



OFFICE OF THE MAYOR

An Open Letter to the Citizens of Pensacola

Once again stories of the City's legal fees are circulating. Those stories do not give you all of the facts regarding the City's position and its defense of lawsuits which have been brought against it by others.

A case in point is the story about the legal fees that the City has spent to defend itself in the Fish House lawsuit. When I became your Mayor, I had the City staff evaluate all of the City's Leases so that I could be familiar with their terms and could insure that both the City and our tenants were complying with those leases. One of those leases was the Fish House lease. Our review of that lease indicated that the rent being paid was not what was called for in the lease. Our tenants disagreed with our interpretation of the lease. As a result, the City issued a notice of default in November, 2013. Shortly after that, at the request of our tenant, our notice of default was withdrawn when they agreed that there were "legitimate issues which should be the subject of open and frank discussions" between the parties. A letter was signed by all parties agreeing to those discussions on December 10, 2013. Subsequently, in January, 2014, the City was sued. The city did not file any lawsuit against anyone. It goes without saying, however, that anytime the City is sued I have a fiduciary duty to respond to the lawsuit and to file any counterclaims which the law requires be brought in the same lawsuit. What has been left unreported is why the City continues to pay attorney's fees to defend its position. Simply put, it is my duty as Mayor to defend the City and its taxpayers when suits are filed against it and to bring any claims on behalf of the City once someone else sues it. That is what I have done.

In 1985 the City entered into a 30-year lease for the land currently occupied by the Fish House and Atlas Oyster House. Since 1985 taxpayers have received \$46,161 a year, or \$0.10 per square foot, for the lease of the land. By way of comparison, the City receives \$1.64 per square foot for the Maritime Place office land lease and \$1.84 per square foot for the Maritime One office land lease at the Community Maritime Park, amounts which are 16 to 18 times higher per year than the comparable Pitt Slip lease fee - and the Maritime Park office building leases are indexed to increase over their lifetime, unlike the Pitt Slip lease. Without question, the market rate for that city-owned waterfront property is many times higher. It was, and still is, our position that the current lease calls for additional rent and lease fees to take into account the value of this property.

Contrary to what some have said, we have never tried to force the renegotiation of the lease. We have simply tried to enforce what we believe to be the terms of the lease. The appellate court filed an opinion last week in favor of the tenant. Barring further action by the courts, the City will continue to collect a lease fee that is considerably below market value for the property and is less than what I believe is the rent called for in the lease. Unfortunately for the taxpayers, it turns out that the City entered into a lease in 1985 that could not stand the test of time, at least when it comes to protecting the interest of taxpayers with a fair return on the lease of the public asset.

What this means is that for the next 25 years the City will collect \$46,161 a year for the lease of Pitt Slip, the amount that was paid beginning in 1985. We can't fault the tenant for striving to maintain his favorable position, but we can point out that the City loses and residents foot the bill when city-owned property is leased for less than its market value. That is why we felt obligated to spend the money on attorney's fees. Imagine if the City were paid rent of only \$0.70 per square foot from the tenant, well below the current market rate. That equates to a little over \$300,000 a year as opposed to \$46,000 a year. Not only would the City receive enough money in one *year* to reimburse its legal costs, it would continue to receive that much annual revenue for at least the next 25 years.

As John Paul Jones said, "It seems to be a law of nature, inflexible and inexorable, that those who will not risk cannot win." Reasonable people will disagree about how much risk to take, but if the taxpayers are the ultimate judge, they deserve to be presented with all the facts."