

**CITY OF NORWALK
PLANNING COMMITTEE
REGULAR MEETING
DECEMBER 4, 2008**

ATTENDANCE: Rev. Phyllis Bolden, Chair; Carvin Hilliard, William Krummel, Kelly Straniti (7:19 p.m.); Amanda Brown (7:23 p.m.); Andrew Conroy (7:40 p.m.); Douglas Hempstead (7:45 p.m.)

STAFF: Timothy Sheehan, Redevelopment Agency, Susan Sweitzer, Senior Project Manager for Development

OTHERS: Diane Cece

CALL TO ORDER

Rev. Bolden called the meeting to order at 7:05 p.m. There was not a quorum present.

PUBLIC PARTICIPATION

There was no one who wished to address the Committee at this time.

BUSINESS

A. West Avenue Redevelopment Project

1. Discussion of Waypointe Master Development

Mr. Sheehan then stated that the Committee was reviewing the Development Plan for Waypointe and that the Committee was reviewed the Article 7 titled "Disadvantaged Business Enterprises". Mr. Krummel had some detailed questions about the definition of the management of Disadvantaged Business Enterprises. A discussion about the role of ownership and role of the shareholders followed.

The discussion then moved to some of the wording in Article 7. 1 regarding the permitting of DBEs in the project. Mr. Sheehan said that the efforts of the developer would be monitored by the Human Relations Department and the Redevelopment Agency, and that failure to do this on the part of the developer is actually a failure to comply with the contract.

On page 41, Mr. Krummel had some concerns regarding the goal of the utilization of the DBEs and the percentage stated. He said that it would be important to have reasonable

outreach as approved by the Human Relations Department and the Redevelopment Agency rather than just a legal notice in the Hour.

Ms. Straniti joined the meeting at 7:19 p.m. A quorum was now present.

The Committee then reviewed Article 8 – Public Improvements. Mr. Sheehan gave a brief overview of the section. Mr. Krummel asked what would happen if the developer went into bankruptcy, particularly in these economic times. He expressed concern because the judges in these cases have been known to set aside portions of contracts in an effort to allow the company to survive.

Ms. Brown joined the meeting at 7:23 p.m.

Discussions about the City's legal representation by Robinson and Cole in this contract followed. Mr. Sheehan said that he would be happy to take the question regarding the bankruptcy process back to Robinson and Cole for their consideration. Mr. Sheehan said that while he was not a lawyer, it was his understanding that when a bankruptcy happened, the bank comes into and takes over the role of developer that could no longer support the debt service for the project.

Ms. Brown asked if the City was locked into paying the amount named in the Agreement because of the economic situation. Mr. Sheehan reviewed the details and pointed out that the City was actually gaining benefits through improvements in services.

The discussion then returned to item number 2 regarding the occupants of the spaces. Mr. Sheehan reviewed this with the Committee. He also emphasized the fact that the Agency must accept the completion of the public improvements.

Mr. Conroy joined the meeting at 7:40 p.m.

The discussion then moved to the timeline for the closing and when the cost information would be available to the City. The developer is required to turn in the cost information within 90 days after completion of the public improvement projects (roads, sidewalks, etc.). Mr. Sheehan then reviewed details of the process that would occur once the developer presents the information to the City for review. The developer must reach a full 75% rate of occupancy and all the other conditions listed in this section must be fulfilled before a property closing.

Mr. Hempstead joined the meeting at 7:45 p.m.

Ms. Brown had a question about the wording of number six involving incomplete offsite common elements, which Mr. Sheehan reviewed with her.

Mr. Hempstead asked about lien releases. Mr. Sheehan said that he would note this as a question for Robinson and Cole.

Mr. Krummel then asked for clarification about the paragraph regarding project change orders. Mr. Sheehan reviewed this. He added that the phrase “commercial and reasonable efforts” would be further clarified. Mr. Sheehan then read the following definition from the U.S. Legal Resources online:

“Commercially reasonable efforts’ is a term incapable of a precise definition and will vary depending on the context in which it is used. It is based upon a standard of reasonableness, which is a subjective test of what a reasonable person would do in the individual circumstance, taking all factors into account. Commercially reasonable efforts refer to efforts which use a standard of reasonableness defined by what a similar person would do as judged by the standards of the appropriate business community.”

The Committee then considered Article XI – Plans and Plan Review. Mr. Krummel said that the Design and Review Consultant should be a licensed architect. Ms. Sweitzer then referred the Committee to page 10 of the definitions, where the agreement identifies the type of firm or individual that would meet the qualifications. Discussion followed on the actual wording of the first paragraph.

Mr. Hempstead then asked if the project could be designed to the LEED standards. Mr. Sheehan said that the Agency might require a design standard overlay for the project. Mr. Sheehan also explained that they did not want to incur extra costs to the developers. He added that there actually was a garage in California that had been designed and constructed to LEED standards.

The discussion then moved to the process for the City to request a change order on the project. Mr. Hempstead had concerns about the lack of a timeline being included in the last paragraph of the Article regarding disapprovals of change orders. Ms. Sweitzer explained that on page 34, there is a statement that requires the City to respond to the request, but that there wasn’t a timeline for the Council to respond. Mr. Sheehan made a note of this. A failure to act on the part of the Council will now be considered disapproval.

Mr. Sheehan then reviewed the details of non-conforming work. Mr. Conroy then suggested that a certified letter be used to make the Agency aware of the change. Discussion then followed.

The Committee then reviewed Article XII – City’s Infrastructure Obligations. Mr. Sheehan then gave an overview of this section to the Committee. Some of the

improvements involve State funding and the City is already obligated to make these improvements.

Mr. Sheehan then reviewed Article XIII – State Traffic Commission (STC) Certificate and his comments to Common Council. He said that the project should be presented as one project and not in phases because of the time involved with the STC reviewing each segment of the project.

Ms. Brown then asked what the process would be once the comments were answered. Mr. Sheehan then explained how he planned on making the answers from Robinson and Cole available to the public.

Mr. Sheehan then reviewed Article XIV – Public Improvements, which defines the purchase model and waives the requirement for competitive bidding. Discussion then followed.

Mr. Hempstead noted that the final paragraph should contain specific requests regarding the type of surveys that should be submitted and that copies of the “as built” plans should be included.

Mr. Krummel had concerns about prevailing wages as outlined in Section 14.4. Mr. Sheehan pointed out that the prevailing wage for construction workers was higher than what the City’s prevailing wage was. Mr. Krummel then asked if the prevailing wage would apply to the entire project. Mr. Sheehan said that the developer was willing to pay prevailing wage for the public improvement portion. However, requiring the developer to pay prevailing wages for the entire project would incur a significant increase in project costs. Mr. Krummel said that the project would not be feasible without the City’s portion of the funding. Mr. Sheehan said that the City was buying public infrastructure in the form of roads and other items. Discussion then followed.

Mr. Conroy said that he had believed that this issue had been addressed before. He added that on a previous project, it turned out that there were no union members in certain fields available in Norwalk. This resulted in workers driving in from Bridgeport, New Haven and other areas. Mr. Krummel said that when he was the head of the Brien McMahon building project, he regretted that he did not push for local apprentices for the projects. Mr. Krummel said that it would be important to start working on this aspect. Mr. Conroy pointed out that the unions would not necessarily be in favor of this issue because it means that the union employees in Bridgeport and New Haven are not working on the project in Norwalk. Mr. Hilliard said that at the union meeting that he had attended, the union leaders were the ones who were suggesting apprenticeships.

Mr. Sheehan said that he had concerns about balancing between MBEs and prevailing wages because many of MBEs do not have union memberships. Mr. Hilliard disagreed.

Mr. Hempstead pointed out that when his company had done a project, the final employee mix had been between the union and non-union. MBEs often don't have the manpower for large projects, so the unions usually get the larger portions of the project while the MBEs filled in the smaller portions. He added that if the standards are too high, the smaller companies are pushed out. Mr. Hempstead suggested that an addendum be added to give preference to Norwalk companies that have a percentage of employees that reside in Norwalk. Ms. Brown then asked if the public improvement portion of the project had prevailing wage. Mr. Sheehan said that this was so. Discussion then followed about how the prevailing wages would impact the entire project.

Mr. Krummel said that he objected to the information in Exhibit J because the costs were the redeveloper's numbers and that the Council had not reviewed the cost estimates. Mr. Sheehan said that he would put a resolution for a new cost estimate before Council and warned that it would be expensive. He added that he and Mr. Hamilton had expected to do this at a later stage of the project.

**** MR. KRUMMEL MOVED TO AUTHORIZE STAFF TO OBTAIN THREE COST ESTIMATES TO PRICE THE ENTIRE WAYPOINTE DEVELOPMENT PROJECT AND TO PRICE THE SAME PROJECT AS BOTH PREVAILING WAGE AND NON-PREVAILING WAGE.**

Mr. Hempstead then asked if this would be subject to funding available. Mr. Sheehan said that the funding would come out of the City's West Avenue Capital budget. A lengthy discussion then followed.

**** THE MOTION PASSED UNANIMOUSLY.**

The discussion then returned to Comment 6 in the Executive Summary, which Mr. Sheehan felt should be submitted to Corporation Counsel or Robinson and Cole.

Mr. Sheehan also pointed out that he had some questions about Comment 7 in the Executive Summary regarding the SSD Board being restricted to only using the Parking Authority.

APPROVAL OF MINUTES

October 27, 2008 Special Meeting

November 6, 2008 Regular Meeting

**** REV. BOLDEN MOVED TO TABLE THE MINUTES OF OCTOBER 27, 2008 SPECIAL MEETING AND THE NOVEMBER 6, 2008 REGULAR MEETING.
** THE MOTION PASSED UNANIMOUSLY.**

**** MR. HEMPSTEAD MOVED TO ENTER INTO EXECUTIVE SESSION FOR THE PURPOSE OF REAL ESTATE NEGOTIATIONS.**

**** THE MOTION PASSED UNANIMOUSLY.**

The Committee entered into executive session at 10:30 p.m.

Respectfully submitted,

Sharon Soltes
Telesco Secretarial Services

