

Columbus Redevelopment Commission
SPECIAL BOARD MEETING
January 2, 2013
12:00 p.m. Noon



MINUTES

The Redevelopment Commission met in special session on Wednesday, January 2, 2013 at 12:00 p.m. Noon 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; Susan Fye and Jayne Farber, Public Works and Safety Board members; Mark Maddox, Attorney and Co-owner of MSCB Group, LLC; Kerry Mann, Attorney for MSCB Group; and Matt Whisler, President of Detour Franchising, LLC. Several members of the public were also present.

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.

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) Election of Commission Officers for 2013: Following introduction by Mayor Brown of the topic of Commission officers to commence serving for 2013 and her expressed willingness and desire to continue serving as President until the formal / legal dissolution of Columbus Downtown, Inc., upon motion duly made by Frank Jerome, seconded by David Wright and opportunity for public comment, the Commission unanimously resolved to maintain the same officers as were serving at the end of 2012. The result of the vote was that Mayor Brown would continue serving for now as President, Sarah Cannon as Vice President, and David Wright as Secretary of the Commission.
- 2) Consideration of Amendment to Lease of Commons Space with Scotty's Greenhouse, LLC: Stan Gamso next reviewed the history of a contractual arrangement for occupancy of space in the Commons entered into in June 2011 between Columbus Downtown, Inc., as sublessor, and an entity named "Scotty's Greenhouse, LLC" (subsequently renamed "Greenhouse, LLC"), as sublessee,

expressly and exclusively for the purpose of operating a “Scotty’s Greenhouse” branded restaurant in the space. He explained that in recent conversation with Mr. Mann, who he identified as present at the meeting, it had been disclosed that Mr. Mann’s client, MSCB Group, had terminated its business relationship with an entity named “A Pots and Pans Production, LLC”, parent and restaurant management company for Scotty’s Brewhouse restaurants, which MSCB had engaged to operate the restaurant as a “Scotty’s” in the Commons, and as a result had closed the restaurant on December 30, 2012. He further explained that MSCB, owner of Greenhouse, LLC, was now proposing to open a new restaurant in the Commons space named “Detour American Grille & Bar” since it could no longer use the “Scotty’s” name, and was requesting an amendment to the sublease language to accommodate the change. Mr. Gamsso then recommended to the Commission that it defer to Mr. Maddox and Mr. Mann to present MSCB’s formal request to make the amendment and to explain their justifications for why the requested change should be made.

Mr. Maddox and Mr. Mann were then invited to introduce themselves, following which they also recognized the presence of Mr. Whisler at the meeting for their collective purpose of addressing the Commission’s concerns regarding the requested change. Mr. Mann reiterated that the only change being requested was to replace the “Scotty’s Greenhouse” name in the sublease with the “Detour American Grille & Bar” name to then match the Indiana Secretary of State’s records under which Greenhouse would be doing business in the Commons space, and that all other provisions of the sublease were being proposed to remain the same. They also described the reasons for terminating their relationship with A Pots & Pans Productions, LLC, which they indicated were the result of certain financial management issues, and re-affirmed the Greenhouse commitment to Columbus and to occupying the Commons space.

Mr. Maddox and Mr. Whisler then described in considerable detail the similar operational model and concept of the Detour American Grille & Bar restaurant as was Scotty’s, including sharing copies of a proposed menu with the Commission. Mr. Whisler also stressed their goal of maintaining the existing management team and employee staff for the Detour restaurant and to re-open a restaurant in the space as soon as possible. There was also a discussion with the Commission regarding Detour’s intent to honor outstanding Scotty’s gift cards, and of the ownership structure of the Detour chain and its other restaurants in the Indianapolis area.

While understanding and expressing sensitivity to their time pressure and urgency to re-open the restaurant, from both their business and employees’ perspective, the Commission pointed out that it had only learned of these events in connection with the Scotty’s closure recently through the media, it was a surprise to Commission members, and that the Commission needed time to assess the situation and its options, which it committed to do as expeditiously as possible. Mr. Maddox then sought to explain the reasons for not being able to provide more

direct and timely notice to the City and the Commission. The Commission also variously made the point to the MSCB representatives that despite the pressure on its business and employees to reopen a restaurant, it was MSCB's responsibility to cure the problems raised by its termination of the contract with A Pots and Pans Production, and not the Commission's, including what Kelly Benjamin characterized as its breach of contract by no longer being able to use the "Scotty's" name for the restaurant.

The Commission and representatives from MSCB and of Detour then discussed Detour's advertising and marketing plans to the community, including use of social media. The Commission also explained its thoughts regarding the intended character and use of the space within the Commons as a community gathering location and not just commercial space for restaurant and other retail business, and also that occupancy of the prominent subleased space by MSCB had been intended to be used for a restaurant like a "Scotty's" with a brand name that would be a regional customer draw, and not just any restaurant to fill the space. The Commission further explained that before any decisions could be made regarding changes to the sublease, it needed to understand all of the Indiana statutory requirements with respect to leasing of space in a public building such as the Commons, including whether the Commission would now be required to engage in a competitive bidding process for re-leasing or amending a lease / sublease for the space, and that it would also seek an opinion regarding the issues from the Indiana State Board of Accounts. A discussion then ensued in connection with how quickly the referenced compliance issues could be researched, and of the Detour's planned timeline for re-opening the restaurant. Commissioner Frank Jerome then exited the meeting for a prior engagement.

Mayor Brown next opened the meeting for public comment and read a letter addressed to the Commission from a current resident of Columbus, who had been a former resident of Carmel, Indiana, which letter enumerated a number of noise and other complaints regarding the operation of a Detour located on Main Street at the Monon Trail intersection in downtown Carmel, and warning of potentially similar problems with a Detour that might occupy the Commons. A copy of the letter is attached to these minutes. Representatives of Detour responded to the issues raised by the letter, and to certain other issues raised by members of the public present.

The Commission, Mr. Gamso and Mr. Mann discussed during the public session the confusion surrounding the prior need to amend the legal name of the party to the initial sublease with Columbus Downtown, Inc. from "Scotty's Greenhouse, LLC", which never had existed as a legal entity, to "Greenhouse LLC d/b/a Scotty's Burger Joint". Also discussed was the term and number of renewal options in connection with the sublease.

Following those discussions, the Commission determined to table any action in connection with the requested amendment, pending legal research to be done and

discussions to be held with the Indiana State Board of Accounts, and further discussions during another special meeting to be scheduled for sometime during the following week, being mindful of the timeframe desired by MSCB for re-opening of the restaurant as a “Detour American Grille & Bar”.

Adjournment

Upon motion duly made by David Wright and seconded by Sarah Cannon, the meeting was adjourned at 1:10 p.m.

Approval of January 2, 2013 minutes.

Chairperson

Member

Member

Member

Member

Date: _____