

June 6, 2019

Nat Bailey Stadium Review

Background

The initial Nat Bailey 25-year term-lease between the Vancouver Park Board and the Vancouver Professional Baseball Club was signed in 2007 and is renewable by the Tenant every five years. This lease was amended in 2012 (second term) and it came up for the third renewal in 2017. By the end of 2018 the renegotiation was still in progress.

According to the lease the Landlord and the Tenant must agree on a new rent amount for the Third Renewal Term in accordance with the formula set in the lease. This amount has not yet been finalized and agreed upon. In the meantime, the Vancouver Professional Baseball Club has submitted a development permit application to expand its operations at the leased site.

It is recommended that the City should not sign off on Owner's Undertaking and facilitate permit issuance unless and until:

- The third Renewal Rent is successfully negotiated and agreed upon and paid in full.
- All outstanding maintenance repair items required to be completed by the Tenant at its sole cost have been completed by the Tenant to the City's/Park Board's satisfaction.
- All required audited and unaudited statements have been provided by the Tenant as agreed with Tenant, namely unaudited for all of First Term and Second Term and audited for prior two years.
- The City/Park Board and Tenant have agreed on the financial and other terms associated with the capital upgrade and expansion requested by the Tenant and a suitable modification of Lease has been executed and agreed upon setting out the terms of same.

Scope

The following areas were assessed as to the Tenant's compliance with the lease terms, as defined by Nat Bailey Stadium Lease Amendment #1, Amended and Restated as of November 1, 2012. The review covered the years 2007 (beginning of lease's first term) to 2018.

- Audited and unaudited financial statements submitted by the Tenant;
- Revenue reporting, rent calculations, and associated payments submitted by the Tenant;
- Review of payments relating to capital improvements undertaken; and
- The Tenant's compliance with other lease terms including pay in lieu property tax, insurance, and notice of renewal.

Our work included interviews and discussions with key stakeholders in Park Board, Finance, and Legal Services. Documentation reviewed includes the lease and amendments with the Vancouver Professional Baseball LLP, as well as other departmental records and

correspondence. Revenue reports and rent payments submitted by the Tenant were also reviewed and recalculated.

The audit is not designed to detect fraud. Accordingly there should be no such reliance.

Conclusion

The areas of non-compliance fall primarily within the following categories:

- Maintenance and Repairs (Lease Section 6.2);
- Property Tax (Lease Section 3.1-3.3);
- Financial Reporting (Lease Section 2.8);
- Insurance (Lease Section 10.1-10.2); and
- Notice of Renewal/Renewal Rent Determination (Lease Section 17.1).

Given the non-compliance issues noted, we recommend that the deficiencies be addressed and that any resulting financial obligations be taken into consideration in negotiating the fair market rent to be applied for the third lease term.

Additionally, lease management processes should be strengthened to ensure that lease compliance is maintained and sufficient oversight is in place for the remaining years of the lease term.

The more significant findings and recommendations are:

D.1 Establish and Assign Responsibilities for a Working Governance Structure, Continuity and Oversight

Lease management processes should be strengthened to ensure that lease compliance is maintained and sufficient oversight is in place for the remaining 13 years of the lease.

D.2 Address Capital Maintenance and Improvements Required

The Tenant has, for many years, failed to comply with its maintenance and repair obligations. Some are safety related and some are critical to operational efficiency of the facility. These deficiencies should be addressed now in priority to bring the Tenant into compliance with the lease terms.

D.3 Outstanding Payment of In Lieu of Property Tax

The exact amount owing has yet to be determined as the property parcel is split between Nat Bailey Stadium and the Vancouver Racquet Club, and the percentage allocation for each has yet to be determined. Park Board should consult with Legal Services and determine if the outstanding payments assigned to Nat Bailey Stadium for 2007-2011 should be collected.

Findings and recommendations have been discussed with appropriate management and work is underway to address them.