

FORT HARRISON REUSE AUTHORITY BOARD MINUTES
MARCH 24, 2008

FHRA Board Members Present

Ms. Ann Lathrop, President
Ms. Kris Butler, Vice President
Mr. Quake Pletcher, Secretary/Treasurer
Mr. Keith Mathews, Member

FHRA Staff

Ms. Cassandra Ashley-Jordan, Executive Director
Ms. Doris Combs, Executive Assistant

Members of the Public

Ms. April Pyatt, Ice Miller
Mayor Paul Ricketts, City of Lawrence
Mr. Tom Crouch, City of Lawrence
Ms. Kim Reeves, Browning
Mr. Joe Desormiers, Browning
Mr. Robert G. Bogigian, Dickmann Reason & Bogigian
Mr. Arthur Baskin, Loop Resident
Ms. Maureen Viscomi, Lawton Loop
Ms. Linda Calip, Lawton Loop
Ms. Dianna Miller, Lawton Loop
Mr. Bob Pychinka, Lawton Loop
Mr. Robert Overton, Lawton Loop
Mr. Tim McCoy, YMCA
Mr. Brett Dodd, RQAW

A copy of the public agenda is attached.

Meeting was called to order at 5:32.

1. The first item on the agenda was the approval of the February 25, 2008 minutes. Ms. Lathrop called for a motion to approve the minutes. Ms. Butler made the motion and Mr. Mathews seconded. The vote was unanimous to approve the February 25, 2008 minutes.

2. The second item on the agenda was the presentation of FHRA 2008 operating budget. Ms. Lathrop asked Ms. Ashley-Jordan to give an overview of the 2008 operating budget for FHRA. Ms. Ashley-Jordan stated the FHRA 2008 operating budget is as follows:

The operating budget is funded by tenant rent and land sales and any interest that comes off the money that is in the account. There are four general categories which, these are expenditures, are general office, general personnel, general maintenance and general utilities. Each month the top line items are showcased with the greatest variance. In this particular case, February is shown because all March expenditures are not in and the top three variances are legal, architectural and engineering and payroll taxes. The variances are positive meaning FHRA incurred savings on all three top expenditures. Ms. Ashley-Jordan recommended to the board, in order to get an accurate reflection of how the FHRA operating budget works, the operating budget be presented to the board quarterly. The next budget would be brought before the board in June, then September, November the 2009 budget and in December final quarter of 2008.

Ms. Lathrop called for a motion to approve the budget. Mr. Mathews made the motion and Ms. Butler seconded. The vote was unanimous to approve the FHRA operating budget.

3. The third item on the agenda was an update on status of FHRA 2008 capital budget. Ms. Ashley-Jordan stated that due to the uncertain nature of the property tax issue pending in the legislature, FHRA is still putting together a firmer idea and firmer financial picture of what the TIF revenues would show. FHRA just received from the financial consultants the circuit breaker analysis regarding FHRA TIF revenues. Ms. Ashley-Jordan recommended the board postpone the 2008 capital budget presentation until the April 21 meeting. FHRA is working with Browning, the development consultant, on the capital budget.

Ms. Lathrop asked if the budget the board sees in April would be a reflection of what the property tax bill holds. Ms. Ashley-Jordan stated that was correct. Ms. Lathrop stated no action was required by the board.

4. The fourth item on the agenda is the final approval of YMCA lease amendment. Ms. Lathrop commented that this item has come before the board in the past, but there has been a new election of officers. The lease needs to come before this board and be re-radified for approval. Ms. Lathrop asked if there were any changes made to the lease. Ms. Ashley-Jordan stated no and gave a brief history. The YMCA has been working with FHRA for over two years on the development and expansion of the YMCA services to the Lawrence community. As part of that initiative the YMCA requested an amendment to its lease to include an additional 3.31 acres to the south and west of its current Fort Harrison branch. The land would be used to develop an outdoor water park, bathhouse, day camp pavilion and added parking. In consideration for this lease amendment for additional acreage, the YMCA will:

a. Extend its lease term for two years and pay a base rent of \$24,000 per year as defined in the lease.

b. Provide 40 new youth/family scholarship memberships per year for 15 years to Lawrence Township students with obesity health risks and financial needs.

c. Pay \$10,000 (due 30 days from the execution of lease amendment) for the opportunity to complete the project expansion within approximately 48 months of execution of the lease amendment.

Ms. Ashley-Jordan stated that due to board election of new president/vice president/secretary and new members FHRA board needs to acknowledge this transition and reapprove the request and get a resolution and get signatures of board president and secretary/treasurer.

Mr. Mathews asked who determines who gets the scholarships – the YMCA?

Ms. Ashley-Jordan stated the schools, along with the YMCA and FHRA.

Ms. Lathrop asked for a motion to approve the YMCA lease. Ms. Butler made the motion and Mr. Mathews seconded. Mr. Pletcher did not vote because he is a member of the YMCA board. The vote was 3-0 to approve the YMCA lease.

5. The fifth item on the agenda was the consideration and approval of Adam Theis of Eden Collaborative as a member of the ARC committee. Mr. Theis was the Master Planner who helped FHRA develop the original master planning document and the PUD. Adam has been helping as an advisor and FHRA would like to make him a permanent member of the ARC committee. Ms. Lathrop called for a motion to approve to make Mr. Thies a member of the ARC committee. Mr. Pletcher made the motion and Ms. Butler seconded. The vote was unanimous to make Mr. Theis a permanent member of the ARC committee.

6. The sixth item on the agenda was the rate swap. Ms. Lathrop stated that FHRA has been watching the latest financial market on whether FHRA is going to fix some of the variable rate debt. The latest report FHRA received indicated we could potentially end up fixing some of the debt, but the savings are not substantial at this point. FHRA will not have any board action today, but will continue to monitor the situation. The biggest part of the report now is FHRA did get a preliminary analysis of what the property tax changes are and the impact on the Reuse Authority funding for future capital. Preliminary analysis says our TIF collections could come in between \$235,000-\$435,000 less each year which will have an impact on our ability to bond for future project and put in additional dollars for capital. The good news is they did not shut us down and FHRA still has a mechanism for getting money. There will no action on the rate swap.

7. Ms. Ashley-Jordan, Executive Director, gave an update on two change order requests. On the demolition of the old commissary-PX and Area 5, a number of pipes, waterlines, concrete foundational walls and slabs were found during demolition. Therefore, demolition completion date has been moved to end of April and two change orders totaling \$162,447.18 is required action by this board.

a. First, Casey Bertram, who is doing actual demolition. There is removal of pipes and trees that were not initially earmarked to be removed. These have to be removed now because the pipes that need to be removed are underneath the trees. There are additional foundation walls and a concrete slab which was not included in the construction document. The total amount of this change order is \$157,447.18. FHRA anticipates some additional change orders due to some confusion on the drawings that Casey Bertram is using to determine which pipes to pull and which pipes to leave. As of now, FHRA does not have a cost estimate of what those additional change orders will be, but just be aware there will be some.

b. The second change order request is from AirCo, the asbestos abatement company, who was hired to remove any asbestos found. At this point there is transite asbestos pipes that were found and had to be removed. The current cost is \$5,000.00. However, FHRA does anticipate another change order because additional transite pipes have recently been found. It will be significantly higher than \$5,000.00. They are still working on the costs and they are estimated to be over \$80,000.00

Ms. Ashley-Jordan recommended the board approve the change order requests: (1) Casey Bertram, \$157,447.18; and (2) AirCo, \$5,000.00.

Ms. Lathrop wanted to clarify that the board could anticipate seeing more change requests coming before them in April and that they would be six figures. Ms. Ashley-Jordan responded yes.

Ms. Lathrop called for a motion to approve the change order requests. Mr. Pletcher made the motion and Mr. Mathews seconded. The vote was unanimous to approve the change order requests in the amount of \$162,447.18.

8. Ms. Lathrop asked Mr. Brett Dodd to give an update on VLB with a new estimated timeframe on when the building will be completed the building; then April Pyatt to talk about the remedies that are available from the Reuse Authority's perspective, what FHRA could do related to VLB project, then open the floor for 10 minutes for public comment. If individuals comment publicly, please state your name and spell it so it can be reflected accurately in the minutes. Limit comments to 1-2 minutes. The board will take an action at that time.

Mr. Dodd stated the contractors are back at work on Building 666, Davis Building. Their anticipated schedule for completion is June. VLB had a meeting with two property owners north of Building 666, which is an insurance company and Triade. There are some issues with the property. An e:mail was forwarded to Ms. Ashley-Jordan asking for

assistance with this issue. A right on way was deeded through their property to connect up with the east side circulation unit which goes around behind the Garrison building and VLB wants to vacate that. They don't need it any longer and it would free up property for them to reconfigure their parking and make it more effective. They would like to be able to separate the circulation from their buildings and the development south. It is platted, probably with the city, but is in the FHRA area of development and VLB is not sure how to take care of it without changing that plat.

VLB also had meeting with the West side of the Loop on Thursday. Six people showed up. The intent of the meeting was to give the residence a chance to voice express their concerns and issues with the project and see if we could come to some resolution. The first thing VLB wanted was to understand what the concerns were. What VLB found out was their priorities and the things they would like to see happen are very consistent with what VLB wants to accomplish. Their interests are not dissimilar by any means; they are very well aligned, but it is a matter of lack of communication. VLB had a very good open dialogue. FHRA will receive a copy of the summary of the issues which includes re-examining Building 672, which VLB is looking at other options instead of housing, maybe office condo. VLB is looking at a relationship with Lily. Lily has asked to potentially lease that building for apartments for people who are coming in from out of town for long stays working with their scientists. Also the owner immediately to the west has expressed an interest in developing the property. VLB is also looking at redefining the product of the two remaining garrison buildings that have not been developed.

Ms Pyatt, Counsel, asked if VLB had a definitive date for completion date.

Mr. Dodd replied first part of June. VLB is asking for some flexibility in completing the project.

Ms. Lathrop asked Ms. Pyatt, as a resident expert, to give a brief history on the project which has been ongoing since 2000, and the remedies which are available to the Reuse Authority under FHRA's contract.

Ms. Pyatt, Ice Miller, responded as outlined on July 26, 2000, the Reuse Authority sold three buildings, 666, 667, and 668 on the Loop to VLB. FHRA and VLB entered into a performance agreement. Under that performance agreement VLB was to complete those buildings by January 26, 2004. If VLB failed to perform the Reuse Authority would be entitled to \$55,000, the maximum penalty for a year, or \$150.60 per day. At this time, under that performance agreement, the Reuse Authority is entitled to \$55,000. In 2003, the Reuse Authority sold Buildings 670, 671, and 672 to VLB. VLB was to complete those buildings by March 25, 2008. The same remedy is \$150.60 per day. If VLB didn't complete in a year she owes \$55,000.

Ms. Lathrop asked if the total was \$55,000.00 on the first and second and it is not an annual renewable penalty.

Ms. Pyatt stated the answer is no – it is the maximum.

Someone in the audience asked about Building 669.

Ms. Pyatt stated that Building 669, in the purchase agreement, was always condition of completion. Originally it was to be a club house. It was the Reuse Authority understanding that the West side wanted a club house; then was told the West side did not want a club house. Ms. Pyatt stated since it was to be a club house for the owners, to her knowledge, there is nothing the Reuse Authority has put in writing.

Mr. Dodd asked if Building 669 was VLB's to develop.

Ms. Pyatt said she believed VLB owns it unless she transferred it to the Homeowners's Association.

Mr. Baskin stated it was transferred to the Homeowners Association and the reason it is a concern is that it is listed as an possible inclusion in the Eastside Association.

Ms. Lathrop asked if those were the two remedies available to FHRA - \$55,000 based on the first three buildings not being completed in 2004; and starting on March 26, Wednesday, an assessment of \$150.68 each day up to \$55,000.00

Ms. Pyatt stated this would eventually get FHRA to March 21, 2009.

Ms. Lathrop asked if anyone in the audience would like to speak on the VLB items.

Mr. Bagigian, an attorney, who represented some of the homeowners on the East side, stated Ms. Pyatt stated at this point VLB is liable for the \$55,000.00 liquidated damages. Have they been assessed, or is that what you are considering tonight?

Ms Lathrop replied that is what the board is considering this evening.

Mr. Bagigian asked if he understood correctly that the \$150.68 per day had not been collected to date on the liquidated debt that has accrued since the original completion date.

Ms. Lathrop stated there were two pieces. The first is FHRA can assess up to \$55,000.00 because that time period is passed and FHRA can assess the full \$55,000.00. The second is starting on Wednesday, March 26, 2008, FHRA can start assessing at \$150.68 per day up to \$55,000.00 over the next year.

Mr. Overton stated he was interested in knowing how is the \$55,000.00 was assessed. Is this because the project was not completed within a year of the original date or because the project is still not completed?

Ms. Lathrop replied because it was not completed as of the date listed in the performance agreement which was back in 2004.

Mr. Dodd asked if VLB could get an extension on that.

Ms. Pyatt stated she could not find an extension agreement in her files and she could not imagine it would be for another four years.

Mr. Overton asked if the board was looking for justification to assess the \$55,000 penalty.

Ms. Lathrop replies that the passage of the dates is justification.

Mr. Overton asked if the board anticipated assessing the \$150.68 per day beginning now or waiting.

Ms. Lathrop stated she needed a motion from the board and she thanked Mr. Dodd for his time and effort that he put into the project.

Ms. Lathrop asked the board what they would like to do. Ms. Butler moved that the board assess the \$55,000.

Ms. Lathrop stated the board would make a motion to assess the \$55,000 on the first remedy. Mr. Pletcher seconded. The vote was unanimous to move forward on assessing the \$55,000 penalty.

Mayor Ricketts asked if a lien could be put against the property if the assessment was not paid.

Ms. Pyatt said it would be a lien against the remaining property that she owns.

Ms. Lathrop asked what the board's belief in moving forward on \$150.68 on a go forward basis starting on Wednesday, March 26, 2008.

Mr. Mathews recommended the board assess that penalty and bill it quarterly. Mr. Pletcher seconded. The vote was unanimous to start assessing \$150.68 penalty daily and bill quarterly starting March 26, 2008.

Ms. Lathrop stated FHRA would move forward with sending a demand letter and continuing dialogue with VLB. An update will be presented at next month's board meeting on status of collection.

Meeting was adjourned.

