



DATE: June 10, 2016

TO: Board of Estimates

FROM: Judge Doyle Square Negotiating Team

RE: Informational Report on the Development Agreement with Beitler Real Estate Services, LLC

Introduction

On April 19, 2016, the Common Council adopted Resolution RES- 16-00317 selecting Beitler Real Estate Services, LLC (Beitler) as the Judge Doyle Square Development Team with which to commence negotiations on proposal version B, and directed the Judge Doyle Square Negotiating Team to immediately initiate negotiations with the selected development team and to report back to the Board of Estimates by June 27, 2016 with a final term sheet.

Since April 19th, the City Negotiating Team has held two face-to-face negotiating sessions, one conference call session, and the respective attorneys for the City and Beitler have exchanged multiple drafts of a development agreement. The City Negotiating Team also provided a status report and received feedback from the Board of Estimates on the negotiation progress on May 23, 2016.

As of June 10, 2016, there are four key issues that remain unresolved and at issue:

1. Development Services Agreement terms;
2. Timing of the demolition of the Government East Garage;
3. Project Labor Agreement and Labor Peace Agreement language;
4. Termination language; and

Beitler's representatives have informed the City Negotiating Team that they do not intend to negotiate further. Beitler has, therefore, asked that the Board of Estimates review these issues at its meeting of June 13, 2016 and make a final recommendation on the form of development agreement. Representatives of the Beitler team have expressed that they will be present at the meeting to present their position. A proposed development agreement based on the City position and a proposed development agreement based on the Beitler position are attached for your review. Further, a draft resolution is also attached in the event you take action and move the item to the Common Council for its consideration, as Beitler has requested.

Appendix A to this Informational Report provides a brief summary of each proposed Article of the proposed development agreement. Appendix B provides a schedule of key actions going forward. Appendix C provides a summary of the financial elements of the proposed Beitler development.

The history of the project, the goals for the development, the RFP issued by the City, as well as the Beitler responses and interview can also be found in the Gallery section on the Judge Doyle Square website at: www.cityofmadison.com/planning/judgedoylesquare/.

Review of the Key Unresolved Issues in the Development Agreement

Item at Issue	City Position	Beitler Position	Negotiating Team Comments
Development Services Agreement (DSA) Terms (Section 5.1(a))	City to coordinate design and construction of the public development (new parking garage) with Beitler. City would execute a DSA with Beitler for services and pay time and materials up to a maximum not-to-exceed contract of \$250,000.	Beitler to have day-to-day management of the public development including directing team members of the public development. The City would execute a DSA in the amount \$1.5 million, payable over 20 months at \$75,000 per month. (Estimated design and construction period)	City recognizes need for cooperation between the parties during design and construction but strongly believes the responsibility for executing the public parking garage design and construction must remain under City leadership and control.
GE Garage Demolition Timing Section 5.1(e)	Beitler has the right to request that GE be demolished in advance of the completion of the new garage on Block 88, subject to the City, in its sole discretion, finding adequate replacement parking.	Beitler has the right to request, after securing financing for at least one of the private development elements to be constructed on Block 105, that the City, on sixty-day notice, vacate the GE ramp and commence demolition.	The RFP was clear on the City's intent. Early demolition of GE was not requested by Beitler during the developer selection process. The Negotiating Team agreed to language to allow Beitler to request early demo subject to the City finding adequate replacement parking at its sole discretion.
Project Labor and Labor Peace Agreements Sections 5.2(f) & 5.3(c)	City wanted a Beitler commitment to enter into a Project Labor Agreement during the construction period and a Labor Peace Agreement for the operation of the hotel.	Beitler has offered language that the private development's general contractor will be responsible for all organized labor agreements in accordance with customary practices in the Madison market. Beitler has offered good faith negotiations for a labor peace agreement.	All development teams responding to the City's RFP have been resistant to Labor Peace language as proposed by the City. The negotiating team believes this is the best language that can be achieved. Also, as a practical matter, the project is very likely to be built with organized labor.
Termination Provisions Section 12.1(b)	Beitler must comply with the Schedule in Section 5.2(d) unless the parties agree to extend the date.	Once Beitler has commenced one private development element, the schedule in Section 5.2(d) for the remaining elements no longer would apply.	Beitler should not receive a perpetual option on the remaining elements of the project if Beitler has commenced one element within the 24-month period specified in Section 5.2(d)

Appendix A - Summary of the Proposed Development Agreement (Based on City Position) Unresolved Issues are Noted per the Summary of Key Unresolved Issues in the Report)

Article I – Development of the Project

The project will implement option B of the Beitler Request for Proposals response which was selected by the Common Council on April 19, 2016, and is comprised of three private development project elements.

1. On Block 88, an apartment element of approximately 144 units and a retail/commercial component of approximately 33,400 square feet plus ancillary parking.
2. On Block 105, an apartment element of approximately 210 apartments and a retail/commercial component of approximately 7,800 square feet plus ancillary parking.
3. On Block 105, an urban mixed-use hotel element of no less than 250 guest rooms within approximately 164,000 gross square feet of floor area plus ancillary parking.

The public development consists of two public development elements, the replacement of the City's Government East garage with an approximately 600 stall underground ramp, and a bike center on Block 88.

Article II - Division and Leasing of the Property

Upon completion of the public ramp on Block 88, the City will lease to Beitler portions of the property on Blocks 88 and 105 under terms provided in Exhibit B of the development agreement. Key elements of those terms are:

Term: 98 years with two 50-year extensions options

Rent: Block 88 apartment parcel: \$180,000 annually

Block 105 apartment portion: \$225,000 annually

Block 105 hotel portion: \$350,000 annually

Rent Escalation: Beginning in the 5th lease year, rent will escalate 5% every 5 years.

Rent Commencement: First payment will begin 10 months after issuance of the Certificate of Occupancy by the City.

Property Taxes: The private development will pay its property taxes.

Subordination: Any debt will be subordinate to the ground lease agreements.

Termination:
1. At the end of the term of the ground lease agreements, including extensions;
2. In the event of default under the ground lease agreements;
3. Failure to comply with the timeframes of Article V of the development agreement;
4. By mutual agreement of the parties.

The City will create, approve and record a two-lot certified survey map for Block 88 prior to the public development closing on Block 88 to create a MMB parcel and a Block 88 development parcel.

Article III - Public Development Financing

The City will start the construction of the underground public parking facility by May 1, 2017 and be responsible for all costs of the public ramp, City fleet parking and the bike center. Sources of funds for the public development are Parking Utility reserves (approximately \$13 million) and TID #25 cash (approximately \$24 million).

Article IV - Land Use Approvals; Permitting

The City and Beitler will each pursue the needed land use approvals for their respective developments on Blocks 88 and 105, following the Master Development Schedule in Exhibit C.

Article V - Construction of the Project

Section 5.1 - Public Ramp. The City of Madison will be responsible for the design and engineering of the public ramp, including the bike center, the preparation of bid documents, the bidding process and the construction of the public ramp on Block 88, and the demolition of the Government East facility on Block 105 prior to the private development closing. The public ramp shall be completed by November 30, 2018.

Beitler has the right to request that the Government East Ramp be demolished in advance of the completion of the public ramp on Block 88, subject to the City, in its sole discretion, finding adequate replacement parking. **Beitler has alternative language for this issue.**

The City will contract with Beitler to provide pre-construction and construction phase coordination services as described in Attachment D, on a time and materials basis, for a not-to-exceed cost of \$250,000. **Beitler has alternative language for this issue.**

Section 5.2 – Private Development. All private development costs are to be responsibility of Beitler. The closing of the financing of not fewer than one private development element, as described in Article I, must occur within 24 months of the public ramp completion date. The closing of the financing for the second and third private development elements must occur no later than 36 months after the public ramp completion date.

Prior to commencement of the private development, Beitler shall include in its contract with its general contractor, provisions requiring the general contractor to use its best efforts to encourage targeted business participation,, with a private development goal of having at least 10% of all construction contracts, as measured by overall contract value, awarded to targeted businesses. **This language doesn't meet the BOE's directive.**

The private development general contractor will be responsible for all organized labor agreements in accordance with customary practices in the Madison market. **This language does not conform to the BOE's directive.**

Section 5.3 – Block 105 Hotel. The plans for the Block 105 Hotel advanced by Beitler will incorporate the brand and operator of the hotel and a room block agreement to support Monona Terrace and will be subject to review and approval by resolution of the Common Council prior to the private development closing.

No later than the Block 105 Hotel opening date, Beitler and/or its successor in interest shall supply to the City evidence that Beitler, or its successor in interest, has entered into (or caused the Hotel operator to enter into) good faith negotiations for a labor peace agreement with a labor organization that validly represents hotel employees and seeks to represent the Block 105 Hotel workers.

Article VI - Conditions Precedent to Project Commencement

Prior to the public development commencement, the City must (1) approve and record the Block 88 certified survey map, (2) budget funding for all of the public development, (3) receive certification of a TID #25 Project Plan Amendment from the Wisconsin Department of Revenue, and (4) receive land use approvals for the public ramp including the bike center.

Prior to the private development commencement, City must (1) complete the public ramp and (2) deliver to Beitler a Phase I environmental report and any follow-up testing recommended covering the entire property. Beitler must (1) execute the ground lease agreements, (2) receive land use approvals for each private development element and (3) receive approval from the Common Council of each element of the Block 105 Hotel development set forth in Section 5.3 of the agreement.

Article VII – Article XI – City Boiler Plate Provisions

Article XII – Termination of the Agreement

The development agreement will terminate if:

1. The City fails to satisfy all of the public development conditions by the public development closing deadline;
2. Beitler fails to comply with the schedule in Section 5.2 of the development agreement; and **Beitler has alternative language for this issue.**
3. The date on which all of the parties' other respective obligations under this development agreement are satisfied.

Appendix B - Schedule

City Financial Participation, Land Use Approvals

- Development Agreement to BOE June 27, 2016
- Development Agreement to Common Council July 5, 2016
- Sign Development Agreement July 15, 2016
- 2017 Executive Capital Budget to Council Sept 6, 2016
- Board of Estimates Action on Capital Budget Sept 26, 2016
- Final 2017 Capital Budget Adopted by Council Nov 14-15, 2016
- Land Use and CSM Approvals/Recordings/Permits By May 1, 2017
- Public Development Commencement Closing May, 2017

TID #25 Project Plan Amendment

- Letter to Overlying Taxing Jurisdiction July 25, 2016
- Introduce Resolution to Common Council August 2, 2016
- Organizational Joint Review Board Meeting August, 2016
- Plan Commission Public Hearing and Action August 29, 2016
- Board of Estimates Action September 12, 2016
- Common Council Action September 20, 2016
- Joint Review Board Action Early Oct, 2016
- Documentation to DOR (deadline) October 31, 2016
- DOR approval of Project Plan Amendment First Quarter 2017

Public Ramp Construction

- Design, Bid and Award Public Ramp Construction July 2016 - May 17
- Demolition of MMB Annex By May 1, 2017
- Complete Construction of Block 88 Public Ramp November 2018
- Commence Demolition of Government East Garage on Block 105 November 2018

Appendix C - Financial Elements of the Beitler Development

	<u>BEITLER</u>
	<u>Option B</u>
	<u>Underground</u>
Hotel Square Feet	164,166
City Offices	
Residential Square Feet	320,435
Office Square Feet	in retail s.f.
Retail and Bike Center Square Feet	58,240
Parking Square Feet	<u>371,102</u>
Gross Square Feet	913,943
Hotel Rooms	252
Hotel Location	Block 105
Hotel Style	Select Service
Function Space Square Feet	19,545
Parking Stalls	1,097
Parking Structure Cost per Stall (public stalls only for Beitler)	\$63,312
Public Stalls (Govt East Replacement; not needed for development)	576
City Fleet Stalls	40
Total Cost	\$170 million
Cost per Square Foot	\$186
Debt	\$85 million
Equity	<u>\$46 million</u>
Total Private Contribution	\$131 million
Total Cost less Private Contribution ("Gap")	\$39 million
TIF	\$24 million
Parking Utility	\$13 million
City Fleet Parking	\$1 million
Bike Center	<u>\$1 million</u>
Direct Public Investment	\$39 million
City Land Value -- Indirect Public Investment	\$11 million+
Public Investment before Land Sale Proceeds	\$50 million
Net Land Sale Proceeds	-\$7 million*
Total Public Investment	\$43 million
Estimated Assessed Value of Project	\$87 million
Assessed Value Added per TIF Invested	3.6 to 1
New TIF from Project Value over 27 years	\$18 million
TIF from remaining time in TID 25 from Project Value	\$4 million
Estimated post-2014 TID 25 Balance with Project	\$40 million

* Block 88 lease of \$180,000 / year for 10 years and Block 105 lease of \$575,000 / year for 10 years using 3% discount rate