

**SPECIAL COUNCIL MEETING MINUTES
CITY OF UNIVERSITY HEIGHTS, OHIO
MEETING HELD VIA ZOOM / MEETING ID: 847-3777-9217
MONDAY, MAY 27, 2020**

Mayor Michael Dylan Brennan called the regular meeting to order at 7:02p.m.

Roll Call:

Present: Mrs. Michele Weiss
Mrs. Sandra Berry
Mrs. Barbara Blankfeld
Mr. Justin Gould
Mr. Phillip Ertel
Mrs. Susan Pardee
Mr. John Rach

Also Present: Law Director Luke McConville
Clerk of Council Kelly Thomas
Finance Director Dennis Kennedy
Police Chief Dustin Rogers
Economic Development Susan Drucker
Communications / Civic Engagement Michael Cook

Agenda Items:

A) Approval of Ordinance 2020-27 Authorizing the Mayor to Enter into a Development Agreement with KL Holdings, LLC

Mayor Brennan stated that since its original conception and the original issuance of TIF Funds in 2001 University Square has spent most of its existence falling short of expectations. The City has found a Developer in KL Holdings Brad Kowit and Greg Leavy who each grew up on the eastside of Cleveland. These are two people who share in the community and share a vision for this site. Mr. Kowit and Mr. Leavy want to see University Heights improve and for this investment to be everything it can be. Approval of this development agreement bring the City one step closer to the re-do of University Square a reality. Phase 1 is a mixed-use development with 180 to 200 market rate apartments above and new retail below. Approximately fifty apartments will be ready to occupy within 24 months of the beginning of construction. Aspects of the development have been presented to the County, Cleveland Heights-University Heights School District and the City. The replacement TIF was approved on January 6, 2020. The Development Agreement represents the collective vision, values such as paying a fair wage, supporting the use of minority/women/disadvantage and small business enterprises and the utilization of women and minority workers on the job. Mayor Brennan said the city has assured the registration of contractors and other working the project so that city taxes can be collected from this project. Lastly, with this Development Agreement we (University Heights) is on its way to making the site worthy of University Heights once again.

Mr. McConville remarked that Phase 1 of the project will have 180 to 200 market rate apartments with new retail space. It is anticipated that the apartments will be built in a phase manner. It is also anticipated that the current area where TOPS and the outer Parcels will be considered as Phase 2 of the project development. The parties have negotiated a list of prohibited uses with respect to future Phase 2 development as exhibited in section C of the agreement. Both Mr. Kowit and Mr. Leavy have committed to going through a pre-administrative review of the Phase 1 plans with the City to allow vetting from all department heads before it is formally introduced to the Planning Commission. The Development Agreement has the basic language such as indemnification and insurance provisions. There are also specific improvements detailed in the agreement such as the garage, the construction of a police sub-station for use by the City, a landscape plan and construction of the utilities by the developer. Mr. McConville added that the plat has to be reviewed and approved by the City Engineer, once that it completed the legal description will be added to the document. There is also a memorandum of option where if a Development Plan for Phase 2 is not submitted in a particular time period then the City would have the rights to exercise the option to purchase. The Memo of Option will be filed with the County Recorder to put any third parties on notice.

Mr. McConville noted that procedurally the Development Agreement is prerequisite/contingency to the land purchase agreement that the developer is entering into with the bond holders. The idea is that once this process is completed the bond holders will have sold the parcels to the developer and those parcels will be subject to pilot payments to a TIF and in order for that to occur this agreement must be entered into.

Mrs. Pardee asked for clarification that if there is no development planned within five (5) years the City can purchase the Phase 2 location for \$3.5mil. Mrs. Pardee asked how the buy-back floor of \$3.5mil figure arrived at because that seemed very high.

Mr. McConville said that the \$3.5mil was the purchase price for the entire real estate deal including all the parcels. The opportunity and ability to develop Phase 2 has been made clear through negotiations that it is of upmost importance to the developer, so the developer wants to avoid this scenario at all cost. So, this is not meant to be an attractive purchase price, it is meant to be a last resort option because absolutely nothing has happened well after construction of Phase 1 is complete. The concern that the City wanted to address was to make sure it doesn't watch Phase 2 languish because this development has a history to that affect and the City is very sensitive to that issue.

Mr. Kowit commented that once they are at Phase 2 they will have committed a lot of money so he didn't envision any need for the City to need to purchase those parcels.

Mrs. Pardee asked why there was restricted uses shown in Exhibit C #4 and why are restricted uses only Phase 1 and not Phase 2 because she would prefer it be for both phases. The wording states "as to Phase 1 only - any establishment providing the sale, distribution or display of items for pawn loans or establishments that offer payday loans, title loans, check cashing services or similar establishments notwithstanding the foregoing, nothing herein shall be construed to prohibit the presence of any FDIC insured banking institution or credit union.

Mr. Kowit replied that Phase 2 includes the strip sections on Warrensville so they want to have flexibility. Mr. Kowit assured everyone that the stores and development will be first class.

Mrs. Pardee stated that she understood that they want flexibility but noted that she did not want any payday loans.

Mr. Kowit said that they aren't looking to locate the traditional pawn shops, etc., they just want to have flexibility. The more restrictions that are placed and the broader it is defined the more trouble is had. The bottom line is that any use that is placed in the development has to go through the city's processes and has to receive an occupancy permit from the City.

Mrs. Pardee asked if it was a permitted use was there anything to stop a payday/predatory lender type of business from going in anywhere in the City? Mrs. Pardee also asked if once the Zoning code is redone could this be incorporated into it so it wouldn't be an issue later on.

Mrs. Drucker said no; not if it was a permitted use.

Mr. McConville stated that the City would still remain in control in terms of the planning process and in the event, they plan any use that requires a Special Permit it would have to be approved and multiple levels before going forward. Regarding Mrs. Pardee question, as long as the City isn't engaging "spot zoning" or a process that reflects animus to these developers or this particular set of parcels, then, yes, the City can engage in a zoning process.

Mr. Gould voiced his concerns also for mini storage facilities because those too are parachutes for developers. Regarding the Development Agreement Mr. Gould asked for clarification on what the delegation of authority meant. Is the person who is meant to approve things on behalf of the City; a delegation of Council's authority to the Mayor or is it by Charter and Law an Executive function of itself? Or, is it saying that instead of coming to Council as normal for approvals in this agreement, the Mayor is being delegated to represent the City in authorizations contemplated in this agreement. On page 12 of the agreement under "O" Approvals by City where it states "any provision of this Agreement requiring the approval of the City, the satisfaction or evidence of satisfaction of the City, certificate or certification by the City or the opinion of the City shall be interpreted as requiring action by the Mayor or the City (or such other official as the Mayor of the City may from time to time designate)"

Mr. McConville replied that any amendment in the agreement would be brought back to Council for approval. Regarding Approvals by the City the Mayor is authorized to sign administer and review the Professional Development Plan (PDP).

Mr. McConville provided the example where if the developer would to breach the agreement the City would not go back to Council for approval but instead the City would issue the notice of the breach.

Mrs. Blankfeld – change orders if the City is left on the hook for the development.

Mr. McConville stated that all change orders are a Building Department function.

Mr. Gould asked about Section 2A – Modification to the Professional Development Plan.

Mr. McConville replied that the Professional Development Plan will go through changes and that as long as those changes are not radical there would be no need to come back.

Mr. McConville noted the commitment on both parties of good faith.

Mr. Gould asked if there were any changes made to the agreement would that come back to Council.

Mr. McConville replied yes.

Mr. Rach added that the Professional Development Plan would be more in depth and that things will probably change as time progresses. What is currently being presented is conceptacle in nature.

Mrs. Drucker stated that this development is an opportunity for growth and will make a big change in the community.

Mr. Gould voiced his objections to any attempts to allow payday loans operations or big box storage facilities.

Mr. McConville remarked that both of those uses would require a Special Use Permit with Board of Zoning approval. But, by the same token Mr. McConville said he could not guarantee that there would not be litigation in conjunction with any type of zoning dispute. Mr. McConville noted that if the City implements new Zoning Regulations and makes changes to the Zoning Map in connection to the process that involves city-wide consideration of both the Zoning Map and Zoning Regulations and conducts that process in compliance with Ohio Laws and the City's codes where multiple public hearings are held with the developer and the community so that they can voice their opinions. That type of change to the existing zoning to something that is currently a permitted use or a permitted use that is conditioned on the issuance of a special permit and is then turned into something that is a prohibited use would be supportable and Constitutional.

Mr. Gould asked if Council did not want to go through that process because it would have to be done for the entire city and that there may be some delay; what opinions did Council have to ensure that there would never be any payday or big box stores allowed on this property. Noting paragraphs 4 and 10 that state slaughterhouses or adult entertainment would never be allowed Mr. Gould suggested changing paragraphs 4 and 10 to add big box facilities and payday stores.

Mr. McConville replied that he really couldn't answer Mr. Gould question because currently those things are conditioned upon the issuance of a special permit and the issuance of a special permit is the purview of the Board of Zoning Appeals. The Board of Zoning Appeals operates independently without political pressure. Mr. McConville said if big box facilities and payday stores are added to paragraphs 4 and 10 of the agreement so that they would never be allowed the city will no longer have an agreement anymore. Mr. McConville added that the agreement language for provisions and restricted uses were discussed for about five weeks, nothing listed in the provisions were there by accident but by after careful consideration of each attorney with the best interest of their prospective clients.

Mr. Leavy stated that he and Mr. Kowit have been conducting real estate deals throughout the State of Ohio for 30 years and have seen the changes in allowable uses. Mr. Leavy said that they have no intention of either of those uses and their intentions are to hold on to these properties long-term but they don't want to be restricted or limited as to their deeds or development agreement down the road. If it is the city's desire to place that restriction there will not be an agreement.

Mrs. Weiss commented that the City will be going through a Zoning Code review in the next few years and she did not think that any of the current wording and all the work that was done should be hindered.

Mayor Brennan recommended not acting on Ordinance 2020-25 because it has not been voted on at the State level.

Mrs. Pardee asked if this agreement would be grandfather-in if there are Zoning changes later on.

Mr. McConville replied that the covenants will run with the land. If a current allowable use is change in the future that could be changed but if something is not allowable in the agreement and then becomes allowable by the code in the future that would not change.

MOTION BY MRS. WEISS, SECONDED BY MRS. BLANKFELD to Approve Ordinance 2020-27 Authorizing the Mayor to Enter into a Development Agreement with KL Holdings, LLC. On roll call on the suspension of the rules, all voted "aye," and Roll call on passage, all voted "aye."

B. Motion to Enter Executive Session for Real Estate or Legal Matters

Executive Session was not needed.

MOTION BY MR. RACH, SECONDED BY MRS. BLANKFELD to adjourn the meeting. On roll call, all voted “aye.”

There being no further business, the special meeting was adjourned at 8:20p.m.

Michael Dylan Brennan, Mayor

Kelly M. Thomas, Clerk of Council