

Meeting of the: COMMITTEE OF THE WHOLE COUNCIL
Date/Time: Monday, July 6, 2015 @ 6:00 p.m.
Location: EMS Training Room; 516 S Fourth St
Members: Sonny Swangstu, Tim Swadley, Michael Engelberger, Ron Christianson, Paul Lawrence, Tom Majewski, Sid Boersma, Greg Jenson, Eric Hohol, Regina Hirsch, Tom Selsor, Pat O'Connor, Donna Olson

CALL TO ORDER

President Lawrence called the meeting to order at 6:02pm. Clerk Kropf called the roll and noted that 10 alderpersons present, with Majewski and Christianson absent and excused.

Public Comment Period

Roger Springman; 812 Kriedeman Dr; Spoke in opposition of the four agreements before the committee.

Reimbursement of City fees & costs

Finance Director Sullivan explained that the City is keeping track of the costs that are being incurred. Staff time is not included in these amounts but will be paid by the developer. Swadley asked if there are currently any outstanding expenses. Sullivan explained that no they there isn't and that a bill will be received soon. Once there is TIF money available administrative costs get taken first. If the development doesn't go through then that money won't be recovered, just as like any other project.

****The Meeting May Close Per State Statute 19.85(1)(e), deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session, and then reopen to take action on any items discussed in closed session and continue the regular course of business; Regarding the following agreements:**

- Three party Agreement
- Collateral Assignment Agreement
- Borrow Material Agreement
- DOT Agreement

Hohol requested that each item be discussed separately. Dan O'Callaghan and Bill Dunlap, Senior project engineer, stated that the bids for KPW had come in and explained the cost summary. Section one provides the total public improvement funds available under TIF Development agreement Section two describes the final bid amounts and noted that the bid is \$12,952 under the total reimbursement available. The difference between the new and old bids is \$1,847,827.00. It was noted that a significant amount of the bid was taken away due to the fact that there is existing fill to be used, rather than having it purchased and hauled in. That was not taken into consideration when RG Huston placed their initial bid.

Boersma questioned if there are any noise or light issues or hazards to wildlife. Dunlap noted that they have obtained all of the necessary and required permits from the DNR

Boersma questioned if the city will have any unforeseen costs particularly to water and wastewater to accommodate such a large building. Hohol stated that the Utilities Committee has discussed this exact problem and that they feel that there is plenty of infrastructure that can handle that capacity.

Paul Lawrence called for a recess at 7:30pm.

The Committee of the Whole reconvened at 7:38pm.

Attorney Dregne stated that the three party agreement involves the completion of the public improvements in the event of developer default and the other is the assessment guarantee from Wal-Mart. He then read the suggested changes to the committee.

Hirsch questioned if there was a way to ensure that the building wouldn't change its assessment to be lower than the \$12 million. Attorney Dregne explained that the assessor would determine that assessment and that if Wal-Mart wanted to challenge the assessment they could do it at the annual Board of Review, but then the board would have the authority to change it.

Motion by Hohol, that the Committee of the Whole recommend to Council to approve the three-party agreement contingent on the proposed amendments made by the City Attorney, second by Boersma.

Swadley stated that he would like to see the language before it goes to Council and that he is concerned with bringing this agreement to the public

Motion by Boersma, to go in to closed session, second by Swadley.

Motion to go into closed session was voted on by a roll call vote. Motion passed 7-3, with Selsor, Swangstu, and Hohol voting no. The Committee of the Whole went into closed session at 8:43pm.

Motion by Hohol, to reconvene into open session, second by Lawrence. Motion passed unanimously 11-0. Open session at 9:17pm.

The Clerk reread the main motion that stated, "that the Committee of the Whole recommend to Council to approve the three-party agreement contingent on the proposed amendments made by the City Attorney. Motion passed on a roll call vote 7-4, with Engelberger, Hirsch, Selsor, and Swadley voting no.

Attorney Dregne noted that the Collateral Assignment would not modify anything in the Developer's Agreement.

O'Callaghan stated that the bank made the request for assurance that the project is going to be completed as suggested.

Motion by Hohol, that the Committee of the Whole recommend to Council to approve the Collateral Agreement contingent on the proposed amendments made by the City Attorney, second by Lawrence.

Motion passed 10-1, Engelberger voting noe.

Motion by Hohol, that the Committee of the Whole recommend to Council to approve the Agreement for Disposition of Available Borrow Material contingent on the proposed amendments made by the City Attorney, second by Swangstu.

Mayor Olson noted that the Utilities committee would be reviewing the borrow material agreement later this week, and that they will be bringing it to Council for review and vote.

Motion passed 11-0.

Attorney Dregne stated that the DOT agreement is still being worked on between the DOT and city staff. This agreement that KPW that there will be facilities constructed in the DOT right of way. Requiring the City to maintain the shared use path, a roundabout with a landscaped central island and round about side path, a retaining wall, pedestrian median crossings, and appurtenances such as drainable pipes, railings and signage.

He mentioned another agreement from the DOT that pertains to access. Final draft should be available this week and will be available to Council next week.

Motion by Hohol, to take no action and place on the July 14, 2015 Council agenda, second by Lawrence.

Motion passed 11-0.

Motion by Hohol, to adjourn the Committee of the Whole meeting, second by O'Connor. Motion carried 11-0. Committee of the Whole meeting adjourned at 9:48 p.m.