

ALASKA STATE LEGISLATURE
LEGISLATIVE COUNCIL
MARCH 31, 2016
5:05 PM
Approved August 3, 2016

MEMBERS PRESENT

Senator Gary Stevens, Chair
Representative Bob Herron, Vice Chair
Senator John Coghill
Senator Lyman Hoffman
Senator Charlie Huggins
Senator Anna MacKinnon
Senator Kevin Meyer
Senator Peter Micciche
Representative Mike Chenault
Representative Craig Johnson
Representative Sam Kito
Representative Charisse Millett
Representative Mark Neuman
Representative Steve Thompson, alternate

MEMBERS ABSENT

Representative Mike Hawker

OTHER MEMBERS PRESENT

Senators Egan and Olson; Representatives Claman, Colver,
Josephson, LeDoux, Ortiz, Spohnholz, Tarr, Tuck and Wool

AGENDA

ANCHORAGE LIO - EXECUTIVE SESSION

SPEAKER REGISTER

Sheldon Fisher, Commissioner, Department of Administrative
Services
Mark Pfeffer, Pfeffer Development and 716 West Fourth
Avenue, LLC
Don McClintock, Ashburn & Mason P.C.

5:05:15 PM

I. **CHAIR GARY STEVENS** called the Legislative Council meeting to order at 5:05 p.m. in Room 532 (Senate Finance) of the State Capitol. Present at the call were Senators Meyer, Coghill, Hoffman, Huggins, MacKinnon, Micciche, and Stevens; Representatives Chenault, Johnson, Kito, Millett, Neuman, Thompson, alternate member, Drummond, alternate member, and Herron. Representative Hawker was absent.

II. **ANCHORAGE LIO - EXECUTIVE SESSION**

CHAIR STEVENS noted for members that this meeting was to address the motion passed by Legislative Council at the December 19, 2015, meeting; specifically, "...that Legislative Council advises the Legislature not to appropriate for the 716 W Fourth Avenue lease pending the outcome of the currently pending litigation or unless negotiations between counsel for the Legislature and a State entity within the next 45 days result in a competitive cost on a per square foot of usable space basis." Based on that motion, Council is meeting today to discuss a proposal by the owner of 716 W 4th Avenue. He said that before Council hears from Mr. Pfeffer, he wanted to give time to the commissioner of Administrative Services who has to leave shortly to catch a plane. He asked that Commissioner Fisher address the basic question of whether space at the Atwood Building is still available to the Legislature.

COMMISSIONER SHELDON FISHER confirmed that space in the Atwood Building continues to be available to the Legislature. He said that the space totals approximately 34,690 square feet, and it would consist of the area that was formerly the Diane Restaurant on the first floor, the public meeting room, and two floors in the building as well as some space on the 19th floor. In terms of availability, which assumes that a final decision and an RSA is given by early May, the space should be ready early in January 2018. He said the space on the first floor, the public meeting space, as well as some space on the 19th floor could be made available sooner, approximately seven months after the RSA is granted.

SENATE PRESIDENT MEYER asked for an estimate of what it would cost to do the build-outs for the Legislature.

COMMISSIONER FISHER said that the build-out was estimated at \$3.5 million, did not include costs associated with

moving the Legislature, and assumed that existing fixtures, furniture and equipment can be repurposed and moved from the current office space to the Atwood.

SENATE PRESIDENT MEYER followed up to ask if there were other state leases around the City of Anchorage that would be expiring soon and whether those employees could be moved to the Atwood.

COMMISSIONER FISHER said that if the Legislature does not take the space, it will be filled with other Executive Branch tenants.

REPRESENTATIVE KITO asked if temporary space was available on the second floor of the Atwood that could be used in the transition.

COMMISSIONER FISHER said that while the space on the second floor was vacant, their expectation was that some of that space would be used to effectuate the rest of the build-out, so would not really be available until early 2018.

CHAIR STEVENS said that currently during the interim there are approximately a dozen people that work in the Anchorage legislative offices - about six LIO staff, three in Ethics, and maybe three to four legislative offices have staff present during the interim; about a dozen folks altogether.

SENATOR MICCICHE followed up on Senator Meyer's question about other State offices moving into the Atwood to ask if such a move would facilitate a savings for the State.

COMMISSIONER FISHER agreed that certainly there would be a savings. The commercial lease rate in Anchorage tends to be a little over \$3.00 per square foot; he said they haven't defined precisely who would relocate to the Atwood, so he couldn't speak to the exact savings. As leases were terminated and employees moved to the Atwood, there would be a savings as the Atwood Building tends to be closer to \$1.80 per square foot. In response to a question by Speaker Chenault, Commissioner Fisher reiterated that the entire renovation would be finished early in January 2018 and would expect that with the move, the Legislature would be occupying the space by the end of January 2018.

SENATOR MICCICHE asked if it was possible to achieve renovations for a lower cost than the estimated \$3.5 million.

COMMISSIONER FISHER said that it was possible to do fewer renovations to bring down the cost. He said the estimates were pro forma; they haven't gone out to bid, haven't tried to negotiate more favorable rates than they have experienced in the past, but for budgetary purposes, they are suggesting a figure of \$3.5 million.

CHAIR STEVENS thanked Commissioner Fisher for being available to answer questions and for being excellent to work with.

Chair Stevens said that members should have received the report and addendum from Navigant. He said he had hoped there would be a purchase price that would be comparable to moving to the Atwood Building, and said that they, including Legislative Council's attorneys, Doug Gardner and Serena Carlsen with Stoel Rives, came up with a figure of \$32,500,000, which he shared with the owners; and they came back with a counter figure of \$35,450,000. They had a follow-up meeting and the owners put forth a new purchase price of \$33,975,000. He noted Mr. Pfeffer was here today to discuss the purchase price with Legislative Council.

MARK PFEFFER introduced himself and his attorney Don McClintock, who he said was here primarily to speak to some of the ongoing litigation issues.

CHAIR STEVENS noted that Mr. Pfeffer had requested to make a public presentation and then to also be allowed to stay in Executive Session to address issues that should remain confidential.

MR. PFEFFER said that, as he spoke with various Legislators and Legislative Council members, he wanted to address the questions that seem to keep arising about what happened and when it happened; that there were questions about the chain of events. He said he wanted to walk through the steps of how we got to where we are today and then would be happy to discuss any proposed fiscal terms in Executive Session. He said he'd like Mr. McClintock to respond to any recent emails members might have received from Alaska Building Inc.'s Jim Gottstein on the litigation.

Mr. Pfeffer said that prior to May 2013, Legislative Council went through just about a dozen attempts to find a new house for legislative offices in Anchorage; a combination of buy/build/lease through Requests For Information (RFIs). By the time it got to April 2013, none of those procurement efforts had resulted in a solution.

The Legislative Council approached him and his partner (Bob Acree) to provide alternatives for how to extend the lease. They asked specifically for three choices: (a) new carpet and paint, lease rate remains the same; (b) new carpet, new paint, repair bathrooms, fix elevators and some mechanical upgrades with a moderate increase in the rate; and (c) a full modernization which is what they had just done with the old Chevron building near the Park Strip on 9th Avenue. Those options were presented in May 2013 and Legislative Council indicated a preference for the modernization option, but said they wanted to go out for an RFI one more time to see if anything else was available. The RFI was published and two responses were received. He said he wasn't present at the Executive Session meeting, but understood the proposals were deemed unacceptable. A new Legislative Council meeting was called for June 7, 2013, and at that meeting, several motions were made. In general, they authorized the Chair to move forward to negotiate a lease on a full modernization basis and how to do that under the Legislature's procurement code, and hiring Alaska Housing Finance Corporation (AHFC) as the Legislature's third party representative to review the proposal. At that point, the Chair had the authority to enter into a contract without coming back to Legislative Council; he indicated that was not his preference and that he wanted to go through a process. Mr. Pfeffer said that they then spent three months, June through August, with Legislative Affairs Agency and legislative staff and AHFC, who had a third party construction cost estimator and a third party appraiser. As we developed the scope that Council was looking for and the finished project, the prices would be estimated and AHFC would review it and decide if it was fair and reasonable in the market place. That was a three month back-and-forth process, at the end of which the Chair chose to come back to Council. On August 23, 2013, and in an Executive Session, we presented the scope, AHFC presented their findings of cost competitiveness, and there were no objections; because it was in Executive Session, there aren't meeting minutes to reflect those presentations. The public portion of the meeting shows that members came out of Executive Session; the Chair indicated there were no objections to moving forward; Representative Johnson made a motion to try to negotiate a purchase price; and the deal was set to go. The only thing remaining at that point was to sign a lease and, in order to move forward on a lease and to do the improvements, we needed to be able to finance the improvements. That meant getting past the scrutiny of banks; we went to several banks in an attempt to finance the project. The banks wanted to see the

T's crossed and the I's dotted before they made that loan. Two key exhibits to the lease were a nine page procurement officer's finding that he said he believed was drafted by Legislative Legal and signed by the Chair as the procurement officer, and a finding of savings under this methodology as compared to providing the same scope in a different place in downtown Anchorage. He said that's kind of a tricky concept because at that time there was no ability to lease more than maybe 10,000 to 15,000 square feet in any single location in downtown Anchorage, so if you wanted space with parking onsite in the quantities we were talking about, it essentially boiled down to new construction so the cost comparison was to try to be 10% or greater below new construction. The AHFC reports concluded that. There was a finding by the Legislative Affairs Executive Director that that test had been met and there was a letter sent to Legislative Budget & Audit saying that they had met that test, which was required by statute. He said that as part of the procurement officer's finding there was a notice to the legislative leadership that the Chair intended to enter into the lease. He said that took about three weeks and the lease was then signed September 19, 2013.

Mr. Pfeffer said that basically we were in a position of okay, perform, or you're in default under the lease. We got to work, we acquired the adjacent property, we let the construction contracts and we got the project done. We were obligated to deliver a completed project by December 31, 2014. As we got close to completion, we were ready to transition from the construction lenders to the long-term lender. The long-term lender was new to the project and wanted to see the T's crossed and the I's dotted. He had the lease with the exhibits, the procurement officer's finding, the letter to LB&A; but as with any commercial real estate transaction, that lender also wanted what's called a Subordination of Non-Disturbance Agreement, which is basically something that is signed right before you do the final closing of the financing and the lender wants the tenant to say everything's in good order, the work is complete, we're satisfied with the results, the scope's been done, all the conditions have been met and we're ready to commence paying rent. He said that agreement came from their lender to Legislative Council and that was signed by the Chair as procurement officer on December 23, 2014. Based on that certification that everything was in good order and good effect, the lender closed on the transaction, paying off the construction loan; and the leased commenced January 1, 2015.

Mr. Pfeffer said that shortly thereafter, fiscal crisis issues started to rise and everybody started second guessing if this was actually the best solution. The option of relocating to the Atwood Building was discussed and that culminated in Legislative Council recommending to the conference committee to fund the full lease which happened last year, so the 2016 annual rent amount was funded. As part of that recommendation from the Council, they also asked the Chair again to negotiate a purchase price. During the summer of last year (2015) and into September and October, we met with Senator Stevens and Serena Carlsen (Stoel Rives LLC) and Doug Gardner (Legal Services Director), and we basically said the purchase price should be \$37,000,000, which was our costs and those costs were validated by the third party before we entered into the contract. If we didn't have those validations and certifications and procurement findings, we wouldn't have entered into the contract, but we did, based on those approved costs. We believed that to be a fair purchase price. He said that in December, an analysis was presented to Legislative Council that showed a wide variety of different ways of looking at comparison of costs. He said that many of the Council members questioned at a meeting on December 4, 2015, and again on December 19, 2015, if there was really a true third party analysis done of that. By the time we got to December 19, 2015, we were six days before the holiday and, at that point, the Council passed the motion that Senator Stevens read earlier that, in essence, said that Council recommended to the full Legislature not funding the lease unless it can be shown to be cost competitive on a usable square foot basis. We then said okay, we think we have a lease that says something but alright, here's a new target. We said we were willing to try to jump in and help and see if we can find savings; we realized things were different than when this deal was cut. He said we started to work to see if we could hit the target set in that motion. We asked that a financial consultant be retained by Legislative Council so that there was an independent analysis and that request was declined, but we submitted our proposal within the 45 days thinking that we believed we hit the target.

Mr. Pfeffer said there was somewhat of an independent analysis by the Department of Revenue who prepared a spreadsheet that said, yes, under these conditions, that is a cost competitive solution. Legislative Council then convened February 11, 2016, and said that an independent analysis was needed because there were so many different opinions. Council retained Navigant Consulting; over a

three week period they completed their analysis. He said they met with him for an hour and a half somewhere near the end of that three weeks. He provided them with his information and then on March 14, they came out with their report. He said we didn't see that report until March 16 and, in essence, it says that if the State were to purchase the building for the \$37 million, the equivalent lease rate for Atwood would be about 4% higher. The report said that if the State were to purchase the building for \$35.6 million, it would be equivalent to the lease for Atwood; and, obviously, if you purchased it for less than \$35.6 million, it would be less than the Atwood. He said we were pleasantly surprised to have it confirmed by the consultant that we were cost competitive. We believed we hit that target from the December 19, 2015, meeting motion. Since then, as Sen. Stevens said, shortly after that report came out, Sen. Stevens made a purchase offer of \$32.5 million, and we agreed to lower the price to get within a number that's lower than needed to be competitive with Atwood, and we proposed \$35.4 million. He said, subsequent to that, just this past Monday, there was a conference call with Sen. Stevens, Rep. Herron, Mr. McClintock, Mr. Pfeffer, Serena Carlsen, and Doug Gardner. After a bit of "what are we gonna do," Rep. Herron asked if we'd be willing to split the difference between those two numbers and we verbally agreed to that. It hasn't been done in writing, with the exception that he said he sent an email this afternoon to confirm that the verbal agreement was for a number just slightly less than \$34 million, which puts it solidly below the cost of Atwood on a usable square foot basis.

Mr. Pfeffer said the Navigant report also, on page 6, highlighted really three other factors that they didn't address from a financial perspective. He said he was just going from memory, but that the report said it doesn't take into account any of the costs or expenses that might be associated with breaking the lease or any of the relationships that breaking the lease might cause in the business community; it doesn't account solidly for potential cost increases in a move to the Atwood Building. He said Council just heard the Commissioner of Administration say they believed that to be the cost, but might be less, might be more. He said the report also laid out that the office building as designed and built was per Council's specifications and hits a lot of the criteria that are important to the legislative branch that may or may not be achievable in the Atwood Building. He said those are intangibles. He believed they beat the cost per square foot number plus we avoid those intangibles. The last thing

he said he wanted to add before Mr. McClintock addresses the litigation issues was that several Council members have said that they heard a rumor that the owners have made a lot of money on this project - maybe we made \$9 million or maybe \$5 million or maybe \$3 million. He said that on several occasions by multiple different parties, Legislators and others, have asked if we would be willing to agree to an audit of the cost and every time we've been asked, we've said yes. If we go into Executive Session and it's important to everybody, we'd almost prefer to insist that there was an audit because we know what our costs were, we know that they were validated up front, we know that they are fair and reasonable. He said we'd ask that Council get an independent auditor to confirm that so it puts that rumor to rest.

Mr. Pfeffer said the point was that the first request of them was in April of 2013 - can we solve a problem, can we give Council solutions - and there have been multiple requests since then and every time we get those requests we try to solve the problem and, so far, we think we have every time. He said if we can help achieve savings, we're willing to do it and we're here to talk about that. Mr. Pfeffer made himself available to answer any questions before Mr. McClintock spoke to the litigation issues.

REPRESENTATIVE KITO said he had a question and perhaps a comment. He said thinking back to the motion in December and, while Mr. Pfeffer recounted many things that happened, one of the things he didn't identify was that the other part of the motion indicated that there was either a per square foot comparable or that the lawsuit resulted in a declaration that the lease was invalid; and he said we do have that second component, that the lease is invalid. He said that, to him, the motion says that the Legislature does not appropriate according to Council's motion in December. He requested clarification on that part of the motion. He then said that Mr. Pfeffer had identified that Legislative Council had received an appropriate possible third party Department of Revenue analysis and he just wanted to find out for the record if Mr. Pfeffer had a relationship or formal role with the Department of Revenue where he is engaged with that Department.

MR. PFEFFER said he was not engaged with the Department of Revenue, but he was the chair of the Alaska Municipal Bond Bank Authority, which is an independent authority. The DOR is a resource for the AMBBA in doing their lending work around the state, but it is an independent relationship. He

said that review happened in December when Mr. Mitchell was requested by a Legislator (he wasn't sure who) to show up on December 19, 2015, and have an opinion. Mr. Mitchell came to the meeting with a spreadsheet that he said made a bunch of assumptions, that he didn't have accurate data and which was a quick exercise for him. Mr. Mitchell presented that data on December 19, 2015. When we were asked to try and hit this target of being cost competitive, we asked that an independent third party be hired to analyze the report; we asked in writing and were told no in writing. We said the only person left standing was the DOR spreadsheet and we, through Representative Herron's office, had asked DOR to update their spreadsheet. DOR asked us for updated information and we provided it.

REPRESENTATIVE KITO asked Chair Stevens if there would be an opportunity to ask questions about the Navigant report. Chair Stevens confirmed that would happen in Executive Session and that Navigant would be on teleconference to answer any questions Council has.

There being no additional questions for Mr. Pfeffer, Chair Stevens asked Mr. McClintock to share his information.

MR. MCCLINTOCK, from the law firm of Ashburn and Mason, said he wanted to respond in part to Representative Kito's last question. He said his firm had filed a Motion of Reconsideration. The court had ordered additional briefing with responses to their motion due April 11, 2016. Not surprisingly, in the way most litigation is, from our perspective, the lawsuit is far from over. We think there were some significant errors that were made in the court's order that went beyond the question that was presented to them. But that's not to be argued here, but that was the procedural status.

Mr. McClintock said the main thing he wanted to address, and just very quickly, was that Council had received a number of emails from Mr. Gottstein offering gratuitous legal advice to the Legislature on how to proceed. He said it goes without saying that he thought the Legislature had excellent legal counsel with Legislative Council staff and they should look to them for guidance. He said that he took a personal affront to a few of Mr. Gottstein's accusations - not just for himself, his firm or Mr. Pfeffer, but also for the staff of the Legislature's counsel and the participants of the process they went through. He said whatever happened, it was all definitely in good faith. The accusations that Mr. Gottstein repeats over and over about

outrageous conduct, or brought in motions to the court when he asked for punitive damages and *qui tam* damages - those motions lost. The issue Mr. Gottstein had raised continuously, efforts to get into the personal financial affairs of Mr. Pfeffer, the court had basically ruled, at least until this order, that those were not relevant. He said they believe Mr. Gottstein made fairly reckless accusations of the status of where things are. He said that lastly, the court had never made a finding of any sort that there was any bad faith that has gone forth in this process on behalf of any of the parties, and that he would let the record stand for itself. He said that he would also note that early in the case, there was no question that Mr. Gottstein acknowledged that his motivation for bringing the case was over money; he wanted money and he wasn't paid money, and he brought the case. He said there was deposition testimony to that effect. Mr. Pfeffer has offered that we will protect the rights that 716 W 4th Avenue LLC has under the contract and in the litigation but our sincere hope is actually that another path be found to bring everything to a resolution.

There being no further testimony offered by Mr. Pfeffer and Mr. McClintock, and no further questions, Chair Stevens requested the motion to move the Council into Executive Session.

[5:42:40 PM](#)

VICE CHAIR HERRON moved that Legislative Council go into Executive Session under Uniform Rule 22(B)(1), discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit and 22(B)(3), discussion of a matter that may, by law, be required to be confidential. I ask that the following individuals remain in the room: Pam Varni, Doug Gardner, Katrina Matheny, Linda Hay, Mike Abbott, Mark Pfeffer, Don McClintock, Amy Slinker and any legislative staff working for Council members and that Serena Carlsen, Kevin Cuddy and Nigel Hughes remain on the teleconference line. We also welcome any Legislators that are not on Legislative Council to remain in the room.

CHAIR STEVENS, in response to a request by Representative Kito, said that his plan was to first ask the Municipality of Anchorage to make a presentation; then to allow Mr. Pfeffer and Mr. McClintock to offer information, then they will be asked to leave the room and Council will continue with the Executive Session.

There being no further discussion, Council went into Executive Session.

7:36:17 PM

Council came out of Executive Session.

CHAIR STEVENS said the discussion in Executive Session was quite extensive. Council heard from the Municipality of Anchorage who was interested in working with the Legislature on the Anchorage LIO project; Council spoke with outside attorney Kevin Cuddy with Stoel Rives LLC in Anchorage, about the current litigation; Council spoke with Nigel Hughes from Navigant, and Serena Carlsen, attorney with Stoel Rives in Seattle; and Council had a good discussion about all the issues they are facing. He then called for a motion.

7:36:58 PM

VICE CHAIR HERRON moved that Legislative Council recommend the purchase of 716 W. 4th Avenue building and land in the amount of \$32,500,000, and authorize the Chair to enter into a purchase and sale agreement which is subject to appropriation by the Legislature. Legislative Council will maximize space in the building by consolidating legislative entities.

CHAIR STEVENS said discussions will continue with the Anchorage Municipality and will look at other financing issues as nothing in the motion precludes trying to finding other ways to finance this project.

A roll call vote was taken.

YEAS: Meyer, Coghill, Hoffman, Huggins, MacKinnon,
Micciche, Chenault, Johnson, Kito, Millett,
Thompson, Herron, and Stevens

NAYS: Neuman

The motion was approved 13-1.

There being no further business before the committee, the Legislative Council meeting was adjourned at 7:38 p.m.

7:38:30 PM