

January 3, 2012

URBAN RENEWAL AUTHORITY

A meeting of the Urban Renewal Authority was held on Tuesday, January 3, 2012, at 7:00 p.m. in the Council Chambers of the City of Fort Collins City Hall. Roll Call was answered by the following Boardmembers: Horak, Kottwitz, Manvel, Ohlson, Poppaw, Troxell, and Weitkunat.

Staff Members Present: Atteberry, Krajicek, Roy.

Executive Session Authorized

Vice-President Ohlson made a motion, seconded by Boardmember Manvel, that the Fort Collins Urban Renewal Authority Board go into Executive Session as permitted by Colorado Revised Statute Section 24-6-402(4)(b) for the purpose of receiving legal advice on specific legal questions related to the proposed agreement between the Urban Renewal Authority and the developer of the North College Marketplace project. Yeas: Weitkunat, Manvel, Kottwitz, Ohlson, Poppaw, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

(**Secretary's note: The Council reconvened at 7:40 p.m.)

Resolution No. 041

Authorizing the Adjustment of Line Items Pursuant to the Redevelopment Agreement Between the Fort Collins Urban Renewal Authority City of Fort Collins and 1908 North College, LLC for the North College Marketplace, Adopted

The following is staff's memorandum for this item.

“EXECUTIVE SUMMARY

In September 2008, an application for financial assistance by 1908 North College, LLC, through Loveland Commercial (Developer) was approved by the Urban Renewal Authority (URA) Board for tax increment financing (TIF) assistance for the North College Marketplace project (Project). The amount of TIF awarded was not to exceed \$8,000,000 for all public improvements. At the time of the executed Redevelopment Agreement with the URA, Exhibit C of that agreement detailed the Eligible Costs associated with the Public Improvements. As stated in the Redevelopment Agreement, the Developer must come back to the URA Board to move funds from one line item category to another with reasonable approval from the Board, with the exception of the Contingency line item which can be approved administratively by the Executive Director. The Developer has requested that the cost savings of approximately \$1,265,000 from the Off Site Street Infrastructure line item (College/Wilcox Intersection improvements) be transferred to the On Site Utilities line item for cost overruns related thereto.

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The Off Site Street Infrastructure funds were allocated and loaned by the City to the URA in May 2009 for the purpose of constructing the College Avenue and Willox Lane intersection as a Capital Improvement Project (CIP). These intersection improvements, including the roundabout on Willox Lane, were completed in October 2010. As stated above, the Developer has requested the cost savings from this line item category be transferred to pay for cost overages within the On Site Utilities line item and has submitted documentation supporting its request.

The parties have gone through many months of negotiation to come to an agreement acceptable to both parties to bring forward to the URA Board for consideration. Staff and the Developer have agreed, subject to approval of the Authority Board, to share the cost savings from the Off Site Street improvements that will reimburse the Developer for certain cost overages, pay related interest charges within the \$8,000,000 original appropriation, incentivize the project to continue building as planned, and allow the URA to retain a portion of the cost savings. Additionally, the Developer will absorb approximately \$711,000 in eligible, but unreimbursed public improvement costs as part of this proposal.

BACKGROUND / DISCUSSION

On September 16, 2008 the URA Board approved Resolution No. 011, authorizing a Redevelopment Agreement between the URA and the Developer to provide financial assistance for North College Marketplace. It was determined at that time that the URA would construct the road on behalf of the Developer to ensure the road construction occurred prior to the opening of King Soopers. The City loaned the URA funds in the amount of \$5 million in May 2009 for those public improvements associated with the first three line items of Exhibit C of the Redevelopment Agreement (Agreement) including the Off Site Street Infrastructure. Exactly \$2,812,620 of the \$5 million was appropriated to the City Engineering department to complete the Off Site Street Infrastructure for the College Avenue and Willox Lane intersection. (Attachment 4)

The Off Site Street Infrastructure (road improvements at College Avenue and Willox Lane) actual costs came in significantly under budget. According to the memo sent by City Engineering, who facilitated the construction on behalf of the URA:

“The project was fast-tracked and the costs for the roadway improvements were based on conceptual cost estimates. These conceptual estimates were completed prior to the engineering plans being started. Without any engineering and without CDOT approval for either the construction or the North College Access Plan revisions, the original cost estimates were a “worst case” cost.

On May 19, 2009, City Council appropriated \$2,812,620 from the URA into the Capital Projects Fund for the construction of the College and Willox Improvements. The project used \$1,548,079.31 in URA funding to construct the local street portion of the Marketplace road improvements on College and Willox and the improvements to the existing businesses on the west side of College.

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There remains \$1,264,540.69 in project savings appropriated in URA funds into the College and Willox Capital Improvement Project Fund. This appropriation will expire once the project is closed out by the City Finance Department. However, this project cannot be financially closed out until the two year warrantee period is completed in February of 2013.” (Attachment 3)

At the time the Agreement was being finalized, the use of eminent domain was a real possibility, as well as the cost to acquire the right-of-way had yet to be determined. City staff engineers preferred to over-estimate the cost of the project based on the significant amount of unknowns at this time, than to underestimate the project and not complete it on time for the opening of the King Sooper's store.

The original budget for the roadway improvements totaled \$4.7 million, using both URA and Street Oversizing as the two funding sources. This preliminary estimation was a worst case scenario since the project has not yet been bid. The final project cost \$2.6 million to construct, approximately \$2.1 million under budget, thus saving both the URA and Street Oversizing a significant amount from the original estimates. The URA will receive a cost savings of approximately \$1.255 million and the remaining \$900K to the Oversizing Fund.

The Developer submitted a letter to the URA on March 25, 2011 (Attachment 2) requesting to transfer the cost savings from the Off Site Infrastructure line item to the On Site Utilities line item for the purpose of covering cost overruns within the On Site Utilities category pursuant to the Redevelopment Agreement. Since the original request was received, staff has been in conversation and negotiation with the Developer to come up with an acceptable compromise that allows benefit to both the project and to the URA.

This project continues to be an asset and destination location for the northern gateway into the City. In the original presentation to the URA Board, several key benefits were named for the completion of the North College Marketplace that staff continues to believe are valid if the project continues to build to its completion. As originally listed, the key benefits are:

- 1. The Urban Renewal Authority gains a redevelopment project that revitalizes North College and serves as a catalyst to future investment in the Plan Area.*
- 2. The Urban Renewal Authority provides financial assistance to a key catalyst site on North College that should foster additional retail and commercial development.*
- 3. The Urban Renewal Authority gains an additional \$4.6 million for other public improvements in the Plan Area.*
- 4. The City benefits from an improved intersection at College Avenue/Wilcox Lane that includes the related pedestrian walkways and much needed public infrastructure.*
- 5. The City gains a new roundabout at Wilcox Lane to facilitate the traffic flow between both the North College Marketplace and the retail center anchored by Albertsons to the south.*

6. *The City achieves a distinctive gateway at its northern entrance that increases the profile of the area.*
7. *The wetlands are appropriately mitigated and add to the ambience of the area and the North College gateway.*

Request by the Developer

The URA received a letter from North College Marketplace, requesting the re-allocation of funds from The Off-Site Streets line item to the On-Site Utilities line item on March 25, 2011. The need for such re-allocation, as stated in the letter:

“is based on several factors relating to the installation of the on-site utilities including:

1. *an underestimated cost estimate from our engineer relating to unknown site and soil conditions at the time of the original estimate,*
2. *additional City requirements from the development review process including the addition of bio-swales and other unanticipated improvements to the storm water system, and*
3. *overages related to the estimation of the design and other engineering costs associated with the project utilities.” (Attachment 2)*

Table 1 – Budget to Actual for On-Site Utilities (information provided by Developer)*

| Sub category | Budgeted | Actual Cost | Variance |
|---|--------------------|--------------------|--------------------|
| <i>Sanitary Sewer</i> | <i>\$114,930</i> | <i>\$262,883</i> | <i>\$147,953</i> |
| <i>Storm Sewer / Bio-Swales</i> | <i>\$338,100</i> | <i>\$704,371</i> | <i>\$366,271</i> |
| <i>Water lines</i> | <i>\$238,315</i> | <i>\$257,305</i> | <i>\$18,990</i> |
| <i>Site Stabilization Materials</i> | <i>\$ -</i> | <i>\$353,150</i> | <i>\$353,150</i> |
| <i>Mobilization, Surveying, and Permits</i> | <i>\$ -</i> | <i>\$201,341</i> | <i>\$201,341</i> |
| <i>Gas (Xcel)</i> | <i>\$77,580</i> | <i>\$14,998</i> | <i>\$(62,582)</i> |
| <i>Electric (City of Fort Collins)</i> | <i>\$49,363</i> | <i>\$186,827</i> | <i>\$137,464</i> |
| <i>Design Engineering and Administration</i> | <i>\$81,829</i> | <i>\$363,561</i> | <i>\$281,732</i> |
| <i>Contingency (built into this On-Site Utilities line item budget - approx. 10% of cost)</i> | <i>\$122,743</i> | <i>\$ -</i> | <i>\$(122,743)</i> |
| Total | \$1,022,860 | \$2,344,436 | \$1,321,576 |

**More detailed information found on page 3 of David H Bower, CPA letter (within Attachment 5)*

As mentioned above, there have been many months of negotiation and fact-checking since receiving the first request from the Developer on March 25, 2011. Staff has worked diligently with both the Developer’s team and the City’s development review team to determine the best case scenario for the project and for the URA.

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Staff has evaluated the request for additional funds applied to the On-Site Utilities category, explored the request with Development Review staff, Utilities, and Engineering, and researched comments from all staff reviews to determine a recommendation of appropriate unanticipated expense reimbursement.

Additionally, the URA and developer jointly funded a third party consultant to research and evaluate the budgeted costs versus actual costs spent for reasonableness in both the Off Site Street Infrastructure and the remaining line items, especially On Site Utilities. The information should be complete in order to present to the URA Board in January 2012.

Financial Considerations Related to North College Marketplace

1. *Original URA appropriation was \$8 million and did not provide for interest owed to Developer to be paid above the original appropriation. The proposed settlement pays Developer interest within the original appropriation.*
2. *The On-Site Utilities portion of Project exceeded preliminary budget estimates by over \$1.4 million and estimates agreed to by the parties within the Redevelopment Agreement.*
3. *The Off-Site Street Improvements were completed within and under the "worst case" budget estimates agreed to by the parties.*
4. *Wetlands mitigation is an ongoing obligation for the maintenance and monitoring will remain with and funded by the Developer and is subject to separate agreements. (Development Agreement and the Redevelopment Agreement)*
5. *Warranty on street improvements is an Authority obligation and will not expire until February 2013.*
6. *TIF revenue shortfall from the original projection is related to construction timing, County assessor's valuation and market conditions.*

Based on the desire to see this project move forward and come to completion in the near future, staff has pursued sharing a portion of the Off Site Street Improvement cost savings with the Developer. A portion of the savings should be applied to an incentive for Developer to continue building out the project to completion.

Staff and the Developer are supportive of contributing to half the overage amounts incurred within the On Site Utility Line Item for the Sanitary Sewer (\$73,976), and the Stormwater improvements (\$183,136). This amount totals \$257,112. In addition to those costs, staff and the Developer are supportive of paying the cost overages of the Site Stabilization Materials within the same line item. This amount totals \$353,150. The amount staff and the Developer are supportive of for hard costs expended is \$610,262. This amount is referred to in a later chart as approximately \$610,000 which has been rounded to the nearest thousand. Refer to the table below for an illustration of the costs

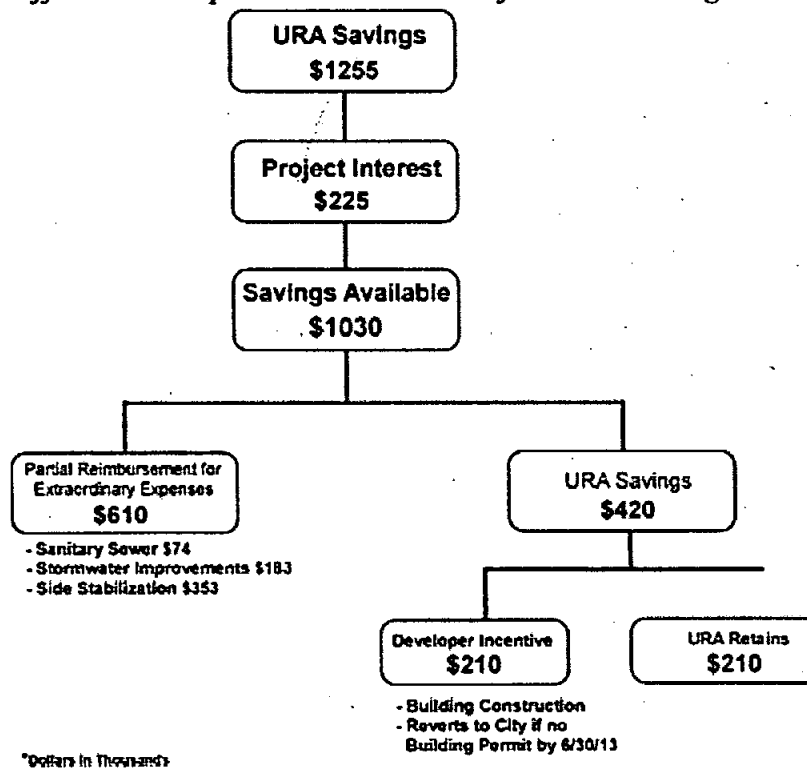
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staff is supportive of sharing that relate to the On Site Utilities cost overruns. Table 1 above shows the Developer's list of cost overruns and Table 2 is the recommendation.

Table 2 – Hard Costs Supported by Staff

| Sub category | Budgeted | Actual Cost | Staff Support for Costs above Budget |
|------------------------------|----------------|------------------|--------------------------------------|
| Sanitary Sewer | \$114,930 | \$262,883 | \$73,976 |
| Storm Sewer / Bio-Swales | \$338,100 | \$704,371 | \$183,136 |
| Site Stabilization Materials | \$ - | \$353,150 | \$353,150 |
| Total | 453,030 | 1,320,404 | \$610,262 |

Illustration 1 - Staff and Developer Recommendation for Cost Sharing



Through many months of negotiation, staff and the Developer have come to an agreement acceptable to both parties to bring to the URA Board for consideration. Staff recommends the sharing of the cost savings from the Off Site Street improvements as illustrated above that will reimburse the Developer for certain cost overruns in the On-Site Utilities category, pay related interest charges within the original \$8 million appropriation, incentivize the project to continue building and complete build-out, and allow the URA to keep some of the cost savings. (Illustration 1)

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According to the Redevelopment Agreement, the Developer has the right with reasonable approval from the URA Board to move funds between line items and the prior request was to move the entire savings from Off-Site Streets to On-Site Utilities for reimbursement. However, in this proposal, the parties have agreed to include interest due within the original \$8 million appropriation, to leave a portion of the funds for future project build-out incentives, and allow the URA to retain a portion of the cost savings.

Staff has put together a table that shows the payments paid to date for the entire project, the payments received by the Developer, as well as the impact of the agreement negotiated on the TIF award. See the table below.

Table 3 – Payments

| <i>Redevelopment Agreement Line Items from Exhibit C</i> | <i>Original Line Item Budget</i> | <i>To Date Paid to Developer for Eligible Costs</i> | <i>Approximate Amount Paid to date plus agreement terms (rounded to the nearest 1,000)</i> |
|---|----------------------------------|---|--|
| <i>Off Site Street Infrastructure (City Project, Reimburse only Engineering Costs)</i> | \$2,812,620 | \$159,099 | \$1,557,000 |
| <i>Demolition, Property Cleanup and Site Preparation Costs</i> | \$366,650 | \$366,650 | \$375,000 |
| <i>Wetlands Mitigation, Landscaping, Unsuitable Materials and payment to the Wetland's Reserve Fund</i> | \$1,763,206 | \$1,763,206 | \$2,001,000 |
| <i>On-Site Utilities</i> | \$1,022,861 | \$1,022,861 | \$1,196,000 |
| <i>Gateway/Landscaping/Pedestrian Connection/Grading/North/South Circulation and College Avenue Public Access Easement/Paving of Grape Street</i> | \$1,702,128 | \$1,418,608 | \$1,457,000 |
| <i>Relocation Assistance</i> | \$10,000 | \$10,000 | \$11,000 |
| <i>Contingency</i> | \$322,535 | \$315,895 | |
| <i>Interest</i> | \$0 | \$149,979 | |
| <i>Subtotal</i> | \$8,000,000 | \$5,206,298 | \$6,597,000 |
| <i>Remaining Balance</i> | | | \$1,403,000 |
| <i>Staff Recommendation for Additional Reimbursement</i> | | | \$610,000 |
| <i>Interest Payment</i> | | | \$75,000* |
| <i>Eligible Costs still available (Gateway)</i> | | | \$290,000 |
| <i>Incentive (Wetlands, add'l building)</i> | | | \$210,000 |
| <i>URA retain portion</i> | | | \$210,000 |
| <i>Total</i> | | | \$8,000,000** |

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**Actual amount \$149,979 of the \$225,000 has been paid to the Developer, \$75,000 is approximate.*

***Actual amounts are rounded up to the nearest thousand in this column. Actual costs will be based on invoices within the latest pay application.*

If the URA Board agrees with the staff recommendation, the amount of \$610,262 would be transferred from the Off Site Infrastructure reimbursement line item and would be reimbursed to the Developer for costs associated with the On Site Utilities and the Developer would absorb approximately \$711,000 in Eligible Public Improvement cost overruns. Additionally, payment would be made to the Developer for the remaining interest of \$75,000 still owed under the Redevelopment Agreement. In this proposal, the ongoing wetlands monitoring and maintenance remains a Developer responsibility. By splitting the remaining available funds with the Developer, it supports the URA's desire to continue progress of development of the project. The URA would retain approximately \$210,000. The remaining \$210,000 would go into an escrow account for the Developer to use towards cost reimbursements related to future buildings within the Development and would require the Developer to obtain a building permit by June 30, 2013. If these funds are not used, they will revert back to the URA.

In summary, the proposal specifically addresses the URA's concerns related to having money available for ongoing maintenance and warranty obligations associated with the Off Site Streets, provides for Developer interest to be paid within the original \$8 million appropriation, provides incentive to the Developer for quicker build-out of the project, and provides for a portion of the cost savings to be retained by the URA."

Mike Beckstead, Chief Financial Officer, stated this Resolution summarizes the City's objectives in reaching a settlement with the developer.

Christina Vincent, Redevelopment Program Administrator, discussed the project site and previous actions taken by the URA Board regarding the project. The developer's request is to move the cost savings from the offsite street infrastructure line item to some of the onsite utilities that were cost overruns. Vincent detailed the additional costs and stated staff is proposing that the overage cost of the storm sewer, sanitary sewer, and site stabilization materials be split between the URA and the developer. The additional \$420,000 in savings would also be split and used as an incentive for additional development on the site.

Eric Holsapple, North College Marketplace developer, discussed the success of the project and stated it would not exist without the support of the URA. He noted there were no budget overages once construction began but street savings could not be capitalized upon until the street work was complete and those savings were documented.

Nathan Klein, North College Marketplace developer, provided an update regarding the project and building leases.

Lucia Liley, attorney representing the North College Marketplace developer, supported the settlement agreement.

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Mr. Holsapple stated his company has delivered on every aspect of the project, within the budget and timeframe, and requested support of the settlement agreement.

Boardmember Kottwitz made a motion, seconded by Boardmember Troxell, to adopt Resolution No. 041.

Vice-President Ohlson asked about the status of the wetlands on the site and requested input as to the purpose of the incentives. Vincent replied the developer has taken on the responsibility of the wetlands as part of the development agreement and the wetlands are not part of the incentive.

Vice-President Ohlson asked why an extra \$210,000 is being provided as an incentive given \$8 million was already provided. Vincent replied the redevelopment agreement is based only on the King Soopers building, which is meant to be a catalyst for redevelopment in the immediate area. Mr. Holsapple replied the \$210,000 is within the \$8 million and stated he is actually receiving \$435,000 less due to the agreement.

President Weitkunat asked about possible upcoming projects. Mr. Klein replied a proposal from a junior box anchor tenant has been received for Lot 2. However, it requires significantly subsidized rent. Additionally, a 5,000 square-foot multi-tenant retail building has been proposed for Lot 5 and a contract has been presented for Lot 7.

Vice-President Ohlson asked why incentives are being provided given the certainty of additional projects. Beckstead replied market conditions are significantly different than they were in 2008 and rents on the property contracts make it difficult to financially float the projects. Mr. Holsapple replied at least two of the three aforementioned projects will not occur without the settlement.

Boardmember Manvel stated he would support the motion.

Boardmember Troxell supported the project and stated he would support the motion.

Vice-President Ohlson stated he would not support the motion and expressed concern regarding the ambiguity of the agreement.

Boardmember Horak stated he would support the motion.

President Weitkunat stated this project exemplifies the necessity of the North College URA.

The vote on the motion was as follows: Yeas: Weitkunat, Manvel, Kottwitz, Horak and Troxell.
Nays: Ohlson and Poppaw.

THE MOTION CARRIED.

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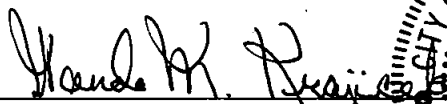
Adjournment

The meeting adjourned at 8:30 p.m.



Mayor, Ex Officio President

ATTEST:



City Clerk, Ex Officio Secretary

