

Economic Development Committee Meeting

Date | time Tuesday, March 1, 2022, at 5:00 P.M. | *Meeting called to order by* Neil at 5:00 P.M.

In Attendance

Members Present: Tom Neal (C), Sarah Watson, Lisa Rasmussen, Tom Kilian
Member Excused: Becky McElhaney
Others Present: Mayor Rosenberg, Liz Brodek, Attorney Anne Jacobson, Randy Fifrick, MaryAnne Groat, Tammy Stratz, Doug Diny, Gary Gisselman, Nick Patterson (T. Wall, Webex), Jason Armani (Webex)

In accordance with Chapter 19, Wisc. Statutes, notice of this meeting was posted and sent to the Daily Herald in the proper manner.

Agenda Item 1 – Approval of the Minutes from 2/01/2022

Watson motioned to approve minutes, seconded by Killian. Motion carried 4-0

Agenda Item 2 – Discussion and possible action on approving new Standard Deed Restrictions (Atty. Jacobson, Fifrick)

Fifrick explained most aspects of the deed restrictions have been unchanged since 1990. Fifrick provided an example of a potential issue that occurred in December where a couple of property owners exchanged property within the Business Campus and the new owner came to the city regarding First Right of Refusal. Fifrick said it's important to ensure the property exchanged stays with a tax paying entity. Fifrick noted another part of the current deed restrictions requires new tenants/leases in a multi-unit building come to the city for approval. Fifrick doesn't agree this is a best use of time/resources. Fifrick explained the new deed restrictions keeps the commencement dates and completion requirements the same and if an entity doesn't start their project in the specified timeline the city has the first opportunity to buy the property back.

Kilian asked if the new deed restrictions were reviewed by the City Attorney's office. Fifrick replied they were and that he worked hand in hand with them.

Rasmussen made a motion to approve the new deed restrictions, seconded by Kilian. Motion passes 4-0.

Agenda Item 3 – Termination of recorded Deed Restrictions and Recording Set of Revised Deed Restrictions for 715, 717, 719, 721 and 723 S. 72nd Avenue (Fifrick)

Fifrick said this item is related to the new deed restrictions discussed in the previous agenda item. Fifrick explained Jason Armani, owner of R3JAS3, LLC, bought property at 715-723 S 72nd Avenue in December 2021 and approached city staff about removing the deed restrictions on it. Fifrick then advised Armani there were revisions to the deed restrictions in the works that may address Armani's request. Fifrick explained commencement/completion dates in the deed restrictions don't make much sense in situations like Armani's because there's already a building on the property.

Jason Armani referred to Item #11 on the Standard Deed Restrictions for Wausau Business Campus, which he requested a revision on. He explained the way it is written now gives the city the ability to do anything it wishes with the parcel, which is unnerving. Armani referenced earlier discussions with Fifrick as to what the cities concerns are in relinquishing this provision. Fifrick explained it could be related to potential future easements the city would have to pay for if the current language in the Deed Restrictions didn't exist. Armani proposed to give the city unilateral ability by resolution to an easement at no cost to the city, so the language in the Deed Restrictions can be less restrictive.

Neal asked if the highlighted section on the handout is the desired change of the city's or Armani's. Fifrick replied the alteration came from Armani. Fifrick stated staff felt it was a decision for the committee to make and in agreement, staff will work with the attorney's office to make the administrative changes.

Armani clarified he is specifically requesting change to the verbiage “provide for other and/or further covenants, regulations, restrictions, and/or encumbrances to this land or they may exempt the land or any portion of the land...” Armani explained it would make sense if the land had not been built on, but this provision allows the city to change the rules at any point.

Atty. Jacobson stated she’s received numerous requests to change the deed restrictions but is unsure how the committee feels about having a uniform set applied to everyone at the business campus. Atty. Jacobson stated #11 is in every business’s deed restrictions but may not be consistent because other businesses have approached the committee about changing certain provisions. She explained that any change would reduce the city’s power and ability over the property, but she is okay with it legally if the committee wants to grant Armani’s request. She also explained the committee may encounter more of these as individual businesses negotiate their own deed restrictions.

Rasmussen commented if standard deed restrictions are going to be customized, there may need to be a change to #11 so it’s effective but less scary. She explained the restrictions not only allow control on the use and purpose of sites but also to ensure tax base and job creation is maximized. Rasmussen suggested reviewing issues with #11 to prevent so many re-reviews.

Atty. Jacobson said to get all current owners in the business campus to agree to and then record a new set of deed restrictions would be a very involved and time-consuming process.

Neal asked if Rasmussen made a motion to approve the requested change with the caveat that staff will review #11 to see if the verbiage can be tweaked for future use. Rasmussen added a grandfathered date should be established because she doesn’t expect staff to re-negotiate with 50 other businesses and replied, “so moved” to the motion as presented by Neal. Seconded by Watson.

Fifrick added it is the intent the new restrictions would be used going forward and would not go back to current owners.

Kilian asked Armani what his greatest fears are with the language. Armani replied, the perpetual state of uncertainty.

Agenda Addendum Item 7 – Discussion and possible action on approving Planning Option extension request from T. Wall Enterprises/District at Riverlife, LLC (Brodek, Patterson)

Committee agreed to move to agenda item 7 to allow for all members to hear/participate.

Brodek provided a timeline of events regarding the planning option with T. Wall: committee requested a planning option for T. Wall at the 12/7/21 meeting, a draft was brought to the committee at the 1/4/22 meeting and approved unanimously. Brodek explained T. Wall (Nick Patterson) contacted the city on 2/9/22 to begin testing the week of February 21st and at the council meeting on 2/22/22 a discussion occurred satisfactory certificates of insurance (COI) for sub-contractors before testing could begin. T. Wall and sub-contractors exchanged emails that evening to obtain them. Atty. Jacobson found issues with COI’s that could not be addressed in a timely manner. In a discussion on 2/24/22 between Brodek and Patterson, Patterson explained an extension would be necessary to complete their due diligence. Brodek explained a more in-depth conversation occurred on 2/25/22 regarding extending the planning option to May 2nd and development agreement negotiation to September 1st.

Neal asked Brodek where we would expect T. Wall to be since they were initially chosen. Brodek replied the committee chose T. Wall in the April 2021 meeting. A planning option was sent to T. Wall in May of 2021 that was not returned at which point there was communication back and forth. Brodek said we are coming up on about a year of negotiations and she would have expected us to be a bit farther in the process than there has been.

Rasmussen expressed disappointment there is not a viable development agreement almost 10 months since T. Wall’s proposal was chosen. She reflected on T. Wall stating there would be no issue accomplishing the requirements by March 1st and she does not see COI’s as an unforeseeable circumstance for being unable to meet the deadline. Rasmussen explained the riverfront is a limited commodity for Wausau and there’s no need to rush

development. She added we can afford to be choosy and perhaps need to re-RFP the property or at least provide the ability to do so and T. Wall would be welcome to submit a new proposal.

Patterson agreed there have been many delays and the issue now is on soil properties and getting a better grasp on how much contamination there is. Patterson said they can certainly negotiate pieces of a development agreement but there's a lot up in the air with soil conditions. Patterson also agreed liability insurance is certainly standard practice and they engaged with technical services in December, immediately upon receipt of the planning option. T. Wall's regular provider could not commit to submitting a proposal due to backlog. They sought other providers and went with American Engineering Testing (AET) who has worked with Wausau in the past and could provide a proposal. Although discussions with them began in December, Patterson said he didn't find out until 2/9/22 that they couldn't get to the site until 2/21/22. He also assumed AET would know the standard requirements for insurance which turned out to be incorrect.

Neal commented that the extension requested is substantial given what's left to accomplish and asked Patterson to explain why so much extra time is needed. Patterson replied because the insurance requirements were not met, True North and AET were unable to mobilize, and the project was taken off their schedule. He is hopeful they can remedy the liability insurance and get back on their schedule in the next week or two but is unable to guarantee that. He continued that testing takes about a 5-day period and he could have a report in hand within three weeks and from there a week to complete the feasibility report and a week or two to coordinate with contractors.

Rasmussen commented that negotiations should not have waited until the 11th hour and Wausau's project need to be as important as any other community. She said she will not vote for an extension.

Neal asked if the timeline is not extended, how does it affect the viability of the project. Atty. Jacobson responded the developer had until 5 P.M. on 3/1/22 to complete requirements and provide the city with their intent to proceed prior to the expiration of the planning option. Brodek said a letter was received from T. Wall on 2/28/22 but we were unable to provide it. Brodek explained we may be looking at in the termination is the city having the option to terminate with or without cause. Atty. Jacobson stated it does not appear T. Wall wants to terminate it so it would be up to the committee, and we would have to send them a notice within 30 days.

Kilian echoed Rasmussen's comments and said he would not agree to an extension.

No motion to approve extension received therefore, no action was taken.

Agenda Item 4 – Update on rescinding prior resolution #12-0705, Joint Resolution of the Economic Development and Finance Committees approving the sale of the to be surveyed Wausau Business Campus Expansion Area land at 9500-9600 Innovation Way to Composite Envisions (or their assignee) and revers Tax Increment Financing (TIF) payments for 2 years not to exceed a total of \$49,000 adopted September 24, 2019 (Brodek, Fifrick)

Brodek stated rescinding of the offer was approved at finance on 2/22/22 so no action is needed but she wanted to advise the committee that it will not be moving forward and once passed by council, the parcel will be offered to new parties.

Agenda Item 5 – Set April Meeting Date

Brodek explained the usual meeting date for E.D. in April is election day and the chambers is reserved from 12-8 P.M. and an alternate meeting date/time is needed. Members requested an email be sent with possible options.

Adjournment

Watson motioned to adjourn at 5:46 P.M., seconded by Kilian. Motion approved 4-0