

<b>TO:</b>	Mayor and Assembly
<b>FROM:</b>	Brad Ryan, Borough Manager
<b>DATE:</b>	January 19, 2023
<b>SUBJECT:</b>	Port of Skagway Upland Lease Negotiations

I have provided information on how specific negotiations are going with each of the three upland sublease holders that want to continue utilizing the Port of Skagway after the expiration of the PARN master lease.

In summary, the three primary upland sublease holders (TEMSCO, Alaska Marine Lines, and Petro Marine) have a similar complaint. They do not want to pay market rent for the improvements that they built and they would like an extension on their lease without paying to rent the improvements. My response has been the same to all of them. First, the Municipality of Skagway (MOS) does not have a lease with them, therefore there is nothing to “renew”. Second, improvements that are not removed from the uplands will become the property of the MOS, and MOS code requires these facilities be leased at market rent.

Providing a discount to these three private businesses when we charge other businesses, such as M&M Tours, market rent to operate on the adjacent property along the Seawalk is a practice that sets a dangerous precedent; one that I do not recommend, nor do I recommend changing code to provide private businesses with a discount. Additionally, I am in conversations with CLAA to lease the building they are currently in for the next couple of years, and they have indicated a willingness to pay market rent. Should CLAA get a discount?

This is merely an update on the negotiation process for the community and Assembly because I know you are getting outreach from some of these businesses. The MOS will need to consider when to go back to RFP, if the current negotiations do not result in the proposed users committing to paying market rent.

- 1) TEMSCO: In September 2022 TEMSCO was presented with a draft lease agreement that offered TEMSCO a three-year lease for the land and improvements for the area and existing facility that TEMSCO occupies at Market Rent, as established by a commercial appraiser. There was also substantial language in the draft lease to protect the MOS and avoid the pitfalls that were present in the existing PARN lease. The two points that are not negotiable for me are the three-year term and market rent of the land and improvements. TEMSCO representatives have repeatedly asked to lease the area and only pay rent on the land and not the improvements.

I have repeatedly responded to TEMSCO’s request, indicating that code requires the MOS receive market rent for MOS facilities, and that unless TEMSCO and/or White Pass removes the improvements prior to the expiration of the Sublease or 60 days after the expiration of the master lease, the improvements will become the property of the MOS. Therefore, I do not have the authority to offer TEMSCO a discounted rent for MOS facilities. I have informed them that if

they want a discounted rent, it will require a change to Municipal Code which can only be authorized by the Assembly.

Additionally, TEMSCO would like a longer term than three years. In the RFP, we made it clear longer terms would only be considered if developers were going to invest significant capital to justify the longer term. In TEMSCO's case, they have not offered any investment. This property is a highly valuable community resource that is under consideration for the future location of the Alaska Marine Highway terminal.

In summary, there are two simple questions that need to be answered by TEMSCO before I am willing to continue negotiations as the borough manager. I have said this to TEMSCO, both verbally and in writing, and I have never received a direct response. The questions are included below in a copy of an email submitted to Ethan Berto on my behalf from Emily Deach and his response.

**From:** Emily Deach <[e.deach@skagway.org](mailto:e.deach@skagway.org)>  
**Sent:** Monday, December 19, 2022 10:50 AM  
**To:** Ethan Berto [REDACTED]; Cody Jennings <[C.Jennings@skagway.org](mailto:C.Jennings@skagway.org)>; Brad Ryan <[manager@skagway.org](mailto:manager@skagway.org)>  
**Cc:** Tory Korn [REDACTED]; Kelly Healy [REDACTED]  
**Subject:** RE: Lease Negotiation

Ethan,

I'm sending this on behalf of Brad – he intended to send this prior to leaving town but had to unexpectedly get on Friday's ferry. Let me know if you have any questions; Brad will be back on January 3:

"I have been reviewing your comments on the draft lease and I believe there is some room for negotiation. Can you please send the Word version of the draft lease with your tracked changes? This will make it easier for me to review and comment.

However, before I begin this process I need to establish a couple of items that I am not able to negotiate. 1) That TEMSCO agree to pay Market Rent for the Uplands and Improvements as required by MOS code. 2) TEMSCO is willing to accept a three year lease term. If you cannot agree to these two terms than I will need to report to the Assembly that we are at an impasse for those particular terms."

Thanks,

**Emily Deach**  
**Deputy Borough Manager**

**[ATTENTION: This Email was received from outside the Municipality]**

Hi Emily,

I hope the New Year is off to a great start for you in Skagway. I truly believe that there is some type of compromise that we can come to even if it is a shorter term deal that will avoid us coming to an impasse.

Thanks,

Ethan

- 2) Alaska Marine Lines: I have met with and spoken over the phone with Alaska Marine Line Representatives multiple times to discuss the terms of a lease in their current location. They have had a similar request as TEMSCO, in that they do not want to pay market rent for the improvements they built. At one point, AML representatives indicated they would consider market rent of the uplands and the improvements if we could reduce the lease area they leased to two acres and they could utilize the pier and adjacent area for short term storage (as outlined in the Tariff document). With this information, I reduced the proposed lease area to two acres and provided AML with a draft lease. However, on further consideration, AML has made it clear they are not in agreement with this arrangement and have concerns with the MOS's ability to maintain the docks and AML would be better suited to do this. I find it hard not to take exception to this comment, as Skagway is a community that takes good care of their facilities and is quick to respond. This is especially bothersome in light of the first meeting I had with AML representatives where they were negotiating for a reduced lease rate because they were going to repair the loading dock which they had damaged.

I have provided the last email I received from Don Reid outlining AML's response to our lease negotiations.

**From:** Don Reid [REDACTED]  
**Sent:** Thursday, January 12, 2023 5:27 PM  
**To:** Brad Ryan <manager@skagway.org>  
**Cc:** Cody Jennings <C.Jennings@skagway.org>; Emily Deach <e.deach@skagway.org>  
**Subject:** RE: [External Email] RE: Port Lease

Hi Brad, I think you should tell them that we are at an impasse and it is not because we are concerned about paying fair market rent for the property. The reason we are at impasse is because we believe that by the City taking ownership of our building and our dock that they are not treating us fairly and they are putting our service in jeopardy. There should be some accommodation for the fact that we already paid for the improvements and we need to have some control over using and maintaining the dock. With that said, the warehouse is less of an issue to us than the dock. That dock was purpose built for our barges and the way we operate. There is a fair amount of wear and tear to these docks especially in Skagway with the extreme winds and conflicting vessel traffic. Damages happen to this dock and we know how to maintain it. The first time this happens when the City owns it, we will find that the cost of the repair and the timeline of the repair will be out of our control. I would estimate that repair costs will triple or quadruple under the City's processes and there will likely be a day when we cannot service Skagway for a period while it is under repair. I appreciate your willingness to work with us on decreasing the leased area and charge wharfage instead of lease for dock use. At first that sounded like a good alternative but the more I think through the details I think it will be a mistake to put the City in the position of managing the dock use and maintenance as well as the property that we are not leasing. If we don't control the property our security plan can't cover it when we are not using it. I expect that the Coast Guard will require a fence between our yard and the non-leased area if you have a security plan for this area. What seems like a simple thing like a Facility Security plan is not a simple thing nor is it quick. It is now 1/12/23 and our lease expires on 3/19/23 so there is not a lot of time. If we were in agreement right now it would take lawyers until 3/19/23 just to get this wrapped up properly. My thought is the City should view this situation with AML as short term for now, come to an amicable lease agreement similar to what we had with PARN to get us by for a few years while you figure out what you are doing for sure on the rest of the dock. I'm not saying the price has to be the same but it should be fair. Would it help to have someone come to the next City Council meeting to express these concerns?

In any event, I would say the most urgent thing is to get the appraisal completed so we know what the numbers are. It is hard to agree to anything when we don't know the costs. I'm available for a call tomorrow after 1:30 if you would like to talk.

Thanks, Don

- 3) Petro Marine: Similar to the TEMSCO and AML discussions Petro Marine does not feel they should pay market rent for the improvements on the property. We told Petro Marine that if they want a longer-term lease there needs to be a commitment to replace the large tanks so that they do not exceed 50 years of age. To provide some leeway, we did indicate that we would use the date that the tanks were rebuilt on their current site as the original construction date, even though some of these tanks are significantly older—potentially up to 80 years old.

One of my biggest concerns, outside of the negotiations overpaying market rent, is Petro Marine's unwillingness to provide the condition assessments for the tanks. I have provided the email correspondence below which indicates their reluctance to provide these assessments. The tank farm is a huge liability for the Municipality, and we should have required the condition assessments at regular intervals during the master lease, as the tank farm has always been on MOS property and the liability has always been there. Without these condition assessments, I don't know why the MOS would continue the negotiation with Petro Marine.

**From:** Brad Ryan <[manager@skagway.org](mailto:manager@skagway.org)>

**Sent:** Thursday, January 12, 2023 5:58 PM

**To:** Matt Lindsey [REDACTED]

**Cc:** Cody Jennings <[C.Jennings@skagway.org](mailto:C.Jennings@skagway.org)>; Emily Deach <[e.deach@skagway.org](mailto:e.deach@skagway.org)>

**Subject:** RE: [External Email] RE: Uplands Lease

**\*\* EXTERNAL EMAIL - CAUTION: This email was sent from outside Petro 49, do not open unexpected attachments or links, and verbally validate all requests with their sender. \*\***

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Matt

I had understood from previous conversations that you believed your tanks to be in good condition and well maintained and you would be willing to share that information with the MOS. Now you are refusing to share that information and I am having a hard time not taking exception to your unwillingness to share the inspection reports because you feel we would not understand them or misconstrue the information. I would not be the one to provide a technical review of the condition assessment I would contract a subject matter expert to provide this review. I had anticipated you would be proud of the condition of your tanks and now your refusal to share the information now makes me question the condition of the tanks. I hope that you will reconsider your refusal to share the inspection reports so that we can move this process forward with the greatest understanding possible.

Thank You

Brad A. Ryan

Skagway Manager

Municipality of Skagway

P.O. Box 415, Skagway, AK 99840

(Phone) 907-612-1788

[manager@skagway.org](mailto:manager@skagway.org)

**From:** Matt Lindsey [REDACTED]

**Sent:** Thursday, January 12, 2023 1:16 PM

**To:** Brad Ryan <[manager@skagway.org](mailto:manager@skagway.org)>

**Subject:** RE: [External Email] RE: Uplands Lease

Brad,

I have followed up with the ADEC unfortunately they are tied up with a large update to some regulations and are unable to meet timely. I have asked our consultant if she would be willing to walk you through the regulations and process we use for maintaining service life for tanks. She is available and could schedule a meeting with you whenever you are available. I am reluctant to send you an inspection report due to the technical nature of what is presented and how it might be misconstrued. Tanks much like buildings if properly maintained and repairs/general upkeep are performed as needed have a useful life that can continue indefinitely. These inspection reports not only address potential issues but help establish necessary work that needs to be performed on the tank to extend the life of the asset/tank. These inspection reports however are only one component to the overall picture, regulations and industry standards make up the majority of this web of operating tanks. This can be lost if the only focus is on one inspection report and will not paint a more accurate picture of overall operation standards.

**Matthew R. Lindsey** | Chief Operating Officer | Petro 49, Inc.

[Redacted signature block]