

City of Gahanna

*200 South Hamilton Road
Gahanna, Ohio 43230*



Meeting Minutes

Wednesday, November 6, 2013

6:00 pm

200 S. Hamilton Road, Gahanna, OH 43230

City Council - Special

Stephen A. Renner, President of Council

Ryan P. Jolley, Vice President of Council

Karen J. Angelou

Beryl D. Anderson

Brandon Wright

Brian D. Larick

Thomas R. Kneeland

Isobel L. Sherwood, MMC, Clerk of Council

A. CALL MEETING TO ORDER - Roll Call.

Gahanna City Council met in Special Session on Wednesday, November 6, 2013, in Council Chambers of City Hall, 200 South Hamilton Road, Gahanna, Ohio. President of Council Stephen A. Renner called the meeting to order at 6:00 p.m. The meeting was called to hold second reading on ORD-0140-2013. Agenda for this meeting was published on November 5, 2013.

Present 5 - Stephen A. Renner, Ryan P. Jolley, Brian D. Larick, Brandon Wright, and Thomas R. Kneeland

Absent 2 - Karen J. Angelou, and Beryl D. Anderson

B. SECOND READING OF ORDINANCES:

Present 6 - Stephen A. Renner, Ryan P. Jolley, Beryl D. Anderson, Brian D. Larick, Brandon Wright, and Thomas R. Kneeland

Absent 1 - Karen J. Angelou

[ORD-0140-2013](#)

TO AUTHORIZE THE MAYOR TO ENTER INTO A GROUND LESSOR (BUILDING B AND C) ESTOPPEL WITH CREEKSIDE INVESTMENT PARTNERS, LLC; AND TO DECLARE AN EMERGENCY

Jolley stated he had a question on the estoppel where it communicates that there is no default under this agreement; does that apply to the payment that was due October 1. Ewald stated you are referring to Section 3(a); know what will happen is that this will be similar to the process we used when the current owner bought from foreclosure; originally we executed 5 or 6 estoppels; they have been included in here for these particular documents; it will be exchanged from escrow from the title company in exchange for the back payment that was due.

Kneeland stated that Section 4 talks about covenants and subordination to the loan; can you give some insight into what this will do; that the city will not have any rights of first refusal; is this any different from last one; what does this effectively do. Ewald said no; it allows them to take the first right of refusal and counter it with their own offer; in essence that's what it does. Kneeland said so it keeps the city from making the first initial offer. Ewald agreed that in essence that is correct.

Mayor Stinchcomb stated she wanted to express for the record that we received this at 3:00 p.m. today; my administration and I have not

had an opportunity to thoroughly review; have some questions; there are no exhibits attached to this document; want to understand how this works; being asked to sign something that says they owe us no money and they do; understand it is supposed to happen at closing but have some concerns how that will be orchestrated to guarantee that we get paid; no language in here about money being put in escrow and being exchanged; understand time is of the essence; will have to go by attorney's advice but state my concerns about how this is going to work and the hurried nature of this; understand why but need to better understand the risks.

Jolley stated that was my question; the money that is already owed, that agreement doesn't change, that is correct? Ewald said no it does not change.

Stinchcomb said it technically says they are not in default; my understanding is that they are not technically in default until the one year anniversary; there is money owed; there are late charges, interest, and penalties accruing; figured out that amount through Oct. 31; been told verbally we will be paid on closing; but don't know where we have any guarantees.

Ewald stated Councilmember Wright said it best the other day; the process normally is, and is the same as last time, the title company will be the location of the closing; the title company will take these documents and hold them until the lender produces a check for payment thereof; that is the normal process; they have title insurance on it; they have certain obligations they have to meet as a neutral party.

Stinchcomb asked who would be attending the closing from the city; wondering if there will be an actual closing; is it going to happen in Columbus or Lansing; will there be a physical representation.

Ewald stated the only action in front of Council tonight is whether or not they are going to authorize you to execute the documents; doesn't mean you have to execute them.

Stinchcomb stated she understood that; if we go through this and find changes, Council would have to reconsider the issue so bringing up my concerns now.

Ewald stated if there were substantive changes that would be correct, typos could be corrected. Stinchcomb stated that those of you more familiar with banking and law than I am, have the confidence that this will be handled correctly in closing and that when we review this tomorrow there will be no substantive changes; appreciate City

Attorney for his work on this; very rushed; know we are trying to do our best to make this work.

Ewald stated he has spent the last day and a half on the phone with outside counsel who helped draft the original agreements and estoppels; they are comfortable with this; just finally got final document back today.

Jolley stated he wanted to clarify, the estoppels are not and do not preclude us from collecting on the payment that was due in October for the back rents.

Ewald stated not if the process is followed; if this goes into escrow and is held until exchange of check occurs, then it will absolutely protect us; if this gets to them before that, arguably could use this to say nothing is owed; that is why it is important to have this process.

Anderson stated she echoed the comments of the Mayor; she used an operative word in our "normal care" in terms of review of things; understand the time frame in going back and forth for the last day and a half; when things are done in a rush doesn't give you the time to digest and go through with a fine tooth comb; for clarity of understanding not just of the Mayor but everybody involved; think the timing of this and lateness of getting it to us at 3:00 p.m. today, speaks to the necessity to give us more time to review; in these kind of transactions just think that taking more care is better than rushing; am in favor of having more time; we all want Creekside to be a success but we need to understand all the aspects and facts; seen where that has been a mishap in the past and don't want to repeat.

Renner asked if there was a specific point or a motion. Anderson stated she had made her point; we received it late and should have time to look at it.

Motion by Anderson, seconded by Larick, to postpone ORD-0140-2013 to November 12, 2013.

Larick stated his question is pertinent to motion to postpone; Section 2 of the ordinance says that this ordinance is declared emergency legislation and shall be in full force and effect after passage by this Council and on date of signature approval of the Mayor; what precludes us from including in here and payment of "x" dollars by "x" date; doesn't that then protect us with the questions we are asking.

Ewald stated it would; reason we didn't include it is you don't normally put that in an estoppel because it is handled during the transaction. Larick stated he was talking about the legislation. Sherwood stated

she could do a separate section in the legislation but not include in the final paragraph which is standard language somewhat dictated by ORC for emergency legislation.

Larick stated his question was separate section giving detail. Ewald stated you could add it; would not be binding on the borrower in this case; you would explain the intent and why the money was being appropriated but there is nothing obligating the other party to make sure they follow through. Larick stated other than the estoppel is not a valid document until those criteria are met. Ewald stated it would have to be in the estoppel.

Anderson stated my concern is to that but also to the contractual part of it. Larick stated he is less concerned about the contractual part. Anderson stated that is what makes it enforceable or not; even if we have something legislative; not binding; and there might be other questions.

Kneeland stated he would normally be of the same impression as Anderson; what I am looking at is that this is basically the replication of an estoppel that is existing; do have external legal counsel in Pat Cornelius looking at this; experts in the field who have examined it and given recommendations; guess the other point is we are only authorizing the Mayor to enter into the agreement; assuming she will have a vetting process tomorrow; definitely am in favor of acting on this in order to keep the process going forward; based on the Mayor's angst will get vetted very deeply; in favor of moving forward, especially given some of the risks for the project if this doesn't occur.

Larick stated this may be repetitive but just trying to clarify; there is the concern about the document; separately heard concern about the follow through that protects the city that this would actually be delivered after the moment in time that the city is made whole; simultaneously as opposed to prior to which would put the city at risk. Ewald stated correct. Larick stated he would think from a legislative or potentially contractual nature that risk can be mitigated by language; how do we do that. Ewald stated it would need to go in the estoppel.

Anderson asked how that can be done. Ewald stated we can make the adjustment; looking to see where it can be added. Larick asked if it would need to be vetted by both legal parties. Ewald stated if we add it to the legislation then you are authorizing us to add it and we would need to run it back past Cornelius; we talked about that particular point and normally estoppels don't carry that because there is a simultaneous transaction.

Larick stated he did not think there was much risk but it would be

prudent if there is a simple means of eliminating it, that's what we should accomplish.

Kneeland stated he would have to say if we do that, should add to the estoppel itself; if we add that and pass it legislatively tonight, the other party only has one choice - to accept this; and if they don't the process starts over again; from a risk standpoint if we can't add to the estoppel where it protects us financially from the component we are discussing, then by passing it legislatively we have done our due diligence. Ewald stated we could build that into the request for the legislation saying Council wanted that done; if possible, can add to this and vet that through; can be added as a condition.

Stinchcomb stated wouldn't an amendment be needed now. Jolley stated discussion is supposed to be focused right now on postponement; can we dispose of that motion and then continue discussing whether or not to amend. Larick stated the only reason he wouldn't is that until we resolve the issue, I would be in favor of postponement if we don't protect ourselves; if we are going to protect ourselves, then I'm fine.

Ewald stated we can add that language in; find out where to insert but we can add it in. Anderson stated she had a question relative to that; said could do as a condition; that means they can accept or reject; think they realize we are in agreement in wanting to make this happen; don't think it would be a condition they would reject. Ewald stated he didn't think so; you could make it a concise statement to the effect of "our understanding this is in exchange for this transaction to occur and that said monies will be coming to the City for ground leases for 2013"; could just be a statement. Anderson stated we would need a date certain.

Sherwood stated the third whereas section in the pending legislation could be moved to be a new section in the body of the legislation. Larick read the section and Ewald agreed.

Stinchcomb confirmed that we are not changing the language in the estoppel itself. Ewald stated he would try to accomplish that; could vote on it as a form with the addition of the request. Kneeland asked if this could be done conditionally; we could add it to this legislation.

Jolley stated he had a process question; you are talking about going to the closing; how are you going to deliver this; if you take to the closing and they don't have the money, do you simply don't deliver this. Ewald stated that what was done last time we put it in escrow and that company not release the documents until a check was in their hand. Larick stated you would put the estoppel in escrow. Ewald replied

yes.

Stinchcomb stated she understands that is the process, but is my responsibility to sign; wanted to express that we needed to change language on the floor; need to write that language now to add to the estoppel.

Ewald stated it could be added to the legislation; you would agree to add it to the legislation. Anderson stated what about physically seeing the language. Stinchcomb stated it was highly unusual.

Ewald stated you could be that descriptive and drill down to the estoppel to the exact language; could also open it up so that the intent of making sure that language is added is in the legislation.

Kneeland stated that whatever that amount is, if we add it to a new section of the legislation being added now by the Clerk, and add financial numbers to that then the estoppel would be null and void if they don't meet the mandate of the ordinance; by virtue of the ordinance saying it must be, they either accept it or they don't; to me as a layman in law, sure seems like it would protect us.

Jolley stated that in rereading the third whereas clause, it says that the Mayor is authorized to execute this agreement which is to be delivered to escrow to be held in exchange for the complete payment of the ground lease payments due. Stinchcomb stated a whereas clause is not binding. Jolley stated he understood; talking about moving to a new section; not authorizing you to simply hand this over to Strathmore; it will have to be placed in escrow; they can't have access to it without payment. Stinchcomb stated I see where you are going. Jolley continued that he saw no need to add it to the estoppel itself; we are not authorizing you to give it to them but to put it in escrow; they can't access it from escrow without providing payment.

Wright stated that is exactly right; taken us a long time to get to the point of what escrow does; have confidence in the process; that's why escrow company has insurance; if it were to happen that they improperly did something then the liability would go to escrow company; that's where the City would turn their focus for any ramifications on financials; just wanted to make that clear; would like a point of order on what we are discussing.

Renner stated the motion on the floor is the postponement to Tuesday evening; any further discussion.

Larick stated a line in the whereas being moved states "ground lease payments due"; monthly payments were to be made; is that referring

to those payments to date or is that the complete term of the year; what is that amount. Ewald stated it is due as of the execution of this agreement. Stinchcomb stated she understood that payment in full will be accomplished. Larick reiterated not payment to date but payment in full. Stinchcomb stated that was her understanding. Larick asked if that was an assumption or a documented value somewhere. Ewald said that had been delivered verbally; actually is all due right now.

Anderson asked Ewald what is worst case scenario if this didn't close on Thursday and the legislation was postponed to Tuesday. Ewald stated he can't say for certain; has been told by the developer that it is extremely important for this to occur tomorrow. Anderson said so no downside; no conversation about risks. Ewald stated he believed the owner had conversations with each of the Council members. Jolley stated in my conversation he said the potential risk is foreclosure. Stinchcomb stated she heard that as well.

Jolley called the question on the postponement.

ROLL CALL: Voting yes: Anderson. Voting no: Larick, Jolley, Kneeland, Renner, Wright. Motion to postpone fails.

ROLL CALL:

Angelou entered the meeting at 6:28 p.m.

Present 7 - Stephen A. Renner, Ryan P. Jolley, Karen J. Angelou, Beryl D. Anderson, Brian D. Larick, Brandon Wright, and Thomas R. Kneeland

ORD-0140-2013

TO AUTHORIZE THE MAYOR TO ENTER INTO A GROUND LESSOR (BUILDING B AND C) ESTOPPEL WITH CREEKSIDE INVESTMENT PARTNERS, LLC; AND TO DECLARE AN EMERGENCY

MOTION by Jolley, seconded by Larick, to amend ORD-0140-2013 by moving the third whereas clause to create a new Section 2 with the same language and renumbering existing Section 2 to Section 3.

Angelou apologized for just arriving; thought meeting was at 6:30 pm; asked for a brief explanation of the motion before us. Renner stated that motion before us is to amend the legislative portion of ORD-0140-2013 for the third whereas to be a new section 2 to the ordinance and existing section 2 be renumbered to section 3.

ROLL CALL Voting yes: Jolley, Larick, Anderson, Kneeland, Renner, Wright, Angelou. Motion carried.

This Ordinance was Adopted, as Amended, as an Emergency

Yes: 7 - Renner, Jolley, Angelou, Anderson, Larick, Wright and Kneeland

C. ADJOURNMENT: 6:30 p.m. - Motion by Larick.

Isobel L. Sherwood, MMC
Clerk of Council

APPROVED by the City Council - Special, this
day of 2013.

Stephen A. Renner