

Columbus Redevelopment Commission
SPECIAL BOARD MEETING
January 10, 2013
6:00 p.m.



As a time-sensitive follow-up to its special session on January 2, 2013, the Redevelopment Commission met again in special session on Thursday, January 10, 2013 at 6:00 p.m. in the Columbus, Indiana Common Council Chambers. The meeting was chaired by Mayor and Redevelopment Commissioner Kristen Brown. Other Commission members present were Frank Jerome, David Wright, and Sarah Cannon.

Also present were Heather Pope, Redevelopment Director; Kelly Benjamin, City Attorney; Stan Gamso, Counsel to the Commission; Mark Maddox, Attorney and Co-owner of MSCB Group, LLC; and Kerry Mann, Attorney for MSCB Group. Several members of the public were also present, including employees of MSCB's subsidiary, Greenhouse Restaurant LLC d/b/a Scotty's Burger Joint, now being re-trained by MSCB to operate the restaurant as a "Detour American Grille & Bar" in the Commons, and certain members of their families.

Except for matters raised by members of the public present, matters discussed during the meeting were those previously disclosed in a public notice of the meeting posted on the City's website and also available at the meeting.

Call to Order

- 1) Roll Call by Mayor Brown – Frank Jerome, David Wright, Mayor Brown, and Sarah Cannon. Steven Scgalski was absent from the meeting.

Action Items

- 1) Authorization to Sign Master Lease Between Columbus Redevelopment Commission and Commons Board and to Accept Assignment of Subleases Under Master Lease and for the Commons Board: Following a reading describing this agenda item by Mayor Brown, Kelly Benjamin explained to the Commission that shortly prior to the meeting, Mr. Maddox and Mr. Mann had presented her with a document signed by both Meredith Shipman and Mert Shipman, President of Scotty's Greenhouse, LLC and personal Guarantor of its obligations under its sublease with Columbus Downtown, Inc. (CDI), respectively, which document purport to revoke its previous written consent dated December 17, 2012 to permit an amendment and assignment of the sublease from CDI to the Commons Board. The purported revocation was predicated on MSCB's mistaken belief that the assignment had not yet been accepted by the Commons Board.

Ms. Benjamin then presented Mr. Maddox and Mr. Mann with a copy of the executed acceptance by the Commons Board of the assignment, thus nullifying the attempted revocation and, in addition, handed them a copy of a letter from the Commission declaring MSCB in default under the sublease, which she stated the Commission would next be considering at the meeting to authorize, for violating the covenant in the sublease that the subleased space be operated exclusively as a “Scotty’s” branded restaurant. Upon motion duly made by David Wright, seconded by Sarah Cannon and an abbreviated opportunity for public comment due to public comment at several previous meetings, **Resolution No. 1-2013** in the form presented to the meeting and attached to these minutes authorizing signature of the Master Lease and acceptance of the assignment was unanimously approved.

Mr. Mann and Mr. Maddox objected to the presence of this item being on the agenda, which objection was based on their belief that it was not properly noticed to the public. Mayor Brown and Ms. Benjamin responded that the agenda initially appearing on the City’s website had been amended and re-posted on the website, copies of the amended agenda were available at the rear of the room and prior to the meeting, and that all notice requirements with respect to the meeting had been complied with under Indiana law.

- 2) Authorization to Provide Greenhouse, LLC with Notice of Default for Violating Sublease by Operating Other Than a Scotty’s in the Commons: Following reading of this agenda item by Mayor Brown, Ms. Benjamin explained to the Commission that a copy of the written notice had just been physically presented to Mr. Mann and Mr. Maddox. Following a motion duly made by Frank Jerome and seconded by Sarah Cannon to authorize providing of the notice, Mayor Brown then opened the meeting for public discussion and comment prior to a vote being taken, cautioning the former Scotty’s employees present to direct any remarks regarding status of their future employment to MSCB Group, and not to the City of Columbus or Commission, since that matter was solely at the discretion and in the control of MSCB / Greenhouse, their employer.

Prior to any other members of the public commenting, Mr. Mann stated his belief that it was premature to have delivered the notice of default since MSCB still had time to cure the asserted violation, and reiterated his objection regarding whether the meeting agenda item regarding the sublease assignment had been properly noticed. Mr. Maddox also restated comments he and other restaurant representatives had made concerning the situation during the Commission’s January 2nd meeting, including of their intention to re-open the restaurant on the following Monday, January 14th as a “Detour American Grille & Bar”, which in his and Mr. Mann’s opinion complied with provisions of the sublease, explained their objections to the City’s interpretation of language and requirements contained in the sublease, and objected to Mayor Brown’s intention to limit public comments.

In addition to other members of the public present, many employees of the restaurant spoke to the Commission, interspersed with comments and responses by Mr. Mann, Mr. Maddox, Ms. Benjamin, Mayor Brown and other members of the Commission. At various points during the discussion, Mayor Brown and the Commission reiterated, which point was disputed by Mr. Mann based on the assertion that CDI and not the Commission was still sublessor of the space to MSCB and for other reasons, that since MSCB had breached the sublease, the City and Commission must now follow Indiana law by competitively bidding through an open process a new sublease of the space within the Commons as a municipally-owned building and as had been advised by the State Board of Accounts, and further that MSCB would be welcomed to make a proposal for re-occupancy of the space as part of that process. Included in Mr. Maddox's and Mr. Mann's remarks was an expressed preference that the parties attempt resolution of the issues cooperatively, but if they were not would result in litigation, and offered to meet directly with the Commission's lawyers for this purpose. Following these extensive and emotional discussions, the Commission voted unanimously to authorize giving of the sublease default notice that had been presented to Mr. Maddox and Mr. Mann by Ms. Benjamin.

- 3) Authorization for Legal Counsel to Proceed with Actions Necessary Arising from Sublease Default: Following reading of this agenda item by Mayor Brown, David Wright suggested the Commission not take action on the item at that meeting, but instead have the Commission next meet in "executive" session, as permitted under **Ind. Code Sec. 5-14-1.5-6.1**, for the purpose of privately discussing the initiation of litigation in connection with the sublease default. The Commission agreed with the suggestion.

Adjournment

Upon motion duly made by Frank Jerome and seconded by David Wright, the meeting was adjourned at 7:10 p.m.

Approval of January 10, 2013 minutes.

Chairperson

Member

Member

Member

Member

Date: _____