MINUTES
LAWTON ECONOMIC DEVELOPMENT AUTHORITY
MAYORS CONFERENCE CENTER
NEW CITY HALL
NOVEMBER 1, 2012, AT 2:00 P.M.

Fred Fitch, Chairman, called the meeting to order at 2:00 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: Fitch, Fred; Madigan, David; Means, David; Nance, Ron; Neal, Larry; Sheppard, Ernie; Wells, Doug.
ABSENT: Denham, David; 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 Endicott City of Lawton Finance Director, Richard Rogalski City of Lawton Planning Director, Bryan Long Interim City Manager, Doug Meier President BancFirst, Rick Smith City of Lawton Finance Advisor, Dan Batchelor LEDA Attorney and Steve Robinson Lawton Constitution.

BUSINESS ITEMS

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

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

2. Consider adopting a resolution approving the issuance of LEDA's Tax Apportionment Bonds or Notes for the financing of projects in the Lawton downtown increment districts in the amount of not to exceed $37,000,000 (the "2012 Bonds"); waiving competitive bidding on the sale thereof; approving a General Bond Indenture, one or more Supplemental Indentures, a General Security Agreement, a General Agreement of Support and Reserve Maintenance Agreement, a Sales Tax Agreement, a Development Financing Assistance Agreement and other documents related thereto; and containing the provisions relating thereto.

Fitch stated this Item mirrors what the City Council approved on August 21st.

Batchelor stated we have arrived at a significant point in the implementation of the downtown redevelopment project. The City in approving its project plan and establishing the TIF District in support of this project exercised statutory powers to delegate certain implementation responsibilities to a public entity. Council did that by delegating responsibilities to the Lawton Economic Development Authority to carry responsibilities for financing and implementing this project. We have closed on the hotel redevelopment site and in order to move forward in a timely manner to close on the retail redevelopment additional authorizations is necessary. Those currently critical to the project are on your agenda today. The first request is with respect to the public financing. This was the same authorization that City Council approved on August 21st. Your approval will enable LEDA to move forward and perform its obligations under the retail development agreement. There will be implementation pieces put in place that is the key to this project. I want to mention two key obligations at the outset. One is putting together the financing with the retail redeveloper. The redeveloper will be required to secure and protect the funded land by giving back to LEDA a note which will be an obligation in the amount of all funds advanced unless the redeveloper completes the retail portion of the next phase of the project. Second in order to back and assure this will occur it requires we put in place a guaranty of completion by the retail redeveloper that reference a specific square footage involved in this phase of the project and the right to reimbursement will be limited to the percentage of completion at any point and time. Completion means the retail stores are equipped, obligated and all conditions have been met to opening the operation. I recommend your approval as a timely action for this project.

Smith stated as you know we have been meeting with the banks and we have six local banks that have committed to $31.6 million in financing under the terms and conditions that was outlined to the City Council and are a part of this resolution today. We are continuing to finalize those discussions. There are a number of other things related to this project such as the PSO relocation cost and other things we need to continue on. Mr. Meier has been the lead bank and we need approval so we can move on down the road. This mirrors what the Council approved on August 21st.

Wells asked how much did you say it was.

Smith stated $31.6 million.

Wells asked what is the difference.

Smith stated if you recall we had $37 million as a number not to exceed. When we looked at how much funding might be required it was around $32 or $33 million. That was based on the City having to be responsible for all the PSO cost. We are anticipating that some of those costs will be shared by PSO, but right now we have all of it on the City. That gets us back to $31.6 million.

Wells stated so that is the number that we need now.

Smith stated. Yes.

Batchelor stated one other thing that is extremely important is we closed on the hotel conference redevelopment and under the financing agreement there is in place a guaranty of completion. This is a requirement of the lenders and investors in that project which gives us a strong legal and financial assurance that this piece of the project will be completed and revenues generated will in fact occur. We have taken significant steps down the road and it puts us in a position to take the next steps to cover both the interim and long term financing to get from where we are to the development of the retail facility. I'm requesting your endorsement and approval of the requested financing authorization.

Fitch stated I will reinforce the fact we have seven present today and we need seven affirmative votes due to waiving the competitive bidding.

Madigan asked has Council proofed all the documents.

Batchelor stated these are the exact same documents Council approved. These authorizations will empower us to finalize the terms of the documents with the lenders. On this agenda there are additional implementation items we are requesting your approval on. This is a critical step. The final documents with the lenders will be subject to the lenders final approval. They must be accomplished and in accordance with these authorizations and restraints I mentioned earlier that we must obtain from the retail redeveloper. Very similar to what the lenders obtained from the hotel redeveloper.

Means asked how many banks.

Fitch stated Liberty, Arvest, BancFirst, First National Bank, City National Bank and IBC.

Wells stated although I was against the financing I stated after the August 21st meeting since Council voted to support the project I would also.

Jensen stated I want to say for Bush's benefit the Council approved items were in draft form and are still in draft form. They will have to be tweaked mostly in the area of legalese. He didn't have time to put the finishing touches on every single document.

Madigan stated I would ask we get notification of any changes Bush makes.

Batchelor stated we will keep you fully and completely advised.

Motion by Wells, **Second** by Means, to approve adopting a resolution approving the issuance of LEDA's Tax Apportionment Bonds or Notes for the financing of projects in the Lawton downtown increment districts in the amount of not to exceed $37,000,000 (the "2012 Bonds"); waiving competitive bidding on the sale thereof; approving a General Bond Indenture, one or more Supplemental Indentures, a General Security Agreement, a General Agreement of Support and Reserve Maintenance Agreement, a Sales Tax Agreement, a Development Financing Assistance Agreement and other documents related thereto; and containing the provisions relating thereto. **Aye**: Fitch; Madigan; Means; Nance; Neal; Sheppard; Wells. **Nay**: None. **Motion Passed**

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

Batchelor stated under the terms of the amended retail redevelopment agreement the redeveloper is required to submit an updated preliminary redevelopment plan. What that does is defines the areas and uses in each phase of the project. What you have before you is an updated preliminary redevelopment plan. It shows the Phase I area in green and you will recognize that as the hotel site. The area that takes up the bulk of the site is in orange labeled Phase II. That is the retail phase that is to be undertaken plus two out parcels to the south side of the hotel site. Phase III is in yellow and that is the office building. Phase IV is the balance of the twelve block redevelopment site at the north end. This plan will be implemented and is proposed to be undertaken by the retail redeveloper with the appropriate allocations for the hotel and office building developments. We request your approval of this updated preliminary redevelopment plan.

Wells asked does this also take in the Jefferson property.

Batchelor stated yes. I might mention that the retail square footage in this phase is slightly in excess of 230,000.

Means asked does that include these two little places right here where it says shops.

Batchelor stated yes.

Madigan asked are the hotel developers planning on securing this property. It looks like it is a lot more than what they purchased.

Batchelor stated shown in green are the access ways that service both the hotel and the office parcel. The hotel is not taking title to that site. It becomes access ways that will be subject to an easement agreement showing the beneficial interest and rights of use of the various parties. It was colored green as a way of showing it as an access. It does not reflect the hotel parcel has the title. It is the same along all the access way edges.

<u>**Motion** by Wells, **Second** by Neal</u>, to approve a resolution approving an updated Preliminary Redevelopment Plan submitted by Lawton Town Center, LLC, for the Lawton Downtown Redevelopment Project Area. **Aye**: Madigan; Means; Nance; Neal; Sheppard; Wells; Fitch. **Nay**: None. **Motion Passed**

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

Batchelor stated the presentation of an updated phasing plan for the project is a requirement under our retail redevelopment agreement. This plan now ties with the preliminary redevelopment plan which you just approved. It reflects the same map with the same four major development phases. First with respect to the hotel we were to close by September 30th and actually closed on September 28th. Phase II area is our major retail development with a closing date between December 15th and January 31st depending on how quickly LEDA can perform. We have a number of conditions that place great pressures on us to perform which include assuring the delivery of satisfactory title, all environmental requirements, necessary remediation and that we have approved utility relocation arrangements sufficient to accommodate the project. There is a piece of Phase II near the north end that has a slightly different color that erases an additional contemplated major tenant for this phase. It is called Major Tenant A. That piece will lag approximately six months behind the rest of Phase II. Then it reflects the timing on the office development as a spring date of approximately April 30th based on the information we currently have. Phase IV has a closing date of November 1, 2013. This update corresponds with where we are now and our best estimates on our ability to perform under the terms of the redevelopment agreement and conforms to the preliminary redevelopment plan you just approved. Beyond this all the plans, specifications and redevelopment final evidence of financing is all subject to your further approval under the redevelopment agreement. I recommend your approval.

Sheppard asked are these dates recommended dates or are these hard fast dates.

Batchelor stated they are solid dates subject to our ability to perform.

Sheppard asked do you mean LEDA's ability.

Batchelor stated yes. There are also challenges on the redeveloper side. An example is the hotel development closing. We all moved hard, fast and furiously to close August 1st but it took until September 28th due to all the parties involved. On trying to close the deal we have our final financing arrangements to put into place, utility relocation, environmental and title. With all those pieces we have a number of parties we are dealing with. Likewise our redeveloper is dealing with seven major retail participants and his lender Wells Fargo. You are trying to get an agreement among all the arms of this octopus. I think the timeframe is reasonable and achievable if we continue to give this our top priority.

Sheppard asked are these dates in the agreement?

Batchelor stated yes by virtue of your approval. The agreement says the parties will perform in accordance with the Phasing Plan. This binds us and the developer.

Sheppard stated so the dates aren't binding.

Batchelor stated in the real world we deal with what is possible and that means that many things the redeveloper has to do are dependent upon us and many things we need to do are dependent upon the redeveloper. I think this is a doable timeframe if we all do our business. If we get to mid December and there are still some pieces the chances of putting those in place during the holidays is simply not real high. It will be after the New Year weekend before you can get everybody back in gear.

Sheppard stated my question is are we inserting these dates into the agreement we are about to approve. Are they hard fast dates or just objectives that we are aiming for. Are the flexible or are we going to need to adjust this later.

Batchelor stated the agreement says these are our performance dates but they are subject to extension by reason of delays caused by our ability to perform.

Sheppard asked does that extension have to come back to this body.

Batchelor stated they have to give us notice and we will know if we have been unable to complete an environmental remediation and deliver a satisfactory title. We are under the gun. Yes they are in the agreement but in the real world if there is a little piece missing and you are almost to the end of the deal you will have to make a choice. Are you going to exercise your rights to terminate or take that last step.

Wells stated our biggest concern is PSO. If they decide to take this to court it would really hurt the project.

Batchelor stated that is exactly right. That is our single biggest unknown.

Fitch stated I agree but I do believe PSO has taken a turn for the better.

Jensen stated there are two components to PSO which we will get to in the next item. First is the component with the relocation agreement. Due to the franchise ordinance the City has to proceed which we have done. The other component is we may have to pay upfront under protest. We will get to that in a minute. If we have to pay we are not going to give up our claim under language in the franchise ordinance of them being responsible for the cost or to cost share under a different part of the franchise ordinance. In my mind it is two separate things. They have to proceed. They have no grounds to delay based on that. We still have a right to pursue our cost sharing argument and our argument they are actually responsible.

Batchelor stated I feel very keenly that this is a fine project that will make an exceptional contribution to the City of Lawton. It is not the simplest project I have worked on in fact it has become one of the more complex projects. I want to assure you that you have a terrific team working on this project and it has our highest priority. For the last year nothing has been higher on my priority list than moving this project over the finish line. This is too good an opportunity to pass it by. It has my commitment and the commitment of Gary Bush, Rick Smith and your wonderful team here in Lawton. We have had great support with your community, lenders, City staff, our developer participants, the hotel conference team and the retail team. There were challenges but we have had the right kind of team to move it forward and we are about there.

Motion by Wells, **Second** by Means, to approve a resolution approving a Third Amended Phasing Plan for implementation of the Lawton Downtown Redevelopment Project. **Aye**: Means; Nance; Neal; Sheppard; Wells; Fitch; Madigan. **Nay**: None. **Motion Passed**

5. Consider authorizing and approving a Utility Relocation Agreement with Public Service Company of Oklahoma.

Batchelor stated the steps that have to be taken to assure the timely movement on this project arranging for and completing the relocation of the electric utility facility. This is probably the single largest critical piece with respect to this project. The timing is critical because the existing facility impairs the ability of the construction to move forward. With respect to the hotel conference center site we are working out the interim relocation arrangements to assure that their actual construction can commence. We do have an interim arrangement at both the transmission and distribution facilities. With respect to the larger site we have both temporary and permanent relocation issues for the site as a whole. Our discussion has not resulted in an agreement on financial responsibilities in connection with payment for that relocation. Based on an exchange of correspondence and proposals what is before you is a proposed agreement that PSO agreed to timely relocate its facility to accommodate the project. In connection with that this Authority would agree to perform its responsibilities with regard to information with coordination to pay for whatever cost are involved in the relocation that are determined to be the responsibility of the City of Lawton. While these things move forward the agreement provides for a process to try and resolve the reimbursement issues. Step one would be to negotiate a solution through the end of November. If that is unsuccessful we would agree that it would be arbitrated by a mutually agreed arbitrator who was a former state or federal judge. The agreement also provides the provision for temporary relocation which we would acknowledge would be our responsibility to pay for because the franchise agreement doesn't address the issue of temporary relocation.

Jensen stated I would add PSO wants to get this resolved from what we can tell. They proposed the possibility of arbitration, some terms to keep moving forward and not to delay the actual relocation while we go through our dispute process. We think they have become more encouraging in their response to us.

Batchelor stated the agreement provides we will give them information on the timing, phasing and site plan necessary for them to perform. The site plan shows the needed utility relocation and the timing scheduled. We will transmit this timing schedule and agreement to PSO. With this authorization behind us we hope to see the approval of the City Council at their next meeting.

Motion by Wells, **Second** by Nance, to approve a Utility Relocation Agreement with Public Service Company of Oklahoma. **Aye**: Nance; Neal; Sheppard; Wells; Fitch; Madigan; Means. **Nay**: None. **Motion Passed**

6. Consider adopting a resolution authorizing and approving site preparation and pre-closing activities for the retail redevelopment in accordance with the Amended Retail Redevelopment Agreement.

Batchelor stated in order for us to act in a timely manner with all the issues that are in front of us we are recommending your approval to grant the Chairman the authority to authorize these interim activity provided that the aggregate cost of these activities not exceed $100,000 without your approval. Then he will report back an account of any of these actions and authorizations that were taken at your next meeting. This is critically important to enable us to move everyday in advancing this project.

Motion by Wells, **Second** by Means, to approve a resolution authorizing and approving site preparation and pre-closing activities for the retail redevelopment in accordance with the Amended Retail Redevelopment Agreement. **Aye**: Neal; Sheppard; Wells; Fitch; Madigan; Means; Nance. **Nay**: None. **Motion Passed**

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 other development projects under consideration in the City, and take appropriate action in open session as necessary.

Fitch stated there is no reason for us to convene into Executive Session.

DISCUSSION ITEMS AND REPORTS

Rogalski stated we requested a letter from LEDA as part of the sewer system development. In moving the sewer lines there are a couple of lots owned by LEDA that will be left without services temporarily. Typically we don't allow this but in order to move the sewer system we requested a letter from LEDA to the City of Lawton stating it was okay for these properties to be without sewer services. This allows the City to approve the sewer relocation. Those plans were submitted and will go to Council on the 6th.

Batchelor stated I have one other update. Our retail redevelopment team is currently at their regional meeting of the ICSC. This is one of the deal making meetings of that organization and they are there prospecting for retail for our project.

Rogalski stated I would add we received a call from Kohl's and we will be meeting with them next week. They want to know what the process is and how it is going.

Wells asked why we are paying $225,000 when the total due is $339,000. How did we get a balance of $310,000?

Fitch stated we have only paid $30,000 through the course of the year. We have not been paying since we didn't have any money.

Batchelor stated part of our agreement with the Collett group was they would advance $450,000 to help LEDA in covering their financial obligations in connection with the project. I hope you will appreciate the fact this is evidence of our commitment in our performance and not because of the kindness of our banker in connection with our accounts receivable. We are committed and that is just the way things work. This project has been far more difficult and it has taken more time than any of us would have envisioned. It has been a challenge but this year has been a remarkable year in terms of the final pieces that came together both from the hotel conference center and our retail developing. We could not be much stronger in that respect but it was not an easy walk through the woods.

Wells asked does that include any of the funds that Ruhl and Ruhl owes.

Batchelor stated all of their obligations were assumed by Collett as a redeveloper. Under the understanding we had with Steve Scott $450,000 of LEDA's project cost would have been absorbed by Scott had he remained the redeveloper. Collett advanced $450,000 to assist in covering LEDA's project cost. We are considerably better off than we would have been under the prior arrangement.

Fitch stated Arkla is scheduled to start in another week. At the last meeting you gave me the authority to pay PSO for relocation expenses up to $79,000. The actual check was for $65,000. I will be meeting with the defense department tomorrow and hope to have information for you at the next meeting.

ADJOURNMENT

<u>**Motion** by Wells, **Second** by Means</u>, to adjourn. **Aye**: Wells; Fitch; Madigan; Means; Nance; Neal; Sheppard. **Nay**: None. **Motion Carried**.