

CARSON CITY REDEVELOPMENT AUTHORITY

Minutes of the October 4, 2018 Meeting

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A regular meeting of the Carson City Redevelopment Authority was scheduled to take place during the Board of Supervisors meeting on Thursday, October 4, 2018 in the Community Center Sierra Room, 851 East William Street, Carson City, Nevada.

PRESENT: Chairperson Karen Abowd
Vice Chairperson Lori Bagwell
Member John Barrette
Member Brad Bonkowski
Member Robert Crowell

STAFF: Nancy Paulson, City Manager
Sue Merriwether, Clerk - Recorder
Adriana Fralick, Deputy City Manager
Dan Yu, Chief Deputy District Attorney
Kathleen King, Chief Deputy Clerk

NOTE: A recording of these proceedings, the Redevelopment Authority's agenda materials, and any written comments or documentation provided to the Clerk during the meeting are part of the public record. These materials are available for review, in the Clerk's Office, during regular business hours.

19. CALL TO ORDER AND ROLL CALL (9:55:22) - Chairperson Karen Abowd called the meeting to order at 9:55 a.m., noting the presence of a quorum.

20. PUBLIC COMMENT (9:55:30) - Chairperson Abowd entertained public comment; however, none was forthcoming.

21. POSSIBLE ACTION ON APPROVAL OF MINUTES - June 21, 2018 (9:55:41) - Chairperson Abowd introduced this item, and entertained a motion. **Member Bonkowski moved to approve the minutes, noting a correction to the approval date. Vice Chairperson Bagwell seconded the motion. Motion carried 5-0.**

22. COMMUNITY DEVELOPMENT DEPARTMENT

22(A) POSSIBLE ACTION TO CONSIDER AN APPEAL OF THE REDEVELOPMENT AUTHORITY CITIZENS COMMITTEE'S ACTION REGARDING THE EXPENDITURE OF UP TO \$25,000 FOR FAÇADE IMPROVEMENTS TO THE BUILDING LOCATED AT 302 NORTH MINNESOTA STREET, WITHIN REDEVELOPMENT AREA NO. 1, UNDER THE REDEVELOPMENT FAÇADE IMPROVEMENT PROGRAM (9:55:59) - Chairperson Abowd introduced this item, and entertained disclosures. Member Bonkowski read a prepared disclosure statement into the record. He explained a disqualifying conflict of interest, and advised that he would not vote on this matter. He further advised of having conferred with counsel, who informed him that he may participate in the discussion "as long as [his] comments are related to factual knowledge and not to advocate." Mayor Crowell read a prepared disclosure statement into the record, advising of no disqualifying conflict of interest and that he would participate in discussion and action.

Community Development Director Lee Plemel explained Mr. Yu's representation of the Redevelopment Authority Citizens Committee and introduced the Appellant, Joe Cowee. Mr. Plemel presented the agenda

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materials in conjunction with displayed slides. Chairperson Abowd thanked Mr. Plemel for his presentation, and suggested considering amendment to the façade improvement program resolution.

(10:07:56) Cowee Investments Managing Member Joe Cowee introduced himself for the record, provided background information on this item, and presented the appeal.

Mr. Yu compared the subject appeal to a “request for ... declaratory relief. ... it’s a matter of interpretation which is why we’re here today.” Mr. Yu agreed with the “three sub-issues” identified by Mr. Plemel. “The easy one ... the location issue. I base that on the plain language of the resolution that was adopted in 2017. There’s no question ... when reading the plain language of that resolution, there is no restriction. So, to that extent, it’s not restricted for eligibility purposes just to ... the primary commercial corridor, meaning Curry or Carson Streets. And I do agree with the Appellant and I do agree with staff that that is the correct reading and, in fact, I don’t even need to dig beyond the plain language of it because it’s so crystal clear ...

“As to the roof decking issue, it sounds like Mr. Cowee himself doesn’t really have much of an objection to the recommendation I provided at the RACC level ...” Mr. Yu read into the record a portion of the recommendation he provided to the Redevelopment Authority Citizens Committee. Mr. Yu pointed out that roof decking “by definition, is not visible. And so, therefore, that language is probably something I’d attribute to scrivener’s error.” Mr. Yu advised of having reviewed the record of the Redevelopment Authority meeting at which the façade improvement program resolution was adopted. “... based on the discussions on the record, it was plainly clear that the intent of the [Redevelopment] Authority, at that time in adopting this resolution, was to exclude re-roofing. In fact, ... staff’s discussion on the record also alluded to the use of that term ‘roof decking’ ... to capture different types of ‘architectural features that may extend from the roof or be adjacent to the roof’ but was to exclude, for example, roof shingles.

“... that leaves us with the final sub-issue which is incentives versus deferment and this is a much trickier issue. I wasn’t able to pinpoint anything exactly from the legislative history of the resolution itself. ... I can’t avow to looking at every document out there ...; however, based on my discussions with staff; based on the input from the RACC members; and also based on the limited number of documents I did review, I was not able to decipher one way or another what was intended behind the use of that term. Now, those terms themselves, it’s actually two terms. It’s tax incentives or other financial incentives. I would say the succinctness of that language is probably written in a very broad stroke and so that was my recommendation and explanation to the RACC members when they were ... trying to come down with a decision on this which was it’s really up to the RACC members to decide, based on their reading of that language, what is intended by it.

“... normally, you go beyond the language of a statute, a resolution, an ordinance, a constitutional provision. If there’s any ambiguity, you try to ascertain ... what was the true intent behind the adoption of that language. Here, ... I’m not able to ascertain the intent from past written records and so, instead, I’m unfortunately going to have to ... punt that question back to the Authority members. I would recommend, however, one of two options as Lee also stated earlier. If the Authority decides today on this appeal matter that the property is eligible, I think that because the roof decking issue is very clear that that is probably nothing more than a scrivener’s error. The true intent of that I’ve just discussed on the record. I think that staff’s recommendation to fund 50 percent of the painting, which would amount to \$9,292.50, would be appropriate for eligibility. If, however, the Authority decides that the ... property would be ineligible for

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funding because of the term that's used with respect to incentives, then obviously there would be no funding at all. I don't think that alternative number 3 ... that's just provided as an option on the staff report would be a recommended course of action which would be to modify it at an even higher level than \$9,292.50, as recommended by staff."

District Attorney Jason Woodbury responded to questions of clarification regarding the Redevelopment Authority's options. Member Barrette discussed his involvement in the RACC meeting, as the Board's liaison, and advised that he would vote in support of the \$9,292.50. Vice Chairperson Bagwell expressed concern over the issue of "the painting of the building as a project." Discussion followed.

Mr. Cowee provided background information on his original application. In response to a question, Mr. Plemel expressed the opinion that the RACC generally understood that painting was an eligible activity. In reference to Vice Chairperson Bagwell's earlier question, Mr. Plemel provided an overview of discussion which took place at the RACC meeting "about considering the merits of the project. That's not how the program was set up. That's not how the resolution was set up. It was set up on a first come, first served basis. There's no criteria in here so I caution against randomly applying some meritorious criteria to this particular application without writing it in there. It was set up, here's the criteria. If you meet these criteria and we still have money, you get the incentive. It's how the resolution was set up and written. There's not, like with other incentives, ... requirements and you have to show this and that. That was not the case with the set up for the façade improvement program. So, I saw that because if you feel that there should be some ... review on the merits and whether or not you like it, I think you should write some new policies into the resolution to say that because I don't believe that's how it was originally set up." Discussion followed.

In response to a question, Mr. Yu expressed the opinion that a distinction can be made between tax incentives applied to a general area without qualification and an incentive granted to an individual property owner. "I think you can draw a distinction between the two, as two separate categories of incentives and ... that would be a justifiable position to take." Additional discussion followed.

In reference to the Redevelopment Authority Citizens Committee meeting, Mr. Cowee advised that "they had approved other properties that were receiving these tax deferments already. So, I asked, '... doesn't that set a precedent?' and the board kinda fell silent and that kinda just got brushed over but ... there is that too ..."

Chairperson Abowd requested Mr. Plemel to explain the difference between "big box tax incentive versus historic tax deferment." Mr. Plemel explained that the "big box tax incentive ... was a program that was in the policies and has since been repealed and is no longer available. But, basically, to fill large, empty spaces, an incentive was given by the City for a while ..., if they got a new tenant in there, there's a reimbursement ... of sales tax to those properties for filling the vacant space. ... I honestly don't know too much about the historic tax deferment as even the Assessor's Office told me it's a pretty complicated formula how it actually ends up working in terms of impacting the actual taxes paid but I have pulled up the open space assessment. ... so any property is eligible, ... one of the categories is for any site or structure designated as historic by the Carson City Board of Supervisors based on the criteria provided in Section 18.07, which is the Historic District section. So, if they meet the criteria in terms of historic preservation, then they're eligible. And this falls under Open Space Use Assessment under Carson City Municipal Code and ... under state law as well." Mr. Plemel responded to questions of clarification.

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In response to a question, Mr. Woodbury advised that “a denial is defensible, if nothing else, on the grounds that Supervisor Bagwell has indicated; that her interpretation ... globally of the objective of the historical tax deferment is to provide for those kinds of things.” In response to a further question, Mr. Woodbury advised that the Board “can take into account the aspects of this property, the unique aspects of it, where it’s located, its character, what it’s used for and all that.” In response to a comment, Mr. Woodbury clarified, “You can’t make an arbitrary decision and I don’t mean to suggest that at all. ... I disagree with the characterization that this is set up ..., only restricting the review to whether or not a property is eligible. ... And I just base that on the language of that. Maybe that was the intention of how it was supposed to be set up; that all the discretion was supposed to be controlled by this resolution but there is a review process set up and there is an application process. And we talk about you’re eligible to apply. That’s the language that is, ‘All commercial properties within Redevelopment Areas 1 and 2 are eligible to apply for façade improvement program funds.’ And then it talks about ineligible properties and eligible improvements. But my question being, why do you have a review process if the only question is on eligibility? Why do you have RACC go through, for consideration, the review process? Why do you have an appeal process to this Board unless it is to say, even if you’re eligible there is some level of discretion to approve or deny the expenditure of those funds. And when we talk about first in time, first in right, that means you get priority to have your application considered and your application is based on a first come, first served basis and, once that money runs out, then that’s it. The consideration is over. But my interpretation of that resolution is to say that gives you priority for consideration. It doesn’t give you priority to guarantee it.” Extensive discussion followed.

Chairperson Abowd entertained additional questions or comments of the Redevelopment Authority members, and entertained public comment. Mr. Yu requested the Redevelopment Authority to consider the extent of the Redevelopment Authority Citizens Committee’s authority to exercise discretion to act upon incentive funding applications. Mr. Plemel provided an overview of discussion which took place relative to original adoption of the Redevelopment Façade Improvement Program resolution. “... should we just make it administrative? If we meet everything, do it? Or do this? And, honestly, there wasn’t a comfort level at just the administrative review and that’s probably the right thing to do, put it into public forum. ... ironically, we haven’t even got past the eligibility part and, so even on that alone, there’s an argument that it should go to RACC for public review even if it is just first in, first out. So this reason that we’re here today is exactly why they review it. It’s just to make sure that their interpretation is eligibility so let’s start with that. But then there’s also compliance with development standards so this happens to be just repainting but there’s been others where there have been new improvements so I include the Downtown Development Standards if it’s downtown or other commercial development standards. And they may interpret it differently than I do so they do have, even under the scope of it as written, they do have a level of review to look at it and say, ‘These ... improvements are appropriate; therefore, we’ll approve them.’ But that is kind of the limit of discretion that’s written in there unlike, as I mentioned before in the Redevelopment Policies and Procedure under that incentive program, there are some other findings that you have to make to authorize it. And, to the Mayor’s point, those types of things that lead to a decision on some basis are not written into the resolution for the façade improvement program right now. But ... perfectly agree that maybe it’s time to revisit that and have that discussion.”

In reference to Mr. Yu’s request, Chairperson Abowd agreed we need to fine-tune this. “It’s been a successful program but ... now we’re getting into some intricacies that need to be visited ... But I think the RACC’s position has never changed on this. They need to consider an application on its own merits and does it fit the goal of the program and they are that body that will determine it, above and beyond check

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boxes because there are intricacies to every single project, as this one, that comes before the RACC. So I don't see that as changed."

Member Crowell commented on the benefits of matters such as the subject "because they point out errors or inconsistencies or lack of clarity in our Code which should not have any lack of clarity." He suggested that the historic tax deferment, "because it applies generally across a geographic area, is not the same as other incentives that we've entered into with Board approval on all these things. I can get over that side. On the painting side, I don't understand how we can say, when painting is clearly an authorized expenditure, how you say no where we are on the record. In a way, we pick our poison. Let him take the brunt of it and we'll fix the ordinance or let this one go through and then we'll fix the ordinance. Whatever you want to do."

Following a brief discussion, Chairperson Abowd called again for public comment. When no public comment was forthcoming, Chairperson Abowd entertained a motion. **Member Crowell moved to approve the appeal and approve a modified expenditure of up to \$9,292.50 for painting the building located at 302 North Minnesota Street, within Redevelopment Area No. 1, subject to staff's recommended conditions of approval; that the motion is made upon the basis that this is not a precedent for any future painting applications in the historic district that come before the Redevelopment Authority Citizens Committee or the Redevelopment Authority; and that the Redevelopment Authority will consider clarifying the Code on the subject matter. Member Barrette seconded the motion.** Chairperson Abowd called for a vote on the pending motion.

RESULT:	Approved [4 - 0 - 1]
MOVER:	Member Robert Crowell
SECOND:	Member John Barrette
AYES:	Members Crowell, Barrette, Vice Chair Bagwell, and Chairperson Abowd
NAYS:	None
ABSENT:	None
ABSTAIN:	Member Brad Bonkowski

22(B) POSSIBLE ACTION TO MAKE A RECOMMENDATION TO THE BOARD OF SUPERVISORS REGARDING THE EXPENDITURE OF UP TO \$9,000 FROM THE FISCAL YEAR 2019 REDEVELOPMENT REVOLVING FUND, SPECIAL EVENT ACCOUNT, FOR A SPECIAL EVENT FUNDING REQUEST FROM THE CARSON CITY DOWNTOWN BUSINESS ASSOCIATION FOR THE PASSPORT TO DOWNTOWN EVENT, ON OCTOBER 26, 2018, AS AN EXPENSE INCIDENTAL TO CARRYING OUT THE REDEVELOPMENT PLAN (11:00:04) - Chairperson Abowd introduced this item, read a prepared disclosure statement into the record, and advised of no disqualifying conflict of interest. She entertained additional disclosures; however, none were forthcoming. Mr. Plemel presented the agenda materials. Jennifer Smith, of the Downtown Business Association, responded to questions regarding printing expenses and available funding.

Chairperson Abowd entertained additional questions or comments of the Redevelopment Authority members and of the public and, when none were forthcoming, a motion. **Member Crowell moved to recommend to the Board of Supervisors approval of the expenditure of \$4,500 for the Passport to Downtown special event. Vice Chairperson Bagwell seconded the motion.** Chairperson Abowd called for a vote on the pending motion.

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RESULT:	Approved [4 - 1]
MOVER:	Member Robert Crowell
SECOND:	Vice Chair Lori Bagwell
AYES:	Member Crowell, Vice Chair Bagwell, Member Barrette, Chair Abowd
NAYS:	Member Brad Bonkowski
ABSENT:	None
ABSTAIN:	None

23. PUBLIC COMMENT (11:09:05) - Chairperson Abowd entertained public comment; however, none was forthcoming.

24. ACTION TO ADJOURN (11:09:20) - Chairperson Abowd adjourned the meeting at 11:09 a.m.

The Minutes of the October 4, 2018 Carson City Redevelopment Authority Meeting are so approved this _____ of December, 2018.

KAREN ABOWD, Chair

ATTEST:

SUSAN MERRIWETHER, Clerk - Recorder