

**MINUTES OF NORTH BREVARD ECONOMIC DEVELOPMENT ZONE (NBEDZ)
SPECIAL DISTRICT BOARD, GOVERNING BODY OF THE SPACEPORT
COMMERCE PARK AUTHORITY**

Special-Called Meeting

February 26, 2021 @ 8:30 a.m.
Titusville Public Library - Auditorium
2121 South Hopkins Ave
Titusville, Florida 32780

Board Members:

In Attendance: Dan Aton, Rodney Honeycutt, Micah Loyd, Al Matroni, Donn Mount, Stan Retz,
and Louis Sanders

Telephone: Dr. Brenda Fettrow and George Mikitarian

Call to Order: Meeting was called to order at 8:30 a.m. by Donn Mount, Treasurer

Pledge of Allegiance: Donn Mount, Treasurer

I. Approval of Agenda

Motion by Louis Sanders, seconded by Stan Retz, to approve the Agenda as presented.
Motion carried and ordered unanimously.

II. Old Business Items

Counter-offer from North American Properties Re: Spaceport Commerce Park Lot

Troy Post, CEcD, CBE, NBEDZ Executive Director, reminded the Zone board where it was with this project; he mentioned Shawn McIntyre with North American Properties (NAP) was there to speak, and there were several guests in the audience; the NAP company has recently purchased a 21-acre site in the Riverfront Center; and they desire to purchase a lot in the Spaceport Commerce Park (SCP) and build-to-suit for a tenant company they have been working with. He stated the lot is at the intersection of SR 407 and Shepard Drive and is about an 11-acre site; a counter-offer has been made and they intend to build a 25,000 square foot building; the Zone board had some issues with that, one being they were looking for a two-year commitment, a smaller amount of option money would be non-refundable, there is discussion of changing that to a six-month or shorter term option agreement, and also having more money being non-refundable at a certain period of time, and also requesting more money to show commitment to the project; what the company responded back with, in the letter of proposal, were the same basic terms, but now a deposit of \$50,000, instead of \$5,000, and \$5,000 would be non-refundable; and at one year, an additional \$35,000 becomes non-refundable, making \$40,000 of the initial deposit non-refundable.

Mr. McIntyre, the managing partner for NAP, stated they are excited about being in Titusville; his company sees the opportunity and the need to fill a gap for housing and offices and the project being talked about today; there is a lot of vacant land in the County, and the Economic Development Commission of Florida's Spacecoast (EDC) has said there are users that would like to locate here, but need a company to fill the gap; there are two companies that are very serious about moving here, and NAP is looking for land to build to suit for them; and they have brought back a proposal that addressed the comments from the meeting two weeks ago. He stated in the first six months, NAP will pay for the Geotechnical and Environmental reports and provide a copy to the County immediately, giving the County the use of that report; they agreed to put down \$50,000, with \$5,000 immediately, non-refundable, and then at one year, it will go up to about 10 percent of the purchase price, an additional \$35,000 non-refundable; NAP would be bringing the County-owned land into private ownership, which places it on the tax rolls, and a minimum 25,000 square feet building, with 50 employees; he can almost guarantee the company he is working with will exceed that by almost three times; and he added NAP is ready to start as soon as possible.

Mr. Post added there was a request to have the Geotechnical and Environmental report become the property of the Zone board, regardless of what happens, and NAP agreed to that; and he mentioned there are examples of the types of work NAP does in the hand-outs.

Al Matroni asked if the acreage was all usable.

Mr. McIntyre replied there is an indication of wetlands, and possibly gopher tortoises; an environmental survey will need to be done; and he believes the wetlands will be able to remain in place.

Mr. Matroni stated he is more concerned with the price per acre, because it is based on price per acre of useable land.

Mr. McIntyre responded no; and he stated he will do total land, and it can be put into the option agreement.

Stan Retz mentioned from his understanding, when someone purchases property in the Park, they have two years to build or the property can be bought back for the same price; and he asked if that was correct.

Mr. Post replied that is the standard rider.

Mr. Retz stated in this case, that may be up to four years.

Mr. Post responded if they extend the option.

Mr. Retz stated at this rate, it is a 24-month option, or 12-month renewable.

Mr. McIntyre stated he changed that from two years to one year.

Mr. Retz stated that was his concern, that someone would want that location, and they would have to accelerate to close.

Mr. McIntyre remarked that NAP would have to demonstrate to the County, before they close, the user and their financial paperwork; and by then they will be ready to go.

Motion by Al Matroni, seconded by Rodney Honeycutt, to accept the counter-offer from NAP for the SCP lot. Motion carried and ordered unanimously.

Proposed Ground Lease Agreement for Project “Freedom”

Troy Post, CEcD, CBE, NBEDZ Executive Director, stated the next item is for Project Freedom and what the Zone board does today, if it approves this, it would then go to the County Commission to see if it will accept this; the Zone board needs to look at the Incentive Agreement and the Ground Lease today; he mentioned Christine Schverak, Assistant County Attorney, has spent a lot of time on this; one of the things that are typically asked for is an Operating Agreement from the Limited Liability Corporation (LLC) who can sign and bind the company into a contract; and they intend to set up two LLC's in Florida, one for the real estate holding company and the other an operational company for the enterprise. He stated they have not done that yet, as they are still in the site selection phase; the LLC name will be inserted when it has been verified; one of the discussions with the company was the counting and creation of part-time jobs, as they do not want the company creating the majority of the jobs as part-time; and the standard is that the company does not have more than 35 percent of the jobs as part-time. He continued by pointing out that there are two grants covered by this Incentive Agreement, one based on the infrastructure improvements, and the other is based on the overall capital outlay for the building; the Zone board is asking for something a little different, as there must be evidence of the capital investment made to the building, to qualify for the capital improvement grant; they also must be in the building and operating for six months to receive those grants; the first five jobs to be certified would come at the end of 2022, but the company was stating, from a practical standpoint, if the site is selected this spring, the earliest they could start construction would be this year, which would mean completion possibly in the summer of 2022, and they probably would not have those jobs at that point; but, they are considering taking a temporary space and may be able to do some hiring as early as this year. He added for that reason, they decided to shift the schedule out one year; the jobs that they will be counting will be both at the Project site and the temporary site, provided they are jobs for that operation; the only other thing that is different is the County now has a new requirement for all of the Zone board's agreements, which is that the employees must be enrolled in the e-verify program; and the motion that is needed would be to approve the agreement as presented.

Dan Aton asked is there any concern about the sub-LLC's as it relates to the clawback, as far as going back against the parent company.

Attorney Schverak replied the two LLC's that will be created are not going to be related to the current company and the Contract will bind the operating company and the company holding the land; and that will cover the bases as best as it can.

Stan Retz asked to be reminded of the time period to pay the incentives.

Mr. Post replied the qualifications to receive these two grants is based on potentially getting into the building and occupying it for six months; if they submit the other documentation, like permitting and financial reporting, and assuming they finish the

building in the summer of 2022, they could start the clock and possibly meet that threshold in early 2023; 2025 is just for the jobs which will be tracked for clawback provisions; and if they do not meet the job requirements, the Zone board could require some of the money that would have been granted.

Mr. Retz stated from the funding standpoint, we are looking at 2023.

Mr. Post replied that is correct.

Al Matroni asked how the clawback is monitored.

Mr. Post replied there is one standard date that runs across all agreements, regardless of when the Project actually starts, which is the 31st of December each calendar year; that makes it easier administratively; and he allows two or three months at the beginning of the year to get the information turned in for certification of the jobs and salaries.

Attorney Schverak stated basically any job created in the calendar year will be monitored for a full two years.

Louis Sanders asked how the \$250,000 was derived; and if it could have been less.

Mr. Post replied when incentives are considered, several things are looked at; the overall project cost, which he tries to keep under a 5:1 ratio, funds availability, or what it might take to put the Project over the top; and keep it as low as possible to reserve funds for other projects.

Mr. Matroni asked if a lien is looked for on the equipment, as much of the equipment is usually financed.

Attorney Schverak replied they do not.

Motion by Louis Sanders, seconded by Al Matroni, to approve the Economic Incentive Agreement for Project Freedom. Motion carried and ordered unanimously.

Mr. Post stated the Ground Lease will be presented to the Board of County Commissioners for approval; he will explain the Operating Agreement to the Board; they will be provided with the preliminary survey and legal description; this is a seven-year lease term, which would begin in the summer; this could be significant because the job requirements needed to earn the site will not be based on a certain number of years, because they may not be able to use the building until year two; and they will be providing three successive periods to renew it. He stated the terms of the extended lease will be based on a square footage rate of 25 cents per square foot, for what has been calculated out to be just over 430,000 square feet, for that 10 acre lot; one of the discussion items is the builder's all risk policy that would be required to be carried at the dollar amount equal to what is being provided for the capital improvement grant; section 5.4 was added by Attorney Schverak, which was some of the language from the Economic Incentive Agreement; the lessee may not assign the Ground Lease without written consent from the Zone board; and there will be an option to purchase the property in full at any time for \$362,600. He mentioned there is a way for the company

to gain title for \$10 if all conditions listed in Section 11.4 of the contract are met; the company proposed some legislation to get credit for some of the jobs if they got to the end of seven years and had created less than the required number of jobs; he explained the formula to create the amount to be credited if they still wished to purchase the property; and there shall not be any hazardous waste except in compliance with applicable law.

Attorney Schverak stated if the company should leave, and not buy the property, Item 26.3 of the contract states they must pay for any environmental remediation to clean up the site; if the lease is not renewed, extended, or if the company does not qualify for a transfer of title, and the company wishes to remain at the site, they will be under a month-to-month tenancy and shall pay \$8,962.50 per month as rent; and she mentioned if the lessee fails to fulfill the terms and conditions of the lease, they will not be in default if they refund the grant funds, complies with Section 26, and upon vacating, leaves the facilities clean and in good working order.

Mr. Matroni asked if the lessee sets up any type of company, and that company dissolves, the County, as the land owners, would have joint and several liability for the cleanup; he stated the government is going to look to the fee owner of the property to clean up the site, which could be more than the site is worth; and he asked if there is any language to protect the Zone board from the potential of the company going belly-up and leaving the County with the liability of clean up.

Attorney Schverak replied she did not know of any and would have to look into it; and she advised this is the first time she has used this language in a contract where there is a manufacturing and light industrial use for environmental remediation to the site.

Mr. Retz suggested if the lessee goes belly-up to have the parent company clean up the property; and he asked if there was an environmental insurance that could be required to purchase.

Attorney Schverak replied she did not know; and she explained the types of hazardous waste that was disclosed and the process for removing it.

Donn Mount stated he thinks that either the insurance or the guarantee by the parent company or principle would be a good set up.

Mr. Aton asked if the company leaves the property, are they able to encumber the building.

Attorney Schverak replied the building is the County's when they leave, and this is not addressed in the agreement, except that the company cannot encumber the lease hold; and the question has been asked if the company could encumber the agreement, which has not been discussed.

Mr. Aton asked what if the Zone board gets the building back and there is a mortgage on it that is in excess of the value of the building.

Attorney Schverak stated she could write that into the agreement.

Mr. Aton stated his bigger concern with the \$10 buy-out is, it seems, the company is receiving an incentive of \$500,000 to create 25 jobs in five years, and a free ground lease, effectively, and in the next two years, if they maintain those 25 jobs, they get another \$362,000, which is the value of the ground lease if they buy it, at the end of the seven year term; and the total incentive for 25 jobs in seven years is \$862,000.

Mr. Post stated the company is also going before the County Commission for tax abatement that it might be eligible for, along with the City Council for a portion of the Ad Valorem taxes.

Mr. Matroni stated he does not remember why the Zone board would give them the first three years of the lease for \$10.

Mr. Post responded one reason is to try to stay consistent with the Embraer deal; and they are just trying to find a way to reduce the overall cost to the developer and eliminate the site acquisition cost.

Mr. Mount asked if it would see a return on the \$862,000 investment.

Mr. Post replied he would think so; he stated the parcel is not on the tax roll, so it is not doing anything for the County; if there is a rebate going back, because of the tax abatement, the other taxing authorities will get their portion; there are other things like jobs, a potential supply chain, and it will continue to advance the cluster of other armament manufacturers in the area; and allows for a diversification from the aerospace industry.

Mr. Matroni stated this is a sweet deal for them.

Mr. Post stated that is the rationale behind it, to induce the buyer to buy; and he asked Attorney Schverak what it was that needed to be added to the agreement.

Attorney Schverak replied adding the environmental insurance to cover remediation; and she asked if she should add that the company cannot put a security interest on the building.

Mr. Aton replied he did not think that would be necessary.

Mr. Matroni asked Mr. Post if it would be better to get these documents to the Zone board before the meeting so it could be reviewed.

Mr. Post replied absolutely, but this one is rushed due to the developer needing to make a decision soon; and it still needs to go to the County Commission.

Mr. Matroni stated it is good to have the time to discuss it; but he thinks sometimes it reaches a bit further than it has to, and worry about the taxpayer's money as much as it should, on the back end, as \$37,000 per acre in 17 years...

Attorney Schverak remarked there could be an elevator added into the contract, to increase it at the last lease term; but there is two weeks until the next Board of County Commissioners meeting.

Mr. Post stated he appreciates everything he is saying, as he has a lot of experience in this field; he stated to keep in mind that this is an economic development agency, not a real estate firm; and its job is to get those sites off the tax roll and get some businesses out there.

Mr. Aton asked in that gap period after the five years and before the 16 years, if the lease is still valid if the property sits empty; and he asked if there are triggers that can terminate the lease if there are no jobs.

Mr. Post replied he has not seen that specifically addressed.

Attorney Schverak remarked there was a lot of discussion on this yesterday and the company did not want the failure to create the jobs to be a default trigger; they stated there is already a clawback in the incentive agreement if they do not create the jobs; and they fought very hard to not have that a condition in the lease.

Mr. Aton stated it is giving them almost free rent on the lease if they default on the job creation; and as long as it is getting market value on the ground lease, he thinks that is probably okay.

Attorney Schverak stated she could put something in there that if they default on the economic incentive agreement, there would be a clawback and they would have to pay rent.

Mr. Aton remarked it would still be under market rate for the purchase or to rent without creating the jobs; he has no problem with them renting at below market value as long as the jobs are there; but if the building is empty and there are no jobs, he asked why would they be given the below market value rate.

Attorney Schverak stated she could add a Cost-of-Living Adjustment (COLA) elevator in the agreement.

Mr. Retz stated he read it to mean that after the initial lease term of seven years, they would have the option to buy it for \$10, but only if they had the jobs.

Mr. Aton remarked the purchase option does go away, but the rent option on the ground lease is still there.

Mr. Post stated the lease is there but they could still buy it for \$37,000 per acre during the extended lease term, which seems it would be below market value.

Mr. Aton stated theoretically, the saving of \$362,000 over 16 years, could actually fund the lease; in year 10 if they say they are closing the operation, they could pay the lease payment for six more years and they could buy the land for \$10; and it does not say the jobs still have to be in place at the end of the lease.

Attorney Schverak stated the \$10 option only occurs following completion of the lease term; and she could change that language to make it only at the end of the initial lease term so that it would not apply to the extended lease term if they meet the job requirements in the extended lease term; but that seems counterproductive.

Mr. Aton stated his concern is the period between seven and 16 years, the jobs go away, and the provision to buy stays, because the 25 jobs is not a requirement of the extended lease terms.

Attorney Schverak stated they would only get a \$10 buy-out if the 25 jobs have been maintained for the two year period; they would have to meet the terms of the economic incentive agreement; there could be a situation where they could do that during the extended lease period instead of the initial lease period; and she could tighten-up that language.

Mr. Aton asked if the extended lease period was between five and seven or seven and 16 years.

Attorney Schverak replied the initial lease period is seven years.

Mr. Aton stated his opinion is that the \$10 buy-out should not apply to the extended lease period.

Attorney Schverak stated she can make the language very clear.

Mr. Aton remarked for the extended lease term, they are paying rent.

Attorney Schverak stated they are paying \$362,600 every three years, which is approximately \$8,900 per month.

Mr. Aton stated his only other concern would be some clarity around the LLC's; and at least one of the LLC's is the operating company, not just a holding company.

Mr. Post stated he was hoping to approve the form to allow him to get on the docket for a Commission meeting; and if this is not the final document, the Zone board would need to meet again in two weeks.

Attorney Schverak stated she thinks she will have to do more negotiating with the company; they are savvy; when she puts the environmental insurance in there, they will have to respond; she will make sure the contract is with the operating company, not a shell corporation, make sure there is environmental insurance, fix the typos, make sure the \$10 buy-out option does not apply to the extended lease term; and she did not hear to add the COLA elevator.

Mr. Matroni stated he wanted a COLA elevator, but not at the first option.

Mr. Aton stated if the Zone board is saying the company can spend \$362,000 and buy the property, they would buy it, not lease it; and he asked if they really need a COLA for the lease, since it make more sense to buy it.

Attorney Schverak stated it could do a COLA for the second and third extended lease terms, at no more than three percent.

Louis Sanders remarked there are 10 acres of land and only a 25,000 square foot building; and he asked if that was just because the lot was that size.

Mr. Post replied the company is talking about a larger facility or additional building; but for the purpose of this Project, it is a 25,000 square foot building.

Mr. Aton stated it is important to remember the Zone board is there to protect the taxpayer's dollars and investment; he does not want to give the impression that the Zone board does not want the company here; and the reason it is doing so much clean-up is because of the role the Zone board has to be good stewards, and look for the down-sides.

Mr. Retz mentioned the insurance would not be needed until the operations begin; and he asked if that was correct; and he stated the estimate would be at least \$10,000 per year.

Mr. Mount inquired if it would be helpful to approve it subject to these points, and Attorney Schverak could go back to the company and if they are amenable to it, it could go to the County Commission.

Attorney Schverak replied if they approved the changes, she will edit the agreement and go back to the company; if the company does not counter, it will then go to the County Commission; and she will add the COLA with a floor and a ceiling for the second and third extended lease terms.

Motion by Louis Sanders, seconded by Dan Aton, to accept the changes as discussed, making sure the contract is with the operating company, not a shell corporation, making sure there is environmental insurance, making sure the \$10 buy-out option does not apply to the extended lease term, and add the COLA elevator with a floor and a ceiling for the second and third extended lease terms. Motion carried and ordered, with Al Matroni voting Nay.

Mr. Aton asked if the incentive agreement should also have the operating company, because that is actually the riskier one because of the clawback.

Attorney Schverak stated basically, they are going to warrant that one of the two companies is the operating company, not a holding company.

Mr. Mount stated if the company accepts these changes, it is not coming back; and if they do not accept it, it will be coming back.

Upon consensus the meeting adjourned at 9:47 a.m.

Donn Mount, Secretary/Treasurer

Approved on