

**THE CITY OF KENT OHIO
COMMUNITY DEVELOPMENT COMMITTEE
WED., AUGUST 4, 2010**

This meeting of the Community Development Committee of Kent City Council was called to order on Wed., August 4, 2010, by Erik Valenta, Chair, at 7:18 p.m.

PRESENT: MR. AMRHEIN, MR. DELEONE, MR. FERRARA, MR. KUCHAR, MS. SHAFFER, MR. TURNER, MR. VALENTA, MS. WALLACH, AND MR. WILSON

ALSO PRESENT: D. RULLER, CITY MANAGER; J. SILVER, LAW DIRECTOR; D. SMITH, DIR. OF ECONOMIC DEV.; AND L. COPLEY, CLERK OF COUNCIL

ABSENT: JERRY T. FIALA, MAYOR

MOTION TO RECESS THIS MEETING TO ALLOW THE FINANCE COMMITTEE TO CONVENE AT THIS TIME.

Motion made by Mr. Wilson, seconded by Mr. Ferrara.

Mr. Wilson said they will be discussing Tax Incremental Financing in Finance Committee, and unless that passes, there is no sense in discussing the Land Development Agreement.

The motion carried by a voice vote of 8-0-1, with Mr. Valenta abstaining.

Chair Valenta recessed this meeting at 7:19 p.m.

Chair Valenta reconvened this meeting at 8:38 p.m. He explained the only item on their agenda dealt with the Land Development Agreement.

Dave Ruller, City Manager, explained this deal was being structured with Mr. Ruttenberg and allows him to do his investments. He said all pieces will be articulated, and each round will be more defined with respect to who will do what, conditions of the various commitments, and the next steps. He said there are exhibits with the Land Development Agreement, adding that one is the lease agreement which will be the final significant milestone when all conditions of the LDA are met, including Mr. Ruttenberg having his financing. He said they tried to talk to all of them regarding the terms of the agreement, and it is very legalistic. He said it was the same team that was involved in the TIF agreement.

Mr. Smith said they have to sign the LDA in the next week or two to allow Mr. Ruttenberg to get his financing. He said there are twelve conditions for the lease. Mr. Smith said they will own the land under the agreement, and can dictate the types of development. He said, for example, that check cashing and tattoo parlors are not on the list. He said they already have two great anchors.

Mr. Smith said the City will lease the property to the developer, who will control it for seventy-five years, with a twenty-four year renewal clause. He said if they enter into the TIF, they are down to eleven items. He said some of those items include the amount of square footage of residential and commercial development. Mr. Smith said one-half of the good faith money will be returned to Mr. Ruttenberg when the LDA is signed, and the other half will be returned when the footers go in. He said the lease is where they get to talk about their expectations. He said that one reason they can limit the types of businesses are because the City will control the land. He said if Fairmount wants to buy out the City, it is their option, but the City has conditions that must be met to approve the sale.

Mr. Smith said the lease speaks of the responsibility of maintenance and repair, as well as use restrictions. He said it will include a surface parking lot of 105 spaces in the middle, as well as the top two floors of the multimodal. Mr. Smith said it includes the rest of the utility relocation, demolition work, and other public improvements and street construction on Erie Street and Depeyster Street.

Mr. Kuhar said that since they are putting in \$3 million in the PARTA facility and paying for the parking lot in the development, as well as providing the infrastructure, he did not understand why they cannot get money from the lease. Mr. Smith said in the pro forma, during the negotiations, there has been a gap. He said Mr. Ruttenberg has taken on the challenge of finishing that gap. He said Kent is not an "A" market with twenty people behind Mr. Ruttenberg to do a development. He said Mr. Kolmosi, along with another consultant, assisted with this process. Mr. Smith said this is what they are contributing to make the project happen.

Mr. Kuhar said that Mr. Burbick is putting in millions of dollars, and feels he is going to have a success. He said they are giving, giving, and giving because they want the downtown so bad. He suggested they may be giving too much. Mr. Smith said that Mr. Burbick needs what is being generated, as he needs the parking deck.

Jim Silver, Law Director, said that by keeping the property, the City does not have to buy it back in seventy-five years. He said they will still have an asset with value, because they kept it. Mr. Kuhar said they are not handling the \$2.5 million, and suggested they invested too much. He said it looks like the other end of the TIF agreement where they will break even or better. Mr. Kuhar said they are not even getting anything back on their \$2.5 million investment.

Mr. Ruller noted that Mr. Kuhar almost answered his own questions. He said with the TIF that was approved earlier, they created funding mechanisms to pay for parking lots and surface lots. He said that is the premise of the TIF. Mr. Ruller said Mr. Ruttenberg's investment will drive up the property valuation, with a share coming back to pay for the infrastructure at no existing cost.

Mr. Kuhar said they are not speaking about the initial \$2.5 million. Mr. Ruller said he understood Mr. Kuhar's point of view, and noted that their consultant has said from their \$2.5 investment, they would be getting a return of about \$165,000 annually. He said if they amortize \$2.5 million over thirty years that would be about \$80,000 annually. He said if they do not like his approach regarding an annual yield, they can realize the project is paying back the land, and can argue that they are doing it in 16 years. Mr. Kuhar said that is not paying back \$2.5 million. Mr. Ruller said it is generating \$165,000 in annual revenue, which goes into the undesignated balance, replenishing what they took out. He said that is part of the logic and value of a TIF, adding he understood Mr. Kuhar was not a huge fan of it.

Mr. Kuhar said he is not a huge fan of paying for something with the taxpayers' money and giving it away. Mr. Ferrara asked what they were giving away, and Mr. Kuhar said they are giving the use of the property away.

Ms. Wallach said she supposed the reason they were leasing it for \$1 per year was in lieu of tax abatement, as they were giving them \$2 million in property for free. Mr. Smith said he was unsure he would categorize it as an abatement, adding it is more like an incentive. Ms. Wallach said it is the same thing as a tax abatement, which runs ten years. She said they could charge them a minimum amount of rent, after a certain number of years, and suggested \$1,000 per month. Mr. Smith said it was more likely they would sell their interest or buy them out, adding it was most likely they would sell their interest. Ms. Wallach said they do not want to sell it, adding they do not want it the way it was. Mr. Smith said he agreed, but if Mr. Ruttenberg wanted to buy it in four years for \$3 million that is a discussion for a future Council. He said they have that option. Ms. Wallach asked why he would want to do that if they can rent it for \$1 per year, and Mr. Smith said someone else may want to buy it out. He said there are provisions in the lease to consider it. Ms. Wallach asked if there were deed restrictions, and Mr. Smith said there was a host of restrictions, preempting things like check cashing and tattoo parlors. Ms. Wallach asked about restrictions when they sell it, and Mr. Smith said it would be negotiated at that time. He said he did not anticipate anything like that until well after stabilization. He said this is a way to make the project happen, be financially viable, and getting the structure built.

Mr. DeLeone asked if the prohibitions on tattoo parlors included body piercing, and Mr. Ruttenberg said, jokingly, that he never said anything about body piercing. Mr. Smith said he thought it would be safe to say they would not have body art, and noted there are other places in town for body art.

Mr. Kuhar asked that they clear something up for him. He said they are talking about wanting to keep control, but are offering the developer the option to buy it at a later date. Mr. Smith questioned why they would not give themselves the option later if the market conditions were good. Mr. Kuhar noted they are contradicting what they said originally, that they want to control it for seventy-five years. He asked which it was, and Mr. Smith said they do not anticipate it happening, but it is an option in the lease. He said they are giving themselves the alternative. Mr. Kuhar said they should sell it up front. Mr. Smith said the project does not happen if they do not lease the land because the pro forma does not work. He said they have built in as many protections, alternatives, and options as possible, which is why they had Pam Hanover and hundreds of hours wrangling. He said the purpose was to make the project happen.

MOTION TO AUTHORIZE THE LAND DEVELOPMENT AGREEMENT, WITH THE EMERGENCY CLAUSE.

Motion made by Mr. Ferrara, seconded by Mr. Wilson.

Mr. Ferrara said it was a well-thought plan that gives them options, which is exactly what they want. He said it makes it work for Fairmount and the City. He said it was well done and a nice job.

Mr. Wilson said he was happy they got to this point, and looked forward to seeing it move quickly.

Mr. Kuhar said he is happy to see it go through also. He said he did not like throwing cogs in the wheel, but felt they should get something, even if it was a token. Mr. Kuhar said \$1 is not a token.

Mr. Wilson said the \$40 to \$50 million investment by Mr. Ruttenberg is something, adding he does not even live in Kent. He said they are getting that in the form of investment. He said they are getting something for their money.

Ms. Shaffer said they are minimizing the risk by holding onto the land. She said they have learned the perils of not owning the land and the difficulty in making something happen. She said if the worst came to pass, they still have the opportunity to have something happen quickly.

The motion carried by a voice vote of 8-0-1, with Mr. Valenta abstaining.

Hearing no further business before this Committee, Chair Valenta adjourned this meeting at 8:52 p.m.

Linda M. Copley, Clerk of Council

ACTION RECOMMENDED:

- 1) TO AUTHORIZE THE LAND DEVELOPMENT AGREEMENT WITH THE EMERGENCY CLAUSE.**

