

MINUTES
LAWTON ECONOMIC DEVELOPMENT AUTHORITY
2ND FLOOR CONFERENCE CENTER
NEW CITY HALL
AUGUST 4, 2011, AT 2:00 P.M.

David Madigan, Vice-Chairman, called the meeting to order at 2:00 p.m. in the New City Hall 2nd Floor Conference Room. Meeting notice and agenda were posted on the City Hall bulletin board as required by State Law.

ROLL CALL:

PRESENT: Denham, David; Madigan, David; Means, David; Neal, Larry; Sheppard, Ernie; Wells, Doug; Zarle, Richard.
ABSENT: Fitch, Fred; Nance, Ron.
OTHERS PRESENT: Denise Ezell, City Clerks Office, Frank Jensen, City Attorneys Office.

INTRODUCTION OF GUEST

Madigan stated we have Kimberly Furrh our accountant and Steve Robinson from the Lawton Constitution.

BUSINESS ITEMS:

1. Approve the minutes of July 7, 2011.

Motion by Denham, **Second** by Wells, to approve the minutes as written. **Aye:** Madigan; Means; Neal; Sheppard; Wells; Denham. **Abstained:** Zarle. **Nay:** None. **Motion Carried.**

2. Consider approving invoices, requisitions, and all other submitted materials for payment and take action as deemed necessary.

Motion by Denham, **Second** by Means, to approve invoices, requisitions, and all other submitted materials for payment. **Aye:** Madigan; Means; Neal; Sheppard; Denham. **Nay:** Zarle; Wells. **Motion Carried.**

Mitchell stated if you remember Batchelor's history he was the attorney for the Oklahoma Urban Renewal Authority for thirty or forty years, the Skirvin Hotel project, the Dell project, most of the Oklahoma City downtown redevelopment and the Bass Pro Shop.

Wells stated I wouldn't have a problem paying them if I could see something they had accomplished.

Mitchell stated attorneys can't accomplish anything.

Wells stated you stated he did the Bass Pro Shop and all the other projects.

Mitchell stated he did the legal documents not the negotiating of deals.

3. Receive Treasurers Report and take action as deemed necessary.

Furrh stated I wasn't here last month but you received a copy of the June report and we don't have the July paperwork yet. In June the bank account ended with \$44,430. We did receive income for the ad valorem from the County in the amount of \$32,165 in June and \$8,046 in July. Expenses in June were \$23,000 for legal expenses. The total paid to The Center of Economic Law is \$327,000 since July of 2009.

Zarle stated we average \$13,633.00 a month to the Batchelor's.

Sheppard ask when LURA paid the interest did they pay it directly to the bank or did it come through LEDA.

Mitchell stated directly to the bank.

Furrh stated LURA will need to invoice LEDA.

Mitchell stated I had a conversation with Barbara Burk and if all the taxes are paid we will receive around \$90,000 in ad valorem.

Denham ask will that be paid next June.

Mitchell stated it is starting to be paid now. She has collected about 96% of the taxes owned and we have received two checks.

Sheppard ask did she say what the value was.

Mitchell stated that report will be issued by the assessor.

Madigan ask when do we expect that report.

Furrh stated in the fall.

4. Consider approving An Extension Of The Stated Maturity Of The Revolving Line Of Credit Capital Improvement Note Initially Issued In 2007, For The Purpose Of Funding A Phase IA-Project And Other Downtown TIF District Projects; And Approving And Authorizing Execution And Delivery Of A Reformed Note And All Documents Relating Thereto.

Madigan stated you should have received a copy of this document in your email. The items updated were the effective and maturity date.

Mitchell stated those were the only changes. This is just an extension of the note.

Denham stated it states we will be paying the interest monthly instead of quarterly.

Jensen stated correct. Now the interest is due on the 15th of the month.

Zarle ask how long is the extension.

Jensen stated until December the 5th.

Zarle stated that isn't enough time.

Jensen stated we ask for more and all they would give is six months.

Wells stated I have a problem with this. We need to go back to the banks and ask for a year extension. If they are not willing to give the year then let them call the note. This is crazy to have to renew the note every three to four months. I know this puts Madigan in a bad position to discuss this but this is absolutely crazy. The banks are in just as deep as LEDA is and we haven't missed an interest payment yet.

Madigan stated from a loan underwriting standpoint a positive attribute is in six months we hope to see some progress. Continuing to issue one year extensions without seeing any activity and I don't want to rehash the lack of activity so hopefully by December 5th we will see some activity. If so it will be a littler easier as an underwriter to ask for another extension.

Wells stated you have to be kind of realistic with the economy the way it is and with all that is happening right now. I would like to think we will have a closing on October 31st and then Kohl's shortly thereafter but I'm not certain that is realistic with what is happening with the economy right now.

Mitchell stated this is an item for Executive Session. The idea behind extending it until December is we are anticipating a closing within that period. Jensen, Fitch and I have been talking with Gary Bush and Dan Batchelor about issuing a bond through LEDA to reduce the value/balance of the note once we have a closing.

Wells stated again that relies on a closing in October and what if that doesn't happen. The market is down 1100 point in the last six or seven days.

Zarle ask are we going to look for additional financing while this goes on.

Mitchell stated that is what we are doing.

Jensen stated we don't have a market for long term financing until we have a closing and construction. Once we have construction on the hotel/conference center and Kohl's then Gary Bush will have a market for a chunk of the \$12 million. Since we don't have a market for it his hands are tied.

Wells stated that is the reason it is crazy to renew until December. In three to four months we will be doing the same thing again.

Jensen stated I talked with Doug Meier and asked for twelve months with a lower interest rate and they are not willing to do so until they see a closing in October.

Wells stated the banks and LEDA are in pretty deep and it seems like the banks rather than going through this every six months would be willing to go for a year just to calm it down for a while.

Zarle stated with an option of some kind.

Madigan asked what other questions or comments do we have. If there are none how would you like to proceed on business item number four?

Neal stated since we have come this far and Jensen has this agreement with Meier I believe we should honor the agreement. At the same time I think it would be very appropriate to talk with the banks between now and December to see if we can change the terms.

Mitchell stated we are talking all the time and this is part of the reason you are seeing the bills to Dan Batchelor.

Zarle stated that is part of the problem.

Mitchell stated no that isn't part of the problem. Jensen and I don't have the expertise to do what is required with the TIF notes and Batchelor does. There firm is the only firm in Oklahoma that does what they do. We have a lot of documents. If we had the development two years ago we wouldn't be seeing these legal fees but it didn't happen. We had a credit melt down which is nobody's fault it just happened. Nobody in this room could control that and it is what it is.

Sheppard stated Jensen has said that Meier isn't going to give you twelve months so you take what you can get.

Denham ask has Council approved this.

Mitchell stated Council approved the extension of the note subject to seeing the final version. This note is between LEDA and the banks. Council will simply ratify LEDA's action.

Jensen stated that will be on Tuesday night.

Wells stated there might be some controversy because Council thought we would get a one year extension.

Jensen stated all I can say is we tried.

Wells stated the rest of you have been on the Authority longer than I have but as far as the Batchelor's are concerned I haven't seen anything they have done that Jensen didn't have to straighten out.

Jensen stated I haven't straightened anything out. We have just provided out input. As far as the banks are concerned we don't want to be thirty days past due so we need to get this done if you are so inclined.

Motion by Sheppard, Second by Means, to approve an extension of the stated maturity of the Revolving Line of Credit Capital Improvement Note initially issued in 2007, for the Purpose of funding a Phase IA-Project and other downtown TIF District Projects; and approving and authorizing execution and delivery of a Reformed Note and all documents relating thereto. **Aye:** Means; Neal; Sheppard; Denham; Madigan. **Nay:** Wells, Zarle. **Motion Carried.**

5. Consider approval of the Retainer Agreement for Professional Services with M.D. Johnson, P.E., to provide professional engineering services to the Lawton Economic Development Authority, and authorize the Chairman and Secretary to execute the Agreement.

Madigan ask did everyone have a chance to review the agreement.

Zarle stated no.

Mitchell stated it is straight forward. Michael Johnson was the Chief Engineer for the city and has retired. He was assisting us in coordinating with the utility relocations for the utility companies. He was the contact person with Ruhl's engineer and has had a lot of conversation with the utility companies. I'm recommending we retain him to continue that work for LEDA.

Zarle ask what is he going to charge.

Mitchell stated \$90 an hour.

Sheppard ask will this service be replacing the service of the city.

Mitchell stated for this project. The general engineering the city staff will provide. His function would be to coordinate the project requirements in Phase 1A with the developer and local utility companies.

Wells ask why is city staff not continuing to do this.

Mitchell stated Johnson was the one providing this service. He is the one who has had all the meetings and talked with the utility companies.

Madigan stated facing our financial position can we not continue to keep it in-house. I realize there will be a learning curve.

Mitchell stated we can but I recommend we enter into this agreement for at least the next six to nine months or until the construction starts. In the interim period we would be bettered served by having his involvement. He knows all the people at the utility companies and has all the information.

Sheppard ask does he have staff with him.

Mitchell stated no. He would be working as we ask him to and it would not be a forty hour week.

Zarle ask there is no retainer.

Mitchell stated no. The first thing I would ask him to do is schedule a meeting with Ruhl's engineer to make an assessment of where they are with respect to the permanent easements for Kohl's and the hotel/conference sites.

Wells ask why wasn't that done when he worked for the city.

Mitchell stated we have no control over the private engineer.

Wells stated and we still won't have when we hire a private engineer. You stated it was only him but the contract shows a staff engineer, technician, draftsman and clerical.

Mitchell stated his services are the only services we are buying.

Zarle stated you are buying a blank check according to this.

Mitchell stated the reason the easement work wasn't done is because it wasn't being submitted by their engineers.

Motion by Wells, Second by Zarle, to keep the engineer services within the City of Lawton staff until the project begins construction. **Aye:** Wells, Zarle. **Nay:** Neal; Sheppard; Denham; Madigan; Means. **Motion Failed.**

Sheppard ask who will call the shots on how much we will use his services.

Mitchell stated I will.

Sheppard ask what do you anticipate.

Mitchell stated ten to twelve hours a week.

Sheppard ask what dollar figure does that translate to.

Zarle stated a thousand a week.

Denham ask can we amend the contract to state that city staff will do the other work.

Mitchell stated yes you can modify the agreement.

Denham ask can he utilize city staff.

Mitchell stated he can't but I can. I will talk to him about your expectations. If you want to put a dollar limit per month that would be fine.

Sheppard stated we are going to pay one way or another whether it is through the city or through Johnson.

Wells stated LEDA will not pay for it through the city. The city has absorbed it for the last seven years and now we want to pay a thousand a week plus expenses.

Sheppard ask has the City hired an engineer to replace Johnson.

Mitchell stated we are interviewing. The project has been assigned to another engineer but she doesn't have the background. I don't disagree that the standard day to day routine items cannot be done in-house but over the next sixty to one hundred and twenty days we need someone with historical background and information. The only other person on staff with this information is Richard Rogalski and he wasn't having those conversations with the utility companies or with Ruhl's engineer. You could just make it a six month agreement and put whatever limitation you like. I think for the immediate timeframe we need to have his services to get through this transition.

Madigan stated so you are going to be the gatekeeper.

Mitchell stated yes. I have spoke with Johnson and have ask him, contingent upon this agreement being approved, to schedule a meeting with Ruhl's engineer next week to determine exactly when they are going to get the permanent easements to us. The permanent easements must be filed before we can ask any of the utility companies to relocate. They don't know where to go. This is a critical point right now. Scott can't get the site ready for Kohl's until the easements are done.

Wells ask why doesn't Ihler send them a letter asking for the information.

Mitchell stated we have asked for it repeatedly. Batchelor and I have sent emails and talked to him on the phone.

Wells ask what power does Johnson have to make them comply.

Mitchell stated all I'm asking Johnson to do is to get the information directly from Ruhl's engineer so we have a baseline to know where we are and what needs to be finished.

Denham ask will he go to Chickasha or will they come to him.

Mitchell stated they haven't scheduled a meeting yet.

Sheppard ask the agreement goes through what date.

Denham stated June 30th of next year. He should be able to complete the job by the end of the calendar year.

Sheppard stated let's shorten the ending date. You will always have the option to renew.

Zarle stated he should have knowledge of what is going on in ninety days.

Mitchell stated remember the timeline. We are trying to close in October.

Zarle stated I haven't seen anything that shows where we are going to have a closing.

Mitchell stated that will be discussed in executive session.

Motion by Denham, **Second** by Zarle, to approve the Retainer Agreement for Professional Services with M.D. Johnson, P.E., to provide professional engineering services to the Lawton Economic Development Authority, to remove Staff Engineer at \$55.00/Hr, Technician/Drafts- man at \$45.00/Hr and Clerical at \$35.00/Hr, and to change the ending date to ninety days, and authorize the Chairman and Secretary to execute the Agreement. **Aye:** Neal; Sheppard; Wells; Zarle; Denham; Madigan; Means. **Nay:** None. **Motion Carried.**

EXECUTIVE SESSION

1. Pursuant to Section 307B3 and C10, Title 25, Oklahoma Statutes, consider convening in executive session for the purposes of conferring on matters pertaining to economic development, including the purchase/transfer of property and financing in connection with the Lawton Downtown Redevelopment Project, for the hotel-conference center and the mixed-use commercial retail establishments and take appropriate action, if necessary, in open session.

Motion by Wells, **Second** by Madigan, to convene into executive session. **Aye:** Sheppard; Wells; Zarle; Denham; Madigan; Means; Neal. **Nay:** None. **Motion Carried.**

The Authority convened in executive session at 2:30 p.m. and reconvened in open session at 3:00 p.m. Roll call reflected Wells; Zarle; Denham; Madigan; Means; Neal; Sheppard.

Madigan stated the Authority convened into Executive Session Pursuant to Section 307B3 and C10, Title 25, Oklahoma Statutes, consider convening in executive session for the purposes of conferring on matters pertaining to economic development, including the purchase/transfer of property and financing in connection with the Lawton Downtown Redevelopment Project, for the hotel-conference center and the mixed-use commercial retail establishments with no action taken.

DISCUSSION ITEMS AND REPORTS

ADJOURNMENT

Motion by Zarle, **Second** by Denham, to adjourn. **Aye:** Zarle; Denham; Madigan; Means; Neal; Sheppard; Wells. **Nay:** None. **Motion Carried.**