



COUNCIL MEMORANDUM

Council Meeting Date: May 14, 2015

LEGISLATIVE ACTION ITEM

SPONSOR:

City Council Member Sherri Myers

SUBJECT:

Removal and Replacement of Trustees of the Community Maritime Park, Inc. (CMPA)

RECOMMENDATION:

That City Council exercise its authority to remove all of the Trustees of the Board of the Community Maritime Park, Inc., replace them with 7 members of the Pensacola City Council, and take other action as may be appropriate in the City's best interests.

AGENDA:

Regular Consent

Hearing Required: Public Quasi-Judicial No Hearing Required

SUMMARY:

The history of the CMPA and its relationship with the City is summarized in the attached City Attorney memorandum to Council dated April 5, 2013. The authority for the City Council to take the action recommended above is set forth in the attached legal opinions of the City Attorney and the City's bond attorneys, as well as the attached By-Laws of the CMPA.

The reasons why the City Council should take the action recommended is twofold:

A. Ownership and Control of Public Improvements by CMPA.

1. The City no longer owns the public improvements, including the stadium, amphitheater and all public improvements of any kind at the Maritime Park. The City transferred ownership of the public improvements (the people's park) to the CMPA in order to obtain New Market Tax Credit funding. According to paragraph 6 of the Omnibus Lease Amendment approved by Council in May 2010 to the Master Lease of March 27, 2006, "Throughout the term of the Master Lease, CMPA shall have the **exclusive right to own**, operate, manage, sublease, finance and otherwise deal with the Project, subject to the requirements of the QLICI Loans, **but without any approvals or consents from the City.**" As a result of this agreement, the CMPA has ownership of the public improvements and the City has no say in the matter.

Council Memorandum

Subject: Removal and Replacement of Trustees of the Community Maritime Park, Inc. (CMPA)

Date: May 14, 2015

Page 2

2. In order for the CMPA to be the recipient of Build America Bonds (BABs), the source of most of the funding for the public improvements, the CMPA had to become the instrumentality of the City because the proceeds of BABs can only go to governmental entities. To accomplish this relationship, the CMPA was required to amend its Bylaws and expand the number of City Council-appointed board members from 4 to all 12 of its board members. (CMPA Bylaws March 12, 2010, attached hereto). On March 10, 2010, the City Council adopted Resolution No. 03-10 (attached) providing Council with the authority to appoint and remove all of the members of the CMPA. The fact that the Council could appoint and remove all of the CMPA trustees assured compliance with the Build America Bonds requirements and allowed CMPA to be the recipient of the proceeds of the sale of the bonds and that its interests would be aligned with that of the City.
3. On February 19, 2014, the CMPA breached its agreement with the City to allow the City Council to appoint and remove all of the CMPA trustees. Without the knowledge or consent of the City Council, the CMPA amended its Bylaws (attached) to provide that only seven (7) of the trustees would be appointed by the City Council and that the other five (5) members would be appointed by the CMPA itself. This move by the CMPA to undercut the authority of the City Council to appoint all of the CMPA trustees is grounds for removal of the board of trustees. Paragraph 10 of the CMPA's current Bylaws states that, "Any Trustee may be removed from office by the City for lack of sympathy with its (*the city's*) objectives, or for refusal to render reasonable assistance in carrying out its purpose." Clearly, the actions of the CMPA demonstrate a lack of sympathy with the objectives of the City as expressed in Council Resolution 03-10, giving the Council the authority to not only serve as trustees but the authority to remove all of the CMPA trustees.

B. Development of Private Improvement Stymied.

1. The original Master Lease gave the CMPA an interest in the private improvements at the Maritime Park through subleases. However, the Omnibus Lease Amendment of 2010 altered this relationship and provided that the "CMPA shall have no interest in the Private Improvements It shall, instead, act as agent for the City in making such portions available to developers of the Private Improvements on terms subject to approval by the City."
2. Developing the private improvements at the park is a challenge due to the procedures that are unclear and confusing. A prospective developer is required to go through a bureaucratic nightmare of a gauntlet to present a proposal to the City and the City Council for approval of a proposed lease agreement. An applicant must appear before several CMPA committees, the CMPA full board (often, more than once), and then, with luck, to the City Council. This procedure for obtaining subleases is counterproductive and discourages potential interest in the private developments. Having the City Council members serve as the CMPA trustees would reduce the number of presentations and individuals involved substantially.
3. The need to streamline the process for developing the private parcels by appointing Council members to govern the CMPA is consistent with the manner in which the Community Redevelopment Agency, which provides funding for the Maritime Park bond payments, is governed.

Council Memorandum

Subject: Removal and Replacement of Trustees of the Community Maritime Park, Inc. (CMPA)

Date: May 14, 2015

Page 3

PRIOR ACTION: None

FUNDING: N/A

FINANCIAL IMPACT: None

STAFF CONTACT:

ATTACHMENTS:

1. Omnibus Lease Amendment
2. CMPA Bylaws of 2010
3. CMPA Bylaws of 2014
4. City Council Resolution 03-10
5. City Attorney Opinion Letter
6. Bond Council Opinion Letter—April 8, 2012 (2013)
7. Bond Council Opinion Letter—February 28, 2011

PRESENTATION: None