

**CHARTER TOWNSHIP OF COMMERCE
DOWNTOWN DEVELOPMENT AUTHORITY**

Tuesday, November 17, 2015

Commerce Township Hall

2009 Township Drive

Commerce Township, MI 48390

12:00 p.m.

CALL TO ORDER:

The Meeting was called to order by Acting Chairperson Hoy at 12:00 p.m.

Downtown Development Authority:

Present:

Tim Hoy, Acting Chairperson
Mark Stacey, Director
Dan Lublin, Vice Chairperson
Brian Winkler, Member
David Smith, Member
Jose Mirkin, Member
Susan Averbuch, Member
Tom Zoner, Township Supervisor

Absent:

James Gotts, Chairperson (excused)
Susan Spelker, Member (excused)

Also Present:

Thomas Rauch, DDA Attorney
Vanessa Magner, DDA Secretary
Matt Schwanitz, Giffels Webster
Randy Thomas, Insite Commercial
Amy Neary, Planner, McKenna Associates

Item 1: Approval of Minutes

MOTION by Lublin, seconded by Mirkin, to approve the Regular Meeting Minutes of October 20, 2015 as presented.

MOTION CARRIED UNANIMOUSLY

Item 2: Public Comments

None.

Item 3: Director's Report

Director Stacey discussed the following with the Board:

- Township Board Items:
 - The Township Board approved an advance of \$1.3 million which was reduced from \$1.5 for actual needs. They agreed to provide the advance for the DDA with the understanding that it will be paid back through the sale of the property to Galbraith, which was the intention. Galbraith is likely to close in the first part of December, and the Board clearly expressed that they want the sale to close as soon as possible.
 - Also at the last Board meeting, the 2015 budget amendments were approved. These are included in the packet.
- Updates on developers
 - HPI - Wyncliff - Progressing well
 - HPII - Merrill Park - At MDEQ for permitting
 - Shapiro-Barrington - Tentatively closing the week of 12/7/15
 - Granger - AIG in as equity partner

- Pole Barn - The pole barn has been emptied of all necessary items and the roof has been repaired.
- MTT Judgments - Regal Cinemedia Corp estimated refund \$11,171
- HOA Items
 - Irrigation - Michigan Automatic Sprinkler, Mike Rennie - The system has now been turned off for the winter.
 - Lighting - CJs Lighting, Chris Niestroy
 - DTE has been monitoring power surges at the Library and Pontiac Trail roundabouts.
 - We've been less than successful in dealing with the current underground contractor, but are seeking other options to troubleshoot the electrical issues that are causing the breaker to fail.
 - The overall assessment is being finalized.

Discussion took place between Director Stacey and David Smith regarding damage to the light poles caused by frequent car accidents, the need for a contractor to examine the underground and the control panels, and turning over the system to the HOA once it is completely functional.

- Insurance Claims
 - There are 18 light poles in need of repair and/or replacement. We will be filing claims for up to 14 light poles, and the remainder will be scheduled for repairs.
 - The bridge claim is complete and the check for repairs has been received. These will be scheduled accordingly.
 - The policy we have instituted for insurance claims has been effective. Police reports are now sent to the DDA office for accidents that have occurred in our area and claims are filed promptly.

Director Stacey addressed details of two issues concerning the Galbraith closing. The first was negotiating of a Landscaping Agreement among the developers with regard to the GMA proposal. This agreement will provide that future improvements are made to the public spaces which will create the nicest project possible at a cost of approximately \$450k-500k, and the DDA will not have to participate in that cost. The agreement is not completely finalized as commitments and signatures are still needed from the remaining developers, but the outlook is positive.

Susan Averbuch inquired about landscaping north of the bridge. Director Stacey explained that the area north of the bridge is residential. The bridge is the dividing line to change the nature and scope of the landscaping as residential requires a different feel and texture, and landscaping will be present there also, but south of the bridge will have a unique nature and scope and the majority of the money for landscaping improvements will be invested in that area.

Director Stacey addressed a second issue with the Galbraith closing, which is a Right of First Offer for Galbraith to Purchase the Aikens' property, if for any reason the Aikens sale and development did not become a reality. The reason Galbraith proposed this was in consideration of his significant investment, which will be \$50 to \$60 million into the Barrington residential development and considerable additional sums in the commercial portion. He has a substantial interest in what will be developed on the site directly across from his, and he also has the financial resources to perform under the agreement, if necessary. Although he does not have extensive commercial involvement, based upon discussions with him, he would bring in an

experienced commercial developer to work with on the site. This is all a 'what-if' scenario and it offers a backup plan for the DDA and the Township in the event that the Aikens' deal falls through for whatever reason.

Susan Averbuch, expressed her strong opposition, which initiated extensive, lengthy debate regarding the Right of First Offer to Purchase. Points she made were, with all due respect, that the document is not yet available for review, she does not want to see the agreement tied into the Galbraith closing in December, it has been 2 years since Galbraith's original purchase agreement was presented, and the offer should have been made available to the other active developers in the area also. Although she agrees that Galbraith does develop quality projects, she felt preference should not have been given to him exclusively. She also felt that Bruce Aikens may have been offended by this agreement.

Director Stacey explained that Bruce Aikens was made fully aware of the proposal and he had no issues. He also explained that it is not unusual to have a backup plan in place. Attorney Rauch explained that if the Aikens deal were to fall apart, notice would be given to Galbraith and he would have 10 days to decide to purchase under the same economic terms as Aikens. He would then have 60 days to close in cash. This arrangement is surprisingly short and attractive, and it's a reasonable Plan B.

Discussions continued as Susan Averbuch presented further questions, while David Smith agreed that Susan presented some valid points. He initiated discussions regarding requirements for potential commercial developments and stated that there are some entities that Galbraith would not want to see across the street. Therefore, Galbraith wanted to have certain conditions in place that would provide greater assurances that the commercial development would complement his residential. David Smith also felt that the Right of First Offer to Purchase should not be tied into the current closing for the Barrington project property.

Director Stacey added that success for Aikens is likely and this is simply a backup plan which would expedite development of the property as opposed to having it go back on the market.

Randy Thomas agreed and further elaborated on the current tenant status for the Aikens development. Susan Averbuch stated that she does have faith in Bruce Aikens. Dan Lublin felt that chances of Aikens not moving ahead were minimal and he understood Galbraith's desire to protect his investment. He felt there were valid points presented, but he agreed with Director Stacey that this backup plan offers a win-win situation and an insurance policy for all parties. Acting Chairperson Hoy discussed the details of the contract with Aikens. He explained that Galbraith has reviewed this and would like to have the option for 60 days and would write a check for the \$10.5 million.

Further discussion included the length of Aikens' agreement, the timeline and benchmarks, property values, the economy, previously proposed developments by Galbraith, Averbuch's strong opposition to the agreement with Galbraith, and Smith's questions as to whether it was valid for a public entity to make this offer to a single developer. Randy Thomas restated the tenancy status for Aikens and reinforced that there is only a remote chance that anything will happen that would lead to this property not being developed by Aikens. He also reviewed the history of potential sales and property values pre and post-market crash, and he feels that the DDA is now doing better financially. He added that backup agreements such as this are extremely common.

Attorney Rauch - You've selected a candidate to buy this property, you've selected a developer. In my opinion, if there's any criticism of it, it is that it should have come up six months or a year ago, but it didn't. I fail to see any downside. I also don't believe you have any obligation whatsoever, just because you're a public body, to go do an RFP for a second backup. Our by-laws and the statute for the DDA allow the Board to buy and sell real property on the terms the Board shall determine and these are terms you have determined. I do think you risk the

possibility that the developer will rethink when or whether he wants to close this fall or in the spring, and you have an opportunity to close with this developer now. I frankly think it's a little lesser issue than the Board is making of it.

Susan Averbuch asked, if negotiations began three weeks ago, why was this not presented to the Township Board of Trustees. Director Stacey responded that he does not present anything to the Board of Trustees until it is first approved by the DDA Board. He added that he felt this was a non-issue. He thinks it's a great thing and again, it's a win-win for all parties concerned.

Matt Schwanitz indicated he had another meeting to attend and exited at 1:00pm.

Item 4: Advance with Return

(Reviewed under Director's report. No action necessary.)

Item 5: Attorney's Report

Attorney Rauch - Last month you approved the Seventh Amendment to the Galbraith agreement. I had prepared a form of Amendment that indicated the closing date would be December 14th; the day before the December DDA Meeting. After discussion with the Board, it was decided that the date was intended to be December 17th (after the December DDA meeting), however that date was not corrected on the amendment. I request that you entertain a motion to authorize the Director to execute a corrected Seventh Amendment to reflect the date of December 17, 2015, if necessary.

MOTION by Lublin, seconded by Zoner, to authorize the DDA Director to execute the corrected Seventh Amendment to the M. Shapiro Purchase Agreement as necessary to extend the closing date to December 17th.

Discussion -

David Smith - So that means we have a drop dead date of December 17th?

Rauch - Yes, we always did. In fact this was pointed out to me today when I discussed it with Mark. I checked the records and found that the wrong date was in the amendment.

MOTION CARRIED UNANIMOUSLY

Attorney Rauch - Thank you. What I have discussed with the Director is that we are scheduling closing in December for Galbraith. As I mentioned earlier, our closing inventory list of documents includes 73 documents. Rather than bring all 73 of them to you for separate approval, in as much as you have approved the agreement, each amendment and you've discussed substantive matters including the Landscaping Agreement today, as well as the Right of First Offer to Purchase. We have prepared a simple proposed resolution that approves and authorizes the Acting Chairperson, Secretary, DDA Director, as well as the other officers, to execute the closing documents with Galbraith.

MOTION by Lublin, supported by Mirkin, to approve the Resolution as written to authorize the Acting Chairperson, Secretary, DDA Director as well as the other Board Officers to execute all closing documents for the M. Shapiro property sale.

Discussion -

Smith - What was this again?

Averbuch - Everything, all the documents including two more of them. Okay, do you want to know why the first red flag came up? The potential special meeting the day after the closing. Why would we schedule a special meeting the day after the closing?

Stacey - We scheduled the closing for the week of December 7th. If something between now and then comes up that I need Board approval for, I wanted to see who would be in town because we're in the holiday season. I think it said tentative. That was to determine who would be available if we ran into any trouble.

Smith - For closing for Galbraith?

Stacey - Yes.

Hoy - Any other comments?

Smith - Is this what we're voting for right now?

Hoy - We are voting to approve the documents so that they can close that piece of property.

Magner - Does that include the proposal?

Hoy - The two additional amendments.

Stacey - The Landscape Agreement and the Right of First Offer to Purchase.

Rauch - There were 73 documents, most of which you've heard of. For instance, there were three easements last month that we approved. Prior to that, the Master Deed Amendment was approved. You also have approved the various PUD agreement amendments. All those relate to closing, and this resolution is designed to simplify it.

Magner - Have the Board members seen the two new agreements?

Smith - They're not done.

Magner - The right of first refusal or purchase? They should be.

Smith - We don't have it yet.

Stacey - The Right to First Offer to Purchase is not completely finished yet, correct Tom?

Rauch - Correct, it's not complete.

(Open discussions ensued and the vote was called. All members were in favor of the resolution except Averbuch and Smith.)

Rauch - The intention of the resolution is that the substance of the transaction has been discussed at length, and unless you require all of the final documents to be presented, if you are comfortable, you are authorizing all of them to be signed with this simple resolution. I can advise that you've seen everything of a substantive nature and material changes have been presented to you, including the two new documents today.

Stacey - You have already called for the vote.

Rauch - You've already had the vote and due to negative votes, there should be a roll call.

Smith - We've seen a landscape document.

Averbuch - Right. We want to see the Right of First Offer to Purchase.

Smith - Shouldn't it be with their exhibits for the landscaping documents? Or are you talking about the \$500,000 proportioned amongst everyone else?

Rauch - Correct, they'll be following the landscape easement where extra landscaping will be done according to Grissom Metz.

Smith - The documents we saw last month are parts that are being added to the Master Deed?

Rauch - Yes, they are. They were sent yesterday to Giffels to be depicted on the Master Deed B-docs, the three easements that were approved last month.

Smith - Correct. So there's a new landscape and that's going to be a new document that's got to be written up?

Stacey - Yes, and that is being worked on. That is not going to be on the title. It's not an easement.

Smith - No, it's an agreement everyone is going to adhere to, subsequent to the entities signing it.

Stacey - Correct.

Smith - Which is a benefit to the Township. The only other document that we're not going to be able to receive is going to be ... what is it called?

Stacey - Right of First Offer to Purchase.

Smith - We have to agree to that, otherwise we can't close? Why does that have to be in this agreement to close?

Rauch - It was drafted in a form that I was not comfortable with. It's being revised by developer's counsel and the points were negotiated up until yesterday or the day before.

Smith - Why do we have to incorporate that in the closing?

Rauch - The same reason you need a deed, because the parties are requiring it. The Right of First Offer is part of the developer's requirements and the recommendation of the DDA director. It is part of the closing. You don't need to have the final document to approve the concept. There are provisions in all purchase agreements that the parties will use best efforts to do whatever is necessary to cause the property to close. This issue came up after the last meeting. It's been discussed a lot, including the principals, from the business points, and the lawyers. The developer has requested it, and the DDA Administration, staff and the consultants have recommended it.

Smith - It's part and parcel of the deal. It's putting a covenant, a restriction or tentative purchase agreement on something that was not related to the deal and now we're finding out that this is related to the deal because it's the comfortability of the developer? If it's not that important, why can't we make the decision next month then?

Stacey - It's an opportunity for us...

Smith - It's an opportunity for him.

Stacey - And us too, I think there's positives on both sides.

Smith - If it's that good an opportunity then why can't we do it next month?

Rauch - We want to close it before next month if possible.

Stacey - Yes.

Smith - Are you telling me he's not going to close unless we sign this?

Lublin - It could hold it up. He'd probably want to think about it and discuss it with his partners. What guarantees do they have that the commercial development will be the way they would like to see it based on what Aikens is doing. If Aikens didn't do it, and somebody else got into the picture, the property does not have to be built as commercial.

Stacey - The point being, his only opportunity to control the property is if Aikens doesn't buy it. After that, he has no control.

Smith - Why does this have to be part of this sale agreement?

Stacey - As Tom has said, it's not part of the sales agreement, it's part of the closing process.

Hoy - It's an addendum to the closing agreement or a side agreement.

Rauch - It's a side agreement, like a side letter.

Hoy - Because the developer probably wants it.

Smith - There's a lot of things I want too.

Hoy - The only question is are we going to give it to him.

Mirkin - Tom, can you please explain to me, what are the advantages of this side agreement, for us, the DDA?

Rauch - The advantages of the Right of First Offer; I think the best advantage is for an extremely short time period, you are agreeing to offer the property to an adjacent developer that's invested approximately \$50 million in a property next door. It's a wonderful opportunity to have a creditworthy party acquire the property that the shopping center developer chose not to. I don't see any downside.

Mirkin - So do you agree with Mark's comment that this is a win-win situation?

Rauch - I do agree.

Mirkin - Okay, end of the discussion.

Rauch - Technically, I believe you have voted. Please do a roll call now.

Magner - Who seconded the motion?

Watson - Mirkin.

ROLL CALL VOTE:

Ayes: Lublin, Mirkin, Winkler, Hoy, Zoner
Nays: Averbuch, Smith
Absent: Gotts, Spelker

MOTION CARRIED

Magner exited the meeting at 1:23pm.

Item 6: Insite Commercial - Contract Extension

Attorney Rauch reviewed the Second Amendment to the Consulting Agreement for Insite Commercial.

MOTION by Lublin, supported by Smith, to approve the Second Amendment to the Consulting Agreement to extend the contract with Insite Commercial for Randy Thomas.

MOTION CARRIED UNANIMOUSLY

Item 7: Engineer's Report

No report as Matt Schwanitz had to exit the meeting at 1:00pm.

Item 8: Planner's Report - OR District Presentation

Amy Neary delivered a presentation and discussed existing uses, proposed changes and challenges with nonconforming uses in the OR District. She met several times with Township Administration, counsel and the DDA Director to compile the proposal which was presented to the Planning Commission at their last meeting for review, feedback, concerns and ideas. This proposal includes updating the Master Plan draft and making suggested changes to the Zoning Ordinance to eliminate the OR District. It would be replaced with a new district called Technology and Light Manufacturing. The new district would be a combination of the OR and the Industrial with the exception of heavy industrial type uses. Limited outdoor storage would also be permitted with restrictions. Automotive repair is proposed to be a special use and would be completely enclosed in a building. The dimensional and landscaping requirements of OR would apply to the new district. The proposal also includes eliminating the ORI overlay and removing the OR area north of Township Hall from the TC Overlay.

Lublin discussed how this would affect existing commercial buildings. Amy Neary clarified that this is essentially the corner of Haggerty and Oakley Park and the commercial zoning there will remain. He inquired further about the appropriateness of having light manufacturing adjacent to office uses and they discussed the options and potential issues at length. Amy explained that the main goal here is to allow for owners of vacant buildings to find new tenants by expanding the allowable uses, and to maintain a high level of standards at the same time. These would be proposed as Special Land Uses and would not be permitted by right. They will be discretionary and each would require special approval. Lublin also discussed outdoor seating for restaurants with Amy.

Susan Averbuch initiated conversation regarding medical marihuana uses in the Township. Amy stated that it is only permitted in industrial since the recent amendment.

Winkler discussed restrictions on outdoor storage. Smith discussed limitations upon any use that involved adverse impacts.

Amy concluded that the Planning Commission will see this proposal again in December for the public hearing. She encouraged the Board members to forward any questions or comments to her, or to attend the December public hearing.

Item 9: Committee Reports

- A. Finance Committee - See action under Item 10, Budget Amendment.
- B. Public Relations Committee - Director Stacey requested that Jose Mirkin present his report next month due to time constraints. Mirkin had no objection.
- C. Marketing Committee - David Smith stated that the Board had already heard his comments.

Item 10: Budget Amendment

Director Stacey discussed the 2015 Budget Amendment that he and Treasurer Phillips put together. This was approved by the Township Board at their last meeting.

MOTION by Smith, supported by Lublin, to approve the 2015 DDA Budget Amendment as presented. **MOTION CARRIED UNANIMOUSLY**

Item 11: Insite Commercial Report

Randy Thomas presented an overview of the report for the properties to the DDA Board. He discussed Parcel L as it was presented to the Marketing Committee meeting just prior to the DDA Meeting. The list price suggested was \$550,000.

MOTION by Smith, seconded by Lublin, to accept the assessment of Parcel L with an offering price of \$550,000. **MOTION CARRIED UNANIMOUSLY**

Item 12: Approval of Warrants, Carry-Overs and/or Add-ons, and Revenue & Expenditure Report

MOTION by Zoner, seconded by Lublin, to approve the Warrants, Carry-Overs and/or Add-ons and the Revenue & Expenditure Report. **MOTION CARRIED UNANIMOUSLY**

Item 13: Other Matters

- The next regularly scheduled meeting of the DDA is December 15, 2015

MOTION by Lublin, seconded by Mirkin, to adjourn at 1:56p.m. **MOTION CARRIED UNANIMOUSLY**


Vanessa Wagner, Clerk
DDA Secretary

DDA's Secretary Certificate

Exhibit A

**COMMERCE TOWNSHIP DOWNTOWN DEVELOPMENT AUTHORITY
2009 Township Drive
Commerce Township, Michigan 48390**

RESOLUTION

At a regular meeting of the Board of Directors of the Commerce Township Downtown Development Authority, Commerce Township, Michigan, held on November 17, 2015, in the Commerce Township Hall at 12:00 Noon.

PRESENT: Tim Hoy, Daniel Lublin, Thomas Zoner, David Smith, Jose Mirkin, Brian Winkler, Susan Averbuch

ABSENT: James Gotts and Susan Spelker

The following preamble and resolutions were offered by Daniel Lublin; and supported by Jose Mirkin:

WHEREAS, The Commerce Township Downtown Development Authority (“DDA”) has, under the Fifth Amended Development Plan and Fifth Amended Tax Increment Financing Plan for Development Area No. 1 dated August 2, 2006, constructed Martin Parkway from Oakley Park Road to Pontiac Trail on the DDA’s land in the Township, entered into a Planned Unit Development Agreement with the Township dated February 12, 2013, as amended (the “PUD Agreement”) and platted the majority of the Project land as a the COMMERCE TOWNE PLACE CONDOMINIUM, the Master Deed of which was dated April 16, 2013, as amended (the “Master Deed” and the “Condominium” and individually each unit thereof a “Unit” and collectively the “Units”); and

WHEREAS, the Condominium Units are being sold, in whole or in part, to developers which will develop and construct on their Unit (or Units) development projects in accordance with the Master Deed, PUD Agreement, Township zoning and all other ordinances and other applicable laws, rules and regulations of public bodies having jurisdiction on such developer’s project;

WHEREAS, on June 25, 2013, the DDA contracted to sell Unit 5 of the Condominium to M Shapiro Development Company, LLC, a Michigan limited liability company (the “Developer” and, as amended, the “Agreement” respectively) for construction of a development project on such Unit 5 (the “Project”); and

WHEREAS, the DDA is amending the Master Deed to split Unit 5 of the Condominium into Unit 10 and Unit 11, to facilitate the Developer’s residential and commercial portions of the Project (collectively the “Property”); and the Developer is assigning its interest in the Agreement as permitted therein, to **MM Commerce Martin Apartments LLC** (as to Unit 10) and **MM Commerce Martin Retail LLC** (as to Unit 11) (each a “Purchaser” and collectively “Purchasers”).

NOW, THEREFORE, BE IT RESOLVED that the DDA Board of Directors authorizes the Acting Chairperson and Secretary of the DDA, or in their absence any one of the Acting Chairperson, Vice Chairperson, Secretary, Treasurer or DDA Director, to consummate the sale of the Property to the Purchasers, in one or more transactions and to execute all closing documents, including but not limited to amendments to the Agreement, the PUD Agreement, the Master Deed or other Condominium documents, any Title Company documents, deeds, bills of sale, assignments of rights, closing statements, affidavits, Condominium Association documents, easements, restrictions, Section 1031 tax deferred exchange documents, if any, side letters and any other documents whatsoever necessary or desirable in order to sell and convey the Property and consummate the transactions contemplated by the Agreement; and

FURTHER RESOLVED, that the DDA execute and deliver all such documents, take all such actions and perform all such obligations in connection therewith for the DDA to sell the Property in accordance with the Agreement, as amended and otherwise to effectuate the intents and purposes hereof, with any modifications to the terms of all of the foregoing as are deemed appropriate by the person or persons consummating the transactions on behalf of the DDA; and that the actions of such person or persons in consummating such transactions with such modified terms shall be conclusive evidence that such modified terms have been deemed appropriate and are approved.

FURTHER RESOLVED, that all prior and current actions taken by the DDA and its staff or the person or persons executing on behalf of the DDA, or their agents, attorneys and advisors in furtherance of the transactions contemplated by these Resolutions are hereby ratified, approved and confirmed as the actions of the DDA.

MOTION by Daniel Lublin

SECOND by Jose Mirkin

ACTION ON THE MOTION --

Tim Hoy, Daniel Lublin, Jose Mirkin, Brian Winkler and Thomas Zoner – For

Susan Averbuch and David Smith - Against

MOTION CARRIED

November 17, 2015

819247

#821182-Attachment to the DDA's Secretary Certificate

