



Deerfield Beach Community Redevelopment Agency

Special Meeting Minutes
Tuesday, May 25, 2010, 6:30 P.M.
City Commission Chambers, Deerfield Beach City Hall

The meeting was called to order by Chair Noland at 7:30 p.m. on the above date in the City Commission Chambers, City Hall.

Roll Call:

Present: Mr. Bill Ganz
Ms. Sylvia Poitier
Mr. Martin Popelsky
Vice Chair Joseph Miller
Chair Peggy Noland

Also Present: Burgess Hanson, Interim City Manager
Andrew Maurodis, City Attorney
Ada Graham-Johnson, MMC, City Clerk

APPROVAL OF THE AGENDA

May 25, 2010

MOTION was made by Mr. Ganz and seconded by Ms. Poitier to approve the May 25, 2010 CRA agenda as submitted.

Voice Vote: YEAS: Mr. Ganz, Ms. Poitier, Mr. Popelsky, Vice Chair Miller, and Chair Noland. NAYS: None.

GENERAL ITEMS

ITEM 1

TAPE 1, COUNT 0036

Request for Additional Services – Garcia Stromberg, Pier Entrance Building Redesign.

GENERAL ITEMS - CONTINUED

Keven Klopp, CRA Director, said that this is a request from Garcia Stromberg for additional services and outlined the information that was included in the Board's backup to support this request. On April 17, 2010, he requested conceptual revisions to the site plan from Garcia Stromberg to address comments by the Florida Department of Environmental Protection, and he continued to outline the backup information. He commented on the May 18, 2010 CRA Meeting wherein he requested additional authority; however, the Board did not grant the request.

Continuing, Mr. Klopp said that this item is for the Board to consider granting additional services to Garcia Stromberg; the contract amount is \$295,000 and is currently in the schematic design phase. He said that George Garcia is present if the Board wishes him to entertain questions.

Chair Noland asked if this is for additional services surrounding the issues with the DEP.

Mr. Klopp replied yes. Initially, it was unknown that it would be an additional service; however, Garcia Stromberg did try to follow the schedule that was implemented at the beginning of the project. Mr. Klopp further stated that they were moving ahead hoping that DEP would provide conceptual approval to continue. Since DEP approval was not received, they decided that they needed to scale back the extent to which the buildings were heading seaward. He said that it was his recommendation that Garcia Stromberg develop minor conceptual revisions. Garcia Stromberg has indicated that the revisions are costing more than what the contract allows.

George Garcia, Garcia Stromberg, said that the instructions to keep to the schedule were very urgent. In order to submit to the DEP, they had to complete a certain amount of work at the conceptual level, i.e. schematics and engineering work. He said that this is tied to the schematics; and the request is based on the revisions not being included in the main contract. Thus far, the work was done with the City in a team effort and when it was submitted to the DEP, they were under the impression that this would meet their interpretation of the regulations.

Continuing, Mr. Garcia said that submittals to the DEP have to be done in a formal manner. When the DEP's comments were received, their interpretation was that the project had to be redesigned; thus, they consented. More of the parking lot in front of the building had to be consumed; which they were not pleased with. He said that they obtained input from Staff and completed an entirely redesigned schematic of the project at no cost, in an effort to meet the criteria set forth by the DEP. However, they are asking for sufficient monies to cover the cost of taking the project back to the phase it was in. He said the cost is not for redesigning the project, but the amount of work required to meet DEP's interpretation of what the rules would be. Additionally, Mr. Garcia said that the rules are so undefined, that when the new scheme is resubmitted, there is a chance that DEP will not approve it. He said that if the City followed the regulations set forth, it cannot build this project. Through engineering and new

GENERAL ITEMS - CONTINUED

methodology, it has been redesigned to meet what they believe is DEP's criteria or intent of their interpretation. Therefore, they are only asking to cover costs from the engineering side.

Vice Chair Miller said that he is not familiar with all of Mr. Garcia's functions and asked if an outside firm is hired to assist in engineering or is it done in-house.

Mr. Garcia replied no, they are consultants. He outlined the various consultants that they have.

Vice Chair Miller asked if the costs were to defray the costs to bring the consultants in.

Mr. Garcia replied yes.

Vice Chair Miller asked for clarification on how the costs were incurred.

Mr. Garcia said that the majority of the funds are to defray the costs of compensating the consultants that have to redo a certain amount of work. Some of the money is to take the design now set forth and put it in the hard line phase or get it back to where it was architecturally as well. He said that Mr. Klopp has been provided the cost figures and that no one is benefiting from this change.

Vice Chair Miller said that based on how the contract is written, the City does not have to grant the request.

Mr. Garcia said that if the Board denies the request, he would have to swallow the costs; and would be more cautious in future decisions.

Mr. Popelsky asked if Mr. Garcia received authorization from anyone to make the changes.

Mr. Garcia said that the changes were done at no charge and he did not believe anyone would object to that. He said that the request is for engineering to execute the suggested design changes.

In response to Mr. Popelsky's question, Mr. Garcia replied that authorization was not sought because they did not know to what extent additional funds would be required; until they knew what the redesign would entail, to meet the criteria set forth by the State Department.

Mr. Popelsky said that Garcia Stromberg was aware that the State wanted to make the change. He said that he too was informed a couple of weeks ago that the State wanted to make a change and it had to be decided whether the City wanted to get involved, fight them, allow it, or vice versa. He said that he was willing to fight the State because of moving it back a certain distance.

GENERAL ITEMS - CONTINUED

Mr. Garcia said that they are fighting the State, even with the redesign. He explained that the State's interpretation of what they want the City to adhere to, the City could not build the project. He said that they are still asserting an effort to get them to understand to make this a viable project.

Mayor Noland said that we still do not know if they will accept the new drawing.

Mr. Garcia agreed.

Mayor Noland said that there is a possibility of an additional cost.

Mr. Garcia said that he doubts that we are going to go the distance, considering they are not certain what their interpretation is; nor will they take too deep a plunge into getting to formal about it. Therefore, they will have to tread lightly in determining what the State really wants. He said that they have substantiated with many other criteria that they are relatively sure will be accepted, but he cannot guarantee it. He said that they will have to understand that we will have to work together.

Mayor Noland said that Louisiana is experiencing a similar situation with the Department of Environmental Protection Agency, and the governor has said that he is doing whatever necessary to protect their shoreline, because DEP is not giving them the proper permitting to save the shoreline from the oil spill. Mayor Noland expressed concern with DEP's action to this city and others. She said that although they provide a certain criteria to follow, interpretations can be different; however, they are not giving clear guidelines on how to receive approval.

Mr. Garcia said that these are the rules today, but can change. He further stated that they did not go in ignorantly, but carefully worked with locals, and then they formally submitted the entire application. Although they were taking a chance, they did not want to leave the City waiting, therefore, he urged the Commission not to have them take the full blunt of this.

Mr. Ganz asked what the original price was.

Ms. Poitier replied that the backup indicates \$12,000.

In response to Mr. Ganz's question, Mr. Klopp replied that the original amount was \$16,000; which was provided via e-mail without a formal request. Thereafter, the formal request was \$12,000; after further negotiations, the final verbal was \$9,500. He clarified that four (4) parking spots were removed in the revision.

Mr. Ganz said that when they decided to redesign for free, the Board should have been informed that from an engineering standpoint, there would be additional costs. He said that Garcia Stromberg was selected due to their experience in this area, along with working with the Environmental Protection Agency. If not, the subcontractor

GENERAL ITEMS - CONTINUED

environmental engineer would have had experience in dealing with this organization; as it is much different on a local level versus the Tallahassee organization. He said that this risk was done by Mr. Garcia and not the Board. He said that he does not like change orders after the fact, but wants to know ahead of time what the costs are going to be before actions take place. Once actions take place, and come back with a bill, it is likely that the bill will not be paid. He said his motion is to decline this amount. Additionally, in the future, if changes before the work is done are necessary, then the Board be made aware, and allowed to make a decision.

Mr. Garcia said that meeting minutes will show that they presented the fact that this would require a change. Perhaps the verbiage discussed at the meeting was that in order to determine the amount of scope that would change and see what it would take to do it and if there was any cost to do it, that they first had to determine what it was that they had to do to meet their criteria now set forth. He said that they do have the experience to do this kind of work as they have done it before. He explained the reason "additional services" exists in agreements such as this is because sometimes unforeseen things do occur; not necessarily due to them not knowing what is going to occur, but in the issues of code interpretations and so on. He said that as of today, things are changing and it is a burdensome situation to find out that the rules of the game vary. He agreed that they are the professionals, but things can and will happen; however, they do not have a contingency for the rules of the games changing.

Mr. Ganz said that in having experience, you know that there is an inexact science to the rules and what rules will be provided. He said it sounds that the rules are liquid in some ways, that they change and are subject to interpretation. He asked if this is known would it be better to include some contingency in the contract or clear language as opposed to currently language as it does not state what the City is dealing with. He said that there is no exact cost with regard to revising the original plan. Notwithstanding, it appears that the risk was taken to extend this as far as possible with the hopes that if extended, the cost will end up exactly where desired. He said that some contingency should have been built in.

Additionally, Mr. Ganz further expressed concern with contracts that are worded to people that come in after the fact. Specifically, in this case, this is not an unforeseen incident, but some anticipation that this is a little bit of an inexact science that there may be some additional costs or not; most likely, it will be. He expressed opposition to awarding a contract and coming back later and adding on change orders.

Lastly, Mr. Ganz said that he would make a motion to decline; however, in the future, with the Board being well aware that there may be something like this occurring, he may be more open to entertaining additional costs to reach what is needed. At this time, he said he is not comfortable with giving out extra money.

Mr. Garcia said that the contingencies in the agreement are there as they price a project, to an extent. He said that they have contingencies in their agreement to cover

GENERAL ITEMS - CONTINUED

said incidents. He further stated that they worked with Staff and they went to many extents with their contingencies to design the project, to satisfy the City's design criteria as they changed. However, to completely having to go that distance and redesign a project, is not a contingency, but a redesign.

Mr. Ganz said that in reviewing Exhibit D of the contract, "additional services," there are only three (3) things that meet the criteria for additional services, to get extra for additional money above and beyond the contract, but this does not seem to fit the criteria. He said that it is inconsistent with written approvals previously given by the CRA, "where such revisions occur after formal approval of the design is not the result or errors or omissions of the consultant". He continued to read portions of the contract and outlined various reasons why the contract was inadequate. He reiterated that what is presented by Garcia Stromberg to be paid more; he said that it does not meet the three (3) criteria in the contract for additional money. Lastly, Mr. Ganz reiterated his motion to decline.

Mr. Poitier asked if he was a former DEP.

Mr. Garcia replied no.

Chair Noland said that we are not out of the box yet, and change orders are already being requested. She said since Garcia Stromberg has experience in this area, language should have been included to address the anticipation of DEP approval or non-approval. She said that she has a hard time with this, and although they were trying to keep this project on schedule, a contract was signed with them as they were the best to bring the project forward. Now, prior to the project beginning there is a dispute of \$9,000.

Ms. Poitier seconded the motion for discussion. She said that she does not support change orders. She further stated that Mr. Garcia said he was not authorized to do the re-drawing, but did so.

Mr. Garcia explained that the additional services have not been performed, but that they redesigned the project to meet the requirements of the interpretation of the Department of Environmental Protection. Therefore, the work they are seeking additional services for has not been performed yet.

Ms. Poitier said then, nothing will be lost.

Mr. Garcia said that he would lose something, unless something changes in his heart as a professional, he will not simply say they are not going to do the work and leave the City high and dry and get into a conflict. If the Board does not approve their request, they will proceed at no cost, as are obligated. He further stated pursuant of the contract, the Board can deny the request, but he is here to plead his case; and asked that the City help them. He said that Mr. Ganz is clear on the contract.

GENERAL ITEMS - CONTINUED

In response to Ms. Poitier's comments, Mr. Garcia said that they designed the project from a design standpoint and now to execute the design, a certain amount of work has to be done architecturally and engineering wise; this has not been done yet. He said regardless of whether the Board approves the request they will proceed with the project.

Ms. Poitier asked if their lead person has any knowledge of DEP.

Mr. Garcia said that they have worked with DEP in the past and will continue to do so in the future. He said that they were aware of the possible complications but took their chances. He reiterated that they will honor the language in the contract, but pleaded to the Board because of this unique situation.

Vice Chair Miller said that he was in Washington when the Board found out that DEP wanted the project pulled back from the beach and it was a surprise. He said that goodwill has been extended; on one hand, the letter of law has been acknowledged and the Board is not required to grant this request. However, he does not believe that Garcia Stromberg's intention was to make more money and that it was a mistake; which was made in an effort to accommodate a time schedule. Additionally, they have expressed that if the request is denied, Garcia Stromberg will continue to live up to their reputation.

Moreover, Vice Chair Miller said that he is aware of the budgetary constraints and understands the Board's stance. He suggested that the cost be split to show that a mistake was made even though the City is obligated to. He further stated that Garcia Stromberg has extended good will, as they worked without knowing that if they would receive funding. Vice Chair Miller offered a substitute motion to split the cost. He said he does not believe Garcia Stromberg was trying to profit on the mistake or their regulations; as the City can still be rejected again.

Chair Noland said that if the first motion fails, then Vice Chair Miller's motion will be discussed.

MOTION was made by Mr. Ganz and seconded by Ms. Poitier to deny the request.

Roll Call: YEAS: Mr. Ganz, Ms. Poitier, Mr. Popelsky, Vice Chair Miller, and Chair Noland. Nays: None.

ITEM 2**TAPE 1, COUNT 1118**

Consideration to transfer \$30,000 from Other Contractual Services to Personal Services.

Keven Klopp, CRA Director, said that this request is to provide a transfer of funds in the CRA budget in the amount of \$30,000, from Other Contractual Services to Personal

GENERAL ITEMS - CONTINUED

Services. The intent is to bring in a CRA Coordinator on a temporary, contractual basis until the end of September, 2010 to assist him with the CRA responsibilities as a result of him being tasked with additional responsibilities. He said he was hoping to assist in that office and continue to fulfill all the CRA needs. Unfortunately, it is not possible with everything that is going on. He said that there are adequate funds in Other Contractual Services to more than cover this transfer. He said that he provided an additional memo in response to questions received about the responsibilities of the CRA Coordinator and his additional responsibilities.

Ms. Poitier clarified that the \$30,000 will not come from general funds, but from CRA funds. She asked who was doing CRA work prior to Mr. Klopp's arrival.

Burgess Hanson, Interim City Manager, replied that it was a combination of Michael Mahaney, former City Manager, Gerald Ferguson, Director of Planning & Growth Management/Building, and Charles DaBrusco, Environmental Services Director. Mr. DaBrusco was managing Hillsboro Streetscape and Mr. Ferguson was handling some of the administrative duties.

Ms. Poitier said that she is not in favor of paying out \$30,000 toward the end of the fiscal year. She said that although she has seen the individual's qualifications, but if the Board is going to be consistent, this will be very difficult for her to support. She said that she met with Mr. Klopp to discuss the coordinator's responsibilities; however, the timing is not practical.

Mr. Hanson said that the timing is not best for anyone. He said that the CRA is moving quickly with the Cove Shopping Center and with the International Fishing Pier. He said that there are also issues with Code Enforcement, the new agenda process, in addition to him considering other reorganizations that Mr. Klopp will be responsible for. The reorganization will be presented to the City Commission at its next meeting. However, he does not want the CRA projects to fall through.

Additionally, Mr. Hanson commented on possible real estate acquisition during this time. He said that he supports providing additional assistance for Mr. Klopp. Further, he said that prior to this, there was a City Manager and the Assistant City Manager. He said that the City Manager's salary was approximately \$185,000 and the Assistant City Manager's salary was \$145,000 plus cost of living. Moreover, he said that the Parks and Recreation Director's salary was \$149,000. He said since his appointment to City Manager, he is being paid approximately \$35,000 less than the prior; and the Acting City Manager's salary is a little above \$100,000 which is approximately \$44,000 decrease than the former Assistant City Manager. He said that the contractual Parks and Recreation Director is making approximately \$25,000 less than former permanent director. Therefore, reductions have been made and those cuts affect the General Fund. However, these funds will be paid from the CRA budget and has no impact on the General Fund deficit that the City is expecting.

GENERAL ITEMS - CONTINUED

Chair Noland asked what the amount of the undesignated fund is in the CRA account.

Mr. Klopp replied that the particular account that this is being transferred from, Other Contractual Services, is in the range of \$200,000 available. Those services are set aside for engineering and other professional services; however, he is comfortable that funds will be available to cover any needs between now and the end of the fiscal year. He further stated that this is a contractual service and it is possible that funds may not have to be transferred accounting wise, but thought this was the most convenient way to bring it to the Board.

Chair Noland clarified that no benefits are included.

Mr. Klopp said that is correct.

Mr. Ganz said that Mr. Klopp's role has expanded in helping the City achieve what is in its best interests. He said that it does help that the \$30,000 is not coming out of the general fund, but from the CRA budget. At the beginning of the fiscal year, the City Manager's salary was \$185,000; the Assistant City Manager's salary was \$145,000 plus \$30,000 in living costs that were rolled into his salary. Parks & Recreation Director was \$149,000, and the CRA Director was \$85,000; equating to \$594,000 for four (4) employees. Currently, the Interim City Manager's salary is \$150,000, Acting City Manager/CRA Director salary of \$101,500; Parks & Recreation Director's salary of \$124,500, and the CRA Coordinator will make \$30,000. The savings would be \$180,000 total from the beginning of the year until now, even with an additional person. He said that he originally agreed with Ms. Poitier; however, in reviewing the savings from January until now, he will support the request.

Vice Chair Miller said that he too supports the request and commented on real estate acquisitions and now would be a good time to consider purchasing. Further, he said that the Cove Shopping Center has stalled out and attention has been diverted. He said that Mr. Klopp has been divided in his duties and for six (6) months, it would be prudent to have someone overseeing it.

MOTION was made by Vice Chair Miller and seconded by Ms. Poitier to approve the request.

Roll Call: YEAS: Mr. Ganz, Ms. Poitier, Mr. Popelsky, Vice Chair Miller, and Chair Noland. NAYS: None.

BOARD/ADMINISTRATION COMMENTS

CRA Director - Keven Klopp - Mr. Klopp said that during a meeting with Keith & Associates, the engineering consultant for the Cove Shopping Center, they created a schedule for the prequalification and bid for that project. It will be advertised by the end of the week and the CRA will receive the qualifications by June 23rd and then the bids

BOARD/ADMINISTRATION COMMENTS - CONTINUED

will be placed by July 2nd; after that, the item to award the contract will be presented to the Board at its August CRA meeting. He said that he wants to assure that the contract provides a very meticulous means and methods to do the work and not disrupt the parking during business hours; and is confident that it will work.

Mr. Ganz - Public Comments - Mr. Ganz said that it has been suggested that the CRA open its meetings for public comment, if time allows, at the end; as well as the agenda's backup material being published online. He asked if everyone would be comfortable with that.

MOTION was made by Mr. Ganz and seconded by Ms. Poitier to have a public hearing at the end of the CRA meeting, no longer than three (3) minutes per person.

Roll Call: YEAS: Mr. Ganz, Ms. Poitier, Mr. Popelsky, Vice Chair Miller, and Chair Noland. Nays: None.

Mr. Klopp said that the agendas will be adjusted to indicate the motion. Additionally, he said that he has already begun placing the agenda and backup on the website.

Ms. Poitier - No Report.

Mr. Popelsky - No Report.

Vice Chair Miller - No Report.

Chair Noland - No Report.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:00 p.m.

PEGGY NOLAND, CRA CHAIR

ATTEST:

ADA GRAHAM-JOHNSON, MMC, CITY CLERK