

Office of
City Attorney

City of
Pensacola



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September 22, 2011

Leo J. Cyr
President of Marina Management Corp.
1901 Cypress Street
Pensacola, Florida 32502

CERTIFIED MAIL
7099 3220 0002 0928 7093

Re: Pitt Slip Lease Agreement and Request for Renewal

Dear Mr. Cyr:

This will serve to respond to your letter dated July 21, 2011, requesting a renewal of the Pitt Slip Marina Lease Agreement. It is my legal position that your letter does not constitute an automatic renewal of the lease.

As you know, there have been numerous changes in City administration since the referendum on the new Charter. One of the new changes has been the appointment of my law firm as interim City Attorney.

On my extensive "to do list," is the negotiation of a new lease agreement between our respective clients. The Mayor has asked me to ensure that we have an agreement in place by the end of this calendar year.

At this point I believe it is important to sketch out the City's position on the current lease labyrinth in order to ensure that there will be no misunderstandings in our future negotiations.

There are four separate parcels involved in these negotiations. As an illustration of the complexities involved, Parcel II, the property used for ancillary parking does not even have a lease. In order to utilize the paved parking area Parcel II, there will have to be another lease executed.

Parcel I, the marina, and Parcel III, the undeveloped parking, appear to have the same lease terms and expiration date of September 18, 2015. At ten cents a square foot, these parcels appear to be seriously undervalued.

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Parcel IA, the uplands, has a lease expiration date of June 17, 2013. The City will renew the lease for a five year term, upon a lease fee payment equal to appraised rental value established by an appraisal. That appraisal has not been done. In response to Dan Lozier's request, Parcel IA cannot now be considered to have the same lease terms as Parcel I and Parcel III. Not only is Parcel IA clearly distinguished in the lease with specific, unique treatment, it is the uplands portion of the property and would obviously be valued differently.

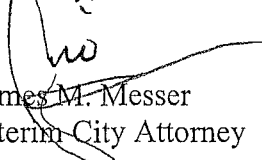
A remaining issue requiring resolution prior to renewal is the ownership of the improvements on the property. In your letter to Dick Barker, dated February 8, 2008, you stated the building had been sold to Merrill Land, LLC. Pursuant to Section VII of the lease, title to any building or other permanent improvements on the property shall vest with the City upon termination or renewal. It would appear that upon renewal of the lease, title to the physical structures will vest in the City. Should the lease be renewed, the City needs to be in a position of understanding exactly who is the current titleholder of each parcel and who will be parties to the renewed lease(s). In order to facilitate future negotiations, I would appreciate the closing documents for that sale, and a list of all building occupants and the terms of their occupation. Please also confirm that there have been no other sales of any permanent improvements on the property.

Receipt of such information will provide some clarification regarding past, present and future rent payments due to the City. It would appear that a ground rent and/or a gross sales percentage from the operation of the property should be paid to the City. In addition, it would appear that the City is owed the same percentage upon the putative sale of the physical structure.

Whether the City has received the full measure of those payments and all payments due under the lease is a question for the auditors. By separate copy of this correspondence, I would ask the Director of Finance to confirm whether or not the City received the \$71,000.00 in required matching contributions, a detailed accounting of all rental payments received under the lease from 1985 to date, and to ensure that an appraisal is conducted on Parcel IA to determine the appraised rental value pursuant to Section II(C) of the lease, as well as the improvements to all the parcels.

I would hope that we could schedule a meeting in early October to discuss our future arrangements. It is my belief that our respective clients both wish to come to an agreement that is fair to both parties without resort to a declaratory judgment action, which is the only other way I can envision that these complex and convoluted arrangements can be sorted out with any finality.

Sincerely,


James M. Messer
Interim City Attorney

JMM/jlm

cc: John Asmar, Chief of Staff
Bill Reynolds, City Administrator
Travis Peterson, Public Information Officer
Richard Barker Jr., Director of Finance
Dan Lozier, Esquire
Lawrence Schill, Esquire

TARRAGONA

BARRACKS

MAIN

ADAMS

ALCANIZ

BAY FRONT

Parcel III
(no lease)

Parcel IIA
(exp 9/18/15)

Parcel III
(exp 9/18/15)

Parcel I
(exp 9/18/15)