

**ST. JOHN REDEVELOPMENT COMMISSION
JULY 25, 2013 - REGULAR MEETING
10955 W. 93RD AVENUE, ST. JOHN, INDIANA**

**Mark Barenie, President
Michael Forbes, Vice-President
Larry Bustamante, Secretary
Greg Volk
Ken Gembala**

**Attorney David Austgen
Chief Fred Frego
Sherry Sury, Clerk-Treasurer
Steve Kil, Town Manager
Chip Sobek**

CALL TO ORDER:

Mr. Barenie called to order the St. John Redevelopment Commission meeting of July 25, 2013, at 7:44 p.m.

(The Pledge of Allegiance was said.)

ROLL CALL:

Ms. Sherry Sury, Clerk Treasurer, took roll call with the following members present: Mark Barenie, Michael Forbes, Gregory Volk, Ken Gembala, and Larry Bustamante. Attorney David Austgen was present. Dr. John DeVries and James Sakileras, citizen members were also present. Recording Secretary, Susan E. Wright was also present.

APPROVAL OF MINUTES: JANUARY 10, 2013

Mr. Barenie stated he would entertain a motion on the meeting minutes of January 10, 2013, with any additions, corrections or deletions. Mr. Forbes made a motion to approve the minutes of the meeting of January 10, 2013, as posted and provided by Susan E. Wright, Recording Secretary. Mr. Bustamante seconded the motion. The motion was unanimously carried by voice vote (5/0).

NEW BUSINESS:

A. AFFIRMATION OF TIF DISTRICT CAPTURE NOTIFICATION

Mr. Barenie stated that the first order of business before the Board was consideration of affirmation of TIF District capture notification. Mr. Kil informed that Board that the deadline for the affirmation was July 15, and the Board must vote to ratify the action not to capture any levy in the TIF District.

(General discussion ensued.)

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Mr. Gembala made a motion to ratify the Board's action to not capture any tax levy in the TIF District. Mr. Forbes seconded the motion. The motion was unanimously carried by voice vote (5/0).

REPORTS AND CORRESPONDENCE:

There were reports or correspondence.

PUBLIC COMMENT:

Mr. Barenie called for public comment.

Donald Bates, 11689 Patterson

Mr. Donald Bates, appeared before the Redevelopment Commission on behalf of John Eenigenburg, JDE, LLC. He stated he recently came to work on this project. Mr. Bates was requesting TIF money, if available, for building demolition at the Eenigenburg site.

Mr. Barenie asked if the Board members had any comments. Mr. Forbes noted that everything was agreed upon in September. He stated TIF money was offered as incentive for a new building. Mr. Forbes noted that everything was approved and laid out and the money was flatly refused. He stated that it would be a problem right now to start over. Mr. Bates stated that if Mr. Eenigenburg's new site plan is not accepted, he would proceed by knocking down the old building and constructing a new building.

Mr. Forbes stated according to the plans that Mr. Eenigenburg has right now he has two options, one, he could build as he planned by shelling in the building, or two, he could knock the building down and build an entirely new building. Mr. Forbes stated that these two options are available based on the plans that Mr. Eenigenburg has right now. Mr. Forbes stated this is exactly what Mr. Eenigenburg should have been doing since April.

Mr. Bates stated that Mr. Eenigenburg's decision to initially decline the funds was based on bad information. He stated that there was some confusion as to the value of the "tax base year for the real estate taxes." Mr. Bates explained that Mr. Eenigenburg's perception was that it would be a significant amount of tax. Mr. Bates stated he got involved in this matter because he had discussed it with Mr. Eenigenburg. Mr. Bates stated that he called Lake County

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Assessor's Office and talked to a knowledgeable representative, and ran some "as if numbers" for comparison. Mr. Bates stated that he believes there has been a lot of bad information going back and forth and a lot of miscommunication. He stated that Petitioner wants to move past this and move the project on.

Mr. Bates stated that the proposed changes to the site plan would be brought before the Plan Commission. He stated that this information would be submitted no later than on or before August 2, 2013. Mr. Bates stated that Mr. Torrenga is in the process of redrawing the site plan. Mr. Bates mentioned the proposed utilities location was to run between lots. Mr. Kil stated that all of the work Mr. Bates was referring to had been completed back in February. Mr. Kil stated he was on the record asking that these issues be addressed back in February, and he stated he was given a flat no, it would not be done.

Mr. Kil stated that the issue he has right now is not so much the request but the timing of the request. He stated that this site plan was approved back in September. Mr. Kil stated that Mr. Eenigenburg was told repeatedly about the tax implications. Mr. Kil stated it was Mr. Eenigenburg's decision not to accept the Economic Development Agreement as presented by the Redevelopment Commission. Mr. Kil stated that Mr. Eenigenburg stated repeatedly that he would keep the old building. Mr. Kil stated that this matter was presented time and time again on the record.

Mr. Kil stated that if Mr. Eenigenburg came back before the Plan Commission at this point in time, and if Petitioner changed the entire site plan he would again have to appear before the Board of Zoning Appeals to request a variance for the outdoor storage. Mr. Kil stated that Mr. Eenigenburg would not walk out of the Plan Commission with an approval before October, at best.

Mr. Kil stated, from past experience, it would be at least October before Petitioner could walk out of the Plan Commission and the Board of Zoning Appeals with the needed approvals. He noted that Gary Torrenga, Torrenga Engineering, would have to redraw the entire site. Mr. Kil noted a few of the issues that would have to be addressed (at a minimum): moving all of the site utilities, moving all of the on-site storm sewers, site plan review by the Town's engineer, possible reconfiguration of the drives and traffic flow and relocating all of the curb cuts. Mr. Kil remarked that these types of changes do not happen in five days but more like over several months.

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Mr. Kil stated that one of his concerns is not knowing how this would impact project as a whole. He stated not only would Mr. Eenigenburg's project be affected but the McDonalds project would also be affected. Mr. Kil stated that when the original agreement was approved, the Board was of the understanding that there would be two new buildings and two new businesses.

Mr. Kil stated that the Plan Commission, Town Council and the Board of Zoning Appeals granted approvals back in April and have not heard a word since that time. Mr. Kil remarked now, all of a sudden, there is a "fire drill" to get something done. Mr. Bates stated that the "fire drill" started once he heard what that issue was. Mr. Kil noted that Mr. Bates couldn't come in more at the tail end of this project if he tried.

(General discussion ensued.)

Mr. Bates reiterated that there was bad information received and bad communication on the matter. Mr. Bates stated that the Petitioner wants to make the project to go through. Mr. Bates held up a signed application for the demolition of the building. He stated that the matter is serious and Petitioner wants the project to move forward. He stated that Petitioner would like to have a new building as opposed to an old building that has been reworked.

Mr. Kil asked what repercussions the McDonalds project would be subjected to if Mr. Eenigenburg is delayed, for example, until November. Mr. Barenie asked if there was anyone present who was related to the project that would like to add their thoughts on Mr. Eenigenburg's proposal.

Mr. Maurice King

Mr. King, area real estate manager for McDonalds Corporation, appeared before the Board. He stated that McDonalds Corporation has entered into an extension with Mr. Eenigenburg that states, among other things, that McDonalds must have possession of the McDonalds lot, Lot 4, free and clear of all tenancies and parties in possession, no later than March 31, 2014. Mr. King stated that as long as McDonalds has possession of that site by March 31, 2014, McDonalds will build Earl Drive and McDonalds will develop in St. John.

Mr. King stated that if the aforementioned timeframe related to possession of Lot 4, does not occur prior to or on March 31, 2014, the probability of McDonalds going forth with Mr. Eenigenburg is less than one-half of one percent.

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Mr. King stated that whatever happens here tonight (if the Board grants Mr. Eenigenburg's request) it will not influence the March 31, 2014, deadline date. Mr. King stated that this date is etched in stone. Mr. King stated he wanted everyone to be acutely aware of this date, including Mr. Eenigenburg.

Attorney Austgen stated that he and Mr. Kil have monitored and overseen this project application from the beginning, including a project kick-off meeting of August 14, 2012. He stated all of the active participants of this project were present at this kick-off meeting, including Mr. John Eenigenburg. Attorney Austgen noted that the project was laid out, discussed in terms of the process, the timetable, the time periods, the commitments of the Town to incent the beginning of the timetable and processes for land use approvals, et-cetera. Attorney Austgen opined that this was a comprehensive meeting.

Attorney Austgen stated that Redevelopment Commission took the lead on September 13, 2012, by action to commit to the use of Mr. Eenigenburg, TIF revenues that were available at that time to demolish an existing structure, restore it to grade and to construct a frontage road. Attorney Austgen stated that everybody relied on, from that point going forward, how to develop this commercial area, including the subdividing, the site plans and approvals, specifics of the site plans dealt with by variances and including having the engineers check off.

Attorney Austgen cited the following dates: August 14, 2012, project coordination meeting; September 10, 2012, Town Attorney prepares draft Economic Development Agreement with JDE, LLC; September 13, 2012, approval of the Economic Development agreement with Mr. Eenigenburg; October 25, 2012, Town Council approves Economic Development Agreement with Mr. Eenigenburg; December 19, 2012, projects were applied for, McDonalds and Eenigenburg filed joint petitions; January 4, 2013, meeting; January 16, 2013, presentations at Plan Commission; February 6, 2013, study session; February 20, 2013, Plan Commission, study session of the platting and site details; March 6, 2013, Plan Commission approved change request for public hearing date for Mr. Eenigenburg; March 20, 2013, Plan Commission special meeting, primary approval of the plat was granted with conditions, McDonalds site plan was approved with waivers and conditions, Eenigenburg site plan was deferred to address waiver requests, variances and site plan details; March 25, 2013, Board of Zoning Appeals meeting for hearing on variances; March 28, 2013, Town Council adoption of a Public Way Vacation Ordinance necessitated by the plat; April 3, 2013, Plan

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Commission meeting, Eenigenburg site plan deferred at request of Petitioner; April 4, 2013, meeting in Town Hall; April 10, 2013, traffic report received by the Town after Dennis Cobb studied right-in/right-out issue at the request of Mr. Eenigenburg; April 17, 2013, Plan Commission special meeting, final plat approval, Eenigenburg site plan was approved with waivers and conditions; April 22, 2013, Board of Zoning Appeals meeting, approved Developmental Variance for signs with conditions, favorable recommendation for the variance of use for open sales area at Eenigenburg site; April 24, 2013, drafting commences on developer agreement to commitment instrument; April 25, 2013, Town Council meeting, approved the variance of use for the open sales area; May 13, 2013, construction design release was issued for the remodel of the Eenigenburg parcel (foundation only); May 29, 2013, developer agreement commitment finalized, entitled Projects Development Agreement (in public record); June 6, 2013, received executed Project Development from Mr. Eenigenburg; June 6, 2013, McDonalds executes and delivers a letter of credit (in the amount of estimated construction cost for Earl Drive).

Attorney Austgen noted that the aforementioned meetings were lengthy, tedious, detailed and progressive. He stated all of these steps were necessary to get to the point where the project is presently. Attorney Austgen opined that nearly everyone relied on this process including Mr. Eenigenburg.

Attorney Austgen stated that at this point in time all land use approvals are granted. He noted that the only thread that prevents this project from moving forward is Mr. Eenigenburg's application for a building demolition permit. Attorney Austgen assured that Board that they have done everything that they can do related to moving this project forward.

Attorney Austgen stated that he intentionally went into great detail in order to show what the government did or didn't do to incent, assist, facilitate and promote quality economic development. Attorney Austgen noted that the Town's staff, Plan Commission, Board of Zoning Appeals, consultants and Town Council were at the ready to make this project happen. Attorney Austgen opined that this was important to point out all of the painstaking work that has been done since the Town Council had heard that they may have to start the entire process over.

Mr. Bustamante noted that McDonalds is ready to go. Mr. Bales showed the Board the signed application for the building demolition. Mr. Bales acknowledged that the building plan changes would have to go before the Plan Commission. Mr. Bates reiterated that Mr. Eenigenburg was relying

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on information of the tax base associated with the whole building; he stated Mr. Eenigenburg did not understand.

Mr. Barenie asked Mr. Kil if he had any additional comments. Mr. Kil stated that based upon the drop dead date of March 31, 2014, given to the Board by Mr. Maurice King, and in the event the Board allows Mr. Eenigenburg to proceed with the Economic Development Agreement, the project will be thrown off by months. Mr. Kil stated, at best, Mr. Eenigenburg will not be able to pull a building permit to start the construction of his new building, until sometime in December. Mr. Kil stated that Mr. Eenigenburg will not surrender the building to McDonalds until his new building is built and he is operating out of it. Mr. Bates stated that there are some other solutions he has in mind.

Mr. Bates pointed out that there is another building on the property that can be used as a temporary location. Mr. Kil stated his fear is that if Mr. Eenigenburg is granted this request, it will throw McDonalds past their drop dead date, and the Town will lose the McDonalds. Mr. Kil stated that the *less than one-half of one percent* chance given by Mr. King tells him that there is no chance.

Mr. Bates stated that business operations can be moved into the existing blue building temporarily in order to meet this deadline date. Mr. Bates stated that if Mr. Eenigenburg cannot get the approval to flip the property, he will proceed with the new building on the footprint of what has already been presented. Mr. Kil stated that Mr. Eenigenburg should proceed with what has already been approved and get moving immediately. Mr. Kil stated that a demolition permit should be pulled tomorrow and an application for the building permit at the same time so that work can begin.

(General discussion ensued.)

Mr. Bates stated that Mr. Eenigenburg is asking for two weeks. Mr. Kil stated that if Mr. Eenigenburg would obtain a new construction permit at least he would know that he is serious about moving forward. Mr. Bates stated that Mr. Eenigenburg is going to want to present the information to the Plan Commission that Torrenge Engineering is redrawing.

Mr. Kil stated his recommendation is that Mr. Eenigenburg proceed as is and get moving immediately. Mr. Kil stated he just went through a timeline of what will happen if Mr. Eenigenburg is allowed to present new drawings. Mr. Kil reiterated that the drop dead date of McDonalds will be missed.

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Mr. Bates asked if the Town would stop Mr. Eenigenburg from moving his operations into the blue building to pass on having McDonalds coming into Town. He stated that the proposed building would look better, be more inviting and more accommodating. Mr. Kil stated that there is a Fire Code and a Building Code to adhere to. He stated that when employees and the general public enter into this building that there are certain minimum fire and building code requirements that must be met and the existing blue building meets none of the requirements. Mr. Kil stated that Mr. Eenigenburg would have to invest money into the blue building to bring it up to code, and then turn around and tear it down. Mr. Kil stated that Mr. Eenigenburg is not going to want to invest money in the blue building, and he will not allow Mr. Eenigenburg to run his business out of an unsafe building.

Mr. Kil stated neither he, the Fire Chief, the Town Council or the Building Commissioner would allow Mr. Eenigenburg to operate his business out of an unsafe building.

(General discussion ensued.)

Mr. Kil stated that any request made by Mr. Eenigenburg should be reduced to writing and signed, and he yet to see this done. Mr. Kil stated that the application for the demolition permit does not count. Mr. Bates stated that Mr. Eenigenburg is asking for the TIF money that is available to be used to demolish the site.

Mr. Bates stated that if the proposal is not going to move forward, Mr. Eenigenburg will proceed with the plan that he has as new construction. Mr. Bates stated if this proposal is not going to work they will not hold up the project. Mr. Bates stated that if Mr. Eenigenburg can end up with a better project that will enhance the Town and it can happen then it should happen. Mr. Bates stated as far as visibility, access and traffic flow, Mr. Eenigenburg's proposal will be better for his business, better for the Town and better for development down the road. He stated that it would also be better for McDonalds. Mr. Maurice King responded "Well, I don't know about that."

Mr. Barenie stated he sincerely wished that Mr. Bates would have been involved in the project earlier. Mr. Barenie asked Attorney Austgen if he had any further comments. Attorney Austgen stated that there seems to be a simple request before the Board, to consider granting use of TIF funds for JDE, LLC, to use for the demolition of an existing structure.

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Mr. Barenie asked if the Board had a motion on granting the use of TIF funds for JDE, LLC, the Eenigenburg project. There was no motion made. Mr. Barenie called a second time for a motion. There was no motion made. Mr. Barenie stated that the motion was denied.

ADJOURNMENT:

Mr. Barenie asked for a motion to adjourn. Mr. Forbes made a motion to adjourn. Mr. Bustamante seconded the motion. The motion was unanimously carried by voice vote (5/0).

(The meeting was adjourned at 8:18 p.m.)

A TRUE COPY

Susan E. Wright, Recording Secretary
St. John Redevelopment Commission