



MINUTES

**Committee on Development and Planning
Thursday, August 25, 2016 @ 10:00 a.m.
10th Floor Conference Room, City Hall**

CALL TO ORDER

The meeting was called to order at 10:04 a.m.

ROLL CALL

Council Member Jody Washington, Chair

Council Member Jessica Yorko, Vice Chair- left the meeting at 11:27 p.m.

Councilmember Judi Brown Clarke, Member- excused

OTHERS PRESENT

Sherrie Boak, Council Staff

Jim Smiertka, City Attorney

Council Member Carol Wood

Bill Rieske, Planning & Neighborhood Development

Mark Dotson, Deputy City Attorney

Kathy Miles

Shirley Woodruff, Grand Haven Manor, Reenders Inc.,

Mackie Woodruff, Grand Haven Manor, Reenders, Inc.

Price Dobernack, UAW 333

Mark Mello, Sheet Metal Union 7

Kim Sakowski, DEQ

Janet Michaluk, DEQ

Bret Stuntz, SkyVue

Jeff Hukill, DEQ

Matt Marshall, Rise

Jamerson M. Ries, Wolverine

Steve Willobee, LEAP

Bill Rieske, Planning & Neighborhood Development

Brent, ATK Peerless

PUBLIC COMMENT

Council Member Washington stated all comments will be taken during each agenda item.

MINUTES

MOTION BY COUNCIL MEMBER BROWN CLARKE TO APPROVE THE MINUTES FROM AUGUST 11, 2016 AS PRESENTED. MOTION CARRIED 2-0.

DISCUSSION/ACTION:

RESOLUTION –ACT-1-2016; Grand Haven Manor; Farrell Drain Easement Reduction; 3215 W Mt. Hope

Mr. Rieske outlined the request, based on the anticipation of a possible expansion and new building for the Grand Haven Manor building. The owners have asked for the drain easement to be reduced in size to accommodate the building. The Department on Public Service have performed an investigation and determined the City does not need any of the easement. Therefore the proposed resolution is to vacate nearly all of easement. It was noted that at the south end, off their property, there is a manhole that feeds into the Deerfield Avenue drain. Law has determined the manhole in question is not on this property, therefore not included in the legal of the easement.

The group discussed the current Grand Haven Manor, site for expansion which is land locked, and lending. Ms. Woodruff confirmed for the Committee that they will be establishing a condo association to address the land lock issue and to build their 78 new senior mixed income independent units offering congregate services, etc.

Council Member Wood asked about the history of water issues on the site. Ms. Woodruff stated they are addressing that with enlarging the detention on the west, and they have gone thru the MDEQ wetland approval process so it will be engineered to accommodate.

Council Member Wood asked of the existing tree buffer will be staying, and it was acknowledged that some tree clearing will be done, but nothing beyond the drain.

MOTION BY COUNCIL MEMBER YORKO TO APPROVE THE RESOLUTION FOR ACT-1-2016; FARRELL DRAIN EASEMENT REDUCTION; 3215 W MT HOPE. MOTION CARRIED 2-0.

DISCUSSION – Ordinance 206.25; Transparency in Bidding

Law distributed new version of the proposed ordinance dated 8/25/2016. Council Member Washington outlined the process and involvement on how it had gotten to this point. Mr. Smiertka outlined the ordinance highlighting that revisions were made based on comments from the Committee and outside organizations. The first revision was page 4 adding (6) per the Committee request and (7) per Law recommendation. Page 5 removed the waiver section, because Mr. Smiertka noted that under this proposal there is no reason for it, but would be needed in the dialogue that will occur during conversations with the developer. Page 5 the Committee asked for the addition of line 14, and line 16 was also added. Again it was stated this is not a regulatory ordinance. There is an application for incentive that Council will look at, and then Mr. Smiertka referenced an example from Corunna. Mr. Willobee confirmed that LEAP does a contract and it can be modified to reflect the changes. Council Member Washington asked to see the agreements, and Mr. Willobee noted the use a universal agreement currently. Council Member Wood asked if going from a regulatory ordinance to contract, where each will be different, can Council pick and choose, or will Council see each item. Mr. Smiertka stated that Council has the criteria, then referred the group to the definition on page 3, noting that this information should all be vetted before it even gets to Council.

The Committee and other public reviewed the “Requirements” on page 3- 4. Council Member Wood voiced a concern with items that the developer could choose not to. Mr. Smiertka noted they can have it written out, but if Council wants it in there, then Council can send it back to LEAP to renegotiate.

Mr. Dobernack asked for the requirements to be written into the LEAP boiler plate agreement. Mr. Willobee answered they the agreement they use is a universal agreement created under the Executive Order of 2008. Since it is an executive order no revisions can be made, and if are they are not substantiated. If Council has the power to change the executive order the LEAP can consider it. Council Member Wood referenced the universal agreement and concern with the item that states the developer will "attempt to use local and union labor." There is no criteria if they say they tried, and have nothing to prove they have or haven't. She pursued having this language of criteria built in which could be in the contract enforced by LEAP before it comes to Council. Per Law if this is passed by Council, it will be initiated in the documents they will work with LEAP on. Mr. Willobee reminded the Committee that if it is desire of the Council to move forward in this way, they are currently under the Executive Order and PA98. They will work with Law to do what Council considers, but they want to sure not a fraudulent agreement that could end up in litigation. Mr. Dobernack asked Mr. Smiertka if there be an issue going against the Executive Order. Mr. Smiertka noted that this appears to be a local concern, and the LEAP is a universal agreement. Mr. Willobee suggested adding the requested items into the "best effort" category, but the question would be how you do that without butting up against the Executive Order.

Council Member Yorko asked if it would be best to go back to the 2008 version; however Mr. Smiertka noted that one was a regulatory ordinance and it created the potential for multi law suits from non-parties, disgruntled bidders. Mr. Dobernack stated again his concern that there is nothing enforceable. The majority of the contracts that are dealt with are last minute, and Council needs to get away from that. Mr. Smiertka suggested that even though Council won't look at projects case by case, each project will look different. The standards will be the same. Whatever agreement the LEAP is talking about, Law would review and LEAP would make sure it meets the Council intentions. Council Member Washington pointed out that if they do not exercise fair and open bidding that will be addressed.

Mr. Willobee informed the group that many times the applicant has begun its investigative and financial work before Council even sees it. Can they move forward before Council takes any action. Mr. Smiertka reminded him it would be at their risk, and they will have to work with developer on the criteria. Council Member Washington noted that they are not asking for the bidding topic to be addressed for the architect, or general, but once the general contractor puts out for bids for the subcontractors open bidding should be addressed. Council Member Yorko suggested changing the language to state "upon approval of incentive".

Council Member Wood encouraged Mr. Willobee to start encouraging all current applications to follow what has been discussed in this ordinance, and Mr. Willobee acknowledged there are some projects already under way that might not be able to go back.

Mr. Smiertka went back to review of the ordinance noting the original ordinance was regulatory which had mandatory items. If the developer did not have the times it was a civil infraction. Council Member Yorko referred the Committee to page 4, Section D. Council Member Washington asked Law if all this Section would take place before Council approval. Mr. Dobernack admitted that it would be typical to bid after the incentive is approved. Mr. Willobee noted what can occur, and based on the ordinance there would be a delay. LEAP would have no issue with loosening up the language on page 4 and give the developer both ways. Mr. Smiertka clarified that what it says now, whatever they have done pre-bid or not, they will come to Council with a plan, so his opinion was that he was not sure if there needs to be a change. Mr. Willobee stated that if the applicant has followed every posting requirements and all

ordinance, then they come for consideration. Council Member Washington suggested that all the documentation be brought at the time of consideration of a Brownfield. Council Member Yorko again pointed out that there need to be a modification because now the ordinance says after approval. It needs language to assure that open bidding could occur before approval. Mr. Willobee stated it can be changed if possible, and Mr. Smiertka stated it would be.

Mr. Willobee asked for details on what “bidding” applies to since there a lot of federal funds with the activity in question, so is it what is being directly funded. Items included clean up, materials, etc. Mr. Smiertka referred them to page 2, and stated they could add a definition of “construction”.

Council Member Yorko referred the group to page 2, which stated low income tax credits, and question how that could be listed since the City does not issue those. Mr. Smiertka stated it is a PILOT so that would cover it, but he could reference MSHDA. Council Member Yorko again asked that it be removed since it is an incentive the City does not have jurisdiction or control over. Mr. Smiertka stated he would make the change.

Council Member Yorko then referred to page 4, an asked why those items were listed under requirements. Council Member Wood stated they were in the original ordinance.

Council Member Yorko asked Mr. Dobernack if the labor councils and trades were promoting this and if so what other municipalities have adopted it. Mr. Dobernack confirmed he has spoken to Ingham County, Delta Township and East Lansing, however Lansing is further along in the process. There has been no push back from those municipalities though.

Mr. Mello spoke in support of the ordinance and the City setting precedence.

Council Member Washington outlined the process, with the last revision coming back 9/8/2016, then introduction and setting of a public hearing on 9/21/52016. The hearing will then be set 10/10/2016, and will be back to the Committee on 10/24/2016. Law should provide the final draft to the Committee the week of August 29th, and any concerns should be sent to herself of Law.

Discussion – SkyVue Development Questions and Answers

Introductions

Council Member Washington outlined the request for SkyVue Developers to attend the meeting which included questions on environmental cleanup, incentives, and the process of reporting. This is to educate Council and assure them who are responsible. Council is never been given a check list to follow when they give out incentives and abatements. Therefore Council never knows what, why the cost and assurance it was done and done responsibility.

Mr. Hukill began the conversation stating they administer the ACT 31 tax incentive which the City applied for, for SkyVue. The process includes the developer submits a work plan for review, and in the work plan there are specific criteria on what has to be included on the plan. In the plan they have to propose what to do, then propose a plan to reduce that off the site. This is not to clean up the site to present conditions, but purpose how they will reduce the risk to make it safe. The developer proposes a plan on due care responsibility of the owner of property, and to make the site safe for anyone who comes along. They have proposed how to mitigate with a variety of implementations. When they get ready to buy a parcel, they do a Phase 1 environmental testing, then baseline. Those are in the environmental assessments

and submitted to the DEQ for their liability protection. The purchasers/developers are not the contaminators, but they are pursuing to protect the third party. They are not responsible for clean up as long as they follow the due care to make sure process is followed and meets the plan. The plan will have a due care, then a budget of do not exceed. Then the DEQ will review the plan and make sure it is active, reasonable and appropriate, and evaluate the costs. In regards to the SkyVue project they have performed two (2) reviews, one under the letter of the law, and the other to look at the activities to make sure what they are proposing will make it safe. If the criteria is met, they issue them the approval to use the mills to fix it. Ms. Sakowski noted that when they do a review if it is contaminated soil, they can't move, but have to properly dispose of it. Mr. Willobee added that they also look at the ground water level, and DEQ reviews it to make sure the environmental conditions will not be made worse. They are trying to get the site back to a safe level. Mr. Hukill also clarified that that does not mean they have to remove anything, it needs to be safe, and it depends on what the contaminates are. There are many options, types of contaminates, and levels. For example for a due care for vapors, there could be vapor barriers, venting, etc. They need to make sure no one comes in contact with contaminates, and try to isolate contamination. In the case of the SkyVue plan, this is being considered a "construction on site" and there was no level of contamination. In Lansing there are other incentives or eligible activities they were approved for with MEDC. The parking structure, the site preparation, and land balancing would be brought up to level if they would have been a greenfield. The purpose of the site is a Brownfield, regardless of contamination or blight. The eligible activities can be used on either, however there has to be contamination for the DEQ to allow for tax incentive on school mills. Mr. Mello asked if the DEQ works with MIOSHA and the EPA, and who follows up on the tanks that were removed, and he also asked for those documents. Ms. Sakowski confirmed they do work with the EPA and has info on the tanks which can be FOIA from the State of Michigan. Mr. Mello wants to speak to the EPA and MIOSHA.

Mr. Hukill went on to outline that the due care compliance, when the project is complete, is a document on what they did, when the development is complete that document will be completed as well. At that point the DEQ will then know what the site is. They are not required to submit it to DEQ periodically but have to have on site. They only have to submit to the DEQ upon request. Mr. Mello stated to the group that it now falls on Council. Council Member Wood asked if the DEQ performs any periodic audits. They do receive the manifest directly from the landfill, provided by the environmental consultant, but an audit is not done. ATK Peerless is on site during excavation, there is not an audit but a daily inspection. They can ask for additional information, which is vetted and reviewed. It is a verification during the review of the process. The project engineer outlined the "chain of custody process" which involves ATK Peerless at the landfill before the excavation of soils, where they give them the data expectations. ATK then oversees the excavation details, and obtains a signed ticket and weight. ATK then will match the manifest from what they told the landfill would come in with the truck manifest, then the landfill manifest. The documents state what was to be done was done, then that goes to the cost incurred, what payments were made, and all done prior to the BEA. All this has to be done before BEA can approve the reimbursement. Brownfield and work plans are caps up to estimates. These are "not to exceed amounts", and in this case in the purpose of "construction". If say 6 tons, for footings, cutting for site prep, if that is a smaller tonnage, then record as actual ATK has done assessed environmental conditions on site, and reviewed the based on site, in Phase I and II, and based on those conditions they determine what needs to be done, then in turn have verified and against what they proposed, and what the building meets all the requirements to be protective of people living on property.

Council Member Yorko left the meeting at 11:27 p.m.

Lastly, what is submitted for the Brownfield reimbursement is what was done. Ms. Sakowski noted this is a reimbursement program, they can only submit for what has been done, with not to exceed amounts. When this is established they are estimates. For an example, if there was an estimate of 6 tons, but they only had to take 4 tons, they will only get approved for reimbursement on the 4 that was done. They are always doing on site sampling, and working with the environmental engineer. If the test shows an area is not contaminated, they do not remove. If there is an amendment to increase the removal, that will have to occur before the activity. Mr. Hukill stated again that the developer is not the liable party, they just need to review the amount of soil on what they need to develop. It is not up to them to clean up, and if they properly dispose it will help the site.

Council Member Washington thanked DEQ representatives and ATK Peerless engineers for the breakdown on the process, and reiterated it is the goal to educate Council on what they find, what they are doing, when it is done, what was the cost and process.

Ms. Sakowski said that to reimburse as ACT 381, LEAP reviews and makes sure it is in line , then DEQ has checks and balances. Council Member Washington asked LEAP to put together a sheet on the checks and balances they review which would show it was done.

Ms. Miles spoke in opposition to the process of documentation after the project is complete. Ms. Miles also asked why Mr. Mello is not getting the information he has requested. Mr. Willobee stated they have provided information that they have, information Mr. Mello seeks could be acquired from the State.

Mr. Mello asked what would happen if the property is not properly abated, and stated again his request for information on who did the abatement. Mr. Willobee confirmed LEAP has fulfilled the FOIA request with the information they have. They will not have any additional information until the project is complete. There are enforcement agencies he can call if he sees something illegal, such as the EPA, the police if there is dumping, but they cannot assume everyone is guilty.

Mr. Jameson informed them there is a 10 day process for demo and abatement, and per contract they have to file with the State. The State can visit and inspect anytime, in addition there are checks and balances with LARA. Mr. Dobernack asked if Wolverine inspects, and Mr. Jameson clarified that Wolverine is the oversight as the general contractor, but they are not competent in abatement that is why they hired an abatement contractor that is competent.

Council Member Wood asked for a list of deliverable, which included a check list; compliance that when a request is made on the development it is being responded to, and that LEAP reaches out to the developer to get the information if they do not have it. She then asked Mr. Willobee if there were completed Brownfields that did not met the criteria. Mr. Willobee stated he would have to get that information from Mr. Dorshimer. Another deliverable is an end project sheet, a system to find information, and lastly if there is an issue, notify Council. Mr. Willobee was directed by Council Member Washington to provide those three (3) items back to the Committee. She then acknowledged DEQ, RISE, Wolverine and ATK Peerless for working through the process, that this meeting was never an attack but a learning process.

Mr. Dobernack asked for a list of contractors on site and list of employees. Council Member Washington explained the need for the request to verify the contractors are paying taxes.

Mr. Smiertka asked if a FOIA was sent by Mr. Mello, and Mr. Mello stated he would resubmit it.

Council Member Wood asked Mr. Jameson for a list of contractors and employees. Mr. Jameson stated that is possible but he was not sure if can get everyone. It is written in their contracts, however some contractors are only there for hours or one day. We do have it written in their contract.

Mr. Jameson asked how the City knows for any individual that works in the City if they have paid income taxes, and Council Member Wood admitted they are working through that process. Mr. Jameson then asked if there was a department in the City that can produce that information, and Mr. Mello answered his belief it was the Treasurer. Mr. Willobee noted that it could be a taxing responsibility for one person to verify every person who works in the City even for a day. Council Member Wood then asked Mr. Jameson to provide the Committee with a list of the subcontractors on the site and their employees and the City will follow up if they are filed in the Treasurer office. This can be provided to LEAP and the LEAP can forward to Council. Mr. Jameson noted that this request should be made to every business and project in the City not just this project. Wolverine has a head count on site daily, but do not require a sign in for everyone on the site in a day. The subcontractors themselves should be withholding the City income taxes, not the General Contractor.

Adjourn at 12:00 p.m.

Submitted by,

Sherrie Boak, Recording Secretary,

Lansing City Council

Approved by the Committee on September 22, 2016