

CITY OF BUFFALO
DEPARTMENT OF AUDIT & CONTROL

AUDIT REPORT ON THE
OPERATION OF ERIE BASIN MARINA

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For the 2007 Season

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Erie Basin Marina

Background

The City of Buffalo constructed the Erie Basin Marina located at 329 Erie Street on Buffalo's waterfront in 1974. The Marina consists of a boat harbor, marina and multi-purpose recreational and food service facility for use by the general public. After a Request-for-Proposal process, on May 1, 2001 and August 2002, the City of Buffalo entered into a lease agreement with Brand-On Services, Inc. ("Brand-On") for the administration and management of the Marina. Prior to this arrangement, the Marina was operated by employees of the Department of Public Works, Parks and Streets, which still maintains oversight authority. The lease was extended in 2004 and 2007 and, if all extensions are exercised, will expire in 2016.

The Marina's normal period of operation is May 1 to October 15. The current City administration is considering the option of keeping the Marina open year round. In an effort to attract off-season visitors, on February 7, 2009 the Marina hosted the second annual Labatt Blue Buffalo Pond Hockey Tournament with 64 teams participating.

Significant terms contained in the lease agreement are:

- Guaranteed minimum payment to the City generated from food sales and other activity at the Marina - \$80,000
- Receipt of 10% of all fuel sales, net of taxes
- Minimum Gross Marina rental payment to the City - \$115,000

While the primary focus of this Audit is the 2007 Season (May 1 to October 15), we took note of activities outside that period and will comment as appropriate.

It should be disclosed that the spouse of the President of Brand-On is an employee of the Department of Public Works, Parks and Streets, Division of Water. He is the representative of the company that dealt with our Audit staff, during this Audit.

Initial Findings

As a result of our Audit, we have serious concerns regarding the management of the Erie Basin Marina.

There are numerous instances of incomplete and/or unverifiable data relating to the verification of compliance with the lease terms.

In some instances payment was made under terms that differed from those of the lease, and expenses were incurred without approval by the City, as required by the lease terms. Safeguards to ensure revenue accuracy was either disregarded or non-existent.

Below is a summary of our findings and recommendations, outlining problem areas and actions required to become compliant with lease terms.

Audit Findings and Recommendations

1. Changes to the Original Lease Agreement

The original agreement between the City of Buffalo and Brand-On was entered in to on May 1, 2001. Since May 1, 2001 changes to the original agreement have taken place without the written approval of the Commissioner of Public Works, Parks and Streets and the Buffalo Common Council. The following changes to the agreement were implemented without proper approval:

- A. The City's portion of revenue from fuel sales from 10% of all fuel sales, net of taxes – as stipulated in the lease - was changed to \$.10 per gallon by letter agreement.
- B. The daily slip rate for transient boats was increased from the 2006 rate of \$1.70 per foot to the 2007 rate of \$1.90 per foot
- C. The daily boat launching rate was increased in 2007 from \$5.00 per launch to \$7.00 per launch.

In addition to the above, the slip rental rates being charged by Brand-On as stipulated in the 2001 original lease agreement differ from those recorded in Chapter 175 Fees for Section 495-34 of the Code of the City of Buffalo entitled "Slip rental at Erie Basin Marina based on boat size for the season". Rates contained in the original lease agreement for 20 foot and over boats are less than those mandated by the City Code while 30 foot and over boat rates are higher.

While reviewing records on-site, it was noted that Brand-On would exercise a level of discretion in renting to transients that is neither contemplated nor approved by the Common Council or City Code. A large yacht owned by a famous, wealthy divorcee was given a discount of one day free for four days in dock, according to the vendor. While such a practice may be popular for marketing purposes, it has the direct effect of reducing revenue the City is entitled to receive.

It is our recommendation that any changes in the terms of the lease must be properly referred to and approved by the Common Council. Fee amounts listed in the City Code can only be changed by an ordinance amendment of the Code approved by the Common Council. Likewise, any fees in the lease can only be changed by written agreement between the Commissioner and the vendor, with the Common Council's approval. Any proposed changes to the fee structure should first be presented to the Common Council, who after reviewing the request can properly authorize the change if they deem it warranted. The vendor does not have unilateral pricing authority and it should be clearly communicated that individual deal-making should cease immediately.

2. Fuel Dispensation and Recordkeeping

A review of fuel dispensing procedures and fuel records maintained by Brand-On was performed during the course of the audit. Fuel sales are rung up daily on cash register tapes and a separate

daily summary sheet is maintained to provide a breakdown of ship store sales from dock sales. A total of 37 days were tested with a beginning date of May 19, 2007 and a closing date of September 23, 2007. Our test resulted in the following observations:

- A. Internal control procedures are virtually non-existent in the dispensing of fuel. Daily meter readings are taken at the beginning of the shift but not at the end of the shift. Subtracting the beginning gas meter reading from the end reading will show the amount of fuel dispensed on a particular shift. The monies collected for the sale of fuel to the public should agree to the amount of fuel dispensed times the cost per gallon. We found that 22 out of the 37 days tested the amount of fuel actually sold was greater than the amount rung up. The range of gallons sold but not rung up varied from as little as 5.63 gallons to as much as 1,247.04 gallons. The daily meter readings are handwritten and in some cases illegible. There is an undeniable conclusion that either gas has been misappropriated or proceeds from unrecorded sales have been misdirected.

It is our recommendation that a computerized recording system be installed for recording gallons dispensed and sold. This system should provide a daily record of fuel dispensed. The City's Department of Administration, Finance, Policy and Urban Affairs currently uses a "Fuelmaster" system to record fuel dispensed. The Department of Public Works, Parks and Streets should explore the feasibility of using such a system at the Marina.

- B. The lease agreement stipulates that the City of Buffalo is to receive "10% of all fuel sales, net of taxes." Our analysis of the 2007 summary report submitted by Brand-On to the City revealed that the City received revenue based on total gallons delivered. Based on 2007 figures received from Brand-On total gallons delivered were 64,008, which resulted in a payment to the City of \$6,400.80. Our total gas sales for the days tested during the audit were \$79,920. At 10%, this would result in revenue for the City of \$7,992 or an increase of \$1,592. It should be noted the sales figure was calculated for 37 days out of a possible 153 days which the Marina is open for. Pro rated we would expect that the amount for the season would approach \$319,680 in total fuel sales or approximately \$31,000 due the City based on percentage method. Obviously as gas prices escalate, the City's loss in revenue increases, while the vendor's revenues increase from original lease terms. This change was made by letter from Brand-On to the Commissioner of Public Works, Parks and Streets at that time without Common Council approval as required.

It is our recommendation that the City be reimbursed for amount due under the terms of the Lease. While there may be legitimate reasons to change terms, (i.e. competitors price etc.) they should be submitted to the City for review, negotiation and approval, if warranted.

- C. Section 4 of the lease agreement pertains to the "Grant and Use of Premises." Under this section, the operator of the Marina is granted the exclusive right to sell fuel to watercraft. The 2007 Summary of Gross Revenues provided by Brand-On to the City of Buffalo reduces total gallons delivered by 2,161 gallons due to "Sales to Family."

It is our recommendation that the sale of fuel to the Operator's family for purposes not related to Marina operations be discontinued. There is no provision in the lease allowing for fuel allowance for the Operator's family. While we recognize there may be legitimate fuel usage in the operation of the Marina, the amount used would require a usage rate of over 14 gallons daily in a 153 day season. There currently is no system to monitor this. Any use should be justified, verifiable and negotiated with the City. After negotiation on this issue, the Common Council should be asked to approve an amendment to the lease, if so warranted.

3. Launch Tickets

A portion of the gross marina rental paid to the City of Buffalo by Brand-On consists of boat launching fees. The rate per launch is \$7.00 and is collected upon entering the marina. Our sample audit of launch tickets was prepared to test 38 days from the opening date of May 1, 2007 through the closing date of October 15, 2007. During the testing procedure, we found that launch tickets were not available for auditing for July 6, 7,8,10 and from July 27 through October 14, the last day of our test period.

In addition to the daily launch passes, 50 full season launch ramp passes may be issued at a cost of \$100.00 each. No record of any sale of these passes could be found. The original 2007 Computation of Rentals Due report submitted by Wittlin, Cain & Dry, LLP, Certified Public Accountants, to the Department of Public Works, Parks and Streets did not list any revenue for launch fees. Subsequently, a revised 2007 report listed launch fees of \$14,700 without the above mentioned physical launch tickets being available for substantiation.

Our audit revealed that launch ticket revenues were rung up on cash register tapes from the Hatch restaurant instead of on Ship Store register tapes which would segregate this revenue from other revenues. Therefore, an accurate accounting of launch ticket revenue could not be obtained. A review of the General Ledger submitted by Brand-On via their personal accountant showed zero revenue for launch tickets. Repeated requests were made in December 2008 and January 2009 by the auditors to Brand-On for the missing launch tickets without any success. To date none have been forwarded.

It is our recommendation, that Brand-On install an automated ticket tracking system of receipts that would provide detailed transactions of monies received on a daily basis. At the very least a daily log should be kept, recording beginning and ending ticket numbers on a daily basis. This should be attested to by employees collecting fees. Any voided tickets should be so marked and all three copies retained for verification.

4.) Maintenance Charges

A review of maintenance charges submitted by Brand-On for 2007 to be deducted from the City's annual rental payment revealed that the operator included late fees and interest charges (\$325.15) from his personal credit card in reimbursement submission to the City. Invoices requested as part of our tests were missing, and various receipts requested for purchases from Home Depot for test review were not provided.

The 2007 General Ledger forwarded by Wittlin, Cain & Dry, LLP to the City Comptroller's office recorded a balance of \$19,819.04 to be written off against the City's annual rental payment. The annual Summary of Gross Revenues report prepared by Wittlin, Cain, Dry & LLP shows a write off of \$17,885.50. After an examination of the list of expenditures from Brand-On, we found the difference between the General Ledger and the Summary of Gross Revenues of \$1,933.54 to be a purchase of various supplies from Home Depot made on January 19, 2008. This expense is to be applied to the 2008 General Ledger.

It has further been found that the Operator has been reducing the amount owed to the City by sums accumulated for capital improvements made to the Marina. Particularly, the installation of the new 2008 Marina Beach was done by Brand-On outside the solicitation of bids or proposals. The cost has been written off of sums due to the City from the operations of the Marina. This arrangement was done without a written contract and without the approval of the Common Council.

We recommend the City demand immediate repayment of any finance and/or late fees the Operator has submitted as a lease write-off. The City should accept only original invoices as acceptable proof of expenditures for these purposes. While we realize that certain work must be done quickly to insure the Marina performs to the satisfaction of slip holders and the public, this should be limited to emergency maintenance items, or those costs due to wear and tear outlined in the lease agreement. Major work should be bid by the City and should follow General Municipal Law and the City Charter requirements. Emergency work can follow already established procedures. This would ensure control over cost of major expenditures and protect the City from any legal liability which could arise if proper bidding procedures are not followed.

Once again we **recommend** the need for stronger monitoring of operations at the Marina. The acceptance of credit card statements, including late fees and interest, missing invoices and receipts for charges written off apparently without verification or authorization creates significant concern.

5.) Computation of Rentals Due

A revised 2007 Computation of Rentals Due report was submitted from Wittlin, Cain & Dry, LLP, to the Department of Audit and Control. An examination of this report by the Audit Division revealed the following errors:

A.) Listed under Marina operations is "Total Collected (Includes Dry-dock Fees)" of \$398,781. This figure represents the amount of monies collected by Brand-On from renters of boat slips at the Marina. A list of slip renters and the rental amounts paid by each renter was provided to City auditors by the Department of Public Works, Parks and Streets. The total collected from slip renters was \$398,939 or a difference of an additional \$158 as compared to the audited total. The terms of the lease agreement allow the Marina operator the option of issuing 25 dry storage slots for transients at a cost of \$250 each (total \$6,250). The difference between "Total Collected" is \$158, therefore we can

conclude that dry-dock fees have not been included. This would decrease Net Marina Rental, thereby decreasing the amount paid by Brand-On to the City of Buffalo.

B.) Rental collected by Brand-On for Floating Docks C, D, F and G are to be subtracted from the total collected figure listed under Marina Operations. These docks were installed for the 2006 season by the Marina operator solely at his cost. The City of Buffalo will receive 5% of the gross rentals received from these new slips for the 4th thru 10th seasons after installation (refer to Section 3, paragraph j of the lease). An examination of the 2007 revised report for rentals revealed that the amount of revenue recorded for docks C and D was \$57,440 and for docks F and G was \$54,220. After reviewing the amounts paid by slip renters for these docks listed on the slip renters list provided by the Department of Public Works, Parks and Streets, we determined that the amounts recorded were reversed. The \$57,440 should have been applied to docks F and G. At the 5% rate as stated in the lease, the City would be entitled to \$2,872 and not \$2,710 as reported on the revised report. This error would again decrease the amount to be paid by Brand-On to the City of Buffalo.

C.) Section 3 of the current lease agreement between the City of Buffalo and Brand-On is entitled "Rental Terms" and states that income received by Brand-On from transient slip rentals be credited to gross revenues under "Base Sales". The revised Computation of Rentals report received from Wittlin, Cain & Dry, LLP has income from transient slip rentals entered under the "Marina Operations" being added to "Net Collections for City Docks." The City of Buffalo's percentage of revenues differs from Base Rent to Marina Operations therefore it is important that revenues be appropriated to either the Base Rent or Marina Operation section.

It is our recommendation that financial records submitted by Wittlin, Cain & Dry, LLP to the Department of Public Works, Parks & Streets be verified for accuracy before a check is issued by Brand-On to the City of Buffalo for "balance underpaid." Based on our 2007 audit of the Marina, \$11,806 is due immediately to the City of Buffalo as the "balance underpaid." The "balance underpaid" amount entered in the January 2009 revised Summary Report of Gross Revenues by Wittlin, Cain & Dry, LLP is \$15,340.

6.) Net Sales Cannot Be Verified

Our examination of the Erie Basin Marina cash registers in 2007, 37 randomly selected dates were tested and it was noted that the "counter system" is not being used to reconcile the sales totals. This system provides an excellent internal control feature that aids in the prevention of misappropriation of funds. The system works by using a beginning cumulative running number taken from the register tape in the morning and subtracting the ending cumulative running total at the end of the day. The difference in the numbers would then become the "should be" sales for that day minus any cashier over-rings or void errors. By using this "counter system", the operator is then held accountable by recording these numbers on a daily basis or their daily summary sheets. It should be noted by the manager that the running counter total in the morning

should coincide with the previous nights total to verify that no other transactions have taken place since the closing of the register.

During the 2007 season, a “zero” or “Z” out system was used to close out the cash registers’ and recording sales for the day. Once this cash register is “Z” out, the register is set back to zero and sales are recorded on the operators’ daily summary sheet. Without using the “counter system” in conjunction with the “Z” out system sales readings cannot be verified for mathematical accuracy. The potential exists where a cash sale could be transacted and “Z” out before the next transaction takes place, leaving the funds unaccounted for. For example, an employee who has cash register keys could ring up a cash transaction, “Z” out the register, remove the cash and continue on to the next transaction without any accounting for the previous transaction.

Based on the above findings, the cost of goods sold percentage cannot be effectively verified for accuracy.

We find that the “counter system” which was readily available on the present system for use with the “Z” out system for tracking cash registers sales was in use for the 2008 season. The failure of the Operator to institute these controls would be a major violation of the duty to provide a true and accurate account of all monies received under the terms of the lease. The use of all available controls should be expected and monthly reports should be monitored.

7.) Summary Report of Gross Revenues

Section 3d of the lease agreement states “Within thirty (30) days following the close of each operating season, a summary report of gross revenues derived from food and beverage and Marina operation will be delivered to the Commissioner of Public Works and Common Council in addition to the Comptroller. If payments due exceeded the annual guarantee, pursuant to the above scheduled percentage of sales, a check payable to the City for its percentage of gross revenues from the food, beverage and Marina operations shall accompany the summary report.” Our audit found that the summary report and its attached check in the amount of \$16,364.47 were not delivered to the City of Buffalo until March 17, 2008 well past the thirty (30) day close of the operating system.

It is our recommendation that the Summary Report of Gross Revenues be submitted to the Commissioner of Public Works, Parks and Streets before the end of November of each marina season along with any payment due to the City of Buffalo. Assignment of lease monitoring to a specific City employee within the Department of Public Works, Parks and Streets may increase efficiency in this area.

We would note that the same recommendation was given after our 2005 audit of the Marina.

8.) Slip Renters Register

A slip renter’s register was provided to the Audit Division by the Department of Public Works, Parks and Streets. This register lists the following for all boats docked at the Erie Basin Marina:

dock number, renters name, email address, personal address, phone number, boat license plate number, fee amount charged and whether the fee is paid or unpaid.

On September 19 and September 26, 2008, using the slip renters list provided by the Department of Public Works, Parks and Streets, a physical inspection of each boat docked in a slip at the Marina was performed by the Division of Audit. Our inspection compared information from the slip renters list to the actual boat docked in the slip. Specifically, the plate number on the boat was compared to the number listed on the slip register.

The results of our inspection are as follows: A.) Eight (8) boats were found with plates on that were listed on the slip renters list with no plate. B.) Six (6) plate numbers listed on the slip renters list did not agree with the number seen during the physical inspection C.) Three (3) boats were entered on the slip renters list with no plate. Our inspection found plates on all three (3) boats. D.) One (1) boat was listed with a plate on the slip renters list. Physical inspection revealed a boat in dock with no plate on. This suggests that the slips are being double-rented to multiple individuals or are being sublet without compensation to the City.

It is our recommendation that when a contracted slip holder sublets his dock space to another boat, an updated slip renter's register be maintained by the Harbormaster to record the new boat's license plate number. The Harbormaster should be notified by Brand-On before any slip change to prevent re-rental of dock space. The Harbormaster should periodically perform a random inspection of the slip renter register to ensure accuracy. A current, updated slip renters register should be forwarded to the Comptroller's office by the Harbormaster before the start of the Marina season, May 15, along with any changes made to the list during the season.

9.) Security

The current lease agreement between the City of Buffalo and Brand-On states that it is the responsibility of the operator to "maintain adequate security for the premises during the season, May 1st to October 15." During the course of the audit, field work was performed at the Marina office of the Harbormaster. This office is located at the far end of the Marina across from the stairwell leading up to the lookout tower. On numerous occasions, unsupervised children were observed running up and down the stairwell as well as milling around the stairwell. Security was not present to prevent rowdy individuals from disrupting the peace and tranquility of the Marina for other visitors.

The Audit Division performed physical inspections of the boat docks at the Marina on September 19 and September 26, 2008. At no time during this inspection were the auditors asked for identification. It should be noted that the current security firm is owned by the Marina operator. Restroom facilities were also not open at many times during the 2008 season and the 2008 post-season, which served to encourage illegal and unsanitary conditions.

In addition to the above findings, we refer to a communication dated August 13, 2008 from the slip-holders at the Erie Basin Marina to Mayor Byron Brown, Brand-On Services Inc and all

Common Council members. This communication addresses the concerns of the slip holders and requests “heightened professional security.”

It is our recommendation that in addition to foot patrols, security could be further enhanced by designing a security card key system for dock entrance. This would prevent unauthorized individuals from entering the boat slip area. We also recommend a mobile security personnel vehicle which would provide more visible and readily available security for the public.

Conclusion

To the credit of the vendor, sales at the Erie Basin Marina have increased from \$740,998 in 2004 to approximately \$1,300,000 in 2007, evidencing that the general public’s usage of the Marina is increasing. However, it is said that “volume can hide many inefficiencies” and the Erie Basin Marina is no exception. The revenues generated have exceeded some expectations, but internal control over these revenues is grossly inadequate. We noted major deficiencies in all revenue generating areas of the Marina. Deficiencies in recordkeeping were found in the purchase of food at the “Hatch” restaurant, boat launching, boat slip rental, fuel sales and maintaining an up to date slip renters register.

In our audit of Marina sales and expenses, over \$1,300,000 of revenue was reported in a span of six months (May 1 thru October 15). With this amount of sales, Brand-On’s failure to address the majority of problem areas is troubling. There needs to be major changes in the way the operator accounts for sales and expenditures in all areas of Marina Operations if true and accurate revenue and expenses are to be verified. The unaccountable loss of revenue raises suspicion and may require further investigation.

The City needs to be more vigilant in the enforcement of lease terms, oversight of Marina Operations and overview of financial reporting, in both accuracy and timeliness of submissions. As it currently stands, the City seems to have ceded recreational control over the waterfront to Brand-On Services, Inc. City staff must take on a larger role in the daily operation to ensure greater accountability. In the absence of significant changes in the future, it is recommended that the agreement with Brand-On should not be renewed when it expires, and a new plan for Erie Basin Marina be developed.

On July 1, 2009, the Audit team met with representatives of the Department of Public Works, Parks and Streets. They had previously received a copy of this audit and reported that they found it useful as a guide in addressing problems at the Marina going forward. The Commissioner has been very cooperative in the preparation of this report and his professionalism is duly noted and appreciated. A formal written response to the audit will be prepared shortly.