



City of Foley, AL

Meeting Minutes - Draft

The City of Foley Public
Facilities Cooperative
District
407 East Laurel Avenue
Foley, Alabama 36535

Public Facilities Cooperative District

Thursday, February 25, 2016

7:00 AM

Conference Room

Call to Order

Chairman Charles J. Ebert, III called the Public Facilities Cooperative District to order at 7:08 a.m.

Roll Call

All Public Facilities Cooperative District members were present with the exception of David Rauch. Others present were Vickey Southern, Jeff Rouzie, Mike Thompson and Philip Burton of Burton Properties.

Present: 6 - Charles Ebert III, Roderick Burkle, Clyde Abrams Jr., Rick Blackwell, Ralph Hellmich and Vera Quaites

Absent: 1 - David Rauch

Approval of the Minutes

16-0117 Approval of the 02-04-2016 PFCD Minutes

Attachments: [02-04-2016 PFCD MINUTES FINAL.pdf](#)

The February 4, 2016 Public Facilities Cooperative District Minutes were unanimously approved on motion by Mr. Blackwell and seconded by Mr. Abrams.

Old Business

16-0120

Consider extending the Public Facilities Cooperative District User Fee for Wolf Bay Lodge

Attachments: [TOTAL_LS_PROPOSAL_02.24.16\(1\).pdf](#)

On October 4, 2016 there were two options the city could consider on the sale of Wolf Bay Lodge: 1) The initial plan was for WBL to pay 20% (\$260,000) down of the sale price, which is \$1.3 million and the City would do any and all of the repairs. ($\$1,300,000 - \$260,000 = \$1,040,000 - \$94,806 = \$945,194$) OR 2) The City would go through with the sale of WBL for a sale price of \$1.3, let WBL use a portion of the \$260,000 for the repairs so they can do the repairs. In both cases they ask the Cooperative District to renew the 1% User Fee to reimburse the City for repairs and attorney fees, and use the remainder of the fees for maintenance and upkeep of the paving, infrastructure and landscaping. The City would subtract the cost of the repairs according to the quote \$94,806 (this quote was not itemized) from the sale price.

Since the October 4th meeting Mrs. Haber and Mr. Rouzie were in discussions regarding the repairs and the sale of the property. Things that were brought to light were if the City did the repairs the project would have to go out to bid because it would be a public works project (by law anything over \$50,000 has to be bid out). This would delay the repairs at least 30-40 days, as well as the sale. Mrs. Haber did not want to delay the sale because the portion of the user fee she was getting helped with the lease payment, and the user fee will end soon, thus not giving her any more support to help with lease payments. She was in agreement with moving forward with the sale at \$1.3 million, less the cost of repairs. She and Mr. Rouzie agreed upon an itemized list of what needed to be done. Mr. Rouzie went back to HPM, who is the City's contractor who ensures that work is done properly and at a lowest responsible cost, to obtain an itemized list and cost from each contractor who specializes in each item being repaired. The new itemized list, which is in your packet, came out to be \$104,886.88. The biggest difference in the cost since the last meeting was the Ultimate Tree Service for tree removal.

Since then the City is looking at selling WBL at a cost of \$1.3 million, agreed with Mrs. Haber to use a portion of her 20% down to do her own repairs with the City getting the remaining balance (\$260,000 20% down - \$104,886.88 cost of repairs = \$155,113.12 balance to City), (\$1,300,000 Sales Price - \$155,113.12 down payment less repair costs = \$1,144,886.88 Balance owed to the City).

Mrs. Haber and Mr. Rouzie are requesting to renew the 1% Cooperative District User Fee possibly over a 15 year period, which is the length of the financing of the loan, or a percentage of the loan, whichever comes first. The User Fee would be used to reimburse the City for the cost of repairs, attorney fees for validation and other associated costs. After they have been paid any additional fees would go into the City's General Fund to be used for WBL's Parcel 2 maintenance and upkeep of parking, paving and re-paving, new and old infrastructure, lighting, and landscaping. The City has a cross easement over Parcel 2, which gives them the right to work in/on the easement/ parking lot. This will not only benefit WBL but will also benefit the CAFFM, Inc., Moe's, and Foreland's Farms by ingress/egress. There is also a portion of Parcel 2 that has gravel parking that still needs to be paved at some point.

Mr. Rouzie reported that by utilizing Ultimate Tree Service, LLC and R&S

Paving & Grading's services it will eliminate the drainage problems WBL is having. The heavy rains would run up under the slab of the foundation. Once they have the trees trimmed and the brush removed then WBL will have the responsibility of keeping that area cleaned out. City Attorney Heyward Hosch feels that the City needs to go back through the validation process because there is a change in what the previous user fee approved.

Mr. Hellmich asked how long it would take to recover the fees. Mr. Rouzie reported based on \$3-4 million in sales and collecting between \$30-40,000 annually it won't take long to recover the fees. He further reported that the District would have to set a limit on how much we can collect with the User Fee because it is based on debt. There will be approximately \$1,195,113.12 in debt so that will be the maximum. With this fee it is between Ms. Haber and the District because the fee will go towards WBL's Parcel 2 parking lot, which the City has cross easements, landscaping or anything else that would have anything to do with the CAFFM. The User Fee is a project between the Cooperative District and Wolf Bay Lodge.

Mr. Hellmich reported the fee will be used to help defray the costs until the financing deal is complete. Mr. Thompson reported if you collect \$40,000 annually over 15 years that is \$600,000. The first \$104,886.88 will stay with the City as reimbursement for repairs ($\$40,000 \times 15 = \$600,000 - \$104,886.88 = \$495,113.12$) and then you probably have \$20,000 worth of legal fees ($\$475,113.12$) over the coarse of 15 years that the City could use for paving, restriping, repaving, landscaping, infrastructure, etc. on Parcel 2 that WBL owns. It really ends up benefitting the people who go to the Farmers Market, Moe's, and Forelands, which are all CAFFM assets. There is a part of WBL's parking in the Parcel 2 that isn't even paved and these funds can be used to pave it.

Once the sale takes place Mrs. Haber owns the building and the land and she will not get any of the user fee. All of the user fee will go back to the City to reimburse us for attorney fees and the repairs that lowered the sales price and thereafter the City has the funds to repair and improve that area.

Chairman Ebert asked Mr. Thompson if he could get with the Street Superintendent to see if they can get that portion of the graveled area of Parcel 2 smoothed out so that the hole is covered up. Mr. Thompson reported he would.

Chairman Ebert asked about the 80% in the draft resolution. Mr. Rouzie reported Mrs. Southern inserted that amount into the resolution as a guess. The board can decide on a different amount if they so choose. Mr. Thompson's recommendation was to take a certain percentage of the debt that would be well above that because why would we not want to collect it. The fee is not going to Mrs. Haber (WBL) it is going to the City to do repairs. Chairman Ebert reported the water feature needed maintenance also. Mr. Hellmich asked who paid for the electrical on the water feature. Mr. Thompson reported the City pays for it. He referenced Krispy Kreme in that their User Fee expires this year. Mr. Rouzie reported that Mrs. Haber is good with this because it helps her with the parking lot.

There was a discussion regarding the quotes. The quotes will be handed over to Mrs. Haber and she will be able to choose to use them or not use them. She will pay for the repairs. HPM will make sure the work is done properly to give

the City and Mrs. Haber the assurance that it is done correctly.

Mr. Abrams made a motion to approve the draft resolution as presented and Mr. Hellmich seconded the motion. Mr. Burkle reported, "he thought the District was getting into a slippery slope with respect to user fees that the user fees are being used for something that wasn't originally intended for."

Mr. Abrams said that there were other properties out by WBL and asked if they were included in the user fees. Mr. Thompson reported the only property that the user fee would be subject to would be Parcel 2 that will be owned by WBL. The other parcels, CAFFM, Inc., that include Moe's and Foreland Farms would not be included in the User Fee. At the end of the 15 years or the 80% of the price the User Fee ends unless the owner requests renewal of the user fee. There was more discussion regarding the differences in tax abatements via the Industrial Development Board and Cooperative District User Fees. Chairman Ebert pointed out that the User Fee will have to be validated.

Hearing no further discussion the Chairman took the vote with all attending members saying aye, with the exception of Mr. Burkle who voted nay. The vote passed by a majority vote.

Aye: 5 - Chairman Ebert III, Member Abrams, Member Blackwell, Member Hellmich and Member Quaites

Nay: 1 - Secretary/Treasurer Burkle

Enactment No: 16-0120-PFCD

New Business

16-0119

Consider Phase II Burton Properties' Request - Philip Burton

Mr. Rouzie introduced Philip Burton of Burton Properties. He has invested a lot in Foley, i.e. Hobby Lobby, Big Lots, and Academy Sports. There will be 300,000 sq. ft. of retail. Mr. Burton stated this is the first time that he has had the opportunity to address the Public Facilities Cooperative District and thank them for their assistance. It has been a very successful partnership.

Burton Properties acquired 24 acres south of Academy Sports project with the intent to bring in some addition big box retailers here and there has been a considerable amount of interest in Foley. There has been more interest since Academy Sports opened and Ross Dress for Less soon to open. You can never predict the future but there are several other folks that they were in very good discussions with that they hope to come back down to talk with the District members.

On the economics of the project he is very sensitive about the issues. The costs for new development are extremely high; rents are very suppressed because of the economy. Retailers are putting the hammer down on the developers to drive the occupancy costs down on them to make these deals work. Foley hasn't been alone on these endeavors with the public/private partnerships. In Mobile, Burton received all the City sales tax going toward the project to make it work. They added 200,000 additional square feet and approximately 600 jobs. They have been working projects in Starkville, Leesville, and Murray, Kentucky. All the municipalities that they do developments this is the only way to make it work. The projects are very expensive and if the project doesn't work then the developer is the one that is hung out to dry because they have gone to the bank to borrow the money to make it work and it is recourse to us. There is no one more invested in this to make it work.

With respect to Foley and what is going on with Foley Square, Pet Smart just committed. He just reviewed the lease draft from last night and they hope to have it finalized in the next 30-60 days. In addition they have two letters of intent from two new market retailers that are not here currently. One is a beauty concept and the other is a home accessory concept, and there are some others. It is all about momentum. As soon as you get one and you get the other, it is co-tenancy and synergy that you build with the project. The site plan can be blasted out to the world and they see their neighbors on there. They have had success with Academy and Ross being on the site plan, and now Pet Smart is planning on opening. He is just here to promote the project and get to introduce himself to the board members and thank the board for all their help.

Mr. Hellmich asked what he considered phase II. Mr. Burton explained that Pet Smart is Phase III. Phase I was Academy, and Phase II was Ross and the small shops, Phase III is Pet Smart, Phase IV is the two big box guys that they are talking to now and Phase V may just be one more addition or maybe all the way down to the Tanger intersection. It depends on who they have in tow. They subdivide each component so that they can have a separate tax parcel. All the tenants want to have their prorata portion of the taxes and insurance so it's a lot easier for them to get comfortable economically by saving you are only paying property tax for your tax parcel or you're only paying the insurance for

the parcel that your building is on.

Mr. Rouzie reported that if you have ever seen a Ross Dress for Less lease it is a nightmare. Mr. Burton stated they are the most challenging retailers to work with and they have crafted the project around their lease to prevent additional challenges that come with expanding a project at their end because there are exclusives and restrictions on all the issues that are in their lease are isolated just to their particular tax parcel. Mr. Hellmich reported that he thought they were always big into going into older buildings instead of moving into new buildings. Mr. Rouzie reported Ross and TJ Maxx have dominated the soft retail scene since the mid-2000's and continue to do that because they buy from everyone. If you are a shopper it is fun to go into the store because you never know what they have.

Mr. Hellmich reported that if they have a PUD then as you develop the phases it is a matter of adding to the tax base the signage issue goes away. He asked Mr. Burton if he had considered a PUD. Mr. Burton replied they have been exploring the PUD but the issue with it is the 25% of the land mass has got to be green space. No disrespect but the land mass in Foley is not the best and you have to have a lot of area for a retention pond so now we have to try and figure out how we can manage that whole situation. That is the world of development that we live in is all the challenges that you come up with when you are trying to develop 36 acres. Mr. Rouzie reported that is one of the reasons the District members need to go into Executive Session so that we can discuss who Mr. Burton has been working with and show you a concept and site plan of the way it sits now. If we didn't it would jeopardize Burton's ability to do deals with National Retailers that are very sensitive about getting anything out on the street. Mr. Burton and a couple of other developers are fighting for the same ones and he formally asked the boardmembers to go into executive session for the purpose of discussing executive development that would otherwise would harm the competitiveness of the project. The executive session should last approximately 20 minutes. Mr. Burton will need to step out while executive session is in session.

Mr. Abrams made a motion to go into Executive Session and Mr. Burkle seconded the motion. Mrs. Southern took the following roll call vote: Chairman Ebert, aye; Mr. Burkle, aye; Mr. Blackwell, aye; Mr. Abrams, aye; Mr. Hellmich, aye; and Ms. Quaites, aye. There was unanimous consent to go into Executive Session. The meeting recessed to go into executive session at 7:53 a.m.

Enactment No: 16-0121 PFCD

Executive Session

A motion was made by Member Abrams, seconded by Member Blackwell, that the Board go into Executive Session. Mrs. Southern took the following roll call vote: Chairman Ebert, aye; Mr. Burkle, aye; Mr. Blackwell, aye; Mr. Abrams, aye; Mr. Hellmich, aye; and Mrs. Quaites, aye. There was unanimous consent to go into Executive Session.

Mr. Thompson reported it would take approximately 20 minutes and then the Board will come back into the meeting. The meeting recessed to go into Executive Session at 7:53 a.m. Mr. Thompson reported that the information that will be given in Executive Session is highly confidential and if word got out on the street it would make the deal go away. The retailers are also looking at other places besides Foley. If word gets out that Foley is expecting these businesses and word gets out then these businesses might go somewhere else. At this time Mr. Burton left the room.

Chairman Ebert called the Public Facilities Cooperative District to order at 8:22 a.m.

Mr. Burton reported who they end up with will depend on how they want to be positioned on the site and who they end up with. The retailers drive a lot of what Burton does and the retailers have a lot of influence. Mr. Rouzie reported from Pet Smart going south the City of Foley is calling it Phase II of in line space, they talked about the out parcels and it might be those will be sold. Food stores do not get a user fee.

Mr. Burkle asked why the length of the term of the user fee was necessary to have it for 15 years. Mr. Burton stated it was not a question of recouping their investment but overall underwriting of the project as a whole. If you look at a lease from Academy Sports it is 15 years. They invest \$12 million in the first phase alone, which was Academy. Pet Smart's investment is another \$4 million. To do the others it will probably be another \$6-7 million and it is a substantiation investment Burton won't get back in 15 years based on the rent rates. Their hope in the way it works out is that it will help offset and make the economics work today. The revenue source is a part of the NOI that Burton presents to the Lender that is used to underwrite to give Burton the loan. It is actually part of the collateral Burton gives to the Lender. Burton looks at it as a part to service the debt. They won't be recouping their investment.

Mr. Burkle stated the City is pledging a fee to help you recoup a portion of the investment. Mr. Burton reported they write it as an income stream but they are not putting up \$30 million and going to get \$10 million back. They are putting up \$30 million and getting a percent return on that \$30 million and part of that percent return is a piece that is coming from the user fee. Mr. Hellmich stated that it actually supplements the rent rates to get it.

Mr. Burkle stated the way it is presented is \$10 million is your investment and we are going to return 35% cap so you keep a maximum of \$3,500,000. So he is asking why is 15 years would be necessary to recoup \$3.5 million. Chairman Ebert reported that 15 years is there if he needed it but it could be paid off earlier if the business is doing better than anticipated. Mr. Burton stated they are looking at it as an income stream to service the debt. The debt is 15 years. Mr. Thompson reported the user fee is tied with the debt length. Why is it that

it would be ok if it stopped at year 10 because we hit the 35% match. Well he got the revenue stream anticipated that was expected in 15 years within the first 10 years. That means the business is successful.

Aye: 6 - Chairman Ebert III,Secretary/Treasurer Burkle,Member Abrams,Member Blackwell,Member Hellmich and Member Quaites

16-0119

Consider Phase II Burton Properties' Request - Philip Burton

A motion was made by Mr. Abrams to adopt Resolution 16-0121 PFCD approving a 1% User Fee for a maximum of 35% of the developers cost of Phase II or 15 years from the start of the collection of the fee, whichever comes first, be adopted. Mr. Hellmich seconded the motion and the motion passed unanimously. The motion carried by the following vote:

Aye: 6 - Chairman Ebert III,Secretary/Treasurer Burkle,Member Abrams,Member Blackwell,Member Hellmich and Member Quaites

Enactment No: 16-0121 PFCD

Visitor Comments

Chairman Ebert gave Vickey a big thank you for preparing breakfast for the board. The rest of the members also expressed their thanks.

Mr. Rouzie thanked Vickey too. She goes through a lot of paperwork and has to round up people and it is a daunting task.

Mr. Blackwell reported Vickey has a good certified assistant. Ms. Katy Taylor has her Certified Municipal Clerk designation.

Mr. Hellmich asked about the timeframe of the validation. Mr. Rouzie reported that yes it has to be moving along. Mr. Thompson reported it would be initiated immediately.

Mr. Burton thanked each of the board members and left the meeting at this time.

Adjourn

Mr. Abrams made a motion to adjourn and Mr. Burkle seconded the motion. The meeting adjourned at 8:36 a.m.