

MEETING
OLIVE/GRAESER TRANSPORTATION DEVELOPMENT DISTRICT
BOARD OF DIRECTORS

Creve Coeur Government Center
300 North New Ballas Road, Creve Coeur, Missouri 63141

Thursday, September 22, 2011
3:00 p.m.

MINUTES OF MEETING

The audio of this meeting will be posted on the website of the City of Creve Coeur: www.creve-coeur.org.

1. OPENING AND CALL TO ORDER.

Based upon a determination that eight out of nine voting directors were present, constituting a quorum, Stephen L. Kling, Jr., legal counsel to the District, called to order a meeting of the Board of Directors of the Olive/Graeser Transportation Development District (the “**District**”) at approximately 3:05 p.m.

2. ROLL CALL.

Directors present:

Joe Beaudean
Denise Chomicki
Steve Heitz
David Hutkin
Carole Jamison
Stacy Manolakas (*present during roll call, but left the meeting during new business/resolution no. 11-008*)
Rick Matejka
Les Steinberg

Directors absent:

Rocky Adkins

Advisory directors present:

Mel Klearman
Dan Smith

Advisory directors absent:

Mark Perkins
Kristy Yates

Others present:

Stephen L. Kling, Jr., Jenkins & Kling, P.C., District legal counsel
Jennifer E. Beasley, Jenkins & Kling, P.C., District legal counsel
Heather L. Siddle, Jenkins & Kling, P.C., District legal counsel

3. PUBLIC COMMENTS.

An opportunity was presented for persons in the audience to make public comments.

No comments were made.

4. ACCEPTANCE OF THE AGENDA.

An opportunity was presented to make comments or amend the agenda.

No comments or motions were made.

5. ANNOUNCEMENTS.

Mr. Heitz announced that Pace-Creve Coeur Associates, L.L.C. ("**Pace**") sold the Walgreen's property within the District, and noted that Pace continues to own an outlet within the District's boundaries. Mr. Heitz further announced that Pace entered into an agreement with the purchaser where Pace will retain control of appointing the Board of Directors (the "**Board**") members for "Developer" under the District Development Agreement, as amended.

Mr. Kling notified the board that if the ability to control more than fifty percent of the Board changes, the District's Directors and Officers Insurance Policy would need to be updated. Discussion ensued. Steve Heitz confirmed that the agreement between Pace and the purchaser will not change Pace's right to appoint Board members. Steve Heitz agreed to submit the recorded agreement between Pace and the purchaser for the District's records.

6. REVIEW AND APPROVAL OF MINUTES OF BOARD OF DIRECTORS MEETING HELD ON JUNE 23, 2011.

Mr. Kling announced that the closed session minutes from the last Board meeting held on June 23, 2011 are now public records under Missouri law as the subject matter of the closed session has been finally resolved.

Mr. Heitz moved to approve the minutes for the open session of the last Board meeting held on June 23, 2011. Mr. Matejka seconded the motion. No discussion ensued. A vote on the motion carried 8-0.

Ms. Chomicki moved to approve the minutes for the closed session of the last Board meeting held on June 23, 2011. Mr. Steinberg seconded the motion. No discussion ensued. A vote on the motion carried 8-0.

7. **OLD BUSINESS.**

a. **Sales tax collection report.**

At the meeting, the directors received a summary of the District's sales tax collections for 2011, showing that a total of \$57,538.29 in collections for January through August.

Mr. Hutkin inquired if there was a reason for the variation in the amount collected between months. Discussion ensued. Ms. Chomicki noted that the Missouri Department of Revenue handled sales tax collection for the District. Mr. Smith noted that the average collections conform to the collection projections for the District. Mr. Klearman inquired whether the District was expected to reach its target of \$80,000.00 in revenue for this year. Mr. Smith anticipated that the collection total would approximately reach that amount. Mr. Kling noted that the variation in collection amounts was consistent with other transportation development districts in Missouri. No further discussion ensued.

b. **Status Update: Bond Issuance**

Mr. Heitz reported that Pace was working with the City of Creve Coeur and WM Financial Strategies to prepare a request for proposal letter. A draft of the letter was presented to the board. Mr. Smith and Ms. Chomicki raised the issue of whether the request for production letter should include a disclosure that the tax laws may change and noted the draft does not contain this language. Discussion ensued.

Ms. Jamison made a motion to approve the form request for production as presented. Ms. Manolakas seconded the motion. Mr. Smith raised the issue of whether the bond issuance was capped at \$1,250,000.00 or if it also included the costs of issuance and accrued interest. Mr. Smith explained the City of Creve Coeur's position is that the bond issuance is capped at \$1,250,000.00. Ms. Chomicki suggested that the District's bond counsel should make the final determination. Discussion ensued. Ms. Jamison and Ms. Manolakas accepted an amendment to the motion to approve the form request for production with the addition that the interest to be included in the bond would be an amount determined by Ms. Chomicki and Mr. Smith. A vote on the motion carried 8-0.

8. **NEW BUSINESS.**

- a. **Resolution No. 11-008:** A resolution approving substitution of TDD Eligible Costs in certificate of reimbursable costs No. 3, and actions in connection therewith (amending Resolution No. 11-003 approving certificate of reimbursable costs No. 3)

Ms. Manolakas left the meeting.

Ms. Chomicki explained that this certificate replaces certain costs originally included in the certificate of reimbursable costs No. 3. Certain invoices under that

certificate included amounts paid by Pace to subcontractors for services Pace had previously paid directly to Aura Contracting. Due to concern over whether these payments constituted reimbursable costs under the District Development Agreement, as amended, Pace felt it best to substitute these invoices so they would not be included in the Series A Notes. Mr. Smith noted the City of Creve Coeur had no objection to these substitute costs. Mr. Heitz confirmed that the substitute costs did not reflect amounts previously paid to Aura Contracting.

Mr. Steinberg moved to approve Resolution No. 11-008 as presented. Mr. Heitz seconded the motion, which carried 7-0.

b. Review and approval of invoices for legal fees: Jenkins & Kling, P.C.

The Board was presented with itemized invoices from the District's general counsel, Jenkins & Kling, P.C., dated May 23, 2011 through August 24, 2011 (corresponding to time entries from April through July 2011). Each time entry on the invoices was marked with an "F" for formation costs or an "A" for administrative costs because TDD Administrative Costs are treated differently under the District Development Agreement, as amended. Ms. Chomicki noted that the District was close to reaching its cap on the annual TDD administrative costs with the approval of these invoices. Mr. Kling noted that there were unanticipated costs relating to the Aura Contracting issues that arose this year. Ms. Chomicki suggested that the excess costs be rolled over and paid in the next fiscal year.

Mr. Steinberg moved to approve the Jenkins & Kling, P.C. invoices as presented. Mr. Heitz seconded the motion, which carried 7-0.

c. Discussion item: Update on Construction Costs.

Mr. Heitz announced that Pace is in the process of accounting for the remaining invoices and compiling a final accounting for the project. Mr. Heitz noted that the project costs were more than anticipated, and the largest factor in the overruns was Aura Contracting. Mr. Heitz explained there were additional unanticipated hard and soft costs as more work had to be completed at night than was originally anticipated, there were staging issues with the project, and CBB was required to be on-site during all construction for monitoring purposes. No further discussion ensued.

d. Discussion Item: Missouri Department of Transportation Final Approval of Improvements and Dedication of Improvements.

Mr. Heitz announced Pace was in the process of resolving a circuit breaker issue, which was the only outstanding issue item for final approval from the Missouri Department of Transportation. Mr. Heitz further announced that the right-of-way was dedicated. Mr. Heitz explained that Pace hopes to have confirmation of final approval in the following week. Mr. Klearman inquired about the amount of increased costs due to Aura Contracting. Mr. Heitz estimated the overpayments at approximately \$218,000.00,

but suggested deferring discussion on whether these were eligible costs as they were not included in the Series A Notes. Mr. Smith noted that it is the City of Creve Coeur's position that these are not eligible costs. No further discussion ensued.

e. Discussion item: Series B Notes.

Mr. Heitz noted that Pace will wait until it has compiled the final costs to seek issuance of any Series B Notes and that no discussion was necessary on this item at this time. No further discussion ensued.

f. Discussion item: Legal Proceedings against Aura Contracting.

A motion was made by Mr. Heitz and seconded by Mr. Hutkin to temporarily adjourn the open meeting and enter into a closed session with the District's general counsel and advisors for the purpose of discussion of legal actions, causes of action, or litigation in accordance with Section 610.021(1) of the Revised Statutes of Missouri, as amended. A vote was taken to approve entering into closed session, with all directors voting in favor of entering into closed session. No further discussion ensued. A vote on the motion carried, 7-0.

CLOSED SESSION STARTED AT 3:58 P.M.

CLOSED SESSION ENDED AT 4:12 P.M.

A motion was made by Mr. Steinberg and seconded by Ms. Chomicki to adjourn the closed session and re-convene in open session. A vote was taken to approve reconvening in open session, with all directors voting in favor of reconvening in open session. No further discussion ensued. A vote on the motion carried, 7-0.

g. Discussion item: Claims Against District Directors and Officers Insurance Policy.

Mr. Klearman raised the possibility of making a claim against the District's Directors and Officers Insurance Policy regarding payments made to Aura Contracting. Mr. Kling noted that as any claims against the District have been resolved, the District has no claim at this time against the insurance policy. No further discussion ensued.

9. ADJOURNMENT.

There being no further business, Mr. Steinberg moved to adjourn the meeting. Mr. Hutkin seconded the motion. No discussion ensued. A vote on the motion carried 7-0.

The meeting was adjourned at approximately 4:20 p.m.



Stephen L. Kling, Jr., Esq., Secretary of the
Olive/Graeser Transportation Development District

Date approved: November 3, 2011