

MEMORANDUM

TO: CMPA Board of Directors

FROM: Owen Beitsch, PhD, AICP, CRE

DATE: April 18, 2009

RE: Review of other CMPA related documents

If you'll recall, I reported at the last CMPA board meeting that the major deal points had been settled, and the City did not take issue with the terms and conditions outlined in the course of my presentation. I observed that the City and CMPA both needed to review the documents for legal sufficiency, a process which has been underway since the meeting adjourned. This process appears to be functionally completed and those adjustments have been incorporated in the document posted to the city's web page on Friday, April 17th.

Following my last presentation, it was generally agreed that CMPA would review the development agreement in its entirety and forward this document onto City Council for action. As I understand the schedule, this remains the procedure. You will read the documents and forward them to council which could act as soon as next Thursday evening.

The deal terms in the updated document distributed and posted this week remain the same in principle and intent with those already agreed to by CMPA, MPDP, and the City in previous discussions. The City restated these business points in the memorandum Al Coby distributed about ten days ago. You can also refer to my last memo or PowerPoint to recap those items. Among the more important were the budget generally, procedures for defining the program linked to that budget, the financial terms associated with lands consigned to private uses, the form of the management agreement, and application of the design criteria.

In Al Coby's memorandum posted to the web page yesterday along with the development agreement, he recommends to council that the document be approved. It further restates the various conditions precedent that must necessarily be satisfied. I expect that Ed Spears will discuss the significance of these in more detail during Tuesday's special meeting but these also have few obstacles to completion or certification.

I am mindful that there have been many questions or comments regarding CMPA's role in exercising control of many procedures, particularly the design criteria. Overall, I believe the position and responsibilities of CMPA, alone and through its advisors, consultants or future paid staff, have been enhanced as a key party for reviews and approvals in all critical deal points and policy matters. Specific to the design criteria, after extensive discussions in concert with the City which has similar interests in the criteria, I believe the document is adequate to control their form and intent.

If there are changes in the development agreement which might be called to your attention, they do not affect the economic terms of the deal but rather the specific measures and protocols that will be followed by each party to make sure their respective interests are protected. Among the primary legal considerations is that the City's advisory or approval role(s) are much clearer than they were in earlier drafts. There are clarifications regarding the distinctions in MPDP's role as developer and potentially as the entity doing the construction of the project's many components. There is also specific language describing CMPA's role in working with MPDP through its owner's representative or other advisors, consultants and future paid staff. I believe that both MPDP's obligations and defaults are much more clearly articulated, elevating CMPA's oversight responsibilities. Finally, it is possible within the body of the current document that MPDP might perform as the developer *but not as a general contractor*. This possibility could mean -- as plans and budgets are refined -- that CMPA might issue a subsequent RFP for a general contracting entity subject to all other terms in the agreement.

In the matter of the sublease that guides the way property is deployed by MPDP, there are tighter controls in terms of the developer's ability to encumber or use the property over the term of the sublease. Effort has been made to assure that the project has a sustainable future and that its character remains actively mixed use. Again, while these or similar legal modifications are important enough to call to your attention, they are not a change of the *business* deal outlined which remains intact as I described previously.

While I cannot speak directly for the City, the business points and terms I am outlining were discussed and debated with the City staff and consultants jointly but you'll have to infer agreement pending the outcome of Monday's committee meeting. As you know, the entire council will have to act formally following your deliberations.

Finally, I was also asked to consider how the agreements with UWF, Studer, and the Pelicans might affect the development agreement. While I have not been a party to these various documents and I can't say with absolute certainty I have the final relevant documents in my possession, I am under the impression that Studer has provided a memorandum of understanding (MOU) for the board's consideration. UWF and the Pelicans have submitted proposed leases. I also understand that you have taken action on these items.

I recognize and appreciate the contributions these respective parties have made to the concept of Maritime Park. It could very well be that the park idea would not exist without their ardent and unfailing support. Their contributions -- financially, politically, and pragmatically -- must be addressed in way that maximizes the value of their continuing commitments. And that value would be enhanced by assuring their needs are considered collectively in some manner to be determined *following adoption of the development agreement* to affirm they are not inadvertently in conflict with each other or the plan in its entirety. The fact that you may have approved either an MOU or a lease does not change my position.

Your prior actions on these matters notwithstanding, the logic in my recommendation is very simple: all these facilities and users have planning and implementation aspects that are better addressed in the next few weeks as MPDP begins to refine its budget and implementation strategy. Parking is an obvious example affecting *all* activities on site, and the sublease embedded in the development agreement describes MPDP's procedures for managing shared and exclusive parking. Thinking holistically is likely to improve the plans of each user and thereby the whole plan.

Specific to a lease benefitting Studer, it should be noted that this lease, when presented, would almost certainly require the subsequent approval of City Council. I suspect the same is true of the UWF and Pelicans leases -- which I think were just adopted by CMPA -- although these obviously differ in terms of their beneficiaries. While there may *not* be a need for any changes in these various agreements, it is best for CMPA to retain some flexibility for the next several weeks. I am hopeful the affected parties will understand the efficacy of my recommendation.

I understand that a finished or nearly finished document describing the covenant and related commitments to the contracting academy may be adopted soon by CMPA. Because I am not involved in that effort, I may be in error regarding its actual status at this time. Nonetheless, *what is important* in the context of this development agreement is that the obligations created by the covenant and similar documents are a contractual relationship between CMPA and MPDP, and the nature of that relationship *is not* specified in the development agreement. Because this relationship falls *outside* of the development agreement, it will be necessary for the board of CMPA to monitor any changes or progress in the evolution of the covenant or related documents.

I believe the development agreement is a fair deal for all involved. Effectively, I am recommending that the development agreement and any attached exhibits be approved as the first order of the board's business.

Once you approve these documents, your next priority will be engaging a construction owners representative (COR) which may begin to transition CMPA into a fulltime organization with an executive director if that remains the body's objective. Because I have been interacting with the City on the development agreement that is so dependent upon the involvement of a COR, I along with Barry Abramson was asked to describe the general roles and responsibilities of a firm or an individual engaged to provide such services. Our comments have been reflected in a memorandum submitted to Al Coby. I am sure Ed Spears would be glad to report on this matter.

Thank you for your continued patience and support of this process. Please feel free to call with any questions.