

**MEETING OF THE FORT LAUDERDALE
COMMUNITY REDEVELOPMENT AGENCY
8TH FLOOR CONFERENCE ROOM
CITY HALL**

TUESDAY, JULY 7, 2009 – 12:12 A.M.

Chairman Seiler called the meeting to order at approximately 12:12 a.m. Roll was called and a quorum was present.

Present: Chairman John P. "Jack" Seiler
Vice Chair Bruce G. Roberts
Member Charlotte E. Rodstrom
Member Bobby B. DuBose
Member Romney Rogers

Absent: None.

Also Present: George Gretsas, City Manager
John Herbst, City Auditor
Jonda K. Joseph, City Clerk
Harry A. Stewart, City Attorney
Alfred Battle, Director, Community Redevelopment Agency

3. SR A1A Light Replacement – Turtle Compliant Project Funding Recommendation

Alfred Battle, Community Redevelopment Director, stated that this item was being deferred. No date was provided.

8. Funding Request and Fifth Amendment – Sixth Street Plaza

Alfred Battle, Community Redevelopment Director, advised that the new loan amount is \$697,990.50, instead of \$697,144.50.

Continued on page 4.

1. Minutes of the June 2, 2009 - Regular Meeting

Motion made by Member DuBose and seconded by Vice Chair Roberts to approve the minutes of the CRA meeting held on June 2, 2009. Roll call showed: YEAS: Members DuBose and Rogers, Vice Chair Roberts, Member Rodstrom, and Chairman Seiler. NAYS: None.

2. Discussion – CRA Tax Adjustment and Retroactive Payment

The City Auditor stated that an adjustment had been made by the Broward County Property Appraiser's Office on properties located within the CRA Districts. The

adjustment was applied on a prospective basis. Additional funds were available in the first year, and going forward. A retroactive application should have been made and monies remitted to the CRAs, which was not done due to the fact they were not aware of the additional parcels. The previous Commission decided to move forward to collect the monies from the various taxing districts. An invoice was sent and it was declined. The CRA needs to determine how to move forward in terms of approaching the other districts and the City of Fort Lauderdale for their share of the payments due.

The City Attorney stated that the tax years in question were 2003, 2004, and 2005. He stated that the likelihood of successfully collecting for years 2003 and 2004 was zero. There is a four-year statute of limitations. He further stated that the City would have to pay \$900,000 into the Beach CRA in order to collect the \$1.6 Million. He believes there would be less than a 50% chance for success. He stated it was more likely that the City would have to pay \$2.6 Million in order to attempt to collect \$.8 Million. He explained that he represented both the City of Fort Lauderdale and the CRA. The County will most likely raise the issue of the City not collecting the monies in a timely fashion.

The City Attorney advised not to move forward with this matter.

In response to Member Rodstrom, the City Attorney stated that this not only included Beach CRA monies, but some Northwest CRA monies.

In response to Member Rodstrom, the City Attorney explained that this was due to a mistake made by the Property Appraiser.

In response to Member Rodstrom, the City Auditor explained the Property Appraiser discovered the issue while doing a self-audit of their records in November, 2006. The Finance Department was advised they were entitled to additional monies. The Treasury Department sent out invoices to collect revenue due, but unfortunately, neglected to look backwards.

The City Attorney explained that they collected from three entities that included the County. He stated further it would be difficult to win on an estoppel. They would have to collect monies from the Hospital District and from the Children's Services Board.

In response to Member Rodstrom, the City Attorney explained the chronology of events. He reiterated that if the Commission desired, they could fight the battle, but he felt that nothing would be gained.

In response to Member DuBose, the City Attorney provided further clarification of the matter. The City Auditor proceeded to explain how the invoices were handled. The City Attorney explained that the City Auditor conducted an audit regarding the parcels in 2008. This was done during an audit of the CRA.

In response to Member DuBose, the City Auditor explained the procedure that was followed regarding this matter.

In response to Member Rogers, the City Attorney stated there was little case law dealing with this type of matter. He further explained that it was the Property Appraiser's job to run the numbers and notify everyone of their taxable base. It was not customary to audit the Property Appraiser's tax roll in order to determine that each and every parcel had

been included. Jurisdictions sometimes did that, but only when building a large facility and a question arose as to when it should be placed on the tax roll. In this case, one of the additions was a large condominium.

Member Rogers stated that he thought this would be a case where the statute of limitations would trump laches or estoppel. The City Attorney stated he did not agree, and provided an example.

In response to Member Rogers, the City Attorney stated that it could have been the City's duty to check if the properties were on the tax roll, but the question was should they have done so. By custom, the City would not go behind what the Property Appraiser gave them. He explained that a joint meeting would have to be scheduled with the County to see whether a resolution could be reached. If not, the City could sue the County. Member Rogers stated that a document should be created to show that the matter had been addressed.

Chairman Seiler stated that until the City pays, they would not be able to go after the other entities. The question is should the Board direct the City Attorney to seek payment of 2005, and include proviso language that the City would pay if the other entities also paid.

The City Attorney said it would be difficult to argue in front of a Judge on the circumstances stated by Chairman Seiler.

Member Rogers iterated that he had a fiduciary duty in two roles: As a member on the Board of the CRA, and as a City Commissioner.

In response to Member DuBose, the City Attorney stated that in regard to making payments, the City was going to pay or not pay. He added that this was a difficult decision to make, and everyone had monetary issues. He believes the likelihood of success in a lawsuit should be better than a 50/50 chance of winning. He does not believe that to be the case in this situation.

In response to Member Rogers, the City Attorney stated that due to the inherent conflict in this matter, he would not object to the use of outside counsel.

Chairman Seiler suggested that outside counsel be used in this matter.

4. Authorization to Complete a Warranty Deed

Alfred Battle, Community Redevelopment Director, stated that this was to correct an error on the deed.

Motion made by Member DuBose and seconded by Member Rogers to authorize the Fort Lauderdale Community Redevelopment Agency (CRA) to complete a Warranty Deed for property located at 4600 Twin Lakes Boulevard. Roll call showed: YEAS: Members DuBose and Rogers, Vice Chair Roberts, Member Rodstrom, and Chairman Seiler. NAYS: None.

5. Dedication of Easement – Sweeting Estates/River Gardens

Alfred Battle, Community Redevelopment Director, stated they were seeking the Board's

permission to execute easement deeds to locate some monuments to CRA property located at NW 22nd Avenue and Sistrunk Boulevard.

Motion made by Member DuBose and seconded by Vice Chair Roberts to authorize proper City Officials to execute an Easement Deed between the CRA to the City of Fort Lauderdale to facilitate the construction of two neighborhood entryway monuments in the River Gardens/Sweeting Estates neighborhood.

In response to Member Rogers, Mr. Battle explained that the monuments protruded slightly into the roadway.

In response to Member Rogers, the City Attorney explained that as long as they do not create a safety hazard, it would be permitted.

In response to Member Rogers, Mr. Battle stated he did not know what they were made of and were part of the Public Works NCIP project.

In response to Chairman Seiler, the City Attorney stated that they had sovereign immunity as a CRA.

Roll call showed: YEAS: Members DuBose and Rogers, Vice Chair Roberts, Member Rodstrom, and Chairman Seiler. NAYS: None.

6. Authorization to Transfer Funds

Alfred Battle, Community Redevelopment Director, stated they wanted to transfer \$100,000 internally between two CRA project funds to provide development assistance.

Motion made by Member DuBose and seconded by Member Rodstrom to authorize the transfer of \$100,000 from the Business Incentives Program Account (Fund 106/P10649/Sub-Object 6599) to the Midtown Development Assistance Program Account (Fund 106/P10649/Sub-Object 6599). Roll call showed: YEAS: Members DuBose and Rogers, Vice Chair Roberts, Member Rodstrom, and Chairman Seiler. NAYS: None.

7. Authorization To Bid For Vendor Services – Progresso Village Solar Powered Lighting System

Alfred Battle, Community Redevelopment Director, stated they were asked to convert temporary road closures to a more permanent system, and the issue raised was how the community would deal with the maintenance of the area.

Motion made by Member Rodstrom and seconded by Member DuBose to authorize NPF CRA staff to advertise to receive bids for solar powered lighting for the Progresso Village road closures and gateway entry. Roll call showed: YEAS: Members DuBose and Rogers, Vice Chair Roberts, Member Rodstrom, and Chairman Seiler. NAYS: None.

8. Funding Request and Fifth Amendment – Sixth Street Plaza

Continued from page 1.

The City Clerk reiterated that the amount had been amended and was now \$697,990.50.

Alfred Battle, Community Redevelopment Director, stated this was a request from the developer. The project was completed. He then provided a chronological history of the amendments. This request would increase the allocation of funds by \$250,000. The City's total obligation would be over \$1 Million. The Plaza includes the building that houses the CRA, and two other properties having about a 70% occupancy at this time. This would keep the project afloat and protect the CRA's interest. Loan payments would be deferred for seven years.

Motion made by Member DuBose to authorize \$250,000 of additional funding for the Sixth Street Plaza in the form of a deferred loan, for a new deferred loan amount of \$697,990.50, and authorize the proper CRA officials to execute a Fifth Amendment to the Development Agreement.

In response to Member Rogers, Mr. Battle stated that the first mortgage totaled approximately \$1,900,000, and the second mortgage totaled \$300,000. The total debt would amount to \$3.2 Million. The appraisal made in December was \$2.4 Million. Member Rogers stated that possibly another option would be available for restructuring the loan. Mr. Battle explained that mechanics liens and other minor items totaled about \$228,000.

In response to Member Rogers, Mr. Battle stated the rationale behind the structuring of the loan was that a deferred loan was an attempt to recoup some of the monies when the property had sufficient cash flow. A cash flow had not been done, and they recognize that the mechanics liens had to be resolved before they could fully restructure.

Maria Freeman, Developer, stated that a cash flow analysis had been done for a 10-year period, and presently she was able to cash flow and service the debt for the first and second mortgage. The additional loans would not come into effect for another seven years. She further stated that approximately \$400,000 would be realized over a 15-year tax increment period.

In response to Member Rogers, Ms. Freeman explained that the first mortgage was for 20 years.

In response to Member Rogers, Mr. Battle explained that CRA funds were available and could be structured as a grant, if criteria were met. They had structured this as a loan since there was already a grant for approximately \$400,000. These investments were normally made based on the tax increment return to the project. Member Rogers stated that he would feel better if the cash flow analysis was provided for their review.

Member Rogers stated that he wanted to make sure the process was followed so the title report would disclose that there were not any liens on the property, other than the first, second and third mortgages.

In response to Member DuBose, Mr. Battle stated that he did not know the cost for title services. The agreement listed conditions that had to be followed regarding payments.

Member Rodstrom left the meeting at approximately 12:59 a.m.

In response to Chairman Seiler, Ms. Freeman confirmed that there were 10 mechanics' liens, and another two subcontractors not yet paid.

In response to Chairman Seiler, Mr. Battle explained that monies in loans and grants would total over \$1 Million.

Member Rodstrom returned to the meeting at approximately 1:01 a.m.

In response to Chairman Seiler, Mr. Battle stated the third mortgage totaled \$697,000 with the first and second mortgages totaling approximately \$2.2 Million. He further stated that the CRA was paying rent at their location in the amount of \$16.00 per square foot plus expenses. The tenants in the renovated building were paying \$19.00 per square foot. The third building ran about \$11.00 per square foot. Other tenants in the renovated building pay anywhere from \$14.00 per square foot to \$16.60 per square foot.

In response to Chairman Seiler, Ms. Freeman explained that presently she has not been able to turn her loan into a permanent one due to the mechanics' liens. She wants to get the loan out of the construction mode status. The second mortgage was with South Florida and in construction mode status also. She stated the loan was at the 80% loan to value.

In response to Chairman Seiler, Mr. Battle stated that the \$400,000 grant would be forgivable, and was the original incentive provided in 2003.

Ms. Freeman stated that the project accomplished its goal and attracted tenants, and was presently 72% occupied. She also had two leases of the 28% vacancies, reducing the number of vacancies down to 2%.

In response to Chairman Seiler, Ms. Freeman explained that the cash flow would cover the first and second mortgages, and other expenses. Adding the \$700,000 would place a strain on her cash flow. She proceeded to provide information regarding the time period of the loans.

In response to Member Rogers, Ms. Freeman stated that the first mortgage was for five years, and it would then be refinanced. She explained the second mortgage did not have a balloon payment. She further stated that mechanics' liens were not uncommon to construction projects. Larger contractors bonded liens out and the projects did not get delayed. In her case, her project was put on hold while the mortgage ran forward, along with her construction loan. Due to delays, some contractors did not return to the project. She reiterated that this was not a normal project.

Member DuBose stated that this project was a flagship to revitalize the area, and Ms. Freeman should be commended.

Member Rogers believed that staff should be very involved in the project.

Chairman Seiler commented on the history of the project provided in the Board's back-up materials. Mr. Battle explained that the project sat for a number of months while the developer resolved an elevator issue. The project received a CO in March, 2009.

Ms. Freeman explained that the building was basically ready for occupancy in June, 2008, with the exception of the problem with the elevator.

The motion was seconded by Member Rogers with the condition that the mechanics' liens and outstanding bills be paid, and satisfaction be provided of such payments.

Mr. Battle explained they worked through the City's Finance Department.

Ms. Freeman stated that it was in the lenders' interest to make sure the liens were satisfied.

Member Rogers wants to make sure that a title search would be done after payment was made to ensure that no liens were outstanding.

Mr. Battle explained the process to be followed, reiterating that the checks would be provided to the lender.

Chairman Seiler stated that there is \$74,000 in unrecorded claims, and something needs to be provided showing payment.

Mr. Battle confirmed that such process would be followed, and he would oversee everything being done.

Roll call showed: YEAS: Members DuBose and Rogers, Vice Chair Roberts, and Chairman Seiler. NAYS: Member Rodstrom.

There being no further business to come before this Board, the meeting was adjourned at 1:30 a.m.

John P. "Jack" Seiler
Chairman

ATTEST:

Jonda K. Joseph
City Clerk