

**MINUTES OF THE SPECIAL COMMUNITY REDEVELOPMENT AGENCY
BOARD MEETING HELD ON TUESDAY, MAY 17, 2011 AT 6:00 P.M.
IN CITY COMMISSION CHAMBERS, CITY HALL,
100 E. BOYNTON BEACH BLVD., BOYNTON BEACH, FLORIDA**

PRESENT:

Jose Rodriguez, Chair
Bill Orlove, Vice Chair
James "Buck" Buchanan
Woodrow Hay
Steve Holzman
Mark Karageorge (*Arrived at 6:26 p.m.*)
Marlene Ross

Vivian Brooks, Executive Director
James Cherof, Board Attorney

I. Call to Order – Chairman Jose Rodriguez

Chair Rodriguez called the meeting to order at 6:04 p.m.

II. Pledge to the Flag and Invocation

Chair Rodriguez offered the invocation and Vice Chair Orlove led the Pledge of Allegiance to the Flag.

III. Roll Call

The Deputy City Clerk called the roll. All Board members were present

IV. Legal

Attorney Cherof had nothing to report.

V. Agenda Approval/Disclosures

A. Additions, Deletions, Corrections to the Agenda

None

B. Adoption of Agenda

Motion

Vice Chair Orlove moved to approve and Mr. Buchanan seconded the motion. The motion passed unanimously.

C. Disclosures

Mr. Holzman was concerned about the type of disclosures that should be made. He understood since there were no presentations on the agenda, there would not be any disclosures. Ms. Brooks indicated the section would appear on every agenda going forward.

There was clarification the disclosure should be on any communications with anybody that is engaged with the agenda. Attorney Cherof added, if the topic is on the agenda and it can reasonably be anticipated someone will speak to the issue and they have spoken to a Board member, the communication should be disclosed. The communication has to be with a registered lobbyist with the City of Boynton Beach. Mr. Buchanan interjected it was lobbyist, applicants and proposers. Mr. Holzman defined lobbyist as only those persons registered with the City. If an individual was paid to lobby, but was not registered, the contact would not have to be disclosed. The conservative approach, according to Attorney Cherof, would be to disclose anybody who the Board member feels has been paid to talk to a municipal official.

The consequences of non-disclosure were discussed. Attorney Cherof advised it would be the appearance of an impropriety, and if it is a continuing type of behavior, it would be an act of misfeasance in office. The questions arose who would be responsible to report any violations and who would keep track of continuing violations. Attorney Cherof noted there was no rule in that circumstance. A disclosure requirement had been adopted without any means of enforcement. Mr. Buchanan agreed to address the issue at the next meeting.

Mr. Holzman disclosed he did not know who was paid by who or who is not paid, so he disclosed he had spoken to people about certain items on the agenda. He did not know whether they were lobbyists and in some instances did not know their names. It was a full disclosure that he does talk to people in the community and they may be a lobbyist or not. To be in full compliance, Mr. Holzman disclosed he had spoken with every person listed in the yellow pages who lives in the City of Boynton Beach. Mr. Buchanan contended they should be named one-by-one.

It was pointed out the process was new and the Board members should ease into the policy. Chair Rodriguez indicated he had spoken to the Executive Director on several items and the City Attorney. There were no other disclosures.

VI. Informational Items by Board Members & CRA Attorney

A. Information Announcements

The City Hall spruce-up on Saturday was announced. Thanks were extended to the sponsors; the Solid Waste Authority, Frankie's Café, ACE Hardware and Rick Gonzalez

of REG Architects. The goal was to accomplish the interior parking area and if time and paint permitted, move along further. Multiple sessions may be necessary.

There was a reminder that Friday was the last concert of the season. *The Ocohee River Band* was featured at the free concert on Ocean Avenue. A food and beverage vendor would be available.

- B. Disclosure of Contracts with Lobbyists/Applicants/Proposers to the Agenda

(This item had been addressed.)

VII. Old Business

- A. Discussion of Change Orders for Amphitheatre and Marina Entry Projects

Ms. Brooks explained the item had been tabled at the May 10th meeting for staff to get verification from the Agency's design firm for the Marina project. The Agency has its own geotechnical engineer. There was a communication error between VHB (Vanasse Hangen Brustlin, Inc.) and the geotechnical engineer of a design update that was not made available. It included the fence posts; therefore, the engineer was unable to make a recommendation for helical piers. After discussions, VHB agreed to absorb the cost of the change order.

The amphitheater design did not include the engineer drawing for the canopy at the time of permitting. The drawings were such that a true price could not have been given without engineer drawings. When the wind load was determined, the actual footer requirements to maintain the canopy were available. Ms. Brooks felt it was a legitimate cost for the Agency and is not a CCD (Construction Change Directive) issued by an architect.

Mr. Holzman hoped any time a change order was requested, the need for the change order and source of the disputed construction issue is investigated. Ms. Brooks agreed and offered the CRA was running four construction projects with only two members of staff involved. Delving into the required level of detail is time consuming and has not always been possible. Once staff traced back through the reports and plans to find the reason for the problem, there was a legitimate extra cost and the responsible party had to be found.

Motion

Mr. Buchanan moved to approve the Marina entry project that will be costed-out to the engineering firm. Mr. Hay seconded the motion. The motion passed unanimously.

In regards to the amphitheater change order, Bruce Cavossa, Vice President of Kaufman Lynn, Construction Manager, explained the bid for the foundation sizes of the awning had called for a sona tube, eight feet deep, with no reinforcing. A Florida registered structural engineer had to be hired to size the footings to accommodate wind loads. The piers are now five feet by five feet by five feet deep and initiated a change request by the subcontractor because the requirement differed from the bid. Mr. Cavossa issued the proposed change order to the subcontractor at his risk and the work was done at his risk. It was a clear change from the contract documents.

There was also a question on the calculation of the fee for the proposed change order. Kaufman Lynn had calculated the fee per Article 16 of the Construction Management Contract that requires no fee to be more than 15% of the hard budget cost. There is a section in Article 7.3.7 that indicates the cost allowance for overhead and profit should not exceed a total of 15%, but it relates to Construction Change Directives. It is an AIA (American Institute of Architects) document issued by the architect and none have been issued. The change was required in the field to accommodate the design of the awning. Kaufman Lynn calculated the fee at 15% in concert with the contract.

Attorney Cherof commented the provision in Section 18 indicates a fee not more than 15%, suggesting the fee can be lower and negotiated or discussed. The language in the Construction Change Directives section is the only place where changes in the work and fees are addressed with 10% for the subcontractor and 5% for the Construction Manager. Attorney Cherof did not feel the language indicates in all instances the Construction Manager is entitled to 15% on top of the change costs.

Chair Rodriguez opined there were two challenges: first, should the fee to be passed on to Kaufman Lynn only be 5%; second, if Kaufman Lynn is entitled to the \$5,880. He recalled as a Construction Manager at Risk, Kaufman Lynn would honor the price. The changes have begun and Mr. Cavossa admitted he assumed a risk in the field. Chair Rodriguez contended the contractor should have considered possible changes in submitting their bid.

Ms. Ross referenced the letter from REG Architects indicating the charges were fair and reasonable and should be considered in the project. Chair Rodriguez did not feel the dollars was the issue as much as the responsibility to pay. He reiterated the City did not initiate a change order.

(Mr. Karageorge arrived at 6:26 p.m.)

Mr. Hay felt any company using a permit drawing would have done the same thing as Kaufman Lynn due to the lack of an engineering drawing. The amount of \$5,880 is insignificant in terms of the total cost. He supported the increase.

Vice Chair Orlove agreed with Mr. Hay that it met the provisions in the contract with Kaufman Lynn. Chair Rodriguez clarified the cost of the change order is \$5,880 from

the subcontractor. The 15% is Kaufman Lynn's commission on the \$5,880. Attorney Cherof pointed out they should be getting 0 to 15% and it is negotiable. Staff recommended the amount of \$5,369 which reflects a 5% commission should be paid.

Mr. Cavossa contended the mark up was not the issue, rather the interpretation of the control. The base bid included provisions for foundations. The required change in the size of the foundations initiated the request for more money. The fee calculation is a non-issue. Consistency in the interpretation of the contract was the question.

Attorney Cherof felt the cost should be included in the maximum guaranteed price that is broken down in the contract including the management fee which is \$122,063. There are also several categories that could cover this cost, such as general requirements, site construction and concrete that would cover the additional footers. Attorney Cherof cautioned this is an ongoing project and interpretation of the contract at this stage could be critical if there is an additional charge for each and every change that arises.

Mr. Hay opined it should be done on an individual basis. Attorney Cherof agreed with the threshold question, is it already incorporated in the guaranteed maximum price. It was clear there was going to be a canopy and the maximum guaranteed price should have included consideration of all variations that might develop during the term of the project. Attorney Cherof recommended the expense should be incorporated in the guaranteed maximum price and should not be approved as a change order.

Ms. Brooks inquired if other Kaufman Lynn contracts with governments had change orders. Mr. Cavossa confirmed in most construction management at risk project, the project manager for the municipality is allowed to approve change orders up to a threshold prior to seeking city council approval. He stressed Kaufman Lynn stands behind the guaranteed maximum price and Mr. Kaufman clearly indicated he would not guarantee no change order associated with unforeseen or unknown conditions. Any other contractor would not make that agreement either.

Motion

Mr. Holzman moved to deny the request for a change at this time. Chair Rodriguez passed the gavel to Vice Chair Orlove and seconded the motion.

Mr. Karageorge did not agree with the motion and noted REG had submitted a letter advising the engineering drawings were not specific. He stressed the Board had accountability for the dollars also and attempted to compromise the issue with an offer of 5%.

Mr. Buchanan pointed out the City could not expect any contractor to foresee all construction changes that are not specific in the drawings. Both sides have to be reasonable and the CRA should be responsible for the cost of the change.

Chair Rodriguez stressed it was a contractual issue and Attorney Cherof had advised the contract does not require payment of the contingency. Mr. Holzman reiterated it was taxpayer dollars and stressed there was a guaranteed maximum price and Attorney Cherof had urged inclusion of the expense in that price. Ms. Ross pointed out it was a construction project and there are always unforeseen circumstances that do arise and it would be unfair and unreasonable to not acknowledge the situation.

Attorney Cherof suggested the motion to deny the change order be done without prejudice so the contractor can revive the issue at the closure of the contract when the total contract price can be compared to the maximum guaranteed price.

Motion

Mr. Holzman amended his motion to deny with the option to revisit the item at the completion of this management-at-risk contract. Chair Rodriguez seconded the motion. The motion passed 5-2 (Mr. Karageorge and Ms. Ross dissenting).

Mr. Cavossa indicated Kaufman Lynn would cover the contract remedies and negotiate the change order rate with the City Attorney. He offered to hold a construction manager-at-risk workshop to develop a better understanding. There are several ways to adjust the guaranteed maximum price outlined in the contract.

B. Discussion of Options for Ruth Jones Cottage

Ms. Brooks reported the movement and renovation of the Ruth Jones Cottage cost \$340,958 and with design fees paid prior to contracting with Kaufman Lynn and proposed impact facts, the total cost is \$398,458. The contractor, Kaufman Lynn, estimated the cost to build a replica would be \$451,060. Some figures are unknown such as the mover's ultimate cost.

The history of the cottage reveals it is listed on the City's inventory of potential historic structures. It was built by Lucille and Otley Scott of the Lucille and Otley restaurant. It was later sold to Ruth Jones in 1946, who raised her family there until purchased by the CRA in 2007 as part of assemblage for a future parking lot for the redevelopment of the Old High School. The cottage is constructed almost entirely of Dade County Pine which is now extinct. The Pine is impervious to termites and water damage.

Chair Rodriguez summarized that the site move to a new location would cost \$398,458 to be completed in approximately eight weeks. A replica would cost \$451,600 and take approximately six months to complete. The property cost \$265,000 and another \$6,500 for expenses would bring the total to date for the project at approximately \$720,000.

Mr. Karageorge wanted to clarify there were two separate issues. The purchase price had to be subtracted because the site was bought for parking. Chair Rodriguez contended it was irrelevant why the parcel was purchased; it was still taxpayer monies

that had been spent. Mr. Holzman agreed the money was gone. There was value to continuing the project and developing Ocean Avenue. Chair Rodriguez wanted to continue with the project and not deviate from the established plan.

Motion

Vice Chair Orlove made a motion to that affect. Mr. Holzman seconded the motion. The motion passed unanimously.

- C. Consideration of Approval of Funding Impact Fees in the amount of \$23,000 for the Ruth Jones Cottage Project.

Ms. Brooks requested a budget resolution of up to \$23,000 for impact fees even though the Agency did not necessarily agree with the amount of the fees. The goal was to get the permit and hopefully get the fee reduced later. It is county road impact fee and Ms. Brooks felt there should be a credit for moving a structure off the site. Mr. Karageorge indicated the fee was extremely high based on the square footage. Ms. Brooks added, if the impact fee applies to the project, she would apply to the County for a waiver based on the 1996 Ordinance.

Andrew Mack, Building Official, understood the fee was for water, sewer and road impact fees. Ms. Brooks pointed out the road impact fee is \$22,000 because they included a paver area on the railroad tracks as a patio. Mr. Mack had spoken with REG Architects and a letter was sent requesting relief. It was granted. Ms. Brooks advised she would be seeking a credit of \$5,000 for removing the structure from the area.

Ms. Brooks outlined the money would be moved from the General Fund to the Project Fund. Mr. Buchanan surmised, if approved, it would expedite the project and the money issues could be resolved later. Mr. Karageorge assumed the fee would not exceed the \$23,000 and most likely be reduced by \$5,000 to \$6,000.

Motion

Mr. Buchanan moved to approve. Mr. Hay seconded the motion. The motion passed unanimously.

VIII. Adjournment

There being nothing further to come before the Board, Chair Rodriguez properly adjourned the meeting at 6:52 p.m.


Judith A. Pyle, CMC
Deputy City Clerk