

**MINUTES OF A SPECIAL MEETING OF THE
MICHIGAN CITY REDEVELOPMENT COMMISSION
APRIL 16, 2020**

The Michigan City Redevelopment Commission convened in a special meeting via Zoom and streaming live on My Michigan City, Indiana Facebook, on Thursday, April 16, 2020, at 5:00 p.m. local time; the date, hour, and place duly established for the holding of said meeting. The meeting was hosted by City IT staff (Kaleb Goodwin, Application Program Developer).

CALL TO ORDER

President Behrendt called the meeting to order at approximately 5:02 p.m.

ROLL CALL

Commissioners present:

Ken Behrendt, Chris Chatfield, John Hendricks, Pat Kowalski, John Sheets

Commissioners absent:

None

Non-voting adviser(s) present:

Deborah Chubb, Theresa Edwards

Staff present:

Executive Director Skyler York, Attorney Alan Sirinek, Administrative Assistant Debbie Wilson

Staff absent:

None

RESOLUTION 1-20

President Behrendt read Resolution 1-20 by title: RESOLUTION FOR THE WAIVER OF REQUIRED PROCEDURES TO PERMIT THE TIMELY PAYMENT OF FINANCIAL OBLIGATIONS DURING A PERIOD OF DECLARED DISASTER EMERGENCY. President Behrendt asked if counsel had comments.

Attorney Sirinek first noted two changes on page 1 of the resolution. One being a typo in the second WHEREAS clause wherein I.C. 37-7-14-12.2 should be I.C. 36-7-14-12.2. The second change occurring in the third WHEREAS clause from the bottom of the page wherein a subsection was added to now read I.C. 10-14-3-17(5)(B)(H) which specifically deals with paying financial claims.

Attorney Sirinek explained that the Redevelopment Commission has the authority to enter into agreements, contracts, and new projects to alleviate blight in a district. To do that, the Commission can enter into contracts to get a project started and they also have authorization to pay for that; all these things occurring in public meetings. But in periods of emergency, Indiana Statute makes allowances for those situations wherein the Commission can suspend the normal regulations on certain conditions; one of which is paying claims, as well as some other exceptions. This resolution only deals with the issue of paying claims. The reason being is that the Commission still has projects going on and they don't want to get into a situation where they are not meeting their financial obligations and where the contractors are not getting paid for work being performed. Attorney Sirinek added that he is always mindful of the State Board of Accounts so that something is not done wrong resulting in staff/commission exposing themselves to personal financial obligations.

Attorney Sirinek continued explaining that the purpose of the resolution is to make sure none of that happens, that the Commission is doing things according to statute, and acknowledging the State Board of Accounts is permitting a waiver so when they come in to do an audit it would show that the Commission passed a resolution. This would give Mr. York, as Director, the authority to pay claims. Once the emergency is suspended and the Commission is back to having regular meetings, State Board of Accounts wants any claims paid under this resolution to be reviewed and approved in a public meeting in accordance with normal procedures, statutory procedures, and State Board of Accounts regulations.

President Behrendt asked if Commissioners had any questions.

Commissioner Chatfield inquired into past public meetings the Commission had and any new projects, questioning if the Commission could have any discussion about that or if they couldn't decide about any of those things moving forward until the Commission has a regular public meeting.

Attorney Sirinek replied, "yes and no". He explained that the resolution is only calling for the payment of claims; although the Commission could amend the resolution to include other projects, noting that there is also a provision under I.C. 10-14-3-17(5)(B) about entering into contracts. He gave an example of the Pine Street Apartment project in that the Commission has already discussed it in public meetings, so if the Commission was further along with negotiations, they could approve a contract in a setting like this. Under the statute the Commission could not approve something that is brand new which was not discussed in public before.

Commissioner Chatfield said his question was directed toward the Commission's project on Cleveland Avenue across from the Fire Department. He pointed out that the Commission had previously talked about it publicly, so he questioned if the Commission

could not decide in this meeting format as to moving forward with what was talked about.

Attorney Sirinek advised that the Commission could approve the resolution as amended to include subsection (5)(B) of I.C. 10-14-3-17, so the Commission could enter into a contract or purchase agreement with the FOP on the purchase of that property. Although, he recalled that there is still more preparation work to do on that from the viewpoint of a Phase I ESA, which is one of the provisions the FOP wanted completed before they move forward. Attorney Sirinek said that the problem is the Commission has not talked about a purchase price in a public setting yet.

Commissioner Kowalski inquired if the FOP hasn't already offered their purchase for that property.

Attorney Sirinek replied that they did when the Commission put the property out for bid, but their offer was rejected because it came below the minimum bid entertained.

Commissioner Kowalski stated that he thought there was a counteroffer.

Attorney Sirinek stated that he thought it was left at the Phase I being done by the Commission and providing it to the FOP. Once it is done the report can be given to the FOP and at that point negotiations can continue. He said the question is if the Commission enters into those negotiations and reaches an agreement, is the Commission giving authorization to approve that subject to a public meeting so they can go forth with that project. In response to Mr. Chatfield's overall question of if the Commission can amend the resolution and if the statute would allow the Commission to go forth with that agreement, Attorney Sirinek replied, "yes it does" because there has been enough discussion of that in public and it is not a completely new project. Attorney Sirinek said the answer to the other question is that the way the resolution is written right now, that was not contemplated, so if the Commission wants to approve the resolution they should approve it with the contingency of amending it to include subsection (5)(B).

Commissioner Chatfield commented that he believes the Commission gave Mr. York the authority to order a Phase I on that property at a previous meeting. He asked if that was correct.

Mr. York replied that he doesn't think they did that, it was done afterwards. Mr. York does have a proposal from Aegis Environmental in the amount of \$2,250 to complete a Phase I ESA on the property but did not provide it to the Commission because he did not know it was going to be discussed tonight, although he can provide it to them. The Phase I ESA results are good for a period of 6 months. He said it might be worth having the Phase I ESA done just to get the status on the property even if the Commission does not go with the FOP.

There was discussion about the process and whether the Commission should pass the resolution first then discuss the project separately.

Attorney Sirinek agreed it should be two separate things but stated that if the Commission approves the resolution contingent upon amending it to include I.C. 10-14-3-17(5)(B) that would give Mr. York the authority to go forth with ordering a Phase I ESA. Once that information is received it can be shared with the Commission and if meetings are in session at that time the Commission could call a special meeting to give authorization to either approve or not approve that project.

Commissioner Chatfield asked counsel what the verbiage would be for a motion to include having the Phase I ESA done.

Attorney Sirinek suggested language for the motion to be approving Resolution 1-20 contingent upon adding another section making reference to I.C. 10-14-3-17(5)(B).

Commissioner Behrendt raised the question of expending money for the Phase I before agreeing on a price.

Attorney Sirinek advised that this amendment would let Mr. York make that determination for the Commission and then the Commission can make a decision in a meeting after the emergency is over. He explained that the purpose of the resolution is to delegate authority to Mr. York to make a determination that it is a reasonable cost for doing a Phase I ESA for that particular property. Attorney Sirinek said because there are wetlands located there, he is guessing that is why the cost is higher than normal.

Mr. York agreed, adding that it is a larger piece of land as well; it is almost 8 acres and it has wetlands. Mr. York stated that the Commission is obligated to do this before the FOP offers a price.

To not let time waste away, Commissioner Chatfield said he would like for the Commission to give Mr. York authority to work with the FOP to get an agreement started and allow for a Phase I ESA to be done.

Commissioner Kowalski agreed.

Commissioner Chatfield commented that he feels the Redevelopment Commission would have never purchased that property initially if there was some environmental issue there. His concern about environmental issues on the property is minimal. He does not think there is a risk for the Commission to spend \$2,200 for a Phase I ESA even though they don't have a purchase agreement.

Attorney Sirinek said to also keep in mind that the prior owner of the property was the City of Michigan City.

Commissioner Chatfield said his only concern is the property to the immediate west.

Attorney Sirinek acknowledged that would be found out during the Phase I ESA.

Motion by Commissioner Chatfield – seconded by Commissioner Sheets approving Resolution 1-20 contingent upon the adjustment of I.C. 10-14-3-17 to include subsection (5)(B) giving Mr. York the authority to order a Phase I ESA on the Cleveland Avenue property. Voice vote was as follows: (Ayes) Commissioners Behrendt, Chatfield, Hendricks, Kowalski, Sheets – 5; (Nays) None – 0. With a vote of 5 ayes and 0 nays, the motion was APPROVED.

Commissioner Behrendt commented that he thinks the Commission needs to receive a purchase offer, but they have not; he thinks the Commission needs that before they go ahead with the Phase I ESA.

Commissioner Kowalski stated that a Phase I ESA is needed no matter what the Commission does with the property. He added that the Phase I ESA is good for six months and he feels the Commission needs to get it done and then move forward.

Commissioner Chatfield added that Mr. York and Mr. Kowalski can do that at this point and press the buyer to an agreement. The Commission cannot approve an agreement; all they are going to do is wait until the Commission gets back to public meetings possibly in May or June. He stated that in his opinion the Commission has a bona fide buyer and the Commission had somewhat of a discussion as to what that looks like even though the Commission cannot approve an agreement in this meeting format. In his opinion, if the Commission had an agreement, he felt that would be enough to allow a Phase I ESA for this project. He asked for counsel's advice.

Attorney Sirinek advised that the Commission must do a Phase I ESA for the FOP as a requirement. Once that is done, the Commission can share the results with the FOP, and they would have an opportunity to back out of any kind of agreement if something costly came up with environmental cleanup. Once the Phase I ESA is complete, then the Commission can get to the point of entering into negotiations on a purchase agreement. From discussions this evening, Attorney Sirinek said it is his understanding that he, along with Mr. York and Mr. Behrendt, can enter into negotiations for a project for a purchase agreement, but the actual execution of that would not occur with any absence of either a special meeting to that effect or the Commission being back to having meetings once the emergency is done.

As an option so as to not lose time, Commissioner Chatfield inquired into asking the FOP to order the Phase I ESA and pay for it, and in the event the parties move forward with the closing, the Commission would then take that off the purchase price, or if the closing did not go through the Commission could reimburse the FOP for the cost of the Phase I.

Commissioner Kowalski stated that he has a problem with that, explaining that in 2019 the Commission talked to the FOP about them doing a Phase I on their property and the Commission doing a Phase I on our property. He said the FOP already spent money out of their pocket to do a Phase I on their property. Mr. Kowalski said it would not be right having the FOP do a Phase I on the Commission's property. He stated that the Commission should get the Phase I done, and then move forward once it is finished.

Commissioner Behrendt agreed with Commissioner Kowalski, stating that the Commission is going to have to do a Phase I no matter who they sell the property to, so the Commission might as well do it up front.

Commissioner Chatfield stated he was good with where the Commission is headed and agreed the Commission needs to move forward with this, indicating his suggestion of the FOP ordering and paying for the Phase I was made merely for the sake of time.

Mr. York commented that he read through Aegis' contract indicating that it should take less than 30 days for the Phase I; possibly 2-3 weeks.

Attorney Sirinek wanted it to be clear where Mr. York's authority starts and stops, stating that whether there is a regular meeting or not, if he gets a claim and he does not feel comfortable paying it, the Commission is basically saying not to pay it and bring it before them to deal with it whenever their meetings resume. Mr. York's authority will go both ways with paying or not paying claims.

All agreed and trust that Mr. York will make the right call.

Mr. York commented that if there are questions, he will follow up on his end with the contractor/client but obviously he would bring it back before the Commission if there are reallocations needed or change orders. He will make decisions to the best of his ability, along with help of staff.

PUBLIC COMMENTS

Ms. Chubb questioned noticing of this meeting and if it was promoted as a Facebook livestream in the newspaper or anywhere.

Due to short notice, Mr. Goodwin (IT) apologized that he did not have time to properly post it. He said there were no public comments received via Facebook.

Mr. York added that staff did notice this meeting with the 48-hour rule, doing the same exact thing that is done for all meetings.

ADJOURNMENT

The chair called for a motion to adjourn.

Motion to adjourn by Commissioner Sheets – seconded by Commissioner Kowalski and unanimously approved. The chair declared the meeting adjourned at approximately 5:36 p.m.

/s/ John Sheets, Secretary