



## BOARD MEETING MINUTES

WEDNESDAY DECEMBER 16, 2009 4:00 P.M.

### COEUR D'ALENE PUBLIC LIBRARY COMMUNITY ROOM

#### 1. CALL TO ORDER

Chairman Denny Davis called the LCDC Board meeting to order at 4:00 p.m.

LCDC Board members present: Elder, Colwell, Davis, Nipp, Hoskins, Goodlander, Patzer, Jordan, Hassell

#### 2. PLEDGE OF ALLEGIANCE

#### 3. PUBLIC COMMENT

Guests Present: Tom Hasslinger, Matthew Beam, Vince Hughes, Dick Stauffer, Monte Miller, Chris Hollibaugh, Jim Brannon, Skip Fuller, Susie Snedaker

No public comment was given.

#### 4. APPROVAL OF MINUTES

- November 18, 2009 Board Meeting Minutes

**Motion by Elder, seconded by Hoskins to approve the November 18, 2009 Board Meeting Minutes. Motion carried.**

#### 5. COMMITTEE REPORTS

- Finance Committee – Commissioner Rod Colwell  
Lake & River District Monthly Financials  
Lake & River District Payables

Finance Committee Chair Rod Colwell reviewed and discussed the November Lake and River District financial files, and the November account payables sheet, with the Board.

Commissioner Patzer and Executive Director Berns provided additional input on the City of CDA's final invoice payable for the Midtown placemaking

project, and discussed the additional \$20,000 charge to LCDC pertaining to the electrical conduit installation on 4<sup>th</sup> Street between Roosevelt and Boise Avenues.

**Motion by Hoskins, seconded by Goodlander, to approve the November accounts payables and the November financial packets for the Lake & River Districts as presented. Motion carried.**

KYRO Partnership Funding Request

*Please refer to the October 21, 2009 Board meeting minutes for background on this initiative.*

Commissioner Colwell shared that after considerable review, the Finance Committee recommends that LCDC partner with the KYRO organization on the public parking element of the proposed KYRO project in an amount ranging from \$165,000 (75% of KYRO's \$221,411 funding request) to \$200,000 (90% of KYRO's \$221,411 funding request) under the following conditions:

- The land asset supporting the proposed surface parking area will be transferred in ownership and title to the KYRO organization prior to issuance of any LCDC funds.
  - The surface parking area will be public in nature, servicing as access to both the KYRO facility and the Centennial Trail. Therefore, the KYRO organization will agree to a recorded KYRO/LCDC "Parking Use & Access Agreement" (similar to the LCDC/Kroc Center agreement) pertaining to the surface parking area.
  - During each year's operational season, the KYRO organization will provide to the public a minimum number of hours (value to be determined at a later date) of free ice skating time per week, with said free skate times available throughout the week.
  - KYRO will agree to an LCDC reimbursement provision wherein KYRO will agree to reimburse LCDC for a portion of LCDC's parking area investment should KYRO operations cease prior to 2027, and/or a change in the facility's functionality occur prior to 2027. The yet to be developed reimbursement provision will be structured on a sliding reimbursement scale (i.e. the potential reimbursement to LCDC will be less in 2020 than in 2015).
- Commissioner Jordan asked if the proposed parking agreement should run with the land? Commissioner Davis responded that yes, the agreement should run with the land perpetually, and that language could be inserted into the agreement regarding some form of relinquishment provision, allowing for reimbursement to the LCDC should the parking use cease in the future.

- Commissioner Patzer shared that the potential LCDC investment in this project needs to be clearly aligned with public benefits. The public benefits need to be very clear. Commissioner Patzer would still like the Centennial Trail Foundation to help better quantify the potential usage of the proposed trail head. The proposed free ice time to the public is also very important to clearly define.
- Commissioner Elder thinks Commissioner Patzer's concerns are very valid, and would like to move forward with the KYRO organization on negotiating an agreement.
- Commissioner Goodlander shared that she knows of only four ice rink venues in the state of Idaho. She believes supporting the KYRO initiative is appropriate for LCDC, and favors participating at the proposed \$200,000 level if all of the conditions can be worked out.

**Motion by Goodlander, seconded by Elder, to continue discussions with the KYRO organization, targeting for now an LCDC participation funding level in the \$200,000 range pertinent to the proposed KYRO public parking lot project element, contingent upon successful negotiations involving the aforementioned conditions.**

Discussion re. the motion:

- Commissioner Patzer would like to hear further input from the public on this issue. For example, what does the cycling and trail user communities think of the proposed LCDC/KYRO partnership?
- Commissioner Davis recalled that Charlie Miller, Executive Director of the North Idaho Centennial Trail Foundation (NICTF), shared his organization's support for the KYRO proposal, and that NICTF sees great value in increasing access venues to the CDA trail system.
- Commissioner Elder would like to see a more finalized design of the KYRO facility and parking area prior to a final funding recommendation.
- Commissioner Hassell shared that the new transit center at Riverstone will also be providing additional public parking capacity adjacent to the Centennial trail system.

**Motion carried.**

**Recusal – Commissioner Nipp recused himself from the vote on the motion, and did not participate in the Board's discussion involving the KYRO initiative.**

The LCDC Finance Committee will continue to work with the KYRO organization on the issues discussed, and will provide an update to the Board at the January Board meeting.

- Housing Committee – Commissioner Jim Elder

#### North Idaho Housing Coalition (NIHC) Request

*Background: in March, 2009, NIHC approached LCDC proposing that LCDC partner with NIHC to develop workforce housing within the two LCDC Districts via two proposed partnership venues: 1) a Community Land Trust Program, and 2) a Shared Equity Program. Since March, LCDC legal counsel has been reviewing the latitude LCDC possesses under current Idaho statutes to partner with a non-profit entity such as NIHC via the two proposed partnership venues.*

Housing Committee Chair Jim Elder and Commissioner Davis reviewed with the Board a letter written by LCDC legal counsel Ryan Armbruster to the NIHC organization. In the letter, Mr. Armbruster states that current Idaho statutes do not permit urban renewal agencies, like the LCDC, to participate with non-profit organizations in programs as proposed by NIHC. Following are excerpts from Mr. Armbruster's letter to NIHC central to his counsel to the LCDC Board:

*It is our understanding that North Idaho Housing Coalition is a 501(c)(3) non-profit organization. Even so, using tax increment funds<sup>1</sup> for such programs, and donating such funds to NIHC, as opposed to federal funds (such as Community Development Block Grants, stimulus money or perhaps non-property tax funds) potentially violates the Idaho Constitution. Urban renewal agencies are constitutionally required to expend tax funds for public, as opposed to private, benefit. As there is no Idaho Supreme Court case specifically on this issue, a court might concur with the use of these funds if LCDC can demonstrate it is providing a primary public benefit by funding these housing purchase assistance programs and the benefit to the private homeowner is ancillary or merely incidental of the primary public benefit. In that instance, there may be no constitutional violation. Some support for this position may be found in the case *Hansen v. Kootenai County*, but the case did not deal with urban renewal agencies and seemed to contradict clear precedent holding that providing any benefit to private interests by a political subdivision from public funds, no matter if there was a public benefit as well, would violate the Idaho Constitution.*

*Idaho Code Chapter 19, Title 50 specifically notes, for purposes of that statute, "the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions." I.C. § 50-1902(c). "Persons of low income" is defined as those who cannot afford decent, safe and sanitary housing without assistance. I.C. § 50-1903(i). The Housing Authorities and Cooperation Law does not mention or define "workforce housing." NIHC provides assistance to*

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<sup>1</sup> Tax increment funds is the common reference to taxes generated by increases in assessed values of property within a revenue allocation area. The Local Economic Development Act (the "Act"), Chapter 29, Title 50, uses the term revenue allocation. In this letter, the terms may be used interchangeably. Regardless of the reference, the funds are tax dollars generated through Idaho's property tax system.

*persons seeking workforce housing. I.C. § 50-1902 provides some support for the argument providing workforce housing promotes a public purpose. However, the Idaho Legislature has only found providing housing to low income persons to be a public purpose. See I.C. §§ 67-6201(a) and (b); 67-6205(j); 67-6206. No Idaho Court has considered whether or not providing housing assistance to moderate income families constitutes a public purpose.*

*The most recent pronouncement by the Idaho Supreme Court concerning an urban renewal agency is found in Rexburg v. Hart, decided on November 26, 2009. Though the Supreme Court reaffirmed an agency's authority to issue long term debt and generally addressed issues related to Art. 8, § 3 and Art. 8, § 4 of the Idaho Constitution, the precise point of assisting a non-profit corporation (as opposed to a public entity) for the purpose of workforce housing was not at issue and remains unresolved.*

*Although LCDC recognizes the valuable contributions made by North Idaho Housing Coalition, LCDC must decline the request for participation in the non-profit organization's programs. Upon review of the applicable law, it is our belief that LCDC's participation in such programs could be a violation of Art. 8, § 4 of the Idaho Constitution which provides that no political subdivision shall lend or pledge the credit of the subdivision in the aid of "any individual, association, or corporation, for any amount or for any purpose whatever . . . ." Case law handed down by the Idaho Supreme Court has not made a distinction between the aid rendered to for profit private corporations as opposed to non-profit organizations such as North Idaho Housing Coalition or concluded providing the type of housing assistance proposed constitutes a public purpose which would not trigger the application of Art. 8, § 4.*

LCDC Board members commented how valuable NIHC's efforts are to the community, and despite LCDC's ability to help, hope that NIHC continues to excel in bringing affordable housing programs to the community.

**Motion by Jordan, seconded by Hassell, to send Mr. Armbruster's letter to the North Idaho Housing Coalition (NIHC) in care of Lori Isenberg, NIHC's Executive Director. Motion carried.**

- Parking Committee – Commissioner Jim Elder

Parking Committee Chair Jim Elder, who also serves as a member (and LCDC liaison) on the City's Parking Commission, shared that the downtown parking audit work discussed last month is still on deck for implementation in 2010. The proposed audit work, to be performed by Diamond Parking, is a follow-up to the original parking audit work performed by Rich and Associates in the summer of 2007. The current audit work is designed to further validate the parking needs for downtown and to help determine the eventual timing for a downtown structured parking facility.

- Communication Committee – Commissioner Dave Patzer

Communication Committee Chair Dave Patzer shared the following Committee update with the Board:

Midtown Association Meeting

Commissioner Patzer shared that a meeting was held with interested Midtown stakeholders regarding the possible formation of a Midtown Association, similar to the Downtown Association. Mayor Bloem, Councilman Kennedy, Terry Cooper (Downtown Association) and Tony Berns (LCDC) participated in the meeting. There is a core group of Midtown stakeholders who want to further explore the feasibility of an association for Midtown. A follow-up meeting is planned for January.

Commissioner Patzer also shared that he has been contacted by individuals interested in utilizing the LCDC lots on 4<sup>th</sup> Street for possible Midtown event venues during the summer season of 2010.

Midtown Placemaking Project – Funding of a Portion of Dennis Spencer  
Midtown’s Project Advocacy Role

*Background: Commissioner Patzer shared that at the October 21, 2009 Board meeting, the LCDC Board was asked by Kevin Stevens, President of Safco Construction, if LCDC would consider helping to defray some of the costs incurred by Safco in the hiring of Dennis Spencer as the “project advocate” for the Midtown project. Safco budgeted 360 hours for Mr. Spencer, with Mr. Spencer actually logging 428 hours on the project. Mr. Stevens asked if LCDC would be willing to possibly pay the cost associated with the extra 68 hours logged by Mr. Spencer at his contract rate of \$40/hour (\$2,720 in total)? At the October 21<sup>st</sup> meeting, the Board shared that as the project wraps up, LCDC will look to see what level of project contingency funding remains that could possibly be used to address Mr. Spencer’s Safco contract overrun hours.*

Commissioner Patzer reviewed the background of Dennis Spencer’s role in Midtown and the related funding request from the Safco organization. Commissioner Patzer also shared that as discussed earlier, LCDC realized \$0 in remaining funds from the Midtown funding commitment, and was actually billed an extra \$20,000 by the City to help defray costs associated with the electrical conduit installation. Commissioner Patzer asked his fellow Board commissioners for their input on this Safco funding request.

- Commissioner Hoskins shared that he felt it was a great idea to hire Mr. Spencer for his advocacy role in Midtown, and supports LCDC committing the requested funds to Safco. Having Mr. Spencer on site helped the project immensely.

- Commissioner Colwell shared that he felt Safco did an excellent job in Midtown, were very good to work with, and supports Safco's request for the extra funding for Mr. Spencer's role in Midtown.
- Commissioner Elder agreed with Commissioner Colwell, and heard nothing but good reports regarding Mr. Spencer's performance in Midtown. Mr. Spencer's advocacy role saved huge amounts of time for both LCDC and City staff.
- Commissioner Hassell proposed possibility paying half of the requested amount, basically splitting the overrun costs with Safco.
- Commissioner Davis reminded the Board that LCDC had considered early in the Midtown project planning stages of hiring a person like Mr. Spencer for a project advocacy role. LCDC did not have to pursue this issue because the Safco organization also saw similar value and proactively hired Mr. Spencer for the advocacy role. Commissioner Davis supports the Safco funding request of LCDC.
- Commissioner Patzer agreed with Commissioner Davis in that LCDC saw the value of such a person early on, and acknowledged the value added by Mr. Spencer's presence throughout the project's course.

**Motion by Elder, seconded by Hoskins authorizing \$2,720 in LCDC funds payable to the Safco Construction firm as reimbursement for a portion of the hours paid for Dennis Spencer's "project advocate" role in Midtown during the 4<sup>th</sup> Street reconstruction project, subject to validation of Safco payment records involving Mr. Spencer's total contract disbursements. Motion carried.**

6. RESOLUTION NO. 10-02: PARKSIDE IMPROVEMENT REIMBURSEMENT AGREEMENT (IRA)

Executive Director Berns provided the Board an overview of the Parkside IRA, sharing the history of the project and the rationale for the proposed LCDC funding of certain public improvements associated with the project:

- Fall, 2006: Parkside developer application package was submitted to LCDC requesting funding for certain proposed project-related public improvements totaling \$2,829,000.
- February 21, 2007: LCDC Board agreed to partner in the costs of certain proposed project-related public improvements totaling \$820,000. Below is a brief summary of the proposed LCDC Parkside IRA funding for the specified public improvements.

Item	Total Project Cost	LCDC Share \$\$	LCDC Share
<b>Site Remediation</b>			
Asbestos Abatement	\$ 27,000	\$ 27,000	100%
Building Demolition	\$ 80,000	\$ 80,000	100%
Curb/Walk Removal	\$ 15,000	\$ 15,000	100%
Tenant Relocation	\$ 142,000	\$142,000	100%
Sewer, Water Terminations (12)	\$ 18,000	\$ 18,000	100%
<b>sub-total</b>	<b>\$ 282,000</b>	<b>\$282,000</b>	<b>100%</b>
<b>R-O-W Improvements</b>			
Water Line Extension	\$ 5,000	\$ 5,000	100%
Asphalt Alley Overlay	\$ 30,000	\$ 30,000	100%
Curb/Walk Bulb Outs, Pavers, Grates	\$ 60,000	\$ 60,000	100%
Overhead Utility Relocation	\$ 250,000	\$250,000	100%
Landsc., Irrig., Furn., Lighting, Power	\$ 100,000	\$100,000	100%
Artwork (Banners/Rigging)	\$ 12,000	\$ 12,000	100%
<b>sub-total</b>	<b>\$ 457,000</b>	<b>\$457,000</b>	<b>100%</b>
<b>Construction</b>			
Subterranean Parking	\$1,300,000	\$ -	0%
Public Plaza*	\$ 450,000	\$ 81,000	18%
Green Roof	\$ 340,000	\$ -	0%
<b>sub-total</b>	<b>\$2,090,000</b>	<b>\$ 81,000</b>	<b>4%</b>
<b>Total</b>	<b>2,829,000</b>	<b>\$820,000</b>	<b>29%</b>

\* \$81,000 = public accessible water feature

- December 31, 2008: City issued Certificate of Occupancy for the Parkside project.
- May, 2009: Welch-Comer Engineering engaged as a third party entity to conduct a cost validation analysis pertaining to the LCDC agreed-to public improvements.
- November, 2009: Welch-Comer cost validation analysis completed.
- December, 2009: Parkside IRA on Board agenda for review/approval.

Executive Director Berns shared that the \$820,000 in reimbursement funding for the Parkside public improvements will be derived **only** from tax increment revenue proceeds (i.e. property taxes) generated by the Parkside project itself – i.e. no other LCDC revenue resources will be utilized to pay for the aforementioned Parkside public improvements. The Parkside IRA represents a self-funding project

reimbursement model that is totally risk free for the taxpayer; i.e. if the Parkside project itself does not generate sufficient property taxes to repay the \$820,000 in LCDC approved public improvements, then no other public funds will be used to repay the costs for said public improvements – the developer would then bear the burden for the funds invested.

Executive Director Berns shared that a third party cost validation analysis was performed by Larry Comer of Welch-Comer Engineering. The Welch-Comer analysis validated that all of the specified Parkside public improvements were installed, and that documented project records validated that over \$820,000 was spent on the aforementioned LCDC approved Parkside public improvements. Mr. Comer's cover letter to the LCDC Board regarding the cost validation analysis follows:



www.welchcomer.com

208-664-9382  
877-815-5672 (toll free)  
208-664-5946 (fax)  
350 E. Kathleen Ave.  
Coeur d'Alene, ID 83815

November 20, 2009

Mr. Tony Berns  
Lake City Development Corporation  
105 N. 1st Street  
Coeur d'Alene, ID 83814

Re: Parkside Towers: Post Construction Cost Review

Dear Tony:

This letter and attachments presents a summary of our cost review of the Parkside Tower Mixed Use Development, with respect to the partnership agreement with LCDC.

On July 30, 2009 you and I met with project sponsor Dick Stauffer to review in detail, the findings of my initial review of the Parkside Towner cost documentation. I had prepared a preliminary cost review spreadsheet dated July 28, 2009, which requested additional documentation to support various project costs.

On November 9, 2009 I again met with Dick Stauffer, and he provided a significant amount of supplemental documentation in response to our preliminary findings in July. The attached project cost summary is our compilation of the supplemental information provided by the Parkside Towner sponsors.

In summary, the Parkside Towner sponsors have provided documentation of actual project costs over \$993,000 toward project elements which were determined as eligible for participation by the LCDC Board. These documented project costs demonstrated that the LCDC eligible items did in fact equal or exceed the total partnership agreement amount of \$820,000.

Therefore, we find that the Parkside Towner sponsors have provided adequate documentation to demonstrate completion of improvements under their partnership agreement with LCDC in the amount of \$820,000.

Sincerely,

Larry E. Comer, P.E.  
Principal Engineer

LEC/kdh  
Enclosure  
cc: Dick Stauffer, AIA

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lcomer@welchcomer.com

Board members asked a few clarifying questions of Executive Director Berns regarding the Parkside IRA document.

**Motion by Elder, seconded by Goodlander approving Resolution 10-02, authorizing the Parkside Improvement Reimbursement Agreement (IRA) as drafted and presented.**

**Roll Call:**

<b>Nipp</b>	<b>Yes</b>	<b>Goodlander</b>	<b>Yes</b>	<b>Hassell</b>	<b>Yes</b>
<b>Colwell</b>	<b>Yes</b>	<b>Patzer</b>	<b>Yes</b>	<b>Jordan</b>	<b>Yes</b>
<b>Elder</b>	<b>Yes</b>	<b>Davis</b>	<b>Yes</b>	<b>Hoskins</b>	<b>Yes</b>

**Motion carried.**

**7. EXECUTIVE DIRECTOR'S REPORT**

LCDC Executive Director Berns discussed operational issues and updated the Board on LCDC initiatives:

**Local LCDC Legal Counsel**

*Please refer to the October 21, 2009 & November 18, 2009 Board meeting minutes for background on this initiative.*

Ex. Director Berns shared that on December 3, 2009, the ad hoc team (Commissioners Davis, Elder, Hassell, Hoskins) formed by the Board in October to shepherd the local legal counsel initiative, interviewed the following two individuals for the LCDC local legal counsel contract position:

- Randy Adams of the Quane-Smith LLP Law Firm (CDA Office)
- Danielle Quade of the Hawley-Troxell Law Firm (CDA Office)

Commissioner Davis shared that both candidates interviewed very well and brought substantive skill sets to the table. The ad hoc committee took into account that the Hawley-Troxell law firm brings a deeper bench of municipal law talent to the position, and that Danielle Quade (and other Hawley-Troxell legal counsel) has also worked with LCDC and LCDC special legal counsel Ryan Armbruster in the past.

Following deliberations, the ad hoc committee recommends that the LCDC Board engage Danielle Quade of Hawley-Troxell as LCDC's local legal counsel.

- Commissioner Patzer asked what contract rate Mrs. Quade will charge LCDC? Commissioner Davis shared that the rate will need to be negotiated, but will be less than the discounted rate of \$165/hour currently billed by LCDC special legal counsel Ryan Armbruster.

- Commissioner Patzer asked what type of work will be provided LCDC by Mrs. Quade? Commissioner Davis shared that Mrs. Quade will attend all LCDC Board meetings, and will offer her insight on general municipal law issues, potential conflict of interest issues, procedural issues, etc. LCDC special legal counsel Ryan Armbruster will still perform most of the LCDC contractual document preparation, and that Mr. Armbruster will have the latitude to advise that certain LCDC legal tasks be delegated to Mrs. Quade.
- Commissioner Patzer commented that the LCDC local legal counsel initiative was initiated because the economics of having Boise-based LCDC special legal counsel Ryan Armbruster attend LCDC Board meetings on a regular basis were not practical. The Board decided it made better fiscal / operational sense to engage a local attorney to assist LCDC at Board meetings.
- Commissioner Patzer, for audience clarification purposes, asked why local attorney and Board Commissioner Denny Davis does not serve LCDC in a counselor role? Commissioner Davis shared that the LCDC needs and independent person in the local legal counsel role, and that he serves the LCDC as a policy maker; not a lawyer.
- Commissioner Patzer asked what if Mrs. Quade relocates away from Coeur d'Alene? Commissioner Davis shared that the LCDC local legal counsel agreement will be with the Hawley-Troxell firm, and not with just one individual in that firm.

**Motion by Patzer, seconded by Hassell, approving the selection of Danielle Quade of the Hawley-Troxell law firm as LCDC's local legal counsel, and directing Executive Director Berns to develop and execute the necessary contractual agreements for the engagement of Mrs. Quade as LCDC local legal counsel. Motion carried.**

**Recusal – Commissioner Colwell recused himself from the discussion and voting on the motion because his employer sometimes does business with the Hawley-Troxell law firm.**

Annual Board Member Disclosure Letters

Executive Director Berns collected the 2009 LCDC Board member annual disclosure letters. The submitted letters disclose any Board member “personal interest, property or contract” associated with any LCDC projects, and disclose any real property ownership within an LCDC urban renewal district.

8. PUBLIC COMMENT

No public comment

9. EXECUTIVE SESSION – Idaho Code Section 67-2345(1)  
Subsection C: acquiring an interest in real property not owned by a public agency.

**Motion by Goodlander, seconded by Hassell to convene an Executive Session, as provided by Idaho Code Section 67-2345(1) Subsection C: acquiring an interest in real property not owned by a public agency.**

**Roll Call:**

<b>Nipp</b>	<b>Yes</b>	<b>Goodlander</b>	<b>Yes</b>	<b>Hassell</b>	<b>Yes</b>
<b>Colwell</b>	<b>Yes</b>	<b>Patzer</b>	<b>Yes</b>	<b>Jordan</b>	<b>Yes</b>
<b>Elder</b>	<b>Yes</b>	<b>Davis</b>	<b>Yes</b>	<b>Hoskins</b>	<b>Yes</b>

**Motion carried.**

The LCDC Board entered into Executive Session at 5:15 p.m. Those present were the LCDC Board of Commissioners and LCDC Executive Director Tony Berns.

Deliberations were conducted concerning the acquisition of an interest in real property which is not owned by a public agency.

**Motion by Colwell, seconded by Hoskins to adjourn the Executive Session.**

**Motion carried.**

No action was taken in Executive Session and the LCDC Board returned to regular session at 6:15 p.m.

10. ADJOURN

**Motion by Patzer, seconded by Colwell to adjourn. Motion carried.**

The LCDC Board meeting adjourned at 6:16 p.m. Minutes prepared and submitted by Tony Berns.