey concessions

Gazdik suggested sending this list to Kevin Bruder and request any outstanding items that Centennial Management feel is missing from the contract. Spear said he will schedule a meeting with Centennial and include Gazdik and Fuller.

XI. **Action Item** – Discuss and approve Bateman Hall/Hogan to move forward with conducting a new bid process for the Event Center Phase II. Spear introduced the

topic and said he wanted the Board to approve rebidding the project during the first and second quarters of 2021. Gazdik asked about the timing for the rebidding process. Spear felt that it was important for the process to begin within the next month. Gazdik expressed concerns that there will be cost associated with the process and with the potential issues of bidding a project more than once. Gazdik thought it was important for Mike Clements and Chris Nations to comment on the timing of the rebidding.

Nations said it was important to look at a schedule and consider releasing the bid package in the second quarter of 2021, assuming an 18-month construction cycle, this would allow the facility to open in the Fall of 2022. Nations said he is basing his comments on three concepts. First is the construction schedule and from a data point, he continues to monitor the Dodge index. The Dodge index which pointed out that over the first six months of 2020, construction has decreased by 22%. The forecast is that construction will decrease in the high 30% range by the end of 2020. Nations said that reduced construction activity and associated labor costs could benefit clients, however, there are some issues with increased material costs. Nations said they are currently seeing a more competitive bidding environment which has resulted in 15% reductions from original cost estimates. Nations believes Q1 of 2021 is a good time to rebid the project. Nations agreed with Gazdik that it is important that a solid financing plan is in place before bidding the project. There must be confidence that the bonds will sell. Nations said they are seeing more competition; no escalation and subcontractors are bidding less by reducing overhead and profit. Nations expects material costs will be going down but currently the lumber industry has been hit pretty hard. Nations mentioned that they would like to be involved in the project moving forward in the following manner:

- Nations said they would like to review the bidders list. Last time there were 8 packages with only 2 bidders and 3 packages with only one bidder. Nations believes they can help get 3-4 bidders on every bid package. Nations stated there is more of a regional draw now because of the increased competition. He said the Salt Lake market is prime for subcontractors to come to Idaho Falls.
- Nations said they would like to review bid scopes for clarity and accuracy because last time they were changing bid scopes in the middle of the process.
- Finally, they would like to be involved in scrubbing the bids once they are received. Nations is supportive of including the FFE packages in this bidding process.

Nations said they are here to help and would not be asking a fee for this part of the process and would only ask for reimbursables. Once the project goes to bid, Nations hopes their services will be picked back up and compensated based on their original contract.

Gazdik asked Clements if they are seeing similar trends, mentioned by Nations, in our local area. Clements responded, "very much so", and there is increased competition in the subcontractor arena. The backlog is starting to run out and contractors are getting more hungry. With the unrest in the economy right now, you are going to see this carry over into 2021. Clements said what they are asking for is to get all these things prepared and the packages scrubbed. The target would be the first quarter of 2021. For a minimal cost, the rebidding process could be done. Clements said by rebidding, they could take advantage of some cost savings in big items like precast. Clements agreed with Nations that lumber cost

is currently an issue, but all other costs are flatlined. Clements said everything is trending the right way as long as the District can get its financing in order. Gazdik asked if this is a request to start laying the initial groundwork for the rebid process. Gazdik stated that it is important to maintain the confidence levels of the contractor and subcontractors because we do not want to bid this a third time. Clements agreed and said we only want to bid this project one more time. Gazdik said it is important that the Board have information on hotel receipts and the marketplace before going out to bid. Spear indicated that a new and lower GMP should assist the Board with its financing plan. Nations said the bond process moving forward is important but a GMP is needed for the financing plan. Nations believes that because we stopped during a pandemic, there is an understanding about where we are at in this process and the need to rebid. Nations said there is going to be a need where people will want to be involved in the process moving forward, unlike anything we have seen in the last five years.

Gazdik said it is very important that we identify triggers and events before moving forward with the rebid. Nitschke said he would like to see the integration of key financial points with the construction schedule. Gazdik said a list of triggers (e.g. the possibility of CARES funding) is important to guide the Board moving forward. Nitschke said he would like to see things like the CARES funding built into a schedule, so we know the time and the activity. Spear suggested putting together a timeline with trigger points to bring forward to the Board for next meeting. No action was taken.

XII. **Discussion Item** – Chris Nations will brief the Board on how the Nations Group can assist the Board on the next bidding process. This was covered under agenda item XI.

XIII. **Action Item** – Review and discuss short-term rental information and approve entering into an agreement with Host Compliance. Spear said there is an opportunity to engage with Host Compliance to help identify short-term rental activity. Spear confirmed that the State Tax Commission would send letters in an attempt to collect the tax, but they cannot keep us informed and updated of the actions the Tax Commission might take with the provided list. Any feedback would come from the changes to the Master File List Report and Monthly Activity Report. Spear said he needed to visit with Host Compliance again to ensure that all the information is available in order for the Board to make a decision on this. No action taken; this agenda item was moved to the next meeting.

Report and Updates

A. Discussion Item - Executive Director Report

- a. Fundraising and Budget Update – Spear communicated that he had a meeting with the Business Advisory Committee and has requested that the committee provide contact information for businesses and individuals. Spear briefed the Board about the idea of putting a temporary ice rink at the Event Center site in order to get people familiar and excited about the area. Spear said he continues to monitor tax collections with August appearing to be strong and early September looking promising. However, the government travel lockdown is an issue moving forward.
- b. Pioneer Road and Event Center Phase I progress report- Spear said these are near completion. Clements said last week there was a grand opening

for Event Center Drive and Pioneer Road and both roads are now open.
Only a few punch list items remain for Event Center Phase I.

- c. State Tax Commission Reports – Spear summarized that he continues monitor and request reconciliations. Spear said he will also review collections from market-place facilitators and provide feedback back to the Board.
- d. Action Items
 - i. Initiate a meeting with Centennial Management
 - ii. Follow up with VBFA and CRSA to ensure they are clear about Board member Nitschke’s questions.
 - iii. Develop timeline for rebidding process and key triggers

B. Discussion Item - Legal Report. Fuller had no further report.

Calendar and Announcements

- A. Upcoming IFAD Meeting – Next Meeting on October 13, 2020
- B. Discussion Item - Announcements and Minor Questions
- C. Discussion Item - Agenda Items for October 13, 2020 meeting
 - 1. Approve CSL Study
 - 2. Review and approve HVAC scope of work
 - 3. Present to the Board a timeline for the bidding process
 - 4. Host Compliance contract

Meeting adjourned at 8:53a