

Woodland Park Downtown Development Authority Board of Directors

**City Hall – City Council Chambers
200 W. South Avenue, Woodland Park, CO 80863**

REGULAR MEETING MINUTES

September 13, 2016 - 7:30 AM

CALL TO ORDER AND ROLL CALL: Merry Jo Larsen, Chair, called the meeting to order at 7:30 AM.

IN ATTENDANCE - Board of Directors: Merry Jo Larsen (Chair), Noel Sawyer (Vice Chair/City Council Rep), Jon DeVaux, Ellen Carrick, Al Born (Secretary), Tanner Coy (Treasurer), Jerry Good, Elijah Murphy, Jan Wilson. **Staff:** None present. **Others Present:** David Neville (DDA legal counsel), David Buttery, Neil Levy, Marty McKenna, Val Carr, Suzanne Leclercq, Arden Weatherford, Paul Saunier, Sally Riley, other members of the community.

ADDITIONS, DELETIONS, OR CORRECTIONS TO THE AGENDA: Sawyer asks to move agenda item 8 to either 4th or 5th as he has to leave at 9. Item 8 moves between Finance and Lot 2.

MOTION: To approve the agenda. Coy/Wilson. Passed 9-0.

APPROVAL OF MINUTES: August 2nd, DDA Regular Meeting

MOTION: To approve the August 2nd, DDA Regular Meeting Minutes. Carrick/Sawyer. Passed 9-0.

FINANCE REPORT: Coy presents a 2017 budget form used for budget submittal to the City. 2016 year to date figures are within projections from recent reports. All 2016 revenue and expense items are within projected figures. The DDA bottom line is likely to be within \$60,000 and \$70,000. The primary changes in the 2017 budget include, most importantly, a reduction in revenue due to the School District bond refinance and mill reduction. In February Coy had asked DDA staff about the mill reduction effect on DDA revenues, staff asked the County Assessor and DDA legal counsel Benedetti about the calculations, then April 7th 2016 reported to the DDA that there would be no effect on DDA revenues. Fleer's email records include correspondence from Benedetti and Clark-Wine answering Fleer's questions. The responses don't seem aligned with each other. Clark-Wine indicates DDA revenues are based on values not mills. Coy offers to share the emails found in Fleer's email record. He has forwarded the emails to Benedetti and Clark-Wine asking for clarification. The DDA's 2017 budget now includes \$564,835 + \$250 in interest instead of the \$613,000 previously reported. Office supplies increase from \$250 to \$500. A beautification budget expense line item is added for \$10,000. Advertising/Publications is now \$2,500. Contract/Professional Services/Attorney is \$15,000. Internet Connection is now \$0. Travel/Training is now \$500. The DDA's August 24th meeting cost the DDA about \$200. Budgeted abatement expense is now \$20,000. A loan payment to City of \$35,058 previously budgeted is now \$65,000. TIF reimbursement expenses are adjusted based on agreements in place and new agreements like Trail Ridge and Eagle Fire. The 2017 DDA bottom line is not shown here but would be about \$17,000. Sawyer

comments on the amount of legal fees in the budget. Coy says he hopes the legal fees would end up lower than \$15,000 but other contract services of any kind may also be included in this expense account.

MOTION: Preliminary approval of the 2017 budget presented. DeVaux/Murphy. Passed 9-0.

City Debt Refinance: Coy reports the DDA August 24th meeting with Benedetti and Freeman went well. Prior to RE-2 mill reduction calculations, DDA appeared to have plenty of revenue for borrowing additional money through bonds. The largest concern for DDA is whether or not DDA would have enough revenue after the additional \$120,000 bond debt payment to pay operating expenses and administrative costs. If DDA proceeds with the bond issue as is, the DDA's bottom line will be below \$0. The City debt refinance is now a more challenging endeavor. Less revenue makes it harder to borrow money. Vectra might still lend the money, there is plenty of revenue to pay the debt service, but the DDA would not be able to pay all other TIF agreements and/or operating costs. If DDA strikes Woodland Station Improvements and Beautification expenses entirely, and trimmed other expenses as much as possible in the 2017 budget, it is still unlikely the budgeted bottom line will exceed \$0. DeVaux says if it had the school district mill revenue of \$48,000, the DDA would be able to pay all of the expenses. DDA needs to find out from Clark-Wine what the revenues will be. Sawyer would like projections for more years. DeVaux references Fleer's pro forma showing increasing revenues each year. Coy comments it was a 1.7% annual escalation of values, and Freeman used 2% every valuation year, less aggressive than Fleer's calculation. Coy asks for direction from the board on what number is preferred for projecting annual TIF increase. No preference is stated, Coy is staying with 1.7% annual.

DDA WEBSITE AND EMAILS: Sawyer reports the website is 95% complete. You can go out and see it. www.wpdda.org . He still has to upload documents. Sawyer would like a bio and picture from each board member. Bio to be a paragraph, how long you've been in Woodland Park, what businesses you own, favorite quote. Bios will be in the "About Us" page. Email addresses will be sent to the board. Addresses will be first initial last name @wpdda.org . Sawyer will also send information about Sunshine Law to the board. DDA needs to keep all emails. Some DDA property photos are online and Sawyer will change them out throughout the year, he will add documents and show Coy how to add documents. Chair Larsen asks about a section for DDA accomplishments. Sawyer says those accomplishments are in the DDA Newsletters. DeVaux suggests a section to list total assets the DDA has generated in town. Chair Larsen like this idea. Sawyer says he'll continue adding to the site. Sawyer recommends against a Facebook page for the DDA at this time. Sawyer reiterates a suggestion to read the Sunshine Law information. The DDA board cannot have a discussion via email because it would be considered a meeting. DDA board members can post information, but cannot have email dialogue. Meetings must be posted, so if a dialogue will occur online, it must be publicly posted first.

LOT 2: Steve Randolph: Randolph is not present. Born reports on some of the history of the activity to set the tone of what the DDA was trying to accomplish. Prior to the August 25th meeting, Born met with Randolph twice to work through various issues at the board level

regarding removal of some of the dirt. With research, Born discovered a 2014 document including five mentions of the topsoil, indicating the soil was in temporary storage and would be removed at some time, no indication of when. Born considers this a controlling document because it defines the dirt as temporary and still to be in the ownership of the people that brought it in. Born says Randolph recognized concern in some board members about the dirt that was there and the fact it was being removed. Born and Randolph negotiated and talked and put together a plan on how they could maintain the ownership of that land, that dirt is easily definable by its difference in color and texture, setting it apart from the native soil. A series of permits were granted, 2014 is the one that is the controlling document defining the ownership of the dirt and where it was deposited. In the July vicinity of 2016 they started removal of that soil. They did get a Zoning Development Permit to retrieve up to 7500 square feet of soil. Born references three dimensional drawings showing how the soil was sculpted into the area. The agreement Born and Randolph reached is they would accelerate their reclamation, remove additional dirt, grading to the City specification and reseeding. This was to happen promptly after the August 25th meeting. That proposal was presented to the City for their review, Planning and administration found the plan acceptable to get Site #1 graded and reseeded and close to its original contour. Born says at the August 25th meeting the board decided that proposal was not acceptable. The board came on with other criteria they wanted met which were not acceptable to the Steve Randolph team. The DDA is now back to the point where they were at August 25th. He says there were a number of meetings off-site to deal with this particular topic. The original agreement Born was trying to promote would have cost the City and DDA nothing. It would allow Randolph to remove during 2017 Site #2, the long berm of dirt. This was also unacceptable to the DDA board at that time. That offer is retracted. Born had a plan, had a path, it would have been done with green grass today. DeVaux questions why Site #2 won't be excavated until 2017. Born explains the need for Site #1 reseeding to result in 70% germination of new growth before a new ZDP can be issued for Site #2. Murphy asks what is stopping the removal of all soil from Lot 2. Born reiterates the permitting requirements. Riley provides further clarification, explaining that 7500 square feet is the maximum surface area that can be disturbed without the need for a grading permit. If the 70% reseeding is impossible to complete prior to the time for the next permit, a security can be posted in order to get the second permit. Coy comments on the nature of the permit. It seems they can remove the rest of the soils now. A grading permit is required to do so, a grading permit was in place when the dirt was brought in. Is there a good reason a grading permit cannot be used to remove the dirt? Coy refers to the history Born mentioned. The previous proposal did have costs, it would have cost a year, the work would not be done today as suggested. Time is money and more than a year may have been required. DDA board did not know about the 2014 grading permit until very recently. Board didn't know there was any claim to the dirt. They knew some dirt was brought in at some point. Coy can't find anything in the record indicating anyone maintained ownership and claims to the dirt or planned to remove it. Nobody came to the board or board meetings to say they were going to take dirt. When the DDA sent letters of default and then terminated the previous agreements would have been an appropriate time for other parties to state claims to the dirt, which they did not do. Coy does not think the board has been unreasonable. If there is a valid claim to the dirt and desire to remove it, Coy would support it if done in a reasonable time period and with an appropriate process. Some things need to be agreed to by the parties so that work can commence and DDA can take back the property in decent condition. Sawyer agrees. He thinks if the party had come to the board and asked for the dirt the board would have agreed. No request for the dirt had filtered to the board. Sawyer asks Riley about the conditions needed to nullify a permit. Riley says after the permit is issued, there must be a violation to the permit and typically the City allows for a remedy to the violation. Sawyer asks if there are any examples of violated permits. Riley has no examples. Sawyer asks about consideration for timeframes in permits in the future. Riley says excavators are typically motivated to accomplish

their work quickly because equipment is expensive, so the City doesn't need to impose timeframes. Sawyer asks if Born can communicate with Randolph about a timeframe to benefit both parties. Born says the negotiation field is not comfortable at this time. The DDA has come up with different alternatives but the other side of this negotiation process is not going to proceed forward. He says we can talk more with them and see. Born's last communication with them was a few days ago and they are not interested in proceeding at this time, they will operate on the permit they have right now. Good asks about the conditions of the current permit, confirming with Born it is for 7500 square feet of surface area and valid for one year from the date it was accepted. Good asks if there are any documents or anything other than the difference in the color of dirt to indicate how much dirt belongs to the other party. How can we assume they will take only what is theirs? Good suggests clarification needs to be made regarding depth and volume of dirt being removed. Born references the drawings on the 2014 permit. Murphy thinks control of the property is the issue. He asks Riley about property owner rights related to permits, can a contractor work on property against the property owner wishes? Riley explains a property owner can ask for a permit to be withdrawn if the situation is the contractor is in default. DeVaux asks about Site #2 interfering with the DDA's plans to grade and improve Woodland Station. Coy describes the changing topography and permit considerations as issues resulting from the current and proposed ZDP's. Coy would like to see the DDA complete grading in 2016, surface and landscaping in spring 2017. Permitting requirements like surface area re-vegetation may cause one project to preclude another. DeVaux asks about DDA and City removing the black dirt, putting it on the corner of Lot 4. Coy says that increases the surface area disturbance, complicating the permitting process. Coy suggests letting the other party take their dirt now, it's not about the dirt. Sawyer says it isn't about the dirt. He says if the other party wanted the dirt the dirt would be gone, but they seem to be dragging their feet because they didn't get the lot. It's time to move on, work together, remove the dirt, so DDA can improve the lot and give the community what it wants. Murphy agrees it is not about the dirt, it seems to be about control of the property. If the individuals would come forward and work with the DDA, we could work together and get this done. He suggests the DDA might assist with the financial aspects.

Born was just provided a document, a printout of an email to him from Randolph. Born says it is in answer to his September 12th email (also attached) to Randolph, and reads: "As you have been aware for several weeks, removal can be expedited once the DDA board formally acts to affirm that 1: the topsoil described in the two grading permits is not the property of the DDA and, 2: the DDA will grant permission for the topsoil owner, Baker Site Development, to submit subsequent grading permit applications for the balance of the topsoil removal. Additionally there are at least two other options that may be considered as you wish. Option A: keep the remaining 2000 cubic yards on-site as is, and replace it with 2000 equivalent yards delivered to a site designated by Baker Site Development. Or Option B: purchase the remaining 2000 yards as is directly from Baker Site Development at current market pricing. Should there be serious interest in A or B, please advise and further definitions can be provided. Other reasonable alternatives that might be proposed by either the DDA or the City of Woodland Park will be of course given serious consideration. Thank you, Steve."

Born references a meeting Chair Larsen was in the previous Friday. At that meeting, bringing in a soils engineer to determine quantity and quality of soils was discussed. Potentially, an engineer, soils engineer and surveyor would be needed to make the appropriate calculations. Estimating, for talking purposes only, 2000 yards of soil remaining, replacement of the 2000 yards from a local supply source would cost approximately \$47,800. That's for a similar type of soil. Audience laughs. Born thinks the document he just read indicates maybe the negotiation field is fertile. DeVaux suggests authorizing Born to proceed forward with this to see what can

be worked out. DDA can have a special meeting if necessary to complete working this out and move on. He thinks the letter is very promising. Both parties might need to compromise. Born says the board must be reasonable in what it expects and how it handles this. If looking at \$50,000 to \$60,000 to solve this, including attorney's fees, this is somewhere DDA shouldn't go. Good says Born is acting like the board are the bad people. He thinks it's the other way around. There is no reason for the DDA to pay \$48,000 for a mysterious amount of dirt. The DDA's lot is being held captive. DDA is the steward of public land. It is a travesty to let it be held hostage any longer. The grading permit is being circumvented. The first permit was questionable and is now satisfied. The DDA should not extend further offers.

Chair Larsen asks Coy for a summary of the previously mentioned Friday meeting. Coy reports Randolph was expected at the meeting but did not attend. No negotiation, just discussion between City Council, City Staff, and DDA board members occurred. Councilmember Carr had suggested converting the stored soils to "virtual soil" by, basically, buying the dirt at a fair value. That way the other party's soil is no longer stored at Woodland Station. Buttery continued with the concept with an idea that there is \$50,000 in dirt, perhaps a value can be agreed to and the City and DDA could split the cost of the purchase and City equipment could be used to help restore the site. Coy continues recounting the Friday meeting. The ideas from that meeting seem to have gained momentum, evidenced by the email Born just read.

Born thinks waiting for 2017 to come and go is a good return on investment for the DDA because it saves public money. Wilson wants to find out what the dirt is worth, \$48,000 seems ridiculous. Born reiterates it is a quote from a local supplier. Murphy says that price is for grade AA screened topsoil which is \$24/yard. Born says it is grade B soil. Chair Larsen says that's why an objective, independent third party to value the dirt would be helpful. Murphy discusses property rights and topsoil prices. What will an engineer cost to come out and analyze soil? Murphy would like to see a compromise reached. He's willing for DDA to share in some of the cost. He thinks the topsoil can be retrieved in timely fashion but they're choosing not to do it. Due process is being followed by the DDA but not by the other party.

Sawyer says the people being hurt is the City itself. Events at Woodland Station will bring people to the City, to the small businesses. Even the other party will benefit from the events. He asks the individuals to finish this work so we can move on and benefit the City as a whole.

Born asks if the DDA board is ready to define that the topsoil defined in the two grading permits is the property of Baker Site Development. Neville does not think the board is in position to make a determination at this time. It seems from Born that Randolph says he can finish the grading this year but he won't because the DDA won't agree to these conditions. Is that an accurate characterization? Born says yes, on Site #1 originally. Neville clarifies the condition proposed by Randolph was that grading would be done now if allowed to excavate other soil through 2017, keeping the property tied up through next summer. They can finish the grading now but they won't. Neville agrees with Murphy's point about property rights. There is confusion that the permit constitutes authority to enter the property.

Councilmember Saunier is recognized. He says everybody here is at fault. The DDA's foundation plan, bylaws and overlay did not intend for Woodland Station to be a storage site. DDA, City, and contractor bringing the dirt to the site are all at fault. Saunier thinks the dirt came from the Tractor Supply job site. A permit was given after the work had started. He references emails from Riley and Weatherford about the offer to donate topsoil to Memorial Park as well as the need for a permit for the planned work. Within the next 30 days is the best time to reseed. He agrees the people being hurt here are the citizens of Woodland Park and Teller County.

Please use common sense to resolve this here and now. Bring it before Council Thursday night. Saunier will stand and talk to it then, too.

Chair Larsen asks for consensus to meet with Randolph and bring something to Council on Thursday night. DeVaux wants to know what we will ask Council to do. Withdraw the permit. Good welcomes Saunier's open forum comments. Good thinks we go to City Council and tell them what DDA wants to happen. Neville mentions that withdrawing the permit and issuing a new permit would exceed 7500 square feet triggering the need for a grading permit, which might take time. Saunier says it will be quick. Vicki Good from the audience mentions safety regulations are not being followed and there is a safety risk on the site. Neville mentions the good suggestion by Saunier and that the dirt does not seem to be an issue to the board, and that the ball seems to be in Randolph's court. The question posed by the Council is why can't this be done? Neville says we've identified some conditions of the permit are not satisfied. Councilmember Carr from the audience says the DDA needs to include evidence to be able to withdraw a permit so Council can proceed with a reasonable, legal request. Coy asks about being present at the council meeting, be on the record letting council know DDA is working on this and the request will be to remove the remainder of the topsoil at sites #1 and #2 from the property in the proper fashion under a new permit within a specified date range. Neville says we've made request after request at City Council for months. Why is this on the DDA? There was a reasonable suggestion to put the ball in Randolph's court. Maybe they withdraw the permit, submit a new application, present it to the DDA, if the DDA is agreeable to it, go through the proper process and get this done in the next two weeks. Good doesn't want to ask Randolph for anything. The fact that Randolph won't show up to discuss it is prolonging this. DDA should present what is acceptable at this time, through the City Council.

Mark Weaver: Chair Larsen asks if the board wants Weaver's real estate sign removed from Woodland Station. Murphy says Weaver is not the representative and until we have an agreement the sign should be removed. Sawyer asks why we're removing it. Larsen says Weaver asked if we wanted it removed. Born suggests the sign allows people traversing Highway 24 to see it potentially, which is advertisement, why is that bad? Good says DDA will have to pay a commission under the current signage. DDA can put up a generic sign, or come to an agreement that Weaver will represent the DDA.

MOTION: Have the sign removed. Murphy/Wilson. Passed 9-0.

TIF NEGOTIATIONS:

Country Lodge Expansion: Coy references a draft letter from Benedetti to Rabaut regarding Rabaut's request. The letter includes the specifics discussed at the DDA's last meeting. Rabaut has reviewed and approved it. The letter needs board approval. The letter is preliminary approval of some TIF reimbursement agreement terms, including some percentages and numbers of years. The agreement will be contingent on acceptable development plan, construction timetable, evidence of financing, compliance with applicable regulations, etc. Born suggests a cap be added to the future TIF agreement. Rabaut asks about the letters from Fire and Ambulance districts about possibly being exempt and that could be problematic.

MOTION: Approve the letter by Benedetti to Mark so he can move on. DeVaux/Wilson. Passed 9-0.

TAX DISTRICT LETTERS: Coy reports the DDA is in receipt of two letters, one from the Fire District, one from the Ambulance District. He reminds the board of Benedetti comments from August 24th that taxing bodies do get pretty good benefit from the DDA even with the TIF in place because the base goes up annually. Coy considers other debt obligations reason not to consider approving the requests. Furthermore, at the April 7th DDA regular meeting a motion was made to table the Fire District request until 2017. Coy suggests it seems the Ambulance District request is virtually identical in nature to the Fire District's request and could be treated the same.

MOTION: Table the consideration of these requests until 2017. Wilson/Murphy. Passed 9-0.

CASE CONSULTING PROPOSAL: Coy reports Kellie Case submitted a proposal to the DDA for administrative or financial services on an as needed basis. He suggests tabling the discussion until the next meeting.

MOTION: Table the Case Consulting proposal until the next meeting. DeVaux/Sawyer. Passed 9-0.

COMMITTEE REPORTS:

Events: Chair Larsen says she's moving forward with a more structured events committee. People are excited about it. More to come.

Finance: Born suggests putting this topic into Coy's court.

Downtown Improvements: None.

GENERAL DISCUSSION: Chair Larsen asks for those who have comments to raise their hands. Vicki Good comments on the price of dirt. She can get dirt from suppliers for \$14/yard or so. Sawyer references a pile of dirt down Highway 67 that might be available.

MOTION: To adjourn meeting. DeVaux/Sawyer. Passed 9-0.

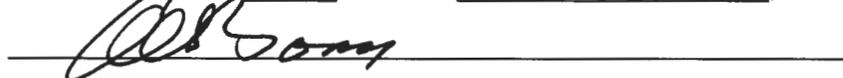
Meeting was adjourned.

Recorded by: _____



Tanner Coy

APPROVED THIS 4 DAY OF October, 2016



Al Born, Secretary