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CITY OF PONTIAC

RECEIVERSHIP TRANSITION ADVISORY BOARD MEETING

THURSDAY, JANUARY 19, 2017

1:00 P.M.

Meeting before the RTAB

Board at 47450 Woodward Avenue, Pontiac, Michigan, on  
Thursday, January 19, 2017.

BOARD MEMBERS PRESENT:

Edward Koryzno - The Chairperson  
Keith Sawdon  
Douglas Bernstein

OTHERS PRESENT:

Patrick Dostine  
Mayor Deirdre Waterman

REPORTED BY: Mona Storm, CSR# 4460



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1 Pontiac, Michigan

2 Thursday, January 19, 2017

3 1:00 p.m.

4 THE CHAIRPERSON: Good afternoon. It's  
5 1:00 p.m. and I'll call the City of Pontiac  
6 Receivership Transition Advisory Board Meeting to order  
7 for Thursday, January 19th, 2017.

8 Mr. Dostine, roll call, please.

9 MR. DOSTINE: Robert Burgess has been asked  
10 to be excused.

11 Doug Bernstein?

12 MR. BERNSTEIN: Here.

13 MR. DOSTINE: Keith Sawdon?

14 MR. SAWDON: Here.

15 MR. DOSTINE: Ed Koryzno?

16 THE CHAIRPERSON: Here.

17 MR. DOSTINE: You have a chair, Mr. Quorum --

18 THE CHAIRPERSON: Thank you.

19 MR. DOSTINE: -- or you have a quorum --

20 THE CHAIRPERSON: A quorum.

21 MR. DOSTINE: -- Mr. Chair.

22 THE CHAIRPERSON: Thank you.

23 A note for the public: If you wish to speak  
24 during the public comment period of the meeting, you'll  
25 need to sign the sign-in sheet that's located at the

1 podium.

2 Next item on the agenda is approval of the  
3 agenda. I'll entertain a motion to approve the agenda  
4 as presented.

5 MR. SAWDON: Motion to approve the agenda as  
6 presented.

7 MR. BERNSTEIN: Second.

8 THE CHAIRPERSON: Moved by Sawdon, supported  
9 by Bernstein. Discussion?

10 Seeing none, all in favor of the motion say  
11 "aye".

12 BOARD MEMBERS: Aye.

13 THE CHAIRPERSON: All opposed say "nay".

14 The agenda is approved as presented.

15 Item C, approval of the minutes of  
16 December 15th, 2016. I'll entertain a motion to  
17 approve the RTAB minutes for that date.

18 MR. BERNSTEIN: I'll make the motion.

19 MR. SAWDON: I do have a couple of  
20 corrections I'd like to enter into the record.

21 The first one is on Page 8, Line 24, reads  
22 "Gatsby", should be "GASB". I know it sounds the same;  
23 it's just the way it's spelled. It should be spelled  
24 G-A-S-B, not Gatsby like the movie.

25 On Page 21 (sic., Page 20), Line 22, we have

1 the wrong sheriff's name there. I think we need to  
2 correct that to the right name.

3 And then on Page 22, Line 21, I think the  
4 word "union" needs to read "moved" and should just read  
5 "contract" or "Sheriff's contract."

6 MR. DOSTINE: Duly noted.

7 THE CHAIRPERSON: All right. Is there a  
8 support?

9 MR. SAWDON: I support with corrections.

10 THE CHAIRPERSON: All right. It's been moved  
11 and supported to approve the RTAB minutes for the  
12 December 15th meeting with the noted corrections. Any  
13 further discussion?

14 Seeing none, all in favor of the motion say  
15 "aye".

16 BOARD MEMBERS: Aye.

17 THE CHAIRPERSON: Opposed say "nay".

18 The minutes are approved with the  
19 corrections.

20 There is no old business so we'll move on to  
21 new business.

22 All of the items we'll be discussing today  
23 had been approved by the City Council at their  
24 January 12th, 2017 Council meeting.

25 Item A, approval of Resolutions 17-13, 17-15

1 and 17-16, the sale of the Phoenix Center.

2 Mayor Waterman.

3 MAYOR WATERMAN: Yes, gentlemen.

4 THE CHAIRPERSON: Good afternoon.

5 MAYOR WATERMAN: Good afternoon to all of  
6 you, too, as well. And I will be presenting that end,  
7 regarding the resolutions from the City Council. There  
8 are some people here who are concerned about each of  
9 these issues who also would like to give background  
10 information, if you're so desiring of that.

11 The first, under your New Business A, and  
12 this is concerning the pending sale of the Phoenix  
13 Center, which also is a very complex deal because it  
14 also involves the direct discharge of the litigation,  
15 which has been a burden for the City for the past four  
16 years or so.

17 And it is a four-part deal, which is also  
18 concurrent with the same proposed purchaser, also  
19 purchasing the Ottawa Towers' two office buildings.  
20 And the owners of the Ottawa Towers are the Plaintiffs  
21 in the suits that have been brought against the City  
22 concerning the Phoenix Center litigation.

23 So I don't know how much detail you want to  
24 go into it. On history, I'm sure, in our past notes  
25 and actions, that has been made of record.

1                   But the documents you do have before you for  
2 your concurrence that have already been accepted by the  
3 City Council are the resolutions approving the direct  
4 sale of the real property, of this parcel commonly  
5 known as the Phoenix Center Parking Garage. And this  
6 would be the sale to the BoonEx Corporation for the sum  
7 of \$3 million would also attendant other benefits to  
8 the City, which have been described in other documents.

9                   The next resolution is an actual resolution  
10 for the sale of the Phoenix Center. And that has been  
11 affixed with the seal of the City of Pontiac by the  
12 City Clerk, pending your approval.

13                   And the third document is the resolution for  
14 a settlement of litigation. As I said, this is a  
15 complex deal, one part relates upon the other.

16                   Just to give you a little background, to show  
17 how this whole process came together was, the City was  
18 approached by a proposed buyer who had already been in  
19 contact with the owners of Ottawa Towers and it struck  
20 a deal already and, actually, was ready to sign a  
21 Purchase Agreement for the purchase of the two Ottawa  
22 Towers buildings. But that deal was contingent upon  
23 also having access to parking. And that's why he came  
24 to the City, to see if we were interested in selling  
25 the garage.

1                   Upon extensive conversations with him and  
2                   some negotiation over the two weeks during the  
3                   Christmas holidays, we were able to plan out a deal,  
4                   and it was contingent upon the fact that any action of  
5                   the City with the Phoenix Center Garage had to also be  
6                   contingent upon settling the litigation. So the  
7                   proposed buyer was able to be the mediator, to go back  
8                   and to tell the Ottawa Towers owners that he would not  
9                   be interested in the deal unless the City were also  
10                  free from the litigation.

11                  So, with that, we were able to talk back and  
12                  forth. And, as part of the deal that he has with the  
13                  Ottawa Towers, that all litigation would be discharged,  
14                  to the tune of, essentially, the City paying \$3  
15                  million, which happens to match the amount that Ottawa  
16                  Towers has spent in expenses to repair the garage and  
17                  to pay for lighting and utilities and some other  
18                  expenses.

19                  So, with paying back those amounts,  
20                  essentially, we would be free from all the litigation,  
21                  have all of encumbrances discharged and with all of the  
22                  hold-harmless provisions that have been drafted by our  
23                  City attorneys.

24                  And Mr. Tom McCarthy is here to explain those  
25                  documents and how those will protect the City.

1                   This is -- also we negotiated to do a  
2                   four-way closing. So the two owners of Ottawa Towers  
3                   as well as the BoonEx Corporation as well as the City  
4                   of Pontiac, would all close these -- all deals would  
5                   close simultaneously. So no part would be secured by  
6                   every other part.

7                   So, as you know, this required quite a bit of  
8                   negotiation and writing on the part of our attorneys,  
9                   to make sure all the component parts fit together, and  
10                  that this will be able to be concluded in a beneficial  
11                  manner.

12                  The additional benefits to the City have been  
13                  outlined in a development agreement that we were able  
14                  to work out with BoonEx as well. And it includes such  
15                  things as the Phoenix Center Garage would be taken "as  
16                  is" by BoonEx, the \$8 to \$10 million that was estimated  
17                  that the City should have to repair the Phoenix Center  
18                  from the Desmond report, those would all be discharged,  
19                  the City would not be responsible for those. Also, as  
20                  you well know, there's \$2 million in the City's parking  
21                  funds that was set there for demolition. That will now  
22                  become free and available for the City to use.

23                  In addition to the fact we were able to work  
24                  out some other arrangements with BoonEx, in terms of  
25                  usage of the amphitheater on the garage. And we will

1 be able to use that free of charge and with a schedule  
2 that we can work out with BoonEx.

3 In addition, they were willing to give us a  
4 share of the parking revenue, 25 percent of the parking  
5 revenue, and to assure us that they were intent on  
6 developing this and to use it for their industry, which  
7 is their software company, which also wants to host  
8 data servers here in the City. And they particularly  
9 wanted to come to Michigan because of the incentives  
10 that are provided for such businesses and that we were  
11 in competition with Detroit and Flint.

12 And one of the things that was moving this  
13 deal along was that we were able to win out because we  
14 were able to move on this deal and get the proponent  
15 parts together in time.

16 So that is the deal before you. And we do --  
17 we are here for Attorney McCarthy to answer any legal  
18 questions that you would have at this time.

19 THE CHAIRPERSON: Any questions from the  
20 Board members?

21 MR. BERNSTEIN: I apologize in advance for  
22 being a lawyer but, yeah, I do.

23 For starters, in the term sheet, the summary  
24 sheet, with regard to the Purchase Offer references a  
25 covenant deed. But, in the body of the purchase offer

1           itself, it's referring to a quitclaim deed. I'm  
2           assuming that we are going with a quitclaim deed, as  
3           opposed to a covenant deed.

4                   MAYOR WATERMAN: That is correct.

5                   MR. BERNSTEIN: Okay. That having been said,  
6           with a quitclaim deed --

7                   Yeah, tap her on the shoulder if she's not  
8           doing anything.

9                   With the quitclaim deed, you're really  
10          selling whatever it is you have, good, bad,  
11          indifferent. And, in parts, the Purchase Agreement  
12          says it's being sold "as is", yet I see the City's  
13          making covenants and some representations, and that  
14          tends to contradict each other. And that would be a  
15          concern to me, that there are any representations and  
16          warranties whatsoever on the part of the City, if it,  
17          in fact, is an "as is/where is" sale.

18                   MAYOR WATERMAN: Okay. I'm going to let  
19          Attorney McCarthy speak to that, in terms of the  
20          protections.

21                   MR. McCARTHY: Okay. The reason the language  
22          "covenant deed" appear is because that's how the City  
23          received title to the Phoenix Center back from Oakland  
24          County.

25                   There's another real estate lawyer at

1 Honigman that was directly dealing with BoonEx and I  
2 think she changed it to a quitclaim deed and that's the  
3 operative document of conveyance now in the Purchase  
4 Agreement.

5 I thought the Purchase Agreement was pretty  
6 clear. There were not any representations or  
7 warranties as to the condition of the property. We  
8 provided them with the three engineering reports we had  
9 regarding the condition of the property, and that's set  
10 forth in the Purchase Agreement. It shows there's a  
11 lot of deferred maintenance or repairs that need to  
12 take place. So, if there's any specific  
13 representations that you're concerned about that are  
14 set forth, you could maybe ask me and I can address  
15 them.

16 MR. BERNSTEIN: I think I would typically not  
17 have any. If it's a true "as is/where is" sale, it's  
18 the buyer takes all risks and they've done their due  
19 diligence.

20 And there is a provision, for example, about  
21 the condition of the premises that, except as cited.  
22 It's Paragraph 17, "except to the extent expressly set  
23 forth herein." Well, why are you setting forth  
24 anything if it's a true "as is" sale?

25 MR. McCARTHY: Yeah. I don't have the

1 Purchase Agreement right in front of me but I don't  
2 think there were any representations or warranties as  
3 to the condition. And, as you indicated, if it's a  
4 quitclaim deed, we're just conveying what we have. And  
5 we will be providing title insurance.

6 MR. BERNSTEIN: Yeah, and that's my point. I  
7 don't want to -- I don't want to see the City  
8 contradict the intent of a quitclaim deed by throwing  
9 more in there than it needs to. Really, it should be  
10 bare bones.

11 Then the other question I've got is, with  
12 regard to what's referenced in 27.2 and 27.3, which  
13 contemplates other agreements, for example, use of the  
14 amphitheater and sharing of the parking revenues, are  
15 the agreements -- are there drafts of those?

16 MR. McCARTHY: Those agreements haven't been  
17 prepared yet, to my knowledge. I think BoonEx is  
18 required to make their earnest money deposit by Monday  
19 on the City deal and they were -- I think they were  
20 supposed to make their deposit earlier this week on the  
21 Ottawa Towers deal.

22 I mean, this entire transaction is a perfect  
23 resolution to both the City and Ottawa Towers. But I  
24 would advise the Board, it does rest upon one major  
25 unknown, whether or not BoonEx will proceed to close on

1 both properties. That's the unknown here. If they do,  
2 we have a four-party agreement between BoonEx, the two  
3 Ottawa Towers entities and the City of Pontiac that  
4 resolves everything.

5 And, most importantly, it discharges any  
6 future obligations the City has under the development  
7 documents that were executed in the early 1980s with  
8 respect to the Phoenix Center, which has been the root  
9 of many of our problems in recent years.

10 MR. BERNSTEIN: To be clear, I have no issue  
11 with the resolution in theory, I just want to make sure  
12 it's done right in my mind; that's all.

13 MR. McCARTHY: We're trying.

14 MR. BERNSTEIN: Appreciate it.

15 THE CHAIRPERSON: Any other questions?

16 MR. SAWDON: None for me.

17 THE CHAIRPERSON: All right. I want to note,  
18 for the public, that, at our December 15th meeting, the  
19 Board recommended to the State Treasurer that the  
20 EM Order requiring the demolition of the Phoenix Center  
21 was signed today so that allows us to proceed with  
22 actions at this meeting.

23 Seeing no further discussion, I'll entertain  
24 a motion.

25 MR. SAWDON: Motion approval.

1 MR. BERNSTEIN: Second.

2 THE CHAIRPERSON: Moved by Sawdon, support by  
3 Bernstein. Any further discussion?

4 Seeing none, all in favor of the motion say  
5 "aye".

6 BOARD MEMBERS: Aye.

7 THE CHAIRPERSON: Opposed say "nay".

8 The motion is approved.

9 Next item, Item B, approval of Resolutions  
10 17-18, 17-19 and 17-20. Brownfield Redevelopment in  
11 the Village of Bloomfield Park.

12 MR. BERNSTEIN: Mr. Chairman, in advance, I  
13 need to recuse myself from this discussion and any  
14 participation, as Dennis Cowan of my firm is the  
15 Chairman of the Joint Development Council pertaining to  
16 this project.

17 THE CHAIRPERSON: Thank you, Mr. Bernstein.  
18 Mayor Waterman.

19 MAYOR WATERMAN: Great. I'm glad to be able  
20 to report this to you as well. This was -- also came  
21 to a conclusion, in terms of the approval of the  
22 Brownfield Plan for the project, now known as the  
23 Village at Bloomfield.

24 This has been a long-pending project. It is  
25 comprised in both Pontiac, 78 acres, and in Bloomfield

1 Township, which is about 4.6 acres. This project was  
2 started back in 2002, went through a lot of litigation  
3 with -- Circuit Court did come down with a 425  
4 agreement. And, by the time that got started, the  
5 recession hit and the project and the developers went  
6 into bankruptcy.

7 This project has now sat there half up for  
8 nine years. So we were able to work with the motivated  
9 developer who has come forward now, done their due  
10 diligence, and that is REDICO, who have developed a  
11 concept plan to the JDC. We have moved along with the  
12 necessary steps there to get the project moving.

13 The Brownfield Plan has been drafted by the  
14 Oakland County Brownfield Authority, was presented to  
15 the City Council and the City Council did approve that  
16 last Thursday.

17 The documents that you have before you for  
18 your consideration are the resolutions concerning the  
19 Brownfield Redevelopment Authority, Brownfield Plan.  
20 This is a new plan that was submitted by REDICO. There  
21 was an old plan for the old developer that was  
22 terminated by the Emergency Manager some years ago.

23 There is also a hold-harmless agreement.  
24 And, just to explain this, the 425 agreement did  
25 specify that the City of Pontiac was going to collect

1 the property taxes for this particular property and  
2 then \$3 million of that was to be paid to Bloomfield  
3 Township. Well, the \$3 million we have been paying on  
4 the unapproved property.

5 The problem for us in Pontiac was that, with  
6 the Brownfield Plan, of course, we would not get the  
7 property taxes for the 30 years. And so paying \$3  
8 million on now improved property would be a big expense  
9 to the City budget, to the tune of -- estimated at  
10 \$200,000.

11 So we were able to work out another  
12 development agreement with the REDICO Corporation, and  
13 that includes a number of features, chief among which  
14 is that REDICO will agree to hold the City harmless and  
15 will whatever steps necessary to satisfy that payment  
16 of the \$3 million on now the improved valuation of the  
17 project and the City will be held harmless in that  
18 regard.

19 So that is part of the development agreement  
20 as well as some other very striking features that we  
21 were able to work out, including carve-outs for our  
22 contractors, City contractors who are licensed in the  
23 City of Pontiac to do business here, to tune of a  
24 benchmark figure of 2.1 million as well as a job bank  
25 provision for Pontiac highways during the construction

1 phase, particularly, as well as provisions for usage of  
2 police and fire and emergency services if they fall  
3 above certain benchmarks.

4 So those would be a great benefit to the  
5 City. There is an economic valuation that has been  
6 done that shows the value to Pontiac, if this project  
7 is completed, as opposed to sitting half-finished and  
8 in some disrepair there.

9 We wanted to move this project along. And,  
10 as the developer is here to, also, say that their  
11 intent is, if they can get all these component parts  
12 working now, they can take a long-stalled project and,  
13 actually, their intent is to begin demolition this  
14 season and being able to start vertical construction in  
15 the fall.

16 So, with that, you have the documents before  
17 you for your consideration. The developer's also here  
18 if you have any questions.

19 THE CHAIRPERSON: Do the Board members have  
20 any questions for Mayor Waterman?

21 MR. SAWDON: I don't have any.

22 THE CHAIRPERSON: All right. Seeing none,  
23 I'll entertain a motion.

24 MR. SAWDON: Motion approval.

25 THE CHAIRPERSON: Support. Further

1 discussion?

2 Seeing none, all in favor of the motion say  
3 "aye".

4 MR. SAWDON: Aye.

5 THE CHAIRPERSON: Aye.

6 Opposed say "nay".

7 Motion is approved.

8 Item C, approval of Resolutions 17-21, 17-22  
9 and 17-23, Brownfield Redevelopment, Pontiac East  
10 Gateway.

11 MAYOR WATERMAN: The Pontiac East Gateway  
12 Redevelopment Project is another project we're very  
13 proud of. And this also was approved by City Council  
14 for their Brownfield Plan last Thursday. As I said to  
15 the public, this was a trifecta of economic development  
16 in one City Council meeting. That was a good day for  
17 the City of Pontiac.

18 The Pontiac East Gateway is a -- actually,  
19 the project of a company, AUCH, which is a construction  
20 company that has had its headquarters here in Pontiac  
21 for 40 years. We're very pleased that their search for  
22 a new headquarters landed them -- kept them right here  
23 in Pontiac, as opposed to moving out to some  
24 surrounding community.

25 And so this is a project that is -- they also

1 have a concept plan that's been shown. And there's  
2 pictures of it.

3 You might want to put that out there so  
4 people can see.

5 And it's going to be at the Eastern Gateway  
6 right along University at the M-59 entrance. So  
7 they're so proud of their development here and what  
8 that will look like at the entryway to the City that  
9 they claim that entry -- gateway right into the City  
10 here.

11 And, as they're proposing, they also have a  
12 development agreement with the City in terms of hiring  
13 and other benefits to the City of Pontiac. But what  
14 they have before you for consideration is the  
15 Brownfield Redevelopment Plan, 30-year plan. And it  
16 was also written by the Brownfield Authority of Oakland  
17 County.

18 THE CHAIRPERSON: Any questions for Mayor  
19 Waterman about this item?

20 Seeing none, I'll entertain a motion.

21 MR. SAWDON: Motion approval.

22 MR. BERNSTEIN: Second.

23 THE CHAIRPERSON: Moved by Sawdon, support by  
24 Bernstein. Any further discussion?

25 Seeing none, all in favor of the motion say

1 "aye".

2 BOARD MEMBERS: Aye.

3 THE CHAIRPERSON: Opposed say "nay".

4 The motion is approved.

5 Thank you, Mayor.

6 MAYOR WATERMAN: All right.

7 THE CHAIRPERSON: Item D is the Financial  
8 Quarterly Report, which is received and been filed. Do  
9 the Board members have any questions regarding that?

10 MR. BERNSTEIN: None.

11 MR. SAWDON: I don't have any.

12 THE CHAIRPERSON: All right. We'll move on  
13 to the next agenda item. Public Comment.

14 Pursuant to the Board rules, the public will  
15 have two minutes to comment. And Mr. Dostine will  
16 announce.

17 MR. DOSTINE: Mr. Chair, actually, there are  
18 no requests for public comments.

19 THE CHAIRPERSON: All right. Thank you.

20 Next item is Board Comment. Any comments  
21 from the Board members?

22 MR. SAWDON: I have none.

23 MR. BERNSTEIN: No.

24 THE CHAIRPERSON: Well, we would say  
25 congratulations, Mayor Waterman, on, as you related, a

1           trifecta of economic development projects.

2                   MAYOR WATERMAN: I like it. All right. I  
3 think you set another record here.

4                   THE CHAIRPERSON: Could be. We'll find out  
5 shortly.

6                   I'll entertain a motion for adjournment.

7                   MR. SAWDON: So moved.

8                   MR. BERNSTEIN: Second.

9                   THE CHAIRPERSON: Moved and supported. All  
10 in favor say "aye".

11                   BOARD MEMBERS: Aye.

12                   THE CHAIRPERSON: Opposed?

13                   We're adjourned at 1:24 p.m.

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## C E R T I F I C A T E

I, Mona Storm, do hereby certify that I have recorded stenographically the proceedings had and testimony taken in the meeting, at the time and place hereinbefore set forth, and I do further certify that the foregoing transcript, consisting of (23) pages, is a true and correct transcript of my said stenographic notes.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mona Storm  
CSR-4460

