

MINUTES OF THE COMMITTEE OF THE WHOLE
November 5, 2018
Auditorium

Present: O’Leary, Anderson, George, O’Malley, Rader, Litten

Also Present: Mayor, George Papanreas of Carnegie Development, Planning Director Sylvester, Law Director Butler, Finance Director Pae, 4 members of the public, Cathryn Greenwald of Thompson Hine

Call to Order: 5:40 p.m.

One Lakewood Place Development Agreement Discussion

Director Sylvester stated that tonight’s meeting satisfies Council’s request in the enabling legislation of the term sheet that a public meeting be held upon execution of the development agreement. The development agreement was sent to Council on Wednesday. It is a formal partnership between the City and Carnegie. It augments the term sheet that was approved several months ago. He spoke about the future steps ahead of the project and expressed enthusiasm for Council’s input on these.

Key updates:

- Diesel fuel tanks for generators have been removed
- Soil is remediated
- Construction crews will begin mobilizing mid-November to begin abatement and demolition. The site will be fenced in during this process.
- May 1st 2019 is the target date for abatement and demolition to be complete.
- Goal is to start construction in 2019
- Safe Co. Environmental has been awarded the demolition and abatement contract
- Generators will be removed in November
- Police and fire been using the building for training
- City is wrapping up work with the Historic Society regarding the salvage of items

Director Sylvester displayed a picture of an engraved stone sign from inside the hospital site and said that it will be salvaged and reincorporated into the project.

Upcoming Meetings:

- Belle & Marlowe neighborhood meeting 11/13 at 7:00 in auditorium
- Planning Commission – December 6th @ 7:00
- ABR – December 13th @ 5:30
- December community meeting to discuss community gathering space - TBA

Recap from Boards & Commissions:

Director Sylvester provided a brief recap of Carnegie’s presentations to Planning Commission and ABR. He directed Council to the minutes and videos of the meetings online. He relayed

some of the concerns and questions expressed by residents at these meetings. He displayed some of the materials/visuals that were presented at these meeting.

Tennant & Business attraction update:

Mr. Papandreas expressed excitement about how far Carnegie and the City have come together in negotiating a development agreement. He praised the development agreement for providing the necessary flexibility. The agreement will allow Carnegie to make commitments to the tenants it is actively pursuing. He stated that prospective tenants have expressed a lot of interest. There is currently a potential business tenant looking for 50,000 square feet. Mr. Papandreas stressed the importance of delivering space to tenants on schedule and on a timely basis. He mentioned interest from a fitness center, grocer, and a boutique hotel. He expressed enthusiasm for moving forward with the design stage of the project and incorporating input from the public and City boards.

Director Sylvester remarked that dialogue thus far between Carnegie and the boards and commissions has been productive and thorough. He encouraged Council to take part in these meetings. Edits will continue to happen that make sense. He provided copies of answers to questions emailed by Councilmember Rader.

Director Butler emphasized that the administration was very careful to only magnify where necessary the terms of the term sheet in the development agreement and not to go against them in any way. The development agreement is meant to be an extension of the term sheet and does not violate any term of the term sheet.

Discussion:

In response to a question from Councilmember Rader, Director Sylvester explained that Council will not vote on the development agreement but will vote on the re-zoning of the property after Planning Commission and ABR submit their recommendation on this to Council. The expected timeline for this is January-March.

In response to a question from Councilmember Rader, Director Sylvester explained the project is required by federal law to meet ADA accessibility standards.

In response to a question by President O’Leary, Mr. Papandreas explained that Carnegie looks forward to sharing information about its tenants as soon as it is able. Some tenants will be requesting specific designs. Tenants will be announced on a rolling basis.

In response to a question by Councilwoman George about the height of the buildings, Director Sylvester stated that Carnegie is still pursuing the mid-rise option in favor of the high-rise option. The marketplace will determine the final design. Right now it is not thought that the marketplace can support a high rise, though this will be confirmed through further market research.

The Committee discussed the provisions in the development agreement pertaining to what would happen if Carnegie failed to complete the project. Should that happen, the City would have the right to re-purchase the property and pay the difference for whatever value Carnegie added to it.

Ms. Greenwald stated that this outcome is unlikely and even less likely to occur at a late stage in the project development.

In response to a question from Councilmember George, Director Sylvester addressed plans for creative re-use of historic building features. He stated that there will likely be incorporated into the public space. More discussion on this will occur as part of the planned development zoning process.

Mr. Papandreas expressed Carnegie's strong commitment to follow through on this.

Director Sylvester remarked on the timeline moving forward. Council can expect to receive a report back from Planning Commission and ABR in the first quarter of 2019 in order to allow for construction to begin summer or fall of 2019. He explained that the next update that Council will receive will have additional design details and schematics.

The Committee discussed the possibility of a boutique hotel going into the space. It discussed past and recent studies which have confirmed market demand for a hotel and the details of these studies.

The Committee discussed the various ways in which the project is insured to protect the City. Director Sylvester explained that the City's existing insurance covers environmental risk associated with the demolition and abatement portion of the project.

Ms. Greenwald referred to Section 5.7 in the development agreement, which requires all contractors to be bonded and insured. This protects the City in case contractors fail to perform as agreed.

Mayor Summers cautioned that the project is predicated on a rationale marketplace and that there is no absolute certainty to anything. Nevertheless, he stated that the developer is bearing 90% of the risk and the City has taken steps to protect itself in extreme cases.

President O'Leary thanked all who worked on the development agreement.

Committee of the Whole adjourned at 6:30 p.m.

Councilmember Rader - Questions Regarding the Hospital Property D&U Agreement.

Director Sylvester,

Please answer the following in writing and be prepared to speak to these topics at the Public Hearing regarding the Development and Use Agreement.

Thank you.

Tristan Rader

RECITALS

B. How is this development “in the best interest of the City and the health, safety and welfare of its residents” – I understand the employment and economic aspects, but I’m at a loss how this is improving our health safety and welfare? Please explain:

The Project will generate economic development, grow jobs and increase the tax base, all of which are in the best interests of the City and support the many health, safety and welfare initiatives undertaken by the City.

1.1 Does this actually mean anything? "...shall reflect a mix of uses that is responsive to community demand and additive to the retail base in the City of Lakewood..." Or is it just fluff. Wouldn't building even one square foot of "retail space" be "additive to the retail base"?

The Development Agreement requires that the Project include not less than 25,000 square feet of retail space, but gives Developer some flexibility to be responsive to community demands and changing market conditions in determining the specific tenant mix that will maximize retail activity and the benefit to the community.

1.2 “City’s prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed,” – Seems Carnegie will not be managing the residential, and the city basically has to sign off – will they also be able to sell off portions of the project? I don’t see anything preventing future sale. Please explain:

If the Developer proposes an unaffiliated developer for the residential portion, it does have the right to convey that portion of the Project to the unaffiliated residential developer upon such developer’s assumption of the obligations under the Development Agreement relating to the residential component. Other than the initial conveyance to the unaffiliated residential developer, Section 11.2 prohibits the transfer of ownership of any portion of the Project to any unaffiliated third party for a period of 3 years after substantial completion of that component.

“In the event that Developer engages an Unaffiliated Residential Development Partner that is approved by the City hereunder, Developer shall be forever released from any further obligations or liabilities hereunder with respect to the Minimum Residential Component of

the Project.” – Explain this – Seems the minimum residential component is only valid until Carnegie sells the residential component or contracts a company to manage it for them.

The unaffiliated residential developer is required to assume in writing all of the Developer's obligations relating to the residential component. This means the City would have the right to enforce those portions of the development agreement against the unaffiliated residential developer and cause such unaffiliated residential developer to complete the residential portion of the Project.

1.3 c) There is no mention of making the Curtis Block building ADA complaint or any commitment at all to accessibility of the Curtis Block building... In fact, accessibility, disability, and ADA are not mentioned once in the entire document. I'm personally very concerned with the lack consideration in terms of making this a place for ALL Lakewood. We are making a serious investment here of public assets, we need to do better! Please explain why this is missing. Please explain plans to include these requirements, if any:

All projects are subject to the ADA as it is a federal law. As part of the ABR approvals, Developer will be required to meet the same ADA requirements as any other developer proposing to construct a project within the City of Lakewood.

New buildings are required to meet the design guidelines of the American with Disabilities Act Accessibility Guidelines (ADAAG) as part of the ADA. The Ohio Building Code (OBC) requires accessibility in new structures through Chapter 11 of which references the International Code Council (ICC) publication A117.1 Accessible and Usable Buildings and Facilities. This publication closely mirrors the requirements of the ADAAG.

The building code allows certain accommodations such that existing buildings, including those identified as historic are not required to fully comply with accessibility requirements found elsewhere in the state building code. The extent of compliance is dependent on the scope of renovations and/or change of use proposed. For example, a restaurant in a tenant space previously occupied by a store, would likely be required to fully comply. Renovations to an existing apartment, however, would not trigger a requirement for that apartment to become fully accessible.

Proposed modifications and required level of compliance are determined during the plan review phase. This occurs when design documents are submitted for evaluation by a certified plans examiner. The plans examiner reports items of noncompliance to the building official who then communicates those to the applicant. If the design documents are found to comply with the code, a certificate of approval is issued granting the property owner a license to perform the proposed work. From there, a permit is issued allowing for the actual work to commence.

1.4 This paragraph includes "first class" twice, with a hyphen once and without in the other instance. What is the definition of "first class" and "first-class" are these different?

Councilmember Rader - Questions Regarding the Hospital Property D&U Agreement.

The hyphen is just a product of how the term is used in the sentence. The intent is to make clear that this is to be a quality design. Specifics regarding the quality of design will be addressed as part of ABR approval (as described below). Please also see the response to your question on Section 5.1 below.

I gather that the “public space” is a concrete slab, correct? Will this incorporate green space? Will the city have any control over design? There does not seem to be any sort of requirements about space design aside from the size. (mentioned later, it will need to comply with existing code, but that seems to be it.) Please explain:

Pursuant to Section 4.2, the design of the Public Plaza will be subject to ABR approval as part of the overall review and approval of the Project. Section 6.1(b) contains some further restrictions regarding what can be constructed on the Public Plaza, which restrictions are also incorporated into the deed conveying the Project to Developer.

The design of the public space has been discussed in detail at two ABR and two Planning Commission meetings. ABR, Planning Commission, and members of the public have expressed the importance of balance between green space and hardscape. The design of the space will be a topic at upcoming community meetings and will be a focus of the review by ABR and Planning Commission.

b) “Clinic has a right to obligate the City to enter into a parking lease for a portion of the Development Site (the “Parking Lease”).” - I read this to mean the CD&M has the absolute right to terminate the contract, if City can't deliver on the Parking Lease. Is this obligation restricted? What was the thinking behind letting the Clinic have a claim on this site's? Does the city have any financial obligation relating the parking lease? Please explain:

As part of the negotiations with LHA and the Clinic regarding the closure of the hospital, the City agreed in the Master Agreement that the Clinic would have the right to a long-term lease of the existing ED parking lot in order to provide sufficient parking for employees and patients of the FHC. In order to ensure this lease does not interfere with the overall development, we are working with the Developer and the Clinic to negotiate a lease that will be acceptable to all parties (and will eventually convert to a lease of a portion of the parking garage that is to be constructed). Because the parties have not yet agreed on a final form of lease, the Development Agreement does allow Developer to terminate the Development Agreement if the lease is unacceptable; however, since Developer is involved in those negotiations, this is unlikely to occur. The City has no financial obligation in connection with the parking lease – their obligation under the Master Agreement is to provide the lease and, so long as the City continues to own the Project, it will have the right to collect fair market rent from the Clinic for the lease of the parking lot.

2.1 “Developer for any reason (or no reason) in Developer's sole determination and, upon such termination, the parties’ obligations under this Agreement shall terminate, except” – What happens to the land in this case? IF the Developer terminates, It's a little unclear to me. Please explain:

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If Developer elects to terminate the Development Agreement prior to the expiration of the due diligence period, the City continues to own the property and is free to enter into negotiations with another developer.

Indemnification clause seems solid.

2.2 Seems agreeable.

2.3 (e) Is paying ½ the closing costs typical? *Yes, this is customary in Ohio.*

I think it important to include these costs along with legal fees up to this point and beyond in any further analysis of as the city's investment in this deal. i.e. ROI or payback figures presented to the public.

2.4 (viii) Was this section a result of the tax payer lawsuit, referendums, and other challenges to the Clinic Master Agreement. Does anyone involved in the drafting or approval of this contract anticipate a challenge to this agreement? Please explain:

It is common in real estate agreements for this type of condition to apply to both parties' obligation to close on the sale of property, as such actions could prevent a closing, materially delay a closing date or complicate financing for any development.

2.6 (b) Is there some concern that the residential component might not be workable? Seems a pretty good exit path. I thought the residential component was one of the more solid aspects of the project? Please explain:

Because the required commencement date for the residential component is later than the other components of the Project, but the property is all being conveyed at once, Developer offered to include a repurchase right to provide additional comfort to the City that the residential component would move forward (just on a different timetable). Because the property is being developed as one cohesive project, there are practical reasons to convey all of the property to the Developer at one time in order to allow for the most effective development of the Project (such as completing all the site work at once or using the residential area for up front staging).

c) What does "approved by the City" mean? Does the city mean the mayor in all instances in this agreement? Also, this whole section seems weird. If the property reverts to Lakewood, "...the City shall pay Developer an amount equal to any increase in value" that occurred while off the city books? Please explain:

"Approved by the City" in the context of approving the appraiser selected to complete the upfront appraisal of the property, would mean the Mayor/Planning Director. Developer requested that the Development Agreement account for any value created by the Developer between the time the property is initially conveyed and the time the City would exercise the recapture right.

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Once the city remediates the property, it will be worth substantially more. In this instance, would we owe them the difference between \$0 or \$1 and the assessed value at time of termination? Or would the remediation the city does be accounted for? I really don't understand this, please explain in detail:

Note that the remediation/demolition work is being completed prior to the conveyance of the property to the Developer, so the value created by this would not be included in the repurchase price. What is intended to be captured is any improvements the Developer may make to the property between the initial conveyance and the recapture. The appraiser will assess the fair market value of the property at the time of conveyance and in the event of recapture. Appraisers typically consider a number of factors in completing a fair market value appraisal of a property, including an emphasis on comparable sales, and could also include a consideration of the assessed value and other factors.

3.1 c) "There is no litigation, proceeding or action pending or, to the best knowledge of [the City]..." – Are there any document retention notices, or any other notices, relating to the master agreement, thus relating to the property? Please explain:

We assume you intended to reference 3.2(c). The City Law Director has confirmed that there are no documentation notices currently in effect and the representation set forth in Section 3.2(c) is true as of the date of this response.

5.1 "High quality materials" shall mean durable and authentic materials containing thoughtful detailing." - What would qualify as in-authentic material? Can you give examples? Is there a legal definition? This is vague. Please explain:

This language is intended to emphasize that Lakewood's high quality standards will need to be met and is an additional tool for the City and ABR to use to ensure the materials used in the Project are commensurate with Lakewood quality standards.

ABR utilizes the Commercial Design Guidelines, the language in the Planned Development Zoning Chapter, and Chapter 1325 of the Lakewood Codified Ordinances to guide its review and its determination of quality.

- *Commercial Design Guidelines: http://www.onelakewood.com/pdf/2015_CommercialDesignGuide.pdf*
- *Planned Development Zoning Chapter 1156.05 - <http://www.conwaygreene.com/lakewood.htm>*
- *Chapter 1325 of Building Code: <http://www.conwaygreene.com/lakewood.htm>*

"...will seamlessly integrate with the design, massing and materials of existing commercial buildings" – Seeing as our downtown is extremely eclectic in terms of commercial design, this is slightly meaningless. – no explanation needed, just seems a very cookie cutter phrase, making the document feel out of touch.

The URL, onelakewood.com/DowntownRFO, does not load. Consider having this ready for Monday's meeting. Even if there is little content, public facing links should work.

Thank you for bringing this to our attention. This has been corrected. Please note that the above link has an "O" instead of a "Q". Please use www.onelakewood.com/DowntownDevelopment moving forward.

5.4 Again, it is very important that future subsidies that this section allows or might be anticipated **must** be included in any and all figures presented to the public.

5.6 When will this plan to minimize impact on the community during construction be discussed and worked out? I think that at least Wards 2 and 3 Councilmembers should have input on this and work with the Mayor on plan development. Please explain:

A meeting with the neighbors on Belle and Marlowe is scheduled for Tuesday, November 13th at 7:00 pm in the City Hall Auditorium. The purpose of this meeting is provide project information, including information about demolition and construction at the property, and also to allow for input to help shape the One Lakewood Place Development. Input from those surrounding the proposed development is critical to the success of the project.

5.9 (b) "... to the extent economically feasible in Developer's sole discretion, the following elements:" – What guarantees do we have that 5.9 (b) to the end of 5.9 will be implemented? Please explain:

Developer is just entering into the due diligence phase of the Project, which will inform their understanding of which sustainability features are most appropriate for the development and are economically feasible. Developer will work with the City during the due diligence period to identify the sustainability features that make the most sense for the Project.

The agreement should include detailed, firm specifications for parking, "exploring" bike infrastructure is not sufficient. The concern with sustainability seems perfunctory.

What about bio swales, roof top gardens, water permeable services? These have all been discussed at some point. What was the rationale behind not including them here? Please explain:

Consistent with the term sheet, the Development Agreement incorporates Developer's general commitment to incorporating economically feasible sustainability features in the Project. More specific specifications and features will be explored during the due diligence period. Storm water management will also be discussed specifically with Planning Commission during its review of the Planned Development Zoning.

6.1 (b) (i) What is the O&M plan? It is referred to and supposedly defined by this agreement, but I'm failing to find a concise definition. I assume it means "Operation and Management?" Please explain:

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This is the plan/agreement that will be jointly developed by the City and Developer prior to completion of the Project and will describes the Developer's obligations regarding ongoing maintenance of the Project as well as its obligations to continue to provide programming at the Project. The parties will commence negotiating this agreement during the due diligence phase.

The Public Plaza Purpose is defined as: "The Public Plaza shall be a first-class, multi-functional community gathering space dedicated to public use." In section 1.4 is this correct?

Correct. This is the definition of Public Plaza Purpose.

This section seems pretty good as a whole. Though, I'm concerned about the preservation of freedom of speech. To me one of the major differences between public and private land, as far as the citizenry is concerned, is how the first amendment treats them very differently.

The Public Plaza will be privately owned and managed and will be made available to the public for public purposes consistent with the ABR and Planning Commission approvals and the terms of the O&M Plan, which the City will approve. The City owns and manages numerous other spaces throughout the city that are available for the exercise of free speech. We note the sidewalks surrounding the Public Plaza are a public forum upon for free speech.

7.1 Seems the O&M plan is an extremely important instrument in making and keeping this public/private space accessible to the public. Will council play a role in this documents development and approval? Please explain:

The Development Agreement and the deed conveying the property to the Developer, which will be recorded, are the primary documents providing for the public's access to the Public Plaza. The use and design of the Public Plaza will be further determined by ABR and Planning Commission. The O&M plan will deal more with the day-to-day operations and maintenance of the Project and ensure that the high quality of the Project will be maintained. It is not anticipated that Council will play a role in the O&M plan.

7.2 "...[Public Plaza] shall be available to the City, without rental or other similar charges, for a maximum of fifteen (15) City-sponsored community events..." – Why 15 events per year? Where did this number come from? Please explain:

This number was the result of negotiation between the parties and an estimation of a reasonable number of events the City would want to host in a given year. Note that Developer also will make the Public Plaza available for rental directly to community and other groups.

9.3 (b) "... the City shall pay Developer an amount equal to any increase in value from the Pre-Closing Appraised Value for the component at issue to the Post-Closing Appraised Value for the component at issue, less any sums required to payoff and release in full the Secured

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Liens.” – similar to 2.6 (c) same question – Please explain if answer is at all different from that given for 2.6 (c)

See response to Section 2.6(c) above.

10.1 Community engagement - This section is vague. I would like to see some commitment to having a minimum number of meeting with residents, mailing regarding construction, guarantee to responded to email and social media messages within 24 hours. A promise to make weekly updates on social media, via email and via the city’s website. Maintaining a list of those who would like updates on progress.

Developer has been consistently committed to public communication and community engagement throughout the planning process, appearing at numerous planning sessions and City Council meetings. The general commitment in the Development Agreement reflects Developer’s intent to continue to keep the public informed and engaged during the due diligence period and construction of the Project. Details of the engagement plan and approach will be developed with the Planning Director during the due diligence period.

As of November 5th, there have been two Planning Commission meetings, and two ABR meetings. There has also been a meeting with the LakewoodAlive Board and the Downtown Lakekwood Business Alliance. There will be a meeting with the Belle and Marlowe neighbors on November 13th at 7:00 pm in the City Hall auditorium. The next Planning Commission meeting is December 6th at 7:00 pm in the City Hall auditorium. The next ABR meeting is December 13th at 530 pm in the City Hall auditorium.

Meeting minutes and videos are available at www.onelakewood.com/DowntownDevelopment.

13.1 Reading the names in this section, I am once again left wondering where are the women in this allegedly "Women-Owned Small Business (WOSB) builder-developer."

It appears you are raising a question relating to the principal ownership of the Developer. Per the Developer’s website, the company is a female owned, diversified real estate development and management company. Section 13.1 deals with who receives legal notices relating to the Development Agreement and reflects the parties Developer identified to receive such notices. It does not reflect the entire Developer team that has been and will continue to be involved in the Project.