MINUTES
LAWTON ECONOMIC DEVELOPMENT AUTHORITY
2ND FLOOR CONFERENCE CENTER
NEW CITY HALL
FEBRUARY 19, 2013, AT 3:00 P.M.

Fred Fitch, Chairman, called the meeting to order at 3:15 p.m. in the New City Hall. Meeting notice and agenda were posted on the City Hall bulletin board as required by State Law.

ROLL CALL:	
PRESENT:	Fitch, Fred; Madigan, David; Means, David; Nance, Ron (entered late); Neal, Larry; Wells, Doug.
ABSENT:	Denham, David; Sheppard, Ernie; Zarle, Richard.
OTHERS PRESENT:	Bryan Long, Interim City Manager, Frank Jensen, City Attorney; Denise Ezell, City Clerks Office.

INTRODUCTION OF GUEST

Fitch stated those with us today is Steve Robinson, Kim Furrh, Tim Hushbeck, Bryan Long and Richard Rogalski.

BUSINESSITEMS

1. Consider approving minutes of December 18, 2012.

<u>**Motion** by Wells, **Second** by Means</u>, to approve minutes of December 18, 2012 as written. **Aye**: Fitch; Madigan; Means; Neal; Wells. **Nay**: None. **Motion Passed**.

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

Fitch stated Nance is on his way so I'm going to wait on this item until he arrives.

3. Receive Treasurers Report And Take Action As Deemed Necessary.

Furrh stated it has been a while since you have received a financial so let's look at January's. Looking at the first page of numbers, which does not include the invoices you will be approving today, we have a line of credit in the amount of $11,000,000 drawn. This leaves a little over $900,000 to use. The second page is the main page of interest. Look at the last column where it shows we are -$523,000 since July 1. We have brought in $2,079,529 in revenue and have spent $2,600,000 leaving us $523,000 in the hole for the fiscal year.

Wells asked will the $900,000 cover that.

Furrh stated we are short because most of this came off the line of credit and we had drained our bank account.

Wells asked how much cash do we have.

Furrh stated as of January 31st $27,000.

Wells asked does that include the $900,000.

Furrh stated no.

Fitch stated the $900,000 just passes through the account. We make a draw from the line of credit and deposit into IBC so we can write a check to pay invoices. We should be in good shape leading up to closing.

Batchelor stated we continue to deal with a number of unknown items such as the $106,000 to CenterPoint Energy for gas relocation. In December we didn't know about this relocation. It looks like the environmental work will come in under our estimate. Our best judgment is we will have enough to get to closing with what is in the line of credit. Unknowns continue to happen so we can't say for absolute certainty.

Wells asked have we paid anything to PSO.

Fitch stated no.

Wells asked did we pay $200,000 to the developer for the water and sewer lines.

Batchelor stated not to the developer. We are obligated under the Supplement Agreement for the work to accommodate the hotel for the cost incurred with Silver Star and I believe we have made one payment in the amount of $111,000.

Wells asked what was the $200,000 referenced in the minutes from the last meeting.

Furrh stated this was the interim priority cost that was passed at the last meeting. This shows you how the $900,000 will be spent.

Wells stated so this negative amount is not covered by the $900,000.

Furrh stated no. Now look at the Project to Dave on the last page. It shows we have spent $12.5.

Wells asked does that number include the $900,000.

Furrh stated no.

Wells stated so we are going to end up at about $13.4.

Furrh stated yes. Are there any other questions on the financial statement?

Motion by Means, **Second** by Madigan, to accept the treasurer's report. **Aye**: Madigan; Means; Nance; Neal; Wells; Fitch. **Nay**: None. **Motion Passed.**

4. Consider adopting a resolution approving an updated Preliminary Redevelopment Plan submitted by Lawton Town Center, LLC, for the Lawton Downtown Redevelopment Project.

Batchelor stated the Resolution before you today represents our countdown towards closing on the retail development scheduled for March 19th. You will see that a number of the items on the agenda are very routine but I wanted to be sure you were fully aware of how the pieces come together for closing. Some aspects of the agenda will focus on the financing so you have a clear picture of how the financing pieces come together. We are trying to get everything in line for a precise closing. This Resolution updates the Preliminary Development Plan. This Plan has been updated 2 or 3 time but we think this is the one that gets us to closing. This Resolution adjusts the sizes of the stores and retail square footage which is about 207,400 for the inline stores plus 15,000 for the out parcels. This is the plan that will be developed in the first phase of the retail. We ask for your approval because everything we are doing ties back to the correctness of this document.

Wells asked is there a copy of the document we can look at.

Batchelor stated it was emailed with our agenda. It is the colored sheet.

Madigan asked does the total square footage match Rick Smith's numbers.

Batchelor stated I can't tell you for certain but it is within 5,000 square feet of this number. He has been updating and cross checking his number and is rerunning the projections to make sure they tie as precisely as possible. He is seeking to schedule a briefing of the 6 banks to make sure they are aware of each adjustment that has been made. There are no substantial changes in the Preliminary Redevelopment Plan. The square footages are precise based on the commitments of the store leases.

Wells stated you said 207,000 square foot and this says 213,000.

Batchelor stated mine shows a precise figure of 208,602. That does not include the out parcels. Yours should say LP6.

Ezell asked Parson sent that yesterday evening and I didn't print copies.

Batchelor stated we will pause a minute so we can make some copies. This is the final corrected document that we received yesterday. It represents an adjustment of 5,000 square feet.

Fitch asked did the 5,000 come from Dick's.

Batchelor stated yes. The final lease with Dick's is 45,000 square feet and we had estimated it at 50,000.

Fitch stated the LP5 you have the difference is about 5,000 square feet in Dick's.

Wells stated if that is the only difference it still lease about 1,000 square feet.

Madigan asked are you saying you are giving a variance within 5000 to make the adjustment.

Batchelor stated no. The variance that will occur had to do with the 3 out parcels. We don't know what those stores are or the precise square footage. The financing documents will allow for a 10% variation of the 15,000. So it could vary by 1500 feet. That is not include in this number.

Wells asked how is the funeral home coming.

Rogalski stated he has signed an agreement that says he is done and all is good. We have issued the demolition contract and the contractor is working on getting all the utilities shut off.

Batchelor stated while we are waiting I'll give you an overview of where we are in terms of closing. All the actions and agreements that have to be put into place from our perspective are doable. It is a fast hard pace but we can get there, Collett says his team can get there and Wells Fargo says they can get there. If we do what we need to do in a timely basis on the things within our control we will get to closing. The major issue that is not within our control is the performance of PSO. Previously we received assurances that PSO would be able to perform on a timely basis and work together on a mutual time schedule. An agreement was reached in December on the areas for relocation of their lines and facilities. It still remains a major matter that is not within our direct control.

(Ezell enters the room with the new site plans)

Wells stated the 208,600 square feet is right.

Fitch stated okay we now have LP6 with the 208,602 square feet are there any questions.

Wells asked 208 is the same number you have.

Batchelor stated yes. It should say LP6 in the upper right hand corner.

Motion by Means, **Second** by Nance, to approve Resolution 13-01 approving an updated Preliminary Redevelopment Plan submitted by Lawton Town Center, LLC, for the Lawton Downtown Redevelopment Project. **Nay**: Means; Nance; Neal; Wells; Fitch; Madigan. **Nay**: None**. Motion Passed**.

5. Consider adopting a resolution approving a Fourth Amended Phasing Plan for implementation of the Lawton Downtown Redevelopment Project.

Batchelor stated this Resolution approves a Phasing Plan with the same exhibit as the Preliminary Redevelopment Plan. The next page is the projected dates for closing on the different phases of the project. Phase I is the hotel/conference center which closed on September 28th, Phase II will close by March 31 but is scheduled for March 19th, closing on the office tract is scheduled for October 31 and Phase IV March 31, 2014.

Wells asked the II A July 31st.

Batchelor stated it will all close together because we have a store at that location. That date is meaningless.

Means asked why does LP6 show 28.09 acres and this shows 27.82 acres.

Batchelor stated we did not correlate the two parcels.

Means stated so this should be 28.09.

Batchelor stated right.

Wells asked what is the status of the office in Phase III.

Fitch stated I'll get into that in a minute.

Madigan asked if we pass this do we need to do Phase IV before II or will we come back and to another amendment.

Batchelor stated all the agreements say they are going to perform in accordance with the Phasing Plan and if things don't work in accordance with the schedule we will bring it back. It proceeds with the direction you provide here. If you haven't authorized it we don't do it.

Wells asked when will you cover the office since we are voting on it.

Fitch stated it is still the same. At the last meeting I stated a letter had gone out to the defense contractor. They are having problems being able to correlate the tax credit from the Department of Commerce for their payrolls. They want 1 figure so Lawton Economic Development Corporation varied in working with the Department of Commerce in compiling the data and then they will disclose who the low bidder is so that we can package that based on what they say they are going to do. The amount of the credit would be in correlation to what their lease would be.

Wells asked so it is strictly on tax credits and not on the sequester that is going on.

Fitch stated I don't know that the sequester isn't part of it but the tax credit situation has to be remedied. They do not want to deal with the tax credits. If it varies any it will be because of their job performance as far as what was outlined.

Nance asked is this still going on the original 250 jobs and they get credit for anything above that.

Fitch stated yes. I think it was 220 and 280 new jobs. The 220 has decreased and they understand it is 500 jobs. Whatever you bring to the table at closing plus how many new ones you will have to create.

Nance asked so if they are down to 100.

Fitch stated if they are down to 100 it is 400.

Wells stated I know they have laid off quite a few people.

Fitch stated there will be other job opportunities that they didn't originally forecast.

Batchelor stated we think after we get pass the retail closing or the month of March that a number of things will began to resolve themselves. LEDA will be freer to turn your focus to supporting the pieces that will enable the office building development. I think the reality is until we see what happens in the next 30 to 60 days we won't know how it will occur but the possibility still seems strong.

Motion by Madigan, **Second** by Neal, to approve Resolution 13-02 approving a Fourth Amended Phasing Plan for implementation of the Lawton Downtown Redevelopment Project. **Nay**: Nance; Neal; Wells; Fitch; Madigan; Means. **Nay**: None**. Motion Passed**.

6. Consider adopting a resolution approving amended Design Development Documents submitted by Lawton Town Center, LLC, for development and construction of the commercial retail center, Lawton Downtown Redevelopment Project.

Batchelor stated the boards on the table contain the newly submitted plans for your review and consideration.

Fitch stated the one at the end is the site plan and these are the elevations. The one on the bottom is the rear view and these are the 2 outparcels coming in on Columbia.

Batchelor asked did LURA take action on these today.

Rogalski stated the Downtown Lawton Architectural Review Committee approved both plans and the sign submittal package.

Nance asked is it okay for us to disclose the tenants.

Batchelor asked yes. Some of these are not real tenant's just illustrations.

Wells asked are we talking these shops are going to be over in this area.

Fitch stated no right there. Outparcel A, B and C most likely will be restaurants around 6 to 8,000 square feet.

Batchelor stated could be from 4 to 6,000 but for projection purposes we used an average of 5,000 for parcel.

Wells asked is he going to build these with Phase II.

Batchelor stated all will be built in this phase.

Fitch stated the inline plus the two out parcels coming in off Columbia.

Motion by Madigan, **Second** by Means, to approve Resolution 13-03 approving amended Design Development Documents submitted by Lawton Town Center, LLC, for development and construction of the commercial retail center, Lawton Downtown Redevelopment Project. **Nay**: Neal; Wells; Fitch; Madigan; Means; Nance. **Nay**: None**. Motion Passed**.

Fitch stated at this time I would like to go into Executive Session.

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, incentive proposals, redevelopment rights, and financing in connection with the Lawton Downtown Redevelopment Project, and take appropriate action in open session as necessary.

Motion by Nance, **Second** by Neal, to convene into Executive Session. **Nay**: Wells; Fitch; Madigan; Means; Nance; Neal. **Nay**: None**. Motion Passed**.

The Authority convened in executive session at 4:00 p.m. and reconvened in open session at 4:15 p.m. Roll call reflected Wells; Fitch; Madigan; Means; Nance; Neal.

Fitch 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.

7. Consider adopting a resolution authorizing approval of evidence of financing submitted by Lawton Town Center, LLC, for development of the commercial retail center, Lawton Downtown Redevelopment Project.

Motion by Means, **Second** by Neal, to approve Resolution 13-04 authorizing approval of evidence of financing submitted by Lawton Town Center, LLC, for development of the commercial retail center, Lawton Downtown Redevelopment Project. **Nay**: Neal; Wells; Fitch; Madigan; Means; Nance. **Nay**: None**. Motion Passed**.

8. Consider adopting a resolution authorizing an amendment to the Supplemental Agreement to Amended Retail Redevelopment Agreement for the Lawton Downtown Redevelopment Project.

Batchelor stated previously you approved a supplement to the Redevelopment Agreement which the retail redeveloper agreed to proceed to with the creation of a temporary ditch for storm drainage and to relocate sanitary sewer to enable the hotel to close. As we have worked through the budget it has become apparent we are imposing on the retail developer a wide range of cost that were of great benefit to the surroundimg areas to the City. This Resolution creates a partial offset to credit what was negotiated in the fall of $265,000 on that supplement agreement to acknowledge these additional responsibilities that the retail developer is undertaking. That number would be $206,000. We are already paying for those amounts under the agreement which was $265,000 total contract. This amendment means after we close and work is underway we will get a net $59,000 credit against the development financing assistance to extend to the retail developer. This is an appropriate and fair adjustment to the additional public burden we ask the retail developer to assume. I recommend your approval and Rogalski joins me with that recommendation.

Wells stated I'm kind of stupid so would you explain that again. We are going to get a $59,000 credit.

Batchelor stated yes. That will be the net effect of this amendment.

Wells asked and he is getting a $206,000 offset.

Batchelor stated what it means is we will not get a $265,000 credit against the assistance that we are extended. We are absorbing $206,000 of the cost of these additional public works that benefit the city and support the development of the office site.

Wells stated it says "hereby authorized, including offset against the Retail Redeveloper's reimbursement obligation to LEDA in the amount of $206,000.00".

Batchelor stated that is an awkward expression and has to do with the way these agreements are set up. The net effect is by acknowledging this offset we have net credit against the $14,390,000 in financing assistance of $59,000. This means we will deduct $59,000 from what we ultimately pay as this project goes forward.

Wells stated I think I understand that.

Jensen stated it is an offset against the credit. The language is a little bit misleading. We are going to fix that in the agreement itself.

Wells stated so it basically says we have already given him $59,000 out of the $14,390,000.

Batchelor stated that will be the bottom line.

Wells stated okay. I assume you guys all understood this.

Motion by Neal, **Second** by Means, to approve Resolution 13-05 authorizing an amendment to the Supplemental Agreement to Amended Retail Redevelopment Agreement for the Lawton Downtown Redevelopment Project. **Nay**: Fitch; Madigan; Means; Nance; Neal; Wells. **Nay**: None**.** **Motion Passed**.

9. Consider adopting a resolution authorizing approval of the Retail Redevelopment Budget for Phase II submitted by Lawton Town Center, LLC, Lawton Downtown Redevelopment Project.

Batchelor stated this Resolution authorizes your Chairman, with advice from legal council, to put a stamp of approval on the final budget that goes into all the financing documents. It will be very close or may be the identical number I reviewed with you in Executive Session. In order to embed it in all the documents we need to give someone the authority to place final approval on that number.

Fitch stated this is critical for closing.

Batchelor stated subject to some minor tweaking it is going to be the number we discussed and in accordance with the budget.

Nance asked can we define in our motion what kind of variance it can have.

Batchelor stated yes. You could say the budget will not authorize development financing in excess of $14,390,000.

Fitch stated it could be less but not more.

Batchelor stated the Resolution says "net development cost of approximately $34,500,000 and maximum development financing assistance of $14,390,000". It is already in the Resolution.

Madigan asked based on that number is Rick Smith coming back and revising the proforma. Our sells for square footage are going to change.

Batchelor stated yes. He will make sure that all of his projections have been brought to the current precise plan.

Fitch asked did you see the sales for square footage that he had listed.

Madigan stated I did but it has been reduced. Is this still good.

Fitch stated what I'm saying is the sells for square footage are on all the retailers.

Means asked when Dicks reduced theirs by 5000 square feet did they increase their sells for square foot.

Fitch stated no.

Madigan stated that is where I'm going. Are we moving in a less favorable position on the retail sells by square footage?

Batchelor stated the revenue projection will be slightly less. That number affects your projected revenues probably 2%.

Fitch stated in the 5,000 square foot reduction it saved him $350,000 in projected cost that were being required of him by Dick's.

Wells asked is LEDA giving him the Kohl's property.

Batchelor stated yes.

Wells stated then he is going to turn around and sell it to Kohl's.

Batchelor stated no. The developer will retain the property. Kohl's will execute a 20 year lease. That gives this project a great amount of stability. It is a long term commitment.

Means asked what happens at the end of the lease and who retains the property.

Batchelor stated I don't know what happens but the developer retains the property.

Motion by Nance, **Second** by Means, to approve Resolution 13-06 authorizing approval of the Retail Redevelopment Budget for Phase II submitted by Lawton Town Center, LLC, Lawton Downtown Redevelopment Project. **Nay**: Fitch; Madigan; Means; Nance; Neal; Wells. **Nay**: None**. Motion Passed**.

10. Consider adopting a resolution authorizing an amendment to the Amended Retail Redevelopment Agreement, Lawton Downtown Redevelopment Project.

Batchelor stated this is a general authorization and we are dealing with housekeeping. The dates of performance in the original agreement have passed and we need to bring that into conformity with the performance dates and the financing arrangement in connection with the closing. The lender will want assurance the redeveloper is not in default under this agreement. This authorizes us to create those conforming amendments.

Motion by Means, **Second** by Madigan, to approve Resolution 13-07 authorizing an amendment to the Amended Retail Redevelopment Agreement, Lawton Downtown Redevelopment Project. **Nay**: Madigan; Means; Nance; Neal; Wells; Fitch. **Nay**: None**. Motion Passed**.

11. Consider adopting a resolution authorizing a Development Financing Assistance Agreement with Lawton Town Center, LLC, Lawton Downtown Redevelopment Project.

Batchelor stated previously you authorized a form of an agreement to provide this development financing assistance. It is changing as we negotiate through the requirements of interrelating agreements with Wells Fargo and the 6 banks. This is a general authorization that we will update the form to conform to the requirements of our lenders and Wells Fargo. The final form will acknowledge the financing constraints with the limitations on the financing assistance that you previously authorized.

Wells stated on page 2 of the first paragraph either I don't understand the wording or the wording is screwy. "Has, by resolution, authorized the sale and issuance of its "Tax Apportionment Note, Series 2013 (Taxable) (Lawton Downtown Increment District Project)" in the aggregate principal amount of $31,600,000 (hereinafter, the "Series 2013 Note") to a group of banks with offices in the City, and the loan of the proceeds thereof to the Redeveloper". Are we giving him the whole $31.6?

Batchelor stated no. If you want to clarify it you can amend it to say "a portion of the proceeds thereof."

Wells asked is that appropriate.

Batchelor stated certainly.

Wells stated it just sounds to me like we are going to give him all the money.

Batchelor stated we are not. We have set a limit. It is up to you if you want to amend it to contain clarification.

Wells asked I'll let a banker decide. Do we need to have it in there?

Madigan stated it is reasonable.

Motion by Wells, **Second** by Madigan, to approve Resolution 13-08 authorizing a Development Financing Assistance Agreement with Lawton Town Center, LLC, Lawton Downtown Redevelopment Project with a clarification that only a portion of the proceeds goes to the developer. **Nay**: Means; Nance; Neal; Wells; Madigan; Fitch. **Nay**: None**. Motion Passed**.

12. Consider adopting a resolution authorizing approval of a Reciprocal Easement Agreement by and among Lawton Town Center, LLC, Lawton Lodging, LLC, the

Lawton Economic Development Authority, and the City of Lawton, Lawton Downtown Redevelopment Project.

Batchelor stated this Resolution authorizes a document that allocates responsibility between the owners of the development tract to include responsibility for construction, access ways, public improvements and utilities. It imposes all the requirements on the retail developer on the access way, storm drains and water and sewer with respect to the entire project except for water and sewer construction located on the hotel development site. Cost of water and sewer installation will be share equally between the retail developer and the hotel developer. It is one of the implementation pieces that makes this project work.

Motion by Nance, **Second** by Madigan, to approve Resolution 13-09 authorizing approval of a Reciprocal Easement Agreement by and among Lawton Town Center, LLC, Lawton Lodging, LLC, the Lawton Economic Development Authority, and the City of Lawton, Lawton Downtown Redevelopment Project. **Nay**: Nance; Neal; Wells; Fitch; Madigan; Means. **Nay**: None**. Motion Passed**.

13. Consider adopting a resolution authorizing the officers, Chairman, and Legal Counsel of the Lawton Economic Development Authority to take such actions and execute such documents as may be necessary and appropriate to implement the real estate and financial closing of the Phase II Retail Redevelopment, Lawton Downtown Redevelopment Project.

Batchelor stated this Resolution confirms the general authorization to do all the implementing pieces necessary to get to closing. It includes things such as form of deeds, declaration of property restrictions, certificates of estoppels and releases. The item of special interest is the declaration of property restrictions. Retailers that come into projects such as this have provisions they want imposed on the property prohibiting certain uses that they consider to be incompatible with a class A shopping center. They also have restrictions what exclude certain uses within a certain distance that they consider to be competitive with their store. The declaration of restrictions cover the shopping center area exclusive of the 3 outparcels and the next phase of development. It does not affect the hotel parcel or the office parcel. If any of you are interested I have copies of the document. Jensen, Rogalski and John Mackey reviewed the document and there are provisions in the declaration of property restrictions that they would not recommend. There was a general concern that these restrictions would be imposed on the next phase of the retail development. I took their concerns to Collett and sought to reopen the question of discussion of the declaration of property restrictions and Collett stated his interest was identical to ours in that the fewest possible restriction would be preferred but bottom line was they had negotiated with as much flexibility as they could get and if he wanted Kohl's, Bed Bath and Beyond, and Dick's in this project we would have to agree to these restrictions. In my experience these restrictions are quite common to high quality shopping centers. They are very common when doing business with Kohl's, Dick's and Bed Bath and Beyond. We would all prefer more flexibility but does not appear to be possible if we want the business deals that are on the table. In terms of risk in respect to the next phase of the retail development we are getting about 70% in this initial phase with at least 25 to 30% for the second phase. Collett is quite optimistic regarding putting together the next phase of development. To the additional retail commitments to this project he plans an immediate follow-up at the ICSC meeting in May. This is their biggest retail maker anywhere. Jensen would you like to add anything.

Jensen stated because Rogalski, I and Mackey felt the restrictions were very burdensome we proposed a time limit for the retail developer to purchase the land for Phase IV. They wouldn't be indefinite restrictions. We could have lived with a lot of the restrictions if they would have done this but they are not willing to do so. My opinion is when they are approved if they don't purchase the property for Phase IV as required by the Redevelopment Agreement they are going to be in breach. If that is the case I'm going to take a different position as to whether this Restriction Agreement is enforceable. That is down the road.

Fitch stated keep in mind this is an A plus credit rated center. This limits him to some degree but in return we are getting a cleaner lease from Kohl's, Dick's and Bed Bath and Beyond. With his capabilities of entering into agreements with retailers that will not have a conflict with tenants he will bring to the table. It is not only to his benefit but it will make the whole center stronger from a quality of life aspect. It offers A plus credit rated stores and forces a little more variety which is not bad. You can have too many of one type in a community. Collett is committed and building a first class center. We need to go ahead because this could be a deal killer with Kohl's.

Nance stated I don't have any problem with this. I think it is in our best interest to have a good tenant mix and those types of tenants. The only question I have is what happens if one of the major retailers goes out of business.

Batchelor stated these restrictions are exclusive to the related store and if they are gone those provision relating to them are gone.

Madigan asked can you point out that language.

Wells stated it seems to me this puts us in a bind if they don't complete Phase IV and LEDA end ups with that property. We are going to be restricted on what we can use it for. Now Jensen could take it to court as he said but a Judge may rule against us and we would still have the restrictions.

Jensen stated he may rule for us. He can't have it both ways as far as wanting to enforce the agreement on restrictions and breach his redevelopment agreement on Phase IV but there are no guarantees.

Nance stated I see your concerns but at the same time if we want this to be a good viable shopping center with top rate tenants to be interested in being here we need to carry this forward.

Batchelor stated the way it works is it has to be enforced by an enforcing beneficiary. An enforcing beneficiary has to be the store that is identified as the source of the restricted uses or the exclusive use restrictions. Look at page 2 under D.

Wells stated D3 is for Bed Bath and Beyond. They want restrictions that say no restaurant within 300 feet of the shopping center. Now why would they care about a restaurant?

Batchelor stated they have already been excluded and Collect is negotiating for exclusion with respects to the 3 outparcels.

Wells stated that is not what that says in here.

Batchelor stated if you look at the drawing of the land it does not include the 3 outparcels which is where we would anticipate the restaurants would go.

Wells stated it says "any children's entertainment or activity facility such as Discovery Zone or Chucky Cheese." These are fairly high class places. As long as Collett goes ahead and closes on Phase IV then that is his business but if he doesn't and we end up with that we could end up with a piece of land that is not worth very much if we happened to lose it in court. I can't vote for that.

Batchelor stated this is pretty standard stuff.

Wells stated I would think if Target would have a Chucky Cheese that they could have.

Madigan asked have you gotten any feedback from the lenders.

Batchelor stated Wells Fargo has to approve this.

Jensen stated that is not going to be effective until there is actually a closing.

Madigan stated that is where I'm going.

Jensen stated until they own that property in Phase II it is not effective.

Madigan stated it would be interesting to get feedback from Wells Fargo and the other banks involved.

Batchelor stated this has to have the approval of Wells Fargo or the deal doesn't work.

Means stated here is says you can't have medical offices and here it says you can.

Wells stated the problem that I have with that, in just a quick glance here, is it is Bed Bath and Beyond that is asking for this. That makes no sense. They don't compete with Bed Bath and Beyond.

Nance stated it is not a competition. They are looking at the dynamics that plays together to make a good retail environment.

Batchelor stated the basic document came from Kohl's and the additional requirements of Bed Bath and Beyond and Dick's were added. Kohl's is setting up the terms in which they will agree to for a 20 years lease and to place their high quality credit on the line for that long term. They set some pretty tough conditions.

Wells stated Kohl's didn't seem to be as tough as Bed Bath and Beyond.

Batchelor stated Kohl's is probably the toughest.

Wells stated they don't have the restrictions like Bed Bath and Beyond.

Neal stated they don't want to lower themselves to having somebody like Chucky Cheese.

Batchelor stated this deal will not close without Wells Fargo approval and I don't believe there will be any significant changes.

Nance stated I understand and respect the general concerns and I think they are beneficial but getting caught up on the individual things….

Wells stated…I think what you have to think about is if Phase IV fails with Collett and we end up with that piece of property with those restrictions we got basically a piece of property that has no value.

Nance stated I think it will be worth more.

Neal stated that is because it has those types of tenants.

Wells asked what type you going to get there.

Nance stated they all want the same thing and the same dynamics.

Wells stated when I look at that closer they are restricting a lot of those type tenants.

Fitch asked Class A.

Wells stated yes.

Nance stated they don't want competition but they are not getting it from a lot of these things.

Wells stated y'all do what you want I can't vote for that the way it is written.

Madigan asked can you address page 5 section 14.

Batchelor stated mortgage subordination means if there is a mortgage on the property the mortgagee has to agree. In this case it means Wells Fargo has to agree to this.

Madigan stated and right now technically the local banks that have a mortgage on this property.

Batchelor stated right but of course their mortgage disappears at closing.

Madigan stated at closing.

Batchelor stated yes and this will not be in place until you close.

Madigan stated or before we release.

Batchelor stated well of course you could agree not to finance if you don't want to.

Wells stated it is not the closing with Collett it is the closing with the banks.

Madigan stated I understand what the subordination says but since we are phasing the current structure the banks are still going to have a mortgage out there to address…

Batchelor stated…you will have a mortgage on the undeveloped and future retail phase and this would require your consent.

Madigan stated I'm comfortable with this. We are protected on Phase IV.

Wells asked how.

Madigan stated because the mortgagee has to sign off on it and they are not going to subornate that unless we agree with it.

Wells asked so the local banks have to agree with this agreement is that what you are saying.

Madigan stated that is the way I understand it. That is why I was questioning him.

Wells stated so not only Wells Fargo but the 3 local banks.

Madigan stated yes.

Motion by Nance, **Second** by Neal, to approve Resolution 13-10 authorizing the officers, Chairman, and Legal Counsel of the Lawton Economic Development Authority to take such actions and execute such documents as may be necessary and appropriate to implement the real estate and financial closing of the Phase II Retail Redevelopment, Lawton Downtown Redevelopment Project. **Nay**: Neal; Fitch; Madigan; Means; Nance. **Nay**: Wells. **Motion Passed**.

14. Consider adopting a resolution authorizing payment of project costs and closing costs through March 31, 2013, Lawton Downtown Redevelopment Project.

Batchelor stated this is a continuation of the Resolution you approved in December authorizing payment of interim project cost to get us to closing. That authorization expired on January 19th and we continue to have things surface that require immediate attention or payment. This would just extend the authorization through March so we can get to closing and act quickly on these interim issues.

Jensen stated this doesn't show a cap and you may want to place a cap in there.

Batchelor stated there was a new version sent yesterday that has a cap.

Ezell stated here is an original for signatures that shows the cap.

Jensen stated so it is in there.

Batchelor stated yes it says not to exceed $900,000 by cost incurred pursuit to the December 18th 2012 authorization.

Fitch stated so the balance left since December 18th.

Batchelor stated right.

Motion by Nance, **Second** by Madigan, to approve Resolution 13-11 authorizing payment of project costs and closing costs through March 31, 2013, Lawton Downtown Redevelopment Project. **Nay**: Wells; Fitch; Madigan; Means; Nance; Neal. **Nay**: None**.** **Motion Passed**.

Fitch stated now we need to move back to Item #2.

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

Motion by Means, **Second** by Nance, to approve invoices, requisitions, and all other submitted materials for payment and take action as deemed necessary. **Nay**: Wells; Fitch; Madigan; Means; Nance; Neal. **Nay**: None**.** **Motion Passed**.

DISCUSSION ITEMS AND REPORTS

ADJOURNMENT

Motion by Wells, **Second** by Means, to approve invoices, requisitions, and all other submitted materials for payment and take action as deemed necessary. **Nay**: Fitch; Madigan; Means; Nance; Neal; Wells. **Nay**: None**.** **Motion Passed**.