

## HOW TO USE COMMITTEE/COMMISSION MINUTES ARCHIVE

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**Redevelopment Authority of the City of Kenosha  
Minutes  
January 6, 2010**

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**MEMBERS PRESENT:** Alderman Katherine Marks, Larry Keating, Bruce McCurdy, and John Potente

**EXCUSED:** Tom Carls

**STAFF PRESENT:** Jeff Labahn, Zohrab Khaligian and Sharon Krewson

The meeting was called to order at 4:35 p.m. by Bruce McCurdy and roll was taken.

**Approval of Minutes of December 16, 2009 Meeting**

*A motion was made by Mr. Potente and seconded by Mr. Keating to approve the minutes of the December 16, 2009 meeting as written. The motion passed unanimously (4 ayes; 0 noes).*

**1. Request for Proposals on the Purchase and Development of Phase III Brass Redevelopment Project**

Zohrab Khaligian, Community Development Specialist, said the Request for Proposals (RFP) is an aggressive proposal designed to see if there is interest in such a project. Mr. Khaligian said he has had several inquiries regarding the RFP before and after the Kenosha News article on the Brass. There was discussion on whether a tax credit project would be allowed. If all proposals are submitted using tax credits, then we know the market is not strong enough to support any other type of project. Mr. Khaligian said he reviewed the ULI Study conducted prior to the Brass Redevelopment Project. When the ULI panel polled the neighborhood, the residents wanted the development to keep within the moderate income level of the neighborhood. If projects are received using tax credits, then the Federal Government will set the rent limits based on median income for the area. The median income for Kenosha County is approximately \$70,000. Current rent rates are: 1 bedroom = \$663; 2 bedroom = \$822; 3 bedroom = \$1,130. If the proposals use tax credits, then they will have to break down the income levels by unit type as required by the Federal Government so we will be able to properly assess the proposals. Mr. Khaligian said he contacted Larry Kilduff, the owner of the mixed use development on the Brass Site. His rents are: 1 bedroom = \$575; 2 bedroom = \$600-650; 3 bedroom = \$1,025. The rent does not include utilities.

Mr. Keating asked if Stationside Village was a low income housing project and how that compares to the mixed-use project. Mr. Khaligian said that only 30% of the units are affordable housing, and that these units faced the railroad tracks, so they were a less desirable location. The City had to review any request for rental change. There were some problems when requests for rent changes were received. We do not monitor them any longer and we are not aware of any issues with the project.

Mr. Keating asked if there were any similar projects in the area that could be visited. Mr. Pacetti, City Administrator, said there are some comparable projects in the area. There is a project in Milwaukee on Martin Luther King Drive, north of downtown in front of the new Manpower building. The project is commercial on the first floor, very stylish and is a tax credit project. Mr. Keating said he would like to visit projects to compare once the proposals come in.

Mr. Keating asked Alderman Marks for her comments since the project will be in her district. Alderman Marks said she also would like to see similar projects that have used tax credits. A site visit of projects constructed by potential candidates allow us to see the quality of their work. Alderman Marks said her district has many low income residents. Alderman Marks said she was glad to see that the RFP has some financial restrictions so the City does not encounter the same problem as before. There could possibly be density issues and Alderman Marks does not want this to become a "project." Mr. Khaligian said the current density is 12 units per acre. The ULI Study recommends going higher to assure a quality project. Alderman Marks said that management of the project also plays a part in the project as does parking on the site. Alderman Marks said it is important that the project compliment the elementary school and the other developments currently on the site.

Mr. Khaligian said the RFP requires the developer to provide the information addressing Alderman Marks' concerns. If the developer is looking to use tax credits, then that information will be needed. Alderman Marks said the building currently on site has underground parking which cuts down on traffic and compliments the site.

Mr. Potente said we need to send out the RFP and see what kind of proposals are submitted. We may like all of them or we may reject all of them.

Mr. Pacetti said the Mayor was contacted to do a project using tax credits. This is an ideal location for such a project and it is in a TIF district. The location is designated for residential and now would be a good time to begin the process. If we are not satisfied with the quality of the proposals, then we will wait a while and send out another RFP. The Redevelopment Authority will review all the proposals. Administration is recommending approval of this RFP.

Jeffrey Labahn, Director of City Development, referred the Authority to the Project Description section of the RFP on page 6. He is recommending to list under requirements and add as an exhibit, the development standards specific to B-4 zoned property. It is best to be upfront and descriptive on the special requirements for properties zoned B-4. The other developers in the area had to adhere to the same restrictions.

Alderman Marks asked if the developers might request a rezoning. Mr. Labahn said he did not anticipate that would happen, and they would not recommend a rezoning for the site. Mr. Keating asked if a copy of the specific zoning ordinance in question could be added to the RFP. Mr. Labahn said he is recommending attaching the specific zoning ordinance to the RFP.

***A motion was made by Mr. Keating and seconded by Mr. Potente to approve the Request for Proposals on the Purchase and Development of Phase III Brass Redevelopment Project with the addition of Exhibit "A" of the Zoning Ordinance. The motion passed unanimously (4 ayes; 0 noes).***

**2. Any Other Business as Authorized by Law**

Mr. Pacetti said there is a potential for an additional \$100,000 - \$200,000 for the METRA Station project. At this time, we are not sure if we qualify. Alderman Marks asked when we will know if we qualify and if the funds are available to us. Ron Iwen, Acting Director of Transit, said they are currently reviewing the application and we should know within the next couple of weeks. Alderman Marks asked if there is a wish list for the METRA Station, there is not a wish list yet because the project architect has only just begun. Mr. Iwen said we should know if we have additional funding prior to the project going out for bids.

The next meeting is tentatively scheduled for Wednesday, February 9, 2010 at 4:30 pm to establish a short list of RFP's.

**3. Public Comments will be limited to subjects within the jurisdiction and responsibilities of the Authority**

No public comments.

***A motion was made by Mr. Keating and seconded by Mr. Potente to adjourn the meeting. The motion passed unanimously (4 ayes; 0 noes). The meeting adjourned at 5:00 p.m.***

**Redevelopment Authority of the City of Kenosha**  
**Minutes**  
**February 9, 2010**

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**MEMBERS PRESENT:** Larry Keating, Bruce McCurdy, Eric Migrin and John Potente

**MEMBERS EXCUSED:** Alderman Katherine Marks

**STAFF PRESENT:** Jeff Labahn, Zohrab Khaligian and Sharon Krewson

The meeting was called to order at 4:07 p.m. by Bruce McCurdy and roll was taken.

**Approval of Minutes of January 6, 2010 Meeting**

*A motion was made by Mr. Keating and seconded by Mr. Potente to approve the minutes of the January 6, 2010 meeting as written. The motion passed unanimously (4 ayes; 0 noes).*

**1. Any Other Business as Authorized by Law**

No other business.

**2. Public Comments will be limited to subjects within the jurisdiction and responsibilities of the Authority**

No public comments.

*A motion was made by Mr. Keating and seconded by Mr. Potente to convene into Closed Session per Section 19.85(1)(eg) Wisconsin Statutes and May or May Not Reconvene into Open Session for Purpose of Holding a Hearing and Making a Final Determination. Roll was taken. The motion passed unanimously (4 ayes; 0 noes).*

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**Redevelopment Authority of the City of Kenosha**  
**Minutes**  
**February 16, 2010**

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**MEMBERS PRESENT:** Alderman Katherine Marks, Larry Keating, Bruce McCurdy, Eric Migrin and John Potente

**STAFF PRESENT:** Jeff Labahn, Zohrab Khaligian, Sharon Krewson, Frank Pacetti, City Administrator

The meeting was called to order at 5:03 p.m. by Bruce McCurdy and roll was taken.

**1. Election of Officers for 2010**

Jeffrey Labahn, Director of City Development, said the By-Laws require an annual election be conducted for the Chairperson and Vice-Chairperson positions for the Redevelopment Authority. A copy of the By-Laws was provided in your packet.

Mr. McCurdy turned the meeting over to Mr. Labahn. Nominations were opened for the position of Chairperson.

Mr. Potente nominated Mr. McCurdy for the Chairperson position. Mr. Keating seconded the nomination. There were no further nominations. Nominations were closed. A roll call vote was taken. The vote was unanimous (5 ayes; 0 noes).

The meeting was turned back over to Mr. McCurdy. Nominations were opened for the position of Vice-Chairperson.

Alderman Marks nominated Mr. Keating for the Vice-Chairperson position. Mr. Potente seconded the nomination. There were no further nominations. Nominations were closed. A roll call vote was taken. The vote was unanimous (5 ayes; 0 noes).

Mr. McCurdy reappointed Mr. Labahn as Recording Secretary.

**2. Redevelopment Authority Financial Report**

Zohrab Khaligian, Community Development Specialist, said the cash balance on page 1 does not include the 2009 and 2010 funds shown on page 4. The cash balance of \$150,000 will also include \$450,000 which is the total of the 2009 and 2010 CIP authorizations.

***A motion was made by Alderman Marks and seconded by Mr. Keating to receive and file the Financial Report as presented. The motion passed unanimously (5 ayes; 0 noes).***

**3. Any Other Business as Authorized by Law**

No other business.

**4. Public Comments will be limited to subjects within the jurisdiction and responsibilities of the Authority**

No public comments.

***A motion was made by Mr. Keating and seconded by Alderman Marks to convene into Closed Session per Section 19.85(1)(eg) Wisconsin Statutes and May or May Not Reconvene into Open Session for Purpose of Holding a Hearing and Making a Final Determination. Roll was taken. The motion passed unanimously (5 ayes; 0 noes).***

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*Open Session reconvened.*

***A motion was made by Mr. Keating and seconded by Mr. Migrin to accept Bear Development as the Developer for the Phase III Brass Redevelopment Project upon the Successful Negotiation of a Development Agreement between the Redevelopment Authority of the City of Kenosha and Bear Development. The motion passed unanimously (5 ayes; 0 noes).***

***A motion was made by Mr. Keating and seconded by Mr. Potente to adjourn the meeting. The motion passed unanimously (5 ayes; 0 noes). The meeting adjourned at 8:15 p.m.***

**Redevelopment Authority of the City of Kenosha  
Minutes  
March 11, 2010**

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**MEMBERS PRESENT:** Alderman Katherine Marks, Larry Keating, Bruce McCurdy, Eric Migrin and John Potente

**STAFF PRESENT:** Jeff Labahn, Zohrab Khaligian and Sharon Krewson

The meeting was called to order at 5:10 p.m. by Bruce McCurdy and roll was taken.

**Approval of Minutes of February 9, 2010 and February 16, 2010 Meetings**

***A motion was made by Alderman Marks and seconded by Mr. Potente to approve the minutes of the February 9, 2010 and February 16, 2010 meetings as written. The motion passed unanimously (4 ayes; 0 noes).***

Mr. McCurdy thanked Ms. Smith for a very complete set of Closed Session minutes.

**1. Request for Proposal to Lease, Provide Leasehold Improvements, and Operate a Coffee Shop/Restaurant at the Kenosha METRA Train Station**

Mr. Migrin stated he will abstain from the discussion and voting on this item due to conflict of interest.

Zohrab Khaligian, Community Development Specialist, said the plans for the renovation for the interior and exterior of the METRA Train Station are moving forward. The proposed plan for the interior include the north half of the building consisting of a waiting area, accessible women's and men's bathrooms, a ticket counter and janitor storage area. The remaining half of the building will be for the coffee shop/restaurant and storage. The RFP is scheduled to be mailed on Monday, March 15, 2010 to a list of interested people including the current tenant. The RFP will be sent to franchises such as Starbucks, Beaners, etc.; posted on the City Development website; and an ad regarding the RFP will be placed in the Kenosha News on Friday, March 19, 2010 and Friday, March 26, 2010.

Alderman Marks stated there is nothing in the RFP that suggests hours of operation. Mr. Khaligian said the hours of operation will be up to the tenant. Sharon Krewson, Real Estate Broker for the City of Kenosha, said the hours of operation will be in the lease. They anticipate the hours to be 5:00 am to 8:00 pm. Mr. McCurdy said the Authority will negotiate the hours in the lease. Mr. McCurdy said the RFP is well written and straight to the point. Alderman Marks asked if the Authority knows what the rate per square foot will be? Ms. Krewson said that will be negotiated with the successful bidder.

***A motion was made by Alderman Marks and seconded by Mr. Potente to approve the Request for Proposals to lease, provide leasehold improvements, and operate a coffee shop/restaurant at the Kenosha METRA Train Station as presented by staff. A roll call vote was taken. The motion passed unanimously (3 ayes; 0 noes).***

*Larry Keating arrived.*

## **2. Contract of Purchase and Sale for Phase III Brass Redevelopment Project**

Mr. Khaligian distributed a new redlined version of the contract. The Authority asked Mr. Khaligian to touch on important aspects of the contract page by page.

**Page 1:** Indicates that the contract refers to the two (2) parcels on the Brass Site referred to in the RFP.

**Page 2:** This page references Bear Development's response to the RFP and their interest in constructing a high quality development on Lot 1 of the Brass Site. The Authority was interested in proceeding and a Contract of Purchase and Sale must be entered into. If the Contract is approved by the Common Council, the proceeds from the sale will be transferred to the Authority. Staff, the City Attorney, Bear Development, and their attorney have met. Dates throughout the contract were reviewed. The original closing date has been moved out to *March 31, 2011*. Section 3, Conveyance, is customarily transferred by the City using a Quit Claim Deed. Bear Development wishes the transfer be done via Warranty Deed. Alderman Marks asked if this item could change. Mr. Khaligian said it was discussed by the above mentioned parties, and Bear Development may ask to change this item.

**Page 3:** Section 5. Buyer's Conditions Precedent – the SELLER to BUYER has been changed to “*parties to each other.*” The proposal will require an amendment to the parcel density. A sentence was added to Section 5.b.ii. Regarding GAP Coverage, at buyer's cost, from issuance until closing. The City has a Purchase Requisition with Landmark Title Company for all title and closing transactions. Bear Development wishes to use Lakeside Title Company.

**Pages 4&5:** Bear Development will not know if they get their tax credits until July, so the dates were amended to September and October 2010 making them more reasonable. One issue not resolved is the exit strategy in Section 5.f.i. Environmental. This item is non-negotiable and must be complied with. We have not shared complete environmental documents with Bear Development. They have some concerns, so this item will have to be negotiated. Bear Development will have an opportunity to do some soil testing. If a problem occurs, Bear Development has 30 days to accept or reject the assessment. A rejection would make the Contract of Purchase and Sale null and void. Section 5.f.i. - a space is required between the month (March) and the date (28). Section 5.f.v. states Bear Development must provide a Materials Management Plan approved by the DNR for the redevelopment of the parcel by December 31, 2010. Every development on the Brass Site has been required to submit such a plan. The dates on pages 5 & 6 in Section g. Low Income Housing Tax Credits were provided instead of vague time periods because of the compressed timetable for the tax

credits. If certain particulars in this contract do not happen, the project does not move forward.

- Page 6:** Section 5.i. Conditional Use Permits requires that the Conditional Use Permit for the project be submitted to the City by October 1, 2010. Building and construction permits must be submitted prior to closing so we have proof all three (3) buildings will be constructed on the site.
- Page 7:** Section 6 Objection Notice and Seller's Right to Cure provides Bear Development a process in which to object to anything the City provides to them. Section 7 Extension of Dates allows the City Administrator to extend any dates under Sections 5 and 6, if necessary prior to closing. Section 8 Representations and Warranties is standard contract wording.
- Page 8 & 9:** Section 9 Buyer's Representations and Warranties is standard wording. Section 10 Seller's Agreements is standard wording. Section 11.c. Annual Inspection of Buildings and Rents provides the Authority with the right to inspect the building annually and to verify that the rents charged comply with WHEDA requirements. Mr. Khaligian said the contract does not indicate a consequence if the requirements are not met. If the requirements are not met, the parties will have to meet and work them out. The process would be similar to what was negotiated with Stationside Village and we did not have any issues with them.
- Page 10:** In Section 10.d. Deed Restriction – A deed restriction will be placed on the property limiting the number of KHA Section 8 units to 25. This restriction stays with the property regardless of the owner. This section also states it will become a taxable parcel and the buyer and the buyer's successor or assigns will not request future land divisions.
- Page 11:** Section 14. Earnest Money – The last sentence covers the possibility of the Common Council rejecting the proposal which would not be deemed a default by the seller.
- Page 12:** Section 16.e. references the Certificate of Completion which is only required with this type of agreement. Final approval is granted when the Certificate of Occupancy is issued by Neighborhood Services and Inspections (NSI). Once the Certificate of Occupancy is issued by NSI, the Department of City Development will issue the Certificate of Completion. The Department of City Development feels once the other departments have signed off that the work has met their requirements and the Certificate of Occupancy has been issued, then we will sign off on the development and issue the Certificate of Completion. Section 17. Construction Completion has been added because of the problems encountered with the previous developer on the Uptown Brass Site.

**Page 13:** Section 18. Transfer of Parcel – Once everything is in place to move forward and transfer the parcel to Bear Development, a new LLC will be created. Any obligations will pass onto future entities.

**Page 14:** Section 21 Broker – The first two (2) sentences in the paragraph should be deleted. The City is hoping to become a Broker. The new text has not been discussed with Bear Development. Section 22 Notices – Bear Development's attorney's name and notary information have been included.

**Exhibit D:** Indicates date changes as reflected in the revised proposal. The City feels the WHEDA occupancy requirements will satisfy our occupancy requirements.

**Exhibit E:** The Deed Restriction language revision stating buyer will limit the number of units for the KHA's Section 8 Project Based Assistance Program for families with disabilities to twenty-five (25) units.

Alderman Marks asked if KHA's Section 8 Project Based Assistance Program is a specific program and a new program. Mr. Khaligian said it is a program that they have to specifically apply for. There are 25 units under contract for this program. Alderman Marks said only 25 units are under contracts, but if more than 25 apply they will have to be accepted. Will KHA send over more than 25 applicants? Mr. Khaligian said Bear Development cannot be restricted from renting to Section 8 tenants. S.R. Mills, President, Bear Development, 4011 80<sup>th</sup> Street, Kenosha, WI, said they have concerns also. Any development in the City of Kenosha could become all Section 8. If the development meets a particular threshold and Bear Development becomes uncomfortable with the number of Section 8 tenants, we ask KHA not to send any additional applicants to us. This is the policy we use on all our developments. The Uptown Brass development to the west could potentially be all Section 8, but it is not. Mr. Mills said he has a description on the “Project Based Assistance Program” from Donna Cook, Executive Director of KHA and he would provide a copy to Alderman Marks.

Mr. Migrin said he is unclear as to what would happen if WHEDA does not approve tax credits for the project. Mr. Khaligian said the contract becomes null and void.

Mr. Keating said he shares Alderman Marks concerns regarding Section 8 tenants. It is an issue the Authority takes seriously. Could the language in Section 11.c. Annual Inspection of Buildings and Rents be made stronger to help prevent the development from becoming an issue at a future date? Mr. Khaligian said in the discussion with the City Attorney, we could not come with anything that would be acceptable to the developer. We have to have faith in the developer. The developer has been candid with the Authority, and they are proposing a high quality development that they want to see succeed also. A staff member saw the development in Madison that was the design model for the development. The project in Madison is in a different setting, but the design and quality are the same. Staff was impressed with the Madison development. We need to have faith that Bear Development is not going to build a project of this quality and let it deteriorate over time. Mr. Labahn said staff was able to inspect the

interior of a couple of the Madison units and noted it was a quality building. The site plan of the interior and exterior is satisfactory to staff. The Madison development is in a different setting, less than one (1) mile from the State Capital. Also, the Conditional Use Permit for this development which includes the final plans will need to meet the approval of the Authority, Plan Commission, and Common Council.

Alderman Marks asked how the Contract of Purchase and Sale addresses compliance with the 25 unit deed restriction of Section 8 tenants. Mr. Mills said the Property Management person for the project will monitor compliance of the deed restriction. Mr. Labahn said the restriction will also be a condition on the Conditional Use Permit and in the Contract of Purchase and Sale.

Alderman Marks asked what would happen if the City were refused the right of inspection. Mr. Labahn said that would be a breach of the Contract of Purchase and Sale and the Conditional Use Permit. Mr. Keating asked if language could be included in the Contract of Purchase and Sale for a swift resolution if there is a breach to the right of inspection clause. Ms. Krewson said the City of Kenosha has police power to enter the building. Mr. Mills said WHEDA has strict compliance requirements and if Bear Development is not in rental compliance, they would have to repay them the tax credits immediately. Mr. Khaligian said if there is an issue with garbage, the Health Department would be notified; if there is a drug issue, the Police Department would be called in. Mr. Keating said there is a certain stigma that follows Section 8 tenants, would the police be able to take immediate action. Mr. Khaligian said the police could take immediate action if the unit were not habitable. Mr. Keating said in case of a citation or warrant, it may take months for action. Can language be included in the Contract of Purchase and Sale for immediate action while waiting for issues to make their way through the court system? The Buyer agrees to abide by all City regulations. Mr. Khaligian said with the timeframe we are working under, we do not have time to include such language in the Contract of Purchase and Sale. We need to be fair and we have to have some faith in the developer.

Alderman Marks asked for clarification on the 15 year contract that Bear Development will have with WHEDA. Mr. Mills said the tax credits will be sold to an investor. The investor will own 99% of the development. Bear Development will manage the property. After 15 years, the property will be owned by Bear Development. We are undertaking this project so we can purchase the development in 15 years. The last thing Bear Development wants is a deteriorating building in 15 years. Mr. Keating asked if Bear Development could sell the development at the 15 year juncture. Mr. Mills said yes, they could sell the development at that time. Alderman Marks said management, ownership, and integrity of the owner gives the project stability. We still have a few concerns for the project long-term. Mr. Mills noted that in the 30 years that Bear Development has been in business they have never sold a multi-family development. But in 15 years, who knows what will happen.

Alderman Marks asked if the Authority wishes to support additional units in the future. Mr. McCurdy said if the Authority adheres to the ULI plan, this project is the only multi-family development on the Brass Site. Mr. McCurdy said no one can predict what will happen in 16 years. He has the same concerns as the other members of the Authority,

but if everything is put in writing you will not get agreement from both sides. Alderman Marks agreed, but if the Authority did not ask the questions and get answers, their vision for the Brass Site will not materialize. Mr. McCurdy said as long as he is part of the Authority, he will try to follow the ULI Plan. We want to keep the concept going and move forward, just like we want to move forward with the plan for the Wilson Neighborhood.

Mr. Mills said in reference to the option on the second parcel, Bear Development is spending millions of dollars on this project giving them a significant investment in the area. Bear Development is bringing a lot of value to that corner. If everything falls into place, Bear Development would like the option to purchase and develop the parcel to the south. Because of their investment in the area, Mr. Mills said they are insistent on having this language in the Contract to Purchase and Sale. Mr. McCurdy asked how Mr. Mills would like the 5-year option at closing (2011 – 2016) to read. Mr. Mills suggested the option be contingent on an approved concept plan for a WHEDA tax credit, senior living facility by the end of the 5-year period. Alderman Marks asked if the proposed facility is consistent with the ULI Plan. Mr. Khaligian said staff discussed the possibility of “right of first refusal.” There are two (2) ways to handle the issue and neither are good for the developer. Mr. Mills asked which will help the neighborhood. Bear Development does not want an unsuccessful building next to this project. Mr. McCurdy asked what Bear Development planned for parcel 2. Mr. Mills said a senior housing project could work. Mr. Khaligian said the RFP stated both parcels multi-family, but senior housing for the second parcel only. Mr. Mills asked if the ULI Plan showed it as senior housing. Bear Development has not done any market studies to date for senior living facilities, and it does limit them, but in four (4) years we can do our due diligence and amend the Contract of Purchase and Sale, if necessary. Mr. Keating asked if Mr. Mills would be interested in the 5-year Option to Purchase from date of closing for senior housing. Mr. Mills concurred. Staff agreed. Mr. Mills said it is an option they would seriously consider before walking away from it. Alderman Marks said the Authority is putting their faith in Bear Development for the 5-year Option to Purchase. Mr. Mills said Bear Development is not receiving any TIF dollars or assistance for this project. It just makes good economic sense. Mr. Khaligian said if the Authority agrees, then language can be drafted and we can move forward. The Authority agreed on the 5-year Option to Purchase for Senior Housing.

Mr. Mills said Bear Development would prefer a Warranty Deed because it provides more assurances for the developer. Ms. Krewson said the City Attorney's office wants us to use the Quit Claim Deed because we are not providing any assurances upon sale of the property. A Warranty Deed says the City is selling the property free and clear of all issues. Mr. Keating said if a title company misses something the City is liable. If the project uses Bear Developments' title company and a Warranty Deed both favor the developer. There are specific reasons why the City prefers a Quit Claim Deed and the developer prefers a Warranty Deed. Mr. Mills said the Warranty Deed is not a deal breaker. Bear Development can obtain title insurance and if problems arise, they can sue the insurance company. Mr. Mills asked for a copy of the City's Title Insurance Policy.

In reference to using Lakeside Title Company, Ms. Krewson said it should not be an issue as long as they meet the quote the City receives from Landmark Title Company.

Landmark Title Company has some preliminary information that can be provided to Lakeside Title Company also. Mr. Mills said if Lakeside Title Company receives the preliminary information, Lakeside Title Company can do the remaining work and they will match the quote. Ms. Krewson said this situation happens occasionally and is acceptable. The Authority agreed to use Lakeside Title Company.

Alderman Marks asked how the amendment to increase the residential density will be conducted. Mr. Khaligian said Bear Development will submit the density request with the Conditional Use Permit application to the Plan Commission and the Common Council. If the plan is not approved by the Common Council, the Contract of Purchase and Sale becomes null and void.

In reference to Section 5.f. Environmental, Mr. Mills said since the Contract of Purchase and Sale is on the fast track, they are agreeing to the language but do not understand what it means. How were other projects financed with this document? Mr. Mills asked what would happen if an environmental issue arose that was not found previously. Mr. Khaligian said if everything matches with the testing from 10 years ago then it is fine, but not sure what would happen if the testing didn't match. The City has been through this twice with the other developments on the Brass Site. Both developments received their financing. Bear Development and the City are both taking a risk. The City as well as the environmental company used to clean up the site would be liable for any issues that arose. Alderman Marks said the guard shack was located on that particular site. Mr. Khaligian said we know what was at the specific location, but we do not know what seeped over to that location over the past 10 years. Ms. Krewson said the site where the Pick and Save is located had the most environmental issues. Mr. Mills said once the WHEDA approval is received, then we can start drilling.

Mr. Mills said he did not see any problem in receiving DNR approval of the Materials Management Plan required in Section 5.f.v. on page 5.

On page 9 in the Contract of Purchase and Sale, Section 10.c.iv. Affidavits and Other Certification – Landmark Title Company will be changed to Lakeside Title Company. Any other references in the contract will also be changed.

Section 11.d. Deed Restriction – Mr. Mills asked if language could be added to modify the deed restriction if the contract with KHA for Section 8 Project Based Assistance Program is no longer in effect in 25 years. Mr. Khaligian said he discussed this with Donna Cook. The Section 8 Project Based Assistance Program is new and a program KHA has just applied for. KHA does not know if it will be approved or not and how it will work. The program may not be in existence in 25 years, so to add language to the deed restriction is not necessary. Mr. Mills agreed to keep the language as is.

Section 11.e. Closing Documents – Mr. Mills said Bear Development is spending a lot of time and money on this project. If Bear Development meets all the contingencies of the Contract of Purchase and Sale and the City decides not to close, they would like to receive more than just their escrow. Mr. Keating said the Authority can not agree to that. Bear Development is asking the Authority to abide to a condition that the Authority has no control over, which is the vote of the Common Council. Ms. Krewson said such a

condition has never been in any City contract. Bear Development could sue the City for specific damages.

Section 11.e.v. Right to Purchase – Mr. Mills said Bear Development needs to be able to sell the tax credits and get a first mortgage. No lending institution will finance the project if the City can come in and take away the property. WHEDA has ways to ensure that the project is completed on time.

Section 11.e.vi. Irrevocable Letter of Credit – Per WHEDA's Payment Performance Bond, all money is set aside at the beginning of the project and they draw funds from it. If Bear Development does not finish the project, WHEDA will finish it with the funds provided. We do not need both the Letter of Credit and the Payment Performance Bond. Mr. Khaligian said the issue is if WHEDA forecloses on the project, they will finish the project but the City loses out. We do not have all the information regarding WHEDA. The only way the City would get the property back is to satisfy the mortgage. We do not have control on who purchases the property if it is foreclosed on. That could potentially cause a problem with the owner and the environment of the development. Mr. Keating said if WHEDA finished the project, it could potentially become a Section 8 project. Mr. Mills said a bank will have purchased the tax credits, WHEDA would finish the project based on the performance bond, and someone would own it. Bear Development would not own it, we just posted the money. Mr. Mills said once the development is built and occupied, the owner still remains the same and Bear Development still manages the building. Mr. Keating asked if the agreement transfers to the bank. Mr. Mills said yes, it does. Mr. Mills asked for further discussion with his attorney and the City Attorney on this section. The mechanics are complicated. Bear Development knows they will assign the project to a LLC. If the construction company does not complete the project on time, the funds are still available to complete the project and the ownership would not change. Mr. Keating said he would like the City Attorney's input on this section. Mr. Khaligian said as long as the connection is there and all obligations transfer it is acceptable.

The Contract of Purchase and Sale will go to the Finance Committee and Common Council with current wording and any language change will be provided at the meeting.

Mr. Mills said the Right to Repurchase has to be eliminated. Alderman Marks said that issue needs to be discussed with the City Attorney. Mr. Keating agreed with Alderman Marks.

Ms. Krewson noted that if Bear Development, LLC is assigning the Contract of Purchase and Sale to another entity, the contract should read “and their assigns.” Mr. Keating agreed.

Ms. Krewson asked if WHEDA conducts annual inspections. Mr. Mills said they have very strict compliance requirements.

Mr. Mills said he is not familiar with a Certificate of Compliance. Mr. Khaligian said once all other City departments sign off on occupancy, the Department of City Development sends out the Certificate of Compliance. Mr. Mills asked if language

could be included that the Certificate of Compliance not be delayed or withheld. Mr. Labahn said it is similar to the final occupancy permit. Developments are also issued temporary occupancy permits if certain requirements are not completed such as landscaping during the winter months.

Section 21. Broker – Ms. Krewson said the title company usually disburses the funds and conducts the closing. If a commission is charged, it will be split 50-50. Mr. Mills agreed.

Mr. Labahn said the majority of the changes made to the Contract of Purchase and Sale will be presented to the Finance Committee and Common Council. The two (2) outstanding issues will be provided on Monday at the meetings. Mr. McCurdy said if Common Council makes any changes to the Contract of Purchase and Sale, it will have to come back to the Authority for review. Mr. Khaligian said if there are changes, the Authority will hold a special meeting to review the changes. Alderman Marks asked what happens if the project is deferred at Common Council. Mr. Mills said the details are being worked at this level not on the Council floor. Also, he will be at the Common Council meeting, so hopefully there will not be any issues. Mr. McCurdy said he would like to see the Contract of Purchase and Sale be approved as revised.

***A motion was made to approve the redlined version of the Contract of Purchase and Sale with the following revisions:***

- 1. Addition of a Five-Year Option to Purchase clause.***
- 2. Use of Lakeside Title Company instead of Landmark Title Company.***
- 3. Section 16.e. – add language that the “Certificate of Completion will be issued upon issuance of final occupancy.”***
- 4. Section 11.v. – Right to Repurchase and Section 11.vi. – Irrevocable Letter of Credit will be addressed by the City Attorney's office.***

***The motion passed unanimously (5 ayes; 0 noes).***

#### **Public Comments**

Public comments opened, no public comments, public comments closed.

#### **Authority Comments**

Mr. Khaligian informed the Authority that the regularly scheduled meeting on Tuesday, March 16, 2010 is being canceled due to lack of agenda items.

**A motion was made by Mr. Potente and seconded by Mr. Migrin to adjourn the meeting. The motion passed unanimously (5 ayes; 0 noes). The meeting adjourned at 7:08 p.m.**

**Redevelopment Authority of the City of Kenosha**  
**Minutes**  
**March 30, 2010**

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**MEMBERS PRESENT:** Alderman Katherine Marks, Larry Keating, Bruce McCurdy, Eric Migrin, and John Potente

**STAFF PRESENT:** Jeff Labahn, Zohrab Khaligian, Sharon Krewson and Frank Pacetti

The meeting was called to order at 5:04 p.m. by Bruce McCurdy and roll was taken.

**Approval of Minutes of March 11, 2010 Meeting**

*A motion was made by Mr. Keating and seconded by Mr. Potente to approve the minutes of the March 11, 2010 meeting as written. The motion passed unanimously (5 ayes; 0 noes).*

**1. Contract of Purchase and Sale for Phase III of the Brass Redevelopment Project.**

Zohrab Khaligian, Community Development Specialist, stated at the Finance Committee meeting on March 15, 2010 two (2) issues remained unresolved. The two (2) issues were in Section 17 pertaining to the repurchase of the property and the Letter of Credit. The Finance Committee determined they would accept the agreement negotiated between Staff and the developer. Staff and Bear Development met and determined if construction has not started within the designated timeframe, the property is returned to the City. If construction did commence but was not completed within the designated timeframe, WHEDA and the investor would have the developer's surety which would ensure that the project is completed. Following the Finance Committee's meeting, WHEDA extended their application deadline to April 9, 2010. Because of the extended application deadline, the Contract of Purchase and Sale can be sent back to the Common Council for their review and approval.

The revised Section 17 does not include a "Right to Repurchase" or a "Letter of Credit" in the name of the City of Kenosha. If the developer does not start construction in the designated timeframe, the property reverts back to the City of Kenosha and the developer is responsible for returning the property to pre-purchase condition. Once the construction has started, WHEDA and the tax investor will ensure that the project is constructed. Funds are held in a construction escrow as assurance that the project will be completed. If the developer goes bankrupt, WHEDA and the tax investor have the funds in escrow to complete the project as well as the developer's surety to pay for any increased construction costs.

The owner will be a new LLC. Bear Development will have a 1% share in the project and a tax investor will have the remaining 99% investment in the project. All funds to construct the project are in a construction escrow to ensure the project is completed. If the LLC follows all the regulations over the next 15 years, then they take ownership of

the development at that time. These are the two (2) issues the Common Council wanted Staff and the developer to negotiate, which has been accomplished.

The developer will put up a \$1 million Performance Bond in the name of the City to cover any City costs of monitoring the development. There is nothing saying an issue may arise, but if something does happen, the City has assurances that the project will get finished at no cost to us. If problems arise, the City can draw funds from the Performance Bond, but only if WHEDA or the tax investor has tapped into the developers surety.

Mr. Keating said he is pleased that the neighborhood will receive an inspection of the complex. This will provide the possibility of two (2) meetings annually. Frank Pacetti, City Administrator, said the contract answers the concerns raised by the Authority and the Common Council; and Bear Development is agreeable. This contract holds a number of parties responsible for the completion of the project. Funds are available upfront to draw from. If an issue arises in the project, the developer is responsible. Bear Development has a surety which can be drawn by WHEDA or the tax investor and a Performance Bond which can be drawn by the City to cover the possibility of any issues. The developer gets to build the project at zero cost to them and at the end of 15 years, the development is theirs. The City wants a quality project that is well managed. Mr. Potente asked if a \$1 million Performance Bond is enough to cover any issues that might occur. Mr. Pacetti said Bear Development, WHEDA, and the tax investor are the parties to make sure the project is completed and the Performance Bond would only cover City administrative costs to monitor the construction in case there is an issue. They originally wanted the bond to be lower.

Mr. Keating asked who will review the plans for the project. Jeffrey Labahn, Director of City Development, said Plan Commission and the Common Council will review the Conditional Use Permit. On a previous project, the original plans were very nice, but when the plans came back for approval they were very different from the original plans submitted. Mr. Khaligian said the original plans for this project are part of the contract. Mr. Keating said he is fine with the contract.

***A motion was made by Mr. Keating and seconded by Mr. Migrin to approve the Contract of Purchase and Sale for Phase III of the Brass Redevelopment Project in its entirety as presented with changes and amendments. The motion passed unanimously (5 ayes; 0 noes).***

### **Public Comments**

Public comments opened, no public comments, public comments closed.

### **Authority Comments**

Alderman Marks said this whole process moved very quickly. In the future, she would like to see the process started earlier, so they can be more focused and not have to move as rapidly through the process. Alderman Marks asked why WHEDA extended their application deadline. Mr. Khaligian said Congress is in the process of approving the gap

funding. The financing had not been approved yet, so the deadline was extended to March 26, 2010. At this time, Congress is almost ready to approve the funding, so the deadline was extended to April 9, 2010. Once the application is submitted, we have no control of the project. Mr. Labahn said the announcement on who has been awarded tax credits is usually around mid-June.

Mr. Pacetti said he wishes the RFP could have been sent out earlier, but Staff was busy with the budget. The City received calls from two (2) developers for the same type of project which prompted us to move forward with the RFP. Alderman Marks suggested being more conscious that the deadline for tax credits is in the spring. Mr. Pacetti agreed.

Mr. Potente asked if because this project is a tax credit project, does the remaining project on the Brass site have to be tied to tax credits. Mr. Pacetti said having this project as a tax credit project does not tie you to a future tax credit project, but it does not preclude you to other WHEDA projects either. WHEDA works with other types of programs besides rental projects; they have homeowner projects also. When you have homeownership, the area changes for the better.

Alderman Marks said the Authority should evaluate the entire Brass Site in and for the long-term. She suggested reviewing the ULI Study for the Brass Site also. Bear Development has a history of success. In the future, we may get a developer that we are not familiar with. Hopefully, this tax credit project does not link us to another tax credit project for the second parcel. Mr. Keating said he did not think this would link us to an additional tax credit project.

### **Staff Comments**

No staff comments.

***A motion was made by Mr. Keating and seconded by Mr. Potente to adjourn the meeting. The motion passed unanimously (5 ayes; 0 noes). The meeting adjourned at 5:25 p.m.***