



CRA Board Meeting Minutes
Regular Meeting
Tuesday, April 9, 2019 – 10:00 a.m.
City Commission Chambers – 100 NW 1st Avenue
Delray Beach, FL 33444

STAFF PRESENT:

Jeff Costello
Lori Hayward
Patrick McCullum

Teresa Hadjipetrou
Elizabeth Burrows

Joan Goodrich
Kristyn Cox

Renee Jadusingh
Carter Roush

OTHERS PRESENT:

Evelyn Dobson
Neil Schiller

Ernestine Holiday
DJ Doody

Jeb Conrad
Caryn-Gardner Young

Daniel Levenson

Call to Order

Chair Petrolia called the meeting to order at 10:00 a.m.

1. Roll Call

Present: Chair Shelly Petrolia, Vice Chair Shirley Johnson, Deputy Vice Chair Angie Gray, Treasurer Bill Bathurst, Commissioner Pamela Brinson, Commissioner Adam Frankel, and Commissioner Ryan Boylston.

2. Approval of Agenda

Deputy Vice Chair Gray asked that item 6i be moved off the Consent Agenda. It was made item 8aa under New Business for discussion.

Motion by Deputy Vice Chair Gray, seconded by Vice Chair Johnson, to approve the agenda as amended. In a roll call vote, the **motion** passed unanimously (7-0).

3. Approval of Minutes

None.

4. Public Comments on Non-Agenda and Consent Agenda Items

Jeb Conrad, CEO of Greater Delray Beach Chamber of Commerce, thanked the Board for their support of the Business Accelerator program and gave a brief update.

Evelyn Dobson, Delray Beach Community Land Trust (CLT), stated due to the support of the City and CRA this year, the CLT has been able to benefit the community since October with the construction of five (5) new single-family homes completed , one (1) resale, and five (5) homes are under construction.

5. Planning & Zoning

None.

6. Consent Agenda

- a. CRA Financial Report – January 2019
- b. CRA Financial Report – February 2019
- c. CRA Monthly Progress Report – March 2019
- d. Clean and Safe Program Monthly Report – February 2019
- e. Temporary Use Agreement – Emanuel Jackson, Sr. Project, Inc. (EJS Project) – 2nd Annual EJS Project Block Party
- f. Creative City Collaborative – 1st Quarter FY2018-19 A-Guide Report
- g. Expanding and Preserving Our Cultural Heritage, Inc. (Spady Museum) – 1st Quarter FY2018-19 A-Guide Report
- h. Delray Beach Historical Society – 1st Quarter FY2018-19 A-Guide Report
- i. Request to Issue Invitation to Bid (ITB) to Renovate the Duplex Located at 121 SW 10th Ave.

At the request of Deputy Vice Chair Gray, item 6i was moved to item 8aa under New Business for discussion.

Motion by Commissioner Frankel, seconded by Commissioner Boylston, to approve the Consent Agenda as amended. In a roll call vote, the **motion** passed unanimously (7-0).

7. Old Business

None.

8. New Business

aa. Revised First Amendment to CRA/City Interlocal Agreement for Funding Construction/ Professional Services FY2018-19

Deputy Vice Chair Gray stated she wanted to pull the amendment to discuss the new items being added, in order to direct funds to items which could be completed during the current fiscal year. She pointed to the elevator at Old School Square as an example of items originating with the CRA.

Continuing, Deputy Vice Chair Gray stated she would like to table the elevator but move forward with the sidewalks addressed in the amendment.

Chair Petrolia asked staff for clarification on whether the elevator was functional.

CRA Executive Director Jeff Costello stated it was a replacement of the elevator in the garage and verified it was broken.

Deputy Vice Chair Gray said the elevator should be repaired, but she saw it as a City issue, not a CRA issue.

Mr. Costello explained the Amendment included reallocating funds for several projects which were on the CRA priority list, including additional funds for the sidewalks which were returned to the CRA, and a previous discussion regarding the mast arm.

Commissioner Bathurst stated he is very concerned regarding not repairing the elevator, as he sees it as a safety issue.

Deputy Vice Chair Gray reiterated that it should be a City issue, rather than being pushed to the CRA for funding.

The Board discussed the request.

Motion by Deputy Vice Chair Gray, seconded by Vice Chair Johnson, to approve the Revised Amendment without elevator project. In a roll call vote, the **motion** passed unanimously (7-0).

a. Purchase and Sale Agreement – BH3 Management, LLC – SW 600-800 Blocks of West Atlantic Avenue

Board Attorney DJ Doody presented the proposed Purchase and Sale Agreement with BH3 Management, LLC for the conveyance and redevelopment of 7.4 acres located between the SW 600 and 800 blocks of West Atlantic Avenue.

Continuing, Mr. Doody stated since January when the Board voted to accept the proposal, earnest negotiations have been conducted. He recognized those involved for their efforts.

Mr. Doody provided highlights of the agreement including:

- Project Description
 - Retail Food & Beverage: 43,300 sq ft
 - Grocery: 33,000 sq ft
 - Office: 21,600 sq ft
 - Public Open Space including Frog Alley: 40,000 sq ft
 - Residential: 165 Rental Units (plus pool and amenities), 18 units Workforce Housing offsite; 12 units Workforce Housing onsite
 - Parking: 2 Structured Parking Facilities and 1 Surface Lot, City approved site plan number plus at least 206 public spaces
- Dates
 - Inspection Period: 90 days from effective date
 - Application Date: 210 days from effective date
 - Approval Date: 365 days from application date
 - Closing Date: 30 days from permit date
 - Termination Date: 720 days from effective date
- Earnest Money
 - \$250,000 due when contract is paid
- Additional Agreements
 - Relocation Plan for Commercial Tenants
 - Public Benefits Agreement
 - Parking Maintenance Agreement
 - Restrictive Covenant

Mr. Doody stated there remain two (2) issues the Board needs to provide direction on, including a right to repurchase and the terms of a restrictive covenant.

Mr. Costello provided information regarding the Workforce Housing portion of the agreement with BH3. He stated the 18 units would be at 11 SW 6th Avenue and 21 SW 6th Avenue, with an availability on September 1 and a penalty for non-compliance. He noted an ability to relocate the 12 onsite units in the future is also included in the agreement, with restrictions and a requirement for CRA Board approval.

Renee Jadusingh, Assistant CRA Director, presented details of the project's Community Benefits Agreement regarding hiring, including:

- Requirement to hire minimum six (6) subcontractors from census track
- Hire at least 30 skilled and unskilled construction laborers from census track, with living wage

Ms. Jadusingh stated penalties will be charged as required, and a third-party monitor will be hired.

Mr. Doody reminded the Board all agreements being discussed would come before them for consideration and vote.

Mr. Doody reiterated the open issues within the agreement which the Board needed to address before moving forward:

- Subordinate right to repurchase to a construction loan
- Right to repurchase to be exercised for failure to commence installation of concrete foundations
- Restrictive covenant, including amount to be paid to the CRA and percentage of legal interest transfer or conveyance which would trigger the covenant.

Neil Schiller, Attorney for BH3, presented on behalf of his client. He stated even though BH3 was not delivering a check at closing, they were providing extraordinary value with the project. Mr. Schiller reviewed the terms, pointing to value of about \$15 million.

Continuing, Mr. Schiller explained BH3's position on the open items and addressed potential compromises.

Chair Petrolia opened a public hearing on the item, however seeing none to speak, closed the public hearing.

Chair Petrolia stated at this point, the Board is working to figure out what makes sense for the CRA moving forward. She noted the opportunity for BH3 to sell a portion of the lots was a problem for her and expressed concern with the dollar amounts listed in the restrictive covenants.

Mr. Schiller clarified BH3's position on the concerns Chair Petrolia had raised, noting the company would be bringing in capital sponsors to finance.

Chair Petrolia confirmed capital interest would be in the full project, not selling off pieces of the full project.

Commissioner Bathurst stated the restrictive covenant was brought in due to past experiences within the City. He said it was perfectly clear that financing would be brought in, but the Board wants BH3 to remain in charge.

Continuing, Commissioner Bathurst stated land is worth what someone is willing to pay for it and asked for clarification from Mr. Costello regarding offers the CRA had received. Commissioner Bathurst stated the CRA would have to be subordinate for BH3 to obtain funding. He said he was in alignment with Mr. Schiller's positions.

The Board discussed protections against the project languishing in case of a change in the economy or other issue.

Mr. Levenson interjected that the right to repurchase does not come into play until after the site plan approval, permits, and construction loan are in place.

Mr. Doody addressed Chair Petrolia's concerns regarding selling off portions of the block and stated that issue could be addressed through unity of title by the City.

Commissioner Brinson stated she is all for the project, but the CRA will take the fall if something happens, so she wants to make sure everything is out on the table.

Deputy Vice Chair Gray thanked legal and the CRA staff for their work negotiating the agreement. She said she would be in support of one concrete foundation being required, and said she felt the right to repurchase agreement had teeth in it and was covering the CRA appropriately.

Continuing, Deputy Vice Chair Gray stated she would not want to see the Workforce Housing homes spread all over the community.

Commissioner Frankel stated he concurred with Commissioner Bathurst, who is a commercial real estate professional, and noted he wants to see the project built.

In response to a question from Commissioner Frankel, Mr. Costello stated the CRA would be working to facilitate getting BH3 through the City process utilizing the Business Navigator program.

Commissioner Frankel stated he does not want to see the project get delayed due to staffing issues. He said he would like to see permitting expedited.

Mr. Doody stated there is language in the agreement pertaining to issues regarding blocks in the development process.

Commissioner Boylston said the Board has been involved in the negotiations the entire time, and noted he agreed with the concessions made by Mr. Schiller in his presentation.

Vice Chair Johnson thanked everyone for their efforts moving the agreement forward. She stated she agrees with everything that has been said and said the CRA just wants to protect itself.

Continuing, Vice Chair Johnson stated she would like to see a name on the project. She asked Mr. Costello for an update on the project at each subsequent CRA meeting.

Mr. Levenson stated the common theme on the name has been Frog Alley, and he thinks Vice Chair Johnson should take credit. He said developers are mindful of the history.

Chair Petrolia thanked the Board for being responsive through the process and adding their input and thanked all involved in the negotiations.

Continuing, Chair Petrolia stated she agrees on the subordination, but thinks it needs to be restricted to construction loans. She said she was OK with the single foundation, but still had an issue with the dollar amount being set in the restrictive covenant. She stated the amount should be at least equal to what the CRA had invested.

Mr. Doody asked for direction regarding the ownership interest piece of the discussion and clarified the unity of title could not be required in the contract. He noted that would be handled in the development review process at the City level.

Mr. Costello stated ultimately the conditional use and land use amendment are reviewed and approved by the City Commission.

The Board and staff discussed a requirement of notice regarding changes in ownership.

Mr. Doody stated he would defer to Mr. Schiller to explain how he would keep the CRA Board informed of changes in ownership, not subject to approval, but for information purposes only.

Mr. Schiller stated BH3 would be happy to provide information to the Board in case of changes to the interest members. He noted the managing members are not changing and cannot change per the agreement.

The Board and Mr. Schiller discussed ownership interests in the project.

Commissioner Bathurst reviewed the safeguards put in place through the agreement.

Commissioner Boylston argued for a compromise between the amount recommended by BH3 and the amount the CRA purchased the property for.

Mr. Levenson reviewed the reasons he did not believe the restrictive covenant should be included in the agreement. He noted it was not included in the RFP.

Chair Petrolia asserted removing the penalty amount was not on the table.

Commissioner Boylston stated he believed the CRA had shown good faith by selecting the project with BH3, which offered zero dollars for the property, but offered a list of other benefits to the community.

Commissioner Brinson said she was willing to compromise on the \$6 million recommended by Commissioner Boylston.

Vice Chair Johnson stated she did not want to tie the feet of the developer. She said she would defer to Mr. Levenson's number.

Deputy Vice Chair Gray stated she thought it came back to the value of the land. She said she did not want to see anything blocking the project and wanted to defer to legal.

Mr. Doody stated he was not a banker but thought the parties would be able to prove to lenders the covenant was not an issue.

Motion by Deputy Vice Chair Gray, seconded by Vice Chair Johnson, to approve accepting the right to repurchase allowing for commencement of construction to be limited to the 600 block within 180 days, and that the CRA agrees to subordinate the right to repurchase to a construction lender. In a roll call vote, the **motion** passed unanimously (7-0).

Mr. Doody clarified the language regarding estate planning within the agreement as it pertained to control with Mr. Levenson and Mr. Schiller.

The Board discussed the issue of estate planning and whether it needed to be removed from the agreement.

Motion by Vice Chair Gray, seconded by Commissioner Boylston, to approve and allow for the incorporation of the language in the purchase agreement relative to a controlling interest of the purchaser. In a roll call vote, the **motion** passed unanimously (7-0).

Motion by Commissioner Boylston, seconded by Deputy Vice Chair Gray, to approve the restrictive covenant, including a \$4 million payback to the CRA. In a roll call vote, the **motion** passed (6-1). Chair Petrolia voted no.

Motion by Vice Chair Johnson, seconded by Commissioner Frankel, to approve the purchase and sale agreement as amended for the project on the 600-800 block of West Atlantic Avenue, aka Frog Alley. In a roll call vote, the **motion** unanimously (7-0).

Mr. Doody read the Resolution accepting the purchase and sale agreement by title only.

Motion by Deputy Vice Chair Gray, seconded by Commissioner Boylston, to approve the Resolution. In a roll call vote, the **motion** unanimously (7-0).

b. Modifications to Site Development Assistance Program

Elizabeth Burrows with Economic Development presented proposed modifications to the Site Development Assistance Program with the purpose of accelerating development in the CRA's primary focus areas, including:

- Institute two (2) funding tiers
 - Tier 1 – CRA Sub-Areas #3, #4, #7, and #8
 - First \$10,000 of eligible costs funded at 100 percent; additional eligible costs covered at 75 percent rate, up to \$75,000 maximum award
 - Tier 2 – CRA Sub-Areas #1, #2, #5, and #6
 - Eligible costs funded at 40 percent rate, up to \$50,000 maximum award
- Updated funding disbursement procedures
 - Monthly payments allowed while project is underway
 - Payment may be made to approved applicant by reimbursement or directly to vendor – for completed, pre-approved improvements anyway

Chair Petrolia opened a public hearing on the item, however there being none to speak, she closed the public hearing.

Chair Petrolia stated there may be applicants who are unable to meet these requirements due to lack of funds, and she did not want the Board to be short-sighted. She said she did not want to see a completely subsidized program but wanted to offer a program to existing businesses who have proven themselves in order to make improvements.

Vice Chair Gray stated she would agree the West Atlantic area needs to be looked at, and asked Ms. Jadusingh to share her past experience and how it applied to the situation.

Ms. Jadusingh stated an important distinction is whether the business owner owns the property or not. She said in her past experience it was easier to help business owners who also owned the property, noting in those situations loans were given, with restrictions on funds and forgivable payments. She stated in cases where there was a separate property owner, relationships with the owner were required.

Chair Petrolia stated that there are viable businesses that are attracting people that just need an extra push but were unable to do funding on the front end, and she wanted to support that effort.

Vice Chair Gray asked that Ms. Jadusingh and the Economic Development staff be allowed to work together to come up with a program.

Joan Goodrich, Economic Development, stated there is a small group of people looking at best practices and options to support local businesses in this way. She noted a coalition of local lenders is being discussed.

Ms. Goodrich stated the group is just beginning the research and noted additional new tools will be presented at the next meeting.

Commissioner Bathurst stated he thought key special projects in targeted areas could be added as a third tier.

Commissioner Boylston stated the reason for putting these modifications in place was because too many exceptions were being made, and a policy was needed. He said he felt this new program was aggressive and pointed to additional options.

Chair Petrolia said she didn't disagree, but the West Atlantic is harder to jumpstart, and things languish because of it.

Vice Chair Johnson stated she didn't know why programs didn't work in the past but thought it might be about businesses not trusting the CRA. She said the approach may be the most important piece for a new starting point.

Ms. Burrows thanked the Board for their input, noting it is a combination of tools and good old-fashioned relationship building that Economic Development is working on. She stated the department is also open to being responsive to needs.

Motion by Vice Chair Gray seconded by Commissioner Frankel, to approve the modifications as presented. In a roll call vote, the **motion** passed unanimously (7-0).

c. Second Amendment to Interlocal Agreement Between the City and CRA FY 2018-19 for Transportation Services

Mr. Costello presented the amendment. He explained the Board awarded the RFP at the March meeting, and agreements are being finalized. He stated staff is recommending an extension of the current agreement up to June 30 to cover the interim.

Motion by Deputy Vice Chair Gray, seconded by Commissioner Boylston, to approve the amendment as presented. In a roll call vote, the **motion** passed (7-0). Commissioner Frankel voted no.

d. Executive Director's Annual Review

Mr. Costello stated it was the consensus of the Board at the October 2018 meeting to conduct the next evaluation in May. He noted a form had been provided to the Board, and a decision needed to be made whether to use the form or continue with another process.

Chair Petrolia opened a public hearing on the item, however seeing none to speak, she closed the public hearing.

Vice Chair Johnson stated she would like to add an item under personnel management regarding evaluations performed by the Executive Director.

The Commissioners and staff discussed what records were in place.

Motion by Commissioner Frankel seconded by Commissioner Bathurst, to approve use of the evaluation form for the Executive Director's Annual Review. In a roll call vote, the **motion** passed unanimously (7-0).

9. Other Business

a. Comments by Commissioners

Deputy Vice Chair Gray commented on Rock the Block, and said it was an awesome event. She also mentioned the opening of Little League.

Continuing, Deputy Vice Chair Gray stated she wanted to discuss seeing projects like BH3 getting through the permit process without issues. She said staffing needs to be increased to get things done.

Deputy Vice Chair Gray asked Mr. Costello for a status of the NW 5th Avenue alley construction project.

Mr. Costello stated one (1) of the alleys on NW 5th Avenue and an alley on block 63 will be moving forward to the City Commission for award of bid in May. He explained the attorneys are working through title issues on an additional two (2) alleys.

Deputy Vice Chair Gray stated the Old School Park campus park improvement design is a \$700,000 project that is not moving forward and listed several other projects with CRA

money tied to them which are not going to be completed in the current fiscal year. She stated attention needs to be paid to these items.

In response to a question from Deputy Vice Chair Gray regarding the NW neighborhood design, Mr. Costello stated the purchasing department is currently negotiating with the selected vendor. He agreed it should be moving forward, but there has been a delay.

Deputy Vice Chair Gray stated if these projects are not moving forward, funds could be allocated to projects which could be completed in a timely manner.

Mr. Costello stated he expected a budget amendment to be before the CRA at the May meeting regarding the listed items. In addition, he said he has a meeting this week with the Assistant City Manager regarding the status of capital improvements.

Deputy Vice Chair Gray asked that the City be asked to tighten its belt rather than continuing to push projects to the CRA for funding.

The Board discussed the relationship with the City of Delray Beach.

Commissioner Boylston stated there needed to be a certain portion of the budget which is set aside for exceptions, but there needs to be controls.

Chair Petrolia stated she understood the concern, and said the concern is that not enough is getting done in the district for outside projects to be added. She noted the City is providing financial standing where it is committed.

Vice Chair Johnson asked if a roundtable could be held between the CRA and City to discuss the issue.

Commissioner Bathurst referenced Deputy Vice Chair Gray's list of outstanding projects and stated Mr. Costello provided him with the start of a Gant chart. He said he thinks the Board is moving forward with completing projects and celebrating them.

Vice Chair Johnson stated she is in awe of the CRA Board for moving forward with the BH3 project through all the noise, social media and traditional media. She said she hoped there was a celebration.

Continuing, Vice Chair Johnson stated she did not think the Gant chart Commissioner Bathurst was referencing was completed, and she wanted to see it move forward.

Vice Chair Johnson stated she thought the A-Guides were wonderful, but that the Board was missing something. She said the recent City audits made her think the CRA needs to do something in addition to the A-Guide, rather than taking what the non-profits give the Board as official and correct. She asked that an internal evaluation of the non-profits be sought.

Commissioner Boylston stated it is not uncommon for large foundations to have someone on staff to provide the service Vice Chair Johnson referenced. He said he wanted to think about it and not decide today.

Chair Petrolia asked if a conversation could be had regarding a diversity study regarding women and minorities in small businesses. She stated it fits with the work plan, but something stronger is needed. She asked for consensus to hold the conversation.

In reference to a question from Chair Petrolia, Mr. Costello stated the CRA audit would be presented to the Board in May.

Continuing, Chair Petrolia thanked the CLT for the update and said it was great to see the community is moving forward. She pointed to Rock the Block and said it was a positive event that made all the difference in the world.

b. Comments by Board Attorney

Mr. Doody thanked the Board for the opportunity to represent them and to be engaged in the BH3 project. He reminded the Board this was the first step, and additional considerations would be brought forward.

c. Comments by Executive Director

Mr. Costello echoed Mr. Doody's comments and thanked the Board and staff.

Continuing, he stated a draft document from the Goal Setting session would be circulated.

d. Comments by Staff

None.

10. Adjournment

There being no further discussion, the meeting was adjourned at 12:42 p.m.

Renee A. Jadusingh, Executive Director

Shelly Petrolia, Board Chair