

Minutes of the Special City Council
Sheffield Lake, Ohio
September 28, 2009

This special meeting of the City Council was held Monday, September 28, 2009. Council Pro Tem Rick Rosso called the meeting to order at 7:02 PM.

*******ROLL CALL OF MEMBERS*******

Present: Rosso, Bring, Huska, Kovach, Elliott, Diebold, Smith, Mayor Piskura,
Law Director Graves, Safety/Service Director Arendt
Absent: Podmanik, Finance Director Smith, Treasurer E Hoenig (excused)
Attending: Concerned Citizens, Zoning Board of Appeals; Ebenschweller,
SUAB; Garcia, Civic Center; Nicola, Park Board; Evans, Civil
Service; Huffman, Members of the Media; Avon Lake Press

Mayor Piskura explained this is all to consider the memorandum of understanding that you guys got over the weekend or Friday, I can't remember when I sent it out. We have had Tom and Jason here from North Coast Capital Partners and talked to them a couple of times, I have been talking to them for about 2 months maybe – 3months. Before we get into the meat of the discussion and I realize that we have a lot of people here and I thank everybody for coming. It has been a while since we had a lot of people here. I would request a brief executive session to consider the sale or lease of public property just for some housekeeping prior to getting into this – probably 15 minutes, try not to keep these good people waiting. *Motion by Kovach/Second by Bring to go into executive session for the discussion of the sale or lease of public property. **ROLL CALL TO GO INTO EXECUTIVE SESSION FOR THE DISCUSSION OF THE SALE OR LEASE OF PUBLIC PROPERTY:** Yeas All – Rosso, Huska, Elliott, Diebold, Bring, Smith, Kovach.

Council Pro Tem Rick Rosso advised for the convenience of the audience we will go downstairs, so you don't have to move.

ROLL CALL TO RETURN TO REGULAR SESSION: Yeas All – Rosso, Huska, Smith, Kovach, Elliott, Bring, Diebold.

Law Director Graves advised let the record reflect that the City Council of Sheffield Lake did adjourn into executive session for the purpose of considering the sale or lease of public property pursuant to the State Sunshine Laws.

Mayor Piskura explained everybody has the ordinance and the actual memorandum of understanding. I just wanted to go through a couple of things, before we kind of

get into the meat of discussion. We are talking about what could or could not happen, this is basically – it is not a book of an agreement. All this is designed to do is define and solidify our relationship with this company to get this property redeveloped. We tried to put to paper what would be the obligations of the city and what would be the obligations of the developer before even getting to the construction phase, financing phase or any of that for 12 months. The reason we put down 12 months is that we thought that was a reasonable time frame to secure pre-leases and to market the property and talk to brokers and real estate agents. Anyway in a nut shell, you can read it – I am not going to read it point by point. The developer, they are going to create a website, put up their signs, use their contacts and their expertise and the real estate agent. They are going to get their brokers involved and they are going to try to market this property and get it pre-leased to get these tenants prior to us even building. Now once they get these tenants, whatever tenants that we get will probably drive the actual building/how big it is/what it looks like. As soon as they are to that stage and feel that they can tell us how big that building should be/what it should look like/how it should be laid out based on the pre-lease we will get then enter into a much more detailed lengthy book of a contract. They will give us their construction drawings which will be referred to the Planning Commission and ultimately make its way back up to Council for their consideration on unlimited use rezoning if need be. So this is just a preliminary step, what we have committed in exchange for this company using their resources to try to get this property leased and built is that we are giving them a 12-month option to purchase but not piece-meal. If they get all the property leased the way they want to and they have a 5-year plan or 2-year plan or whatever the plan is that they are comfortable with to actually buy the property and move forward then we will structure a deal to sale them the property but we are not going to piece-meal it. We are not going to sale them the corner parcel and then have them build something and then say see you later kind of thing. It is basically all or nothing. We will approach the schools and try to put together a TIF deal which is a tax increment financing deal to help with the construction and we will depending on what the end plan is and what Planning Commission passes and what Council passes on all that – put in the infrastructure or the roads. Again none of this is going to be done until there is legitimate leases in place and tenants that want to go there. So that is the basic purpose of this to move forward. Now I don't know how much more detail I can give to that, I can try to answer questions. Mr. President if you or Council have any questions about this or if you are going to allow the audience, it is up to you. No questions were heard from Council. Council Pro Tem Rick Rosso advised before we move onto citizens commentary I want to point something out here because this is a special Council meeting – the only thing that can be discussed tonight is anything to do with the reason that the Special Council meeting was called which was the attached ordinance for the memorandum of understanding with North Coast Capital. So you cannot bring up anything else.

CITIZENS COMMENTARY:

Bob Ebenschweller, 362 Cove Beach stated so this memorandum of understanding, will it override all other actions that we have previously taken such as the other route that we had? Mayor Piskura asked Liberty? Mr. Ebenschweller answered yes. Mayor Piskura explained Liberty, if you remember the arrangement with Liberty there was a long period of time when we were what we needed to do to develop the property ourselves and because I am not a property developer I really needed somebody to help me, help guide me along the process. They were acting in the capacity of a consultant to us, not putting any of their money in/not developing it/not doing leasing but helping me through the process. So if we do get this memorandum of understanding signed, their services will no longer be required because we are going to have developers developing the property instead of the city. Mr. Ebenschweller stated then the second thing, all previous plans that we showed over the years they are by the wayside now and the new developer will pretty much have their own idea of how they want to do it? Mayor Piskura answered no the consensus that we have gotten so far has identified some real tangible, concrete components. In moving forward City Council will have the ability to say yea or nay or have more consensus meetings if there is something that they feel is not consistent with what the public has already seen and what we feel they want. So I guess to answer your question – no, they are not out the window but we always knew that any plan that we were working on was a starting point and we would try to be as flexible as possible in moving forward.

Kerry McCullough, 685 Roberts stated I guess this one is for you Mayor, who gets the rents? Mayor Piskura answered we do. Mr. McCullough asked what is this going to cost the city? Mayor Piskura answered nothing. Mr. McCullough asked tomorrow if there is a grant that becomes available, like if you sign this tonight and tomorrow all of a sudden there is a non-repayment grant that becomes available for a shopping center redevelopment of a \$100 million do you mean to tell me that we now can't get that grant and they can buy it for \$3.5 million? That is what it says in here. Mayor Piskura stated I am not quite sure of you are eluding to? Mr. McCullough stated what I am saying is if tomorrow there is a grant that becomes available for \$100 million dollars for a shopping center redevelopment. Mayor Piskura asked would we be on the hook to sale it to them? Mr. McCullough asked for \$3.5 million? Mayor Piskura answered according to this – yes. But our intention if you remember was never to make any money off of this and to get it redeveloped. So we are not going to sale it for more then our purchase price, we are going to sale it for what we have into the property. Now if your question is if the government gives us the means by which to develop it ourselves and wants to throw \$100 million dollars at us, are we obligated to sale it to them. I suppose that is a question for David to answer but that probably could be addressed through this memorandum of understanding with some additional language. That is a very good

point. Mr. McCullough stated I mean sign me up, I will go do all this leg work for \$3.5 million for \$100 million because there is monies out there all the time. That is I guess my point that I am getting at. I don't understand, it has got to be a win – win situation and I am trying to figure out which is the win – win. Law Director Graves stated we have a Grant Administrator who is here everyday and has applied for I believe 175 different funding sources. The reality is that there is not a lot of money out there for these kind of projects and if there was we would have exhausted it already. Councilman Bring advised a lot of it is matching funds too. Law Director Graves stated the other thing is that we have talked to a tremendous number of developers, with the economy the way it is very few people are interested in the project. If that kind of money was out there, we would be beating down the door. Mr. McCullough asked who is paying the costs of any rebuilding that needs to be done. You are talking about the signage. Mayor Piskura answered the signage that is referred to in this memorandum is their signs for leasing the property. We are allowing them to put their company signs up there. Mr. McCullough stated one more question – 8 commercial developments – name the 8 buildings on that property. Am I missing something, unless we are considering part of the actual center. Mayor Piskura explained no, no – this is their proposal is the end result for there to be 8 commercial buildings with approximately 170 square feet. Law Director Graves advised companies with old and new constructions. Mr. McCullough advised I thought it was 8 buildings and I am trying to count 8 buildings - I am at 5.

Merlin Linn, 732 Lake Breeze stated I have a question, we have a project that will consist of 21 acres of land. Now I live right across the street from the woods, now it that woods going to be developed. Law Director Graves asked are you talking about the woods behind Apples? Mr. Linn answered yes sir. Law Director Graves answered it is part of this project. Mr. Linn asked what are they going to do with the woods? Law Director Graves answered that is still owned by the Trust. Mr. Linn asked it is not owned by the city? Law Director Graves stated no. Mr. Linn stated well they were planning on making condos and homes and stuff in there at one time. Mayor Piskura explained we did have a proposal a gentleman and his company that wanted to be involved in partnering with whoever developed the shopping center to develop that into a higher density, aged targeted, empty nester kind of community that was pedestrian in nature. That company, I haven't heard from in a while and the individual that was interested in buying it from the Trust I haven't heard from in a while and quite frankly I don't think anything can happen back there without Council-matic action because I think they would have to dedicate a road and do some zoning changes back there. So that is going to remain woods for a long time unless there significant discussion across Council floor. Mr. Linn stated well just for a plain woods – okay but it is getting to be a nuisance. There is trash and everything that has been thrown back in there. So maybe the city

can look into that too and whoever that property owner is. Service Director Arendt answered they have been cited.

Mark J Erdei, 4015 Tennyson stated say this thing gets moving along and they are going to start doing something after that year or whatever, the existing tenants that are in that plaza now that signed contracts and that. What is going to happen to them? Mayor Piskura answered if they buy the property they assume all those leases. Mr. Erdei asked they would get first dibs if they wanted to on the new construction? Mayor Piskura answered the leases that we have negotiated or that we re-negotiated, Dave can answer this better but what we were aiming to get in every single lease was either a mutual termination clause or a relocation clause specifically so that if we got to a redevelopment phase, we can move those stores but whatever we had negotiated in those leases the new developers will just assume if they purchase the property, the same we assumed from.

Ralph Huffman, 735 Roberts stated well a little bit from Mark's about the leasing, any leasing being done after the date of this signature and they take over – does that leasing go through the city still or will they be handling the leasing of the property that is still there? Mayor Piskura answered no they are not going to be handling any leasing, all the leasing will be going through the city if there is any new leases to be signed and executed but the plan is for that company to strike up their own deals through their own contacts and own expertise with XYZ companies to say we are working here, we want to redevelop this property, if we redo all this property are you in, will you sign a lease with us. They will get their own agreements with these companies and then they will bring all that to the table for us and we will sale them the property. If so some reason that deal falls through, if you read one of the things that we were insistent on was the report of all activities pertaining to the project on a by-weekly basis. The reason that that is there is because that we want to know who they are talking to, so in case they develop a lead and our deal with them falls through we still have the lead. Mr. Huffman stated you have another small place, you got the small barber shop and you have something else to move in there – is it going to hinder them from moving in right now during this 12-month period or will there still be an option for somebody else to move in one of the other vacant stores that we still have. Mayor Piskura answered I hate to say this but it kind of depends on who the person is and what their business plan is and what Council thinks about the tenancy? Will it hinder them - it could, not necessarily. Mr. Huffman stated it would have to fall in a plan that maybe they might come up with in a years time. So there would be a years time that the prospect of somebody else moving into the facility will be a little bit hindered because don't know at the end of that year whether you are going to want that person to stay there or not. Mayor Piskura advised it wouldn't necessarily be that we were concerned about them staying in the shopping center because quite frankly if it is not a quality tenant we are really not interested renting to them anyway. It is the question of whether or not a quality tenant wants to come

in, what the arrangement would be if they wanted to get started now/opened up a space in the building in the existing area and then had to be relocated. That would be the question and depending on the business and the costs for build-out on the inside and how much revenue they are generating – it is a hard question to answer. Mr. Huffman stated yes it is and it is hard for a business that would want to start up to come in, out-lay a lot of money to start up and have to move in a year – so they would be less likely to want to try it, not knowing where they might be at the end of the year. So we would be on the hold pattern for a year. Mayor Piskura answered again we are not giving up any of that control, if we get a quality tenant – Council still has the option to approve a lease based on whatever my recommendation is or David's recommendation is and then if we sale that property they will still be on the hook to buy that lease with it. Mr. Huffman stated they have that lease and honor that lease for the term that it would be and most companies that would come in or somebody that would come in would want at least 5 years. That is what you would be looking at somebody that had a big investment in it. Mayor Piskura answered yes and again it would depend on the tenant.

Kerry McCullough, 685 Roberts stated I got to re-ask this I am sorry, are you telling me that you are restricting trade in that center? If you are telling me that you will rent to one person but not rent to another person? You are restricting trade, if it has got to go through Council for everything and yes to this one and no to that one. It is not a matter of business plan, if somebody comes and they have got the funds to open up a business that is following laws are we restricting the trade because we might not want that business there. Law Director Graves stated there is nothing that obligates us to rent to any tenant. Mayor Piskura added and we haven't done that yet. Law Director Graves continued there is nothing wrong with a landlord requiring a viable long-term business plan, happens all the time. Mr. McCullough stated there is nothing wrong with a landlord requiring that – right. But what you are telling me and what is being said is 2 different things. You are telling me that but what just came out there was if I went to them and hey I want to open this business and say I want to sale widgets and my long term business plan is for 5-years and Mark decides he wants to sale widgets but his long term business plan is 7-years but I brought it to you to the table and it sat there for a month and everybody kicked it around and said you know Kerry gave us a hard time and we don't want to give it to him but all of a sudden Mark says you know Kerry is out and I only want to go 3-years and then Mark puts his widgets in there – that is restricting trade. Law Director Graves advised we are not going to do that, you are right you can't discriminate against people but you can evaluate business plan, the solidity of the tenant. You know you get somebody that comes in and says well I have been in business for 20 years and I have a successful company, as a landlord your chances of having a viable tenant that you are not going to have to evict are a lot better then someone that comes and says start up a business, I have never had it

before and I need a place to rent. It happens all the time, you evaluate a business plan. Now we are not discriminating about this individual versus that individual – obviously you can't do that. Mr. McCullough stated but basically you are – if somebody has 20 years and somebody has no track record. Law Director Graves answered it is based on economics.

Mark J Erdei, 4015 Tennyson stated I know this is on a lot of peoples minds, in case you do sale this place – you going to have some kind of clause in there to where they are going to have to upkeep or redo every 5-years or 10-years like they do in the mall and that for stores. Mayor Piskura answered the idea with selling the property, what we all said is we want to get all this property, we want to abate the nuisance and we want to redevelop and we want to make sure that long term anybody that comes after us doesn't have to deal with this mess and we as residents don't have to put up with that demoralizing piece of property. So there was a couple of different ways that we could go, we could retain ownership – lease it, we could put it into a CIC or CDC, there was all kinds of things that we could do. The one that makes the most sense, that is the most viable option is to sale it/put covenants in the deed – performance requirements in the purchase agreement that Council can enforce at a later date if the performance of the property or the conditions of the store fronts or whatever get to where they were or get to where they are offensive and they need to be addressed. So yes to answer your question, there will be a mechanism in the conveyance of the property that will give the city a significant hammer to use against letting it get the way it is now.

ORDINANCES AND RESOLUTIONS:

Council#057 – EMERGENCY – an ordinance authorizing the Mayor to enter into a memorandum of understanding with North Coast Capital Partners LLC for the development of the Shoreway Shopping Center, and the declaring of an emergency.

*Motion by Huska/Second by Bring for SUSPENSION OF RULES:

ROLL CALL FOR SUSPENSION OF RULES: Yeas All – Bring, Kovach, Smith, Rosso, Huska, Elliott, Diebold.

*Motion by Huska/Second by Bring for ADOPTION:

ROLL CALL FOR ADOPTION: Yeas – Rosso, Huska, Kovach, Diebold, Elliott, Bring, Smith.

Ordinance Passes#55-09

MEETING ADJOURNED: With no further business before this council, Motion by Kovach/Second by Bring to adjourn at 7:57 PM. Yeas All.

CLERK OF COUNCIL AFFIRMATION: This Meeting Of The City Council Of The City Of Sheffield Lake, Ohio Was Held And Conducted Under All Rules And Regulations Governing

The Sunshine Laws Of The State Of Ohio As They May Apply. All meetings are recorded and available in council offices.

CLERK OF COUNCIL

Kay Fantauzzi

PRESIDENT OF COUNCIL

Edward R Podmanik

and/or

I, Kay Fantauzzi, duly appointed Clerk of Council of Sheffield Lake DO HEREBY CERTIFY that this is a true and exact copy of the Minutes of Special Council of September 28, 2009.

COUNCIL PRO TEM

Richard Rosso

MAYOR

John J Piskura