



If any person decides to appeal any decision made by the Board with respect to any matter considered at this meeting, that person will need a record of the proceedings, and that, for such purpose, the person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

## REGULAR MEETING MINUTES

Thursday, October 20, 2016, 6:00 p.m.

Environmental Services Dept. – 434 S. Swinton Avenue  
Delray Beach, FL 33444

### STAFF PRESENT:

Jeff Costello	Elizabeth Burrows	D J Lee	Scott Pape
Thuy Shutt	Kristyn Cox	Renee Roberts	Susan Shaw
Joan Goodrich	Kevin Matthews	David Tolces	Debra Slaski

### OTHERS PRESENT:

Jane Smith	Christina Morrison	Bruce Gimmy	Yvonne Odom
Nina Clark	Dorothy Mathew	Mack Bernard	Morris Carstarphen
Lynne Hubbard	E. B. Ward	Judy Byrd Miller	Charlotte Wilkins
David Torgerson	John Brewer	Phyllis Martini	Jose Aguila
Cheryl Grimes	Sandra Tolliver	Kristie Ward	Dwayne Randolph
Darlene Brown	Rae Whitely	Dwight Stephenson	Chuck Ridley
Deandre Poole	Terence Davis	Paula Harris	Ann Stacey-Wright
Michael Carlen	Cory Neery	Robbie Littles	Michael Cleveland
Christina Betters	Vic Kirson	Michael Evans	Cecelia Boone
Rich Ryles	Joseph Anderson	Al Jacquet	Alfred Straghn

### 1. Call to Order

Chairman Cox called the meeting to order at 6:10.

### 2. Roll Call

**Present:** Reginald Cox, Joe Bernadel, Cathy Balestriere, Herman Stevens, Paul Zacks, Daniel Rose, Dedrick Straghn

**Absent:** None

### 3. Approval of Agenda

Ms. Balestriere made a motion to approve the Agenda, which was seconded by Mr. Zacks and passed unanimously.

### 4. Approval of the Minutes

#### A. Minutes of September 22<sup>nd</sup> Board Meeting

Mr. Rose made a motion to approve the Minutes of the September 22<sup>nd</sup> Board Meeting. Mr. Zacks seconded the motion which passed unanimously.

## **5. Public Comments on Non-Agenda and Consent Agenda Items**

Ann Stacey-Wright, 225 SW 7<sup>th</sup> Avenue, thanked the CRA Board for all their hard work in helping make The Set a better place. She then stated that the community supported the Equity Enterprises project because Dwayne Randolph was selected as contractor. She noted it took seven months to craft the Community Benefits Agreement (CBA), and there were assurances all along that Randolph & Dewdney would be the general contractor. Finally the community was going to directly benefit from a development project. She said she was disappointed with how the project has evolved and wants to see the promises that were made be honored.

Alfred Straghn, 26 SW 5<sup>th</sup> Avenue, stated the community turned out in support of the Equity project to support Dwayne Randolph, one of their own. Now he has heard Equity wants to dismiss Mr. Randolph, and he felt the City and the community was being used.

Morris Carstarphen, 619 SW 7<sup>th</sup> Avenue, agreed with the previous comments and noted that Randolph & Dewdney Construction, Inc. (RDC) had hired local subcontractors, so the effect of not using them has more ramifications in the community. He would be losing an \$80,000 contract, as well as, ten other jobs he promised to others. He asked the Board to do whatever they can to have the developer uphold their end of the deal.

Rae Whitely of Black Votes Matter stated they are working hard in Boynton Beach to implement a CBA for their community, so he finds this issue with Delray's CBA not being honored concerning. He noted there are other cities waiting to duplicate the CBA, so he stated this issue is bigger than Delray Beach, and is a great opportunity to change cities around the country.

Chuck Ridley, Vice Chair of the West Atlantic Redevelopment Coalition (WARC), stated that he had helped negotiate the CBA with the Developer, and the community had wanted to create a different "norm" for redevelopment in Delray Beach with the CBA, by building wealth. He added that while Equity was not the project of choice for WARC, they recognized the community's wishes and so supported Equity since they had teamed with RDC as their General Contractor. He commented in all of the monthly CBA meetings nothing was ever mentioned regarding concerns with the capacity and performance of the General Contractor, until at the eleventh hour. He also noted that since the Developer teamed with RDC for the RFP submission, all issues should have been vetted at that point. He cautioned the Board to be careful before signing the Purchase and Sale Agreement to sell \$6 million of land for \$1 million to Equity.

Yvonne Odom, 3905 Lawson Blvd., lifelong resident, stated that after years of community meetings, the Delray citizens could be a part of the redevelopment process. She noted that Delray does not fold easily and is not a City you can get away with not honoring promises. She asserted the community has waited 20 years they can wait another 20 if necessary because Delray says what it means and means what it says.

Michael Evans, Evans LLC, said his was one of the businesses who was going to work on this project. He said it is more like 30 – 40 jobs that will leave the community if this GC is not retained, and he thought that if the Developer cannot keep his promise he should not be able to get the land.

Dr. Vic Kirson, Tierra Verde, wanted to know how the situation got this far without the residents knowing about this issue. He asked what the Board plans to do about it.

Mack Bernard, Palm Beach County Commissioner, stated that 1) the Board needs to direct its Attorney that RDC is a material component of the RFP submitted by Equity and the contributing factor to Equity being awarded the project and 2) Due to the community's apprehension he felt it

is important that the Board require the CBA be included as an addendum to the Purchase Contract if they want more time.

Roger Jones, President of Bridge Builders of Palm Beach County, felt the Board needs to take a critical look at this process. He stated the Developer should be required to honor the commitment that was made to the citizens of the community. There is a \$6 million piece of property being sold for \$1 million. He stated if the Developer wants to release the local black GC it should not be allowed.

Jose Aguila, of Currie Sowards Aguila Architects (CSA), noted their firm is Equity's architectural consultant firm but he is not the principal in charge of this project so does not know all the facts. He understands the community's sentiment given their history in Delray, but he believes the commitment on Equity's part remains a team effort. The Developer does not yet have all the permits due to a myriad of issues and he felt the Board should give Equity an opportunity to come and answer all the questions and explain what is happening.

Cory Neering, 3965 Torres Circle, West Palm Beach, is a lifelong resident of Palm Beach County and a City Commissioner and CRA Board Member in West Palm Beach. He stated that West Palm Beach has been paying close attention to this project as he believes the CBA is a template for other cities going forward. He felt a CBA needs teeth so that promises made can be kept and it should be grounded in core principles representing the community. He added it should be transparent, inclusive, and accessible to the community with specific concrete benefits to the community as well as clearly defined formal means by which the community can hold the developer accountable. He encouraged the Board to do what is necessary to assist the community to empower one of its own and to keep Dwayne Randolph as the contractor.

Lynne Hubbard, Riviera Beach CRA Commissioner, echoed the comments which others have made. She stated that Delray Beach is on the cutting edge of equity participation in community projects. She noted that Riviera Beach is watching to see how this project will go forward. They all want the template to work well for other communities, showing that locals can have an equity part and deliver the goods to their community.

Joseph Anderson, 331 West 16<sup>th</sup> Way, Riviera Beach, stated how proud he was when RDC, a local black contractor, was hired to be the General Contractor (GC) on this project. He asked that the Board hold the Developer accountable and have this project anchored by RDC as their GC. He challenged the Board to not let the ball be dropped and to make the hard decision to do what is right and fair and was promised.

Terence Davis, Riviera Beach CRA Commissioner, stated that the room is full of relationships, and shows that many care about this CBA process around the county. Equity made RDC their community partner, and he suggested asking what Equity's intention was when they signed the contract with RDC.

Dwight Stephenson, 4785 Tree Fern Drive, stated that Dwayne Randolph is a very accomplished contractor and quite capable of completing this project. He attended to show his support for Mr. Randolph.

Al Jacquet, 236 SE 3<sup>rd</sup> Avenue, City Commissioner for Delray Beach, stated the CBA was and is the talk of other cities. Cities have been requesting copies of the CBA as they want to duplicate it and every city he visited while campaigning the CBA was the big talking point. He said Delray Beach created something other cities did not know was possible and they are looking at Delray. The Developer agreed to a certain set of conditions and chose RDC as their GC on the project. Those were the terms which were agreed upon and they were material terms, so if the GC goes

then so does the deal with the Developer. The Set needs protecting, and the Board needs to make sure there are some teeth in the CBA.

Richard Ryles, West Palm Beach Attorney, stated he had seen this scenario too many times, remembering Auburn Trace as an example. He encouraged the Board to honor the spirit and the intent of what the community was promised.

## 6. P&Z

### A. Cut 432 Restaurant – Class III Site Plan Modification – 428 E Atlantic Avenue

Debra Slaski, Planner, presented the petition. The proposed changes involve the expansion and conversion of a retail tenant space to restaurant use in order to expand the existing Cut 432. The proposal would require a minimum of seven parking spaces and the applicant has submitted an In-Lieu Parking Fee Application for those spaces.

The Board Chair asked for public comments.

Bruce Gimmy, 429 East Atlantic Avenue, stated he did not understand why a Site Plan was being put before the CRA. CRA Attorney David Tolces reviewed the policy that anything within the CRA District comes before the CRA Board for their comments.

Board consensus was supportive of the petition.

### B. Asta Parking Lot – Class II Site Plan Modification – 241 NE 2<sup>nd</sup> Avenue

Senior Planner Scott Pape presented the request to install pay meters and signage at the Esplanade Parking Lot located at 241 NE 2<sup>nd</sup> Avenue. He noted that staff feels the signs should say Esplanade Parking Lot managed by Asta rather than Asta Parking Lot. There is a concern that in making it a commercial parking lot, during the daytime business hours customers for the businesses in the Plaza will be pushed to other areas for parking, so staff is looking at how to condition their support of the petition, i.e. free parking during business hours with meter system during off hours and weekends.

The Board Chair asked for public comments.

Jose Aguila, CSA, said he frequents the plaza and wanted clarification that he would be paying to park to use the post office and other businesses. Mr. Pape confirmed that is the request.

Ms. Christina Betters, 263 NE 2<sup>nd</sup> Avenue, owns Christina's Restaurant and said if this is approved it will ruin her business. She noted it has always been a private lot and that her lease provides parking spaces. She implored the Board not to destroy the small businesses in Pineapple Grove. She added that next year property taxes will be raised as well so the small businesses don't need this too.

Cecelia Boone, 239 NE 1<sup>st</sup> Avenue, Southdale Properties, Inc., reiterated that this proposal would hit the area businesses very hard. Some of the businesses run until 10:00 at night so is not an office complex where you can charge after hours. She stated that the parking is an accessory use, and that this would be a change of use from accessory to a commercial parking lot which should require a parking study. She said there are 96 spaces which are required to support the businesses in the plaza, and how can you justify to businesses leasing there that their customers have to pay to do business with them. She cited the City's Land Development Regulations Sections 4.3.2 and 4.6.9 which determine all the off-street parking regulations, so

the petition goes against City regulations.

Bruce Gimmy, 439 East Atlantic, stated he got blindsided by this but was not surprised. He commented that the taxes are going up, citing that next year for example Kilwin's Ice Cream Shop the taxes will be almost double what they pay in rent, and no business will be able to succeed. He wanted to know if Asta had a plan – are they using smart meters where people can have codes to park for free. He felt it needs to go before the experts on the Parking Management Advisory Board for their review.

Mr. Pape stated he has the meter layout site plan, but said he was not aware if there will be any code system. He added that staff is just looking at the physical aspects of the proposal. Mr. Bernadel felt the point of view of the businesses has to be considered. Mr. Zacks felt it was a stupid proposal that will only put local businesses out of business. He noted that part of the CRA charge is to promote economic development not kill it and he could never support this. Ms. Balestriere agreed. Mr. Stevens asked if this was the first advisory board that has seen the proposal. Mr. Pape said it has been before Pineapple Grove Board and the DDA Board, and neither saw any benefits to the proposal except for the owner of the parking lot so they were not supportive. Mr. Straghn said he saw no way the City would benefit and that it would have a negative impact. Mr. Cox was not supportive, noting that the Board could try to at least slow down rising costs for businesses.

Board consensus was not supportive of the petition.

## **7. Consent Agenda**

- A. Economic Development Monthly Report, September, 2016**
- B. CRA Monthly Financials, August, 2016**
- C. CRA Monthly Marketing Report, September, 2016**
- D. CCC Quarterly Reports FY 2015/16**
  - 1. 2<sup>nd</sup> Quarter Report**
  - 2. 3<sup>rd</sup> Quarter Report**
- E. First Amendment to Temporary Construction & Easement Agreements – NW 12<sup>th</sup> Ave. Beautification**
- F. Right-of-Way Dedication - SE 4th Ave-Alley – iPic**

Mr. Rose made a motion to approve the Consent Agenda which was seconded by Ms. Balestriere and passed unanimously.

## **8. Old Business**

- A. Seventh Amendment to Purchase & Sale Agreement - Delray Beach Holdings, LLC (iPic) (continued from September 22<sup>nd</sup> Board Meeting)**

Mr. Costello presented the item. He reviewed the background and outlined the rationale for the termination date extension request. He apprised the Board that the attorneys are working on the parking agreements, and that Delray Beach Holdings are showing good faith and moving forward. He updated the Board on all the Agreements pending, noting that the TriParty Agreement involves the CRA while the Parking Facility Easement Agreement does not. He understands that all are slated to be on the November 1<sup>st</sup> City Commission Agenda.

The Board Chair asked for public comments.

David Torgerson, 1010 Dotterel Road, referenced a copy of the time lapse since the project was approved, and wanted to know how many more extensions would be granted. He also questioned if the Developer was buying time until a more favorable time to flip the property. He felt the Board should stop granting extensions.

Bruce Gimmy, 439 East Atlantic Avenue, stated the Developer was getting a sweetheart deal on property that could be worth \$13 million. He felt there was a secret agreement between the City and Delray Holdings LLC. He believes the project was flawed from day one and that a theater was being put some place where there is not a road system that can handle the traffic. He has become very pessimistic and predicts empty store fronts along Atlantic Avenue.

Victor Kirson, Tierra Verde, recommended the Board follow staff's recommendation. He said developers do have a hard time meeting deadlines with delays in the permitting department, and questioned if someone wanted to get rid of iPic because they don't agree with the project.

Mac Bernard, County Commissioner, believed the extension is necessary and that the Developer has no intention of flipping the property. He noted that many community meetings had been held, and urged the Board to grant the extension.

Ms. Balestriere stated she would like to see the project move forward and asked staff to do everything possible to keep this the last extension. Mr. Zacks agreed with Dr. Kirson that it is difficult to get through permitting. He believes the Developer has done everything in a timely fashion and noted that there is a clause in the contract that prohibits flipping the property within a time frame. The Developer is earnestly trying to work the Parking Facility Agreement out and he supports the extension. Mr. Stevens stated that absent anything having been done that is not in good faith, and given many of the issues have been beyond the Developer's control, he believes that this project has been moved forward in good faith and can be ready by the end of January. Mr. Bernadel commented that nothing new has been brought to the Board's attention and he supports staff's recommendation. Mr. Straghn noted that Mr. Stevens had offered the Developer more time but was assured that the end of January would be sufficient. He supports the extension, but if it is not done by then there needs to be something to hold the Developer's feet to the fire. Mr. Tolces stated that if by the end of January it is not done, there can be language added to the contract.

Mr. Rose cited how quickly iPic Theaters were opening in other towns and does not understand why that cannot be done in Delray Beach. He stated it has been 1,039 days since the Agreement was signed and that he does not believe the delays are due to the City. He noted he is against the extension and the removal of any contingencies, and was also against delaying the vote until this meeting. Mr. Tolces stated that the motions were made properly at the last meeting. He noted that the reason this project is taking longer may be because it involves a public parking lot, alley abandonments, conditional use approvals, waivers, site plan and plat, so it is a unique situation. He said the CRA has worked diligently with the Developer and they are here this evening to answer any questions about the negotiations with the City for the Parking Facility Easement Agreement. The CRA is not a party to that Agreement, so by considering this tonight the Board is acting as facilitator to allow the City and the Developer to reach an agreement on a condition that is contained within the Purchase and Sale Agreement.

He added that to not approve this agreement tonight could result in the CRA having some potential liability.

Mr. Zacks made a motion to approve the Seventh Amendment to the Agreement for Purchase and Sale with Delray Beach Holdings, LLC to modify Section 1.12 of the Agreement to eliminate the time frame for the Parking Facility Easement Agreement to be negotiated between the Purchaser and the City, and Section 1.17 of the Agreement to extend the Termination Date to January 31, 2017. Ms. Balestriere seconded the motion which passed 6-1 with Mr. Rose dissenting.

Ms. Balestriere left the meeting.

## **9. New Business**

### **A. Agreement with Currie Sowards Aguila Architects - OSS Campus/Park Master Plan/Improvements**

Assistant Director Thuy Shutt presented the Agreement. She reviewed the background and the scope of the Agreement. She noted that the performance schedules have been included for specific deliverables which will be due within six months from issuance of the notice to proceed from the CRA.

The Board Chair asked for public comments. There were none.

Mr. Zacks stated that this item was pursuant to the Joint Workshop the CRA had with the City, and made a motion to approve the Agreement between Currie Sowards Aguila Architects, Inc. and the Delray Beach CRA for Architectural Services for the Old School Square Center for the Arts Campus and Park Master Plan in the amount of not to exceed Ninety Thousand Dollars (\$90,000.00). Mr. Bernadel seconded the motion which passed unanimously.

### **B. Monthly Progress Report, September, 2016**

Project Manager Kevin Matthews presented the item. He reviewed the highlights, noting any pertinent changes or issues since the last meeting, as well as, updating the Board on recent land acquisitions.

## **10. Other Business**

### **A. Comments by Commissioners**

Mr. Straghn addressed the public comments regarding the Equity deal, saying he was a part of the community effort favoring Equity and had spoken at the meeting asking for the CRA Board (of which he was not a part at that time) to award the project to Equity with RDC as the General Contractor. He said he was disheartened by this issue and that he has an ethical and moral problem with Equity not honoring their promise if that is the case. Many businesses and subcontractors in Delray would be adversely affected as well as residents, and he asserted that if there is anything the CRA Board can do, it needs to be done. He would like staff and the attorneys to look into incorporating the CBA into the Purchase and Sale Agreement if there are any extensions to give teeth to the CBA and to see if it could be a viable option for the Board to vote on. He felt the CBA should be included in the contract to give it some teeth. He asked that this item be put on the November agenda, with the Developer present to speak to this issue. He added that the CRA needs to help them remain true to their promise.

Mr. Bernadel spoke of the recent natural disaster in Haiti, and thanked Ms. Balestriere for

stepping up and taking the lead to help with her contacts, as well as Old School Square where there will be a benefit tomorrow night. He thanked Delray for any and all assistance.

Mr. Zacks noted that the Developer had agreed to the CBA, and it was very clear that the Board was not a part of that agreement – it is between the community and Equity. The CRA is not in contract with RDC but felt sure all legal options will be explored.

Mr. Cox agreed with many of the comments made this evening regarding Equity and the consistent theme expressed around removing RDC as contractor. He thought from the Developer's side, it is a performance issue. He felt WARC is the reason Equity is the Developer selected for the project because WARC had a Memorandum of Understanding (MOU) with the CRA, one provision of which was that the community gets a say and has input into the selection process on RFPs. WARC is an advisory board to the CRA and the City and can monitor things like this. That ability is limited as the MOU was not renewed and so WARC could not get out in front of the current situation. He expressed a need to get another MOU in place. He agreed that the Developer needs to address the Board on this issue and that the CRA needs to do whatever possible to make the community whole again.

**B. Comments by Board Attorney - None**

**C. Comments by Executive Director**

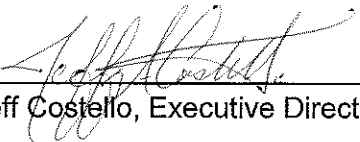
Mr. Costello referenced information that he disseminated to the Board regarding the Staff Assessment. He also provided information regarding the City's Comprehensive Plan process which is about an 18 month to 2 year process. He noted that unfortunately, about four of the dates conflict with already scheduled CRA or WARC meetings.


**D. Comments by Staff**

West Atlantic Redevelopment Director Kristyn Cox mentioned the Board might want to check their calendars for a soft ribbon cutting for the installation of The Set Banners during the first week in November, probably that Tuesday or Wednesday.

**11. Adjournment**

There being no further business the meeting was adjourned at 8:10 pm.

  
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Jeff Costello, Executive Director

  
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Reginald A. Cox, Board Chair