

**OFFICE OF THE CITY COUNCIL**

**RESEARCH DIVISION**

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**HYBRID VIRTUAL/IN-PERSON COMMITTEE OF THE WHOLE ON**

**ORDINANCE 2020-648 – LOT J DEVELOPMENT**

**Meeting Minutes**

**January 7, 2021**

**10:00 a.m.**

**Location:** City Council Chamber, 1st floor, City Hall

**In attendance:** Council Members Rory Diamond, Aaron Bowman, Terrance Freeman, Al Ferraro, Ron Salem, Michael Boylan, Garrett Dennis, Randy DeFoor, Matt Carlucci, Sam Newby, Tommy Hazouri, Brenda Priestly-Jackson, Joyce Morgan, Randy White, Ju’Coby Pittman, Kevin Carrico, LeAnna Cumber, Reggie Gaffney, Danny Becton

**Also**: Kim Taylor, Phillip Peterson, Heather Reber – Council Auditor’s Office; Peggy Sidman, Paige Johnston, John Sawyer – Office of General Counsel

**Meeting Convened**: 10:03 a.m.

President Hazouri convened the meeting and Council Member DeFoor led the Pledge of Allegiance and gave the invocation. A moment of silence was observed in memory of the victims of the violence at the United States Capital yesterday. The President noted that a list of previously submitted proposed amendments had been distributed in advance of the meeting and those amendments would be taken up and acted upon before additional amendments could be offered from the floor. The Council Secretary read the call of the meeting.

Deputy General Counsel Peggy Sidman reviewed the spreadsheet of the proposed amendments to the ordinance which includes both Council Auditor amendments and amendments submitted by various council members before last week’s deadline. She described the process by which the amendments would be moved, considered and rolled into a comprehensive report of the Committee of the Whole for consideration by the City Council next Tuesday.

Council Auditor Kim Taylor explained the list of Council Auditor Recommendations that included some items to which the Jaguars team agreed, some of which they did not agree to, and others that were no longer applicable due to other changes in the negotiation process. It included recommended amendments to both the project agreement and the pending ordinance.

In response to questions from Council Member Becton, Chief Administrative Officer Brian Hughes explained the City’s revenue source options for different types of events to be held at the Live! facility, some of which will be private events and others City-sponsored events, and described how the revenue from those events differs for Florida/Georgia football events. Council Members Priestly Jackson and Pittman posed questions about the timing of environmental cleanup of the site. In response to a question from Council Member Pittman, Ms. Taylor explained that the authority to reduce or waive rental fees for non-profit organizations to use the Live! facility lies solely with the developer. Zed Smith of the Cordish Companies said that while that is not addressed in the agreement, it is the practice of the Cordish Companies to work with non-profits. Mr. Smith added that he has met with the Jacksonville Chamber of Commerce and will be meeting with the City’s JSEB office to talk about small business participation in the project.

Council Member Morgan asked that the items referring to the audited or unaudited status of the guarantor’s financial statements be pulled from the Council Auditor’s list of recommendations for further discussion before a motion is made for blanket approval.

**Council Auditor amendment 1 (pages 1 through 48, excluding pages 20 through 23) was approved as distributed 18-0 (CM Dennis temporarily absent).**

The Committee of the Whole was in recess from 12:43 to 1:23 p.m.

Council Member Boylan introduced Tarik Bateh, a commercial real estate developer and real estate investment banker, to make a presentation on his concerns about the structure of the development proposal. He raised 4 major red flags, all of which he said could be overcome: 1) detailed due diligence information should be required of the developer, which has not yet been presented; 2) developer cash equity should go into the project first before the City’s investment; 3) the City should fund its money as a lump sum at the completion of construction and not be a construction lender; 4) Lot J’s location in the middle of the Sports Complex makes it a crucial part of the City’s overall assets so the City needs to retain long-term ownership of the property and lease it to the developer for $1 per year. There should be a clause in the ground lease allowing the City to terminate the lease should the Jaguars franchise ever leave Jacksonville.

Zed Smith of Cordish said that projects of this type are very complex and that this location particularly demands that a large project be constructed all at once and not in the usual phases. His company has been constructing this type of project across the country and each project is unique and not subject to a cookie cutter approach. He explained the importance of the “breadbox loan” to the deal for its tax advantages. He emphasized that Cordish operates the projects it builds and continues to invest in them and that is why it has been successful. He believes the City and the DIA have had every opportunity to perform proper due diligence with the information the company has provided. Mr. Smith said that the City’s up-front investment is for public infrastructure, which is a standard practice. He said that the allocation of the breadbox loan funds has not been finalized between the hotel and the mixed use aspects of the project, but hotel funding is difficult to come by in the current market. He emphasized that there are guardrails in the agreement to protect the City’s interests. It has always been Cordish’s practice to invest its private capital shoulder to shoulder with its governmental partners. A ground lease for the property can be problematic in getting funding for the project from private lenders. In response to a question from Council Member DeFoor, Mr. Smith said Cordish would not be willing to share its pro forma documents.

Ms. Taylor reviewed Council Auditor Amendment 2 which includes 3 clean-up items to which the developer has agreed.

**Council Auditor Amendment 2 was approved 18-0.**

Council Member Diamond described his proposed amendment to the project agreement regarding Inspector General audit rights and a prohibition against City officers or employees working on the Lot J project from subsequently taking a job with the developer or a related company for a period of five years.

Paul Harden representing the developer objected to the amendment declaring a violation of the either provision of the amendment to be a breach of the contract; the company does not want to be in the potential position of having the contract declared to be in breach for something over which the company has no control.

**The Diamond amendment #3, as amended to remove the breach of contract provisions, was approved 15-4.**

**A motion to reconsider Council Auditor Amendment 2 was approved unanimously.**

**Council Auditor Amendment 2 was approved 19-0.**

Council Member DeFoor explained the DeFoor/Hazouri proposed amendment #4 regarding the imposition of a liquidated damages clause should the Jaguars franchise leave the city in the future. Mark Lamping, President of the Jacksonville Jaguars, said the development team has agreed to a significant number of concessions and taxpayer protections throughout the negotiation process but cannot agree to a liquidated damages provision because their investment in City facilities can’t be relocated if the team were ever to move, which is not its intention. Paul Harden representing the developer said that the liquidated damages have nothing to do with Lot J but rather with the Jaguars’ lease for the stadium. John Sawyer of the Office of General Counsel said that the pending agreement is between the City and Gecko Investments, which is a company affiliated with Jaguars ownership but is not the Jaguars franchise itself, meaning that a third party not involved in this contract would be the trigger for the liquidated damages clause.

**The DeFoor/Hazouri amendment failed 5-14.**

Deputy General Counsel Peggy Sidman discussed President Hazouri’s proposed amendment #6 requested by the Council Auditor, which covers pages 20-25 of the Auditor’s comments master document discussed earlier excluded from the motion for Council Auditor’s Amendment 1. These are the Auditor’s recommendations that were not agreed to by the developer. Paul Harden explained the developer’s opposition to the proposed amendments.

**The Auditor’s recommended liquidated damages provision failed 2-16.**

**The Auditor’s recommended cost savings reconciliation provision regarding developer expenses and cost overruns was amended to remove reference to cost overruns and approved 19-0 as amended.**

**The Auditor’s recommended removal of developer expenses from the minimum investment provision failed 3-16.**

**The developer expenses amendment was reconsidered and failed 1-18.**

**The Auditor’s recommendation that the City get a 50% share of proceeds from a sale of the hotel was approved 18-0.**

**The Auditor’s recommendation that the parking agreement include a right to terminate for breach of the agreement failed 0-19.**

Council Member Salem proposed an amendment providing that if the Jaguars franchise leaves Jacksonville and Gecko Investments sells its interest in the Lot J development, then the City gets 50% of the proceeds of the sale (100% of Gecko’s half-share in the development). Additionally, if the Jaguars leave town and Gecko still owns its share of the development but is not managing it to the City’s expectations, then there would be a mechanism by which the City could compel Gecko to sell its share within 2 years and the City would receive that revenue. Council Member DeFoor proposed that the net proceeds to the City should be no less than $50 million, to which Paul Harden agreed on behalf of the developers. Council Member Dennis urged that a trigger mechanism be included regarding the City’s receipt of Gecko’s share of the proceeds should Gecko’s ownership rights ever be transferred to another entity. Several council members raised the possibility that the Jaguars franchise might be sold by Shad Khan to another owner and questioned how this amendment would apply in that instance. Mr. Harden asked that the language be removed that provides that the sale by Gecko of any portion of the development would trigger the payment to the City – the $50 million guarantee should apply only to the sale of the entire development.

**The amendment providing for the City to share in the proceeds of a sale of Lot J, should the Jaguars franchise leave Jacksonville, in an amount not less than $50 million was approved 19-0.**

Peggy Sidman distributed a list of 7 floor amendments proposed by council members during today’s meeting and asked for the Council’s authorization to OGC

**Dennis #1: amend the development agreement to provide for a 30% JSEB participation aspirational goal – approved 19-0.**

**Dennis #2: change the development agreement to require that Cordish’s insurance coverage for business loss or business interruption on the Live! building include the City as an additional insured party – approved 19-0.**

**Dennis #3: require establishment of an Eastside Economic Development Trust Fund via separate legislation providing for a $2 million initial investment by the Jaguars organization and further installments of $500,000 per year ($250,000 from the Jaguars, $250,000 from Gecko) beginning in 2025 for 16 years, including an amendment to Chapter 111 of the Ordinance Code to create the trust fund – approved 19-0.**

**Priestly Jackson #1: provide for a reporting requirement to the Council semi-annually until 2027 and then annually thereafter – approved 19-0.**

**Morgan #1: require that the developer’s required financial reports be certified, audited financial reports –**

Paul Harden stated that Shad Khan does not wish to disclose his audited financial reports and he therefore opposes this amendment. He noted that Mr. Khan’s financial statements are reviewed annually by the National Football League. The developer is willing to provide a letter certified by Gecko’s CFO attesting that Mr. Khan’s net worth exceeds what is required by the agreement.

**The Morgan #1 amendment failed 3-16**.

Kim Taylor said that the Morgan #2 amendment regarding financial records from the Cordish Companies is not necessary.

**Morgan #3: modify the development agreement to require that the City Council, in addition to the City Representative, must approve any material modifications to the master development agreement; City Council would have to file approval legislation in an expeditious manner - failed 5-13.**

**DeFoor #1: the amendment was withdrawn.**

**DeFoor #2: require commercially reasonable business efforts by the operator of the Live! development to ensure that the occupancy rate of the facility remains at 50% or above - approved 19-0.**

**Motion: roll all of the amendments approved today into a comprehensive substitute – approved.**

President Hazouri thanked the council members for a good day of productive and collegial debate. He invited the council members to propose any further amendments at next Tuesday’s council meeting.

**Motion: recommend approval of the bill as substituted -**

Council Member Becton said he still has two major concerns with the project – the City’s ownership of additional parking garages, and the $65 million construction grant. The City has a poor record of operating parking garages and the “breadbox loan” is not a standard City incentive and provides an unfair advantage to one company over others. The substitute still does not address all his concerns and the agreement is still too flawed to be approved.

Council Member Priestly Jackson said she will need additional information on how this deal impacts on the City’s debt capacity before Tuesday’s meeting because there are many other needs. Her vote on the substitute next Tuesday is contingent on what she hears about the debt capacity.

President Hazouri said he is disappointed with how much the City is going to be committed to putting into this project up-front and thinks there are still ways it could be improved. The City is facing lots of big projects in the future (Shipyards, stadium renovations, riverfront development, etc.) and that is concerning.

**The substitute was recommended for approval 15—4.**

**Meeting adjourned:** 8:23 p.m.

Minutes: Jeff Clements, Council Research Division

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5.24.22 Posted 5:00 p.m.