

BRECKSVILLE COMMUNITY IMPROVEMENT CORPORATION

MINUTES Of June 14, 2018 Meeting Brecksville City Hall Council Study 8:00 a.m.

Present: Mayor Jerry N. Hruby, Council President Mike Harwood, Citizen Member Matt Garito, Finance Director Laura Starosta.

Guests: Alan Ritchie (Conference Call) and Jack Clark from Thompson Hine LLP, Kevin DiGeronimo from DiGeronimo Development LLC.

Call to Order: Garito called the meeting to order at 8:05 a.m.

Meeting Minutes: The minutes of the March 14, 2018 meeting were presented for review and approval.

Motion: Garito made a motion to approve the minutes of the March 14, 2018 meeting as presented. Mayor seconded the motion. Ayes: Garito, Harwood, Hruby. Nays: None. Motion carried 3-Ayes, 0-Nays.

Elect Successor to the Board of Directors for the balance of the unexpired term of Virginia Price: Mayor Hruby nominated Finance Director Laura Starosta to fill the position on the Board of Directors for the balance of the unexpired term of Virginia Price. Hearing no other nominations, a motion by Mayor Hruby, and seconded by Garito to close the nominations was made. Ayes: Garito, Harwood, Hruby. Nays: None. Motion carried 3-Ayes, 0-Nays.

Motion: Mayor Hruby made a motion to appoint Finance Director Laura Starosta to the Board to fill the unexpired term of Virginia Price. Garito seconded the motion. Ayes: Garito, Harwood, Hruby. Nays: None. Motion carried 3-Ayes, 0-Nays.

Consideration of a Development Agreement: Alan Ritchie, from Thompson Hine LLP, stated the primary purpose for the meeting today was to discuss the current draft of the Development Agreement of the VA Property with DiGeronimo Development dated July 13, 2018. Mr. Ritchie stated a lot of work has gone into this draft agreement and he believes that both sides have worked incredibly well together.

Jack Clark, from Thompson Hine LLP, handed out a copy of the draft to members of the Board and Mr. DiGeronimo. Mr. Ritchie stated this draft is conceptually finished, however, there may be some clarification additions for the final version. He stated the goal is to have this agreement approved by all parties by the Brecksville Council Meeting on Tuesday, June 19, 2018. He encouraged both groups to take the time and look over the document for any questions or concerns either party may have.

Mr. Ritchie stated the only significant conceptual change from the MOU is the streamlining of the methodology used for the purchase price between the two parties. The

MOU utilized very complex real estate valuations and fair market value determinations and analyses'. After working through some of those concepts, there were a number of issues and complications that arose. It became clear that a specific number should be given for each "useable acre", and paid to the CIC by the developer, as opposed to the valuation system and 50/50 profit split. Mr. Ritchie explained in short, one million dollars will be paid to the CIC as an upfront payment, and forty seven thousand dollars for every "useable acre" will be paid, equaling five million dollars for the site.

Mayor Hruby asked Mr. DiGeronimo if he had sufficient time to review the document and if he is satisfied with the new terms. Mr. DiGeronimo stated there were a few clerical changes that were made late into the evening that his team would need a little bit of time to review, however, he agrees that the only real significant change to the document is what they are calling the "purchase price", and he does not foresee any problems with these new terms or any of the clerical changes, nor does he believe there will be any further material changes.

Mayor Hruby asked Mr. Ritchie if the CIC should meet again, prior to the City Council meeting on the 19th. Mr. Ritchie stated if the CIC approves the agreement that is presented today and there are further material changes to the document, the CIC would have to meet again to approve the updated agreement.

Before any vote could take place for the development agreement, the appointment of the CIC Board for the next year had to be completed.

Appointments to the Board: Mayor Hruby made a motion to appoint the CIC Board as it constitutes now; Mike Harwood representing City as the Council President; Laura Redinger representing City as the Council Finance Committee Chairperson; Mayor Hruby representing the City as the Mayor; Laura Starosta representing the City as the Finance Director; and Matt Garito representing as a Citizen Member for the following year. Seconded by Garito. Ayes: Garito, Harwood, Hruby, Starosta. Nays: None. Motion carried 4-Ayes, 0-Nays.

Questions Regarding Updated Development Agreement:

Council President Harwood stated the topics on the Executive Summary that was handed out, was also presented to Council at the last meeting. The Mayor and Dave Matty have gone into great detail with Council, and Council has been a part of this agreement all the way through. Council President Harwood had no questions at this time.

Mr. Garito asked for an explanation of the term "usable acreage". Mayor Hruby explained there are approximately 103 acres, however, approximately 85 are useable for development due to roads, storm water retention areas, greenspace and common land. Mr. DiGeronimo stated the areas will still be turned over to the developer and they will have responsibility for these areas, so if any environmental liabilities were to arise, the developer would be responsible in those unusable areas. Mr. Clark clarified the City will continue to hold the land, then the CIC will take control of the whole property, all 103 acres. After that, pieces will start being transferred to the developer. Once the agreement is signed and in effect, the developer will take stewardship, for safety, any liability, and maintenance of the whole site.

Mr. Garito asked if the upfront one million dollar payment was to ratify the agreement. Mr. DiGeronimo responded this payment was an "in good faith" effort. Knowing the format of the deal was being changed, Mr. DiGeronimo suggested a large lump sum payment to the CIC upfront. He also explained nothing has changed in the approval process. The developer still has to provide the CIC with all the details originally agreed upon, and then still goes through the proper approval channels any developer would have to go through such as Planning Commission and Board of Zoning Appeals.

Mr. Ritchie left the meeting.

Mr. Garito asked what else, if anything, has changed from the original agreement that has not already been discussed. Mr. DiGeronimo stated the deal is now just simplified, and there is more clarification additions than agreement changes, conceptually nothing more has changed. The developer intends to remediate the area all at once and have remediation and demolition complete within the first two years. Mr. DiGeronimo stated there is no such thing as a perfect deal, and there will be things that come up that are unique and are not specifically addressed. This agreement, however, has identified a process to go through for when these items emerge if need be.

Mr. Garito asked from a risk management standpoint, while the development is occurring, if all necessary protections have been made for the City and the CIC as far as accidents or injuries are concerned. Mr. Clark explained both the developer and the contractors will carry insurance, however, they recommend the CIC obtain premises liability to serve as a backup and the DNO insurance be in place as soon as possible. The agreement does not come in to effect until all documents are signed and the first payments are received, leaving a period of conveyance between the City, the CIC and the developer.

Mayor Hruby stated the City is insured on the entire parcel and will continue that insurance throughout the transfer process.

Finance Director Starosta asked Mr. Clark to clarify between the three days versus the thirty days for transfer of the land to the CIC. Mr. Clark explained that the signing date is the agreement date, from that date there is an up to forty day period for the effective date. The effective date is triggered by deposit of the upfront payment of one million dollars, deposit of one hundred and fifty thousand dollar 2018 expenses payment, and proof of insurance. Three days after the effective date, the CIC will take title to the land. This date will be the true effective date and the agreement will last fifteen years from that date.

Finance Director Starosta stated on page eleven of the agreement it says the one million dollar payment will be paid to the CIC. She had the understanding it would be paid directly to the City, and also the property will not be titled to the CIC until after the payment is made. Mr. Clark clarified, saying the statute in Ohio states any funds that are received over the value that the CIC paid and or received for the land, have to go to the City. The money must first be paid to the CIC then minus any expenses, the remainder will be transferred to the City.

Finance Director Starosta asked Mr. Clark if there was any information about filing for the CIC's tax I.D., because she cannot obtain a bank account without the Tax I.D. number. Mr. Clark stated he will look into that further.

Finance Director Starosta asked for clarification of the 2018 expense payment from the developer to the CIC. Mr. Clark stated the 2018 expense payment is a set amount. The 2019 and 2020 expenses are arranged as reimbursable expenses, so the CIC must incur the expense first and then be reimbursed. Finance Director Starosta asked if the one hundred and fifty thousand dollar expense payment was a cap or a lump sum. Mr. Clark clarified it was a lump sum and a cap because there will be no other expense payments for 2018. The whole amount will be paid to the CIC at one time, however, he said they would change the wording in the Executive Summary to reflect this explanation. Mr. Garito asked if there is a cap on the expenses in the years going forward. Mr. DiGeronimo answered there is an expense amount approximated for each year, anything above or beyond that would need to be agreed upon by both parties.

Finance Director Starosta asked for an update on the Interchange Section of the agreement and asked if there were any changes. Mr. Clark responded this section is still very similar to the MOU. He said the language for TIFF financing expresses support from the City

but no agreement. The Mayor said the City's only obligation is good faith effort. Mr. Garito asked if the cost of interchange and roads is part of the development. Mr. DiGeronimo stated nothing has been defined in this agreement other than what would normally be done by any other land owner. Mr. Garito asked if there is anything in this agreement prohibiting the City from building roads, interchanges, and etcetera. Mr. DiGeronimo responded there is no obligation and there is nothing prohibiting it. Mayor Hraby explained if the City would like to make a road a dedicated right of way, there is a process the City will go through just like any other public improvement, and there is nothing unique to this agreement.

Finance Director Starosta asked if any approval is needed to file for a Tax I.D., to obtain a bank account, or to authorize depositories as a CIC. Mr. Clark responded the CIC is a non-profit, so to follow any non-profit guidelines. It also depends on the CIC's Articles of Organization and bi-laws, however, Mr. Clark does not recall seeing anything specific as to authorizing depositories.

Federal Tax Identification Number: Garito made a motion to approve the CIC obtaining a Federal Tax Identification Number. Mayor seconded the motion. Ayes: Garito, Harwood, Hraby, Starosta. Nays: None. Motion carried 4-Ayes, 0-Nays.

Bank Account: Garito made a motion to approve the CIC obtaining a Bank Account. Mayor seconded the motion. Ayes: Garito, Harwood, Hraby, Starosta. Nays: None. Motion carried 4-Ayes, 0-Nays.

Election of a Secretary: Mayor Hraby made a motion to elect Kristen Kouri as the secretary for the Brecksville CIC. Starosta seconded the motion. Ayes: Garito, Harwood, Hraby, Starosta. Nays: None. Motion carried 4-Ayes, 0-Nays.

Election of a Treasurer: Mayor Hraby made a motion to elect Finance Director Laura Starosta as the treasurer for the Brecksville CIC. Garito seconded the motion. Ayes: Garito, Harwood, Hraby. Abstained: Starosta. Nays: None. Motion carried 3-Ayes, 1- Abstained, 0-Nays.

Mr. Clark stated a motion is needed by the CIC to approve the Development Agreement substantially in the form presented today.

Approval of Development Agreement: Mr. Garito asked if there were any additional questions regarding the Development Agreement. Hearing none, Garito made a motion to approve, substantially in the form presented to the CIC today, the Development Agreement with DiGeronimo Development, LLC. Harwood seconded the motion. Ayes: Garito, Harwood, Hraby, Starosta. Nays: None. Motion carried 4-Ayes, 0-Nays.

Resolution to Enter into Development Agreement: Mayor Hraby made a motion to adopt the Resolution to enter into a Development Agreement, reading the Resolution in its entirety. Garito seconded the motion. Ayes: Garito, Harwood, Hraby, Starosta. Nays: None. Motion carried 4-Ayes, 0-Nays.

Motion to Adjourn: Mr. Garito asked if there were any other matters deemed appropriate for the board to discuss. Hearing none, Garito made a motion to adjourn the meeting at 9:10 a.m. Mayor seconded the motion. Ayes: Garito, Harwood, Hraby, Starosta. Nays: None. Motion carried 4-Ayes, 0-Nays.