

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

**Tuesday, June 30, 2009
Council Chambers–City Hall**

Having been duly advertised as required by law, a meeting of the Temple Terrace Redevelopment Agency was held on Tuesday, June 30, 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 Hallway, and Mary Jane O’Neal, Attorney for the Agency Cathleen O’Dowd, and Clerk Lisa Burns. **ABSENT WAS:** Agency Member Mark A. Knapp.

ALSO PRESENT WERE: Public Information Officer Mike Dunn, Code Compliance Director Joe Gross, Leisure Services Director James Chambers, Community Development Director Charles Stephenson, Police Chief Ken Albano, Public Works Director Joe Motta, Human Resources Director Woody Hubbard, Finance Director Diane Reichard, Fire Chief Keith Chapman, Senior Planner Susanne Hicks, Owen Beitsch, John Toppe, Rod Collman, Nancy Bauer, James Ruyle, Richard Reina, Gloria Kares, John Nertney, Marvin L. Nelson, Joe Bell, Mike Vlass, Dan Hicks, Mark Sneed, Michael Lant, and several other persons.

There being a quorum present, Chairman Affronti called the meeting to order at 9:00 a.m.

Minutes of Previous Meeting:

Upon motion of Agency Member Neale, seconded by Agency Member Fernandez and unanimously carried, the **MINUTES** of the May 12, 2009, Redevelopment Agency Meeting were **APPROVED**. Agency Member Knapp was **ABSENT** and did not vote.

Redevelopment Agency Business:

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

Chairman Affronti introduced several of the individuals present, including Catherine O’Dowd, Attorney for the Agency, and Graham Carothers, Real Estate Attorney, from Shumaker, Loop & Kendrick, LLC; Mike Vlass, Michael Lant, and Mark Sneed from The Vlass Group; and The Vlass Group Attorney, Dan Hicks.

Chairman Affronti commented there have been questions that have come up regarding the proposals that they are considering today, but he hopes that at the end of today, the Agency/Council can decide whether or not to move forward with the Master Developer’s Agreement. He reviewed they have been negotiating this deal since February, adding that in five months a lot of progress has been made; however, there are still some issues that have to be resolved. He said the negotiations have been very costly financially and in time spent, and he believes they owe it to the citizens, the developer, and to themselves to make a decision today.

Chairman Affronti continued that some of the questions that have arisen concern “Fair Value.” He called on Owen Beitsch, the City’s real estate consultant, to explain their determination of Fair Value.

Owen Beitsch, representing Real Estate Research Consultants of Orlando, Florida, stated that about three months ago they prepared a Memorandum, which was distributed to the City and to the Temple Terrace Redevelopment Agency, addressing the question of Fair Value and whether the proposal submitted by The Vlass Group was consistent with Chapter 163.380, Florida Statutes. He said that most of those sitting on the Temple Terrace Redevelopment Agency are aware of the requirements of Chapter 163.380, from which he paraphrased a portion of Chapter 163.380(2) as follows:

“In determining the fair value of property as being in the public interest for uses in accordance with the community redevelopment plan, the county, municipality, or redevelopment agency shall take into account and give consideration to the long-term benefits to be achieved by the municipality or agency resulting from costs, disposal and consideration of covenants, conditions, and obligations assumed by the purchaser in pursuing objectives of the plan.”

Mr. Beitsch explained this passage is very important in reaching a determination about fair value. Although much discussion has occurred since his firm delivered the Memorandum to the City, he said he believes it is fair to say that the basic structure of the deal has not changed very much; some specific business terms may have changed, but the principal components – financial benefits, community benefits, and spin-off benefits that he would describe as community- and society-wide, remain, effectively, unchanged. Therefore, he concluded it is their determination that the basic structure offered by the deal, outlined by The Vlass Group, would still be consistent with and meet the requirements of Chapter 163. He offered to answer any questions, since, he said, it is fairly complicated.

Agency Member Halloway questioned whether the provisions of the Master Developer’s Agreement fulfill the requirements of Fair Value trade.

Mr. Beitsch responded that Chapter 163 does not specifically require a Development Agreement to affirm the value of the transaction. He explained that he has read the Development Agreement, and it is his opinion that the basic structure of the deal is consistent with the original proposal offered by The Vlass Group. He continued that the determination of Fair Value that they offer was related to that original proposal. Mr. Beitsch clarified he is stating that as he continues to read the Development Agreement it remains consistent with that initial determination, which focused basically on three things: a certain cash value associated with the development of public spaces; the development itself, which was basically the concept that had been articulated by the City in its plan; and the long-term value of certain taxes that will be received and generated by the project and related activity adjacent to the project, accruing to the benefit of the City. He concluded those were the key elements in the determination and those are unchanged in the current agreement.

Agency Member Govin commented that he has a very basic question; he wanted to know how this was considered. He continued that as he understands it, the numbers he has seen have taken the TIF (Tax Increment Financing) funds over the next 22 years, or actually from the year 2012, when the first building would be in the ground, and extrapolated them forward to come up with the statement that the TIF would cover the cost of the property. He said that is the way he understands they are coming up with fair value.

Agency Member Govin questioned that if they sold the property, which is what they said all along that they would do, there would be another ingredient that is being forgotten in this fair evaluation. He explained if they sold the property and somebody developed it, the City would still get the TIF.

Agency Member Govin surmised the amount of TIF may be a little different in 22 years from the assumption made here of \$20 million; however, had the City been paid for the property, assuming only \$15 million in today's market, and did nothing with it for 22 years, and assuming a 5% compounded return, the number that comes out at the end of that is \$43,878,000. He rhetorically questioned what happens to that? Answering his own question, he said the City is giving that up to get into a contract that does not do anything immediately for the City and has no return for the City, except for this 22-year TIF that the City will receive regardless of how the property is developed.

Agency Member Govin continued that his contention is how they can call this transaction fair value, when the real fair value is somewhere in the area of \$43 million short of what the City would receive if they just put the money in the bank. If the City decided to build something, such as a waste disposal plant or other buildings during that timeframe, he said that they would have to borrow money to do that and would probably get more than the 5% average. While 5% sounds very good right now, he noted that if they look at an average interest rate over the last 22 years, it is approximately 6-1/2%; therefore, 5% is actually a conservative number. He suggested that if they are not comfortable at 5% because of the current economics, at 4% they would be looking at about \$35 million. He concluded that it seems like the City is giving up a large sum that could benefit the City. He suggested that "fair value" must be in the eyes of the beholder, because it is not fair value in his reasoning, nor can it be for anyone with financial capabilities.

Agency Member Govin asked whether Mr. Beitsch took into account the loss of value of \$20 million or conservatively, \$15 million, when he says this is a fair value.

Mr. Beitsch responded that he would have to answer the question in a different way. He explained that the uniform standards of appraisal practice do not use the term "fair value"; that term has been expunged, in fact; it focuses on fair market value. He said it was important to make those distinctions. In reference to Agency Member Govin's comment that "fair value" is in the eyes of the beholder, he said Agency Member Govin is partially correct. He summarized that first they make the definitional distinctions.

Secondly, Mr. Beitsch explained the reason he read that section of Chapter 163, is because they are not dealing specifically with business terms. He said he did not want to debate Agency Member Govin's assumptions, all of which are meritorious, as another set of assumptions might be, to reach a conclusion about what constitutes a sound business deal for the City of Temple Terrace. He continued that his charge, specifically, was to satisfy himself and in turn to render an opinion that the City is in compliance with Chapter 163, as they attempt to define what constitutes fair value. He said the analysis that they do, representing many different community redevelopment agencies throughout this State and others, answers these kinds of questions quite frequently. He said he believes that is why the language in Chapter 163, which focuses on a variety of benefits associated with the plan and its development, stand distinct and apart, but not unrelated to, business terms that need to be addressed. He continued that because of the conformance with the proposal and the many objectives laid out by this plan, and as expressed by this group for a number of years, it does seem to implement those. Ultimately, he said they have to satisfy themselves, not whether or not this is a legally sufficient transaction under Chapter 163, but they can take some comfort by entering this information into the record about conformance with the plan, their ability to implement the plan, their ability to get financial benefits and societal and community benefits, which satisfies the intent of this portion of Chapter 163. He concluded that the Agency and Council will have to make a political and business decision, if there are other means to recover this money. He said he suspects there are possibly other ways to do just that.

Agency Member Halloway commented that the City's land is probably worth somewhere between \$16 and \$20 million in the market place. He asked the Finance Director for the dollar amount it is carried on the City's "books," to which Finance Director Reichard responded the amount is \$20,400,000. Agency Member Halloway continued that he doesn't know how market rules apply to the City in the valuation of assets, but if they did, he said the City would probably have what is known as a non-performing asset that would probably be valued much, much below what the City is carrying on the books. He said that should be considered as well. He acknowledged not knowing the market value of the property, but knows others have given estimates far below what the City paid for the property. In addition, he said the term "fair market value" apparently isn't used any more, and it is not used in this transaction. He recalled that "fair market value" back in "his days" used to be what a willing buyer was willing to surrender to a willing seller at an arm's length transaction; however, "fair value" takes into account other assets besides money.

Agency Member Halloway stated that in this particular deal, when they read through it carefully and discuss the terms of "fair value" and what it means, the City has a willing buyer that is going to buy the City's property and develop it in the style the City wants – a new urban development. He explained that to the City, this means that the property value will increase, and with the increase of the property, the TIF revenue that the City receives will go up. He continued that if they were to go out today and sell that property to any developer that came along, he believes the TIF revenue would probably be flat, because they have to increase the value of the property to realize that the TIF will go up; this is a benefit to the City and also a benefit to the property nearby that will increase their value as well. He said they know that from experience in developments of this type that the redevelopment of the property has the tendency to increase the demand of people who choose to live and buy near this property, which increases the value of this property, and everybody's "boat is floated." He concluded that is more in line with what constitutes a "fair value" transaction relative to what they are doing now.

Mr. Beitsch thanked Agency Member Halloway, stating that Agency Member Halloway did a far better job explaining the concept of "fair value" than he did.

Agency Member Fernandez commented the Agency and Council have received a number of different analyses over the past few months concerning estimates of TIF revenue. She asked the Finance Director for clarification regarding what the City actually owes on this property, whether the City is "upside down," and whether the TIF revenue is larger than the debt on the land. She acknowledged the Finance Director's responses to her questions would all be estimates.

The Finance Director responded that the debt on the books is \$20 million; the TIF, from this report, is \$12 million, plus the surrounding areas' TIF revenue is another \$9 million, so they are somewhat "even." She continued that she has not re-evaluated it since receiving revenue estimates last week, which show values have gone down and that they are "losing ground" on their TIF revenue. She said she wanted to make it clear when the administration presents the budget to them, that there will be less TIF revenues than right now, but that does not mean they won't go back up in the future.

Agency Member Fernandez questioned, when they do the fair value analysis for purposes of this transaction, how they evaluate the value of the intangible asset, which is just the improvement to the corridor.

Mr. Beitsch responded that if they were doing a “fair **market** value,” they would be looking at that which is legally permissible, physically possible, financially feasible, and clearly, that which would return the highest value to the undeveloped property underneath; “fair value” does not require that – it is a much looser definition. He stated that their firm did not participate with the City in helping to craft its plan; presumably through the Temple Terrace Redevelopment Agency, the Council, and the input of the citizenry collectively over time, this plan was determined to be the vision the City wanted to be implemented. He said a key determination is the consistency of the proposal and not whether or not it immediately makes money; it is hard for him to believe it is inconsistent with the set of plans and objectives that are laid out for the City. He related that other communities have had similar visions, with similar projects, and they have found these to be critical components and a remedy for eliminating blight, which is a necessary finding when a Community Redevelopment Area is created, adding that all of these things go together.

Mr. Beitsch continued that if for some reason they now take issue with this Development Agreement as a device to implement the plan, then perhaps his firm’s conclusion might be different, but certainly, what they see here is very, very consistent with all of the actions, all of the plans, and all of the visions that the City has laid out. He said at the same time it does produce, or is likely to produce, a certain amount of TIF revenue, both within the boundaries of the property and the immediately adjacent properties; these are the considerations that they took in mind as they went through their evaluation.

Mr. Beitsch said that the bottom line is somewhat in the eyes of the beholder, and he doesn’t want to try to convince them other than that; however, even with that subjectivity, Chapter 163 does a nice job laying out the criteria that they must consider. He reiterated this determination must not be confused with the Agency Members/Council Members satisfying themselves that it is a good or acceptable business deal; they are not the same thing. He expressed his belief that the questions being raised here are attempting to blur the distinctions; however, he said that the Agency Members/Council Members need to think about them separately, whether they do in fact satisfy them on both points, and if they don’t, perhaps they have some decisions to make.

Attorney O’Dowd clarified for the record that when Mr. Beitsch is speaking to the Development Agreement that he is reviewed, he is referring to the Draft Agreement provided by the Vlass Development team that was distributed to the Council last Friday. Mr. Beitsch responded that was correct.

Agency Member Neale asked whether Mr. Beitsch’s analysis factored into the equation that societal benefit or improvement to the property, along with the financial benefit of the TIF revenue. Mr. Beitsch confirmed that was correct.

Agency Member Govin added that this deal cuts off any avenues of anything better happening; this is the best that the City can get out of this – that the TIF will pay off the property. Agreeing with Agency Member Halloway that he doesn’t know what the property is worth, Agency Member Govin emphasized his earlier comments, stating that he used \$15 million because the property is on the books at \$20 million and real estate valuations have gone down about 25 to 30%. He continued that they could throw that percentage out and use 10% or any number they wanted; he is saying that they are not getting paid for the property, and, therefore, they are losing the value of the money. He cautioned that they are paying for it with the value that the City is going to get from the TIF, but the sheet that was put together was an estimation of the values that would be added when the property value would go up; however, the agreement being negotiated contains a lot of variables as to when things happen, so he questioned whether this will work.

Secondly, Agency Member Govin pointed out that the Finance Director has mentioned that valuations have gone down and continue to drop. He reviewed this is a problem the Council has found in negotiating their budgets. He rhetorically questioned how much further down the valuations are going, commenting that if they drop a great deal more, then even the TIF won't cover the \$20 million; looking at the agreement, the City is basically going to receive about \$8 million in return from the Developer, if the project goes the whole way. He acknowledged the \$5 million "kicker" on B and C, and the \$3 million on the building, stating that is all the City is going to get. He expressed concern that at the initiation of this agreement, the City is going to get absolutely zero in money going to the City; the number is so massive it doesn't make sense that the Agency/Council is even considering waiving off the ability to make money on the sale of the property. He continued that even if it was sold for less, there would be some source of income beyond being dependent on TIF, which is a very scary feeling to him with a \$20 million debt. He expressed further concern that the City will have one source from which to pay the debt, other than ad valorem tax revenue, which they certainly would not want to do, being in such need for the ad valorem tax revenue. He reiterated that he understands they were shown that the \$20 million could be paid, but he emphasized the Agency/Council needs to consider that they are losing approximately another \$20 million that could be earned on the money if the property was sold. He concluded that it just doesn't make sense to him.

Mr. Beitsch commented that, in fairness, he believes it is important to observe that there is also "opportunity cost" here; whether this deal does or does not go forward, they still have to pay their current indebtedness on the property. He continued that they have to ascertain the "opportunity cost" that was not a calculation that occurred here, but is a factor they would want to weigh in, and evaluate how much more debt they want to carry, and for what period of time. He mentioned that is important to point out in the Development Agreement, there is a basic overarching physical plan that has to be implemented here; if for some reason Vlass is not able to finish the plan laid out here, the City then can step in and re-sell the property. He continued that after the City acquires the property it can still make an effort to improve the property according to the same vision, so in some respects it doesn't really matter whether it is Vlass who ultimately implements the plan or another agent. He stated the basics of the plan are the basics of the plan; they must believe that this essential program that they have laid out is appropriate for the City, Vlass aside. He concluded that once they enter into this agreement, this plan will ultimately be assigned to anyone to takes an interest in this property; that is the intent of the agreement. He added that it is as much an agreement about the plan as it is about the Developer.

Agency Member Neale said what she sees is a conflict between the vision and the financial. She said they are talking about whether the City is buying a vision or a money-maker. Mr. Beitsch said he would not call it a conflict; he would call it a dynamic. Agency Member Neale concurred.

Chairman Affronti commented that was exactly what he was going to point out. He said they are looking at two things – the financial aspect with a lot of assumptions, and whether it will give them the redevelopment area that will ultimately increase the potential of the entire City of Temple Terrace; the redevelopment as opposed to the blighted area that they may sit with for another five to seven years. In the meantime, he said the values would continue to go down. He continued that he believes their prospects for annexation are much greater if they show they have something to provide a sense of place; the vision is very important to him long-range, which is why he believes they are here. He said the financial aspects are extremely important, but at the same time, the City could attempt to try to sell the property during these times; the City will have to carry the debt anyway. He concluded why not get into something where they know they are moving forward to develop the vision they have always looked for and ultimately give the financial rewards.

Stating that she has three separate copies of the Master Developer's Agreement, Agency Member Fernandez questioned the Attorney for the Agency whether the clean copy that was delivered to them yesterday afternoon [Monday, June 29, 2009] is the same as the marked-up copy that they received on Friday afternoon.

Attorney O'Dowd responded that on Friday the firm received two marked-up copies and a clean copy, all of which are supposed to be the same Development Agreement; the clean copy will show all the revisions incorporated without the "strike-throughs" and "underlines." She explained the one redlined copy that she has recommended, through the City Clerk's office and the City Manager's office, for Council review is the one labeled version 13 versus version 11; however, she said that doesn't necessarily reflect on the document itself, because unfortunately each of the documents has the same document number. She continued that the version 13 versus the version 11, which she believes was transmitted to Council yesterday, is the one that shows all of the revisions in the Development Agreement between the time the City prepared a draft on June 17 that was distributed to Council on June 19 and this last draft from the City's development team.

Agency Member Halloway added that he read all of them two or three times and read the latest "clean" copy yesterday and compared it information provided by Chairman Affronti, a copy of which is part of the record. He said it is the same thing except in the back, the legal descriptions of the property are included, which was a comment of Attorney Connolly.

Attorney O'Dowd responded that the final copy *does* have all of the exhibits; however, their comment with respect to the legal descriptions is that they are not updated and complete legal descriptions, and not that they did not exist at all.

Agency Member Fernandez said that she did read the copy she received on Friday and discussed them on the phone, but did not know she would be receiving three additional copies.

The Finance Director explained that Agency Members should not use the copy they received on Friday [June 26, 2009]. She continued the redlined version that says 8 p.m., Friday, that they received yesterday, Monday, June 29, 2009, is the redlined version that they should refer to today, but it does not have the same attachments as the clean copy, so the attachments in the redlined version should not be referred to. She clarified that the clean copy has all of the attachments. In response to Chairman Affronti's question on the various copies, the Finance Director responded that the clean copy has all of the attachments, all of the revisions from the redlined version, and is ready for signatures.

Agency Member Fernandez questioned which version is referred to in the memorandum the Agency Members received from Attorney Mark Connolly. She explained that the memorandum addresses items with regard to verbiage that has been removed, adding that she did not have time to go through this latest version line-by-line, because she had used her time going through the other version line-by-line. She asked whether this memorandum has any application to the copies they received yesterday afternoon.

Attorney O'Dowd responded that it did; Attorney for the Agency Connolly prepared a memorandum on Friday, June 26, which was distributed to Council Members, and the memorandum addressed the different revisions in the Development Agreement that were submitted by Dan Hicks' office.

Attorney O'Dowd advised that a couple of Sections, Section 4.4 and Section 5.2, were revised in response to their comments; the other comments are still outstanding. She said when they get to that point, she has prepared an updated schedule of issues for discussion purposes, if the Agency Members or Council wish to walk through the revisions to the Development Agreement.

Chairman Affronti asked whether Agency Member Fernandez received the summary version he distributed, explaining that it referred to the comments made by both attorneys and Mr. Vlass. Agency Member Fernandez acknowledged that she did receive the document, but that she has four documents in front of her, and at the time, she wasn't sure which document she should refer to. Agency Member Fernandez continued that some of the verbiage that was removed from the document they were reading on Friday, was referred to in the memo, including verbiage that they cannot sign the document without. Attorney O'Dowd interjected that one of the Sections was Section 4.4(e) and that language is back in the agreement; likewise, Section 5.2(f).

Agency Member Neale commented that the document she received yesterday, she received at 1:40 p.m., and that did not give her enough time for review; she spent a lot of time on the first two documents, and now there is a third document.

Chairman Affronti asked to delay the balance of the discussion on the actual agreement until the Finance Director has addressed the issue of Mr. Vlass's financial condition and whether he would be financially capable of doing this project. He said this concern was expressed to him by a citizen. He commented that the Finance Director has done a lot of research; he called on Finance Director Diane Reichard to report.

Finance Director Reichard stated that in September, 2006, when Mr. Vlass responded to the RFQ (Request for Qualifications), the administration performed research at that time and found him to be reliable, top quality, and acceptable to the City at that time. She continued that they re-did the research and added other extensive research, and some of the comments that they can make are that he is detail-oriented, reputable, honorable, experienced real estate operator and developer. She said this is one of the comments that makes it so difficult for her to do a financial analysis and present it, because every business deal or development that Mr. Vlass does is different; they cannot find a Financial Statement on The Vlass Group, because every time he does something, he creates an entity for that project. She stated that is something the Agency/Council should understand in their "new world" here. She continued reading comments, quoting that he has done a great job and has high integrity; Mr. Vlass has the financial ability to move construction debt in a timely manner, in that he makes payments timely when he has debt, and he has no outstanding balances at this point in time. She concluded that The Vlass Group continues to be a high quality firm, with top quality references.

Chairman Affronti said the last question was relative to an email regarding whether the City had done due diligence to check out whether Mr. Vlass actually performed the way he has said he performed in Altamonte Springs and Atlantic Station. He called on the Executive Director to respond.

Executive Director Leinbach stated that on June 19, he provided a report to the Agency/Council and raised the issues that were presented to him indirectly, relative to the developer's qualifications and previous experience. As the Finance Director reported, he said that when all four initial developers submitted in 2006, the administration did their due diligence on each of them, including DeBartolo, Ram/Pinnacle, Transwestern/Chesapeake, and The Vlass Group.

The Executive Director added that he personally contacted some, including Altamonte Springs, because it was alleged that The Vlass Group had not performed as represented; he found to the contrary, that they did perform. He said he received very favorable feedback from the Altamonte Springs Redevelopment Director. He concluded he found no basis to dispute The Vlass Group's qualifications and ability to do the job.

Chairman Affronti interjected that he had also called the Redevelopment Director in Altamonte Springs about four weeks ago, and he also confirmed that while Mr. Vlass was not the actual contractor, he was the Master Developer that oversaw that the development was done according to the way it was agreed upon; he received comments that Mr. Vlass did a very good job and did what he said he would do in Altamonte Springs.

Chairman Affronti called on Attorney O'Dowd for her comments on the Developer's Agreement.

Attorney O'Dowd said that she and fellow Attorney Graham Carothers went through the Agreement and looked at the "big picture" items and then went through the Agreement in a more detailed fashion. She asked Attorney Carothers to begin with the "big picture" items.

Attorney Graham Carothers, Shumaker, Loop & Kendrick, LLC, advised that Executive Director Leinbach has a sealed envelope from Agency Member Knapp, who asked yesterday morning that the letter be opened and read before proceeding with any further board discussion about the Development Agreement.

Chairman Affronti said he was planning to have the attorneys' comments and then open it before the Agency Members/Council Members' response, but, apparently, Attorney Carothers did not agree with that approach.

Attorney Carothers responded not necessarily, suggesting that perhaps Executive Director Leinbach has a different understanding than he does; he wanted to be sure that that they were honoring Agency/Council Member Knapp's request in terms of timing.

Chairman Affronti interjected they were going to honor it; the question is whether they are going to do it right now or right before they get Agency Members/Council Members' comments.

Attorney Carothers said he would be happy to proceed either way, to which Executive Director Leinbach said he believed it would be okay to proceed now with the attorneys' comments. The Executive Director asked Chairman Affronti to allow him to read the letter prior to the other comments, to which Chairman Affronti agreed.

Attorney Carothers advised that he and Attorney O'Dowd are here as Legal Counsel to the CRA (Temple Terrace Redevelopment Agency) and to the City Council. He commented that City Attorney Mark Connolly, Attorney Cate O'Dowd, and he have worked very hard over the last several months on this Development Agreement and the issues surrounding it, together with members of the City staff and the Vlass team. He continued that they have worked extraordinarily hard since the May 12 meeting of the Redevelopment Agency in an effort to come up with a final Development Agreement that is consistent with the guidance, direction, and spirit that the Agency Members/Council Members made clear to everyone at that time.

Attorney Carothers began that they were told by Mr. Vlass' Attorney yesterday afternoon that the Development Agreement distributed to Agency Members/Council Members yesterday, which was initially emailed about 8 p.m. on Friday evening, is the final document and is not subject to any further discussion or negotiation. He said he concurred with Chairman Affronti's preliminary statement that the Agency Members will be ultimately called upon this morning, as the CRA, to recommend either up or down to Council, and then Council will make a decision accordingly.

Attorney Carothers said that in an effort to focus on the issues in the Development Agreement, he would review a few of the "big picture" issues, and then narrow it down. As Attorney O'Dowd mentioned, he said they have prepared a detailed memorandum regarding each and every one of the issues they consider, from a legal perspective, to be problematic and very troubling. He said they have also been asked to comment and provide some feedback relative to some major financial and business points that they have discussed with staff and The Vlass Group, on which they want the CRA/Council to focus their attention.

Attorney Carothers stated first, that the "final-final" agreement, which has been presented for consideration today includes a number of revisions that they saw for the first time on Friday evening of last week, which are directly contrary to some of the agreements that Mr. Vlass submitted at the May 12, 2009, meeting, as a list of concessions and agreements that they were willing to move forward with. He continued that the agreement before them today includes various, very recent revisions that are contrary to a number of those agreements made on May 12; Attorney O'Dowd will review those further in a few minutes. He stated he would bring a couple to their attention because Agency Member Fernandez had some very specific concerns on May 12 relating to some of the financial issues. He reviewed that the Development Agreement before them includes revisions, in the event of a default by The Vlass Group, which would trigger an opportunity for the City to reacquire undeveloped parcels of property; that right would be conditioned on paying Vlass for whatever improvements had been started, but perhaps uncompleted upon the date of reacquisition. He said the current agreement also gives The Vlass Group the right to mortgage multiple phases and multiple parcels, which is contrary to what was discussed before; as a practical matter, although that may seem like a subtle change, that is huge. He explained it means that if and when the City exercises its right to reacquire these undeveloped or uncompleted parcels, they will do so subject to any mortgage or mortgages, which The Vlass Group has placed on those properties, and in fact, he said the Mayor's memo circulated yesterday includes a confirmation by The Vlass Group that they would be taking that property back subject to any debt that Vlass encumbers the property with.

Attorney Carothers continued that another seemingly subtle change was made Friday evening with respect to Vlass' obligations to pay all sums due to parties in connection with the transaction. He said that language has been modified such that, as they interpret it from a legal perspective, the practical result would be that the City would also be reacquiring properties subject to any construction or material liens that may have been put on the property as a result of unfinished work.

The last "big picture" issue, Attorney Carothers said, which Attorney O'Dowd will review further in her Memorandum, is with respect to the sums of money of which the City is responsible for funding; the agreement has been changed such that the City would now actually be "fronting" that money as opposed to reimbursing Vlass, using evidence of actual sums paid and file Contractors' Affidavits, Lien Releases, etc., as they have been contemplated before.

With that brief background of a couple of big picture issues, Attorney Carothers said that more important than any of the things he just mentioned, is the fact that everyone knows – the City’s legal counsel, Vlass and Vlass’ legal counsel, and staff know – and the Agency Members/Council Members need to know - as written, if City Council moves forward authorizing the execution of the Master Developer’s Agreement, the City of Temple Terrace will be in immediate default of that agreement, based on some of the representations and warranties, which are set forth within the agreement and which everyone knows are simply not true. He advised that, as the City’s Legal Counsel, they cannot recommend the City move forward with approving a Master Developer’s Agreement, under which the City would be in immediate default upon execution; doing so would be against Legal Counsel.

Attorney Carothers said the second big picture item deals with conveyance of the property. He suggested that Agency Member Halloway misspoke a few moments ago; there are legal descriptions attached to the Development Agreement, which, for purposes of the Development Agreement, are arguably sufficient. He explained that is an entirely different analysis than the legal descriptions that are required to be attached to a Warranty Deed by the City; it is also an entirely different analysis to the legal descriptions that would be attached to a title policy in the amount in excess of \$17 million, which his firm has been asked to issue by The Vlass Group. He further explained that the legal descriptions attached to the Development Agreement, according to Chicago Title Insurance Company, their Underwriter, are uninsurable because portions of them are based on sketches, cross-hatched, and highlighted areas, rather than being actual, real legal descriptions. As Attorney Connolly discussed with the Council several weeks ago when a request for approval for surveys was brought before them, he said that everyone knew at the time that Council’s decision not to authorize moving forward with the survey, from which the legal descriptions would be prepared, would delay closing.

Attorney Carothers continued that the Development Agreement before them would require closing immediately after execution of the Agreement, and in discussion with The Vlass Group’s Legal Counsel, they intend to close this afternoon or tomorrow, and conveyance of this property would be done by a Warranty Deed, as required by the Development Agreement. He advised that they should also be aware that the legal descriptions attached, together with sketches and what he terms “half-baked” legal descriptions, may be arguably appropriate for purposes of a Development Agreement, but include property to which the City does not have clear title; in essence, if the City is forced into an immediate closing as required by this Development Agreement, the City would be in a position of signing a Warranty Deed to property that the City’s Legal Counsel, their Underwriter, staff, and The Vlass Group, along with their Legal Counsel, all know that the City doesn’t own right now. He explained it is a publicly dedicated right-of-way that would have to be vacated. He commented that these are “big picture” issues.

With that background, Attorney Carothers suggested Attorney O’Dowd should review the Memorandum she prepared. He commented that the alternative here, and what they have proposed to Mr. Vlass and his group, is, rather than rush this, as proposed, this afternoon or tomorrow, they wait until they have the real legal descriptions so they can vacate the right-of-way, and issue Warranty Deeds conveying property to which the City has clear title; the legal descriptions would be insurable on which they could issue a title insurance policy. He continued that if they do this in three or four weeks from now, once they have the surveys and proper legal descriptions, they can go through this once, rather than try to put it together as best they can today, knowing they don’t have the documents and information they need, knowing the City will be in default immediately, and knowing they can’t issue a title insurance policy right now.

As an alternative, Attorney Carothers reiterated they can wait until they have the proper legal descriptions and do it in three or four weeks, saving a whole lot of time, effort, and energy; otherwise, they will be back here before the Agency/Council with a whole other set of corrected documents, which would constitute additional expense to the City. Attorney Carothers concluded that they have not been presented with any compelling reason why the closing has to occur today, assuming the Development Agreement is approved.

Agency Member Halloway expressed disbelief, stating Attorney Carothers just “dropped a nuclear bomb” on this agreement, suggesting the City would be in default if they signed it. He said they had not heard that before, and he asked them to please explain so “mortals” could understand it.

Attorney O’Dowd explained that under Section 8.2 of the Developer’s Agreement, they had distributed an updated Schedule of Outstanding Development Agreement Issues as of June 30, 2009, a copy of which is part of the record, that highlights the revisions that were made and their concerns with them; this is actually the starting point, **Issue #1**. Agency Member Halloway asked Vlass Attorney Dan Hicks whether he was aware of that, to which Mr. Vlass responded that he discussed it with them yesterday. Attorney Hicks asked whether he should address the Agency Members now. Chairman Affronti said he would rather have Attorney O’Dowd go through the revisions first.

Attorney Carothers confirmed that they did discuss that issue with Attorney Hicks yesterday afternoon.

Attorney O’Dowd continued that Section 8.2(a) of the agreement has to do with the City’s representations and warranties that are required. She noted she is referring to the redlined agreement, which tracks the changes that were made. She stated that the representations and warranties in this Development Agreement must be true at the time the agreement is executed, at the time of conveyance of the property, and throughout the term of the agreement where applicable. She continued that it starts out that the City is representing and warranting that a resolution to budget and appropriate funds for payment of the Infrastructure Contribution *has been passed* by the City and is in full force and effect, and a resolution to budget and appropriate funds for payment of the Community Use Contribution will be passed by the City prior to the City’s exercise of the option to use that space; it distinguishes between funding the infrastructure contribution money of \$4 million and funding the \$1.5 million Community Use Space contribution in the event the City moves forward with the Arts Education Center. She advised that the language the City’s Legal Counsel had proposed in their draft of June 17 included a representation and warranty that those monies would be available prior to their need; that is still their recommendation.

Attorney O’Dowd related that when they spoke with Attorney Hicks yesterday, they asked why the Developer is requiring the City to budget and appropriate the \$4 million, essentially, now, when the money will not be needed for at least two to three years. Under the terms of the Development Agreement, she said the Developer has two years to provide a site plan for Phase I in Area A. She said that is where she believes the majority of the \$4 million will be spent; the Developer has a year after that to commence construction. With that period of time built into the Development Agreement with regard to the infrastructure work, she questioned why the City is being asked to represent and warrant that a resolution or a covenant to budget and appropriate will have been passed at the time that this agreement is executed by the City. She concluded that is their concern about being in automatic default under the agreement.

Attorney Carothers clarified further that the City would be representing that a resolution to budget and appropriate has been approved and passed when, in fact, no such thing has ever come before the Council.

Chairman Affronti asked Attorney O'Dowd to continue with their outstanding issues.

Attorney O'Dowd reviewed **Item #2** relative to Section 2.5(f) [Phased Development] of the Development Agreement, and reading the summary included in the Schedule, she expressed their concern that if the proposed revision is accepted, the Master Developer will be allowed to commence work on multiple phases of Area A at one time, which in turn, will allow the Master Developer to place mortgages on each Phase in which a PD Site Plan has been approved and building permits have been applied for. She continued that in the event the Master Developer defaults under the Development Agreement, which default triggers a reconveyance, the City's remedy is to reacquire the partially developed phases upon reimbursement of the Master Developer's equity investment and subject to mortgages. She noted that prior language operated to minimize the City's risk by limiting the number of partially developed phases to be reacquired by the City to one.

Chairman Affronti commented he believed the Council was to approve if the Master Developer is going to go outside of Phase I; i.e., for the Developer to go to the next Area to try to develop that, he thought the Council had to approve it before the Developer is able to do that. Attorney O'Dowd responded that approval was in the prior draft, but is not in this draft. With regard to phasing within Area A, she said that this draft proposes to allow the Developer to commence with multiple phases at one time and doesn't require substantial completion of Phase I before moving onto the next phase.

Chairman Affronti continued that he thought there was something in this document providing that in order for the Developer to go to the next parcel they had to have approval of Council; for instance, if they are developing Parcel 1 of Phase I, and they want to go to Parcel 2, he questioned whether Council has to approve them going to Parcel 2 before the Developer can do that. Attorney O'Dowd responded she does not read the agreement that way; she noted that with regard to moving on to Areas B and C, Area A must be substantially completed, but that same language does not address redevelopment *within* Area A.

Chairman Affronti quoted language he said he took out of the agreement that states, "the Master Developer may not, without the express prior consent of City to the contrary, not to be unreasonably withheld the waiver of conditions, begin development of any phase within either Area A or B or C until the Master Developer should have redeveloped all of Area A in accordance with the provisions of this agreement."

Attorney O'Dowd responded that deals with being able to move forward with Areas B and C, once Area A is complete; but that same language does not operate to require City Council's approval of the phased development within Area A. Chairman Affronti said his understanding was that it applied to all; he suggested that Dan Hicks address that issue when it is his turn to address the issues.

Attorney O'Dowd continued reviewing the outstanding issues. Regarding **Issue #3**, concerning the lack of updated legal descriptions for purposes of conveyance of the property, Attorney O'Dowd pointed out that with the exhibits that they do have that were attached to the final Development Agreement, Exhibit A-1 on page 6 of 6 refers to a stormwater drainage easement area as a City Park. While this may sound like a minor point, she said the Development Agreement does talk about a City improvement, being at Riverside Park. To the extent there are other drawings of different areas referring to a City Park, she said it needs to be clarified that the only park being developed by the City is down next to what will be Area C by the River; any other descriptions of the City drainage area or the stormwater runoff area as being a City Park, they would recommend be removed to avoid confusion.

Attorney O'Dowd continued with **Issue #3**, Exhibit A-3, which is the description of Area C, there is included within Area C certain unimproved right-of-way, which is shown in a cross-hatched area as Riverhills Drive. As Attorney Carothers mentioned earlier, she said that to the extent that unimproved right-of-way is going to be part of the Development Agreement, it will have to be vacated, and for purposes of the legal description should not be included in the conveyance of the property.

Relative to **Issue #4**, Attorney O'Dowd commented that the City has allowed the redevelopment to drain into the City's Drainage Area as long as the Master Developer assumes financial responsibility to make any required improvements that are a condition of approval of any applicable regulatory permits, such as Southwest Florida Water Management District (SWFWMD) permits. She explained that Section 4.2 of the Development Agreement has been revised to limit the Master Developer's financial responsibility so long as the City Drainage Area is in compliance with all applicable laws at the time this Agreement is executed. She pointed out the City Drainage Area is the area right behind Area B on the concept plan. She said she has no reason to believe that it is not in compliance; she would just ask that to the extent staff has had a chance to look at that and confirm it, that staff be able to address it for the record in the event they have information on that point. She said she has no doubt it was in compliance when it was improved and established as a drainage area; she just doesn't have any information to be able to show that it would still be in compliance in the event any laws have changed between that time and today.

Attorney O'Dowd continued with **Issue #5**, stating that after consulting with staff, it is recommended that the City's payment of the Infrastructure Contribution in Section 4.4(a) and of the Community Use Contribution in Section 5.2(b) be made on a reimbursement basis. As submitted, she said the agreement requires the City to make these payments within 15 business days of receipt of the draw requests or application payments and do not require the Master Developer to include evidence of payment for the services or materials covered by such request or application.

Regarding **Issue #6**, Attorney O'Dowd said they have a very minor comment with respect to Section 5.2(f), the Community Use Contribution. She said it is believed to be a typographical error that instead of referencing the Infrastructure Contribution in Section 4.4, it references the Community Use Contribution in Section 5.2.

Relative to **Issue #7**, Attorney O'Dowd reviewed that after consulting with staff, it is recommended that Section 5.4(a), Creation of Condominium, be revised to provide the City with control over other uses within the community use building. She explained that as proposed, the agreement allows for other uses within that building; in the event the City moves forward with the Arts Education Center, the City's Legal Counsel recommends that the City has some control or say as to what those other uses are.

In **Issue #8**, Attorney O'Dowd reviewed that staff has advised that Michael Vlass is the individual whose financial condition provided the basis upon which staff found the development team to be financial viable, and the proposed modifications to Section 102(a), Restriction on Transfer, are acceptable so long as Mr. Vlass' continuing involvement in the development team is confirmed. As the agreement is submitted, she noted the Vlass development team committed to maintaining a 51% ownership interest in the LLC that will be developing the area; it doesn't identify individual membership interests or confirm that Mr. Vlass has the majority membership interest. She acknowledged that Mr. Vlass has stated on the record that he does; she is just saying that the agreement doesn't address it and doesn't require it; to the extent that is an issue for staff or Council, the agreement would have to be modified accordingly.

In **Issue #9**, Attorney O'Dowd stated the recommendation of Legal Counsel to reinsert language in Section 10.3(d), Mortgaging of Property, that would require substantial completion of all prior phases prior to allowing the Master Developer to place a mortgage on a phase or area within the property. She commented this relates back to Section 2.5 on the phased development; the two should be read together. She said it is their recommendation that substantial completion of Phase I be required before a subsequent phase is started; each subsequent phase that is commenced should be completed before the next phase moves forward.

Regarding **Issue #10**, Attorney O'Dowd stated that they recommend the prior language in Section 10.4, Notification to City as to Ownership Changes, requiring a statement under oath as to the ownership, be reinserted. She explained this language was in the City's draft of June 17th that the Agency/Council received on June 19th.

In **Issue #11**, Attorney O'Dowd reviewed the in the City's June 17th draft, insurance provisions were included in Section 11.1 that generally applied to the entire property and not simply those areas of the property that will be improved by the use of City funds, such as infrastructure work and community use space. She explained their approach was based upon the fact that the City's interest is not limited to those certain areas of the property; the City has an interest in ensuring that the entire property is redeveloped in a timely manner consistent with its expressed vision in the RFQ. She reviewed the Sections that will need to be revised if the Agency/Council agrees with this approach: Section 11.1(a), 11.1(b) (iii), 11.1(g), and 11.2.

Relative to **Issue #12**, Attorney O'Dowd stated they are concerned about the modification to Section 11.4, Casualty or Condemnation after Completion of a Phase, as the proposed language does not provide the City with protection that the improvements will be rebuilt if a casualty, such as a fire, occurs. She explained that the verbiage stricken by the Master Developer was intended to provide a level of protection that the City's income stream from the TIF revenue remains in place so long as there is outstanding debt.

Attorney O'Dowd noted that **Issue #13** appears to be a typographical error in Section 12.1(c) with regard to the Master Developer default. She said it would be considered a default under the Development Agreement if the "Master Developer shall fail to pay any sum of money owed to Developer..." She said clarification is needed from the Developer with regards to the revision.

With respect to certain events of default, **Issue #14**, Attorney O'Dowd reviewed, such as failure to maintain insurance or failure to perform in compliance with the approved Planned Development Site Plan, they recommend that the City's remedies include specific performance. She continued that accordingly, Section 12.3(c) needs to be revised to include the language stricken by the Master Developer. She commented that the need for this provision was explained in detail to the City Council at the meeting held on May 12, 2009.

Relative to **Issue #15**, Attorney O'Dowd stated that Mr. Carothers already addressed the issues with respect to Section 18.6, on the Closing Date and the difficulty that would be encountered in trying to close today. In addition, she said that Section 18.7(a), appears to attempt to place responsibility on the City for payment of documentary stamps, which is contrary to Section 18.9 and is inconsistent with the discussions they have had; they would just like that to be revised to be consistent with Section 18.9. She said it also proposes to require corrective deeds only if requested by the Master Developer; if Council approves the Agreement and directs them to close on the property, she said the deeds will have to be corrected to reflect accurate legal descriptions. She said that is something that would not necessarily be discretionary or at the Master Developer's discretion.

Attorney O'Dowd reviewed **Issue #16**, stating that Section 18.12, Brokerage Commission, needs to be revised, since the City cannot indemnify the Master Developer under the City Code.

Relative to **Issue #17**, Attorney O'Dowd reviewed that is a question as to whether the concept plans found in Exhibits D, D-1 & D-2 are sufficiently detailed to provide the City Council with the desired assurance as to the proposed improvements. She commented that during the May 12th meeting, Michael Vlass offered to include the renderings as exhibits to the Development Agreement; however, they have not been attached and she doesn't know whether that offer is still on the table. She continued that it would be equally worthwhile for the Vlass development team to go through the Concept Plan, because the Concept Plan for Area A has been revised since it was approved back in January or February, and she isn't sure whether there has been a complete presentation on the Concept Plans for B and certainly not for C.

Reviewing **Issue #18**, with regard to Exhibit G, the shell for the Arts Education Center, Attorney O'Dowd said she was not sure whether the revisions to the Exhibit are acceptable to staff and City Council. She said they asked that John Toppe and Charles Stephenson to be prepared to address that in the event Council has questions.

Relative to Exhibit I, **Issue #19**, regarding Street Standards, Attorney O'Dowd said she wasn't sure whether there were revisions made to that and requested staff confirmation that the Exhibit is acceptable as presented.

With regard to Exhibit J, the Environmental Reports, listed as **Issue #20**, Attorney O'Dowd commented that they want to confirm with staff that the list of environmental reports provided to the Master Developer is complete.

Attorney Carothers said that, based on Attorney O'Dowd's brief summary of what they consider to be the important issues, they have gone through the most recent draft of this agreement, which they received Friday evening, in copious detail, adding that he hopes each Agency Member can appreciate the fact that because they did not receive it until Friday evening, and were unable to review it until the weekend, it was not their intent to surprise anyone or "drop any bombs." He continued their job is to protect the best interests of the City of Temple Terrace in, what everyone would agree, is the biggest and most important transaction that the City has contemplated or undertaken, which makes it even more important for them to be sure the City's interests are as well protected as they possibly can be, from the beginning, and not to come back in a month and try to correct things. He noted that based on his earlier statements, Attorney O'Dowd's outline, and their understanding that this is the final agreement and not subject to further discussion or negotiation, from a legal perspective, it is their opinion that they cannot recommend the Agency/Council go forward with this Development Agreement as written. He added that doesn't mean something short of that cannot be done, or the prior draft of the Agreement, which was prepared and circulated in early June, cannot be considered; however, they simply cannot meet their obligations of advising appropriately by recommending the Agency/Council move forward.

Dan Hicks, Attorney for the Master Developer, said he does not believe they are as far apart as it sounds. He apologized for any confusion with regard to drafts that were circulated; the text of all the agreements was identical, the only thing changed was table of definitions had not been updated to correct the pagination.

Attorney Hicks mentioned that there were two redlines that he did not send to City Council, not that they are not entitled to be aware of any changes, but they actually tendered a redline draft to City Attorney Connolly and his colleagues on Thursday, had a conference call mid-day on Friday, in which he questioned whether there was anything in the document that would preclude the City from signing it; obviously, they want to present a document that is able to be signed and not illegal. Initially, he said City Attorney Connolly did not indicate there were any items of that nature; City Attorney Connolly indicated there were issues Council would need to consider, as he understood at the time, with the text of the agreement. In terms of the basic text of the agreement, Attorney Hicks said he was told there was nothing in the Agreement that would cause the City's legal counsel to step up and say it was illegal to do the document.

Subsequent to that conversation, Attorney Hicks said he received an email Friday afternoon indicating that that there were two provisions that Attorney O'Dowd referenced earlier, and in fact there were four provisions, the same language in two places in each of the two sections, that were essential and had to be in the document in order for the City Council to approve it; his clients agreed it was appropriate to put the language back in and it was included in the final draft, which was circulated to Council on Friday evening. He mentioned two redlines were sent to City Attorney Connolly and his colleagues at that time, one of which showed all of the changes The Vlass Group had made compared to the prior draft, and the second of which showed only the changes made that afternoon in response to his requests. He noted that he was trying to keep everyone clear, but managed to confuse everyone.

Secondly, Attorney Hicks said what they were trying to achieve was to present something to the Council to bring it to a head; if the deal is moving forward, it is everyone's best interest to make it happen. He continued to that extent, their goal was to tender a document, which they were prepared to sign, for Council to vote up or vote down. He mentioned a conversation with Attorneys for the City Carothers and O'Dowd yesterday, who, after having a chance to digest what was sent them, indicated they had issues with the resolution regarding \$4 million, the right-of-way within area C, the brokerage indemnity, the timing of the closing, and the multiple phasing. Mr. Hicks continued that since he was on the way to the airport to come down, he suggested conferring with his client, and to the extent any changes were appropriate, they were prepared to make those changes; it was determined it would be easiest to strike-through the language, pen in the changes, and initial it. He remarked that on the airplane, he spoke with Mr. Vlass and his colleagues and they incorrectly assumed that approving this agreement, since it clearly contemplates the funding of the \$4 million, was in essence, approval of authorization of the \$4 million. He continued that apparently there is a second step required to appropriate those funds, which they now understand has not happened. He added they are not asking City Council to represent something that is incorrect; therefore, they are prepared to correct that text.

Attorney Hicks noted that they are now prepared to delete the brokerage indemnity, which by its enabling legislation, the City is unable to give. Regarding the right-of-way issue, he noted they were told a few weeks ago that it was a platted, but unopened street, and it was their misunderstanding that the City had title to the rights-of-way to the street, so the legal description says the City will convey to the Master Developer, among other things, that platted, but unopened street area, subject to it being a public street and the need to vacate it down the road. If that is not the appropriate way to do it, and it has to be vacated prior to conveyance, he said they would propose to change that language and simply state the City will undertake to vacate it and convey it promptly after its vacation.

Regarding the phasing, Attorney Hicks said the language has been changed to allow the Developer to permit construction in multiple phases, predicated upon the concession they felt they made, affording the City the right to take back an undeveloped phase by refunding their equity, if chosen to do so. He commented that during the last Council meeting it was their fairly firm position that once they had gotten their plans approved, started the project's financing, and moved to develop the project, the "cow was pretty well out of the barn" with regard to that particular phase, and Mr. Vlass did not want to be in a position where he would be at risk of losing the equity in the deal, if he happened to be in a dispute with his lender or other circumstances that would have caused him to not have completed that phase by the deadline that is articulated in the document. He said if they do not meet that deadline, the City has the right to take back everything that is undeveloped, but he did not want to walk away from his equity that easily, if he is trying to keep the project moving forward. Subsequent to the last meeting, he continued the Vlass Group had agreed to allow the City, at any time, if Mr. Vlass is in that circumstance, to come in and take over. He mentioned that Mr. Vlass believed that to be a considerable concession and predicated on that, in discussions, believed it to be appropriate to request that the City Council reconsider the multiple phasing. He reviewed that The Vlass Group is not entitled to mortgage any phase until the City approves all the plans, and they are actively beginning the redevelopment. For the most part, savvy developers do not commence construction unless they are pretty sure they will finish it, so the risk of it not being finished is fairly remote, he said, and the potential benefit of having multiple phases going up at the same time is obvious, in that TIF revenues will be generated more quickly.

Attorney Hicks mentioned that he had not heard about the confusion regarding the definition of the drainage area; clearly every time the document references "park," it meant only the area in Area C, and the drainage area is the area beside Area B. He believes the legal descriptions are precise in that regard; however, if there is something that needs clarification, they can certainly do that. He reviewed that the Area C right-of-way was discussed, and they are awaiting the City's confirmation of compliance on the detention facility; the revision the Vlass Group made was predicated on their understanding all the while that part of the deal had been the City's agreement that the Vlass Group could drain and The Vlass Group construed that to mean they would not have to undertake any expense in order to drain into that pond. He acknowledged that there are approvals required in order to drain into that pond, which the City does not control, so if their development, in fact, causes the need for those changes, then they are happy to make them at their expense and are entitled to take that out of the \$4 million contribution, if so chosen, so long as the pond, as it sits today, is in compliance.

Attorney Hicks commented, concerning the reimbursement versus simultaneous payment issue with regard to the two contribution amounts from the City, it has been their position all the while that it should be a direct payment; however, the City changed the language of the last draft to make it a payment. Acknowledging that they changed the language, he said essentially, they changed it back to where it had been, which is what they thought was appropriate, in that each side is committing to fund certain portions of the construction and they did not understand the reason why they had to front the money, being, in essence a month behind on the funding, when the City is responsible to pay it. He questioned why both parties would not step up and pay their respective shares at the operative time.

Continuing his review with Section 5.2 **[Item #6]**, Attorney Hicks apologized for the miss-reference to infrastructure due to a typographical error, which will gladly be changed.

With regard to Section 5.4(a) **[Item #7]**, the reference to City control or other uses in the community building, Attorney Hicks said is addressed in a complete section of the document that deals with a Reciprocal Easement and Operating Agreement, which needs to be put into place in connection with development of the property, adding that the Easement and Operating Agreement establishes use restrictions as they would pertain to the site as a whole, in addition to easements. He continued the language was not included in 5.4(a), because they believed it was already addressed in the REA language, which indicates there would be certain use restrictions with regard to the community use building.

With regard to the request of evidence that Mr. Vlass continue to own a majority of the interest in the LLC **[Item #8]**, Attorney Hicks asserted his belief that at last Council meeting, the Council wanted to be assured that Vlass, Lant, and Sneed collectively owned 51%, which the document provides and they have agreed to confirm that annually. He said he was unaware that it was determined to need to know that Mr. Vlass, alone, owned 50%. He said he would allow Mr. Vlass, at an appropriate time, to respond as to whether that is acceptable.

Referring to Attorney O'Dowd's comments with regard to Section 10.3(d) **[Item #9]**, as to whether the Vlass Group must complete a phase prior to putting a mortgage on another phase, Attorney Hicks mentioned it is an issue that was discussed earlier and is a business point. He reminded the Agency/Council that regardless of how the phasing winds up, they are not entitled to mortgage the property unless it is for active development.

Regarding Section 10.4 **[Item #10]**, Attorney Hicks said the request for the annual statement of whether the ownership interests are as they should be, they struck the concept of it being under oath, because developers often times do not have notaries available to swear things in, and a certification by the developer, if false, would be fraudulent. He continued the only difference he is aware of between a certification and a statement under oath, is theoretically, if a statement under oath is false, it is perjury and subject to criminal prosecution. He affirmed that none of them intend to misrepresent anything and do not intend to commit perjury; they simply did not see that as being an ordinary course and necessary.

The insurance issues **[Item #11]** can be discussed as desired, Attorney Hicks said, relating their basic premise that anytime the City is investing money in a project, the City is well within its rights to be assured the insurance coverage is there. Beyond that, he added, they were looking at this as a more traditional development type of situation, where the municipality would not require insurance of developers who are in a regular development; however, he is willing to discuss this with the City's Counsel as necessary.

Relative to Section 12.1(c) **[Item #13]**, Attorney Hicks confirmed this is another typo, which they will change.

Noting the question of specific performance with regard to an unfinished phase, meaning a phase which has been started, but not completed **[Item #14]**, Attorney Hicks stated that their thought all the while had been that once a phase is started, their intent is to complete it, and if something unexpected happens, they are hoping to be in a position to deal with that as best they can. He said they did not believe it was necessary for the City to sue them, in order to try to get a Judge to order them, in some period of time, to complete this building. He continued the City's main concern was to make sure they maintain control of the property and could compel the development in some fashion. He explained giving the City the reacquisition rights, with the equity reimbursement, was their way of addressing this issue.

The closing date issues [**Item #15**], Attorney Hicks said he believes that without committing malpractice, they could close this deal today, tomorrow or the next day. He said while the legal descriptions may not be ideal, he believed that what he had done was adequate, so that a Court could read the legal descriptions and determine on the ground where the property is; generally that is the standard. Having finalized surveys, with completed descriptions based on the actual surveys, is preferable, he added, and is the reason they had contemplated that there would be corrected documentation, signed as necessary, when the surveys came in. He acknowledged speaking with Attorneys Carothers and O'Dowd yesterday, who expressed their concern with the language stating corrected deeds would be issued upon the Developer's request; The Vlass Group is happy to have it state that corrected deeds will be entered into. With regard to the documentary stamps, he said, consistent with their agreement to pay for the documentary stamps originally, they would agree to change that language. He continued that Florida Code states that in circumstances where cash is not being transferred, the stamp taxes are paid based on fair market value; therefore, they believe the text of the agreement should reflect "fair market value," and he suggested that be corrected.

With regard to the Brokerage Commission, Attorney Hicks confirmed that they are prepared to delete the indemnity [**Item #16**], since they certainly do not want to ask the City to do anything illegal.

The Vlass Group would speak, in due course, regarding the questions on the renderings [**Item #17**], Attorney Hicks said.

Relative to Exhibits G, I, and J [**Items #18 – 20**], Attorney Hicks said The Vlass Group would address any issue raised with regard to those.

Executive Director Leinbach opened and read, verbatim, a letter from Agency/Council Member Knapp, a copy of which is part of the record, in which Agency/Council Member Knapp requested that in his absence, and to help with the decision-making process of the City's governing body, one question be asked of the individual staff members Joe Motta, Charles Stephenson, Diane Reichard, Kim Leinbach, and the acting City Attorney, with the answer being a simple "yes" or "no." The Executive Director asked, on Agency/Council Member Knapp's behalf, in their personal, professional opinion, whether they have had the opportunity to fully understand the impact of the proposed agreement, along with all of its 11th hour addendums, to wholeheartedly endorse its ratification by the City Council today as written, without further negotiations or considerations.

As his response to Agency/Council Member Knapp's question, Executive Director Leinbach stated that they tried to go through the document in the available amount of time, and although Attorney Hicks has answered a lot of the questions, he would desire additional time to review the document. He apologized for his answer not being a simple "yes" or "no."

Responding to a question from Agency Member Halloway, Executive Director Leinbach stated his answer is "yes," he would like more time to review the document.

The Finance Director stated that, "no" she cannot recommend it today; however, she had reviewed the document. More time is needed to work through the issues, she said. She confirmed for Chairman Affronti that although she has read it, her answer is "no," because they haven't had time to work through the issues.

Chairman Affronti questioned that she answered “no” at the beginning, to which the Finance Director explained the way the question was worded, her answer is that she could not recommend it today, but “yes” she did read it.

The Community Development Director stated that he does not know that there is simple “yes” or “no” answer to this question; the crux of the agreement is there, but they are still trying to work out some of details. He added that he has not had enough time to review the last document they received; the document that went out to Council on June 19th is the one they were prepared to do, but there have been some changes.

The Public Works Director concurred it is not a simple “yes” or “no,” but “no” he has not had enough time to review it. He continued it has been a moving target; there have been a lot of changes. He said it seems there is a lot more give and take. At this point, he said his answer is “no,” but he would defer to City Attorney. He noted that although a lot of the issues he had concern with have been resolved, but there are still other outstanding issues that need to be discussed; a little more time is needed.

The Executive Director concluded the letter with Council Member Knapp’s final comment, requesting that the Agency/Council, as a body, unanimously vote to defer action on this matter and that a workshop be scheduled at the earliest time possible to consider this document line item by line item, and give it the attention it truly deserves, as this decision will impact the citizens of Temple Terrace, the City they all dearly love and serve, for generations to come. He noted he would have preferred to contact each of them directly, however, that is prohibited by the Florida Sunshine Law.

At the request of Mr. Vlass, Chairman Affronti called for a brief recess at 10:48 a.m.; the meeting resumed at 11:05 a.m.

Chairman Affronti briefly reviewed with Agency Members how they would continue and then announced they would take comments from the Agency Members, after Attorney O’Dowd reviews the questionable items in the Agreement, with The Vlass Group responding as to whether they are willing to change those items, and then the Agency can vote on it.

Mr. Vlass thanked Mr. Knapp for his question and requested that he be able to ask the staff their opinion, with an answer of “yes” or “no,” that the agreement the Vlass Group has submitted and as about to be modified, is acceptable and would they sign it. He added that these documents are complicated and having more time would not make anyone understand them any better. It is unreasonable, he said, to ask of any of them, including the staff, to look at a document without the privilege and opportunity to have the attorneys present both sides. He suggested that the document be walked through, taking the corrected pages and literally mark up those pages, so everyone can see the changes to be made; once that is finished, and they have walked through the changes that will be made today, that document is done, then that is the document the Vlass Group is presenting to the Agency for approval or disapproval, today.

Mr. Vlass expressed his shock at the kind of conversations that came up - whether they have a deal, questions regarding value, and whether the City should be selling or not. He asserted there was a February 10 City Council meeting, after several months of discussions, where Council unanimously approved the economics of the deal that was presented. Because of the delay and the inability of the attorneys to put in writing what the Council agreed to on February 10, he said there was a subsequent City Council meeting on May 12, where the Council once again approved the deal.

Agency Member Govin interjected the vote was not unanimous.

Mr. Vlass asserted that on two occasions, the City Council has approved the economics of the deal, and based on that, the only reason it hasn't been signed and the project begun, is because it hasn't been reduced to writing. Some issues, he said have come up and the draft they received on June 17th had a tremendous amount of changes and some of them were agreed to and some required clarification, such as their understanding of the \$4 million approval process. He concluded they do not start something, with \$4 million in their budget, only to have it go before committee three years later and have it not be approved. He surmised that even the City's attorney would agree that it is reasonable for The Vlass Group to rely on that; they need to know as quickly as possible whether they have that or not. He reiterated his desire to walk through the document and reenact Council Member Knapp's letter with a "yes" or "no" answer.

Agency Member Fernandez commented that there was discussion about the fair value and meeting the requirements. She noted that she can accept the trade-off for getting the value when combining the intangible aspect of creating a place along with the tax value. She can accept that the City can achieve a fair value for this product. She added the deeding of the land may happen without cash changing hands, but it has strings attached. She explained she has to look at reducing the risk to the City, and although she understands there is a business value to being able to start multiple phases, she also knows the practical reasons an LLC is created, which is to protect their assets. She pointed out she is looking to protect the City's assets, so when she comes to certain areas of the Development Agreement, that is her thought process and where she is operating from; how the City's interest can be protected. She expressed concern with regard to multiple areas of the property being mortgaged, which negates the property's return to the City. She continued the whole purpose in the City's purchase of the property, was because it was a shopping center that was decreasing in value and attractiveness, intangibly and monetarily. She has to look at the risk of taking this property and, with the best of intentions, something happening, and it not going forward, the City is back where it started from and owes \$20 million on it, which is a risk.

Agency Member Fernandez said her other concern is not having assurances that if a casualty occurs, such as a fire, and it is not rebuilt, the City will have delayed its monetary recompense on the property. She asserted that by not taking cash up-front and only in TIF revenue, the source of funding is gone; whereas, if it had sold for some monetary cash up front, the TIF revenue would be smaller in the end, but the City would be better off financially; it is a very big concern. She rhetorically questioned whether the City is better off taking some cash up-front, or better for the City to have a much bigger, more-dense development, and intangible assets along with the TIF revenue at the end. She questioned what happens if something changes, it is not finished, and the City has to buy into the equity and be second to a mortgage holder; the City is in a worse position than simply owning the land and a dilapidated shopping center. She concluded those two areas are what she considers to be the City's two biggest risk areas; therefore, in exchange for not accepting cash up-front, she believes there should be some type of assurances.

Agency Member Neale commented that she came prepared to vote on first document received and believes this is a very good process to be able to amend that, so they are all on the same page.

Mr. Vlass pointed out Areas A, B, and C, on a displayed site plan from their wire-bound brochure [Site Plan with Arial Underlay], noting that they are shown on Exhibit A. He continued that under the Agreement The Vlass Group cannot put a mortgage on any part of any of the property until they start construction; if they never start a phase, they give the property back.

Attorney O'Dowd confirmed for Mr. Vlass that the Vlass Group must have an approved planned development site plan and have applied for a building permit prior to having a mortgage placed.

Mr. Vlass said they will sit down with the City Council, and various groups, including Grant Rimbey's group, and come up with what it is from an architectural design standpoint, that the City wanted to see; something everyone says "this is what we like." In the meantime, he said they will be talking with the tenants to try to keep them from moving out of the project. Once those two things begin simultaneously, and they have the commitments from the tenants, and the acceptable architectural design, including the branding of the project, then they will submit plans to the City for the first phase. He continued under the Concept Plan for Phase 1, which is Exhibit C, once approved, they will negotiate a deal with a lender for a loan and the City will be provided a copy of the loan commitment given by the bank. He briefly reviewed information that would be provided to the City in the loan process. At that point, he said they will have a mortgage on that property, just on that phase.

Agency Member Neale said her confusion comes from thinking that the entire first section is Phase 1. Mr. Vlass clarified that Area A is in Phases. Agency Member Neale confirmed that the first phase would just be one-half of Area A. One of the questioned posed at the May 12 meeting, Mr. Vlass said, was what if he obtains a loan, begins construction, and walks away. He emphasized this is absurd, but it was important to the City, citing a hypothetical situation of being in default. He continued the City asked if that were to happen, that he simply step away and hand the property over to the City, walking away from his investment, and the City would have the property subject to the remaining debt, which is totally unacceptable; he would not do that. The Executive Director asked him to come up with something to solve this issue, he said, and the agreed upon solution was that if something were to go wrong and the building is not finished, the City can step in, give him his equity, and take over the project. He noted that he has agreed to provide a copy of his loan commitment to the City and to requiring his lender to provide the City with a notice of his default.

Mr. Vlass reiterated he can never mortgage a property until he begins construction, and the only thing the City is worried about is the taxes on that piece of property. He briefly reviewed possible situations, all of which would result in the City's taxes being paid; otherwise, the City would own the building for free. He believes the request to buy his equity is unnecessary, invasive, and creates a lot more documentation, but he agreed to it and is in the last version of the document that came to them.

Mr. Vlass continued that if that calmed the Agency's concern about their starting something and not finishing it, then he would like the opportunity to be able to go into the next phase of Area A. The way the document reads today, he said, they would have to wait until it is completed, which takes 12 to 24 months, before they can come back to the City and request that they begin the next phase; therefore, he requested the ability to go to the next phase. He rhetorically asked why the City would mind if he goes to the next phase, because that is how the buildings get built, and the tax base increases more quickly. He said they did agree not to go to Area B and C, without the City's approval; all they have asked for is to be able to go from Phase 1 of Parcel A to Phase 2, 3 and 4 of Parcel A, keeping in mind it is really a two-phase project. He stated that they simply do not want to get caught in timelines that keeps them from rolling into the next building and the next building. They have simply requested to go to the next phase.

Agency Member Fernandez stated she believes the intent is strictly about protecting the City if something happens. Being very familiar with the purpose that an LLC is created, she said she does not expect anyone to walk away from their investment; however, there is a history of development throughout the country where that very situation has occurred and her purpose is to make sure the City is protected in the worst case scenario.

Mr. Vlass said he has heard that loud and clear from the City Attorney and is why he agreed to allow the City to take his equity and step into the project; it is in the agreement. Mr. Vlass questioned Agency Member Fernandez as to whether she would want to stop him from starting the second phase prior to finishing the first phase, to which she responded "not necessarily." Mr. Vlass questioned whether Agency Member Fernandez wanted that in writing, to which Agency Member Fernandez responded she believes they want it. Mr. Vlass agreed to not going to the next phase until the Agency/Council approve it, adding that they will not go to Area B and C until Agency/Council approve it.

Attorney Carothers interjected that Mr. Vlass just presented a lot of information, some of which may be relevant and some not. With all due respect, Attorney Carothers said Mr. Vlass used the word "absurd" to describe the issue and the concern that the City has raised. Attorney Carothers said he doesn't believe it is absurd, because it is dollars and cents to the City. Secondly, Attorney Carothers stated that Mr. Vlass advised that all the Agency/Council should be worried about is the TIF money coming through the door. Again, with all due respect to Mr. Vlass, Attorney Carothers stated he didn't believe Mr. Vlass is in any position to be advising the City about what they ought or ought not to be concerned about; that is the job of Shumaker, Loop & Kendrick, LLC, and City staff.

Attorney Carothers continued that among all that discussion there was nothing about the issue and the concern that the City has raised, which is the risk to the City – it has nothing to do with parcels that are never started; it has to do with parcels where construction has commenced and for whatever reason, was not completed. He continued that Mr. Vlass went through a litany of circumstances under which that might happen; the only issue and concern that the City is raising is the fact that in the eventuality that construction stops and the City declares a default, which triggers the City's reacquisition of the property, it will be subject to the mortgage that Vlass has put on the property and subject to the requirement that the City reimburse him for his costs and expense and whatever improvements have been completed, and it may be subject, based upon the language in this document, to any construction liens which result from unpaid contractors, subcontractors, and/or material suppliers. He said he didn't hear Mr. Vlass address any of those concerns.

Attorney Carothers emphasized that the point for the City, is that it is not just about the City having to repay Mr. Vlass his equity; on that point, if they are going to be repaying him his equity, he questioned why Mr. Vlass wouldn't just walk away in the middle of the project if he loses a tenant or there is a problem with the construction or the loan. He remarked Mr. Vlass could walk away, the City will reimburse him for his costs, and the City would be taking the property back subject to the mortgage and liens of any contractors or material men's liens; that is the issue and he didn't hear Mr. Vlass talk about that and the issue on which the legal team is trying to focus the Agency/Council's attention.

Mr. Hicks responded that it is not to say that they don't need to get to that discussion in due course, but he believes the issue they are discussing is the multiple phasing and the beginning of a second phase before completing the prior phase. He believes Mr. Vlass just conceded to the City's position on this, so it is no longer an issue.

Mr. Hicks said they can talk about the issue Attorney Carothers was just addressing when they get to remedy provisions, but phasing is no longer an issue.

Mr. Vlass interjected that the other issue was insurance, which he didn't have a chance to answer. Relative to the phasing issue, he said, if that is a concern that they start a phase and don't finish it without the City's approval to start a second phase, they will make the concession not to start a second phase within Parcel A without the City's approval; that is a big concession. Mr. Vlass expressed frustration with the City's Legal Counsel relative to the equity Mr. Vlass has agreed to give the City, stating that after agreeing to give it to the City, the City's Legal Counsel is telling them all of the problems associated with the City taking his equity. He pointed out that he didn't offer the City his equity; the City asked for it and he has given it to them. After further comments, he questioned why they are engaging in that kind of ridiculous conversation when the City is the one who asked for his equity.

Agency Member Fernandez said she didn't necessarily ask for equity in the project; she asked for some sort of remedy or ability to address the City's risk if construction has started and for whatever reason, is unfinished.

Mr. Vlass responded that is life, citing an example of a person starting construction of their home and being unable to finish; the family and their lender will be very sad, but the City will still get its taxes.

Agency Member Fernandez commented she still has a remedy in that situation. She continued that she didn't ask for a specific remedy; she asked that they come up with a remedy.

Relative to the insurance, Mr. Vlass said they have agreed that for any building in which the City has a financial interest, including the community use building, if it is ever built, and the infrastructure, they have agreed they would insure. He said at some point, the invasiveness of government has to stop. He continued that when he builds a building, he has a tenant, who usually has a lease with him, which might be for 10 or 15 years; the tenant may have a provision in his lease that says if he is in the last five years of his lease and the building goes down, they don't have to build it back. He said if Sweetbay's building went down tomorrow, and they didn't give him any more than a three-year lease, he doesn't want to build back the Sweetbay building, unless Sweetbay says they will do a new lease and start all over again; in that case they look at the insurance proceeds. He questioned why he would put himself or any subsequent owner, for something that happened on into the future, for the rest of eternity, to have insurance that if a building goes down to build it back exactly like it was built; no one in this City has that obligation to put anything back.

Mr. Vlass continued that they have agreed if the building is down, and it is a hazard and is causing a problem, which sometimes happens, and it is in a lot of their leases, then they will raze the property, clear the site, remove all the hazard, and it will sit there as a vacant piece of land. He reminded them that it is in the middle of their Town Center; it won't sit vacant for very long; it just may be somebody else beside Sweetbay and may be a different tenant. He said that to ask them to rebuild the exact building that was there is ridiculous. He said they have the choice to either clean it up and get the site into a safe condition from a City hazard standpoint, so it is not a dilapidated building that is half-burned in which kids can get hurt, but will be taken down to grass, be nice and smooth, or else build the building back up. He explained they do have an obligation to not having an eyesore and create a bad situation.

Mr. Vlass continued that to be obligated to build that building back up exactly the way it was may be inefficient; they may want 10-foot ceilings instead of 12-foot ceilings; that is the problem with the ongoing obligation to maintain insurance. He said they don't have a problem with insuring it during the construction phase; they do that anyway for their lenders.

Commenting that they didn't purchase all of that land because it was blighted, Agency Member Halloway expressed concern that they seem to have forgotten what they were trying to do eight years ago when they started this. He said the City investigated what to do with aging strip malls and decided that New Urbanism was the solution; they purchased that land to assemble it for a New Urban Developer, and wanted to do all of this without burdening the taxpayers. He explained that is the reason the loans were financed the way they were. He continued that the City assembled the land, changed the building codes to reflect the fact that there would be a multi-purpose development there. When they were attracting a Developer, he said, they intended to give the Developer a clean slate of property for him to work on.

Agency Member Halloway continued, stating that the "carrot" for the Developer was that they would sell him the land for exactly what the City paid for it, in return for his guarantees that he would develop the land as the City wanted it to be developed in a multi-use, New Urban, pedestrian-friendly way. He said they believed at the time when they purchased the property that offering to sell it at less than market value would be that "carrot"; a Developer would be excited about doing that because then his investment cost would be substantially reduced.

Agency Member Halloway said they knew when the property was developed in the New Urban style that the value of that land would increase; that has been the experience of CityPlace, Seaside, Kensington, Maryland, and many other places all over the country. To see the value of the property increased, and have an identifiable City was another objective, he said. He continued that they wanted to increase the value of the property around it, and they also knew from experience that New Urban development had the tendency to spread out from the motivation of the real estate economics of the situation. He summarized that is what they were about eight years ago.

Agency Member Halloway continued his statement that in this time period many people have forgotten that the primary mission of the City for the entire time he has been on the Council is to do just that. He reviewed the many problems and "false starts," stating it has been a real struggle to get there. He expressed his belief that the Development Agreement they about to sign pretty much mirrors what they intended to do eight years ago; in this Agreement their Developer agrees to do the development they want, and there are stipulations throughout this Agreement that attest to that. He commented that, as far as he is concerned, negotiations should be finished.

Agency Member Halloway expressed concern that they can "lawyer" themselves right out of business. He questioned the real risks to the City if they accept this. He said he foresees the real risk to the City is a total disaster; he questioned what developer would come and develop the City after Mr. Vlass goes away, commenting he doesn't believe there are any out there who would want to go through the legal chutes and ladders to reach that point. He said the result would be that the City would still be paying for this property, the TIF would remain flat, and if they do manage to sell this property to somebody, no one knows what they would get, adding it certainly would not be anything they want, and he doubts very sincerely it would do anything for their TIF. Eventually, he believes they are going to head down the financial tubes and find out that they are really going to have to hit the taxpayer to pay the debt on the property that they bought.

To get to specifics, Agency Member Halloway said he had plenty of time to review the Development Agreement, all three or four different versions; he counts his time in 24-hour increments. He said he went through it as thoroughly as he could and read Attorney Connolly's comments; he hasn't had time to look at what the other City Attorney had to say, but he listened to what Dan Hicks had to say in rebuttal and is pretty well satisfied with that. He commented that they know the City's attorneys are very good, love the law, and their mission is to provide to the City with an iron-clad contract for the protection of the City; they are striving for perfection, but in their pursuit of perfection, the City runs the risk of losing the "good." Making an iron-clad contract is like making two parallel lines intersect; they will intersect somewhere in infinity, but that takes a lot of time and gets them nowhere, he said. He expressed his opinion that the Agency must assess this Development Agreement in terms of risk - what is the risk to the City if they accept this Development Agreement, but that risk must be tempered with the probability of these events occurring, as well as, the risk of not signing this Development Agreement and losing their Developer. He questioned where they would go then.

Agency Member Halloway acknowledged that if a person read through the Agreement, obviously they would find something they would disagree with; it was a job to read, but it had to be done. He encouraged them to take the pen and "ink" changes to this document and vote on it. He said he believes that the major issues here would have been settled with those pen and ink changes; there are many other issues, but they could go on forever. He questioned the risk to the City if they accept the document as it is. He expressed his belief that they have a good Developer who is going to do the things that he says he is going to do. He briefly reviewed the probability of the Developer walking away. He concluded that he hopes by the end of this day, the Agency and Council have signed off on this Development Agreement, closed on the deal, and Mr. Vlass goes out and builds the City's project the way he intends to build it.

Chairman Affronti commented that Agency Member Govin wants to make a statement. Chairman Affronti continued that after that, he has talked with the Attorney for the Agency Cate O'Dowd and the Vlass Attorney Dan Hicks, and there were a number of concerns that were raised by Attorney O'Dowd that Attorney Hicks has indicated could be worked out. Therefore, Chairman Affronti suggested that after hearing from Agency Member Govin, they recess the meeting for an hour or two to allow the attorneys time to meet to discuss the outstanding issues and to see what can be resolved, then reconvene and let the Agency/Council decide on the issues.

Mr. Vlass stated that he would like to do that, but would prefer to do that in a public forum and get it done right now. He said they have tenants to whom they have represented that they are going to close today; they have lost their credibility if it does not occur. He stated that Mark Sneed has a series of letters, which he has not shared with the City, that indicate the City will lose its post office, perhaps Sweetbay, and a lot of other tenants who are going to go elsewhere. He said if they give him this body with no breath left in it, he can't revive it; it has about lost its life. If there are any outstanding issues, he said they could probably sit down and go through these right now in public; he offered to pay for lunch. He said this isn't big stuff.

Attorney Hicks said he believes Chairman Affronti was proposing for Attorney O'Dowd and him to get together and determine which aren't issues and limit the discussion in the balance of the meeting to the things that are issues. Mr. Vlass interjected that if they were able to do that, they would have already done it. Attorney Hicks continued that they would be sitting and confirming what he said they would do. Mr. Vlass questioned how long that would take, stating theoretically they could take one issue and talk for two hours. Mr. Vlass said he believed it could be accomplished in fifteen minutes.

Chairman Affronti said they would come back to the Agency when they are finished today. Mr. Vlass responded that he had misunderstood and thought Chairman Affronti was suggesting they would adjourn for another time. Chairman Affronti suggested an hour for them to discuss it and come back with those items they do not agree upon and the Agency/Council can make the decision. Mr. Vlass agreed so long as they get conclusion. Mr. Vlass asked whether they could agree to vote among any of those that can be here; if they were to vote, no matter what they say, they may not be able to change the opinions of those who are not able to be here to vote.

Chairman Affronti said he believes this is so important that they do something now, suggesting that they recess for about an hour, see what points upon which they cannot agree, and they will have to make a decision.

Agency Member Govin reminded them that to the best of his knowledge, he doesn't believe this Agency/Council has ever voted against the advice of their attorneys; he can't historically prove that, but as much as he has watched and performed on Council, they have always accepted their Legal Counsel's final word as to whether they are legally entering a spider web or something that could cause them problems. He said they need to decide on that, and they need to let the attorneys know some of the issues that are paramount. He continued that he believes Agency Member Fernandez has done that; all of them that are here should tell their attorneys the paramount issues that need to be discussed and brought back; in final conclusion, he believes the Agency/Council has to work with the Attorney's decision; he said they cannot vote against it. Agency Member Halloway disagreed, stating that they can. Chairman Affronti called for civility.

Chairman Affronti stated that as far as the attorneys go, the City relies on them for legal advice, and if there is anything that is illegal, absolutely the City cannot do it, period. But if there are items, as Attorney O'Dowd brought up recently, that are business issues that the Agency/Council has to decide; it is not up to the attorneys to decide those; it is up to the Agency/Council to decide those issues. He reiterated that no way will they do anything deemed to be illegal, but the Council has to make the decisions on business issues in the best interest of the City.

Chairman Affronti asked Attorney O'Dowd if she has a pretty good feel for the outstanding issues. Attorney O'Dowd said there are two different issues; Attorney Hicks walked through some of the legal issues that she believes they can resolve from a legal standpoint. She stated she is not in a position to negotiate the business issues, to which Chairman Affronti interjected they are not asking that. Attorney O'Dowd responded that she understands what the issues are, but for purposes of working through some of those business issues, ultimately it is up to Council. Chairman Affronti interjected that at the same time, she has opinions on some of those issues; they can discuss those, and if they still can't resolve them, okay – bring them back to Council.

Attorney O'Dowd affirmed she is not negotiating the business terms of the Development Agreement; that is something that staff has done in conjunction with communicating back and forth throughout the months. She suggested that if Executive Director/City Manager Leinbach wants to sit in on some of the business issues, she would welcome that opportunity. She concluded that if she, as their Legal Counsel, is to negotiate certain business issues when she hasn't heard from the CRA as a whole, she does not feel that is appropriate.

Executive Director Leinbach suggested he and Mike Vlass can talk about some of the business issues; if it is something that has been identified as illegal, he is not going to recommend it, but now that they can get together to resolve them, hopefully they can find a solution.

Chairman Affronti announced that the meeting will recess to approximately 1:00 p.m.

Delayed by continuing negotiations, Chairman Affronti reconvened the adjourned meeting of the Temple Terrace Redevelopment Agency at 1:50 p.m.

The Executive Director relayed a phone call he received from Agency Member Knapp, who called to check on the status of the discussions. The Executive Director said he believes it is his obligation to convey Agency Member Knapp's deep concern that this is being done in this manner without what he feels is adequate time to digest very important matters of this significant program for the City; delaying it as he requested would be in everyone's best interest. The Executive Director stated that he believes Agency Member Knapp is of the position, either as an individual or publicly, that he will fight this type of action in this manner. The Executive Director reiterated that Agency Member Knapp called him, asked the status, he told him, and that was his response, and he believed the Agency Members should know.

In terms of the meetings they have just had, the Executive Director said he believes the legal issues and the business issues have generally been resolved. He said there is one remaining major item, and that is when to close on the property. He said it is very important to The Vlass Group; however, the City's Legal Counsel has reservations about going forward without the adequate legal descriptions, and that, to him, is the "fork in the road" of the deliberations today.

Chairman Affronti asked Attorney O'Dowd and Attorney Hicks if they concur with the Executive Director's statements, to which Attorney O'Dowd and Attorney Hicks both responded affirmatively.

Chairman Affronti asked if the outstanding item was the only thing that needed to be discussed. Attorney O'Dowd responded that she can walk through the revisions.

With regard to the revisions to which there was agreement, Attorney O'Dowd went back to the Memo that she prepared and provided to the Agency/Council earlier this morning, and reviewed the following revisions:

- Item #1 – The City's representations and warranties in Section 8.2(a) - that section will be amended to reflect that a resolution or covenant or other appropriate documentation will be approved by Council, with respect to the Infrastructure Contribution on or before August 1, 2009. She explained that way it is not a requirement to be in place at the time this Agreement is executed by Council; it gives the Council time to adopt that resolution or covenant to budget and appropriate the Infrastructure funds.
- Item #2 - Phasing the development in Area A - the Developer has agreed to reinsert the language that had been deleted that requires substantial completion of Phase I before moving on to the next Phase, and thereafter substantial completion of the Phase underway before they move on to the next one; however many number of Phases they have for Area A.

- Item #3 - Exhibit A-1, which is the legal description and survey for Area A - the reference to the City Park will be removed; instead, it will refer to "additional City property"; with regard to Exhibit A-3, which is the legal description and survey for Area C, the riverfront property - they will remove the conveyance of the unimproved or platted right-of-way and allow that to be vacated in the future by City Council, and at that time it will be conveyed to the Developer.
- Item #4 - City's Drainage Area - it was the recommendation of the Developer that the language remain as is, unless the City's legal counsel hears from staff that there is an issue with compliance of the drainage area with the laws currently in place.
- Item #5 - Infrastructure Contribution [Section 4.4(a)] and the Community Use Contribution [Section 5.2(b)]- the language will be revised to reflect that rather than paying the Master Developer, it will recognize that it is a joint funding project between the City and the Master Developer; the City will fund the draw requests that will be filed on a monthly basis, and paid by the City within 15 days of receipt of the draw request or payment application, unless the City envisions a dispute with regard to that; it is recognized that this is a joint funding effort between the City and the Master Developer, rather than an up-front payment.
- Item #6 - A typographical error in Section 5.2(f) has been agreed to; instead of saying "Infrastructure Contribution," it should have said "Community Use Contribution."
- Item #7 - With regard to Section 5.4(a), Creation of Condominium, to allow the City to have control over other uses within the community use building - staff agreed that can be readily addressed in REA agreement and negotiation prior to the City's agreeing to proceed with an Arts Education Center.
- Item #8 - With regard to Section 10.2(a), Restriction on Transfer - Mr. Vlass has agreed to confirm that he owns a majority interest of the 51% jointly owned by Mr. Vlass, Mr. Sneed, and Mr. Lant; that language will be inserted.
- Item #9 - With respect to Section 10.3(d), Mortgaging of Property - Language that had been deleted requiring substantial completion of all prior Phases prior to allowing Master Developer to place a mortgage on a Phase or Area within the property will be reinserted in the Agreement; that is consistent with the changes in Section 2.5(f), Phased Development.
- Item #10 - Section 10.4, Notification to City as to Ownership Changes - the City's legal counsel has agreed to the language as preferred by the Developer, rather than it being a sworn statement under oath, a certification with regard to ownership interest is acceptable.
- Item #11 - With regard to the Insurance provisions in Section 11 - Attorney O'Dowd explained they did not go through those specifically, but there is language in Section 11.1(b), which requires insurance on the property during construction of the redevelopment; it was after discussion about how that works, it was generally agreed that the language as-is, is acceptable. In some instances, the insurance is limited to the infrastructure work or the community use facility. She asked for Mr. Hicks to confirm that they were not proposing to change any language in 11.1. Mr. Hicks confirmed they were not. Attorney O'Dowd continued that it was agreed, relative to the insurance language in 11.2, Casualty Prior to Completion of Redevelopment, that instead of the Builder's Risk Insurance being limited to the Infrastructure work and the Community Use Space, the Developer agreed to remove that language and reinsert the language the City had proposed on June 17, 2009, which is the requirement to carry the Builder's Risk Insurance during construction and redevelopment on any of the improvements on the property and not limit it to just those improvements being funded by the City.

- Item #13 – Regarding Section 12.1(c), Master Developer Default - The language should have read, “In the event of default if Master Developer shall fail to pay any sum of money owed the City...”, where it currently reads “...owed to Developer...” She said this Section recognizes that in the event Master Developer fails to pay the monthly payments for Area B or Area C that will be considered an Event of Default under this Agreement.
- Item #14 – With regard to the specific performance, Attorney O’Dowd said the City agreed to the language in Section 12.3(c) as it is; specific performance is a remedy that is available to the City in the event there is a non-construction-related default of the Agreement. She explained with regard to the ability of the City to take action in the event construction is commenced but not completed, the remedy available to the City will be to take back that partially developed Phase, subject to the mortgage and payment to the Master Developer of his equity interest in that Phase.
- Item #15 - They are cleaning up the language in Section 18.7(a) with regard to the payment of documentary stamps so that it reads consistent with Section 18.9, recognizing that documentary stamps will be paid by the Master Developer. Attorney O’Dowd stated that there is discussion about changing Section 18.9(b)(ii). She explained it currently reads, “All documentary stamps which are required to be affixed to the special warranty deed based upon the tax assessed value of the Property”; the Developer has recommended that “tax assessed value” be changed to read “fair market value” and that fair market value would be something she suspects they will be determining what the appropriate amount is and then dealing with the Department of Revenue on that in the event there is a difference of opinion as to the fair market value of the property, since she is not aware of any appraisal that would otherwise set forth the value of the property.
- Item #16 – Section 18.12, Brokerage Commission – The language will be revised so that the City is not indemnifying the Master Developer.
- Item #17 – With regard to the Concept Plans found in Exhibits D, D-1 & D-2, with Areas A, B, and C – Mr. Vlass confirmed that the renderings that were provided to Council back in February to show generally what is envisioned here will not be attached to the Development Agreement; instead, they have offered that whatever goes forward with regard to the Site Plan approval will be consistent with the RFP, and they are complying with all of the regulations in the Land Development Code, he recommended that those renderings not be attached.
- Item #18 – Exhibit G, which is the building shell for the Arts Education Center – There were revisions requested by John Toppe and Community Development Director Charles Stephenson. Attorney O’Dowd said she doesn’t have that information with her, but she believes they were generally agreed to by the Developer; a copy of that email will be added.
- Item #19 – Exhibit I, Street Design Standards – Attorney O’Dowd stated that it is her understanding that Exhibit I is acceptable as submitted.
- Item #20 – Exhibit J, Environmental Reports – Attorney O’Dowd confirmed that the list is comprehensive of all of the environmental reports provided by the City to the Developer.

Attorney O’Dowd commented that the one outstanding item is Item #12 on the Schedule of Outstanding Development Agreement Issues, which has to do with in the event of casualty after completion of a Phase, if there is a fire and the buildings burn down. She pointed out that the Development Agreement requires insurance to be maintained on the property post redevelopment. She explained that what was revised in the Section removes the obligation of the Master Developer to rebuild in the event there is a casualty.

Attorney O'Dowd continued that although insurance will be paid on the property, in the event the proceeds are insufficient or the situation has changed, there will not be an obligation on the Master Developer to rebuild consistent with this Development Agreement. Attorney O'Dowd stated that is an open item for discussion by Council. While The Vlass Group has explained why they why they don't want to change the language, it was not something the City's legal counsel believed they could agree to in the meeting and she asked that Council address that issue, recognizing that the sole income stream that is going to be available to Council to pay the debt is coming from the TIF. She continued that if there is a casualty and the property is not redeveloped, it will affect the TIF; that is a business issue that Council will need to address.

In response to Chairman Affronti's question, Attorney O'Dowd confirmed that concluded the revisions. She reviewed they spent the last hour and a half discussing these changes; she asked that if the Agency/Council is inclined to approve the Development Agreement as revised, that they be allowed to bring back a revised Development Agreement for their final approval, so they can see the final document, rather than approving it as verbally presented and directing the Executive Director/City Manager to sign off on it.

Attorney O'Dowd remarked that the bigger outstanding issue, which she did not address, is the closing on the property. She stated they are not prepared today to move forward with the closing. She continued that during the morning session they talked about the incomplete legal descriptions, noting that the Development Agreement requires a Warranty Deed be provided. Without accurate legal descriptions, she said they are not prepared to recommend that the Council direct them to move forward with closing. She stated it is Legal Counsel's recommendation that if the Temple Terrace Redevelopment Agency finds the Development Agreement as revised is acceptable, that they come back before Council with a final written document for their review and approval; in the meantime, that Council authorize the City to work with obtaining updated surveys and legal descriptions, so that at that point in time they will have updated legal descriptions and can properly convey the property.

Chairman Affronti asked whether Attorney Hicks wish to comment on Attorney O'Dowd's presentation and recommendation.

Attorney Hicks responded that he believed they discussed the possibility of another brief recess to make the changes and have the document reprinted. He questioned whether Attorney O'Dowd is now suggesting that the final approval be considered at a subsequent meeting.

In response, Attorney O'Dowd said she was not suggesting that, if they have time today to revise the Agreement and bring it back before them. She stated that she did not want Council to approve today a Development Agreement based on verbal changes.

Mr. Hicks said he thought she was suggesting a meeting in the future, which would be problematic; in terms of closing today, he said it is their belief that it could be accomplished immediately without risk to the City. He expressed his belief that any risk associated with the legal descriptions being less than pristine would be the Developer's risk. He continued that because the Attorneys for the City had concerns about giving a Warranty Deed, based on the legal descriptions that the City's Attorneys weren't happy with, they proposed some potential alternate solutions, such as a Quit Claim Deed now, with a Warranty Deed when the surveys come in, or a Warranty Deed today, based on the City's vesting deeds, with a Quit Claim Deed in the future based on the survey encompassing the two or three little pieces that are the only parcels at issue.

Chairman Affronti asked whether that is something that can be done.

Attorney Carothers stated that theoretically it can be done; Mr. Hicks said this morning he felt there was a way, probably short of committing malpractice, for them to achieve conveyance of the property. He continued if they use Quit Claim Deeds and the Council is happy with fixing it later, it can be done. He stated that is not the way he works, it is not the way his firm works, and not the level of service or professionalism that they feel they owe to the City. He commented that, frankly, they are not willing to “skate that tightrope” as closely as they are being asked to skate it. He continued that if the Agency does find it appropriate to move forward with voting for approval of this Agreement, he said he wanted to make it very, very clear for the record, and will restate it for the City Council agenda, that they will be doing so against the professional advice of legal counsel; for that reason, they just cannot support it the way it currently is.

Attorney Carothers explained that aside from a concern about losing some tenants, the discussion of which the City’s Legal Counsel have not been involved, no compelling reason has been given why they can’t wait the two to perhaps three weeks that the City’s Legal Counsel have been told are necessary to generate current, certified surveys in favor of the City, The Vlass Group, and City’s Legal Counsel, to provide the necessary legal descriptions in order to do it correctly once, rather than doing the best they can with what they have, and scratching together things at the last minute, with the intention of coming back with corrected documents in two or three weeks. He said he believes they would be remiss in their professional and ethical obligations to the City to require anything other than waiting until they have current, correct legal descriptions before they convey this property.

Agency Member Holloway commented that he just heard Attorney Hicks say the risk of not having this is borne by the developer. He asked Attorney Carothers whether that was correct. Attorney Carothers responded that was subject to interpretation; certainly if the City executes...Agency Member Holloway interrupted that if the Developer says he doesn’t need that to close, and he can get it later, the risk of that falls on the Developer; it is no risk to the City.

Attorney Carothers responded that if the Agency/Council sees it appropriate to sign a Warranty Deed for incomplete, and as best they can tell right now, inaccurate legal descriptions, he believes there is absolutely a risk to the City in that. He continued that to the extent the Developer may be willing to accept something less than that, he stated that it is a colossal waste of time, effort, energy, and City funds to have the City’s Legal Counsel come back a month from now and redo it all.

Chairman Affronti asked for confirmation that Attorney Hicks said they wouldn’t require a Warranty Deed, to which Attorney Carothers responded the Development Agreement requires a Warranty Deed. Chairman Affronti said he understood Attorney Hicks say they would take a Quit Claim Deed now and a Warranty Deed after the fact, or vice-versa.

Agency Member Neale questioned whether the only problem is now with the closing of the property and is not in the Development Agreement.

Attorney Carothers responded that, generally speaking, most of the points they discussed during the meeting are more business in nature. He said he believes both Attorney O'Dowd and he are comfortable with the discussion which transpired over the lunch hour, and are comfortable that the Development Agreement does not require the City to do anything "illegal," nor does he believe the document as revised over the lunch hour will put the City in a position of being immediately in default under the Agreement, as it did prior to that time. He reiterated that he simply cannot understand why Council would rush into closing on this property, which, by the way, the tax assessor values upwards of \$17 million, when they don't have accurate legal descriptions, which, as a real estate lawyer and professional, it is a big deal.

Chairman Affronti asked for confirmation from a legal standpoint, if they did proceed to closing, whether there would be a problem, legally, to do so, with a Quit Claim Deed.

Attorney Carothers said, as an example, that he could attach a legal description from his own house in Tampa to a Quit Claim Deed and give it to Vlass, and it would not subject the City to any exposure, because a Quit Claim Deed, as a general matter, conveys whatever interest, if any, and not saying there is any, in this property. He said his point is that if Council determines it is appropriate, for whatever reason, to do that now, they will be back before Council a month from now with corrected Deeds, new surveys, and other corrective documents, which will require relatively substantial time, effort, energy, and fees, in order to generate. He reiterated he sees no compelling reason, based upon what he has heard, why they should rush it now and not do it right once.

Agency Member Halloway questioned whether they have legal descriptions of this property in the City files somewhere.

The Executive Director responded that the City has had legal descriptions from when the City purchased the property years ago. However, he said they did not know the disposition of rights-of-way and that sort of thing; the legal descriptions have to reflect the properties that are actually part of the transaction with The Vlass Group.

In response to Agency Member Halloway's question as to how long it would take, the Executive Director responded that it is estimated to take two to three weeks to produce the legal descriptions, reminding the Agency that he asked for permission to have the surveys done several weeks ago, and he will be asking again.

Attorney Carothers said they have been told it would take two to three weeks on an expedited basis; he confirmed the request did come before Council about three weeks ago. He continued that at that time, City Attorney Connolly was very clear in explaining that if Council did not authorize the City to move forward with the new surveys, it would result in a delay in the closing of the transaction. He explained that they do have legal descriptions from when the City acquired the parcels over several years, noting that he did most of those closings on behalf of the City; however, the problem is that there are "carve-outs," and the City is not conveying everything they acquired. He further explained the new, updated legal descriptions, which describe only what is being conveyed, is what they need; there are reservations of drainage easements, rights-of-way, a City park, and Area C, for which they have no legal descriptions.

Relative to the community use building, Agency Member Fernandez commented that the original draft transmitted to them in the middle of June had a listing of items that City staff felt met a certain value; they received another version that was different. She questioned, since it is part of this document, whether the value that has been negotiated or the items that will be included in this building are representative of the value.

The Executive Director referred the question to the Community Development Director, and added that John Toppe, who has been the City's architect for many years, is also here to answer their questions.

Community Development Director Charles Stephenson confirmed that staff has gone through the list and is somewhat comfortable with the provisions that were given to them; staff was given a description, which they redid with the help of Mr. Toppe. He concluded there were some minor revisions given back to staff, and they are comfortable with the Exhibit as it is right now.

Agency Member Fernandez stated that her main issue is they are accepting a delay in payment, by accepting the TIF revenue as payment for the land. She said that she doesn't necessarily have a business problem with that set up, but her concern is how any of the changes address the City's risk. She explained that if the land was sold "outright," they would have money to pay debt. She continued that they are considering an Agreement where they would receive their money later, but they are gambling, based on the revenue stream; the revenue stream is what they need to pay the debt. Consequently, she said she can't go forward with the project until she sees how that risk is managed, because if there is no revenue stream, they cannot pay the debt.

Chairman Affronti questioned how Agency Member Fernandez is suggesting that the City get that revenue stream. Agency Member Fernandez responded that she has a couple of suggestions: 1) the City could agree to take money up front and not take the TIF revenue at the end; 2) the City could agree to take a partial payment up front and take a partial payment of TIF revenue at the end; or 3) she could personally agree if there was some guarantee that their debt would be paid. She continued then they would not have to have insurance on the building or that buildings would be rebuilt; somehow they have to know the revenue is going to exist to pay this debt.

Mr. Vlass responded that they have now assured the City, as a result of their meetings, that they will have casualty insurance and builder's risk insurance for all buildings, whether funded by them or by the City. He explained that anything they build will have insurance that causes them to rebuild the buildings if they are destroyed during construction. He continued that if a building is not finished because of some construction issue, they will have insurance to make sure that it is finished; if it is not finished because of an economic issue, the City has a right to buy their interest, so he believes the City is covered there. Mr. Vlass stated that once the building is completed, they have to have insurance on the buildings, but they cannot agree to do it to rebuild the buildings exactly as it was if it should go down 10 or 15 years or more from now. Mr. Vlass presented a scenario of the building going down and his insurance company being bankrupt, and questioned how he could rebuild; he would be in default with the City for not rebuilding the building.

Agency Member Fernandez responded that she doesn't necessarily want to put that restriction, nor is she saying they have to have the buildings rebuilt exactly as they are. She said she is trying to find a way, because the City, in exchange for deeding the land at no cost with the future payment of the TIF revenue being the only revenue, if something happened to the TIF payment, the City is "out" on every front.

Prefacing his remarks that the suggestion he is about to make is something they have never done before, Mr. Vlass suggested that should the building go down for any reason, whatever the tax base on any building that falls down after it is finished and completed, the tax base on that property will stay the same as it was before the building went down. In other words, he explained that if they build something that creates for the City a \$500,000 tax base, if that building goes down, they will continue to pay the City property taxes on a half million dollars, or the City will have the right to get it back from the Developer; they will continue to pay the property taxes, as if the building was there. He said they are not going to use the destruction or the fall of a building as a way to say it went from a \$20 million asset to a \$1 million asset, so they would only have to pay taxes on \$1 million. He commented that he has never heard of such a thing, but he is more than willing to do it if the attorneys can figure out a way to put that into the document, to state that in the event it happens after construction and completion, they will agree to keep the tax base at exactly where it was before the damage took place.

Mr. Vlass continued that they will also agree to do what they had already agreed to do, which is to clean the sight up and either remove to make the site safe or rebuild, at Vlass' option, depending on the economic conditions. He said the tax revenue from the TIF will not ever go down. He said he doesn't know any other way, adding that he is trying as hard as he can to give them everything he can.

Agency Member Halloway presented his understanding of Tax Increment Financing (TIF). He said he believes TIF is based on 2004 tax levels and encompasses the entire CRA; annually the City receives the TIF payment, and must spend all the TIF money for redevelopment activities within a year.

The Finance Director advised the TIF revenue is received annually, and every year in September, the City has to designate how it will spend any leftover funds, and the funds have to be spent within three years of receipt.

Agency Member Halloway confirmed with the Finance Director that the anticipated primary use of the TIF money is to pay for the principal and interest on the loans, to which the Finance Director added there are also some administrative costs in addition to the principal and interest on the loan.

Agency Member Halloway said his point is that if Mr. Vlass puts up a building or series of buildings, the City's TIF revenues will increase, and if the buildings fall down, the TIF revenues will not decrease below the 2004 level. He asked whether that is correct.

The Finance Director said that was *not* correct. She explained that Mr. Vlass' proposed revision says that the City will not lose their TIF money, but she said that she cannot say that the City's assessed value will not go below the base of 2004; that could possibly happen. Further discussion on TIF among the parties followed.

Agency Member Fernandez commented that she asked the Executive Director if this type of solution would alleviate some of that concern. The Executive Director commented that he believes that is on the right track, but he doesn't believe there is an easy solution; it could be problematic for the City, because they are counting on that revenue stream. How they get there, since the property is valued by the Property Appraiser, he said, is something they would have to work out. He said the concept is solid.

The Finance Director offered that perhaps Mr. Vlass was suggesting was whatever the value of the property was the year that the building went down is what would be put into the agreement, so he would continue to pay whatever the millage rate is times the value of the property when it went down, if he does not rebuild; if he rebuilds that is null and void.

Mr. Vlass concurred with the Finance Director's iteration of his proposal. He said if they rebuild it will probably be something bigger and better, because the market demand will have gotten greater, so they may put up a larger building, subject to City Council approval, etc. He commented that the chance of it going down in value is so minute.

Agency Member Fernandez concurred that it is not likely that the parcels would sit there empty; however, since the City agreed to postpone City revenue, they have to have some way to pay for the land; they are not going to go out to the public and tell them they have to pay for it again.

Mr. Vlass concurred and said they are going to see nothing but a nice, new downtown and their tax base is going to go up, if they can just get started and doesn't blow up in their face while they are spending time on these documents. Mr. Vlass addressed the Agency, stating that the closing is absolutely crucial; the reason they can't close today is because Council did not approve the surveys, and that is not fair to them. He explained they have a legitimate problem with the market place and the perception in the market place that this is never going to happen; the City has a credibility issue, because they have been through this many times now and it hasn't happened. He explained they have put forth their good name and represented to current and future tenants; they don't want to lose Sweetbay and other tenants. He said there is nothing legally to prevent the City from conveying title to them so that they can announce in the papers tomorrow that the conveyance has happened, they are the owner of the property, their management team comes in and takes over, and announcements are in the paper. He expressed concern in this market over the possible loss of tenants if there is further delay, and he urged approval and execution today, with closing tomorrow.

Agency Member Fernandez noted that the survey was delayed because there were still several outstanding issues, and if those could not be resolved, there was not going to be an agreement. Mr. Vlass responded that unfortunately, the issues were presented as "life-threatening"; however, they can see that they are now all resolved. He again asked for approval with a closing to follow tomorrow, adding that they can then obtain the survey and follow up with corrective deeds.

Agency Member Govin asked about the financial information.

The Finance Director reported that the City received three years' of tax returns and confirmed cash deposits from Vlass; Mr. Vlass has earned in excess of eight figures in the past three years. In response to whether that was the corporation or the man, the Finance Director said that was the man, adding there is no corporation. Every time they do a deal, she said, they create a new LLC. Mr. Vlass confirmed there is no corporation; everything goes through his personal statement.

Agency Member Govin asked for a clearer understanding of the timing relative to the Infrastructure Agreement, where the City will have a \$4 million payment to be made against the draws.

The Finance Director explained that the Infrastructure Agreement is like a contract; draw requests will come in, which will show what was done, and the City will pay its portion and the Developer will pay its portion.

The Finance Director explained that they will probably have the Public Works Director sign off on the draw requests, since he is familiar with draw requests of this type.

Agency Member Govin asked whether the Finance Director has seen this Agreement or if it is part of the Development Agreement, to which the Finance Director confirmed with Attorney O'Dowd that it is in Section 4.4 of the Development Agreement.

Attorney Hicks confirmed that the City's money is going straight to the payee and is not channeled through the Developer. The Finance Director interjected that neither is paying up front and being reimbursed.

Agency Member Govin asked the percentage of the City's share. Mr. Vlass responded they don't know that yet; however, the City's share is capped at \$4 million, and Mr. Lant added that a budget will be provided before the first draw.

Agency Member Govin again questioned the percentage and whether that number should be assigned before signing the Agreement. Mr. Vlass said they had prepared estimates for the infrastructure costs, which had started around \$5 million. He explained their negotiations and how they arrived at the amount of the City's exposure for infrastructure to be "up to" \$4 million, with the Developer paying anything above that.

Agency Member Govin said he understands that, but his question relates to the percentage the City will be paying when a bill is presented, which he believes needs to be disclosed. While he understands \$4 million is the City's share, he said he doesn't want to pay it all up front, with the Developer not paying their share.

Mr. Lant explained the Agreement has anticipated that before the first draw and before any money is funded by the City, the Developer will provide the City with a complete budget with the total infrastructure costs that will be based on all of the fees from the engineers, all of the other costs, and for the contractor. He said they will have a contract ready to be executed for the entire infrastructure, noting that 90% of the infrastructure will be completed in Phase I; when that budget is completed, they will be able to determine the exact ratio. Agency Member Govin confirmed with Mr. Lant that it is stated in the document that they will give the City a budget.

Agency Member Govin said a repeated question from many of the residents with whom he has spoken believe that 13 years is an excessive amount of time for this development; however, he said that Mr. Vlass keeps telling them it will be sooner. He asked if there is any way they can reconsider the timelines.

Noting that it was originally longer, Mr. Vlass responded they would like it to go quicker, but just a little while ago, the Agency Members asked them not to start another phase until they have completed the previous one, which amounts to a delay; they have liked to have gone quicker. He briefly explained what he anticipates will occur in the first five years, including the permitting process, tenant negotiations, preparing and submitting their plans, the start of construction, and why they have to work on simultaneous phases. He asked them not to be surprised when they roll in requesting approval of the next phase; they won't be able to finish in 13 years if they adhere to those timelines because of the restrictions that have been placed on them.

Agency Member Govin said he understands that in order for them to vote on a legal document, they cannot vote on a verbal document; they have to have the actual document in their possession. Attorney O'Dowd said that is their recommendation so that the Agency/Council can see the actual language that was revised.

Agency Member Govin asked whether that is a legal necessity. Attorney O'Dowd said that has been her standard of practice in representing other local governments. Chairman Affronti asked whether it was *illegal* for them to go ahead and approve the document with the revisions before they receive the actual wording. Attorney O'Dowd responded that she has not done the research to find whether there is case law to determine whether it is legal; she would recommend against approving a document based on her verbal recommendations.

Agency Member Halloway asked whether the document is on a word processor somewhere that the revisions could be made and it could be finished, so that they can come back with it in a couple of hours and vote on it. Attorney Hicks said that could be done.

Attorney O'Dowd advised that one revision she is not comfortable with is that which Mr. Vlass offered to Section 11.4, with regard to the event of a casualty after redevelopment of the project; she is not prepared to comment on it. She doesn't know how they essentially commit a third Agency, the Hillsborough County Property Appraiser's office, to some valuation by virtue of this document. She said she doesn't anticipate being prepared to do that today.

Agency Member Fernandez said it is her understanding that it is not the Property Appraiser's office; it would be the value that previously did exist with the completed structure, and after a casualty the Property Appraiser's value would not be the one on which they would base their TIF revenue.

Mr. Beitsch commented that he has dealt with similar matters before. He said this is being addressed as though it is a tax matter, but it is only a dollar amount. He said the casualty appears to be tied to that value, so the only obligation is that they agree upon a formula by which the payment for a specific parcel is set; that doesn't necessarily involve another Agency. He noted that Tax Increment is not based on tax rolls, but an amount equal to it.

Mr. Vlass explained that whatever the tax base was in the last tax base before the year of the event of a disaster or the building goes down, whatever taxes that were due on that property will continue to be the taxes due moving forward, whether or not the property is rebuilt.

Agency Member Fernandez commented she wouldn't say "whether or not", because if they were to rebuild, there could be a higher value. Mr. Vlass corrected his statement with "until the property is built." He said it would be not less than. Mr. Hicks jokingly added that they should not consider this an invitation to arson; he understands that with TIF funding, the City's share decreases over time, and if a casualty was to occur after ten years, the City would be getting the payment of what the total tax would have been, even though the County would have been retaining a larger portion of that. He concluded that he believes the City is at least as well off and potentially better off, except for the fact of not having the actual edifice there. He said he doesn't believe it is a taxation issue as much as a contractual arrangement to pay money if the money from taxes declines. Mr. Vlass asked Mr. Hicks to suggest how it could be worded. Mr. Hicks offered that if there is a casualty and the building is not rebuilt, until a building is rebuilt Vlass would pay to the City an amount equal to the difference between the ad valorem taxes that would have been paid for the year at issue, based upon the value as it existed January of that year, to the extent and excess of the actual taxes paid. He said they could do that or simply say the taxes for the prior year were "x" dollars and they are going to pay them "x" dollars less whatever amount they actually pay in taxes, which may be a simpler way to say it. Mr. Vlass said that keeps the City's TIF revenue exactly where they want it.

Chairman Affronti said there are two ways they could go – one is to adjourn until the new document is printed with the changes in it, and then vote on it, or give the Executive Director or the Mayor the authority to sign it once the document is completed.

Agency Member Govin said he believes they need to check the legality and case law; he believes they have to see a document in its entirety before it can be signed. He continued that both of the City's attorneys are saying that they show wait a little on this document, but he doesn't know that a time frame has been put on it. He expressed his belief that there should be some consideration to the fact that they are not a full Council and that this is probably the biggest single decision financially that has ever been made or will ever be made by the City of Temple Terrace. He said he would heartily recommend that a document be ready for them by Friday afternoon or Monday afternoon, when he believes Council Member Knapp will be back. According to the City's attorneys' recommendation, he said he believes it would be a good thing to get this document complete, get started on the survey, and hold a final meeting on this at the earliest available date, which may be Monday evening. He said they shouldn't leave any clouds that the meeting was held while someone was absent, or anything of that nature. He would like to see a postponement of this meeting to Monday, July 6th.

Chairman Affronti commented that ideally it is great to have the full Council; however, they, as Elected Officials have to decide where their priorities are. He continued that this is probably the biggest thing they have had coming down the pike in Temple Terrace, they knew that two weeks ago, and he doesn't believe they can sit here and try to accommodate every member. He said they do the best they can and let everyone know as far in advance as they can as to what is coming up. He commented that whenever he knows it is an important meeting, he does his best to show up.

Agency Member Holloway said he sees no real purpose in delaying this meeting or this decision. He said they can delay it on and on, but apparently all issues have been resolved, mostly in the City's favor, so he see no real reason why they cannot vote today on the Development Agreement. Secondly, he said he doesn't see any good reason why they cannot go to closing after they sign the Development Agreement if they approve it. He said he would like to turn theory into reality, sign it, and get it over with. To delay in this situation will be counterproductive and could be destructive, he said.

Mr. Vlass suggested another adjournment for about an hour to enable them to come back with the agreement with all the changes they have approved, and calling for a closing to occur tomorrow morning. He said they will ask for approval or disapproval and requested no further delay.

Chairman Affronti suggested they get the document, take it with them to review, and vote on it tomorrow morning. Mr. Vlass said that his brother is having major surgery tomorrow morning, and he has to be home for that. He said he could sign the Master Developer's Agreement tonight and call for the closing tomorrow morning; it doesn't require any of them to be there, other than their attorney and one of his partners to sign the closing documents and transfer any money required. He concluded he has a 7:30 p.m. flight tonight.

Agency Member Fernandez said that with the changes they had discussed, she can be comfortable going forward; however, she does not want to go against the attorneys' advice with regard to deeding the property. She questioned whether there is a way to approve in theory and do the closing when the deed can actually be ready. Mr. Vlass responded there is absolutely no exposure to the City to close tomorrow morning.

Executive Director Leinbach reminded the Agency Members that they are sitting as the Temple Terrace Redevelopment Agency. He explained the protocol, if they decide to go forward, is to make a recommendation to the Council, at which time a public hearing will be held. He said he did receive another call from Agency Member Knapp, who said he has been receiving a number of calls from constituents and would like his question that was part of the letter he read to them earlier re-answered.

Chairman Affronti questioned whether they can make a motion to recommend to the Council to move forward with the Development Agreement once it is printed and acknowledged by Council. Attorney O'Dowd responded affirmatively, as long as Council sees the final document. Mr. Vlass commented that it will take about an hour to make the changes and reprint the document.

Upon motion of Agency Member Halloway, seconded by Agency Member Neale, **Temple Terrace Redevelopment Agency RESOLUTION NO. CRA-122(m)** was **ADOPTED** recommending that City Council approve the Master Development Agreement, subject to receipt by City Council of the final document, as amended by the Attorney for the Agency and the Attorney for The Vlass Group. Vote on the motion being: Agency Members Fernandez, Halloway, and Neale voting "aye," and Agency Member Govin voting "nay." Agency Member Knapp was ABSENT and did not vote.

Prior to vote on the above motion, Agency Member Govin said he does not believe they are within legal boundaries to approve a document that is not in their hands in finished form. He asked that to be part of the record.

Agency Member Neale confirmed with the Attorney for the Agency that the Agency Members are simply making the recommendation and not approving the document.

Agency Member Fernandez clarified that they are not actually voting to approve the final document until they see the final document, sitting as the City Council. Attorney O'Dowd commented that the motion as she understands it is that the Agency Members will allow the document to go forward to be revised; this Agency is recommending approval of City Council of that document, as revised, as long as City Council, and not the Agency, receives that final document and it reflects provisions that were discussed this afternoon.

At this point, Chairman Affronti called for a vote on the above motion, which passed by a vote of three to one, with Agency Member Govin casting the dissenting vote and Agency Member Knapp was absent and did not vote.

Chairman Affronti questioned whether a motion is needed relative to setting a day and time for the closing.

Attorney O'Dowd stated that it is up to this Agency as whether they wish to make a recommendation to the Council as to the date and time for closing. She continued that she and Attorney Carothers have already stated their recommendation relative to a closing date and time.

Chairman Affronti acknowledged they already know what their recommendation is.

Attorney Carothers stated that the agreement that has been recommended for approval requires closing immediately after approval, so it is what it is.

Chairman Affronti questioned whether they should go ahead now and open the Special City Council Meeting and Public Hearing and hopefully have the final document before the end of the meeting.

Attorney O'Dowd recommended they have the final document at the start of the Special City Council Meeting, since the public would like an opportunity to address it. Chairman Affronti announced the Special City Council Meeting will begin at approximately 4:15 p.m., allowing time for the agreed upon revisions to be incorporated into the final documents and to print out the final documents for review.

There being no further Redevelopment Agency business to discuss, the meeting was adjourned at 3:15 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