

COMMON COUNCIL PROCEEDINGS
- Special Meeting -
September 23, 2013

The meeting was called to order at 5:00 PM by Councilwoman-at-large Kiyak followed by the Pledge of Allegiance.

Present: Councilmen Michalski, Councilman Gonzalez, Councilwoman Szukala, Councilwoman-at-large Kiyak.

Also present: Mayor Dolce, City Attorney Szot, City Treasurer Woods

Absent: Councilman Rivera

Notice of Special Meeting was read by Councilwoman-at-large Kiyak.

PUBLIC COMMENTS:

No one spoke.

OLD BUSINESS:

RESOLUTION #70-2013
SEPTEMBER 17, 2013

BY: ENTIRE COUNCIL

RESOLUTION AUTHORIZATION LANDLORD CONSENT
(CHADWICK BAY MARINA)

WHEREAS, the City of Dunkirk (the "City") entered into a contract dated July 16, 1985, whereby Metal Craft Company, Inc., was authorized to develop, construct and operate a full-service marina on the Dunkirk Harborfront, commonly known as Chadwick Bay Marina (the "Marina"); and

WHEREAS, pursuant to the terms of such Contract, the right to lease the Marina was assigned to Chadwick Bay Marina, LP; and

WHEREAS, the City later consented to the assignment of the Marina lease to Donald F. Ryan and Richard W. Ryan, and subsequently to Ryan Marine Services; and

WHEREAS, the City later approved the assignment of leasehold rights located at 30 Central Avenue, Dunkirk, New York 14048, from Ryan Marine Services, LP, to JSG Marina Holdings, LLC, and its subsequent assigns Chadwick Bay Marina Holdings, Inc. (Resolution 54-2011); and

WHEREAS, the City later approved the assigned of the Lease interest currently held by Ryan Marine Services, LP to JSG Marina Holdings, LLC, or an entity to be formed with the same principal ownership (Resolution 88-2011); and

WHEREAS, Chadwick Bay Marina Holdings, Inc. (“Chadwick”) is restructuring its ownership participation and as a result is seeking funding through Loeb Term Solutions, LLC (“Loeb”), 4131 South State Street, Chicago, IL 60609; and

WHEREAS, Loeb is requesting that the City of Dunkirk, as Landlord of the Marina, enter into a Landlord Consent to induce Loeb to provide financing to Chadwick; now, therefore, be it

RESOLVED, that the Mayor be and hereby is authorized and directed to enter into a Landlord Consent with Loeb Term Solutions, LLC (“Loeb”), 4131 South State Street, Chicago, IL 60609, and the City:

- Consents to the creation of Loeb’s security interest in certain Collateral and agrees that Loeb’s security interest is prior to the City’s;
- Agrees to notify Loeb in writing at least thirty (30) days before commencing any proceedings or otherwise taking any action to terminate the lease or to enforce the City’s remedies thereunder;
- Disclaims and waives to Loeb any interest in the Collateral, and acknowledges that the Collateral will at all times be personal property and not real estate fixtures, and will be subject to Loeb’s prior security interest;
- Advise Loeb if any payments are not received on time;
- Acknowledges that, to the City’s knowledge, Chadwick is not in default under the Lease;
- Consents to Loeb’s entry upon the Premises at all reasonable times to inspect, dispose of or remove the Collateral so long as all areas of egress will be left in a safe, workmanlike manner with proper OSHA level barriers and fall protections in place. Loeb is not, however, liable for any diminution in the value of the Premises caused by the absence of the Collateral or the necessity of replacing it
- Agrees that upon any default under the Lease by Chadwick and in the event that the City takes action against Chadwick as a result of such default, Loeb has the right to enter into and remain in possession of the Premises for a period of not to exceed one hundred twenty (120) days (“Initial Period”), for the purpose of enforcing its liens on the Collateral, including detaching, selling, auctioning from the Premises and removing the Collateral from the Premises. The City shall

promptly provide notice to Loeb of a default under the Lease as well as notice of the receipt of an eviction judgment in favor of the City.

Councilwoman-at-large Kiyak advised a motion was needed to remove the Resolution from the table.

Councilwoman Szukala made a motion to remove Resolution #70-2013 from the table. Seconded by Councilman Michalski.

Carried, all voting aye (4-0). Removed.

Councilwoman-at-large Kiyak advised a motion was needed to amend the resolution to include the following clauses:

Be provided a first-option to purchase the assets of Chadwick from Loeb for the outstanding loan amount due to Loeb;

Receives insurance from Loeb in the event that Loeb proceeds with its default process against Chadwick.”

Councilwoman Szukala made a motion to amend the Resolution. Seconded by Councilman Gonzalez.

Carried, all voting aye (4-0). Resolution Amended.

RESOLUTION #70-2013 (AS AMENDED)
SEPTEMBER 23, 2013

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**RESOLUTION AUTHORIZATION LANDLORD CONSENT
(CHADWICK BAY MARINA)**

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- Be provided a first-option to purchase the assets of Chadwick from Loeb for the outstanding loan amount due to Loeb;
- Receives insurance from Loeb in the event that Loeb proceeds with its default process against Chadwick.

Councilwoman Szukala expressed thanks to Mr. Pucci, Mr. Gambino, and City Hall Personnel for their patience in resolving any questions or concerns Council had with the resolution.

Councilwoman Szukala stated “We hashed out some of the details and answered the questions that the Council did have at the time and I want to stress at no point, was this ever anything to do with progress in the marina itself. This resolution is only to approve the collateral list for one partner to buy out the other partner. This was not money toward the actual marina. After we sat down today, we discussed everything we needed to. I feel comfortable moving forward in this step, knowing that there will be many other steps that the council will have to approve at a later time.”

Councilwoman Szukala advised that she was disappointed with the recent article published in the Observer in regards to Council’s decision to table this resolution.

Councilman Gonzalez thanked Mr. Pucci and Mr. Gambino for being cooperative while Council reviewed and amended the resolution.

Councilman Gonzalez advised he was displeased with what the Observer published about the tabling of this resolution and their interpretation of Council’s reasons behind it.

Councilman Gonzalez stated “I, or we, don’t want to make the same mistakes that other administrations have done in the past by going into contracts with business without crossing the t’s and dotting the i’s. We have seen what this city has done before I came to council. Buying property that was not worth the value and providing loans without the proper documentation, etc. We don’t want to make those mistakes. We want to make sure that everything is in proper order. We’re not doing this because we’re anti-business or anti-development. I take my time to make sure that everything is in order and that everybody knows what they’re supposed to be doing; what is being blocked, what is not being blocked, everything is taken care of, we’re doing this because that’s what we’re elected to do. To be transparent in everything that we do”.

Councilwoman-at-large Kiyak read the following statement:

“The decision to table this vote was not made in haste.

I personally had many discussions with Mr. Gambino prior to the council meeting last week regarding the resolution put before this council, and he was well aware that with the outstanding questions council still had about this transaction that we would likely table this vote and bring it up again at a special meeting held today.

For the record, this resolution only pertains to the terms of a loan Mr. Gambino is seeking to obtain to buy out his partner, Mr. Michael Pucci. The City's involvement is signing off on an agreement that verifies Mr. Gambino's personal interests in the marina as collateral, as well as a couple of other caveats stated in the resolution that the Mayor will agree to.

Contrary to what has been speculated in the media, this Council has an obligation to do its due diligence and question what is listed as collateral, to ensure that this list does not actually contain city-owned property. Asking questions *after the fact* of passing the resolution would obviously be too late, if the collateral list was indeed found to consist of items that did not belong to Mr. Gambino.

It is unfortunate that the media has confused the public as to how this council views the progress at the marina so far by Mr. Gambino. I, for one, am thrilled that Mr. Gambino will continue transforming the marina into a tourist destination – one in which fishermen and visitors alike will come and spend their time and dollars to enjoy. Not to mention a destination that all residents will be able to enjoy year-round, with the planned restaurant also still in the works.

Mr. Gambino assured me on a number of occasions that regardless of the outcome of this loan coming through, the marina project will continue on, as planned.

I would hope that whenever Council questions passage of a resolution, it will be recognized by residents that we are striving to protect their interests first and foremost. If anyone would like to question my reasoning, I encourage that person to contact me personally so we can discuss the matter further. “

Vote on resolution as amended:

Carried, all voting aye (4-0).

Councilwoman Szukala moved to adjourn. Seconded by Councilman Gonzalez.

Carried, all voting aye.

Adjourned at 5:09 PM

Nicole Joiner, City Clerk
