

Parsons, Susan

From: Peter Apanel <peterapanel@q.com>
Sent: Tuesday, September 26, 2017 8:52 AM
To: Council Clerk – Testimony; Parsons, Susan
Subject: [Approved Sender] Agenda Item #1053 for September 27, 2017 City Council Meeting

September 26, 2017

TO: Council Clerk Testimony

FROM: Peter Apanel
 2715 SE 58th Avenue
 Portland, OR 97206
 peterapanel@q.com
 503-704-9997

RE: Proposed Providence Park Expansion
 Agenda Item #1053, City Council Meeting, September 27, 2017

I am sending this email to inform the city council that there are two major legal problems in connection with the proposed expansion of Providence Park.

First, the proposed expansion does not meet the building code requirements in the 2014 Oregon Structural Specialty Code for the restroom and concourse facilities in the main grandstand. Meeting those requirements will require major changes in the proposed expansion that will, in turn -- and at the very least -- require the Design Commission's review process to start all over again.

Second, the claims made by the Paulsons and the City that the Paulsons will be paying for all of the costs of the proposed expansion are simply false.

In fact, money is fungible, and so it is Portland taxpayers who will actually be paying for the proposed expansion through public subsidies in the form of stadium-related naming rights fees that the Paulsons have already received -- and continue to receive -- under the terms of the Stadium Operating Agreement.

Those fees have never been disclosed to the public by the Paulsons and the City, in violation of the disclosure requirements contained in the Stadium Operating Agreement, and currently those fees are conservatively estimated to be worth \$300-\$400 million over the 25 years of the lease, based on a 2009 marketing study paid for by the City.

Here are the details.

Building Code Issues

The 2014 Oregon Structural Specialty Code will require the addition of as many as 72 toilets and urinals in the main grandstand, where inadequate minimum requirements for restroom fixtures have been "grandfathered-in" up until now.

The 2014 OSSC is the current building code for the City of Portland.

Chapter 29, Section 2903, in the 2014 OSSC, states that, "*Where substantial alterations are made to an existing Groups A, M, and E occupancy with an occupant load in excess of 300, water closets, as specified in Table 2902.1 for new construction, shall be provided.*"

The 2014 OSSC, in Chapter 2, defines a "*substantial alteration*" as any alteration that costs more than 25% of the property's assessed value.

Providence Park is an A-5 occupancy.

In the City Engineer's Report, dated August 1, 2017, the proposed expansion and encroachment are described as "*alterations.*"

The estimated cost of the proposed expansion is \$50 million.

The stadium is owned by the City, which doesn't pay any property tax on the stadium, so the stadium's assessed value is \$0.00 (zero dollars).

Therefore, any amount of money spent on the proposed expansion will automatically exceed the 25% threshold that triggers compliance with Section 2903, and will thereby require the main grandstand to provide the minimum number of toilets and urinals specified for new construction, which will mean adding as many as 72 toilets and urinals.

In fact, in the Plumbing Code Board of Appeals case (Appeal ID: 11133), held on September 25, 2014, the appellant representing the Paulsons, who were seeking permission to add trough-style urinals in the main grandstand, described restroom conditions in the main grandstand for both men and women as "*unsanitary*" -- with men urinating in "*other fixtures or facilities*" during periods of peak demand -- and acknowledged that the problem was intractable due to the lack of adequate restroom fixtures, even though the main grandstand met the code requirements that had been grandfathered-in.

Section 2903 makes an exception in cases where the addition of restroom fixtures is "*structurally infeasible*" or "*structurally impractical*." (The two terms have the same definition and can be used interchangeably.) But that is not an all-or-nothing exception, because even in cases where there may be some limitations due to infeasibility, Section 2903 requires that the maximum number of additional toilets and urinals that is feasible shall be provided. And the required addition of 72 toilets and urinals in Providence Park would not meet the criteria for being defined as structurally infeasible or structurally impractical, even though adding those fixtures would obviously require expanding the stadium's footprint.

At the same time that Section 2903 requires the addition of toilets and urinals, Chapter 34, Section 3409, of the 2014 OSSC, states that the grandfathering-in of previous code requirements is not allowed in cases where the renovation of an existing building for its "*continued use*" will result in sanitation or life safety conditions that are more hazardous than they were prior to renovation.

Section 3409 applies to both the main grandstand's inadequate restroom facilities, as well as its grossly undersized concourse, because the renovation of the stadium that was completed in 2011 has resulted in sanitation and life safety conditions that are now more hazardous than before renovation due to the intensification of use; specifically, due to the nearly doubling of attendance.

But the potential for the intensification of use that has taken place as of 2011 was not correctly anticipated or else not taken into account by building officials during the building permit review process that took place prior to building permits being issued for the renovation that was completed in 2011.

In fact, a 2009 marketing study paid for by the City projected attendance figures of just 14,060 per MLS match at Providence Park in 2011, or 66% of capacity. And that same marketing study predicted an annual decline in attendance after 2011, with an estimate of just 11,780 per MLS match in 2015, or 55% of capacity.

That study was prepared by HVS Consulting. It was titled, "*Overview of MLS Team Proforma*," and dated February 10, 2009. Attendance estimates are on page 29.

Obviously, those estimates have been way off the mark, with Providence Park reportedly being sold out for every match since the first MLS match in 2011. So, the intensification of use impacting restroom facilities needs to be retroactively addressed as part of the current building permit review process for the proposed expansion.

And that review process could easily end up requiring the addition of more toilets and urinals than the 72 toilets and urinals required by Section 2903.

For example, the 2008 edition of Major League Soccer's "*Venue Design Guide*," which contains the most realistic engineering guidelines for soccer stadiums, requires a minimum overall ratio of 1:47 for toilets and/or urinals, compared to a ratio of 1:73 for the 2014 OSSC, and 1:107 for the current number of toilets and urinals (not counting trough-style urinals) in the main grandstand at Providence Park.

Meanwhile, Section 3409 also applies to the intensification of use impacting the main grandstand's grossly undersized concourse, where life safety conditions involving emergency egress and occupant load are more hazardous than before 2011, and need to be retroactively addressed as part of the current building permit review process for the proposed expansion.

The concourse is approximately 23,000 square feet, and the seating capacity of the main grandstand is 16,638. That works out to 1.4 square feet per seat. Based on Chapter 10 in the 2014 OSSC, the minimum amount of floor area required for any potential use of the concourse is 5 square feet per person. (The 2008 MLS Guide requires a minimum of 4 square feet per seat.)

However you do the arithmetic, it is self-evident to anyone who has ever attended an MLS match at Providence Park that the concourse is simply too small, and that it is close to its functional tipping point even under normal circumstances.

It should also be self-evident to any building official or fire official that the undersized concourse poses an unacceptable life safety risk in the event of a crowd surge, panic or stampede situation.

And addressing the problem will obviously require expanding the stadium's footprint, in conjunction with adding the required restroom fixtures.

Stadium-Related Naming Rights

Ord. No. 183516 is a City ordinance, and Section 9 of the Stadium Operating Agreement requires, by law, that the Paulsons provide the price information for all "*non-temporary*" stadium-related naming

rights agreements, so the City can make that price information a part of the public record. That includes the "*Stadium Naming Right*" for the stadium as a whole, and any "*Naming Right*" for any portion of the stadium.

And under Sections 20.11 and 20.12 of the Stadium Operating Agreement, the terms and conditions of the Stadium Operating Agreement can only be modified, amended, or waived pursuant to a process that must be documented in writing.

In fact, even without the disclosure requirements in the Stadium Operating Agreement, public disclosure of that price information would still be required because those naming rights are publicly-owned assets that the City is simply allowing the Paulsons to license to third parties.

On November 19, 2013, in response to a public records request, I received an email from Kim Sneath in the city attorney's office, confirming that there was no documentation that Ord. No. 183516 had ever been modified, amended, or waived in writing in order to allow the Timbers to redact price information in connection with the Jeld-Wen naming rights agreement.

I submitted a new public records request on September 21, 2017, asking once again if there has been any amendment, modification, or waiver of the disclosure requirements for naming rights in Ord. No. 183516, and on September 22, 2017, I received a response from Jen Clodius in the Office of Management and Finance confirming that there has been no amendment, modification, or waiver of the disclosure requirements in Ord. No. 183516.

So, I submitted a new public records request on September 22, 2017, asking for the price information for all non-temporary stadium-related naming rights agreements for 2017, and I have not yet received a response.

But even though price information has never been disclosed, there is a way to estimate the value of stadium-related naming rights.

Prior to the beginning of public hearings in December 2008, the City hired Public Financial Management, a consulting firm based in Philadelphia, which subsequently subcontracted HVS Consulting, an international consulting firm with an office here in Portland, to prepare a marketing study that was titled, "*Overview of MLS Team Proforma*," and dated February 10, 2009; the same marketing study that estimated attendance.

In that study, on page 41, HVS estimated the future value of Stadium Naming Rights for the stadium as a whole, plus the combined value of Naming Rights for various parts of the stadium that it called "*Stadium Sponsorships*." As of 2017, those stadium sponsorships include the Key Bank Club, Key Bank Terrace, Budweiser Balcony, Sunset Porsche Audi Suites, Widmer Brothers Southern Front, and Root Sports Lounge.

The HVS study's methodology estimated that for every \$1 in the value of Stadium Naming Rights for the stadium as a whole, the combined value of Naming Rights for various portions of the stadium would generate an additional \$2.78 in fees.

At the time the HVS study was completed in February 2009, it estimated that the combined value of all stadium-related naming rights would be over \$4 million in 2011, or more than \$100 million over the 25 years of the lease.

But by the time the lease with the Paulsons was approved in January 2010, that figure had nearly doubled, because the value of comparable MLS naming rights deals for stadiums as a whole had increased to \$2 million per year. So, the estimated combined value of all stadium-related naming rights would have been \$7.56 million per year, or \$189 million over the 25 years of the lease, without factoring in any future inflation or escalation in fees.

But in violation of state and federal securities laws, which require the public disclosure of all material facts whenever municipal securities are used to fund a project, the subject of stadium-related naming rights was not even mentioned in the *"Summary of Deal Terms"* that was released by the City just days prior to the vote to approve the deal to renovate and lease the stadium, even though the City had already approved Ord. No. 183070 on July 29, 2009, authorizing the use of municipal securities to fund the stadium renovation once a deal with the Paulsons was reached.

In fact, as of January 2010, the estimated combined value of stadium-related naming rights was already five times greater than the eventual \$38 million cost to renovate the stadium, and nearly four times greater than the \$51 million in rent that the Paulsons are scheduled to pay over the 25 years of the lease.

And since the lease went into effect, comparable values for MLS stadium naming rights deals have risen significantly. So, a very conservative estimate as of 2017 is that the combined value of all stadium-related naming rights for Providence Park over the 25 years of the lease will eventually total at least \$300-\$400 million.

So, obviously the money is there to bring the main grandstand's restrooms and concourse up to code.