

Councilmember Rader - Questions Regarding the Hospital Property D&U Agreement.

Comments & Questions drafted by Councilmember Rader with help from members of the community.

Submitted to the City Planning and Development Department for response - 11/5/2018

RECITALS

B. How is this development “in the best interest of the City and the health, safety and welfare of its residents” – I understand the employment and economic aspects, but I’m at a loss how this is improving our health safety and welfare? Please explain:

1.1 What does this mean? "...shall reflect a mix of uses that is responsive to community demand and additive to the retail base in the City of Lakewood..." Wouldn't building even one square foot of "retail space" be "additive to the retail base"?

1.2 “City’s prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed,” – Seems Carnegie will not be managing the residential, and the city basically has to sign off – will they also be able to sell off portions of the project? I don’t see anything preventing future sale. Please explain:

“In the event that Developer engages an Unaffiliated Residential Development Partner that is approved by the City hereunder, Developer shall be forever released from any further obligations or liabilities hereunder with respect to the Minimum Residential Component of the Project.” – Explain this – Seems the minimum residential component is only valid until Carnegie sells the residential component or contracts a company to manage it for them.

1.3 c) There is no mention of making the Curtis Block building ADA complaint or any commitment at all to accessibility of the Curtis Block building... In fact, accessibility, disability, and ADA are not mentioned once in the entire document. I’m personally very concerned with the lack consideration in terms of making this a place for ALL Lakewood. We are making a serious investment here of public assets, we need to do better! Please explain why this is missing. Please explain plans to include these requirements, if any:

1.4 This paragraph includes "first class" twice, with a hyphen once and without in the other instance. What is the definition of “first class” and “first-class” are these different?

I gather that the “public space” is a concrete slab, correct? Will this incorporate green space? Will the city have any control over design? There does not seem to be any sort of requirements about space design aside from the size. (mentioned later, it will need to comply with existing code, but that seems to be it.) Please explain:

b) “Clinic has a right to obligate the City to enter into a parking lease for a portion of the Development Site (the “Parking Lease”).” - I read this to mean the CD&M has the absolute right to terminate the contract, if City can't deliver on the Parking Lease. Is this obligation restricted? What

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was the thinking behind letting the Clinic have a claim on this site's? Does the city have any financial obligation relating the parking lease? Please explain:

2.1 "Developer for any reason (or no reason) in Developer's sole determination and, upon such termination, the parties' obligations under this Agreement shall terminate, except" – What happens to the land in this case? IF the Developer terminates, It's a little unclear to me. Please explain:

Indemnification clause seems solid.

2.2 Seems agreeable.

2.3 (e) Is paying ½ the closing costs typical?

I think it important to include these costs along with legal fees up to this point and beyond in any further analysis of as the city's investment in this deal. i.e. ROI or payback figures presented to the public.

2.4 (viii) Was this section a result of the tax payer lawsuit, referendums, and other challenges to the Clinic Master Agreement. Does anyone involved in the drafting or approval of this contract anticipate a challenge to this agreement? Please explain:

2.6 (b) Is there some concern that the residential component might not be workable? Seems a pretty good exit path. I thought the residential component was one of the more solid aspects of the project? Please explain:

c) What does "approved by the City" mean? Does the city mean the mayor in all instances in this agreement? Also, this whole section seems weird. If the property reverts to Lakewood, "...the City shall pay Developer an amount equal to any increase in value" that occurred while off the city books? Please explain:

Once the city remediates the property, it will be worth substantially more. In this instance, would we owe them the difference between \$0 or \$1 and the assessed value at time of termination? Or would the remediation the city does be accounted for? I really don't understand this, please explain in detail:

3.1 c) "There is no litigation, proceeding or action pending or, to the best knowledge of [the City]..." – Are there any document retention notices, or any other notices, relating to the master agreement, thus relating to the property? Please explain:

5.1 " "High quality materials" shall mean durable and authentic materials containing thoughtful detailing." - What would qualify as in-authentic material? Can you give examples? Is there a legal definition? This is vague. Please explain:

"...will seamlessly integrate with the design, massing and materials of existing commercial buildings" – Seeing as our downtown is extremely eclectic in terms of commercial design,

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this is slightly meaningless. – no explanation needed, just seems a very cookie cutter phrase, making the document feel out of touch.

The URL, onelakewood.com/DowntownRFO, does not load. Consider having this ready for Monday's meeting. Even if there is little content, public facing links should work.

5.4 Again, it is very important that future subsidies that this section allows or might be anticipated **must** be included in any and all figures presented to the public.

5.6 When will this plan to minimize impact on the community during construction be discussed and worked out? I think that at least Wards 2 and 3 Councilmembers should have input on this and work with the Mayor on plan development. Please explain:

5.9 (b) "... to the extent economically feasible in Developer's sole discretion, the following elements:" – What guarantees do we have that 5.9 (b) to the end of 5.9 will be implemented? Please explain:

The agreement should include detailed, firm specifications for parking, "exploring" bike infrastructure is not sufficient. The concern with sustainability seems perfunctory.

What about bio swales, roof top gardens, water permeable services? These have all been discussed at some point. What was the rationale behind not including them here? Please explain:

6.1 (b) (i) What is the O&M plan? It is referred to and supposedly defined by this agreement, but I'm failing to find a concise definition. I assume it means "Operation and Management?" Please explain:

The Public Plaza Purpose is defined as: "The Public Plaza shall be a first-class, multi-functional community gathering space dedicated to public use." In section 1.4 is this correct?

This section seems pretty good as a whole. Though, I'm concerned about the preservation of freedom of speech. To me one of the major differences between public and private land, as far as the citizenry is concerned, is how the first amendment treats them very differently.

7.1 Seems the O&M plan is an extremely important instrument in making and keeping this public/private space accessible to the public. Will council play a role in this documents development and approval? Please explain:

7.2 "...[Public Plaza] shall be available to the City, without rental or other similar charges, for a maximum of fifteen (15) City-sponsored community events..." – Why 15 events per year? Where did this number come from? Please explain:

9.3 (b) "... the City shall pay Developer an amount equal to any increase in value from the Pre-Closing Appraised Value for the component at issue to the Post-Closing Appraised Value for the component at issue, less any sums required to payoff and release in full the Secured

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Liens.” – similar to 2.6 (c) same question – Please explain if answer is at all different from that given for 2.6 (c)

10.1 Community engagement - This section is vague. I would like to see some commitment to having a minimum number of meeting with residents, mailing regarding construction, guarantee to responded to email and social media messages within 24 hours. A promise to make weekly updates on social media, via email and via the city’s website. Maintaining a list of those who would like updates on progress.

13.1 Reading the names in this section, I am once again left wondering where are the women in this allegedly "Women-Owned Small Business (WOSB) builder-developer."