

MINUTES
LAWTON ECONOMIC DEVELOPMENT AUTHORITY
MAYORS CONFERENCE CENTER
NEW CITY HALL
DECEMBER 18, 2012, AT 12:00 P.M.

Fred Fitch, Chairman, called the meeting to order at 12:00 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: Denham, David (entered late); Fitch, Fred; Means, David; Nance, Ron; Neal, Larry; Wells, Doug.

ABSENT: Madigan, David; Sheppard, Ernie; Zarle, Richard.

OTHERS PRESENT: Frank Jensen, City Attorney; Denise Ezell, City Clerk's Office.

MEETING CALLED TO ORDER

ROLL CALL

INTRODUCTION OF GUESTS

Fitch stated we have Rick Smith City of Lawton Finance Advisor, Dan Batchelor LEDA Attorney, Kimberly Furrh, Furrh & Associates and Steve Robinson Lawton Constitution.

BUSINESS ITEMS

Fitch stated let's start with Item 4 and then we will come back to Items 1, 2, and 3.

4. Consider adopting a resolution approving a Supplemental Agreement to Amended Retail Redevelopment Agreement for the Lawton Downtown Redevelopment Project.

Batchelor stated this agreement provides that the retail developer will go ahead with certain utility relocations that are critical to the timing of the construction for the hotel/conference center. The greatest challenge that LEDA has is can we do everything we need to in a timely fashion to keep this project moving and on schedule. In order to accommodate the hotel construction it is essential we get under contract a sanitary sewer relocation and the development of a water drainage diversion channel. Proposed for your consideration is a Supplement Agreement under which the retail developer has placed additional actions under the contract which provides we go ahead and reimburse the retail developer for these cost. We are working with a good partner and they are willing to move ahead and place these additional items under contract even though we are not yet closing on the retail. The approximate cost is \$260,000 to \$300,000. This is critical to move the project forward and keep the hotel on schedule. I recommend your approval.

Wells asked to we have money to pay for this.

Batchelor stated that is on your agenda today.

Motion by Wells, Second by Nance, to adopt a resolution approving a Supplemental Agreement to Amended Retail Redevelopment Agreement for the Lawton Downtown Redevelopment Project. **Aye:** Fitch; Means; Nance; Neal; Wells; Denham. **Nay:** None. **Motion Carried.**

5. Consider adopting a resolution authorizing and approving a Construction Lease Agreement with Journeyman Construction, Inc., to facilitate the development and construction of the Hotel-Conference Center, Lawton Downtown Redevelopment Project.

Batchelor stated this Resolution authorizes the approval of a construction lease agreement for the location of a construction trailer that will be used during the construction of the hotel/conference center. I recommend this for your approval.

Motion by Wells, Second by Denham, to adopt a resolution authorizing and approving a Construction Lease Agreement with Journeyman Construction, Inc., to facilitate the development and construction of the Hotel-Conference Center, Lawton Downtown Redevelopment Project. **Aye:** Means; Nance; Neal; Wells; Denham; Fitch. **Nay:** None. **Motion Carried.**

6. Consider adopting a resolution approving an Early Entry Agreement between the Lawton Economic Development Authority and Lawton Town Center, LLC, to facilitate the development and construction of the commercial retail center, Lawton Downtown Redevelopment Project.

Batchelor stated this Resolution would approve an Early Entry Agreement where the retail developer and his contractors are onsite conducting all kinds of construction and pre-construction activity. I recommend this for your approval.

Motion by Wells, Second by Neal, to adopt a resolution approving an Early Entry Agreement between the Lawton Economic Development Authority and Lawton Town Center, LLC, to facilitate the development and construction of the commercial retail center, Lawton Downtown Redevelopment Project. **Aye:** Means; Nance; Neal; Wells; Denham; Fitch. **Nay:** None. **Motion Carried.**

7. Consider adopting a resolution approving Design Development Documents submitted by Lawton Lodging, LLC, for development of the Hotel-Conference Center, Lawton Downtown Redevelopment Project.

Fitch stated scattered on the table are elevations of the hotel/conference center. These were submitted to and approved by the Downtown Lawton Architectural Review Committee. We are accepting what they have approved.

Rogalski stated this is the design development. You see there is a significant amount of brick on this property. The brick selected is the same that will be used on the retail development. It is also the same as Liberty National Bank and City Hall.

Motion by Nance, **Second** by Denham, to adopt a resolution approving Design Development Documents submitted by Lawton Lodging, LLC, for development of the Hotel-Conference Center, Lawton Downtown Redevelopment Project. **Aye:** Nance; Neal; Wells; Denham; Fitch; Means. **Nay:** None. **Motion Carried.**

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

Rogalski stated this is going to be the same as what they will use on the hotel/conference center. Between the brick and glass doors a little over 50% of the building will be brick. There are a couple of side you won't see but as you go north the building will be extended. There isn't a pretty edge until you get to Ferris. The backside is going to be split face block. We need your approval on this layout as well.

Motion by Denham, **Second** by Means, to adopt a resolution approving Design Development Documents submitted by Lawton Town Center, LLC, for development and construction of the commercial retail center, Lawton Downtown Redevelopment Project. **Aye:** Neal; Wells; Denham; Fitch; Means; Nance. **Nay:** None. **Motion Carried.**

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

Batchelor stated under the terms of the retail redevelopment agreement we were going to provide certain financing assistance. The redevelopment agreements says that the mechanism by which we do that will be under a TIF Financing Agreement or as we renamed it Development Financing Assistance Agreement. I wanted to bring this to you so we would have the opportunity to review the protections, functions of this agreement and the reimbursement that will close with the retail development. Under the terms of the Retail Development Agreement this document contains three elements. One is the provisions dealing with the reimbursements based on prior expenditures of the redeveloper and on progress as the development or construction proceeds. Second was that the redeveloper was to give LEDA a note representing indebtedness for the full amount of any funds advanced by LEDA under the Development Financing Assistance Agreement. Third would be to give LEDA an unconditional guarantee of completion of construction of the project. This agreement today specifies specifically all these elements will be present. It is spelled out specifically how the reimbursement will occur with respect to site improvement activities to include site clearance and utility relocation. Those reimbursements will be made on a monthly basis based upon expenditures and verification of cost incurred. Additional reimbursements will only occur based on the 3% of the total construction cost incurred. You will deduct any payment previously made which will include payment of site improvements. The last category of qualification for reimbursement covers the

gap between the 30% of construction cost and the final construction cost will be based on the percentage of completion. That is determined based on the actual completion of construction of the retail facilities. With respect to the inline stores the developer has to have satisfied all conditions in the lease that have to be met to opening those stores. As you get 50% complete the redeveloper will be entitled to 50% of the maximum reimbursement authorized by this agreement. If it is 75% then up to 75%. When it is 100% complete then that will release the obligation of repayment on the note and the requirements of the unconditional guarantee of construction completion will be satisfied. There will be no more obligation to LEDA. The mechanism for these functions has the approval of the retail redeveloper. With your blessing we will carry the agreement forward for review and approval by both your lenders and the lender for the retail development. There may be some minor tweaks but anything major we will bring back to you. We think this should work but there will be lots of lenders and lawyers looking at it so there maybe some more second guessing. This is a major step towards getting us to closing on the retail and I recommend it for your approval.

Wells asked are we also paying 30% of the construction cost for the buildings themselves.

Batchelor stated yes. We will bring to you for your approval at the January 17th meeting a budget for the project which will establish the maximum amount payable under this agreement.

Wells stated I thought when we were discussing the bank notes we were talking about \$32 million and \$13.5 was going to be for the original \$12 million and then there was going to be \$14 million.

Batchelor stated about \$14 million would be the estimated development financing assistance.

Wells asked that is infrastructure and building.

Batchelor stated a portion of the building cost that is correct.

Wells stated up to that 30%.

Batchelor stated up to \$14 million or whatever the budget establishes.

Fitch stated roughly \$14 million with the site work that is going to take place on filling the hole on the north east corner, all the concrete and streets. It was our responsibility to have the property cleared. What is left after that will be slim to nothing.

Batchelor stated that could be. It was not measured on that basis. The retail development cost and the developer's budget is still being tweaked. They are taking bids but it is on the order of \$33 to \$34 million.

Wells stated so we would pay about \$10 or \$11 million of that back to them. 30%.

Batchelor stated your total cost and based on the most recent budget the maximum will be about \$14 million. Our reimbursement will be in three sets. The site preparation, the percentage of the construction cost and when you carry it out to the end where the developer will be in the terms of his financing assistance from LEDA he will have \$4 to \$5 million gap in our reimbursement obligation. We will not cover that except on the basis of completion.

Motion by Means, Second by Neal, to adopt a resolution authorizing and approving a Development Assistance Financing Agreement with Lawton Town Center, LLC, Lawton Downtown Redevelopment Project. **Aye:** Wells; Denham; Fitch; Means; Nance; Neal. **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, incentive proposals, redevelopment rights, and financing in connection with the Lawton Downtown Redevelopment Project, and take appropriate action in open session as necessary.

Fitch stated we will not be convening into executive session.

BUSINESS ITEMS (cont.)

10. Consider adopting a resolution authorizing payment of projects costs through January 17, 2013, Lawton Downtown Redevelopment Project.

Batchelor stated as I mentioned our biggest challenge with respect to this project is enabling LEDA to perform its obligations so we can get to a closing. With the help of the retail developer we are having to do things on the site to keep the construction schedule in tack for the hotel/conference center. We have environmental issues to be deal with, reimbursements to the retail developer for the sanitary sewer/storm water drainage work, relocation cost, significant legal cost, and demolition costs. We are requesting your authorization for the Chairman to pay those cost when necessary to keep the project moving and meet our obligations between now and January 17th. I have here testaments of what those cost might be. You may not need the full amount but if we do they would be available by our lenders. What is critical here is that we be able to keep the project moving and to perform on time. If we don't have the site ready, environmental in place, and protection for the coverage of any remaining environmental remediation cost we won't be able to close. He will have very picky lenders looking over his shoulder in connection with the financing of this project. We have to be in a position to deliver on all accounts and keep the project moving.

Fitch stated we had this similar agreement in place with the hotel. We had some remediation concerns about Bianco's, the carwash and one other location. The lenders wanted it established that it would be remediated and LURA would pay the costs. I believe it was around \$5000. This is basically the same thing. There could be a little more cost associated with the Crawford property. This gives the lenders of the retail development the assurance everything

will be addressed and taken care of. This is not new or additional money. The banks are going to release up to this amount so we can stay on track. This is an advancement prior to closing.

Means asked is it part of the original amount.

Fitch stated yes and not in addition to.

Nance stated there are all kinds of things that can create a red flag and they will have to go back and verify there are not environmental contaminants.

Rogalski stated they started on coke and Crawford's yesterday. They were doing the radar search on coke and hadn't found anything as of noon. On the Crawford property there is a slab and a vault so our cost will be more than expected. There is some soil residue but if it is regular automobile oil we can take it to the landfill. At this time we don't know what they will find.

Means asked is there underground storage for the cleaners.

Rogalski stated there wasn't anything there.

Fitch stated the carwash was the problem. There was a grease trap but it was all self-contained. We know that Crawford's father ran a shop and there was a hydraulic lift that was taken out. It was all encased in a still casing and he filled it up and cemented the top. We are hoping any contaminants are contained.

Batchelor stated we are scrambling hard to get our side of the table prepared for closing. Everyday counts at this point. John Collett called this morning and he spent yesterday at Kohl's headquarters in Minnesota. They are 95% complete on their documentation. They are moving very rapidly towards getting all their pieces together. Their probable permanent lender made a visit to Lawton last week to look over the community and the project. Financing pieces seem to be moving. Every day counts so we asking the Authority to approve this item so we are able to make prompt payments and reimburse John Collett to keep the project moving.

Wells asked are we borrowing this out of the \$33 million.

Smith stated this is kind of a recapture of the original \$12 million.

Wells stated so it is against the line of credit.

Smith stated yes. This is just the three banks and we are going to borrow it for about twenty-five days.

Wells stated I just wanted to make sure everyone understood.

Denham stated these are all dollars we would be spending down the road whether it was from the original \$12 million or from the \$33 million.

Batchelor stated that is correct.

Fitch stated we had to have the land cleaned before delivery. Collett is fronting a lot of money so we can get it done. We are going to draw down on some so at closing it will all be done.

Smith asked when do we expect the Phase II portion of the environmental to be complete.

Rogalski stated it takes about two weeks to get the report. Digging was difficult yesterday so I think they will have to come back. It probably will be three weeks.

Batchelor stated we are looking at the first week of January.

Smith asked then is there some remediation that has to occur after that.

Rogalski stated yes.

Fitch stated the retailers you see here are all 98% sure. On the north end you will recall there was a 23,000 square foot parcel that was going to have a six month delay. We now have another retailer coming on board. They agreed on the LOI's yesterday and it will go before a committee first week in January. This particular retailer is going to build a new proto type store. The other retailer will still be available six months later.

Batchelor stated this will basically fill up the inline store on this retail phase of the project. Anything further will be in the next Phase. Phase I is the hotel, Phase II the retail, Phase III the office building and Phase IV the balance of the retail to the north. The future retail to the north still remains to be seen. Our timeframe estimates it another nine months down the road.

Fitch stated this keeps Collett from having to go to a percentage lease. This allows him to go to a firm lease which is what he wants.

Batchelor stated this is looking very good as long as we can perform and keep moving on a timely basis.

Fitch stated I can't go into details but the out parcels are looking good. One is a restaurant that will do well in Lawton.

Wells asked if we do a line of credit of \$900,000 will that reduce the amount we borrow later.

Batchelor stated yes. It will not increase your total.

Smith stated you are just getting an advance.

Denham stated it isn't for sure we are going to use it all anyway.

Batchelor stated that is correct. We just wanted you to have some numbers. We built in some reasonable margins and we hope it is an adequate estimate.

Motion by Means, **Second** by Nance, to adopt a resolution authorizing payment of projects costs through January 17, 2013, Lawton Downtown Redevelopment Project. **Aye:** Wells; Denham; Fitch; Means; Nance; Neal. **Nay:** None. **Motion Carried.**

Fitch stated lets go back to Item 1, 2 and 3.

1. Consider approving minutes of October 25, 2012, and November 1, 2012.

Means stated we received the September 25th minutes instead of the October 25th.

Motion by Nance, **Second** by Nance, to approve minutes of November 1, 2012 as written and to table minutes of October 25, 2012. **Aye:** Denham; Fitch; Means; Nance; Neal; Wells. **Nay:** None. **Motion Carried.**

2. Consider approving annual meeting notice for 2013.

Motion by Wells, **Second** by Neal, to approve the annual meeting notice of 2013. **Aye:** Denham; Fitch; Means; Nance; Neal; Wells. **Nay:** None. **Motion Carried.**

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

Fitch stated we have payments to Charlie's Backhoe in the amount of \$15,000, Kimberly Furrh in the amount of \$100.00, Michael Johnson in the amount of \$1,500, Guardian Enterprise in the amount of \$2,500, LURA in the amount of \$80, City Clerk's Office in the amount of \$19 and City of Lawton in the amount of \$50,000. The City of Lawton check is reimbursement for the interest they paid for us. At the next meeting we will approve another \$50,000 and the meeting after that another \$50,000.

Motion by Wells, **Second** by Means, to approve invoices, requisitions, and all other submitted materials for payment. **Aye:** Fitch; Means; Nance; Neal; Wells; Denham. **Nay:** None. **Motion Carried.**

DISCUSSION ITEMS AND REPORTS

Fitch stated last Wednesday AT&T discovered they had a cable where the slab for the hotel/conference center would be. The internet on the east side would have been gone. If you see Deno Cox you need to pat him on the back. We were told they would not be able to relocate the cable until the 4th of January. I contracted Deno Cox and he had a crew working all weekend. The job is complete and we need to thank Deno tremendously.

Denham asked how is the PSO relocation going.

Fitch stated Jensen, Batchelor and myself will be meeting with them on Thursday. We have a fair offer on the table with lots of documentation to go with it. We had a one on one earlier and it was fully agreed and understood. I followed up with an email to Mr. Harper outlining exactly what we had agreed on and when they came back they had completely flipped it. The next time we met one of their attorneys said “I kind of glanced at that and the figures were the same I just didn’t realize who was paying what”. This is an attorney for PSO. You don’t make mistakes like that. It got heated so we went back to negotiating. I believe we have a very good deal but we will find out Thursday.

Jensen asked do you want to say something about the motion tonight.

Fitch stated there will be an item in Executive Session discussing the situation. We are asking Council to give us the approval to file a lawsuit against PSO in accordance with the franchise agreement if we don’t reach an agreement Thursday.

Wells stated I have agreed to make the motion.

Jensen stated we’re asking for the motion so we can continue to move forward if things don’t go well Thursday. We have a lot of confidence things will go well Thursday. Right Dan.

Batchelor stated yes. One reason for the sense of optimism is subsequent to the Mayor’s last meeting. All the engineers involved got together with no attorneys present. They looked extensively at the issues involved in the relocation and how to do that in coordination with the other utilities. An agreement was reached on the placement of the relocated electrical line and related utilities. They agreed the work would all be accomplished within the time period necessary to accommodate your project. Under the terms of the franchise ordinance with PSO there is no question that once the City gave notice PSO is obligated to do the relocation. The only issue that remains on the table is cost allocation in connection with the relocation. That is where we think we are. We will seek to confirm that understanding at the meeting Thursday and try to finalize an agreement on the cost.

Wells stated I made this statement a few months ago in Executive Session but we need to realize when PSO sold to AEP they are allowed to talk to us but they have to get approval from AEP. I believe that is where the hang up is. AEP is an Ohio company not Oklahoma.

Nance stated PSO has been the most difficult utility for Lawton homebuilders and developers within the state. Something that may be beneficial to you is they are very sensitive to the Corporation Commission. Two or three of us met with their top leaders and a Corporation

Commissioner. That was the only way we could get any rectification and they were responsive to that. The Corporation Commission is where they have to go to get a rate increase.

Fitch stated we have met with the Corporation Commission and PSO knows that.

Nance stated that is the biggest motivator that I have seen.

Denham stated that is a shame. When PSO was a part of central and southwest Oklahoma they were one of the most community minded companies. When they went to AEP it is totally the opposite. It is not the local people.

Fitch stated no it isn't. It goes up a chain and their hands are tied. Things are looking good. We had a conference call this morning and everyone was very pleased.

Batchelor stated this ship is sailing and it is getting smoother. I want each of you as a trustee and public servant to know if it hadn't been for your perseverance this would have cratered a long time ago. It has come through rough and storm seas and now the ship is sailing better every day. We are on course and if we tend to business everything will be fine.

Motion by Wells, **Second** by Means, to adjourn. **Aye:** Means; Nance; Neal; Wells Denham; Fitch. **Nay:** None. **Motion Carried.**

ADJOURNMENT