

**OFFICE OF THE CITY COUNCIL**

**RESEARCH DIVISION**

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**HYBRID VIRTUAL/IN-PERSON COUNCIL MEMBER GAFFNEY NOTICED MEETING**

**LOT J PROJECT**

**Meeting Minutes**

 **December 11, 2020**

**8:00 a.m.**

**Location:** Hybrid in-person (City Council Chamber) and virtual (via Zoom platform) meeting

Attendance: Council Members Reginald Gaffney, Randy White, Ron Salem, LeAnna Cumber, Michael Boylan, Aaron Bowman Terrance Freeman (via Zoom), Ju’Coby Pittman (via Zoom), Sam Newby (via Zoom)

Also: Jeff Clements and Yvonne Mitchell – Council Research Division; Melanie Wilkes, Steve Cassada, Eric Grantham – Council Staff Services; Cheryl Brown – Council Secretary/Director; Kim Taylor, Phillip Peterson, Brian Parks, Heather Reber, Trista Carraher – Council Auditor’s Office; Jordan Elsbury, Leann Krieg, Rachel Zimmer – Mayor’s Office; Peggy Sidman and John Sawyer – Office of General Counsel; Sandra Homrighouse - Ethics Office; Joey Greive – Finance and Administration Department; Steve Kelly – DIA; Zed Smith (via Zoom) – Cordish Companies; Mark Lamping, Megha Parekh, Paul Harden – Jacksonville Jaguars

Convene 8:03 a.m.

Council Member Gaffney convened the meeting and the attendees introduced themselves for the record. Mr. Gaffney said good progress was made at Tuesday’s noticed meeting, but 5 or 6 items are still left to resolve.

Council Auditor Kim Taylor discussed a handout sent out via email to the council members yesterday and discussed the results of the Wednesday meeting among the parties. Regarding the non-public facilities (hotel and mixed-use) financed with the “breadbox” loan, the developer had reservations about disclosing documentation on all building costs, preferring a percentage of completion methodology instead. The developer has now agreed for the City to pay its share on a pro rata basis for actual costs incurred as attested by the project’s Construction Inspector, which was the original language in the first version of the agreement (Sec. 8.3). A compromise was reached in Section 12 regarding future developer improvements to the Live! district at its own expense. The original agreement did not address City approval of such expenditures on its facility; the November 25th revised agreement provided for notice to the City of such improvements if valued at over $5 million. The latest agreement is that the City will be notified of any privately funded improvements valued over $100,000 . The same applies to privately funded improvements in the City’s easements (plaza, walkways, etc.) with the City being given notification of improvements valued at $50,000 or more.

Remaining items lacking resolution:

* Guarantee (Sec. 1.12): A sentence was struck about the City being allowed to withhold payments upon default by the guarantor. The Auditor recommended that the language be amended to only allow termination of the guarantee upon project completion or in the event of a default. Assistant General Counsel John Sawyer said the City must be funding the project before it can call on the guarantee; the lenders don’t want the City to pull out of the whole project if one component of the development is in default. He explained the conundrum of potentially suing for default on one part of the agreement while still funding construction on other parts. Megha Parekh, Chief Legal Officer for the Jaguars, said what’s important is that the overall project goes on even if one part is in dispute and that the developer keeps getting funded for expenses incurred if some portions are still underway and valid requests for pro rata costs are being submitted; the disputed item can then be resolved separately. If the City believes there’s a dispute on 1 component, the rest can continue construction and the developer will still get paid for valid invoices.

In response to a question from Council Member Bowman about whether the City has ever done anything similar on another project, Mr. Sawyer said the City rarely gets a completion guarantee, so this is a different sort of situation. The City recognizes the complexity of this project and the desirability to keep the whole thing going if one part has problems. That’s an unusual position, but is a practical solution to the problem in this case. In response to a question from Council Member Boylan about whether the City will be paying all expenses on a reimbursement basis, Ms. Taylor said the City’s funding for infrastructure goes in at the beginning and the Live! district will be funded on a 50/50 basis during construction and the City will see actual invoices on both. The reimbursement basis will apply to the “breadbox” loan funds for other portions (mixed use and hotel), although the City will never see the actual cost documents and will be relying on the construction manager to verify what’s been spent. She noted a concern that the documentation may be kept in Maryland and suggested that consideration be given to negotiating with the developer to agree to a requirement that at least copies of the project documents must be kept in Jacksonville so as to be reviewable by the City here.

* Cost savings provisions on hotel and residential (Sec. 8.9(c)): Ms. Taylor said the intention is to try to keep the City’s portion of construction costs (excluding the REV and completion grants) to no more than about 42%. The true-up calculation at the end of the project includes developer expenses of 7.5%. Ms. Taylor said the City should never pay for this either in the true-up calculation at the end or for cost overruns per the agreement. What’s at issue is the “minimum developer investment” and how that’s calculated at the end of the project. They’ve run numerous scenarios with the development team for elements coming in under or over budget and the impact to the City could vary greatly depending on what element is under or over budget and how the cost overruns and developer expenses are allocated. Council Member Salem asked if the impact could be lessened by imposing minimum requirements on the various elements so they couldn’t scale them back. Ms. Taylor said the City still don’t know what the construction estimates are for each element so can’t really get protection for the City that way. Council Member Bowman said you don’t know what a REV grant is really worth until the project is completed and the Property Appraiser assigns an appraised value and asked if this is the same sort of situation. John Sawyer said it is similar in that the REV grant is just a calculation formula, but this deal differs in that Section 8.9(c) deals with developer expenses, some of which are appropriately included and some not, so this somewhat favors the developer. The first level of protection is on the infrastructure side, where the City will pay only actual costs up to the cap. The second level is the calculation formula which can favor one party or the other depending on what costs are included or excluded. The Auditor is concerned that the inclusion of the 7.5% favors the developer in the true-up calculation at the end.

Council Member Boylan asked if the developer might agree to a cap on management costs included to protect the City. Jaguars President Lamping said this is the most complicated part of the agreement. There is a cap on total City participation and the deal needs to be viewed in total. The City is not exposed to cost overruns and the developer picks that up on any segment of the deal. The parties agree that their overall percentages will stay the same on the total deal. If the project comes in over budget, the City’s percentage actually goes down and the developer’s goes up. They’ve agreed to all the tweaks they can accept and feel this meets the intention of the deal as originally negotiated. Mr. Boylan asked if the developer could give assurances that there won’t be corners cut to save money. Mr. Lamping said it’s to the developer’s advantage to spend the full amount to get the full City benefit. Zed Smith of the Cordish Companies said they will spend the amount necessary to meet the standard of quality of their other developments around the country.

* Mixed use component minimum investment (Sec. 14.6): Ms. Taylor said this is basically the same issue with the 7.5% developer contribution being in or out. The Auditor prefers it be out, the developer disagrees. Megha Parekh said that 7.5% impacts the determination of eligibility for the REV grant; the actual amount of the grant will be determined by the assessed value of the property after construction. It is a standard cost and compensates Cordish Companies for using in-house architects and engineers.
* Limits on conveyance of components (Sec. 16.9): Ms. Taylor said the developer has agreed to hold the hotel property for 5 years before selling. The Auditor’s Office is still concerned about the value of development rights sale profits before the hotel is built. The developer has offered that if they sell the development rights for cash, the City will get a pro rata share of what it has paid in on that element. We don’t know the pro rata share since we don’t know all the component costs, but that would have to be determined at the time of the sale. Mr. Salem asked if it was possible the developer could put more investment into the hotel to inflate the cost of an element that could be transferred rather than into an element that can’t be transferred; Ms. Taylor said that was a possibility. Ms. Parekh said actually the incentive is the other way around; it’s better for the developer to put their dollars into the mixed use element and get the hotel operator to put more of their money into that element. Mr. Boylan said it seems the developer plans to transfer the property and development rights to a hotel operator and produce a potential profit on land the City is contributing. Mr. Lamping said they will run some scenarios and talk more with the Auditor about what would be a fair percentage of shared benefit. They will try to do that quickly so a revised document can be drafted and circulated well in advance of the next meeting in January so everyone has time to read and digest the proposals. Mr. Sawyer said he wants to have a revised document prepared by the end of today.
* Lease term (Sec. 5): Ms. Taylor said the lease term was changed from the first to second version of the development agreement, from an initial 35 years with four 10-year renewal options to an initial 50 years with two 10-year options. The first version had no occupancy requirements for 55 years effectively, until an 85% occupancy requirement kicked in for the third and fourth renewals. She suggested adding percentage of occupancy, sales targets, or other performance requirements during all of the lease term. The only remedy now is to sue for failure to perform after the first 55 years. Council Member Salem asked how the City could avoid another Jacksonville Landing situation. Zed Smith said the major difference between Lot J and the Landing is the degree of developer investment around Lot J versus what was around the Landing. Cordish does multi-phases in all of its developments so it will get bigger and better and eventually expand down to the riverfront and along Bay Street. In response to a question from Council Member Bowman about whether this is basically the same deal as the Landing, Mr. Sawyer said this is a unique sort of deal with lots of developer investment and so some of the usual non-performance clauses don’t apply. You’re not going to try to force the tenant out for non-performance because they paid for half of the project and are paying all maintenance costs. In response to another question about the change in the lease terms, Mr. Sawyer said the first 35 years and the first two 10-year renewals were automatic which is very comparable to an initial 50 year term. Mr. Lamping said the developer has lots of investment in the area that depends on the success of all the components – they want this whole area to grow and succeed, and to move on to additional developments from there. Ms. Taylor reiterated that there is nothing the City can do under the agreement for the first 50 or 55 years if the project is significantly underperforming.
* Termination of parking agreement (Sec. 6.22): Ms. Taylor said there is no termination option by either party on the parking agreement, even in the event of a contract breach, unless the whole Lot J project fails, and she feels there should be in the event of a contract breach. Council Member Boylan asked what kind of language would address the Auditor’s concern. Mr. Sawyer said the parties agree that parking is crucial to the overall success of the project and therefore the developer does not want any provisions that would give the City the right to terminate the parking agreement if some portions of the Lot J project are still in operation. He said the City has the right to sue for monetary damages or to compel performance. Ms. Parekh said the parking agreement is a support document and a critical component underpinning Lot J so lenders will be very interested in anything that impacts on parking rights. In response to a question from Mr. Salem about the impact of a free validated parking program on City revenue potential, Ms. Parekh said the lot is producing no parking revenue to the City now, and the hope is that the development draws more people who stay longer and spend more money on food, drink, tickets, merchandise, etc. that will produce a new revenue stream to the City. That will be more valuable than the foregone parking revenue, and there will be some transient parking revenue to be had.

In response to a question from Council Member Salem about what amendments to the pending bill have been formally proposed, Deputy General Counsel Peggy Sidman listed a Council Member Diamond amendment on ethics; a Council Members Becton and Cumber amendment imposing a hotel room surcharge; and a Council Members Hazouri and DeFoor amendment on liquidated damages if the Jaguars team leaves Jacksonville.

Council Member Boylan asked about the status of the DIA’s recommendation that financial evidence of the guarantor(s) financial capability be produced every 6 months. Kim Taylor said DIA’s recommendation actually was that evidence of the guarantors’ capacity should be produced as each project phase being guaranteed gets underway. She would like to see evidence more frequently, particularly if project phase commencements occur more than 6 months since that evidence was last presented.

Mr. Bowmansaid it seems like the only real sticking point seems to be the limitation on conveyance of the hotel, and the parties are going to work on that. He thinks the Council is very close to being ready to move the bill on January 7th and finish it off with a few amendments. Mr. Gaffney said he hopes it can be moved and amended without hours of debate. Ms. Sidman noted that the Council President had sent out a memo yesterday afternoon outlining what will happen at the Committee of the Whole on January 7th: 1) consideration of the Council Auditor’s proposed amendments; 2) consideration of council member amendments (pre-drafted by the OGC and circulated by January 5th); and 3) consideration of floor amendments. President Hazouri asked the OGC to circulate the document as it stood on Wednesday, December 9th with what developer had agreed to by then, not what may have happened yesterday or today.

Council Member Cumber thanked Mr. Gaffney for scheduling the noticed meetings and all staff for the hard work to get to this point; she’s ready to vote on final policy decisions. Council Member Salem agreed that these meetings have been very productive and given him what he needs to vote on the final issues. He is glad to see that the Council Auditor, Jaguars, Cordish Companies and OGC have narrowed things down to a last couple of points to resolve. Council Member Salem echoed the thanks to Mr. Gaffney for holding these meetings and expressed regret that not all council members attended to hear the good discussion and the compromises that have been reached. Council Member White thanked John Sawyer for his yeoman’s effort to draft and redraft the documents. Council Member Bowman thanked the Council Auditor for posing good questions and being a neutral information source and thanked the Jaguars and Cordish for their commitment to making Jacksonville a better place. He’s sorry for some of the criticism they’ve been subjected to and is comfortable that there are just a couple of issues left to resolve and he will be ready to vote. Council Member Boylan thanked everyone for the deferral that has given him the opportunity to get fully up to speed on the deal. He thanked the Jaguars and Cordish for being willing to invest in Jacksonville. Metropolitan Park and the riverfront need to be revitalized and parks need to be where people want to use them. He thinks the Jaguars have done sufficient market research to think this project will work. Sometimes the City needs to look at the long term and sometimes take on a loss leader (like the Jazz Festival or the Metro Park pavilion) to generate a bigger overall positive effect for the City. Jacksonville desperately needs more jobs that construction and development will produce. Jacksonville is used to incentivizing projects, but this time we’re going further and partnering with a developer. He has asked Assistant Council Auditor Phillip Peterson for a revised return on investment calculation and if it’s close to 1:1, including the tax benefit to the schools, then it should be approved. Council Member Freeman said 16 council members have attended the last 2 noticed meetings so questions are getting answered. The many hours of meetings are available for public review of the archived videos online so everyone can understand what’s been happening.

Mayor’s Chief of Staff Jordan Elsbury thanked everyone for the hard work and Mr. Gaffney for hosting these productive meetings. Mark Lamping said the Jaguars are not bothered by the criticism; they are still very bullish on Jacksonville and the potential for great things to happen here. Jacksonville is an underappreciated gem and the Jaguars and Shad Khan believe in its future and are willing to invest. The process has unfolded as it should, disagreements and all. Everyone wants the best for Jacksonville, there just may be some different views about how to get there.

Mr. Gaffney thanked everyone for all they’ve done to help move this project along because it’s so important for Jacksonville’s future. We have a great partner ready to invest in the city and need to take advantage of that.

Adjourn 9:53 a.m.

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