



Municipality of Skagway

MEMO

TO:	Mayor and Assembly
FROM:	Brad Ryan, Borough Manager
DATE:	July 18, 2022
SUBJECT:	WP&YR Improvements List

Compensation for Improvements: White Pass & Yukon Route Railway (WP&YR) has repeatedly suggested the Municipality of Skagway (MOS) is legally required to buy Pacific Arctic Railway and Navigation Company's (PARN) waterfront improvements (docks, ore terminal, ore loading facilities, etc.) upon the expiration of the master lease with PARN.

MOS's counsel does not agree PARN is entitled to compensation for improvements upon the expiration of the master lease. Ordinance 229, Article III, Section 34 (Section 34) provides, in relevant part, that any "improvements and/or chattels ... shall revert to, and absolute title shall vest in, the City" when the master lease expires. In short, the title to improvements vest in the landowner upon the expiration of a master lease as a matter of the language of Section 34 and by law. Moreover, Section 34 does not provide that PARN is entitled to compensation from MOS under any circumstances including, without limitation, upon expiration of the master lease. In summary, under the terms of the master lease and as a matter of law, PARN's right, title, and interest in any improvements on the leased land will vest in MOS at midnight on Saturday, March 18, 2023, and MOS will not owe PARN any compensation for those improvements.

Right to Remove Improvements: WP&YR has also repeatedly suggested that it may remove certain improvements unless MOS agrees to compensate PARN for those improvements. This appears to be an effort to use a limited right to remove improvements to improperly leverage MOS into compensating PARN for improvements the master lease anticipates will vest in MOS without compensation.

MOS's counsel agrees PARN has limited rights to remove improvements under the master lease, but counsel also believes, without limitation, that (1) PARN has not satisfied the terms necessary to exercise its limited right to remove improvements, (2) PARN does not have the right to remove improvements when it is in default under the terms of the master lease, as it is currently for several reasons, including the failure to clean up contamination of the land, (3) PARN does not have the right to improperly use its limited right to remove improvements to force MOS to provide compensation not otherwise due under the terms of the master lease, (4) PARN is not operating with good faith and fair dealing in its demands, and (5) PARN may be violating fair trade and business practices in its approach.



Municipality of Skagway

MEMO

Efforts to Find Common Ground. In an effort to find common ground with WP&YR over the last year, I have made multiple requests in person and in writing to WP&YR for a list of improvements PARN is suggesting it may remove upon the expiration of the master lease. On Thursday, July 14, 2022, Port Director Jennings and I met with Tory Korn of WP&YR, and he presented us a list of improvements PARN intends to remove at the end of the 2022 cruise ship season. The improvements include fenders, mooring dolphin caps, catwalks, over 10,000 feet of piling, and more. This list does not specifically identify the location of each improvement, instead it simply lists the quantity to be removed from the Broadway and Ore Docks.

It is concerning to get a vague list in which PARN has still not identified the exact improvements it is seeking to remove only nine months before the next cruise ship season starts. If WP&YR does remove the pilings and catwalks from the Broadway and Ore Docks as Mr. Korn stated in our meeting, MOS will not be able to berth ships at those facilities in 2023 until the improvements are replaced. If PARN had responded timely to my repeated requests, MOS could have made accommodations to replace the improvements prior to the 2023 season, however, with the long lead times on materials and permitting (we anticipate permits for pile driving to take nearly a year), it does not seem possible to complete the necessary upgrades prior to the 2023 season.

While we anticipated PARN may seek to remove some of the improvements not affixed to the land, the removal of some of the affixed improvements such as the piles and catwalks does appear to be punitive rather than reasonable or financially beneficial to PARN. Such actions by PARN would also harm the community of MOS. Further, for the reasons suggested by counsel, I question whether PARN has the right to remove these improvements at all under the terms of the master lease.

Mr. Korn did indicate that WP&YR would be willing to negotiate the sale of the improvements to MOS but did not have a price available at the time of our meeting. If WP&YR insists on selling the improvements when they would otherwise automatically vest in MOS at the expiration of the master lease, MOS will likely have to increase fees on the docks for the 2023 season to recoup these unexpected costs, which we prefer not to do with such short notice for the cruise ships.