PARKING AUTHORITY MINUTES

October 9, 2002

ATTENDANCE: Urban Mulvehill, Chairman, Stephen Bentkover, Troy Jellerette, Amy Jiminez

OTHERS: Alanna Kabel, Director of Marketing & Business Development;
Jack Miller, Finance Department
Kim Morque, Spinnaker Development;
Edwin Schmidt, Assistant to the Mayor's Office

CALL TO ORDER

The Chairman called the meeting to order at 7:45 p.m.

Mr. Schmidt stated the timing goal was to keep the project on track by October 15 or 16 and to be underway to issue the contract packages to the sub-contractor's on October 14 and also to place the order for the pre-cast concrete and steel. He said this was a major piece of the project but the contract was not signed yet and the priority of the law department was to focus on the contract between the Parking Authority and the Construction Manager. He stated that more recently it has become a legalese issue for the law department to finalize the contract and if it is signed this week the project can go forward; the second contract can wait because it won't hold up the project. The council for Maritime Place worked on the contract last week and on Monday and made substantial changes and the third draft is anticipated and in the process of being finalized. Mr. Schmidt said Diane did a summary of the first draft and as it turned out it was found it would require some minor tweaking; the initial summary was accurate and unchanged so they were able to mail it this afternoon.

Mr. Schmidt said there are issues outstanding but however they are decided won't change the contract. The contract is $11 million plus for the private component and the only significant change is that a long time ago they would have had two construction managers and two contracts but this was found not to be the way to go so they decided to have one contract between Maritime Center and the Parking Authority.

Mr. Mulvehill asked about the one contract between the Parking Authority and Construction Manger and if the Parking Authority would pay for the public development portion and who would pay for the private portion. Mr. Schmidt said Parking Authority would pay for it and then they would receive money from the developer for the private share; so the funds would be in-hand prior to the project beginning.

Mr. Bentkover asked if they would be able to differentiate between the public and private portions of the construction. Mr. Schmidt said yes, this would be worked out.

Mr. Schmidt said they know the public portion for the building and the private portion would be worked out, but they would need to determine which month would be for the public portion vs. the private portion; there may be discrepancies so the architect would make the determination on how much is payable based upon the calculation.

Mr. Morque stated the long and short of it is that there would be separate accountings. He recalled the project was set up to be separate projects, bidding and design was done this way so accounting would be as well; but at the end of the day it's the developer who has to be accountable but the Parking Authority ultimately steers the project.

Mr. Mulvehill asked if there were two guaranteed maximum prices. Mr. Morque said yes, they all flow to one total number.

Mr. Mulvehill asked if by arriving at a total number and if they save millions on the public portion, how would they make an adjustment between the private and public portions. Mr. Morque replied he was not sure he understood the question; but he said for example: if they had the additional cost for the pre-cast concrete and if it was paid for out of the public portion there would be a change order to reflect it.

Mr. Mulvehill said he wasn't so much speaking of a change order in this instance but he stated that under the guaranteed maximum price there was the ability to adjust the cost. Mr. Schmidt said there are two guaranteed maximum prices and the Common Council approved them and when the contract was approved they approved a new guaranteed maximum price at $1,992,317 million but then there was the question of the building garage with the retail space, at any rate they are curious and interested in making sure residential gets done at the same time as the retail space. He said it provides for the shell to be done and the process is to build the residential at the same time as the garage and it makes sense for the developer to approach it this way. He broke out the dollars for:
· The shell of residential and retail only - $1.9 million
· The garage only - $11.5 million

Mr. Mulvehill asked if the garage part is done, is there any reason to delay the opening of the garage. Mr. Schmidt said no, this is triggered by the Construction Manager who is entitled to a final payment and when this is done then the residential would be done contemporaneous with the garage; whereas, for the retail space if there are no tenants it doesn't make sense to do the tenant fit-out and its not required. He said it would appear to be done and the entire envelope of the building would be done so there would be no disturbance of the site and it would still be an operational facility.

Mr. Mulvehill referred to the second page of the contract referencing "private component to include all interior work above ground floor; he questioned if it **should read** to include residential and retail. Mr. Schmidt clarified this means: retail on the first floor and residential on the second floor.
He also noted "interior on ground floor **should read** retail or commercial.

Mr. Mulvehill asked if it was correct to assume for the interior fit-out work they would have to engage with Walsh. Mr. Morque said they may use them but after completion of the work probably not, it's a general practice for them to hire their own contractors.

Mr. Bentkover asked if parking for retail was considered on the first floor, such as for deliveries etc. Mr. Morque said there are six (6) on-street parking spaces in front and they would be utilized for short-term deliveries. He said they have looked at designs for trash receptacles.

Mr. Bentkover asked what if a tenant has a lot of merchandise for delivering and no street space, would he be able to access through the garage. Mr. Morque said no, a big truck wouldn't fit in the garage, they would have to schedule ahead of time for space. Mr. Bentkover commented that if parking isn't available people are generally reluctant to come to a building.

Mr. Mulvehill asked when the Parking Authority's part is completed and transfer of title is done would the draft reflect that the building would be condominium-ized. Mr. Schmidt said the contract does outline this.

Mr. Schmidt said the current working draft reflects payment by the developer prior to the date the city has to pay the Construction Manager. Mr. Mulvehill's response was so there will be a periodic payment scale to the Parking Authority. Mr. Miller said this was correct.

Mr. Mulvehill stated it was important costs are properly allocated by the architect. Mr. Schmidt agreed this was so, he said the Parking Authority decides this but if there is a disagreement between the Parking Authority and Construction Manager the contract has been devised to address it; if there is any dispute the issue would be covered on both ends between the Parking Authority and the Construction Manager.

Mr. Mulvehill referred to the summary and asked if the contract would emphasize any deficiency, and if so, would the developer bring it to the Parking Authority's attention. Mr. Schmidt said yes, they would. Mr. Morque acknowledged he would.

Mr. Mulvehill asked if DPW would supervise and he asked if this was always their intention. Mr. Morque stated the disposition agreement involved a lot but its fair to say they worked out the disposition agreement for building with three parcels of land and the concept for them was that their role as a developer was to put together a project and design and go through the land use approvals and bring the package to the city; but they never really got into a lot of issues. He said this new contract accomplishes this, so in going through an analysis they determined the best approach was for the city to hold the contract to provide a comfort level that the larger part of the project was being protected, this way, if the developer encountered any problems the city could step in and finish the project.

Mr. Mulvehill asked if some portion was done incorrectly at a costly mistake, is it the Parking Authority's, DPW or the developer's role to catch it quickly and address it. Mr. Schmidt said that under the contract the developer would notify the Parking Authority of the claim and the city would then decide if they want to pursue the claim against the Construction Manager.

Mr. Morque said that in terms of a possible defect and the possibility it wasn't picked up, they would go to the city and tell them a defect was found in the work and advise them to contact the contractor.
Mr. Mulvehill replied that would be all he was trying to avoid.

Mr. Morque said part of the answer is in the fact they have an architect and they use him to design the shell of the building under the same agreement but its paid for separately; so they would be looking at it as the developer as well as DPW. He noted DPW might not look that closely at the private sector portion so he would. Mr. Morque said his team put the project together so it's in their best interest to try to make sure it runs smoothly.

Mr. Mulvehill asked if there was a change in pricing between the public and private portions. Mr. Morque said no.

Mr. Bentkover asked if they came under budget, how would it be portioned back to the public or private. Mr. Morque said that's why there are separate accountings because they are not looking to co-mingle funds.

Ms. Jiminez asked if they were truly separate buildings with no common wall. Mr. Morque said they are separate buildings but adjacent, but actually separate, he informally outlined how the foundations are separate, noting however, that the water is common because it was too complicated to separate it.

Mr. Miller stated the city would pay all the bills but he questioned what the assurance was that the developer is paying for their portion of the water supply. Mr. Morque said this was covered under the disposition agreement noting that they would have to show evidence of financing.

Mr. Miller asked what assurance there was they would have payment within a reasonable period of time. Mr. Morque said there is an agreement it must be paid within three days.

Ms. Jiminez questioned if there were a delay in payment for reasons unseen, how would payment be assured. Mr. Schmidt said they would pay for the public portion and not the private portion or advance the costs and charge back the developer. He said the developer would then reimburse the city for the portion as required.

Ms. Jimenez's response was, so there is no specified policy. Mr. Miller replied that if something was disputed they have instructions not to pay. Mr. Schmidt further said if there was a dispute the developer still pays.

Ms. Jimenez again questioned the assurance. Mr. Morque said the disposition calls for evidence of mortgage financing. Ms. Jimenez asked once again what happens if it was found they couldn't pay. Mr. Schmidt said they hold the deed and he also pointed out that the Redevelopment Agency is supposed to verify this and there is a financing plan in place.

Ms. Jimenez stated she would like to see periodic reporting that financing is in place and that they are in compliance with LDA. Mr. Morque agreed this was a good question and he offered it was one not fully addressed; he said if this was a question of a bank being involved it would be straightforward but in this case they are trying to ensure that the developer won't fall through on their part of the deal. He said they could provide bank letters to demonstrate they have the finances to pay the bills. He stated all parties are joined at the hip to complete this project and the LDA is in place. He said they are committed to the project and feel they could provide a letter of evidence for finance.

Ms. Jimenez acknowledged she understood the relationships involved but she reiterated it would be a good idea due to the investment involved on both ends and some assurances are a good idea for assuming a reasonable business perspective is met.

Mr. Schmidt said the LDA package outlines this and Jim could further verify this. Ms. Jimenez commented things change and it's not unreasonable to do. Mr. Schmidt offered that although all this holds true, to keep in mind the developer has invested a lot as well.

Ms. Jimenez asked when the project is complete would this be a CO/change order. Mr. Schmidt said yes, when the Construction Manager is done.

Mr. Mulvehill asked about a public contribution. Mr. Morque said it's in the public portion to make a contribution.

Ms. Jimenez commented it would be nice to see the turn out of the new building just as it was for the Lock Building.

Mr. Jellerette asked about the condominiums and if they would be ready to go up upon completion of the project. Mr. Morque said yes, but it hasn't been decided if they will be condominiums or rentals noting that they may be sold.

**** MR. BENTKOVER MOVED TO AUTHORIZE THE NORWALK PARKING AUTHORITY, ACTING BY AND THROUGH ITS CHAIRMAN, URBAN MULVEHILL, TO EXECUTE A "DEVELOPER AGREEMENT" WITH MARITIME PLACE, LLC. SETTING OUT THE TERMS OF THE RELATIONSHIP BETWEEN THE PARKING AUTHORITY AND MARITIME PLACE, LLC. IN RELATION TO THE CONSTRUCTION OF THE MARITIME GARAGE AND UPON RECOMMENDATION FROM CORPORATION COUNSEL'S OFFICE THAT THE CONTRACT IS IN PROPER FORM FOR EXECUTION**
**** MOTION PASSED UNANIMOUSLY BY VOICE VOTE**

ADJOURNMENT

The Chairman adjourned the meeting at 8:45 p.m.

Respectfully submitted,
Diane Graham
Telesco Secretarial Services