



## **Rail Yards Advisory Board**

Thursday, March 6, 2014

3:00 PM

Albuquerque/Bernalillo County Government Center  
City Council Committee Room, 9<sup>th</sup> Floor

### **DRAFT MINUTES**

#### **Members Present:**

Isaac Benton, City Councilor, District 3  
Suzie Lubar for Mayor Berry  
Janice Convery, South Broadway alternate  
Eric Griego, Barelás  
Jay Rembe, ULI-New Mexico  
Leba Freed, WHEELS Museum  
Alex Romero, Gov. Martinez's representative  
Sen. Jerry Ortiz y Pino  
Rep. Rick Miera

#### **Members Absent:**

Commissioner Art de la Cruz  
Rep. Miguel Garcia  
Diana Dorn-Jones, South Broadway  
Sen. Michael Padilla

#### **City Staff and Other Resources Present:**

Chris Melendrez, Senior Policy Analyst, City Council Services  
Diane Dolan, Policy Analyst, City Councilor Isaac Benton  
Kara Shair-Rosenfield, Policy Analyst/Planning, City Council Services  
Andrew Webb, Policy Analyst/Planning, City Council Services  
Kevin Curran, City Legal Department  
Jim Trump, Samitaur Constructs  
Arthur "Skip" Cook, Samitaur Construct's counsel

- I. **Call to order:** Councilor Benton called the meeting to order.
- II. **Approval of minutes:** Minutes of the 11-21-13 Board meeting were approved.
- III. **Presentation of Proposed Master Development and Disposition Agreement (MDDA)**  
Chris Melendrez of Council staff presented the proposed MDDA. He provided a brief summary of each of the MDDA's seven key components, which include:

1. **Infrastructure**

- Developer will be responsible for on-site infrastructure
- Developer will participate in off-site infrastructure costs on a “Fair Share” basis
  - Infrastructure directly benefitting the Project is part of Developer’s Fair Share
  - Required Infrastructure partially or secondarily benefitting the Project is beyond the Developer’s Fair Share
- Any infrastructure paid for by Developer in excess of Fair Share will be deducted from the Purchase Price
- Any infrastructure paid for by the City that directly benefits the Project will be added to the Purchase Price

## **2. Third Party Pre-Development Costs**

- City MAY determine that third party costs will create value for the City and if so, will reimburse these costs
- Reimbursed costs will be repaid to the City – added to the Purchase Price
- Any promised reimbursements left unpaid would be deducted from the purchase price
- ONLY relevant if Master Development Plan is not approved

## **3. Site Remediation and Maintenance**

- Remediation
  - Either party may elect whether to proceed with further study or remediation of Known Contamination – which is already known about, identified, and shared with both parties (per the MPA)
  - City expenses toward remediation will be added to the Purchase Price
  - Developer expenses toward remediation will be deducted from the Purchase Price
  - If contamination is not remediated, the City agrees to hold title to the parcel
- Maintenance
  - Pursuant to Covenants and Restrictions

## **4. Disposition for Purposes of Final Development**

- Transfer Requests will include:
  - Preliminary Parcel Development Schedule
  - A market analysis
  - A pro-forma financial analysis
  - Fair Value Analysis
  - Payment Terms
- Transfer Requests reviewed and approved by Albuquerque Development Commission based on:
  - Consistency with Master Plan
  - City Financial Consideration
  - Fair Value Determination
  - Legal Considerations

- Feasibility of carrying out obligations in time and financial ability to proceed
- Transfer Requests reviewed by RYAB for review and comment on proposed use

#### DISPOSITION – Arrive at Purchase Price

- Base Value – based on initial appraisal
- Fair Value – value as adjusted for “community benefits” – required by the Metropolitan Redevelopment Code
  - MR Code requires City to take into consideration certain factors in calculating Fair Value – facilitates redevelopment
- Purchase Price – Fair value as adjusted to account for costs fronted by either party for:
  - Pre-Master Plan approval Third Party Costs
  - Environmental Remediation
  - Infrastructure Costs in excess of Fair Share

During his presentation on the “Disposition” component of the agreement, Chris walked the Board through hypothetical examples to illustrate how the City and Samitaur will arrive at a purchase price for each parcel to be transferred. Chris explained that the City will never have to pay Samitaur to transfer a parcel, even if the purchase price indicates a negative value, though negative purchase prices will be carried forward as a credit against the next purchase.

#### 5. Development Progress

- Developer will submit annual reports to the ADC that address “commercially reasonable efforts toward project completion” based on the phase of the project. These efforts can include one or more of the following:
  - Marketing
  - Preparing and applying for site development plans
  - Preparing infrastructure plans
  - Progress on infrastructure construction
  - Historic preservation efforts
  - Environmental remediation
  - Other reasonable development or predevelopment activities
- ADC will review annual progress reports and prepare a written assessment of whether Developer acted with Reasonable Diligence
- The Planning Director will submit the ADC report to the City Council
- Upon two consecutive ADC reports that Developer did not use “Reasonable Diligence” in developing the Project, the MDDA may be terminated by the City
  - The City may repurchase transferred parcels after termination

#### 6. Interim Uses & Cultural Facilities

- Interim Uses
  - Developer acknowledges and accepts existing Interim Uses

- New Interim Uses must be presented to the Developer before commencement
- Developer may object to existing or proposed Interim Uses if they interfere with redevelopment progress
- Cultural Facilities
  - The MDDA preserves the opportunity for the City to operate Cultural Facilities within the Project area through a separate agreement with the Developer

## 7. General Provisions

- Term – 10 years with five-year renewals and step-out at year two.
- Assignments – All assignments must be approved by Council unless:
  - To a “qualified assignee” – ADC approves
  - To a subordinate entity – pre-approved so long as Developer holds at least 50% interest
- Default – Any violation of MDDA subject to right to cure
- Amendments – must be approved by the City Council

IV. **Board Questions / Discussion:** Following Chris’ presentation, the Board engaged in the following question-and-answer session with City staff and Samitaur representatives.

**Eric Griego:** Can you give us an idea of how interim use discussions would take place?

**Chris Melendrez:** There has to be some give-and-take in this partnership in order to not impede the ultimate redevelopment objective. I think about interim parking that might need to be moved. We have a building for tenant X and you have user Y in that building. Because of community benefits, can we move user Y to another part of the site?

**Jim Trump:** Sets up a conversation. Dialogue to work on a solution together. We don’t have a crystal ball.

**Eric Griego:** Existing use vs. proposed uses?

**Suzie Lubar:** Administration currently working on getting users for the Blacksmith Shop. If, 4 years from now, they’re ready to put a tenant in the Blacksmith Shop, they’ll be able to take over the Blacksmith Shop.

**Eric Griego:** What about a charter school?

**Chris Melendrez:** If they come to the City, the dialogue would begin with Samitaur.

**Jim Trump:** Dialogue is important.

**Leba Freed:** Let's say Eric Griego has an interim use in Blacksmith Shop and it's making a certain amount of money. Then developer comes in and says they have another user that's going to make X+. Do they automatically get it whenever they want? Cultural facilities will be operated by the City? Does that include WHEELS Museum?

**Chris Melendrez:** Sets up the opportunity for the City to engage in that type of partnership.

**Leba Freed:** The wording seemed more like an obligation than an option. Would rather have it be an option than an obligation.

**Eric Griego:** Page 9, 4.2.6.1 – Review by RYAB – when we were reviewing the Master Development Plan. In the Downtown redevelopment process, we included not only the Albuquerque Development Commission, which is, by design, heavily skewed toward developers – what the Alvarado Task Force has done is tried to bring other voices into the process – elected officials. There is heavy reliance on ADC in this document. There IS a role for the RYAB, but it says we'd be allowed to review and comment and deliver our comments to the ADC, and the ADC isn't required to do anything other than read it. Is there a possibility of asking the ADC doing something with it more than receiving it? Where do you see the community voice in the process? How do we make sure that those of us in the community / neighborhood capacity to have a voice in the process? The RYAB is a robust group. But this document will now govern, and it basically relegates the RYAB to not even an advisory function.

**Suzie Lubar:** ADC meetings are public meetings that are published. RYAB is a recommending body. ADC has the opportunity to take into consideration RYAB's comments. ADC may adopt some, may adopt all. Would take into consideration everything at public meeting. Also think it's a misnomer to say its heavy development.

**Eric Griego:** Any community voices on the ADC?

**Suzie Lubar:** Important to remember that the role of the neighborhoods is very important. In selecting the developer, in creating the MDP. Input is very important being given to ADC. ADC is the body that tasked with overseeing and being the Board of Directors of MR projects. Think it's appropriate for them to be considering all of this information and making decisions based on whether we're complying with the state MR Code.

**Kevin Curran:** City Council has delegated these responsibilities to the ADC. Has worked fairly well over the years.

**Alex Romero:** I served on ADC for 15 years, chaired it for 8. Neighborhoods were always a key player in decisions being made. Fully vetted by neighborhoods.

**Councilor Benton:** Part of the intention of creating this board was acknowledging that neighbors have the right to speak to the Council, but this Board gives a little extra imprimatur to what the neighborhoods' concerns are.

**Eric Griego:** Given the nature of this project, location, right in the heart of the city, there's been a lot of effort to make sure we're doing the right thing. One suggestion is that the ADC – that there would be something more additional about how the ADC would consider the RYAB's comments. Require that they be put in the record.

**Kevin Curran:** Any decision the ADC makes is appealable to the City Council.

**Eric Griego:** Local impacts could be very concentrated. Negative impacts could be very localized. Want to make sure we don't lose the community voice in this process.

**Kevin Curran:** Best place to make that case would be at the ADC hearing.

**Councilor Benton:** To the extent that you can think of any language to reinforce the RYAB's comments.

**Rep. Miera:** Want to go back to real basic agreements or assumptions. Go all the way back to those nice pretty pictures in the book. As we talk about transfer requests – concern – we're still, or Samitaur is still bound by the original document. Looseness of the transfer requests concerns me. Transfer here, transfer there. Basic question – still bound by the Master Development Plan?

**Suzie Lubar / Becca Velarde:** Yes.

**Rep. Miera:** Can't loosely transfer.

**Skip Cook:** Doesn't mean transfer of buildings and uses around the site. Means transfer of property from City to Samitaur.

**Rep. Miera:** Going back to Hypo 1, it's nice to see it be a positive \$67K, but it could end up being a negative number.

**Suzie Lubar:** Other thing, there's language in the agreement that says that when we give a deed to Samitaur, that deed is going to be encumbered with restrictions. Basically says you have to use it for the uses outlined in the MDP, you are obligated to follow the MDP, if you don't start construction within 2 years

we get to have the property back, if you do start construction but then don't continue with construction for 2 year period we get the property back. A lot of protections built in if Samitaur is not doing what it's supposed to do.

**Rep. Miera:** RYAB will give its two cents. When it goes to Council and they will make the determination. Next step, going through process, wouldn't they have to go through EPC as well?

**Suzie Lubar:** No, the Master Development Plan has them going through the Development Review Board, not EPC. That's also a public meeting.

**Councilor Benton:** Those are the people who are going to be reviewing individual site plans for building permit, infrastructure, etc.

**Rep. Miera:** Don't they make a determination based on something?

**Suzie Lubar:** The Master Development Plan.

**Rep. Miera:** Just wanted to clarify what the approval process is and that there is access to different public bodies. Just wanted to make sure ADC, DRB are bound by some laws and can't deviate from what we've approved.

**Councilor Benton:** More subtle factor to keep in mind is balance of power between Council and Administration. ADC received its power through the City Council. Council still has oversight of ADC, MR group.

**Leba Freed:** Will we be meeting as the RYAB to review things?

**Councilor Benton:** I wasn't sure about the 14 days. That's a pretty quick turnaround. When reported to ADC, will be reported to RYAB at same time. Will call a meeting, discuss a proposal, make comments to ADC.

**Suzie Lubar:** 14 days is so that we have time to include RYAB's comments in packet to ADC.

**Jay Rembe:** Who hears an appeal of the ADC?

**Suzie Lubar / Councilor Benton:** The City Council.

**Rep. Miera:** Where did this agreement come from? How did you come up with this agreement? Can we take a look at how this was developed? Is it modeled on other agreements that we can look at?

**Chris Melendrez:** Dealing with very unique redevelopment project. Certain requirements dictated by MR Code. My background is with State Land Office – a

lot of public-private partnerships. Balancing inputs and outputs. Also a need in this particular instance to come up with a process that a group of lawyers did.

**Suzie Lubar:** This document actually started three years ago, when I was first hired by the City. Original document was a combination of the MPA and the MDDA. Started becoming very complicated and hard to understand – was bogging everything down. In order to accurately follow what the RFP had suggested, need to separate documents into two agreements. My background, worked on major development deals on the private side. I learned what developers are looking for. Combination of all of our knowledge. Skip worked on similar agreements for Samitaur and had input on what's worked in the past for them and what hasn't. Has been edited, changed, and discussed many times. Used to have 20 people working on it. Skinned it down to mostly just attorneys negotiating the document. Kevin has worked on other master plans and master development agreements – ATC and Old Albuquerque High. He brought his knowledge, too.

**Rep. Miera:** concerned about environmental issues here. Protection of environmental issues – very unique to this site. This is much bigger than environmental issues at ABQ High. Worried about “transferring” things based on environmental concerns that might stop the development or the City gets stuck with it. Concerned about that.

**Alex Romero:** Clarification of Suzie's comment about developers being sneaky. I don't think that was a reference to Samitaur.

**Suzie Lubar:** No, it was not. Just speaking generally.

**Jay Rembe:** From a developer's perspective, Samitaur has put a lot of time in good faith without knowing what the environmental issues are. Not having read too many MDDAs, seems like there are a lot of protections.

**Eric Griego:** Backbone Infrastructure – want to understand. We have a lot of legislators on this board. Strong state participation in getting to this point. Have heard some horror stories about what it takes to get utilities to the site.

**Suzie Lubar:** Section 4.7, page 20 – everyone agrees we ARE going to have to look for some sources of funds. Electrical power, e.g., likely will need assistance.

**Eric Griego:** If a legislator can get some funding for, say, a commercial kitchen. What about those kinds of improvements?

**Jim Trump:** Our hands are kind of tied. We can't go after users that you want. After we have an agreement, can sit down and figure out highest and best use. Look forward to those discussions with you, Eric.

**Councilor Benton:** Any anti-donation issues if the state investment stays with the property?

**Suzie Lubar:** MR Code contemplates anti-donation clause. Don't know if it's right or not right. We look at the value of the redevelopment – removal of blight, creation of jobs, low-income housing. Because we have all of those factors, we are given a little bit of leeway on the anti-donation issue. At least that's my understanding.

**Councilor Benton:** Under that scenario, that commercial kitchen may or may not be valued...

**Suzie Lubar:** But that improvement would fall on the City's side of the equation.

**Skip Cook:** Depends on what use the developer is going to put to it. May have value. May not. City will be taking risk any time it puts money in because only on interim basis.

**Eric Griego:** Problematic b/c neighborhoods want redevelopment. E.g., Blacksmith Shop – trying to get a community market going. For this agreement to bind us and say if we put in any improvements, they may be lost.

**Skip Cook:** We want to work with you. We want to get together on this. That's why we need to work together. Need to cooperate on these things. If the City goes and spends a whole lot on things that become fixtures in the realty, and we came along and wanted to do something else, that would have been a waste of money.

**Jay Rembe:** And if developer isn't executing, City can get out of MDDA. You're not stuck with nothing happening for 10 years.

**Jim Trump:** And the market that you're talking about, Eric, that's in the Master Plan. It may move.

**Suzie Lubar:** This agreement will go straight to City Council, not through ADC. Deadlines to give comments is 20 days. Our goal is to introduce this in time to catch up with the Master Development Plan.

**Councilor Benton:** Some relatively minor issues and questions have come up. Will get answers back to the Board. Don't see a need for another meeting of the RYAB on the MDDA.

V. **Other Business:** None. Meeting adjourned.