



DOWNTOWN DEVELOPMENT AUTHORITY

Quality Services for a Quality Community

MEMBERS

William Mansfield, Chair
Douglas Jester, Vice Chair
Peter Dewan, Treasurer
George Lahanas, Secretary
Brad Ballein
Lynsey Clayton
Colin Cronin
James Croom
David Krause
Eric Rosekrans
Mayor Nathan Triplett

Staff Liaison

Lori Mullins
(517) 319-6930

City of East Lansing DEPARTMENT OF PLANNING, BUILDING & DEVELOPMENT

410 Abbot Road
East Lansing, MI 48823

(517) 319-6930

www.cityofeastlansing.com

MEETING MINUTES

July 23, 2015 - 12:00 p.m.
Conference Room A, 2nd Floor
410 Abbot Road

Present: William Mansfield, Brad Ballein, David Krause, Peter Dewan, Douglas Jester, Lynsey Clayton, James Croom

Absent: Mayor Nathan Triplett, Eric Rosekrans, George Lahanas, Colin Cronin

Staff Members Present: Lori Mullins, Terri Soliday, Scott House, Kristin Shelley, Tom Yeadon

Guests: Tom Eckhardt, Paul Schmitz, Jim Anderson, Chris Root, Ralph Monsma, Alice Dreger, Jim Anderson, Steven Reed

1) Call to Order

The meeting was called to order at 12:06 p.m. by Chair Mansfield.

A) Roll Call

At the taking of the roll, Mayor Triplett, Rosekrans, Clayton, Cronin, and Lahanas were absent.

B) Approval of Agenda

Mansfield added under Communications from Staff an item 4D regarding the East Lansing Marriott Special Use Permit modification. Mullins noted that Eliot Singer sent an e-mail regarding the Park District. Jester moved to approve the Agenda as amended; Dewan seconded the motion. Vote: All yeas, motion carried unanimously.

C) Approval of Minutes

i. June 30, 2015

Jester moved to approve the minutes of June 30, 2015 as written; Dewan seconded the motion. Vote: All yeas, motion carried unanimously.

Clayton arrived at 12:07 p.m.

2) Financial Reports
A) Treasurer's Report for June 2015

Mullins said this is the last Treasurer's Report for the fiscal year, which will be updated for the board's review following the audit. She reported expenditures were below what was projected. She indicated she will provide a Fund Balance Analysis next month.

3) Written Communications
A) Request for Proposals from MSU – Master Lease for Apartment Units for Visiting Faculty Housing (passed out at meeting)
B) E-mail from Eliot Singer regarding Park District (e-mailed to the Board)
C) Form-Based Code Training Session leaflet

4) Communications from Staff
A) Park District Update

Mullins said we have been working through the due diligence. The Board asked for additional legal history review, and we provided the National Development Council that information. The Board asked the applicant for a history of their projects and litigation, and that was sent to City Attorney Tom Yeadon along with a list of projects which they completed.

Yeadon said he had asked for a list of projects that Strathmore and Crouch have been involved in and projects where there has been litigation, which they provided to him. He said there was one case which was not disclosed. Jester asked how much time it would take to research the cases that were not on the list. Yeadon answered over the Internet he can search all cases which made it to the Court of Appeals level, which he has done. He indicated to find cases on Circuit and District Court dockets would be a time-consuming process.

Yeadon stated he provided Mullins with proposed revisions to the development agreement. One of the concerns is if we enter into a development agreement, we could be brought into litigation by the lenders. He stated there is language in the contract that there are no third-party beneficiaries, but he drafted an additional clause which would add further protections. There would be a requirement that the developer obtain the release of any current claims or future claims that the lender would have. Yeadon said we are protected as much as we can be; the lender would not be able to sue us if the developer can obtain a release.

Mullins added from her discussions with the applicant, without the agreement, they cannot move forward. In discussions with the lenders, she said they are still engaged and are concerned that the MBT credits of \$10 million would expire with further delays. To receive the MBT credits, the project needs to be completed by mid-2018. She stated that the lenders did not comment on litigation, but it was acknowledged. Yeadon said language would be inserted in the beginning of the development agreement stating that 60 days from signing of the agreement, the developer would have to show that the other litigation is resolved.

When asked about the undisclosed litigation, Yeadon said it is published in the Court of Appeals. It wasn't a development agreement, but it speaks to Mr. Chappelle's integrity.

Eckhardt described the details of the case which Mr. Schultz had against Scott Chappelle.

Yeadon said the litigation resulted in a judgment against Chappelle. They were unable to collect due to insolvency of the LLC. The Plaintiff sued and the Court of Appeals affirmed the Circuit Court judgment that there was a fraudulent transfer by Chappelle in order to avoid a judgment. Eckhardt disagreed. He said the statute which covers transfers is very broad and general.

B) Infrastructure Presentation, Scott House, Director of Public Works

Scott House, Director of the Department of Public Works and Environmental Services, gave an update on the City's aging infrastructure, which includes streets, water and sewer. He said the current Wastewater Treatment Plant was built in 1927 and needs many renovations. Staff is waiting to see what we receive from the State for street funding. Jester suggested that street trees be put on a replacement schedule, and that the Department of Public Works should think about communication cabling for reliability purposes and moving some power lines underground. He recommended putting in conduit when major streets are being improved.

C) Makerspace – ELPL Makerstudio Update

Kristen Shelley, Director of the East Lansing Public Library, passed out a report on the Makerspace, which is located in Suite 212 in the Marriott. She said this was to be a pop-up Makerspace for five months. She reported that renovations to the Library will start when Abbot Road reconstruction is finished, and they will not have room for the Makerspace in the Library, so they just extended the lease in the downtown through May of 2016. She indicated on August 25 at 1 p.m. Congressman Bishop will be coming to see the Makerspace, and DDA members are invited to attend.

D) 300 M.A.C. Bistro 43 Special Use Permit

Mullins said they are requesting to stay open an hour later until 1 a.m. She reported that last evening the Planning Commission acted to recommend keeping them open until 2 a.m. at their discretion for specific events. This recommendation is going to City Council, which will set the public hearing for September 1. She said this will be on the DDA's business agenda in August.

Mullins also advised on the August DDA agenda there will be a Special Use Permit application from the Tin Can are requesting a 2 a.m. closing time. They purchased the former Stateside Deli at 313 E. Grand River Avenue. She added that Crunchy's is requesting an SDM license; this will also be on their August agenda.

Mansfield said the Public Policy Committee will discuss these Special Use Permits at their August meeting.

5) Communications from Audience

Jim Anderson, 968 Roxburgh, said he was speaking as a member of Neighborhoods First, but mostly as a homeowner and taxpayer. He asked where the money is to subsidize the Park District developer. He said after going through Public Response documents, he estimates there is about \$12 to \$15 million of real capital in the \$100 million project; all the rest is subsidies and debt. He said in the July 17th memo regarding the PDIG agreement; the list of projects provided by the developer did not include projects which were in litigation. He stated we are at a stage where we need documents, not just references to telephone conversations with lenders. He asked if a new lender would be free to

litigate against the City if the current lender signs a release but is replaced by another lender. He felt the DDA should pay more attention to Eliot Singer's documentation and Public Response.

Ralph Monsma, 1350 Red Leaf Lane, noted the discussion with regard to pending budget issues during Scott House's presentation; i.e. infrastructure costs, and asked if the City has the money to improve the parks and street trees. He said a tennis court in Pinecrest will be removed because there has been no maintenance. He stated a lot of money has gone into this project for design and legal fees, and the legal study came back with a warning flag. He felt the City should not get entangled in this project at this time.

Alice Dreger, 621 Sunset Lane, said she would like the area to be redeveloped. Regarding the legal review, she said the City wanted someone external so no one local would have to take the heat for what they find. She noted that PDIG has a lot of owners. She felt that all information which Yeadon finds should be made public. She said the more we ask Yeadon to do, the more money it costs, and we can't afford it. She asked how much more money will be spent on this before capitalism does its work and said there comes a point where you cut your losses. She noted if this goes into foreclosure, another developer may be able to develop it. She said there are multiple law firms which have represented PDIG. She referred to a letter dated June 10 from an attorney representing PDIG stating, "My client has received all necessary approvals from the City of East Lansing and the State of Michigan and is proceeding to close on the \$71 million construction facility in the next several weeks." She felt that signing a development agreement will get us into more delays and uncertainty. She advised to let the property go into foreclosure and hope that someone buys it at a reduced price and builds a project.

Tom Eckhardt said other than with the changes which Yeadon presented today, the development agreement has been vetted for months by staff, members of the DDA, and Clark Hill. He stated on page 9 of the development agreement, even without Yeadon's addition, it requires that the developer obtain a bond for construction of the public infrastructure for 125% of the cost. He said also on page 9 is a requirement that the developer obtain a demolition and site restoration bond for 125% of the cost. He indicated even if the building is not built, the site would be demolished and covered over as a vacant lot. He said on page 14 it states if the developer is unable to provide sufficient financial assurances that do not have identifiable deficiencies within 90 days, the City may at its option and in its sole discretion terminate this agreement by delivery of notice of termination to the developer. On page 30, Subsection n), it states that the developer cannot sue the City for any damages; all the developer can do is sue the City for not agreeing to do what it agreed to do in the development agreement. If the developer fails to comply with the terms of its loan agreement, in Subsection o) all collateral and development agreement documents will be assigned to the lender, who will step in and take over the project. He noted the SUP/site plan runs with the land. He indicated there will be no construction commencing until the loan is approved and the applicant obtains the necessary approvals it needs to convince the lender to make the loan. He advised that the lender performed extensive due diligence to agree to make a \$72 million loan. Eckhardt asked that the process be moved forward. He said City Council still has to agree; and if at any time the City is unhappy with the financial assurances, it can terminate the agreement.

6) Business Agenda
A) Concessionaires and Food Trucks

Mullins said the DDA instituted a pilot program which allowed food trucks to locate in East Lansing for only the cost of the application fee during a trial period. She said the Public Policy Committee

reviewed the program, and noted that only one food truck participated. She said in a survey to local businesses asking whether food trucks and vendor trucks should be allowed to operate in East Lansing, the majority of respondents (18 different businesses) thought food trucks were a positive thing; 11 businesses did not. The Public Policy Committee at their meeting recommended that the DDA make a recommendation to City Council to rescind the policy resolution related to concessionaires and food trucks because the DDA has been unsuccessful in attracting quality vendors. She said there has not been much interest from food trucks to locate in East Lansing, this program takes a lot of staff time, and a lot of businesses object to it. Mansfield stated they just didn't have any applicants.

Dewan moved to recommend that City Council rescind Policy Resolution 2014-12 regarding Concessionaires and Food Trucks in East Lansing; Jester seconded the motion. Vote: All yeas 7 to 0. Motion carried unanimously.

7) Old Business Agenda
A) Capital Improvements Program

Mullins said the Project & Infrastructure and Executive & Finance Committees have discussed the improvements to the downtown and what is being proposed now to the plaza. She said we are also participating in a fundraising effort to get more public art in the downtown, and the DDA's allocation will come from the Project Development Fund. She said the downtown improvements, which were discussed at a previous board meeting, will also include bike parking. She said there is a \$23,500 allocation for priority items on the list. They will look at other improvements later in the fiscal year. When they put the annual budget together, the DDA allocated \$80,000 for streetscape improvements, which would leave them with \$57,000 in the Project Development Fund for other Project Development activities.

Jester moved to approve the allocation of \$23,500 from the Project Development Fund for the downtown improvement priority items presented; Ballein supported the motion. Vote: All yeas. Motion carried unanimously.

Vote: All yeas. Motion carried unanimously.

B) Park District Development Agreement

Mullins said the Board discussed changes from the applicant and Mr. Yeadon. Jester said we started due diligence a few months ago and are not yet in possession of all of the due diligence, and he is not inclined to proceed. He stated that we are not likely to get the due diligence completed until after sheriff's sale is resolved.

Jester moved to defer consideration of the Park District Development Agreement until resolution pending the sheriff's sale of the properties, resulting in either redemption or permanent transfer of ownership; Clayton seconded the motion. Vote: All yeas 7 to 0. Motion carried unanimously.

Jester then moved to defer any further due diligence work until the sheriff's sale is resolved, and to instruct the City Attorney and National Development Council to stand where they are until we ask for further work. Croom seconded the motion. Vote: All yeas 7 to 0. Motion carried unanimously.

8) Committee Reports
A) Executive and Finance Committee
i. Synopsis of July 16, 2015 Meeting

Dewan said the DDA discussed what was in the synopsis.

B) Business and Market Development
i. Synopsis of July 14, 2015 Meeting

Mullins said the Committee discussed available retail spaces in the downtown and providing market information from property owners. She also discussed upcoming redevelopment projects.

C) Public Policy
i. Synopsis of July 14, 2015 Meeting

Ballein reported that the Committee talked about concessionaires and food trucks and also the Downtown Living Update, which they will make live for developers.

D) Project and Infrastructure Development
i. Synopsis of July 16, 2015 Meeting

Mansfield said they reviewed PDIG current events, talked about the upcoming Brownfield Plan for 565 E. Grand River, and discussed capital improvements.

9) Reports from Chair and Boardmembers
A) Downtown Management Board

Jester said they discussed various promotional activities, mostly related to major events on campus this summer.

10) Announcements/Boardmembers Comments

Clayton stated that she thought requesting information from our City Attorney is very reasonable, as we trust him because he has had extensive experience with this. Regarding the talk about throwing away the Park District project, Krause said there is a significant part of this that may be lost, which will be the MBT funding. He said if we can get a project we are satisfied with, he would like to keep this moving. Mullins said the deadline for the MBT tax credits is July of 2018.

11) Adjournment

There being no further business, Ballein moved to adjourn the meeting at 2:11 p.m.; Clayton seconded the motion. All yeas, motion carried.