MINUTES
Committee of the Whole
Monday, June 4, 2018 @ 5:30 p.m.
City Council Chambers, City Hall 10th Floor

CALL TO ORDER
Council President Wood called the meeting to order at 5:30 p.m.

PRESENT
Councilmember Kathie Dunbar-arrived at 6:14 p.m.
Councilmember Jeremy A. Garza
Councilmember Adam Hussain
Council Member Brian T. Jackson
Councilmember Peter Spadafore
Councilmember Patricia Spitzley
Councilmember Jody Washington
Councilmember Carol Wood

OTHERS PRESENT
Sherrie Boak, Council Staff
Jim Smiertka, City Attorney
Samantha Harkins, Mayor's Executive Assistant
Lisa Hagen, Assistant City Attorney
Greg Venker, Assistant City Attorney
Eric Brewer, Council Internal Auditor
Kathy Miles
Elaine Womboldt
Jennifer Ferguson
Joel Ferguson
G. Sal Gani, Attorney for Binni's Bar & Grill
Love Singh
Walter Sorg
Rina Risper
Darlene Rhodes
Nick Tate, City Labor Negotiator
Bob Trezise, President/CEO, LEAP
Steve Willobee, COO, LEAP
Brian Lefler, Managing Director, Baird
Christopher Stralkowski, Continental/Ferguson Lansing, LLC
Eric Helzer, Advance Redevelopment Solutions
Alan Boyer, Principal, LSG Engineers & Surveyors

Minutes
MOTION BY COUNCIL MEMBER WASHINGTON TO APPROVE THE MINUTES FROM MAY 21, 2018 AS PRESENTED. MOTION CARRIED 7-0.

Public Comment on Agenda Items
Ms. Miles spoke in support of the revocation of the license at Binni's Bar, spoke in opposition to the Red Cedar Development and their proposed Brownfield, and lastly in opposition to the parking changes and costs.

Mr. Sorge spoke on his concerns if the City walks away from the Red Cedar Development after all this time, asking them to work with the developers.

Ms. Womboldt on behalf of Rejuvenating South Lansing spoke in support of the revocation of the liquor license at Binni's Bar and Grill. Ms. Womboldt also spoke in opposition to the Red Cedar development and her opinion of the financial impacts based on comments made previously to Council by the FHT.

Mr. Sal Gani, attorney for Binni's Bar and Grill informed the Committee that Liquor Control Commission has granted his client, the new owners, and a conditional license. The new owners are working on the building, and once renovated will listed it for sale along with the business. He appealed that his understanding was that the majority of the issues in the past were with the previous management, and the new owner does not have the same management plan.

Presentation
UPDATE- Law – Revocation Hearing Binni's Bar and Grill Inc., 820 W Miller Road
Council President Wood outlined the steps, which would be Mr. Tate updating the Committee tonight and once the official transcript is received the Committee and Council will take action.

Mr. Tate confirmed for the Committee the hearing was held earlier today, with the owner and his attorney present. The hearing was recorded and they are waiting on those transcripts to write the findings and recommendations. Mr. Tate stated his intent was to have those findings and recommendations done for the Committee and Council meeting on June 11th. Council President Wood confirmed for the Committee there will be no action taken at this meeting.

Council Member Jackson asked for an update on their Cabaret License. Mr. Tate stated that based on the testimony he heard there was no cabaret license at this time. Council Member Jackson referred to the complaints which were loud music and dancing which would only be allowed with a Cabaret License, and Mr. Tate confirmed that statement. Mr. Smiertka clarified for the Committee that information he received stated the prior owners Cabaret License expired and the new owner's application is pending.

Council Member Jackson asked if there was a way for the owners to keep their current liquor license while they make their reinvestments into the property to resell, but not operate. Mr. Tate deferred to law. Mr. Smiertka stated a Cabaret License and dance permit are necessary. Council Member Jackson then asked Mr. Tate if there was any discussion in the hearing on denying or not approving the Cabaret License. Mr. Tate stated any discussion was about the Cabaret License in condition to denial, but he would look into the transcript for confirmation of any discussion.

Council Member Spitzley reiterated back to a statement by the applicants attorney which stated they were granted a provisional license, but based on what happens with Council he will or will not get a license. If that is the case, he is still marketable. Council Member

Jackson asked if there was a way to have a license and not run an operation with the conditional to sell. Council President Wood answered that he could put the license into escrow which would allow them to make investments. Council Member Jackson asked if anyone has asked the new owners if they want to escrow. Council President Wood stated more information could come out when they get the transcripts.

Council Member Spitzley asked that no presentation or action be taken until the June 25th meeting since there will be 3 Members absent on June 11th. Council President Wood stated she had no problem waiting, and would confirm with the State there would be no issues in waiting either.

Discussion/Action

RESOLUTION – Revocation Hearing Binni's Bar and Grill Inc., 820 W Miller Road

Council President Wood moved any action on a resolution to the June 11th or June 25th meeting depending on the acquisition of the transcripts.

RESOLUTION – Creation of a Task Force to Research Gun Safety Policies & Priorities

Council Member Washington presented her proposed resolution on gun safety and the creation of a task force. She amended the draft resolution to change the "Be It Further Resolved" to state "the City Council Committee on Public Safety will work with the Mayor to form a task force…."

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION WITH AMENDMENTS. MOTION CARRIED 7-0.

ORDINANCE- Amendment to Chapter 230, Section 230.01; Renaming of Dept. of Planning & Neighborhood Development to Department of Economic Development & Planning

MOTION BY COUNCIL MEMBER WASHINGTON TO APPROVE THE ORDINANCE TO AMEND CHAPTER 230, SECTION 230.01. MOTION CARRIED 7-0.

ORDINANCE - Amendment to Chapter 1210, Section 1210.01; Department of Economic Development & Planning Supervision over Planning, Development, Building Safety, Code Compliance, and Parking

MOTION BY COUNCIL MEMBER WASHINGTON TO APPROVE THE ORDIANCE TO AMEND CHAPTER 1210, SECTION 1210.01. MOTION CARRIED 7-0.

ORDINANCE -Amendment to Chapter 224, Section 224.01; Removal of Code Compliance from the Lansing Fire Department and placing all duties and functions of Code Compliance, Code Compliance Manager and Officers to the Department of Economic Development & Planning without change or interruption.

MOTION BY COUNCIL MEMBER WASHINGTON TO APPROVE THE ORDINANCE TO AMEND CHAPTER 224, SECTION 224.01. MOTION CARRIED 7-0.

Presentation –Law & LEAP; Amended & Restated Real Estate Purchase & Development Agreement; Ferguson/Continental Lansing, LLC

Council President Wood asked Law for a brief review, the difference between the first agreement on file and the new one, and then stated Council will go through the recent agreement line by line.

Mr. Smiertka went through the document which was placed on file with the Clerk's office in February 2018, adding an appraisal will be performed, Council will hold the public hearing and then they will consider action. Mr. Smiertka then highlighted the project which includes hotels, commercial spaces, market rate housing, student housing, assisted living memory care, a boardwalk and walkable pathway to MSU. The site is a total of 35.72 buildable acres, per Mr. Smiertka, and the park property is a different component, not part of the sale.

The Committee began the review of the document page by page. While on Page 1 Council Member Jackson asked what the ballot language was in 2012 when they slated to sell. Council President Wood stated the language was only the question to sell, no potential sale price. During that time, she added, Council was given information during the process that it was valued at $7.5 million.

Page 2

Council Member Jackson asked for the cost to clean up the area, what contaminates were and a question was added inquiring in to what phase it was. Mr. Boyer confirmed phase 1 was done, and he could not confirm phase 2 was done. Phase 1 is an assessment that looks at the history of the property to identify if there is potential, phase 2 is a more comprehensive review looking for specifics. Mr. Boyer noted contaminates that were identified were heavy metals associated with golf course chemicals to treat greens and tees. These will be removed as part of the construction. Mr. Helzer commented on the cost questions, noting there was a supplemental investigation that was done under the EPA grant. The cost will be part of the mass excavation across the site and affected the soils, coming in about $1.1 million.

Council Member Spitzley asked if there was a recent appraisal done. Mr. Smiertka stated that the Charter requires it and that it has to be sold for less than appraised value. There were other appraisals completed in prior years, performed by Intergra Services and done on the sales comparison method on comparable property in Michigan. On this site there were two parcels appraised; the corner lot and the Red Cedar site. The value on the smaller parcel was $1.9 million and the larger was $4.9 million. Mr. Smiertka noted that throughout the appraisal it was noted no deductions were made for the necessity of correcting the defects in the property. Council Member Spitzley referred back to that statement, and asked what the impediments and costs of those were, and should the City consider offsetting those costs by the incentives they will be giving. Council Member Washington also voiced a concern on how the final price was found. Mr. Trezise noted there were a variety of appraisals, the recent one they were provided with the engineering reports, and one issue they found that was impending was the floodway. That appraisal was contracted through the City Attorney office. The earlier appraisal he noted was $7.5 million, and Mr. Trezise added a third appraisal was done by the developer which they believe comes in at $45 million in the red. The Committee questioned the last appraisal amount. Mr. Boyer noted that it is $45 million to build the cost for the structures, not an appraisal. The integrated structures bring the site to a buildable area. In the development itself Mr. Boyer stated, is a flood plain, and they will need to be specific to what needs to be constructed to make the project buildable. Council Member Spitzley again asked what the impediments were and incidentals, noting if the City agrees to a purchase price of $2.2 million with an appraisal of $7 million, it doesn’t take those into account. Mr. Boyer again stated that the $45 million mentioned earlier brings the site one foot above to a buildable site. Mr. Lindemann stepped to the podium clarifying that $7 million in an appraisal is as; flat land. The $45 million would bring it up to what it can be built on.

Council Member Washington asked for the Brownfield agreement and what would be captured, what they will get back, and what it will pay for. Mr. Smiertka assured Council that the Brownfield will be back before Council for approval. Mr. Trezise attempted to provide details to the question, noting they were working on a variety of numbers. Currently the property is not providing for taxes because it is City owned, there is contamination, but with the Brownfield there will be a review over the 35 years of the plan which is a net gain to the City. Mr. Trezise concluded that procedurally Council should review the development agreement now, and capping the City portion at $10.7 million. At this time he could not provide a date when the Brownfield will be submitted. Council Member Washington noted that previously Council was told that $2.2 million of the sale would go back to parks, not developer. Council Member Hussain suggested if they are going to continue to reference funds they are putting into the project, the Council should consider doing away with the Brownfield incentive

and any bonding. He then suggested, when looking at the sale price, to include language that the funds go to the parks throughout Lansing.
Page 3
Council Member Washington referred to the last sentence in (a) which referenced "May 1, 2018" and asked if it was still relevant. Mr. Smiertka confirmed that it was fulfilled and does not need to be changed.
Page 4
Mr. Smiertka explained that Section 2.1 references Section 2.4.1 and 2.4.2 which later in the document speaks to a closing in 60 days following the meeting of the conditions.
Page 5
Council Member Spadafore asked if in a scenario the City approved the agreement today, what the timeline would be for the closing, and how long the conceptual drawings would take to be presented before the closing. Mr. Willobee and Mr. Trezise noted that all requirements have to be met before a closing. After the agreement, the next step would be the construction documents, then the Brownfield Applications, and bonding. His estimate would be late Fall or early Winter 2018.
Under Section 2.3, Closing Costs, Council President Wood asked if they will have to have all taxes and assessment paid before start they start the Brownfield work, and would they pay summer and winter taxes during that time. Mr. Willobee assured them.

Council Member Spitzley stepped away from the meeting at 7:00 p.m.,

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Council President Wood referenced items (b), (c), (d) and (e) where it stated "The City" and asked who that represents. Mr. Trezise stated it would depend on the Law, Charter, and regulations.

Council Member Spitzley returned to the meeting at 7:02 p.m.

He noted it was intentionally a place holder for all "City" where it applies. Mr. Smiertka added that there are two parties; the City as a municipal corporation acting through the appropriate department, and in this Section is the "shall action" section. Council President Wood then questioned approval process of the Brownfield, recapping that on a past development Council approved the development agreement, and when reviewing the Brownfield were told they had to approve that as well since they already approved the agreement. Mr. Trezise stated that the Brownfield Authority has to approve and has to be approved or not approved by City Council. Mr. Willobee noted there are conditions and stipulations listed later in the document that should prevent this from happening again.

Mr. Boyer assured the Council that under item 2.4.1 (a), they have already obtained two (2) permits. The first in 2015 for work in a flood plain, and January 2016 a permit for full development.

Council Member Spadafore referenced 2.4.1 (j) and asked if any parcel in East Lansing will affect the tax capture. Mr. Willobee detailed that initially there was some property, based on the boundaries. There were three (3) parcels owned by the City of Lansing, but located in the East Lansing boundaries. Over the last couple years they have moved, so all parcels are in the City of Lansing.

Council Member Hussain voice a concern that in his opinion it appeared the developer could move forward and believed they are entitled to a Brownfield. Council Member Washington had a concern with no say in the conceptual drawings. Mr. Willobee assured them that once they agree to the development agreement, it moves forward to engineering.
Page 7

Council President Wood noted that there were a number of places that speak to the fact the City shall approve conceptual drawings, and so asked what their plan was to report to Council as the process moves forward, and asked them to commit to come back. Mr. Smiertka noted that Law will be involved in this matter going forward.

Council Member Spadafore stepped away from the meeting at 7:14 p.m.

Council President Wood continued with her concern that by the time the project gets to conceptual drawings, which is not a requirement, they are never approved by Council. She again asked the Ms. Harkins if the Administration would commit to coming back to the Council, at which Ms. Harkins could not respond but stated she would have to follow up with the Mayor.

Council Member Spadafore returned to the meeting at 7:15 p.m.

Ms. Harkins noted her opinion that this was an Administrative function, but they don't want to hold up the development. Council Members made Ms. Harkins aware that in the past there were situations where Council never saw the renderings and changes were made to what they were originally told was going to occur. They voiced their concerns that Council will not be able to review or comment. They encouraged a mechanism in the document that would allow Council to see the documents.

Page 8

Council Member Washington referenced (j) and (p) and inquired into when they might be able to see plan.

Council Member Jackson stepped away from the meeting at 7:18 p.m.

Mr. Lindemann stated it is 96% done and they have some utility conflicts to work out.

Council Member Jackson returned to the meeting at 7:21 p.m.

Mr. Stralkowski noted they had finished the last version; those documents and performances will follow and be presented for an impact study, with the intent of occurring before passage of this agreement.

Page 9

Council Member Washington asked what litigation was still pending. Mr. Trezise stated the case with *Jerome* was in Federal Court in Grand Rapids. The applicant's attorney stated that the first litigation was dismissed on technicalities. Then a second was filed by *Jerome*, and he filed a motion to dismiss a year ago in May and the Judge allowed an amended complaint. A motion to dismiss was filed in October 2017, and they are waiting on a decision to dismiss at this time.

Page 10

The Council reviewed the handout they received at the start of the meeting that listed the uses. The applicants outlined there will be 264 total units for the Hotel full service and select; the market rate housing went from 170 units to 200 units and the senior housing went to 98 units. Council Member Hussain asked if the market rate was for active senior housing, and was told 98 of the 298 would be. He then asked how the developer was going to capture the funds for the student housing. Mr. Stralkowski stated the design of the model for students is a one room one bed unit. They were interested in Councils advice on how to assure them. Council Member Hussain inquired into who the operating partners were and where they were based out of. The Council was referred to late item C-2 which listed all the investors.
The Committee discussed detail differences between full service and select hotels, proposed restaurants and retail. Council Member Washington asked if the market rate housing would be townhouses as they have proposed in the past. Mr. Helzer noted he had not seen the study yet, but it would consider the counts and quantity. They are currently proposing

apartments with high end finishes, and a four story feel. Mr. Helzer could not confirm the specifics at this time. Council Member Spitzley inquired into the number of student units, and was told 296. Council Member Spadafore referred the presenters to exhibit C-1 in the agreement versus the one they received today, and noted there appeared to be a change in surface parking. Mr. Helzer concurred noting the buildings have gone higher, making the footprints shrink with an emphasis on surface parking. Council Member Spadafore asked if there were any discussions on reducing parking spaces, and Mr. Trezise stated there will be further discussions. Council Member Dunbar asked Mr. Lindemann if there were any landscaping and solar options proposed. Mr. Lindemann noted the developer will have amenities to have solar but his office has not seen or had input for landscaping. Council Member Garza asked if the parking lot will have catch basins to prevent any of the run off from the cleanup. Mr. Lindemann concurred their goal is to reduce 96% of the pollutants. If they build pavement they have to put in a reduction process. Council Member Hussain inquired into a list of investors and management, and was told they did not have that information but would provide it.
Page 11
Council Member Garza stepped away from the meeting at 7:59 p.m.
Council Member Spitzley inquired into 5.1.3 (b) and asked if there was a maximum height proposed for those buildings. She was told they are always encouraged to go larger along Michigan Avenue, but currently proposing the minimum.

Council Member Hussain stepped away from the meeting at 8:00 p.m.

Council Member Washington referred to the recent spreadsheet that was provided that spoke to uses and management, and encouraged them to consider local management.
Council President Wood asked if the proposed assisted living is taxable, and was told it was. She then asked who will maintain the trails noted in 5.1.2.

Council Member Hussain returned to the meeting at 8:03 p.m.

Council Member Spitzley also inquired into what part of the trails is part of the drain project and what is part is the developer is opting to put in. Council President Wood asked if the drain assessment would pay for maintenance.

Council Member Garza returned to the meeting at 8:04 p.m.

Mr. Willobee referred the Committee to page 13 of the agreement which address Maintenance of Park Property Riverwalk (5.8).
Page 12
Council Member Spitzley asked if there was language that protects the City in case the developer changes the plans, and they have a to come back to Council or the City for approval. Mr. Trezise stated that there are remedies, and if there are violations that can be discussed if things don’t get done as promised, and Mr. Smiertka referred the Committee to the last page for that language.
Page 13
Council President Wood referred the Committee to a document that was submitted at the beginning of the meeting that detailed 5.9 Prevailing Wage. Council Member Spadafore asked the applicants if the Senate action on prevailing wage anticipated for June 5th would affect the document. The developer’s attorney noted that the Senate is looking at an initiative that would repeal the State prevailing wages for projects by the State and Universities. If the Senate does not act in 45 days it goes on the ballot. This development would be contractually bound by the agreement. Mr. Ferguson assures the Council that no matter what happens with the legislation, he agrees to the agreement presented to them.

Council Member Wood passed the gavel at 8:12 p.m. and stepped away from the meeting.

The Committee went through the Local Labor Agreement dated June 4, 2018.

Council Member Washington passed the gavel at 8:14 p.m. when Council Member Wood returned to the meeting.

Council Member Spadafore asked that the newest language be made part of the development agreement. Mr. Trezise concurred it would more than likely be another Exhibit. Council Member Jackson inquired into the specifics on what steps they have in place if they hire non-local labor. Mr. Trezise informed them that the Administration will put together the criteria. Council President Wood asked if there were issues if the Council can revoke the incentive. Mr. Smiertka noted it would depend on the incentive, and there is an ability to recommend revocation. Beyond on that this agreement has default provisions.

Council Member Dunbar stepped away from the meeting at 8:21 p.m.

Council Member Garza referenced the definition in the Local Labor Agreement that defined local labor as “employees whose permanent home address is within the City’s boundaries”, asking if once that is utilized can they reach outside the region. Mr. Trezise stated it could be done but the developer would have to follow all the steps documenting it. Council Member Jackson asked if the “local labor” was the company itself in the boundaries of the employees of that company. Mr. Trezise noted it was hiring of the employees.

Council Member Dunbar returned to the meeting at 8:25 p.m.

Mr. Smiertka pointed out that in 5.9 on page 13 notes a 50 mile radius from Lansing, and the recent Local Labor Agreement and the development agreement will be meshed to address the concerns.

Council Member Washington stepped away from the meeting at 8:29 p.m.

Council President Wood referred to 5.7 which stated no existing business can move to the location, how the developer was proposing to have those businesses. Mr. Stralkowski noted they were hoping to have them open a second location there not relocate.

Council Member Washington returned to the meeting at 8:31 p.m.

Page 14
Council President Wood referred to 6.3 which stated progress reports are to be made quarterly to the City, and asked they be made to Council. Council Member Spitzley noted 6.2 spoke to completion, and inquired into an estimated timeline. Mr. Smiertka stated it is later in the document. Council Member Garza asked about the safety standards referenced in 6.4. Mr. Ferguson stated those standards are a given and will be followed.
Page 15
Council Member Jackson asked if the Brownfield goal is to mitigate the City risk, and if once it is built if they will then know the revenue side. He added that 7.3.1. notes the bond not to exceed $10.7 million. Council President Wood added a question if the developer was responsible to build the roads and sewer. Mr. Stralkowski stated yes, and the City letter of intent has the process, and will cover the cost of an oversight consultant. Council Member Spadafore asked if the growth is faster than and the cost is lower, is the maximum 20 years. Mr. Trezise noted the maximum is 30 years, and if all items come in better, and pay off bonds faster, the City can cancel out the tax capture sooner.

Council Member Spadafore stepped away from the meeting at 8:42 p.m.

Council Member Hussain questioned the spending of $921,000 for pocket park and $515,000 for an amphitheater. Mr. Helzer stated those were suggestions from the public input on the first agreement. A development this size requires a lot of public activity. Mr. Stralkowksi assured them they will not be private areas but public.

Council Member Spadafore returned to the meeting at 8:47 p.m.

Council Member Washington asked how the City will get paid back before the developer. Mr. Lefler detailed that first the Brownfield is a 30 year capture, and if the growth is greater than projected then can be paid off faster. The MEDC is paid first by statue, then LBRA and LSRRF then the City. The estimated dollars for the 5% admin fee would be $1.72 million over 30 years, the local fund $1.72 million, the State 3 mills is $3.79 million. The debt service will take 30 years, at $700,000 a year. It will first go into the City debt service, then the next obligation which is the retain obligation fund.

Council Member Spitzley stepped away from the meeting at 8:58 p.m.

Council Member Jackson asked if, using their example, if there was a scenario where revenue will increase to make payments less than 30 years. Mr. Lefler noted it there is not because they are not sure of the new numbers under the development plan. About a year's worth of debt service can go back to the LBRA. He added that the developer is never reimbursed for the full funds.

Council Member Spitzley returned to the meeting at 9:00 p.m.
Page 18
Council President Wood inquired into the details of 7.3.7.

Council Member Jackson stepped away from the meeting at 9:04 p.m.

Mr. Willobee stated it embodies it if they get tax exempt use and bonds, they will still have to pay. The City bonds will be issued on a tax exempt basis, so they want to make sure they keep everything. Once they get the Brownfield plan, and based on the projections, that will set the floor. The developer will enter into an agreement, and the Brownfield only works on the projection.

Council Member Jackson returned to the meeting at 9:07 p.m.

Page 19
Law was asked if all the clauses in the document satisfy good standards for the City. Mr. Smiertka stated they are standard default provisions and reflects back, if the developer does not do something, there is a default remedy.
Page 20
8.7 reflect back to an earlier question on the timeliness of a construction schedule.
Page 21-22
12.3 have a typo that should be corrected in the last line from "Counsel" to "Council". Council Member Spitzley asked if in 12.4 the November 2014 is significant any more. Mr. Smiertka noted that were personal guarantees in 2014 that are no longer in this agreement.
Page 24
Under 12.17, Mr. Smiertka assured the Committee that even though the LLC is registered in Delaware, the Law is Michigan.

Council Member Jackson asked if Council will receive an addendum after they approve it if there are any changes. Mr. Trezise stated non-substantive changes are done Administrative.

Council Member Spitzley asked that Council also be notified. Mr. Smiertka noted that some changes such as the bonding, finance provisions, etc. will.

Council President Wood asked Law if the new proposed revisions would require a new "30 Days on File" time period. Mr. Smiertka confirmed the revisions were not that significant to call for a refiling. Council Member Washington asked for a clean copy of the development agreement before Monday, June 11th. Mr. Willobee stated they could provide a clean copy and a red-line copy by Friday. Council President Wood then stated the Council will set the public hearing on June 11th for June 25th, and encourage Council to submit any additional questions they may have to LEAP or the Administration.

<u>ADJOURN</u>
The meeting was adjourned 9:21 p.m.
Respectfully Submitted by,
Sherrie Boak, Recording Secretary
Lansing City Council
Approved by the Committee on June 11, 2018