

A JOINT WORK SESSION OF THE THIRTY-FIRST COUNCIL AND THE DOWNTOWN DEVELOPMENT AUTHORITY WAS CALLED TO ORDER AT 7:45 PM ON MONDAY, JULY 9, 2007 BY MAYOR MARILY V. STEPHAN AND DDA CHARIMAN ALAN SEMONIAN

PRESENT: Council

Daniel Benton
Dale GoodCourage
Holly Martin
Michael Matthews-Pennanen(left at 8:50)
Phil O'Dwyer
Eileen Steadman
Marilyn Stephan

DDA

Jane Bais-DiSessa
John Barbuscak
Allen Dyer
James Esshaki
Diane Farrington
John McGovern
Alan Semonian
Aleta Young

ITEM FOR DISCUSSION:

DISCUSSION: Matter of discussing the roles and responsibilities of the Downtown Development Authority.

The City Manager opened the session by stating that the Downtown Development Authority benefits both the residents and businesses in our community. It is a vehicle to improve our downtown. The formation of a DDA provides funding in two ways, Tax Increment Financing which allows for a capture of tax dollars to be used for the projects outlined in the DDA plan, and Ad Valorem funds which must be used for administrative services of the DDA.

Both administration and the DDA members have always had questions about the roles and responsibilities of the DDA. My experience has been that we are a partnership. There are roles and duties for everyone. According to the Act itself, the DDA Board studies and analyzes the economic changes within the downtown area, implement proposed plans for development and redevelopment in the downtown district, you can acquire, construct, lease, improve and rehabilitate the downtown area, you submit to the municipality notices for public hearings and things of that nature, you identify funding mechanisms to help pay for the various projects, and with the approval of the Council, the DDA may levy an Ad Valorem tax. These are the key responsibilities of the DDA.

As I mentioned, I believe it is very important for all of us to work together, because in my opinion, this is how things get done. We are very fortunate to have a group of volunteers appointed by the Council who come together and identify ways to improve our downtown.

The City Council does have the final say. The DDA goes through the same processes that all Boards are required to follow as stated in our City Charter. The City Council may reject a recommendation from the Board, but I have never known that to happen.

There has always been a question regarding the uses of our funds. We are restricted by law as to the use of our funds. TIF funds are used for the brick and mortar of the project and the Ad Valorem funds can only be used for operations. A proposed change is being discussed regarding the Ad Valorem funds, but as of right now, they must be used for operations only.

DDA Director Geinzer indicated that he personally feels pg 10, section 3, last strategy, states you may use TIF funds for promoting and marketing, and page 23, under "use of captured revenues" clearly defines the use of TIF monies.

Finance Director Sabuda reviewed the two funds. There is no tax increase to anyone on the TIF capture. The two mills is a tax increase to those businesses involved and must only be spent on items in the downtown district.

DDA member Barbuscak asked how much money has been collected over the last 10 years. Finance Director Sabuda responded about \$500,000.

DDA member McGovern asked that a projection of revenue over the remainder of the plan be provided to the board.

John Staran, Attorney for the DDA, stated that the DDA is different from other boards like the Planning Commission and the Zoning Board of Appeals. They are governed by a separate statute. They are, unlike other commissions and boards, a separate municipal corporation, they have their own existence. The DDA is a separate entity. It can sue and be sued; it can enter into contracts, can own and sell property. There is a level of autonomy that the DDA has that is different from other boards. Having said that, it doesn't mean that it's entirely separate from the City, it's a separate body corporate that does not mean that it displaces the Council as the elected governing body of the City. They are still the bosses of the downtown, Jane is still the City Manager of the downtown, but with respect to the powers and duties that the DDA does have, it is my opinion that the DDA does have a certain level of autonomy, subject of course, to what I think are two very important limitations. One is that the City Manager, with the approval of Council, has the appointment power and equally important as that is that Council has control over the budget. DDA prepares its own budget, submits it to its Board, but nothing happens with it without Council's approval. I guess I wanted to echo the comments that were made in terms that there really does need to be cooperation and understanding and this is probably a very healthy process in having joint meetings like this. But I did just want to clarify specifically that the DDA is unique and different from your other boards and commissions. It does have this level of autonomy, that once you create it, it does have literally, legally a life of its own. But it is not a government in and of itself in the sense that it displaces you folks. I think it's intended under the statute that it is a cooperative relationship. Both boards have distinct powers and have to work together.

A discussion was held among all present regarding the DDA Director and to whom he reports. It was the consensus of all that he reports to the DDA, but also works with the City Manager. Issues come up that require immediate attention and it is necessary for the City Manager to be involved.

Member Farrington asked why the DDA is not notified or asked for input when major events occur. The City Manager stated that she does advise the DDA board of the upcoming events and in the past we have tried to get DDA members involved but it really didn't go very far. Ms. Farrington feels that board members should have some touch point when these events occur.

Councilmember Matthews-Pennanen cited from the DDA Plan, the Authority was given all the powers and duties prescribed for a Downtown Development Authority pursuant to the Act. Section 4 of the Ordinance, it shall possess all the powers necessary to carry out the purpose of its incorporation. The numeration of a power in this ordinance or in the Act shall not be construed as a limitation upon the general powers of the Authority. Section 8, Section D, under the duties, develop long range plans in cooperation with the City Planning Commission, designed to halt the deterioration of property values in the downtown district, promote the economic growth of the downtown district and take such steps as necessary to persuade property owners to implement the plans to the fullest extent possible; Section E, implement any plan of development in the downtown district necessary to achieve the purposes of this act in accordance with the powers of this Authority as granted by this Act. I believe the people built safeguards into the plan to make sure that we didn't go crazy with this. Much of the effort of the DDA is volunteer. There is always suspect with volunteer effort, will the person have enough time, and is there enough knowledge. I believe we have granted the DDA a lot of authority to do a lot of things. As a member of Council and the DDA liaison, to say go forth and do. There is a natural check and balance between the council and the DDA, I think it's built in, you see that. You add personalities to that; Jane's personality is such that her authority as City Manager and a member of the DDA is always felt. I would hope that you always felt that Council's authority and the fact that we look at your budget and grant you the money, I think of it as a ship that has been set on the sea in 1995 asking you to come back to port and report every year. On board your ship is a pilot, our City Manager, but it's your ship. So sail out there and do what you want to do. Please, use the volunteer effort; I see it in the room here. One of the worst sins we could commit is to suppress the volunteerism.

Mayor Stephan indicated we could not do things in this city without volunteers and we appreciate it. The reason the DDA was created is the reason we need to keep it going in 2007. We need to improve the economic conditions of our downtown and either we do it together or we're going to continue squabbling.

DDA Chairman Semonian indicated he does not feel that the DDA has experienced any squabbling with Council whatsoever. That is not the issue. I feel City Council has been very supportive, that is not the issue. The issue, in my mind, is there have been roadblocks, impediments, what have you, differences of opinion on authority, on who's making decisions, lines of communication, something as simple as Nate's contract brought on a huge brouhaha because of the fact that there is still not a clear decision as to who Nate is working for. Is Nate working for the City Council, the DDA, and the City Manager? At some point that is going to be problematic. I just feel that we have talked about all the things we are doing right. I think that there are some questions about what the spending authority is, that's been a prevalent problem that has been going on for some time. To me what's been going on is more of a logistical kind of thing; how do we get something done - no you can't do that. It's been represented to us that City Council won't let you do that, but I don't hear City Council telling us that we can't do anything.

DDA member Dyer remarked that other DDAs have very similar plans and don't have the same type of restraints that we do. I think Nate hit it right on the head, I had conversations with John,

I know Jack knows this topic better than I. This all started with spending concerns when we wanted to welcome new business to the City. Two hundred and fifty dollars to put a banner up, we were told it's not operations. I thought wait a minute, I'm a lawyer, I read this stuff day in and day out and I can make a good faith argument that I would hang my hat on. I'm a trustee, I stick my name, I vote for that, ultimately that's my burden. Now we're talking about taking this to a vote. If we as trustees believe we're empowered to do such a thing, and we vote for that, ultimately at the end of the day there would be that the Council's authority would be to approve or disapprove the budget or the people who are selected to be trustees but ultimately if we vote for something along those lines and there's a good faith argument that we can back up, what is the problem? I have been on the board for 2 ½ years now and we started with this issue and it lives on today.

Councilmember Benton stated he took a little bit of an exception to Jane's opening statement that DDA and City council are always formed with a spirit of cooperation. These types of discussions come up over time in other cities between the DDAs and Councils. Ours was not set up in a spirit of cooperation at all. I feel kind of bad being the historian. Some of my least favorite times were when the DDA was forming. It seemed every single vote, the formation, 2 mills, the plan, everything was a split decision. We kind of went opposite of what many cities do. We started with a lot of contention, with many people predicting the two bodies wouldn't work together because there was money involved. That the DDA somehow would want to take over someday and run the downtown and there was this huge battle between the residents interest and the downtown's interest. Without a couple votes going a certain way, the downtown interest would be based solely on the Council and you know what that would mean. When you have money in the general fund and you have the option to spend it on recreation or the downtown, you know where it's going. I would hate to see, after the atmosphere in which it was set up, and the way it has improved to where it has gotten to now, somehow deteriorate over some kind of power struggle because we would just prove the prediction of the naysayers. The way it was sold to the fourth aye vote was that this was a budgeting tool and council would maintain final say over what the DDA was going to do with tax dollars.

Councilmember Martin responded to DDA member Farrington's inquiry about the DDA's involvement. As a Council member I had envisioned something that you have been able to accomplish, and that's a DDA Director. That is one of your connections to events. That's one of the jobs I saw the DDA Director taking on because the volunteers simply do not have time. When I was re-appointed to Council I had heard rumblings that there was an estranged relationship between city administration and the DDA so I felt that it was important to have this meeting tonight and I'm glad we're laying our cards on the table because as Dr. Benton said we need to keep going forward. We are playing on the same team and working on the same goals. I appreciate all the contributions the board has made and Jane has made many of them. I feel that the wheels might have turned slower had she not been involved.

DDA Chair Semonian stated that he is not attached to what the decision is or who is the ultimate authority on some matter, I just want to have it defined. I want clarification on lines of authority and spending so we don't keep having these issues.

DDA Director Geinzer cited the ordinance and the Act itself regarding his contract. It was the consensus of everyone that the Director does work for the DDA Board.

DDA member Barbuscak gave a brief history of the founding fathers of the DDA and feels that with all of the progress that has been made and the intelligence and foresight of the members on the Board, the Board does not have to be told what to do by Council. I just feel that there is so much we have been trying to get done, we are not negative, we have done many positive things. There has always been something to get in our way. You have the appointment of the members, and you have our budget, just stay away and let us get things done. The flowers are a good example, why aren't the flowers in?

Mayor Stephan cited the City Charter, Section 4, dealings with Finance. Your checks are written through the city office. You are not off somewhere with your own account. Sec. 42.72 of the ordinance of the City of Berkeley authorizing the Downtown Development Authority, ends with shall not commit to any loans, leases, or purchases without city council approval. If that's under city council approval, we are governed by the city ordinance and the city ordinance says these are the classifications of spending that you must follow. We have that obligation as elected officials.

DDA member Young stated that the DDA and the City are doing something right. Businesses are coming to Berkeley. That's why Fifth Third chose to come to Berkeley. There have been some mistakes, but it's now time to go forward and be visionary and really start working together. Being a new person on the Board, we need to be talking about how we are going to improve the downtown area and as a Board, what we are going to do to insure that businesses that come in want to be here and be viable and successful. I think the purpose of any downtown development authority board, of which I've had some experience with other cities in the past, is to create that sense of urgency and that is to get Nate on board. The real issue is how are we going to make the City better.

DDA member Eshaki stated that we must maintain checks and balances and there has to be a common goal and there has to be trust. I'm involved with 8-10 other cities and the one thing I see here is passion. With passion, open mindedness and trust you see what is being done here. Disagreement is great, we all have to regroup and work toward a common goal and great things can happen. We need checks and balances because without them you will have a lot of power struggles.

Councilmember GoodCourage commented that the flower request was brought before Council a short time ago. Your architect presented a plan and we said go ahead. It's not the fault of the city or this Council that the flowers did not go in. It's the fault of your own architect and your own board. The DDA can get involved in any event that happens. You need to open your mouth and say you want to get involved. I am going to tell you that as a Councilmember, you tell me what you need. We have a good Council and a great DDA, let's move on and get past all of this.

Councilmember O'Dwyer stated that this disagreeing happens in every relationship. If we weren't doing anything, there would be nothing to disagree about. This is testimony to the fact that something has been accomplished, the city is on the move and we are going forward. It's a collaborative effort.

The consensus of all was that it was a good meeting. It was also the consensus to postpone discussion of DDA goals. The DDA will go forward, identify its goals and bring them to Council.

The meeting adjourned at 9:34 p.m. without objection with a motion by Councilmember Martin and a second by Councilmember Steadman and a motion by DDA member Dyer and a second by DDA member Farrington.