



DEERFIELD BEACH COMMUNITY REDEVELOPMENT AGENCY

SPECIAL MEETING MINUTES
Wednesday, October 26, 2011, 6:30 P.M.
Public Works Facility, 401 SW 4th Street

The meeting was called to order by Chair Noland at 6:32 p.m. on the above date in the City Commission Chambers, City Hall.

Roll Call:

Present: Mr. Bill Ganz
Mr. Joseph Miller
Mr. Ben Preston
Vice Chair Martin Popelsky
Chair Peggy Noland

Also Present: Burgess Hanson, City Manager
Andrew Maurodis, City Attorney
Samantha Gillyard, Deputy City Clerk

Absent: None

APPROVAL OF THE AGENDA

DIGITAL TIME STAMP: 06:33:16

October 26, 2011

Keven Klopp, CRA Director, asked that an item be added regarding the beach parking incentive program.

MOTION was made by Mr. Miller and seconded by Mr. Ganz to approve the agenda as amended.

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

GENERAL ITEMS

ITEM 1

DIGITAL TIME STAMP: 06:34:12

CRA Resolution 2011/023 - A Resolution of the Community Redevelopment Agency of the City of Deerfield Beach, Florida, approving a Construction Manager at Risk contract with Stiles Construction, LLC. for the pier buildings reconstruction project and specifying a Guaranteed Maximum Price (GMP 2)

GENERAL ITEMS - CONTINUED

Keven Klopp, CRA Director, outlined Item 1. He said that there is a preexisting pre-construction services agreement and they are concluding those services and will begin construction. The request is for \$4,583,075, which is for the reconstruction of the buildings and the land ward portion of the pier. Mr. Klopp outlined portions of the prepared presentation. He said that construction of the temporary facilities begins tomorrow; fencing for the entire project will appear very shortly, and the ramp will be constructed. Additionally, turtle season ends November 1st; therefore, there cannot be any beach construction until then. He continued to outline the project timeline; complete the temporary facilities, commence demolition, begin the restaurant, restrooms, bait shop and pier by the end of the year, a one year construction project. He said that the actual dates will be based on the actual days of construction, which will be included in the contract. The notice to proceed will be issued after the permit for the entire project is issued; however, the final building permit is still in review. Continuing, Mr. Klopp outlined the CRA project objective.

David Lowery, Stiles Construction, introduced the project team, which would be able to answer any questions. He said that there were 826 subcontractors invited to bid on this project, he outlined the bidders and their backgrounds. Out of those invited, they accepted bids from 119 subcontractors; that amounts to an average of five (5) subcontractors for each division of the construction aspect which means great coverage for each area. Through the constructability reviews and life cycle costs analysis, City Staff, architects, and Stiles, have come together to decide how to build this for the longevity, to endure the beach environment. All things have been taken into consideration from the time they began with the 50% drawings. He explained that the process used is the way Stiles commits to building their own projects.

Vice Chair Popelsky asked where the subcontractors came from.

Mr. Lowery replied that most of them are from Broward County. He stressed that there are 21 trades overall and 14 of them are over the \$50,000 mark. Of those 14, five (5) of those are CBE/DBE companies that have participated in the project.

Mr. Klopp said that there is one part of the contract that must be finalized, builder's risk, which is the property insurance during the construction period, before the building is turned over to the City. Stiles is contributing \$25,000 of their existing guaranteed maximum price toward that and any additional costs, will come from the additional contingency which is garnered through the savings of the project. Additionally, there is an incentive for savings that will benefit Stiles and the City. If any materials or services are purchased below the current bid price, 50% will come back to both the City and Stiles. He said that is an incentive for them to find a savings; out of the savings, will come any additional costs for the builder's risk. Stiles is in agreement and he asked that it be added into the approval of the agreement.

Continuing, Mr. Klopp informed the Board that tables and chairs for the restaurant are not included in the project, but once there is a tenant Staff will work with them on décor and purchase those things either as a tenant or CRA improvement. He said that once the construction contract is approved, this is the next step.

GENERAL ITEMS - CONTINUED

Chair Noland asked when the bid process will start for the restaurant.

Mr. Klopp said that the first decision is whether or not it will be put out for proposals or if the City Commission wishes to extend the current tenant's contract. He said that is the next topic of concern, but did not want to start discussion on that tonight.

Vice Chair Popelsky asked who owns the restaurant equipment now.

Mr. Klopp replied the City; whatever equipment left has been removed, it is in storage and will either be auctioned off. The chairs and tables were going to take more of staff time to remove; therefore, they will be turned over to the contractor likely as part of a demolition.

Mr. Preston asked how often Mr. Klopp meets with Stiles during the pre-construction phase.

Mr. Klopp replied once a week.

Mr. Preston asked if they anticipate any problems and is there a plan to solve any problems that may be encountered.

Mr. Klopp said that every week they anticipate problems and solutions and believes they have done that very well. He provided examples of potential issues that they have addressed and said that they meet for two (2) hours every week for the past six (6) months and that the project is ready to go.

Mr. Ganz asked if the GMP has changed since the last meeting.

Mr. Klopp replied yes, by approximately \$400,000.

Mr. Ganz asked for clarification.

Vice Chair Popelsky asked if the \$400,000 is included in the \$7 million.

Mr. Klopp replied yes, it is already included in the CRA's infrastructure budget.

Chair Noland clarified that the last price was not Stiles price and that it had not gone out to general contractors or the subcontractors; that price was from the architects.

Mr. Ganz said that he thought it was at \$3 million plus from the architect; Stiles had come in at \$4.1 million and now we are at \$4.5 million.

Mr. Lowery said at 50% drawings, they were at \$4,162,007.00. At that time, in working with the constructability review, with Stiles and Staff, and the architect, they looked at things that needed to be part of the project, including the enhancement of design; as well as other parts that needed to be included but may not have been on the 50% drawings. The intent was to get information from Staff as to what the Board wanted and

GENERAL ITEMS - CONTINUED

to include it with the design. Otherwise, the information that the Board has now received as far as any increase, would have happened during construction if it would have been a low bid. He explained that you have to look at the life cycle costs and what the upfront cost would be. Notwithstanding, they added in areas that enhanced the project. However, in a low bid process, you have a design and you have to live with it; but they are making changes while they are on paper and using the right products.

Mr. Ganz clarified that there would not be any cost overruns based on the preliminary drawings and not having any input from the Board.

Mr. Lowery said that they want to provide a GMP and work down. He said that there is a possibility that something can happen; however, with the last job, the MOC, there was a 1% change order in that project. He said that they are taking the same mentality on this project, regardless of the cost.

Mr. Ganz asked what the original architect costs were.

Mr. Klopp replied that the last cost estimate was \$4.2 million and previous to that it was \$3.7 million.

Mr. Ganz said that the final cost is about 20% difference in the price; which is substantial; however, he understands what they are trying to do and looks forward to moving forward. Moreover, Mr. Ganz said if they come under budget, then they will split the cost savings. He provided an example of how the cost savings would be split and asked if this is something that they should be working at why they would receive a split if that should be their goal.

Mr. Klopp said that that is what they are doing, and does not believe there will be any savings. If the market changes, they have an incentive to pass the savings onto the City, as they will receive savings as well.

Mr. Lowery said that most people have that question because you want to make sure you are not being charged up to the GMP. He said that Stiles looked at prices for all the divisions of construction and made sure that they had the lowest and best qualified price. He explained their selection process and bidding the job out. Everyone wants to be included as the subcontractor and wants to be low for selection purposes. He said that they want to make sure they manage the project and that the subcontractors are not purchasing inferior material; hence, they are managing the risk to make sure things like this do not happen. Therefore, he believes the City will do better, but it may not be substantial. He explained the importance of providing accurate pricing on current projects so that five (5) years from now, if there is another project, the City can reflect on their fairness and accuracy.

Mr. Ganz said that if there is an untrusting public and this project was just increased by \$400,000; with a 50% incentive, if the project comes in at the original price, Stiles just

GENERAL ITEMS - CONTINUED

gained \$200,000. He said that because of this, he would like to know why the 50% incentive is being included when it is Stiles job to deliver the best and least expensive product. Notwithstanding, the budgeted \$4.5 million is the maximum and it should come down anyway, and there should be an incentive to do this. He said that the public will not trust that number; however, he does because they are experts. He said that their job is to come below budget and to deliver the best product, at the cheapest cost. He asked why an incentive is being given to do a job that they should be doing.

Mr. Lowery said that a good construction manager will make his numbers come in the way they are provided. The difference in where we were, remembering that there were only 50% drawings at the time, the reason you want the contractor to work from the 50% on is to do some of the things that took place, i.e. \$400,000 worth of life cycle constructability issues discovered; that can and should be a part of the project. In determining whether the items should be a part of construction, they look at three (3) things, time, cost, and quality. He said that they want to decrease the time it takes for construction, which will lower the cost, buy the project out cheaper than the 5 bidders. These prices would not be enhanced, thus, you know what the market says. He said that they do not make money based on that. He commented on some contracts that sign 100% back. He said that the 50% does give them an incentive and everyone will do their very best, but there will not be a significant difference, if any, when the bids come.

Mr. Ganz said that if there is no cost savings, Stiles receives the entire \$4.5 million if they come in budget; the City would not recoup anything. At least by bringing it in below \$4.5 million, whatever the savings are the City would get at least 50%. If left status quo, and Stiles comes in at budget, they are pocketing the money; therefore, the incentive is there.

Mr. Preston said that because Stiles is very experienced, they started at \$3.7 million and adjusted to \$4.2 million and ultimately at \$4.5 million. He said that this was all based on an anticipated cost. He asked why the price has moved as much as it did, with their experience.

Mr. Lowery said that from the time they reviewed the drawings at 50%, from the \$4.1 million, is when Stiles came aboard. He said that once they completed the constructability review and life cycle cost analysis, life cycle products were introduced. If they wanted to take those products out, then the price could be reduced another \$400,000; however, it is not recommended. At \$4.1 million, at 50% drawings, to the permanent drawings, they have reviewed the recommended products to meet time, cost, and quality. He explained that they wanted products that would not start rusting in a year or two, or any other issues.

Mr. Preston said that unknown is what the actual cost will be. He said that although we want to be so close to provide a comfort zone, but in the end no one knows the cost.

Mr. Lowery said that there is a contingency for the unknowns. The project has been refined well enough and the contingency is at 3%, \$119,000 for the duration of the

GENERAL ITEMS - CONTINUED

project. He said the contingency belongs to the City. If it comes in cheaper, it will be added to the \$119,000, but if used on the project, it offers a buffer for the unforeseen. In essence, it is the City's money.

Mr. Miller said that the \$400,000 difference, the investment makes is less expensive in the long run because it is a better quality product. He asked for the total cost of the builder's risk insurance.

Mr. Lowery said that they were unable to obtain a precise cost, but instead, they approximated the amount based on the cost of builder's risk for the MOC, which maybe approximately \$25,000. However, it could be more, so they are proposing to give the \$25,000 to the City. If there is an overage, the contingency will be used to cover it. He said that the builder's risk on the MOC was \$80,000.

Wit Markham, Project Executive, said that the MOC was \$80,000, but it was not on the ocean; therefore, there are different factors to be considered. Nevertheless, they felt it fair to contribute \$25,000. He said in the next couple of days they should have the quote.

Chair Noland said that the contract required that Stiles pay the builder's risk.

Mr. Markham said that it was in the contract, but it was initially excluded because they thought it would be less expensive for the City because their basis and the ability for the City to purchase insurance is much greater than Stiles. Additionally, he said that it is in the contract to be included, but when pricing began, they excluded it.

Andrew Maurodis, City Attorney, said that you are approving the final contract now; this is a result of all the negotiations. He explained that this is different than the low bid; you are awarding the contract based on quality service and then you invite the contractor into the process so the contractor has ownership of the plan. He explained the process that has taken place up until now and said that this is a result of all negotiations and compromises and this is what they have settled upon.

Chair Noland said that if it was \$80,000 for the MOC, which cost \$10 million and is not on the ocean, she thinks that this would be more expensive because of the ocean location.

Mr. Lowery said that it would be if they were the same price, this project is only \$4.5 million whereas the MOC cost \$10 million. He said that apples to apples, half of that, builder's risk would be \$40,000. Also, insurance has changed over the last several years, everything has seemed to decrease. Furthermore, they do not want to promise something, but felt it was necessary for Stiles to contribute to it, as was included in the original contract.

Mr. Klopp said that the City's insurance company suggested that Stiles provide it; therefore, he negotiated with Stiles to provide it without changing the GMP, with the ability to pay from the contingency any remainder. Stiles has agreed to these caveats;

GENERAL ITEMS - CONTINUED

therefore, this is the right approach because if it exceeds contingency, it would be a part of the City's costs which would result in a higher GMP and Stiles agree.

Vice Chair Popelsky asked what builder's risk insurance covers. He provided examples of bodily injury and said that he does want the City to be responsible for these things.

Mr. Klopp replied that Stiles is required to have comprehensive liability insurance, worker's compensation insurance, and automobile insurance; as well as insurance to cover their equipment. However, builder's risk is property insurance; if there is a hurricane it will cover the damage.

Vice Chair Popelsky asked if the subcontractors are given an incentive to finish earlier or a bill if they finish later.

Mr. Markham replied that they buy scheduling projects; they develop schedules. The subcontractors go in knowing that they have a schedule to meet and they are tied to Stiles contract via their subcontract to Stiles liquidated damages. If they hold them up and are unable to deliver on time, then the subs are responsible for their liquidated damages and their extended general conditions; therefore, it is more incentive for them to finish on time.

Vice Chair Popelsky asked for clarification on progress payments.

Mr. Markham said that they bill the amount that the subcontractors bill, plus their fee on a percentage of completion on the job, less 10% for retainage.

Vice Chair Popelsky clarified that Stiles will check to see what the subcontractors have done and bill them based on performance then come back and bill the City.

Mr. Markham replied correct. Additionally, Mr. Markham said that Stiles invoices through the 25th of the month and is paid by the 20th of the following month.

Mr. Preston asked for clarification on the builder's risk cost.

Mr. Markham said that when the price comes in, they will bring it to the Board.

Mr. Preston said that since we are voting tonight, how does that fit in since it is being addressed now.

Chair Noland said that any overage on the builder's risk will be paid from contingency.

Mr. Lowery said that the \$119,000 is a part of the GMP and it would not be any increases to the City.

Mr. Ganz asked if the LEED certification that the City is seeking is included in this, with the exception of the soft costs.

GENERAL ITEMS - CONTINUED

Mr. Lowery replied that is correct.

Mr. Ganz asked about asbestos.

Mark Rubenstein, Stiles Corporation, said that an asbestos report was done and there is none.

Mr. Ganz asked who decides what items will be placed in the restaurant.

Mr. Klopp said that there has been discussion with Stiles, the architect, and Staff, but he makes the final call. In every case, he has requested quality, durability, and attractiveness. Mr. Klopp said that the exterior stone could have been a plain tile, but he chose a coquina tile which will change the look of the building from institutional to resort like. He outlined other items that have been upgraded, wooden trellis, wherein, he decided to go with lpe wood which will be around for 50 years.

Burgess Hanson, City Manager, said that it will hold up over time.

Mr. Klopp said that lpe's appearance improves over time, but is much more expensive, for the material and labor as it has to be pre-drilled. Additionally, the materials and colors were approved by the Community Appearance Board, but the detail was Staff's decision.

MOTION was made by Mr. Ganz and seconded by Mr. Miller to approve Item 1, adopted CRA Resolution 2011/023, as revised.

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

ITEM 2**DIGITAL TIME STAMP: 07:23:37****Discussion regarding real estate acquisition**

Kris Mory, CRA Coordinator, said that recently, the CRA was approached by the owner of 2025, Southeast 1st Street, known as the Elizabeth House Inn; it is directly east of the Comfort Inn and west of the main beach parking lot. This property was not one of the five (5) selected by the Board because at that time, it was not for sale, it was not visible, and it was not on a main thoroughfare. She said now that there is a willing seller, the CRA has been asked to reconsider this particular property. Rather than focusing on a particular property, she suggested discussing the adopted real estate acquisition policy which says that the CRA may only adopt properties in the plan. To amend the CRA Plan is about a 3 - 5 week process; thus, that process makes it difficult for the CRA to act as the private market may desire in terms of an active buyer. In 3 - 4 months, the property may be gone and out of reach. She asked for feedback from the Board regarding the direction of the policy.

GENERAL ITEMS - CONTINUED

Continuing, Ms. Mory also reminded the Board that when the five (5) properties were listed, the policy criteria was used to determine those; thereafter, she outlined the criteria; acceptable use, visibility, economic impact, visual impact of redevelopment, the ability to improve the neighborhood, and increase tax revenue for the area. Additionally, Ms. Mory suggested solidifying the criteria more, amending the plan, and opening it up to give more flexibility to Staff, knowing that they have more specific criteria to go by.

Burgess Hanson, City Manager, said that for clarification, he had asked for this to go on the agenda, as there are ongoing designs of the main beach parking lot and fire station lot. He commented on having to entertain other aspects if the property were to be purchased.

Chair Noland said that if they decided to add this property, will it still take three (3) months. Currently, everything has to be approved by the Board; therefore, Staff's hands are tied. If it takes 3 months, that seems ludicrous because all of a sudden, this property came available. There might be another piece in the redevelopment area that comes available and the Board cannot jump on it if it is financially feasible. She again asked if it will take three (3) months if the Board decides to approve the Elizabeth house.

Andrew Maurodis, City Attorney, said that the plan has to be amended; however, he recommended authorizing an amendment to the plan so that there is flexibility. He said that Staff will try to push it hard. If the Board decides to take that route, then they need to authorize the amendment of the CRA Plan for flexibility. If they want to sell it now, tell them we are working on a plan amendment.

Mr. Hanson said the question is whether the Board wants to approach them about the property.

Mr. Miller said that the plan only includes five (5); one has already declined, two (2) want to profit so highly that the Board is no longer considering them. Since this one has come available, he thinks the Board should approve the authorization to include language that was not originally included in the five (5). The Chamber building is off the table and the two (2) things he wanted to acquire are too expensive. He explained his reasoning for making the plan flexible.

Mr. Ganz agreed with providing flexibility. He asked if this should be amended to speed up the process. Also, he said that he doesn't want this to be done with a 3/5 vote, perhaps a unanimous vote of the CRA Board to allow something outside of the original plan to do that, which would make him more comfortable.

Chair Noland said that if someone is absent, what happens in that case.

Mr. Maurodis said that it can be a unanimous vote of those present on the board.

Chair Noland said that she would not want something held up because one could not be here.

GENERAL ITEMS - CONTINUED

Mr. Maurodis suggested a unanimous vote of those present, but not less than 4 votes.

Mr. Ganz agreed with that, but reiterated he does not want a 3/5 vote, to have one swing vote that changes the entire plan. He reiterated that there should be flexibility to act when the opportunity is presented.

Chair Noland said that when this all started, the Board was gun shy with the funds and the properties. Now that they have a vision they are more comfortable doing this.

Mr. Maurodis recommended making a motion authorizing them to move forward.

Mr. Ganz said that there are two (2) issues, the Board's ability to be flexible over the general policy, not dealing specifically with this project. The vote would be a majority vote, with no less than four (4).

Mr. Maurodis clarified a unanimous vote of those present, but in no case, less than four (4) affirmative votes. He said that this will be presented to the Board again because the plan has to be amended.

Ms. Mory said that right now, they are not amending the plan as they have done an analysis of all the real estate in the CRA; the real estate master plan map includes all properties that are on and not on the short list. That will give the Board the basis for only amending our policy; the policy will be amended to state what was just discussed. In cases where the five (5), not the five (5) that are already in the plan, where you would like to be opportunistic, and take advantage of the market, you will then have a unanimous vote of those present.

Mr. Ganz replied yes, but no less than four (4) members present.

In response to Vice Chair Popelsky's question, Mr. Maurodis replied that you can have telephonic participation only if there is a quorum present.

Ms. Mory said that before it was summarized, there was some misunderstanding; however, she thinks they found a way to accomplish the goal without amending the plan, but will amend the policy to empower the Board to take advantage of real estate opportunities with a unanimous vote.

Mr. Miller asked if the Elizabeth House was on the original list.

Chair Noland replied no, it was not available.

Mr. Miller said that he thought Ms. Mory's comment dealt with the original five (5) properties.

Mr. Klopp said that he and Mr. Maurodis will look at it and see; as there may be three (3) different opinions.

GENERAL ITEMS - CONTINUED

Mr. Maurodis said that there is a consensus to provide for flexibility in purchasing property, and the type of votes needed has been established. If we can move forward without amending the plan, which will be attempted to save time, then they will amend the policy; however, if it is not possible, then the plan will be amended. At this time, Staff will move forward with the Board's recommendations, a minimum of four (4), if five (5) are present, then five (5) have to vote for it and provide flexibility, in the most efficient manner.

MOTION was made by Mr. Ganz and seconded by Mr. Miller to approve Item 2 as presented by Mr. Maurodis.

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

Mr. Ganz said that before obtaining specifics on this property, he would like to look at a cost comparison, what is being received based on the tax rolls compared to what the City receives for gaining the property. Right now, we are gaining parking spaces and that should be compared to the tax basis.

In response to Mr. Preston's question, Chair Noland clarified that the Board is giving staff an opportunity to look into it because the City is already having designs on the parking lot. Now, they may be able to present to the parking lot contractors that this may be a piece that could be incorporated into the design. Staff will find out what they are asking for.

Mr. Ganz said that the Board does not have the flexibility to consider it.

ITEM 3**DIGITAL TIME STAMP: 07:40:42****Discussion regarding discount beach parking stickers.**

Burgess Hanson, City Manager, said that Mr. Ganz had previously suggested having a timeframe to offer discounted beach parking stickers and Staff is recommending setting aside \$10,000 of CRA funds to offset the cost. For that week, there would be two (2) choices, \$50 off the cost, if they brought in a receipt from an eligible business within the CRA then the CRA would cover that, but it would be limited to 200 stickers for that week. Or, take \$25 off if they had a receipt from a CRA business. If the Board decided to take \$25 off, then they could provide 400 stickers or to increase the funding above \$10,000.

Mr. Ganz disagreed with capping the amount. Additionally, without the receipts you are showing the incentive and it meets the economic development standard that you are giving someone a parking decal that allows them to park in the CRA and maybe the assumption is a stretch that they will spend money while there. He said that his original recommendation was cut and dry and simple; this makes it complicated.

GENERAL ITEMS - CONTINUED

Chair Noland said that there are a lot of people that go to the beach and do not spend money in the CRA as they bring their own refreshments.

Mr. Ganz said that he doesn't want to put a cap on it because if someone comes at the last minute, it's too late. He said that it should last Monday - Friday, regardless of the number of people that come; notwithstanding, he understands that this may hurt the CRA budget. This is not an extraordinary amount of money that will break the bank, considering that a cost change on a project was approved. He said that he would be fine to place a caveat on it and how many show up will receive \$50 off, but must present a receipt from a month or two months ago.

Mr. Hanson said they will bring something back at the next CRA Meeting.

Mr. Miller agreed that capping it would have a negative effect.

It was the Board's consensus to allow a one week, Monday - Friday, sales period.

Mayor Noland reminded everyone that tomorrow night is the Halloween Ho Down at the Gates of Hillsboro (s/b Villages of Hillsboro Park).

ADJOURNMENT:

There being no further business, the meeting adjourned at 7:46 PM.

PEGGY NOLAND, CRA CHAIR

ATTEST:

ADA GRAHAM-JOHNSON, MMC, CITY CLERK