

MEETING
OLIVE/GRAESER TRANSPORTATION DEVELOPMENT DISTRICT
BOARD OF DIRECTORS

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

Friday, May 11, 2012
3:00 p.m. (Immediately Following the Property Owners' Meeting)

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 six out of nine voting directors were present, constituting a quorum, Jennifer E. Beasley, legal counsel to the District, called to order a meeting of the Board of Directors (the "**Board**") of the Olive/Graeser Transportation Development District (the "**District**") at approximately 3:19 p.m.

2. ROLL CALL.

Directors present: Jeffrey Gershman
Steve Heitz
David Hutkin
Stacy Manolakas
Rick Matejka
Les Steinberg

Directors absent: Bill Biermann
Denise Chomicki
Garry Earls

Advisory directors present: Mel Klearman
Mark Perkins
Dan Smith

Advisory directors absent: Michelle Voegel

Others present: Jennifer E. Beasley, Jenkins & Kling, P.C., District legal counsel
Stephen L. Kling, Jr., Jenkins & Kling, P.C., District legal counsel
Joe Beaudéan, Pace-Creve Coeur Associates, L.L.C.

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.

Rick Matejka made a motion to move agenda items 7(h) to 7(c), 7(i) to 7(d), and 7(k) to 7(e). Ms. Manolakas seconded the motion. A vote on the motion carried 6-0.

Mr. Heitz moved to approve the agenda as amended. Mr. Matjka seconded the motion, which carried 6-0.

5. REVIEW AND APPROVAL OF MINUTES OF BOARD OF DIRECTORS MEETING HELD ON NOVEMBER 3, 2011.

Mr. Heitz moved to approve the minutes for the last Board meeting held on November 3, 2011. Ms. Manolakas seconded the motion. No discussion ensued. A vote on the motion carried 4-0 with Mr. Gershman and Mr. Steinberg abstaining.

6. OLD BUSINESS.

a. Status update: New District directors

Ms. Beasley announced that under section 3.13 of the District development agreement between the City of Creve Coeur (the "City") and the District, once the series A Notes are owned solely by the City, the Board shall consist of nine members, with two members designated by the City, one member designated by St. Louis County, two members designated by Developer, and four members designated one each by respective vote of Wolff, Stern, Credit Union and Hutkin. Ms. Beasley then proceeded to announce that at the District property owners' meeting the following directors were elected: Bill Bierman for a two-year term, Jeffrey Gershman for a two-year term, Garry Earls for a three-year term, Rick Matejka for a three-year term, and Denise Chomicki for a three-year term. No further discussion ensued.

b. Status update: City purchase of Series A Notes

Mr. Smith confirmed that the City elected to exercise its option under section 3.8(a) of the District development agreement to purchase all of the District Series A Notes. No further discussion ensued.

c. 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 \$85,940.38 was collected for January through December, and 2012, showing that a total of \$22,259.72 was collected for January through March. Ms. Beasley announced that the District had just received the collection information for April 2012 showing a total of \$779.03 collected for the month, which is unusually low. Ms. Beasley further stated that according to the Missouri Department of Revenue Local Tax Unit several businesses in the District had not made the reporting deadline for their April 2012 figures and these additional amounts should be reflected in collection figures for the following month. Mr. Smith stated that the City had initially assumed the District would collect approximately \$80,000 in sales tax per year, and the 2011 figures were in line with this estimate.

7. NEW BUSINESS.

a. Approval of new request for sales tax reports

Ms. Beasley noted that the District currently receives detailed monthly sales tax collection reports from the Missouri Department of Revenue, and it was time for the District's request to be renewed.

Mr. Heitz made a motion to request monthly sales tax reports from the Department of Revenue through the end of December 2012. Mr. Hutkin seconded the motion, which carried 6-0.

b. Approval of District annual report

The Board was presented with the District's annual report to the City as required by the District development agreement. Discussion of the contents of the report ensued. Mr. Steinberg made a motion to approve the annual report, which was seconded by Ms. Manolakas. A vote on the motion carried 6-0.

c. Discussion: Reduction of Directors' and Officers' Insurance coverage

Mr. Heitz noted that the District currently maintains a Directors' and Officers' insurance policy in the coverage amount of \$3,000,000.00 per year, for a \$3,500.00 annual premium. As construction of the District improvements is now complete, Mr. Heitz discussed the possibility of lowering the coverage amount to \$1,000,000 in order to reduce the District's administrative costs. Ms. Beasley noted that section 3.13 of the District development agreement with the City requires this insurance policy be maintained in the amount of \$3,000,000.00 and, therefore, any reduction would require amendment of the District development agreement. Mr. Smith noted that the City carries a \$2,000,000.00 policy for general liability and public officials. The Board noted that the

City's public officials may be entitled to certain immunities from suit that are not available to the Board. Discussion ensued. No further action was taken.

d. Discussion: Annual audit

Mr. Heitz noted that an additional administrative cost of the District is the annual audit currently performed by outside accountants. Mr. Heitz noted that Pace-Creve Coeur Associates, L.L.C. (the "**Developer**") can file the required financial report to Missouri annually. Mr. Heitz further discussed the possibility that the District could terminate its annual outside audit as a possible way of saving on administrative costs. Mr. Smith expressed concern that a District agreement or legislation required an outside audit. Ms. Manolakas questioned what data the outside accountants reviewed in completing their audit. Mr. Beaudean stated that the audit relies on the data submitted from bond counsel for the District costs. Mr. Heitz stated that the outside audit does not look at hard costs of the District. Ms. Manolakas discussed continuing the outside audit for fiscal year 2011 as the construction of District improvements were completed during this year. Discussion ensued. Mr. Matejka made a motion to have the Developer review the District documents, with input of District counsel as requested, and cancel the audit if permitted. Mr. Heitz seconded the motion, which passed 5-1.

e. Discussion: Payment of past due District administrative costs

Mr. Heitz noted the District has several outstanding invoices for District administrative costs owed to both District counsel and the Developer in the total amount of approximately \$31,000.00. Mr. Heitz also noted that the District development agreement with the City limits annual administrative costs to \$15,000 for the first year with a 3% increase per year. Mr. Smith noted the City may be reluctant to amend the administrative cost cap, as this would reduce the amounts available to pay the District's Series A Notes. Ms. Manolakas questioned whether the City may be more amenable to allowing a one-time payment in excess of the limits in the District development agreement and noted that administrative costs should be less in the future as construction of the improvements is now complete. Mr. Kling noted that Mr. Klearman had questioned whether some of the legal expenses incurred due to the payment bond issue would be covered by the indemnification of Developer under the District development agreement, but the Board has not directed District counsel to review a potential indemnification claim at this time. Mr. Smith questioned who invoices for administrative payments were submitted to after they were approved for payment. Mr. Beaudean noted that the trustee pays the administrative invoices from proceeds available for these expenses in the District account. Further discussion ensued.

f. Review and approval of invoices for legal fees: Jenkins & Kling, P.C. (August 2011-May 11, 2012 time)

The Board was presented with itemized invoices from the District's general counsel, Jenkins & Kling, P.C., dated September 28, 2011 through May 11, 2012 (corresponding to time entries from August 2011 through May 11, 2012). Mr. Kling

noted that some of the time entries for 2011 corresponded to legal fees incurred due to the payment bond issue. Mr. Smith suggested that the District could explore amending the District development agreement for a one-time waiver of the administrative fee cap for outstanding compensation amounts owed to District general counsel and others. Discussion ensued. Mr. Matejka made a motion to appoint Mr. Steinberg to review the District administrative expenses and possibilities for payment, with the assistance of District general counsel as requested. Mr. Heitz seconded the motion, which passed 6-0.

Mr. Steinberg made a motion to approve the Jenkins & Kling, P.C. invoices as presented. Ms. Manolakas seconded the motion, which carried 6-0.

g. Resolution No. 12-001: A resolution approving Certificate No. 5 for reimbursable transportation project costs and actions in connection therewith

Ms. Beasley noted that the Developer provided the City a letter confirming the costs in this certificate are not "additional costs," as defined by that certain settlement agreement dated January 30, 2012 between the City and the Developer. Mr. Smith stated that the City and bond counsel believe that the amounts submitted do not constitute "additional costs." Ms. Beasley also noted that the resolution was contingent on bond counsel's determination that the submitted costs are "eligible costs" under the District development agreement. Mr. Smith noted the City requested some additional documentation on certain costs involving the Aura payroll. Discussion ensued. Mr. Steinberg made a motion to amend the resolution to make the Board's approval of Certificate No. 5 also subject to the City's receipt and review of the additional requested documentation. Mr. Heitz seconded the motion, which passed 5-0 with Mr. Gershman abstaining.

Mr. Steinberg made a motion to approve Resolution No. 12-001 as amended. Mr. Hutkin seconded the motion, which carried 5-0 with Mr. Gershman abstaining.

h. Resolution No. 12-002: A resolution approving the invoices of the City of Creve Coeur for costs incurred in connection with the realignment of Dautel and actions in connection therewith

Ms. Beasley noted that the District received invoices from the City and St. Louis County costs incurred in connection with the realignment of Dautel, which are payable under the District development agreement. Ms. Beasley further stated that the resolution was contingent on bond counsel's determination that the amounts submitted constituted "eligible costs" under the District development agreement.

Mr. Heitz made a motion to approve Resolution 12-002 as presented. Mr. Hutkin seconded the motion, which passed 6-0.

i. Resolution No. 12-003: A resolution approving the invoices of St. Louis County for costs incurred in connection with the realignment of Dautel and actions in connection therewith

Ms. Beasley stated that, as above, this resolution was contingent on bond counsel's determination that the amounts submitted constituted "eligible costs" under the District development agreement. Mr. Steinberg made a motion to approve Resolution 12-003 as presented. Mr. Matejka seconded the motion, which carried 6-0.

j. Resolution No. 12-004: A resolution of the District authorizing and approving the issuance of the District's transportation development revenue notes, series 2012A, in an aggregate principal amount not to exceed \$1,260,000, plus an amount equal to the accrued interest on the District's outstanding Series 2010A notes to their date of payment in full; approving the issuance of the District's subordinate transportation development revenue notes, Series 2012B in an aggregate principal amount not to exceed \$1,184,912.00, plus issuance costs and accrued interest, and providing the details thereof; authorizing and approving execution of a first supplemental trust indenture and authorizing other related matters; and authorizing certain actions in connection therewith

Ms. Beasley noted that the purpose of the resolution and promissory notes provided by bond counsel is to refinance the Series A Notes held by the City and to approve the Series B Notes for the costs submitted in Resolution Nos. 12-001, 12-002, and 12-003. Mr. Smith noted that he assumed the Series B Notes would be paid pro-rata as money became available for their payment. Discussion ensued. Mr. Matejka made a motion to amend Resolution No. 12-004 and the form first supplemental trust indenture attached to Resolution No. 12-004 to specify that the "interest rate," as defined in the first supplemental trust indenture, adjusts annually. Mr. Heitz seconded the motion, which carried 6-0.

Mr. Matejka made a motion to approve Resolution 12-004 as amended. Mr. Steinberg seconded the motion, which passed 6-0.

k. Resolution No. 12-005: A resolution approving the termination of Jenkins & Kling, P.C. and approval of Armstrong Teasdale LLP as District counsel

Mr. Heitz stated that in an effort to keep District administrative costs down it had received bids from three firms to represent the District for a fixed fee. Mr. Matjeka noted that the Developer used Armstrong Teasdale LLP as its counsel for other Transportation Development Districts that Developer and its affiliates are involved in and had gone through this similar bidding process. Mr. Matejka noted that Armstrong Teasdale LLP presented a proposal to represent the District for a fee cap of \$5,000.00 for the first year and \$4,000.00 for each year thereafter. Mr. Hutkin questioned whether that was a firm limit. Mr. Heitz noted that the proposal was for a soft cap, that the District would be billed hourly, and any legal fees incurred above the cap would be carried forward. Mr. Gershman questioned the hourly rate for Armstrong Teasdale LLP. Mr. Matejka noted

that the attorney who would be responsible charged approximately \$400.00 per hour. Mr. Hutkin and Ms. Manolakas expressed concern with changing District counsel prior to paying outstanding invoices currently owed and whether the District would save on costs by switching now after the improvements are complete. Discussion ensued. Mr. Matejka made a motion to table the resolution, which was seconded by Mr. Hutkin. The motion carried 6-0. Mr. Steinberg left the meeting.

I. Resolution No. 12-005: A resolution appointing officers and agents of the District

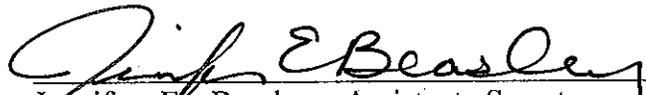
Ms. Beasley noted that this meeting is the first Board meeting following the annual District property owners' meeting and, therefore, time to appoint certain officers and agents of the District. Mr. Heitz made a motion to amend Resolution No. 12-005 as presented to state appoint Stephen L. Kling, Jr. as secretary, Jennifer E. Beasley as assistant secretary and Jenkins & Kling, P.C. as District general counsel. Ms. Manolakas seconded the motion, which carried 5-0.

Mr. Heitz made a motion to approve Resolution No. 12-005 as amended. Mr. Hutkin seconded the motion, which passed 5-0.

8. ADJOURNMENT.

There being no further business, Mr. Heitz moved to adjourn the meeting. Mr. Gershman seconded the motion. No discussion ensued. A vote on the motion carried 5-0.

The meeting was adjourned at approximately 5:06 p.m.


Jennifer E. Beasley, Assistant Secretary of the
Olive/Graeser Transportation Development District

Date approved: June 19, 2012