

MINUTES  
NICEVILLE COMMUNITY REDEVELOPMENT AGENCY (CRA) BOARD  
MEETING  
April 19, 2023  
6:00 p.m.

CRA Chairman Henkel and CRA Commissioners Schaetzle, Alley, Donahoo, and Williams were present. Commissioner Nodjomian called in briefly but could not attend by conference call due to his helpful involvement in an active emergency response at his location. Also present were CRA Executive Director, Lannie Corbin; City Clerk, Dan Doucet; Attorney Dixie Powell; CRA Advisor Dr. Bill McCartney; CRA Administrator Ammy Hanson, Deputy City Clerk Wendy Farmer; Deputy City Clerk and Finance Director, Steven Rausch; Information Technology and Purchasing Director Chad Morris; representing KG Development, Landscape Architect Dave Hemphill and Niceville citizen Amanda Grandy.

CALL TO ORDER

The meeting of the CRA Board was called to order by Chairman Henkel at 6:00 p.m.

APPROVAL OF MINUTES:

Regular Board Meeting, March 20, 2023

Commissioner Schaetzle motioned for approval of the minutes. Commissioner Donahoo seconded. No discussion followed.

COMMISSION VOTE: SCHAETZLE – YES; ALLEY – YES; DONAHOO – YES; WILLIAMS – YES; HENKEL – YES. MOTION PASSED.

ACTION ITEMS:

- Ratification of scoring error on the selection of engineering consultants for the Old Town redevelopment, and reselecting the highest scoring firm to negotiate an agreement for engineering.

Chairman Henkel turned it over to Counsel to address the item. Attorney Powell said I know you are all very familiar with the situation. We have a scoring issue, and we have awarded the contract negotiations for the Old Town Landing to KG Development in a mathematical miscalculation. AVCON is the highest scoring of these two bids that were submitted. I've been in extensive negotiations trying to come to a resolution. Tonight, we have options. One is to certify KG Development as the winner. Option two is to decertify KG Development as the winner, and certify AVCON as the winner with the higher scoring. The scoring was pretty close, said Mr. Powell.

Mr. Powell said we had a suggestion that AVCON be allowed to negotiate on the uplands, the land portion of it, and KG Development be allowed to negotiate on the coastal portion. There's nothing wrong with that. It's perfectly permissible. KG has extensive experience in coastal areas in Escambia, Santa Rosa, and other areas. So, we thought that would be a good suggestion. Mr. Dannheisser has offered for KG Development to do the uplands, and AVCON do the coastal areas. We have several options. I don't know how the Board feels about tabling it, said Mr. Powell.

If we decertify KG Development, and certify AVCON, the ramifications are we're going to be hit with a lawsuit from KG Development's attorney, Mr. Dannheisser. I think that's imminent. If we certify KG Development tonight, we'll be faced with disapproval from AVCON. I haven't been contacted by their counsel or their legal department or anything. So, these are our options. I had recommended last time we table it, to give Mr. Dannheisser and I time to continue to discuss it. He was out of town for two weeks as you may recall. As a professional courtesy, I gave him an invitation to be here tonight. In his mind, he didn't need to be here tonight because he figured we had already determined what course of action we were going to take. It's up to the Board whether you want to give us any more time. These are new developments that I don't believe Mr. Dannheisser is aware of at this time, but I can call him later. Our options are, table this for another two weeks or so, or take either of the other two actions that are available to the Board, said Mr. Powell.

Chairman Henkel thanked Mr. Powell and asked Mr. Doucet to read the action item. Mr. Doucet said, ratification of scoring error on the selection of engineering consultants, for the Old Town redevelopment, and re-selecting the highest-scoring firm to negotiate an agreement for engineering

COMMISSIONER ALLEY MOTIONED APPROVAL. COMMISSIONER SCHAETZLE SECONDED.

Chairman Henkel asked for discussion. Commissioner Alley said, you said something else was coming about and you wanted to wait two weeks. What were you saying about that? Mr. Powell replied, Mr. Dannheisser was under the impression that the coastal work wouldn't be very beneficial. I've talked with Dr. McCartney recently. His understanding, to be expressed to KG Development, is that the coastal work may be fairly substantial. I don't know if it's quite equal to the land portion. There is a difference. I think the land is a little more costly or lucrative. I think there's not too bad of a disparity. That's what I understand. Whichever way we go, we may be facing litigation in the courts which are extremely backed up right now. Mr. Powell spoke more about delays that may be expected, due to the court's schedule, if there is litigation. We're looking at two to three years of protracted and expensive litigation, really of this simple addition mistake, said Mr. Powell.

Commissioner Schaetzle asked I see a KG Development representative here, and I'm wondering if he would like to get up and speak to us on this? Chairman Henkel welcomed Mr. Hemphill to the podium and asked him to introduce himself.

Mr. Hemphill, KG Development, Pensacola, Florida stepped forward and introduced himself. Communication, I think, has been lacking here, said Mr. Hemphill. We were under the belief that the shore work was minimal, with much of it done and a small budget for this. We weren't really interested in that. If that's not the case, I'd like to hear it and we would offer some reconsideration, said Mr. Hemphill. Thank you, said Chairman Henkel.

Mr. Powell said, that was an offer on the table, so Mr. Dannheisser and I can negotiate it. Chairman Henkel said I think there's more to that as well. Basically, what he has expressed is, correct me if I'm wrong but, from a financial standpoint tell us what we think the value of the shore work would be. Is that correct, asked Chairman Henkel? That is correct, replied Mr. Hemphill. So, we have some work to do as well on that, said Chairman Henkel. Chairman Henkel listed the options. One of them is to table this so we can get more information on the work and costs. Another option is to decertify and certify scoring. Does the Commission have any suggestions or recommendations, asked Chairman Henkel?

Commissioner Alley asked, has anyone talked to AVCON to see if they would be open to splitting the project work? Ms. Hanson would you like to respond to that, asked Chairman Henkel? Ms. Hanson replied, no we have not. The coastal part has never been a part of the Historic Downtown redevelopment project, replied Ms. Hanson. That was separate. We received a permit from the U. S. Army Corps of Engineers to do that work. Program modifications need to be made. There are two phases to that project that have not been started. We have no design or engineering yet. If they are coastal, they would be very expensive. So, there's a lot of work with that project to finish the Niceville landing. We have not approached AVCON to ask them if they would be willing to split the Historic Downtown Niceville project, if that's what you're referring to, said Ms. Hanson. Ms. Alley said, it sounds like what we're awarding right now is just the uplands project and not the coastal work. Correct, the coastal part has never been part of the letters of interest request that we sent out to the engineering firms. To people who contacted us, we always said that was separate, said Ms. Hanson.

Commissioner Donahoo asked, for my own clarification, this was a human error identified that night, or the next day. Human error, right? Ms. Hanson replied, yes.

Mr. Hemphill asked, Mr. Powell do you have a mechanism to award the water-side work without going through another request-for-proposals (RFP) process? Mr. Powell said, I'm not sure. I'll leave that to Ms. Hanson and Dr. McCartney. Dr. McCartney said, when we advertised for the downtown redevelopment conceptual plan, the proposals came in and the certification and selection committee reviewed those and recommended two different firms. We recommended S&ME have the conceptual design work, and that Matrix, Inc.

have the economic development aspect of the project. It was one RFP, but the Council awarded two contracts under it. When we advertised for the downtown redevelopment design and landscape architecture, it was specific that it was for the old downtown redevelopment. I got up during the presentation and reminded the Commission that it was only for that one particular aspect of the project. Before that and since then we have requested that Taylor Engineering continue their permitting, which included the original permits, and they wanted to do the design work, which was around \$300,000. So, there is a second component to this. When the project was advertised, it was for old town redevelopment, which also could or could not include the landing, depending on the way you interpret it, said Dr. McCartney.

So, I think that there is the possibility to hire two firms, said Dr. McCartney. Hire one to do the engineering and the landscape architecture for the uplands portion, and the second firm for the off-shore portion, which would include the completion of phase two, phase three which is the off-shore platform, and the pavilion to go on there. The initial concept plan was actually done by Mr. Hemphill, but that was with a different firm, and also with Sam Martial Architects. So, I think the ability you all have tonight is to do either one, order the uplands contract and re-advertise later, or select two firms, one for the uplands and one for the off-shore work. I would recommend that Mr. Powell's recommendation be the one you go with, said Dr. McCartney.

Mr. Powell said, my recommendation would be to resolve this without litigation. I can tell you now the courts are so backed up that we can expect two or three years before we get a resolution. It could be very expensive for both parties and there's a likelihood the losing party is going to have to pay both sides' attorney fees. You can put on your best case and you never know what a jury's going to come up with. So, my recommendation is I would like to see us try to work it out. If that's not possible, we have the other options. We can table it for a short period of time so I can work on an agreement, or we can recertify KG Development, or we can decertify KG and certify AVCON as the highest score, based on the fact that they are or that they were, said Mr. Powell.

Mr. Corbin asked, is it going to be the same if we make a decision now or if we make a decision in two years? Are you suggesting make a decision now and wait two years for the courts to back it up? What is the recommendation, asked Mr. Corbin? Chairman Henkel said the suggestion is to give Mr. Powell some time to negotiate a settlement that is amenable to KG Development and to AVCON, determining who gets what piece, and ensuring there is equality in the award fees and the winning negotiation. There may be interest, according to Mr. Hemphill, from KG Development. His recommendation is for us to table this for a couple of weeks so he can continue to negotiate. We may be able to get some more information about what the cost factors are going to be, said Chairman Henkel.

Commissioner Alley said I just want to say again that I'm very upset about this whole process, and that pushing us up against a wall to threaten to sue us over a mistake, and cost

us thousands and thousands of dollars, when we're trying to do a revitalization project for the City of Niceville and our citizens, makes me very upset. I just want you to know that I'm very upset about this. This was a mistake that was made and we're trying to rectify it. We're not talking about how this has affected AVCON. We keep delaying and we're not certifying who actually won the bid. I'm just expressing my concerns and I'm sorry that I'm so passionate about this, said Commissioner Alley.

Mr. Powell said Mr. Dannheisser was under the impression that we were going to go forward with decertifying KG Development and certifying AVCON, so he did not attend. A short discussion followed about Mr. Dannheisser not attending. You know how I feel about this, and we have a motion on the table, said Commissioner Alley.

Chairman Henkel said we have a motion on the table to approve the ratification of the scoring error and decertifying KG Development. Ultimately, we could have other motions that would certify AVCON. At this point in time, I'm waiting to see if the Commission has any more comments or if they have some direction that they think we ought to move on?

Commissioner Schaetzle said I have a question and I'm going to pick up on Commissioner Donahoo's question. Your firm, KG Development, recognized that a mathematical error was made, and was corrected as soon as possible in the scoring process. Is that correct? Mr. Hemphill said at this point we really don't know what happened. We've seen the scoring charts. We've seen all sorts of stuff. I don't think what we're talking about is a mathematical error. There are other issues involved here. That's a portion of it, but we don't know what happened. None of the scoring cards were signed. There's no chain of custody. I want to believe that it was just a math error. That's what I want to believe, but I don't know. I don't think anybody does. That's where we are, said Mr. Hemphill.

Commissioner Schaetzle said, you were here and the other firms were here, as well as AVCON, and it was stated incorrectly that night who had the highest score. It was corrected as soon as possible. If you pursue this litigation, what do you hope to achieve, asked Commissioner Schaetzle? Mr. Powell said I think, since he's represented by Counsel, it would be better not to put him in that position. If that's okay, I wouldn't feel comfortable with having a representative's client get into the revealing process. That's the proper legal process attorneys use. The attorney's not here because he thought we were going to take the action of decertifying KG Development.

Chairman Henkel said let me try and summarize this to determine the direction we want to go. The recommendation from Counsel is to table this giving a little more time to see if we can negotiate a settlement. Also, that would give us more time to estimate the cost comparison, to see if that may be a little more amenable for both engineering firms to have a piece of the action. We're not talking about tabling it for very long. Is that a good summary of what we've discussed at this point in time, asked Chairman Henkel? Commissioner Williams said I think we should table it. I don't feel comfortable with

making a decision until we speak with AVCON, because we really don't know what AVCON will think about it. So, I'd feel comfortable with tabling it until both parties know exactly what's going on. Mr. Powell said, it will take just one phone call tomorrow to speak with Mr. Dannheisser to see if he's agreeable to it. He said he was not before, but he was not aware of the cost-benefit to his client. He may say that he's not interested in negotiating or doing a settlement in that regard. That's what we've offered to do, which I thought was a pretty good solution, to avoid protracted litigation.

Chairman Henkel said I've heard one recommendation that we table. Commissioner Alley, since you made the motion, are you willing to withdraw your motion to ratify the scoring error, allowing us to table this? Commissioner Alley replied no. We can vote it down. I'm not going to withdraw. Commissioner Schaezle said I would like to withdraw my second because I think we should give Counsel an opportunity. So, if I withdraw my second, then somebody else has to second the motion, said Commissioner Schaezle. Chairman Henkel said Commissioner Schaezle withdraws his second. Is there anyone else who wants to second Commissioner Alley's motion? Hearing none, we will consider Commissioner Alley's motion to ratify the scoring as not receiving a second.

We'll move on to the next item. Do I hear a motion to table this action, asked Chairman Henkel? Commissioner Williams motioned to table the action. Commissioner Schaezle said I'll second that, but I'd like to have a date for this. And, I don't mean a couple of weeks down the road. I mean let's get out our calendars so we don't keep dragging this out through the month of May, June, and July. Chairman Henkel said, we will do that, but is there any other discussion on tabling? Commissioner Alley said I have a question of Ms. Hanson. Can you have the costs for these in two weeks? Ms. Hanson replied yes. From Taylor Engineering, I have their contract that they sent to us, with the break-out of how they wanted to complete phase two and three of the Niceville Landing project.

Mr. Powell said I just want to make one other comment so the Commission is aware. If KG Development prevails in a lawsuit, damages could be in the \$800,000 range, which is a lot of money. If we win, we go forward with AVCON, and we're still in the same position. I'm trying to look out for the best interest of the Board of Commissioners and the City, not exposing ourselves to that risk. Fortunately, we've been very successful all through the years in winning litigation cases for the City, but times have kind of changed. So, you never know what the outcome of a lawsuit is going to be. You can't predict it. Commissioner Alley said if they don't want to take the coastal portion of it, we're going to end up there anyway. Correct, asked Commissioner Alley? Correct, replied Mr. Powell. Commissioner Schaezle said you gave an upwards limit of what the possible damages could be. What are the possible damages against KG Development if they lose? Mr. Powell replied attorney fees.

COMMISSION VOTE: WILLIAMS-YES; DONAHOO-YES; ALLEY-YES; SCHAETZLE-YES; HENKEL-YES. MOTION PASSED.

Chairman Henkel said, let's set a date for a meeting to discuss this action, to bring it to completion. A discussion followed. The Commissioners agreed on May 3, 2023 at 6 p.m. as the date and time for the next meeting.

Are there any other issues that need to come before this Commission, asked Chairman Henkel?

Ms. Amanda Grandy, 134 Tamara Cove, Niceville came forward and said, just a quick question for the Commission, how can I retain a lease on the Edge? As of early January, Mayor Henkel told me I was not able to, due to the Request for Proposals (RFP). Considering the circumstance, the City finds itself in now, I was wondering if we could re-engage that conversation, asked Ms. Grandy? Commissioner Henkel said the request coming from Ms. Grandy, as most of you know, is that she wanted to put a business there in that older building called The Edge. She talked to me since that time. She does not expect the City to make any improvements. I have talked to the City Manager and to consultants that work for us. Basically, the avenue that we came to is, regardless of the current circumstances, if we get this resolved we want to move out quickly getting this phase taken care of. She is looking for a two or three-year lease. If that happens, obviously that's going to impact a lot of stuff that we're going to attempt to do. Her request is for a lease and she's going to specify the lease term she wants. Then we're going to open it up for discussion.

Ms. Grandy said as I had texted Mayor Henkel back in January or late December. It was two years, with an option to purchase. It would be for the same purposes for which it is currently being used, an operating bar plus an events center in the warehouse portion. Discussion followed.

Chairman Henkel said Mr. Corbin, you and I have discussed part of this. Have we moved the current resident out of that building? No, replied Mr. Corbin. We sent a letter, asking her to be out of there by January 1<sup>st</sup>. She has refused to do that. It's going to have to be a legal action to get her out of there, replied Mr. Corbin. And, my understanding is that she has not paid rent in that time frame asked Chairman Henkel? For nine months, right, said Mr. Corbin.

Chairman Henkel asked, based on what we know at this time, what is your feeling on if we were to grant a lease to Ms. Grandy for two years, what would be the impact on the project? Mr. Corbin said I think we need to do one program at a time and make sure she's out of there, because we could be tied up with legal questions with her in there. The City Attorney has a better answer for that than me, but can we get her out of there in a reasonable time where Ms. Grandy can work with us on a lease, asked Mr. Corbin? Mr. Powell said, I'm no landlord and tenant lawyer, but from what I understand the commercial eviction process moves pretty quickly. Mr. Powell provided more detail about the eviction process. Chairman Henkel asked, if we were to get her out of there fairly quickly and we were to

resolve our issues with KG Development and AVCON, what is the impact if we were to grant a lease at this point in time? Mr. Corbin replied, I would like to work with her, but I would think, as a City we would have to open it up for a lease with anyone else. Am I right on that, or can we deal directly with her, asked Mr. Corbin? I think we can deal directly with her for a lease, said Mr. Powell. That'll be good, but I want to make sure we give her the right answer, said Mr. Corbin. I'll make sure to check that, said Mr. Powell.

Chairman Henkel said I'd like to hear, Dr. McCartney's thoughts on this. Dr. McCartney said, assuming that on May 3<sup>rd</sup> the engineering issues are resolved, I would think that we would negotiate a contract within 30 days, and give them a year and a half to complete the design, and go out for bid for construction during that process. I would recommend to you all that you advertise an RFP for a commercial real estate firm to assist the CRA Board in siting target businesses in that property. I would think that before the two-year period is up, we would have the engineering design done. We would be under construction. We would be looking for tenants. One of the problems I personally have, and I say personally because I reviewed it, is there is no access through that building, no public access wide enough to connect all of the activities that are occurring on the uplands portion of the old town landing with the landing portion of the old town landing. They have proposed a five-foot corridor which the public is supposed to go through from one side to the other. So, I think the configuration of the proposed lease, the timing of the proposed lease, and the possibility that the lessee would want to extend the lease are all incompatible.

Also, when the City staff evaluated the property, in terms of putting fire protection, sanitary services, and things that would be required for a public facility, the cost was somewhere around a million dollars. I think the idea is great, but the whole thing is cost-prohibitive and logistically prohibitive, said Dr. McCartney.

Anything else from the Commission, asked Chairman Henkel? Commissioner Williams said, I think it's a great idea. There are just too many moving parts and too many irons in the fire right now. I don't know if you want to put another moving part in there. Let's just put out one fire at a time. That's my take on it, said Commissioner Williams.

Commissioner Schaetzle asked what is the urgency in you getting an okay from our CRA Commission here to move forward with this tonight? Can it be delayed two weeks, two months, or longer than that? Ms. Grandy replied, I think I have been coming to you for about a year, so I can wait. I've lived here at least ten years. That area has been nothing but a dirt pit, right? They're already operating a bar. If there are concerns about it being operable and safe, obviously it's a public venue right now. People are using it. So, I don't see why we can't just convert it into a usable space for the two years that you all are developing this plan. I'll be taking on all of the costs. I didn't ask for it to be completely brought up to code. So, the options to me are plan A, do nothing and wait. See what happens with the current situation. See if the infrastructure piece gets done. The property sits as it has, idle. The City's not making any money. Plan B, allow me to renovate it slightly,



enough to where it actually is more usable. The City generates positive cashflow because I'm paying the rent. I'm showing you that it would work in the City. If in two years they develop the infrastructure plan and according to the corridor, don't want the building anymore, perhaps I can put in a request to open an event center in the same CRA? We knock down that building and we do something different. So, I believe there are options. I'm okay if you say no, because I understand you don't want to move the project forward. But, I look at it as a Nicevillian. It's been sitting there ugly for two years, and we can do something with it. So, I'm willing to do it and I'm at your mercy, said Ms. Grandy.

Councilwoman Alley said, maybe it would be better if she came back in two weeks to see if we had anything resolved. I would like to see something done with that building and at least get some income off of it for the next two years. Then we would know whether it would work or not, as a venue place. Then, if we have to tear the building down and construct a nice building, we know we can do it, said Commissioner Alley.

Chairman Henkel said, Ms. Grandy I would advise you follow this closely and maybe come back to our next meeting in a couple of weeks to see what's transpired. Thank you all, said Ms. Grandy. Councilwoman Alley said, in the meantime, we need to move forward with evicting the person that's in the building right now who's paying zero. Mr. Powell said I'll get right on that. I learned a month or two ago that she wasn't.

COMMISSIONER ALLEY MOTIONED THE MEETING BE ADJOURNED. COMMISSIONER DONAHOO SECONDED THE MOTION. VOTE - SCHAETZLE-YES; ALLEY-YES; DONAHOO-YES; WILLIAMS-YES; HENKEL-YES. MOTION PASSED.

There being no further business, the meeting adjourned at 6:45 p.m.

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COMMISSION CHAIRMAN

ATTEST:

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RECORDING SECRETARY

Minutes – CRA – 4-19-2023