

**CITY OF TEMPLE TERRACE, FLORIDA
REDEVELOPMENT AGENCY
MINUTES**

**Tuesday, May 12, 2009
Council Chambers–City Hall
9:00 a.m.**

Having been duly advertised as required by law, a meeting of the Temple Terrace Redevelopment Agency was held on Tuesday, May 12, 2009, in the Council Chambers at City Hall, for review and consideration of the Development Agreement with The Vlass Group for the downtown redevelopment project.

PRESENT WERE: Chairman Joe Affronti, Executive Director Kim Leinbach, Agency Members Alison M. Fernandez, Ron A. Govin, Ken Halloway, and Mark A. Knapp, Attorney for the Agency Mark Connolly, and Clerk Lisa Burns. **ABSENT WAS:** Agency Member Mary Jane Neale.

ALSO PRESENT WERE: Public Information Officer Mike Dunn, Code Compliance Director Joe Gross, Leisure Services Director James Chambers, Police Chief Ken Albano, Public Works Director Joe Motta, Community Development Director Charles Stephenson, Human Resources Director Woody Hubbard, Finance Director Diane Reichard, Senior Planner Susanne Hicks, Graham Carothers, Cate O'Dowd, Patrick Finelli, R. J. Walker, Mike Vlass, Dan Hicks, Mark Sneed, Michael Lant, Michael Hinman, Bill Roberts, James Ruyle, Cliff Brown, Richard Reina, and several other persons.

There being a quorum present, Chairman Affronti called the meeting to order at 9:10 a.m.

Minutes of Previous Meeting:

Upon motion of Agency Member Knapp, seconded by Agency Member Halloway and unanimously carried, the **MINUTES** of the February 10, 2009, Redevelopment Agency Meeting were **APPROVED**.

Redevelopment Agency Business:

1. Review and Consideration of Development Agreement with The Vlass Group.

Chairman Affronti opened the discussion, stating that this morning they will hear the result of many hours of conference calls and meetings between the City's redevelopment team and The Vlass Group, with much give and take on both sides. He noted the Attorney for the Agency has done a great deal of due diligence on behalf of the City.

Executive Director Leinbach read into the record the letter dated May 12, 2009, received this morning from Michael B. Vlass, Manager of The Vlass Group, a copy of which is part of the record, in which The Vlass Group presents a summary of salient points and requests clear direction from the Agency/City Council. The Executive Director then read each of the points on the ***Summary of Deal Structure: Master Developer's Agreement***, dated May 12, 2009, a copy of which is part of the record. He remarked that a list of 19 concessions made by The Vlass Group during the course of the development agreement negotiations through May 11, 2009, was also provided.

Agency Member Govin questioned how the Agency/City Council can consider approval of anything, with the number of unresolved, open items.

Agency Member Govin continued that yesterday at 11:00 a.m. he was presented with additional information that he has not had time to absorb in the 20+ hours since that time; he is not prepared to be able to approve anything within the prescribed time frame. He said he has a number of questions that have not yet been addressed.

Agency Member Fernandez said she believes they are being asked to consider whether to continue, and not to approve the Development Agreement, since they have not seen the entire Agreement.

Chairman Affronti informed Agency Members that he believes they are looking for decisions from Agency Members/Council on the deal points that have been presented.

Attorney for the Agency Connolly concurred, mentioning the City's disagreement with The Vlass Group on many items, the City's redevelopment team has gone round and round with them on some of the terms; now they need direction from the City Council so that they understand clearly what the Council will or will not agree to do with respect to redevelopment. He reviewed that after the conclusion of the meeting on February 10th, he suggested to The Vlass Group that the first thing that should be done is to draft a detailed term sheet of all the business terms to be included in the Development Agreement; instead the City received a draft Development Agreement. He noted that the City's redevelopment team is in agreement with a lot of the terms the Executive Director read, but there are still important outstanding issues. While he and the Executive Director can make recommendations, he reminded Agency Members that it is up to the Agency/City Council how to proceed on certain issues. He explained that in fairness to the Developer, the Developer needs the benefit of knowing at this point in time, and not a month or two from now, where the City stands on the outstanding issues and whether there are any "deal breaker" issues.

Chairman Affronti concurred and mentioned that each Agency Member met one-on-one with the Developer yesterday; hopefully everyone is prepared to discuss their concerns.

The Attorney for the Agency referred Agency Members to the document read by Executive Director Leinbach and noted the completed items. The first point, conveying the 29 acres "as is/where is" is agreeable to the Agency Members, he said. Regarding the second point, he said they were aware of the offer of 50% of the net operating income of Area A to the City, but not of the 95% of net operating income of Areas B and C. Relative to transferring or assigning title, he explained that was worked out to assure the City they are dealing with *this* development team and not some other development team.

Regarding the concept plans for Areas A and B, the Attorney for the Agency reviewed that yesterday they discussed with the Developer the concept plan for Area B; if acceptable, that issue is behind them. He continued that he believed they had come to agreement with The Vlass Group yesterday that the Developer would provide a concept plan for Area C by October 1, 2009, but this document does not say that; he is unsure of the Developer's position on that issue.

The Attorney for the Agency reviewed the paragraph regarding site plan approval, stating that the redevelopment team recommended that a site plan be provided much sooner than 24 months; as of yesterday it was his belief that the Developer had agreed to provide the site plan for *all* of Area A within 24 months – not just Phase I of Area A. Once the site plan is approved, unless there is a minor modification approved internally, he said they will know exactly what is being developed.

The Attorney for the Agency noted the importance of having the site plan for all of Area A to ensure the infrastructure, utilities, landscaping, etc., are in place, rather than having the site plans prepared on a “piece-meal” basis. He remarked that the last item on the first page, concerning completion time, did not appear to be an issue.

Beginning on page two, the Attorney for the Agency reviewed that the Developer has proposed if they miss any deadlines, the City may take back the property; however, remedies to protect the City’s interest in the event of a default are an issue. He commented that the Agency Members have heard Mr. Vlass’ explanation as to why he does not want to provide the City with the “Right to Cure” with a reversionary interest once the phased development begins, and Agency Members have also heard why the Attorney for the Agency believes this is necessary to protect the City’s interest in the event of a default. He said this is an issue that remains outstanding.

The Attorney for the Agency said the issue in the second paragraph on page two centers around what should be in place before they “take down” a phase and before a mortgage is placed on the property; that is part of the City’s due diligence process. He continued that the provision states that The Vlass Group shall not provide further economic or financial information with respect to any such development. He said that goes back to due diligence; another issue raised with the Developer is that under the terms of the RFQ there was substantial financial information required to ensure that the Developers who submitted responses to the RFQ were qualified and had the financial wherewithal to perform this project. Since the information provided in response to the RFQ is stale, he said, and as such is a condition of closing, updated financial information to ensure the Developer remains financially capable to do the deal is necessary.

Moving down the page, the Attorney for the Agency noted the agreed upon term of \$4,000,000 is to be contributed by the City toward the cost of Main Street and infrastructure, with Main Street to be dedicated back to the City as a public street. In addition, he confirmed the City has agreed to complete roadway improvements to the right-of-way of 56th Street.

Relative to densities, the Attorney for the Agency said he would have to defer to the Community Development Director, because up until this week there were no minimum densities proposed for Areas B or C; they only proposed the maximum densities.

The Attorney for the Agency continued, stating that The Vlass Group has agreed to pay \$20.00 per square foot for commercial space built and \$15,000 per unit built for residential space in Areas B and C. He noted those terms were reviewed by the City’s consultant and the Community Development Director and believes them to be acceptable to the City.

The next bullet point the Attorney for the Agency reviewed concerned shifting densities to Areas B and/or C; the shifting of densities and maximum densities all must be in the context of approved site plans. He explained that just because the DMU-25 provides for it, doesn’t mean they can automatically build on it; site plan approval is still required. Any terms in the Development Agreement that would allow the shifting of densities, maximum densities, and guarantees that they can build certain densities would comprise contract zoning, he said, which the City cannot do. He explained they can state that at this point in time, subject to site plan approval, the DMU-25 land use category provides for certain maximums. He noted if the Developer wants to lock in densities, he would have to go through the site plan approval process, which then locks in the densities.

With respect to planning the community use space in a building to be constructed by Vlass and being delivered in “shell” condition, the Attorney for the Agency said the Developer pushed back the date for the City to make the determination as to whether the City wishes to proceed with the community use space; the specifics can be easily worked out so that the City has flexibility. He explained the agreement proposes to give the second floor to the City and a portion of the first floor, in order to provide the total of 30,000 square feet. He said the concern is how much of the first floor will be allotted to the City and where the entrance will be located; one issue is that to the extent there is a commercial use within that building, the City will have the ability to approve where it will be and what that use will be to ensure compatibility with the City’s use.

The Attorney for the Agency briefly reviewed the paragraph concerning Common Area Maintenance (CAM), pointing out that the Developer agreed not to charge CAM on the Arts & Education facility, which will help the City find the facility to be financially viable. He said a Condominium Declaration will have to be worked out for the building that would be between the City and commercial tenants.

Concerning the \$3.6 million payment, the Attorney for the Agency said that has generated a lot of discussion; that is one of the issues the Developer needs a consensus of Council, in terms of what the City is or isn’t willing to do. Regarding impact fees, he said the City has agreed to work with them on minimizing impact fees and provide them with the benefit of impact fee credits relating to the existing facilities.

Upon conclusion of his review, the Attorney for the Agency remarked those are the remaining issues that require resolutions.

Chairman Affronti asked Mr. Vlass whether he would like to address the issues that were raised, to which Mr. Vlass responded with his belief that these issues have already been addressed in discussion, noting that his letter identifies exactly what The Vlass Group is willing and prepared to do. He commented that both parties have come a long way in trying to allow the City to obtain its vision and allow The Vlass Group the flexibility to do what is needed, depending on the market conditions. He continued that The Vlass Group will be responding to market conditions when it comes to density, which is why they have the minimums and maximums, and the phasing capacity. He said some of the things they have agreed to are somewhat restrictive, actually tying their hands; for example, they cannot go to the second phase until the first phase is completed, and they cannot go to Area B or C until they have completed all of area A. He acknowledged that from a control standpoint, The Vlass Group understands why the City wants that.

Mr. Vlass expressed The Vlass Group’s interest in having Council get the project underway faster. He said it is in everyone’s best interest to get this project up and running, noting the financial benefit to Vlass, and to the City, with the increased tax base and having TIF money in place. He continued the burden is put on The Vlass Group to come back to the City, although they do not have the right to, and ask to start the next phase. He mentioned The Vlass Group will be continuously speaking with the administration, keeping the City updated on where they stand with tenants and future merchants in hopes of obtaining the City’s guidance and assistance in finding those merchants. He remarked The Vlass Group wanted to have the right to do many of the items, giving flexibility to continue; however, they have been restricted with the requirement of returning back for many of the things, which is a risk to them.

Mr. Vlass referred to the last paragraph on page two regarding maximum densities, stating the City is not representing that the density capacity will be available in two years. He clarified that when The Vlass Group obtains tenants, merchants, and financing, and are ready to go, there are no assurances that density capacity will be available at that time, which is uncomfortable and awkward; however, they believe this is being done because the City would like to have this development take place. Even though the City is uncomfortable in representing to The Vlass Group that it will maintain that density until the period in time it is finished, he continued, The Vlass Group is comfortable that everyone has the same objective and no one has any gain if nothing is built. He asserted the greatest, single risk to both parties would be if The Vlass Group is ready to go, and there is no density capacity available.

Reviewing the second to the last paragraph on the first page of the document regarding the number of years from execution to construction, Agency Member Knapp questioned whether The Vlass Group would be under construction by the third year after agreement execution, to which Mr. Vlass responded affirmatively. The Attorney for the Agency interjected that what is being proposed, at this point, is when the Development Agreement is signed The Vlass Group will provide a site plan within two years; however, precisely what site plan is to be provided remains an open issue. The Attorney for the Agency continued reviewing the phase completion timeline. Agency Member Knapp questioned the nine-year completion of Area A. The Attorney for Agency clarified Phase I of Area A will be done in five years, and The Vlass Group will have two years to start additional work in Phase II of Area A, noting that a very likely scenario has been discussed with the Developer; Area A is ultimately going to be a two-phase project completed within nine years. The Attorney for the Agency remarked initially, Area A was going to be a project done in four different phases.

Chairman Affronti relinquished the Chair to Vice Chair Fernandez and momentarily left the dais, returning during Mr. Vlass' response, and Vice Chair Fernandez relinquished the Chair to Chairman Affronti.

After independent discussions with City Council Members, Mr. Vlass stated it was concluded that if construction was to begin within three years, a site plan would need to be submitted for approval within two years; therefore, drawings would need to be started within 12 months. He continued in 12 months, hopefully leases will have been negotiated with the tenants, and subsequently drawings can be done and submitted for site plan approval. Once submitted, he commented that site plan approval takes about six months, and would need to be presented to City Council. He noted that The Vlass Group will have to go through the process, whatever that is, and be ready to begin construction in 36 months.

Agency Member Knapp questioned the Attorney for the Agency whether this agreement, if Council agrees to move forward, meets the legal requirements of their original RFQ. From a development standpoint, the Attorney for the Agency responded he would defer to the Community Development staff. He continued that looking at the mixed-use, pedestrian-friendly, downtown City center concept behind the RFQ, it was his understanding from multiple discussions with the City Manager and the Community Development Director that it does meet the City's vision; however, certain aspects of the RFQ have changed, such as HUD financing, which was found to be unworkable. One term of the RFQ, he said, is that the City receives financial information from the Developer; since it is almost three years later, he would like to make sure that receiving updated financial information, in order to confirm they have the wherewithal to complete the development, is not an issue.

Agency Member Knapp expressed great concern with The Vlass Group's reluctance to supply a financial statement for the Group prior to the City conveying \$20 million in assets to them with no cash exchange. He continued in any transaction he has ever done, he would not move forward without that information, as everyone is aware a lot has happened in three years, specifically in the real estate and development market.

Executive Director Leinbach noted the Attorney for the Agency's concern regarding the age of the information, and he believes Mr. Vlass is willing to update that information as required by the RFQ. Mr. Vlass responded he will confirm, in writing, that their financial information is as good as or better than it was three years ago.

The Attorney for the Agency said there are two due diligence issues: 1) whether the Developer still has the same wherewithal they had when they submitted the response to RFQ; and 2) what is included in terms of the development agreement and what must happen before take down of a phase - commitment letter, budget, evidence of equity to complete phase of construction, etc. He suggested obtaining certain documents, such as a budget, a contract with the general contractor, a commitment letter (to the extent that it does not fund all of the construction costs for a phase), and evidence of equity to complete the phase of construction. He continued that he believes this would be prudent to any "take down" of a phase, which was part of the discussions.

Executive Director Leinbach said another issue is a provision of a loan commitment letter (other evidence at Vlass' ability to obtain any loan necessary to fund contemplated redevelopment of a phase), and obligating the lender to deliver notice of any default to the City simultaneously with the delivery to Vlass, which is what is on the table from The Vlass Group, in lieu of the other information as delineated by the Attorney. The Attorney for the Agency added that what was proposed, and he thought was agreed upon, was the City's ability to cure default and step into the shoes of the Developer with respect to dealing with the bank; however, the Developer said "no"; if the City has that right, the City would have the ability to wipe out any equity the Developer has in a phase and interfere with the Developer's ability to deal with the bank. The Attorney for the Agency continued that the City's position is without that, there could be a long period of time where nothing is happening on a substantial part of the property, and the bank would be able to sell the property to the highest bidder on the steps of the courthouse, with the City unable to step in and negotiate with the bank as having a reversionary interest in the property.

Agreeing with both parties, Agency Member Knapp noted that if he were in Mr. Vlass' position, he would not want a third party or entity to have the ability to jump in the middle of foreclosure proceeding negotiations with the bank, to move forward with a project; however, from the City's standpoint, he understands the need for provisions to get into that prior to foreclosure actually taking place. He questioned whether there could be some compromise.

Mr. Vlass responded by asking him to look at the implications to both parties should those things occur. Hypothetically, he said if they get a loan with 20% to 30% down, in addition to the time and effort they have invested, a technical default, such as the default of an anchor tenant or a technical default with the City, would trigger a default on their loan, adding that he has never had a default, late notice, or foreclosure. If he were to receive a default notice, he said the City would be notified at the same time, as agreed to. He explained that a lot of those occur that the public never sees; it is a posturing position between the bank and the borrower, adding that in today's turmoil, it is happening a lot with the banks.

Continuing, Mr. Vlass noted that the bank he may have done the loan with could now be in hands of the FDIC, and the FDIC is looking for a reason to get the loan paid off, claiming a default, and somehow he is now in a "dog fight." Although he has never been in a "dog fight," he said, if he ever is, he cannot put himself or his partners in the position of having the City or any third party able to step into the middle of his fight, insisting he walk away from his investment, and take over. He noted that whatever the scenario is, anyone who steps into the position of the Developer or the bank can only build what is in the City-approved Master Developer Agreement and site plan; it cannot be changed unless the City agrees. The City's downside risk, he said, is that if he does not finish the project for any of the myriad of reasons he cannot control or anticipate, the worst that could happen is that the building may not be completed for some period of time; however, the City would continue to receive property taxes. He surmised that someone would go in and finish it out.

Looking at it simply in dollars, Agency Member Knapp expressed his concern that the City has \$5.5 million invested in property and when it is conveyed, free and clear, to The Vlass Group, The Vlass Group would have \$5.5 million of equity. Mr. Vlass interjected they would not, explaining the property is not worth \$5.5 million. Agency Member Knapp countered that The Vlass Group would have equity in the amount of the appraised value, surmising that would be used as part of the 30% for the overall development. Mr. Vlass mentioned that the value of that phase will be determined by how well they have pre-leased it, designed it, engineered it, and the relationship between the cost and the final value of the property. He briefly explained how equity can be created.

Agency Member Knapp questioned whether Mr. Vlass was referencing his loan concept as loan to value and not loan to cost. Mr. Vlass responded a lot of times it is, adding there is no question the overall finished product is the value they are creating, of which the land is a component. He continued the quantity and quality of the income stream determines the value, which is what he is creating, and if the quantity or quality of the income stream is insufficient, the value will be closer to or below cost.

Referring to the 2nd bullet point regarding the loss of 50% of the rental income in Area A and 5% loss in Areas B and C, Agency Member Govin questioned whether the City could still pay for the property with the 50% loss of rental from Area A. The Executive Director responded that he believed it was incorporated in the computations, since it was originally proposed, and he deferred to the Finance Director, who said the City could still afford to pay the interest costs with the loss, because at this point the City's net rental income is good, and the City is able to pay some principal; however, the City may not be able to pay as much principal in the first years of the development. She added the concept is once construction is started, the City receives it for six months; hopefully, construction will be completed within six months, and TIF income will begin. Agency Member Govin asked the amount of rental income of Area A, to which the Finance Director responded it is approximately \$200,000. Agency Member Govin concluded that in essence, a third party will manage the property and give the City 50%, which he has a problem with.

Agency Member Govin reviewed the timeline of three years to begin and two years to complete Phase I of Area A, which he finds somewhat ludicrous, adding the timeline for completion of Area A is nine years. He noted the documents do not reference Burger King. Agency Member Knapp interjected that Burger King will be wiped out after Phase I. Agency Member Govin questioned whether The Vlass Group will also be receiving 50% of rent from Burger King. The Executive Director responded it is definitely part of the transaction. Agency Member Govin asserted it is a "deal of a lifetime," but on the wrong side of the table.

Agency Member Govin questioned the cost of the infrastructure for Main Street and whether the City would still give \$4 million toward the cost if the cost were only \$3 million. The Executive Director responded negatively, adding that Mr. Vlass would not make a profit off the City. Mr. Vlass mentioned that can be negotiated. Agency Member Knapp noted the document states the City will contribute “up to” \$4 million. Agency Member Govin confirmed with Mr. Vlass that will be supported by documentation.

Agency Member Govin questioned whether the City’s contribution of \$1.5 million is to finish the space. Mr. Vlass responded it is for the shell. Agency Member Govin asked where the \$3.6 million comes from with regard to the shell. Mr. Vlass responded with a brief explanation of the events, which resulted in The Vlass Group’s \$3.6 million contribution for the civic use building. Agency Member Govin questioned at what point the City contributes the \$1.5 million. Mr. Vlass responded the building budget will be determined with a general contractor, and the City’s portion will be based on a fraction of a total. Mr. Vlass confirmed the cost of the building is projected to be between \$5.5 million and \$6 million.

Agency Member Knapp said it was his understanding from the conversations in February that The Vlass Group was to provide a cold, dark shell for \$3.6 million, or whatever the cost is to provide the shell, and the City was going to finish the interior with the \$1.5 million. A Vlass Group’s representative responded that was not their understanding; it was not the way they wrote or proceeded, so far, with the documentation. Mr. Vlass noted that \$3.6 was budgeted to be spent on the shell. Mr. Vlass mentioned in earlier discussions, the City’s desire for having a civic community center was mentioned, and when asked the amount of money the City has for it, the Executive Director said \$1.5 million, at which time, Mr. Vlass said he would figure out a way to build it for \$1.5 million.

Recalling the previous meeting, Agency Member Knapp asserted the \$1.5 million was in CIT funds. After the meeting, he said the question of whether \$1.5 million would be sufficient to finish out the interior of the shell, was raised. He continued, as mentioned yesterday in his conversation with Mr. Vlass, with what the City has in mind with the 30,000 sq. ft., the \$1.5 million would not suffice; the City would need contributions from outside sources, etc. He continued what is being discussed today is different from what he had understood it to be in February. The Executive Director interjected that in his discussions with The Vlass Group, the offer was made for \$3.6 million, and the City has \$2.5 million in CIT funds, which has been earmarked, with \$1.5 million contributed to the shell, retaining \$1 million for finishing, which was his intent during discussions. Agency Member Knapp questioned whether that was said during the Council meeting in February or sometime afterward, to which the Executive Director responded he is unsure whether it was delineated during the meeting. Agency Member Knapp reviewed his understanding from the Council meeting that those funds were to be used for the finishing of the interior of the project.

Referring to a letter received from Mr. Vlass, prior to the Council meeting, Mayor Affronti noted that under “Obligations to the City,” it says that contributing funds currently set aside for the design and construction of the community center estimated at \$1.5 million; however, he is unable to find the information, with regard to the \$1.5 million, in the minutes of the meeting.

Mr. Vlass read the third point of a letter dated February 3, 2009, from the Executive Director to the Mayor and Council: the Developer agrees to construct Arts Education Center shell in Phase I with a City contribution of \$1.5 million; will allow the City to withdrawal in the event municipal funding is not available; the City would own the facility, including the land; and the City is responsible for Common Area Maintenance, which has since been changed.

Agency Member Halloway commented that in his mind, the document before the Agency provides an excellent framework for what will become the Master Developer's Agreement. He added the items The Vlass Group has presented to the Agency, which he has reviewed in the past and heard arguments on both sides, are a result of negotiations; he has no problems with them. His concern with the agreement initially was that Vlass would acquire the property at zero cost, sit on it for a couple of years, and then sell it; however, according to this agreement, that cannot happen. He expressed his belief that the key point is The Vlass Group agrees to build an urban-style town center, including all of the things the City recognizes in a new urban town center, within a reasonable time frame. He expressed his confidence and faith that after eight, long years the City has finally found the man who can "pull the sword out of the stone," and he is confident the Agency should go ahead with this.

Agency Member Halloway said the Attorney for the Agency has done due diligence very well, mentioning that he is looking at the financial risk is to the City, if the Attorney's point of view on due diligence is not accepted. The benefits in moving forward, far outweigh the risk, he said, adding that he does not believe The Vlass Group is out to "snooker" the City or that they will allow time to pass without acting. He noted The Vlass Group does not make any money until they put something in the ground. He said he believes the City has a developer on board that can do the job, and Mr. Vlass will proceed rapidly with this project, giving the City the project it wants; he does not want to lose that opportunity over small minutia. He asserted the big thing is to guarantee that the City will have the new-urban town center, which will uplift the community financially and economically; a lot of good things can come of this.

Agency Member Fernandez mentioned there have been a lot of discussions and individual meetings between The Vlass Group, the City administration, and City Council through staff, and although the future is unpredictable, the thought has always been to try to protect the City from losses. She said she believes there are some minor points that need to be discussed, but it is in the best interest of the City to move forward, because it is not just the taxes, or the TIF; it is also the intangible benefit to the City; this is a blighted area and the City will get new, improved uses and image. She continued that people see what they believe is Temple Terrace when they drive down 56th Street; however, they do not know what is behind 56th Street - a beautiful City with a golf course, river, parks and recreation, family oriented, and which brings the community together. She confirmed that she is in favor of civic use in this space, whether it is performing arts space or the library, adding that the Family Recreation Center has a lot of use and if space could be freed up there, additional family programs could be incorporated there.

Agency Member Fernandez noted that she did interpret the document to say the shell would be provided and the City's contribution would be used to finish out the building; it is not a "deal breaker" for her, but it is an impact as to whether the building goes forward with regard to how much the City can fund.

Agency Member Fernandez asserted she wants to make sure when the City deeds 29 acres of property that the City has done due diligence, and that the City has every reasonable expectation that development will go forward, meeting the criteria of the RFQ, site plan review, making it mixed-use, etc. She remarked that when the "finer points" are discussed, she would like to know how the City's risk is managed. She believes it is not in the City's best interest to continue to pay the debt on the property and down the road have to take the property back. She continued the value of the property is not just the dirt it is built on, it is also the income stream, and she understands the work that goes into creating that income stream.

Addressing the rental income sharing issue, Agency Member Fernandez said this is the net operating income, and the City does need an agreement allowing for debt payments until the TIF income begins. She noted that although the City will be giving up 50% of the rent after the agreement is signed, the City will have no obligation to perform any repairs; given the age of the buildings, the City is giving up substantial risk with regard to repairs. She continued that she would like to see this go forward; however, she would like to see the financials for the RFQ updated, as part of the due diligence, since a lot has changed in the financial market in the past three years. She commented that she would like assurances, in whatever manner the City can come to a compromise, that if development starts, but does not finish, the City is not in a position where it would need to make up the difference, pay debt, take over the building, and keep the project going.

The Attorney for the Agency said the City has asked to retain a reversionary interest in the property once the development begins, so in certain events of default with the bank, such as developer insolvency, the City should be able to step into the Developer's shoes and cure the default, by negotiating with the bank, and bring in another developer, if appropriate, to finish the property. That is one significant area of risk, he said. Another issue relating to risk, he continued, as suggested to the City, is obtaining certain information prior to take-down of the phase so the City knows there is financing in place to continue with that phase, which is necessary.

The Attorney for the Agency continued there are a couple of points in the document that are legal issues, which have to do with representations relating to maximum densities and the shifting of density, and cannot be agreed to. He explained the City can represent in the Development Agreement that the DMU-25 provides for maximum densities, subject to site plan approval; the rest are business issues which require direction from City Council as to what they deem appropriate.

Agency Member Fernandez mentioned that she is willing to accept a compromise position with regard to assurances that the financing is in place prior to a phase being started, and there is every expectation that the phase will be completed. Mr. Vlass responded that The Vlass Group will provide a loan commitment to the City.

Agency Member Fernandez surmised that a site plan would be required as part of the loan approval process, which should indicate to the financier what the cost expectations are. Mr. Vlass said the bank also reviews the site plans and will not allow him to start construction of this project without knowing the financial specifics. The bank will issue a commitment letter, he said, and briefly explained the information contained in commitment letters. He remarked that one day, when construction starts, the City can rest assured The Vlass Group has met the requirements or the lender will not fund the loan. He pointed out that until they start, the City would get the property back and once started, the City's risk is that The Vlass Group does not finish, noting that the City will not have lost the property taxes, no matter who owns the property.

Agency Member Fernandez commented that the other risk is that the property would languish in that state. Mr. Vlass responded with his belief that someone will get in the middle of this project and finish it.

Referring to an earlier statement by Mr. Vlass regarding the City's rights in the event of default, the Attorney for the Agency clarified that as drafted, the City would have no rights once a default takes place. He continued that what Mr. Vlass is indicating is that the bank would provide a notice of default; however, the City would have no rights with regard to the bank, adding the only right the City has is that whatever successor takes the property from the bank would have to abide by terms of the Development Agreement.

Referring to the minutes of the meeting on February 10, 2009, Agency Member Knapp noted the minutes do not reflect any conversation regarding the City's contribution - only information with regard to the \$3.6 million conveyed to the City, if it does not move forward; therefore, the conversation as to where and how the City's money would be allocated took place during some negotiation process. He commented that the letter between the Executive Director and Mr. Vlass has not been ratified by Council, which is how the misunderstanding occurred with some of the Council Members that the City's TIF funding would be used for the interior finishes.

Chairman Affronti re-read the excerpt from the January letter from Mr. Vlass. The Attorney for the Agency added that the \$4 million in infrastructure that the City is agreeing to provide is essentially for utilities, Main Street, etc., and in addition to that, the City will be separately undergrounding utilities along 56th Street. Agency Member Knapp interjected he is referencing the \$2.5 million in CIT funds for the civic use center.

Referencing the January letter, Chairman Affronti said The Vlass Group is now giving up \$500,000 for underground wiring. Mr. Vlass reviewed the letter to the City on January 15; as part of the minutes, which were approved by Council during the February meeting, one of the items listed was the completion and design of construction of 56th Street, which are the City's obligations, including new signalization at Grove and Bullard, and relocating underground, the presently above ground power lines running along 56th Street, contributing funds for demolition of buildings and site work and infrastructure up to \$4,850,000, and the City contributing the funds currently set aside for the design and construction of community center estimated to be \$1.5 million. He noted that The Vlass Group has now agreed that the City will do the relocating of the power lines underground, which was \$500,000 of the \$4,850,000 and The Vlass Group was asked to reduce the \$4,850,000 to \$4.5 million; therefore, they took away \$850,000, which was in their original budget. He briefly re-reviewed the discussions leading to the City's contribution of \$1.5 million to build the civic use center, noting that the letter only referenced the design and construction.

Chairman Affronti gave the correlation of a recent sermon, stating there are several things to consider:

- Potential – Temple Terrace is not even close to reaching its potential; the blighted area needs to be taken care of;
- Risk – without risk there is no reward; the City took a risk when they bought the property; the Developer is taking a big risk, putting his assets on the line to generate a loan; without risk they can't do anything;
- Change – they have to make change; they can't keep status quo; what will Temple Terrace be like 10-20-30 years from now; if they do nothing, it will decline; and

- Faith – they have to have faith in their own abilities and their developer; Chairman Affronti said he judges people by their track record; from The Vlass Group's track record he believes they will perform.

Chairman Affronti asked that they go forward.

Commenting that everyone has successes and failures in their work, Agency Member Knapp asked Mr. Vlass to relate his biggest failure.

Mr. Vlass related the successful development of a large shopping center in 1986-87, which caused surrounding properties to be devastated as businesses left to join the new center; subsequently he purchased a nearby failed center, took it from 31% occupancy to 90% occupancy, put a million dollars into it, but still ended up having to write a check for a million dollars when he sold it. Mr. Vlass remarked he has always been very concerned about liquidity, which makes his bankers feel good.

The Attorney for the Agency raised several remaining ambiguities: the City believed it would get a site plan for *all* of Area A within 24 months, but the document presented by Vlass says only Phase I of Area A; the legal limitations as to what the City can agree to in the document; the document says the Concept Plan for Area C to be provided at some point prior to beginning the development will be about seven to nine years down the line; and finally, the only remedy is getting the property back.

In the document prepared for The Vlass Group, the Attorney for the Agency said that there is a "self-executing" mechanism for the City to reacquire all the property other than the completed phases, property under construction, or properties conveyed by Vlass, with the City's approval. Relative to item two, he understands certain members of City Council are willing to waive any cure rights with respect to the mortgage. Item three, he said, recommends the City have injunctive relief or specific performance to compel the reacquisition process; otherwise, the City would have no remedies whatsoever; prevailing parties' attorneys' fees to run with the land; waive the fifth point - a mechanism to ensure that Vlass may not retain and receive rental revenues if it fails to perform under the Development Agreement. He reviewed the points in his document as far as the draft goes, stating the City would have points 1, 3, and 4, but not those in 2 and 5; he wants no ambiguity.

Mr. Vlass said they will use their best efforts to do as they say they will do; if for some reason they can't perform by those strict timelines, the City will get the property back.

The Attorney for the Agency commented that if for some reason they don't agree to hand the property back to the City, the City needs the ability to file suit in Court to compel The Vlass Group to comply with terms of the Development Agreement.

Mr. Vlass responded they would agree. Dan Hicks, Attorney for The Vlass Group, added that if the City believes they are entitled to get the property back, and the Vlass Group fails to return the property, he absolutely agrees with the ability to file suit for specific performance; if unsuccessful, in the suit on the merits, to compel specific performance, then presumably the Court has concluded that The Vlass Group is not yet in breach of the trigger allowing the reacquisition of the property.

Mr. Hicks continued that if a judge does not require The Vlass Group to turn over the deed, he does not understand how the City would have the ability to force The Vlass Group to finish building this project.

If a court deems it inappropriate to grant injunctive relief to force a deed to be signed back to the bank, the Attorney for the Agency asserted that he wants to ensure the City is not waiving the right to file a suit to make sure The Vlass Group, or whoever else takes over the property, complies with the terms of the Development Agreement.

Mr. Hicks concurred they are either obligated to convey the property back or comply with the terms of the Development Agreement, as long as it remains in effect. Mr. Vlass added that in the event the City determines The Vlass Group has defaulted under the agreement, asking for the return of the property, The Vlass Group's 50% income on parcel A and 5% of parcel B, to the extent Parcel B is not started, from the time the default was triggered, the money would go in escrow and be held in escrow until the resolution of the lawsuit.

The Attorney for the Agency explained there is no chance of damages, no personal guarantees if there is no ability to compel the Developer to comply with the terms of the Development Agreement. Mr. Vlass responded that if the Court determines The Vlass Group is not in default, the City has no rights; however, if the Court determines The Vlass Group has violated the Agreement, then they would have to deed the property back to the City, which the Court can compel them to do. The Attorney for the Agency expressed concern requiring the Developer deed the property back to the City could be considered a draconian remedy unless it is under the terms of the Development Agreement.

Agency Member Fernandez questioned whether they are held to the Development Agreement. The Attorney for the Agency responded that if the City says they default, Vlass could counter that the City has defaulted and prevented them from performing; therefore, they either convey the property back to the City or the City needs the ability to "hold their feet to the fire" to operate under the terms of the Development Agreement.

Mr. Hicks commented that if, in fact, in three years, or even before that time, The Vlass Group determines this is not going to fly, he assumes they would be happy to give it back because of the liabilities, risk, upkeep, etc.; the only issue is whether they are earnestly, actively trying to achieve the City's vision, and for whatever reason there is a snag, with a legitimate basis to claim the reason they are in this position because of issues caused by the City, subsequently not returning the property back to the City. He continued that he cannot believe a Court would conclude it to be inappropriate to return the property and not direct Vlass to do that.

The Attorney for the Agency responded it is a possibility that a judge may believe that forcing them to give the property back is a more draconian remedy than appropriate, and under this scenario they have no ability to require them, or their successors, to perform under the terms of the Development Agreement. Mr. Vlass stated the agreement does not require them to build anything. The Attorney for the Agency commented that injunctive relieve would compel them to abide by the terms of the agreement.

Further discussion ensued relative to possible Court remedies. Mr. Vlass began to review what would happen if a Court has proven the City is entitled to the property back. The Attorney for the Agency interjected it could take a couple of years to get to trial. Mr. Vlass interjected that the money would be in escrow. The Attorney for the Agency asserted that it is a minimal requirement in order to protect the City's interest.

Agency Member Knapp noted that from what he has heard, the City's Attorney and The Vlass Group's Attorney seem to be able to craft something, with which they can move forward.

Mr. Vlass said if an issue is disagreed upon, and the Court determines the property be given back to the City, the he agrees to give the property back to the City; however, if the Court determines the property does not go back to the City, then he has won the argument. The Attorney for the Agency reviewed the length of time for litigation and his desire to include the reversion.

The Attorney for the Agency's partner, Graham Carothers, of Shumaker, Loop, and Kendrick, stated he believes he understands the concern. He said there are a whole lot of things that could happen, which would constitute a problem under the Development Agreement, such as if Vlass doesn't do a loan commitment or doesn't hand over escrow; it is an important term in the Development Agreement, short of deeding back the property, which needs to be enforced.

Mr. Hicks responded that he believes if they looked at the draft document, everyone has the remedies they have, subject to certain limitations and the limitation is that if The Vlass Group fails to construct and meet certain deadlines; the idea is that Mr. Vlass cannot be sued for failing to build the building, and he absolutely agrees the City could go to Court. The Attorney for the Agency said it sounds as though Mr. Hicks is in agreement with him, to which Mr. Hicks indicated agreement.

Upon motion of Agency Member Holloway, seconded by Agency Member Knapp, Temple Terrace Redevelopment Agency **RESOLUTION NO. CRA-121(m)** was **ADOPTED**, recommending to the City Council to approve the *Summary of Deal Structure: Master Developer's Agreement* ("*Summary*"), prepared by representatives of Vlass Temple Terrace, LLC dated May 12, 2009, a copy of which is part of the record, modified per the discussion held during the meeting as to the need to modify the terms set forth in the Summary to address requirements of Florida law and otherwise addressing the issue of remedies available to the City as discussed during this meeting, and to proceed to work with representatives of the developer to draft the Development Agreement subject to the foregoing. Vote on the motion being: Agency Members Fernandez, Holloway, and Knapp voting "aye," Agency Member Govin voting "no." Agency Member Neale was **ABSENT** and did not vote.

Prior to vote on the above motion, Mr. Vlass said that the purpose of this is to confirm in everybody's mind that these are the business terms of the Development Agreement, assuring he would not have prepared the Development Agreement had he not thought there was a meeting of the minds. He remarked that he believed business points would not be negotiated in a Development Agreement, for example, the conveyance of the land or what order things will be built; that was all specifically laid out in the Development Agreement and the letter sent to the Agency, supported by the minutes. The reason they are here, he said, is because they were told that the business terms had not been agreed upon, and he is asking today to ratify these business terms and to direct the attorneys to finish the document in a fairly short period of time. Chairman Affronti added that the document has to be approved, once it is finished.

Agency Member Fernandez said she understands this is subject to the points made today, which may be different than in this document.

The Attorney for the Agency noted that two of the points in the documents are not agreed to, because they are legal issues. He said one issue is regarding the concept plan for C; as discussed yesterday, the City would be getting the concept plan C by October 1st, but now the City will be getting it in seven to nine years from now. He continued that there are currently no minimum densities for C, adding that right now what the Agency would be going forward with is not quite what they had in mind yesterday. He mentioned that in discussions, Owen Bites said that he was comfortable with having a concept plan for C, along with minimums for C, by October 1st. As of this morning, he continued, the City has a deal that is different from a couple of days ago, which needs to be reviewed with Owen. Agency Member Fernandez confirmed with the Attorney for the Agency this is in regard to assessing fair value.

A discussion occurred relative to Parcel C, with Mr. Vlass stating they would provide a concept plan for Parcel C by October 1st, and questioned what would happen if the concept plan for Parcel C is not agreed upon. The Attorney for the Agency responded that under the terms of the document received yesterday from Mr. Vlass, if the concept plan of Area B or C is not agreed upon within an agreed upon time, then the deal would unravel. He added that it was his belief that what Mr. Vlass suggests to be the concept plan for B, was also provided to the City Council Members, and the City would have minimums based on the concept plan shown.

Agency Member Knapp questioned why The Vlass Group wouldn't draft an *option* for Parcel C in the document, rather than it being deeded immediately, so it can remain tax exempt until that point in time. Mr. Vlass responded that from a marketing standpoint, they want to show they are so committed to the City that they have bought all of the property. Mr. Vlass added that although Parcel B or C cannot be done until all of Parcel A, he would agree to come up with a concept plan by October 1st, with a minimum if desired. The Attorney for the Agency questioned whether minimums will be given, to which Mr. Vlass responded that rather than saying minimums are to be determined by the concept plan, they would simply say the minimum density is 25 units.

Agency Member Govin said it appears to be narrowed down a great deal, but there are still some problem areas that need to be worked out. He mentioned the Agency has not been given a lot of time to review the documents and suggested giving the attorneys a week or ten days to resolve the issues and word the document.

Chairman Affronti said this has been going on after many hours of negotiations, and conference calls and he believes they are at a point now to decide whether to meet the business terms presented by Mr. Vlass. Agency Member Govin questioned how the Agency can vote for it when there are issues - some of which may be illegal, citing the density as an example. Chairman Affronti questioned why this has not come up before, to which the Attorney for the Agency responded it came up a month and a half ago, when the City received the proposed Development Agreement, which said the City would guarantee maximum density, and the City immediately responded in writing, stating that densities are subject to site plan approval.

Cate O'Dowd, of Shumaker, Loop and Kendrick, said with respect to the shifting of densities from Area A to Areas B & C, any City representation that the maximum density can be built as of the date of the Master Development Agreement, or any type of assurance by the City in this Development Agreement cannot be made in this type of Development Agreement.

Ms. O'Dowd mentioned the density and transfer of density approvals are appropriate decisions for Council to make during a quasi-judicial public hearing and cannot be agreed to in this document. She continued that the Future Land Use designation for this property of DMU-25 identifies and contemplates those types of densities, but the City cannot make any assurances that they can be built as of the date the Master Development Agreement is signed, or it would be considered contract zoning.

Since there are items in the document that have been changed through discussions, Agency Member Fernandez questioned how the Agency would agree to the document. The Attorney for the Agency responded by concurring that a Development Agreement cannot be drafted until the terms are known. Reviewing several of the issues covered, he noted that he has pretty clear direction as to where the Agency wishes to proceed with drafting the Development Agreement under this document as he has just clarified.

Mr. Lant questioned whether minimum densities can be locked in, since they are required by the City's consultant to establish fair value. Ms. O'Dowd responded minimum densities are subject to site plan approval. Mr. Lant reviewed that the City cannot promise a minimum, even though fair value is determined by receiving a minimum. The Attorney for the Agency reminded Mr. Lant that is why they proposed paying the City for densities on those properties, adding that the City will be getting paid prior to the issuance of building permits and the density will be locked in long before then, when the site plan is submitted and approved. The Vlass Group has no risk, he said, because they will only be paying for the density that can actually be built on those parcels.

Mr. Lant questioned whether on Area A, as of today, the current zoning allows that density to occur. Ms. O'Dowd responded that she did not believe the current zoning for Area A contemplates 350 residential units; therefore, the City would look at the zoning under the Planned Development site plan to see what can be built today; this is different than what was approved by Council as submitted by RAM/Pinnacle.

The Attorney for the Agency commented that, as advised by Community Development Director Stephenson, under the DMU-25 Land Use category, having compared the maximums as submitted, it could be built today, subject to site plan approval. Concerned with returning before a subsequent Council, Mr. Lant requested a document stating that this Council would have allowed, subject to site plan approval, 350 units. Ms. O'Dowd explained if they desire that comfort level, they would need to get a site plan approval, which locks in entitlements. The Attorney for the Agency said they will work with Dan Hicks and come up with language that complies with Florida law so that it is not contract zoning.

Agency Member Fernandez questioned whether future Councils would be subject to the RFQ. The Attorney for the Agency said the Development Agreement supplants the RFQ.

Mr. Vlass said they are questioning that if a site plan were provided today, whether the density capacity would be approved, because they do not want to find out in the future a new DRI would be required. Mr. Hicks added that he believes the main focus is trying to be assured under current DRI they would be able to do what is contemplated.

The Community Development Director said originally they were given a concept plan for property north of Chicago and numbers of intensity of commercial and density of residential; based on that, it appears that square footage and density can be built, but subject to site plan approval. Mike Vlass interjected that they are looking for density. The Community Development Director asserted that at each meeting, a different concept plan was provided; therefore, some of the numbers have changed. He continued that a concept is only a concept. Mr. Vlass questioned whether the City has the capacity. The Community Development Director responded a site plan must be approved, and if changes occur, the site plan must be brought back before Council.

Agency Member Fernandez suggested they are asking more in a general sense. The Attorney for the Agency commented they cannot give assurances on that. The Community Development Director stated that the numbers given to them do not trigger DRI requirements.

Mr. Hicks summarized that Mr. Vlass wants to do a dense development, and if he cannot do a dense development, this may be a waste of time. He added that Mr. Vlass wants assurance stated simply that approval for the maximums would come from the City of Temple Terrace. Ms. O'Dowd responded that with regard to the DRI, the Florida Department of Community Affairs is the agency who would determine whether this development, at maximum density, would trigger DRI review, and is typically something the purchaser does in due diligence. She said the same holds true with school concurrency, which is governed by the Hillsborough County School District rather than the City.

Mr. Vlass questioned what the City *can* say regarding the City's representing the Developer's ability to do the maximum capacity. The Attorney for the Agency responded the City can say as of today, subject to site plan approval, that they have reviewed the maximum densities for the parcels, and subject to rezoning and site plan approval, they fit within the DMU-25 limitations. Mr. Vlass said they accept that and asked about the other density issue. The Attorney for the Agency responded the other issue is that Vlass would be entitled to shift densities to Area B and/or C so long as aggregate maximum densities are not exceeded, and that cannot be done. Mr. Vlass responded that could be removed.

Agency Member Knapp asked for a point of clarification, according to the document presented, that in the event the City does not build an Art Center, \$1.8 million would be the minimum payment based on completion of Phase I of Parcel A, and he questioned when the subsequent payments would be made. [Mr. Vlass' response is inaudible.] Agency Member Knapp confirmed with Mr. Vlass that the balance of the payments would be made prior to Area A, Phase II being 100% complete.

Chairman Affronti reviewed the motion on the floor to approve the business aspect of The Vlass Group's plan, realizing that these terms are going to be incorporated into a Development Agreement document, subject to Council's final approval. He added that in the meantime whatever issues there are could be worked out between now and the time that the Developer Agreement comes back.

Agency Member Knapp interjected that the motion is subject to the verbal concessions and information that the Attorney has received from this Council and from The Vlass Group, and their mutual agreements.

At this point, the vote on the motion [on Page Fourteen hereof] was taken, which passed by a vote of three to one, with Agency Member Govin casting the dissenting vote and Agency Member Neale absent and therefore, not voting.

There being no further Redevelopment Agency business, the meeting was adjourned at 12:08 p.m.

Joe Affronti
Chairman

Alison M. Fernandez, Agency Member

Ronald A. Govin, Agency Member

Attest:

Ken Halloway, Agency Member

Melissa E. Burns, MMC
Clerk

Mark A. Knapp, Agency Member

Mary Jane Neale, Agency Member