



**CITY AUDITOR** 345 6<sup>th</sup> Street, Suite 600, Bremerton, WA 98337-1873 & Phone (360) 473-5369

October 22, 2009

Cecil McConnell, Mayor Pro Tempore  
Roger Lubovich, City Attorney

The Office of the City Auditor has completed a review of the city's participation in the Bremerton Government Center and has issued the attached report. Several city management issues are identified. One significant deficiency is of the city's recorded legal title to its condominium units in the building. Several other problems were noted that the city should convey to the condominium association for resolution.

Sincerely,

Gary W. Nystul

cc: City Council

# **REVIEW OF BREMERTON GOVERNMENT CENTER**

## **Purpose**

The Office of the City Auditor reviews various phases of city operations for compliance and performance. This review of the Bremerton Government Center was scheduled on the 2009 work plan.

## **Scope**

This is a review of the documents, records, agreements, expenditures and conditions of the city's interest in the condominium association incorporated as the Bremerton Government Center Association for the years 2006, 2007, 2008 and through July 2009.

## **Statement of Auditing Standards**

This compliance audit was conducted in accordance with Generally Accepted Government Auditing Standards, except Standard 3.50 requiring an external quality control review. Those standards require that the auditor plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on audit objectives. The auditor believes that the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives.

## **Objective**

The objective of this audit was to:

- Review the documents and agreements creating the condominium association for compliance by the city and others
- Review city expenditures including payments on the note payable to the Kitsap County Consolidated Housing Authority
- Review the city's compliance with the condominium association by-laws, and rules and regulations
- Report any observations or findings relative to economy, efficiency or compliance

## **Summary of the Results**

- The documents recorded at the county courthouse do not show the city, or any of the other unit owners, as having a legal interest in the condominium units they are purchasing.

- A number of owner association legal and compliance issues were noted that the city, as one owner in the building, should convey to the condominium association board for discussion and correction.

## **BACKGROUND**

For several years the city had been exploring ways to acquire a new city hall. The county health district and the county were also searching for new office space. In 2000, a study of a proposal was undertaken by the city, county and Kitsap County Consolidated Housing Authority. A plan was eventually formulated which included a public-private partnership to construct a government center office building in downtown Bremerton. The result is the Norm Dicks Government Center which is a condominium office building originally owned by the City of Bremerton, Kitsap County, Kitsap County Health District, Bremerton Housing Authority, Kitsap County Consolidated Housing Authority (KCCHA) and Washington Mutual Bank.

On March 1, 2003 the city council, by resolution, approved four documents formalizing the adoption of the building project. These documents are:

- Interlocal Agreement between the city, county and KCCHA for the development of a governmental office building
- Construction and Development Agreement between these same parties to set forth their intentions and agreements with respect to the initial construction and development of the project
- Real Estate Contract and Security Agreement between the city and KCCHA for the purchase of space in the building by the city and the sale of revenue bonds by KCCHA to finance the city's purchase
- Continuing Disclosure Agreement between the city and U.S. Bank National Association relative to the issuance of the revenue bonds by KCCHA

To finance the project, the Kitsap County Consolidated Housing Authority sold revenue bonds. The real estate contract listed above is the agreement by which the city purchased two condominium units. The city's purchase price for its 15,138 square feet of unit office space is \$6,405,000. The city makes monthly payments to a bank account which is in the name of the KCCHA. Monthly payments range from \$33,916.67 to \$34,354.17 with the city's final payment on June 1, 2034.

A non-profit corporation condominium association (Bremerton Government Center Association) has been created. The condominium has seven office units and one garage unit. Each unit in the building has a representative to the association. Association voting is generally based on the percentage of square feet of each office unit compared to the total of all office units. The garage unit percentage of 7% is based on the declared value of the units.

The condominium units, percentage of interest and current owners are as follows:

<b>Unit</b>	<b>Allocated Interest</b>	<b>Owner</b>
Garage	7.00%	Bremerton Capital Group LLC
1	6.66	KCCHA
2	6.79	BHA
3	20.37	Health District
4A	16.57	Health District
4B	3.11	Kitsap County
5A	3.03	City of Bremerton
5B	7.01	BHA
5C	6.30	Kitsap County
5D	3.24	KCCHA
6	19.92	City of Bremerton

The affairs of the Association are governed by a board of directors. Each unit owner may appoint one director. The board has hired the KCCHA to manage the building. KCCHA provides overall building management and staff for the concierge desk. Some tasks, such as janitorial, are contracted out by KCCHA.

## **FINDINGS AND RECOMMENDATIONS**

Two categories of findings and recommendations have been identified. One category consists of items which relate to the city's interest in the condominium units and association. The other category consists of items relating to the building association that the city, as one owner, may wish to have its representative convey to the association board for consideration and correction.

## **CITY ISSUES**

1. No recorded record of the city's ownership interest

A review of ownership information as shown on the Kitsap County property records indicates that the city does not have a recorded ownership interest in the two units it is purchasing. The city is making the purchase under the Real Estate Contract and Security Agreement between the city and the Kitsap County Consolidated Housing Authority. There does not appear to be any recorded document to show that the city has a purchaser's interest in the building.

### **RECOMMENDATION.**

The City Attorney should obtain the proper legal documents to exhibit the city's purchaser interest in its condominium units and then ensure they are properly recorded with the county.

## 2. Record of loan payments

The city is making monthly payments for the purchase of its units in the building. These payments are to a bank account that is in the name of the KCCHA for the revenue bond that financed the project. The city does not receive a year end annual statement of payments and principal balance from the KCCHA or the bank Trustee.

### RECOMMENDATION

The city should ensure that the payment records of the trustee, KCCHA and city agree at year end. Such agreement can be evidenced by an annual statement of principal and interest paid and principal balance.

## 3. Appointment of city representative

There is no evidence that the city's representative to the Board of the Association has been appointed in writing as required by Sections 1.4 and 3.1 of the By-Laws.

### RECOMMENDATION

The city's participation in the Association is properly under the jurisdiction of the mayor. The mayor should designate the city's representative as required by Section 1.4 and 3.1 of the By-Laws. In deciding who to appoint, consideration should be given to selecting a management staff member who has a working knowledge of municipal finance and an understanding of building management issues.

## 4. Encroachment on city right-of-way

On the 5<sup>th</sup> Street side of the government center building some of the steps, lawn, and lights of the building have been constructed in the public right-of-way. (See attached drawing.) The city has not granted the Government Center permission to encroach upon the public right-of-way.

### RECOMMENDATION

The city should request that the Association correct the encroachment by requesting a right-of-way permit under Chapter 11.02 BMC.

## GOVERNMENT CENTER ASSOCIATION ISSUES

The following items are issues of the Bremerton Government Center Association. They are recommended to be submitted to the Association Board for consideration and resolution. They are not listed in any order of importance.

1. The common areas of the building, including parking level P1, are owned by the Association. However, the deed information on file with Kitsap County does not show the Association as the owner of this property. As discussed above for the city ownership interest, the Association should also obtain a recorded interest in the common areas.
2. The Association has landscaping, lights, and trees on the north end of Lots 46 & 47 at the corner of 6<sup>th</sup> Street and Pacific Avenue. This land is not owned by the Association. There is no evidence that the Association has an easement or written permission to encroach on or use this land. (See attached drawing.)
3. The Kitsap County Health District has exclusive use of all area inside its exterior door just off the elevator on the third floor. However, on the condominium documents, this space is shown as OLCE (office limited common element). The square footage is not counted as part of the Health District's space but is part of the total building common area. The space meets the definition of area belonging to a "unit." The Board should consider if this space is "office limited common" or part of a unit and make any changes as appropriate.
4. In similar fashion, the hallway space past the door on the 6<sup>th</sup> floor of the City space is also listed as office limited common. The Board should also consider the proper classification of this space.
5. Expenditures of the Association are made by the management company KCCHA. They prepare the financial statements for the Board and prepare monthly narratives about financial activity. Detail of the expenditures such as a check register or disbursement journal is not provided to the Board for their review. The Board should periodically review check registers or similar listings of expenditures. Supporting documents should be reviewed as deemed necessary.
6. Minutes of Board meetings are prepared by the management company, KCCHA. After approval by the board they are signed by the person preparing the minutes and the KCCHA manager. These are Association documents and should be signed by the Board President and the Board Secretary.
7. The budget for 2008 indicates that unit 5D has been split between KCCHA and the Port of Bremerton. Article 23 of the Condominium Declarations provides a procedure for subdividing and altering units. There is no indication this procedure has taken place. If KCCHA is selling or subdividing a part of unit 5D,

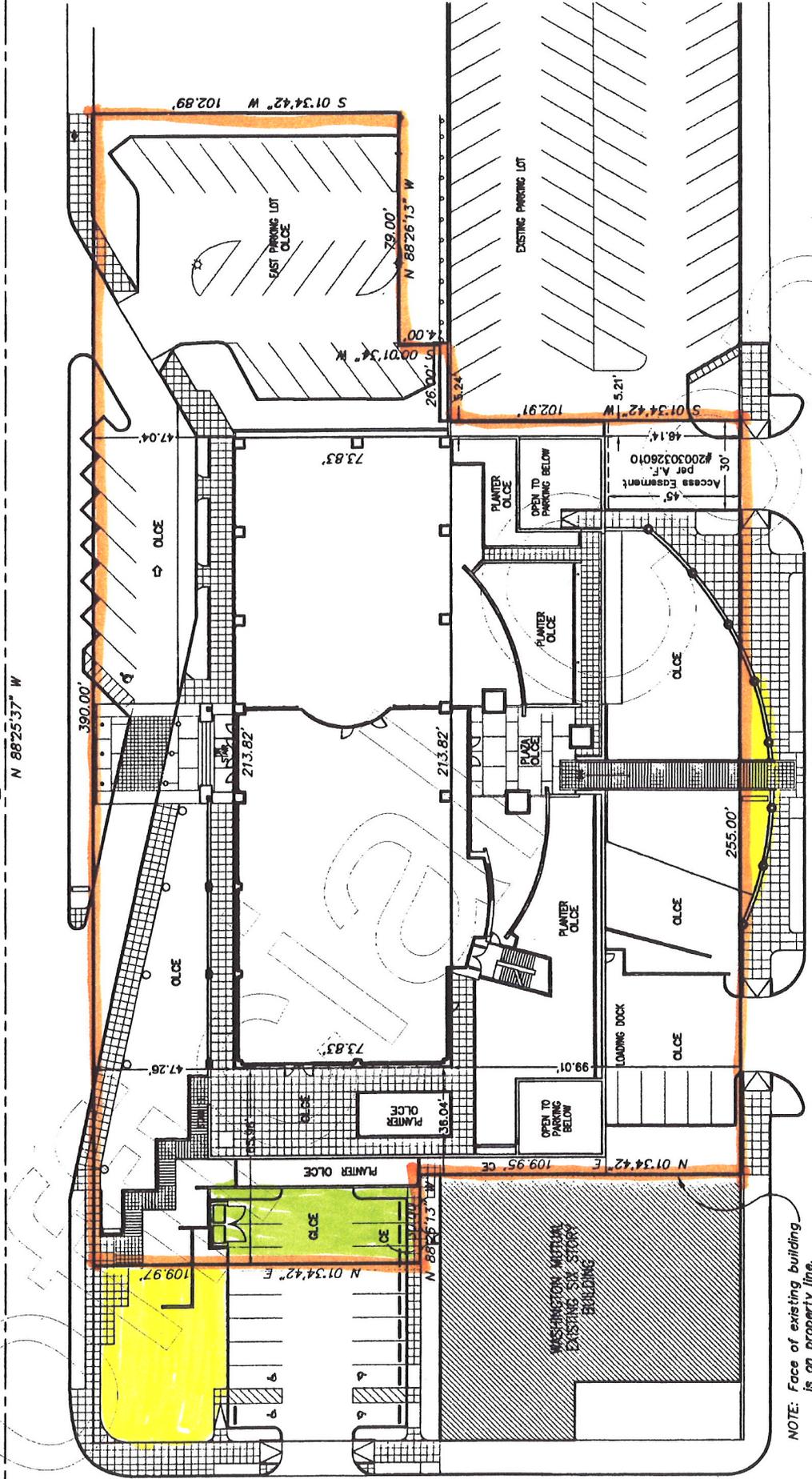
the procedure required by the condominium declarations and bylaws should be followed. In the absence of such transfer of ownership, the budget document should follow the ownership allocations.

8. Article 12 of the Condominium Declaration states that the owners of the units constitute the owners association. It further provides that the number of Board members and qualifications and procedures for election to the Board shall be provided in the Bylaws. Article 13 states that each owner shall be entitled to appoint one Board member. Section 1.1 of the Bylaws states that "Each Unit Owner shall be entitled to one membership in the Association regardless of the number of Units owned." Based on the recorded documents there should be five Board members. They are from: KCCHA, BHA, Kitsap Health District, Kitsap County, and City of Bremerton. Section 3.1 also states that the appointment of directors shall be in writing and submitted to the Secretary/Treasurer by the unit owner. If the Port of Bremerton is not the owner of a unit, they are not a member of the Association or the Board.
9. The minutes of the Board meetings should identify who are the Board members and who are the others in attendance. The present minutes merely list everyone in attendance. The minutes state that some owners have more than one person in attendance and do not distinguish who is the board member.
10. Article 19 of the Declaration specifies the types and amounts of insurance required. The insurance policy in effect for September 1, 2008 to August 31, 2009 names the Kitsap County Health District as the insured. There are no endorsements with the policy stating the Bremerton Government Center Association is the insured. An invoice received by the City for the policy renewal of September 1, 2009 through August 31, 2010 states that it is for an extension of coverage through Kitsap Health District. It references the Norm Dicks Government Center but not the Bremerton Government Center Association. It lists liability coverage for the common areas and property coverage for the structure. The Association should verify that the portions of the building that are owned by the condominium association are covered by adequate insurance with policies under which the Association is the insured.

# BREMERTON GOVERNMENT CENTER A CONDOMINIUM

GOV'T LOT 3 (SW.1/4 SW.1/4), SEC.13, TWP. 24N., RG. 1E., W.M.  
CITY OF BREMERTON, KITSAP COUNTY, WASHINGTON

☐ 6th STREET  
N 88°25'37" W



NOTE: Face of existing building is on property line.

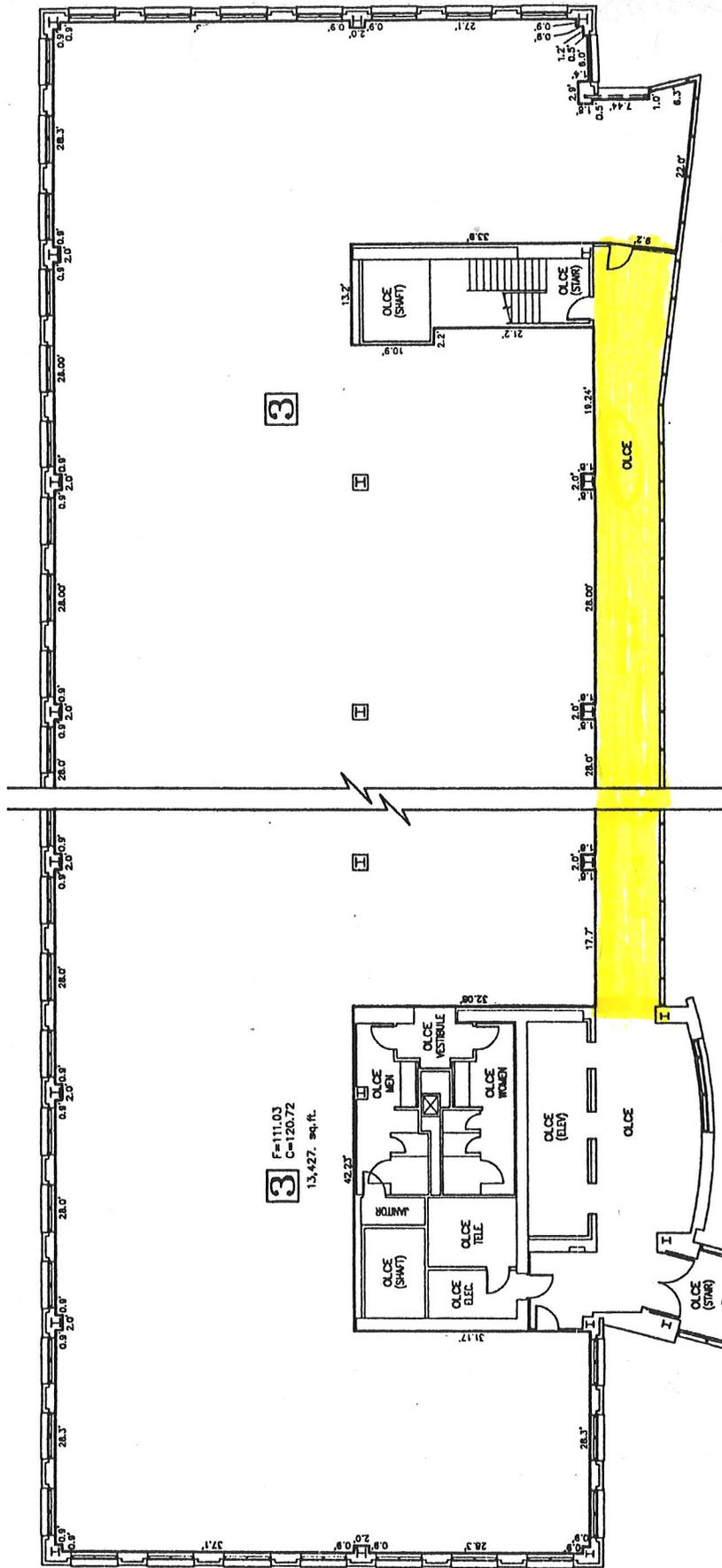
☐ 5th STREET  
N 88°26'52" W

LEGEND

# BREMERTON GOVERNMENT CENTER

A CONDOMINIUM

GOV'T LOT 3 (SW.1/4 SW.1/4), SEC.13, TWP. 24N., RG. 1E., W.M.  
CITY OF BREMERTON, KITSAP COUNTY, WASHINGTON



**3** F=111.03  
C=120.72  
13,427 sq. ft.

SCALE: 1"=10'  
NORTH: NAD 83 (1991)

- LEGEND**
- OLCE GARAGE LIMITED COMMON ELEMENT
  - OLCE OFFICE LIMITED COMMON ELEMENT
  - UNIT NUMBER
  - F FLOOR ELEVATION
  - C CEILING ELEVATION

## THIRD FLOOR PLAN



**AES**  
CONSULTANTS, INC.  
P.O. BOX 880 - SEASIDE, WA 98138 - (206) 425-1000

Drawn By	R.L.J.
Date	9/01/04
Checked By	S.E.O.
Job No.	3124