



HEALTH, EDUCATIONAL, AND HOUSING FACILITY BOARD

**City of Chattanooga, Tennessee
MONTHLY MEETING MINUTES**

**John P. Franklin City Council Building
J.B. Collins Conference Room
1000 Lindsay Street
Chattanooga, TN 37402**

**for
May 26, 2021
12:00 p.m.**

Present were Board Members: Hicks Armor (Chair), Richard Johnson, Amanda Jelks (Secretary), Dr. John A. Schaerer, Charles D. Paty, and Alexa C. LeBoeuf. Absent was Gregg Gentry (Vice-Chair).

Also present were Phillip A. Noblett (City Attorney); Tony Sammons and Sandra Gober (ECD); and Jason Payne (Public Works Engineering).

Mr. Armor called the meeting to order, confirmed the meeting advertisement, and established that a quorum was present.

Mr. Noblett advised the Board that a quorum for meetings will be five (5) members. Mr. Armor welcomed Ms. LeBoeuf, Mr. Paty, and Dr. Schaerer to the Board. This is their first in-person meeting.

MINUTES APPROVAL FOR THE FEBRUARY 24, 2021, MEETING

On motion of Dr. Schaerer, seconded by Ms. Jelks, the minutes of the February 24, 2021, meeting, were approved.

There was no person present wishing to address the Board.

1. Mr. Armor presented the next order of business: **“A RESOLUTION AUTHORIZING THE CHAIR OR VICE-CHAIR OF THE HEALTH, EDUCATIONAL, AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, TO EXECUTE THE ATTACHED EASTSIDE UTILITY DISTRICT WATERLINE EASEMENT AND EXECUTE ALL DOCUMENTS RELATED TO THE EASEMENT AND AMENDING THE VOLKSWAGEN LEASE.” (HEB2021-06)** Mr. Jason Payne stated that this item is related to the Ferdinand Piech Way extension project, and the easement was authorized by this Board previously. Mr. Armor asked that he is assuming that they have to make some waterline adjustments while there is an easement that runs across the Volkswagen lease property. We are the leaseholders on parts of that property.

Mr. Noblett stated that whenever Volkswagen came in, there were grants issued by the State of Tennessee. In 2008 and 2009, those grants were issued in part to the Industrial Development Board for the manufacturing part of the plant, and then to the HEB for portions that dealt with the training facility. Because of that, in order for there to be grant money and PILOT money going into the project, you have to take ownership of that property during that time. Anytime you have a dispute over who is the owner of the property, they have to come to the HEB and that easement would have to be granted by the HEB while that is in effect. After the PILOT is over, it would revert back to Volkswagen under the agreement, and from that point on, they will be granting the easements. While it is in the name of the HEB, the Board has to grant easements. This is simply for a portion of the right-of-way to allow them to run the waterlines down the road for the folks at Eastside. Mr. Armor stated that when we have a PILOT project, we typically hold the leases on the ground.

Mr. Johnson asked if there is any impact to Volkswagen. Mr. Noblett answered yes, they want water. It is along Ferdinand Piech Way on the road coming in. After further discussion, Mr. Johnson made a motion to approve the resolution, seconded by Ms. Jelks, and the resolution was unanimously approved.

Mr. Noblett stated that the reason for the resolution is that anytime we are doing something there needs to be board action, not just individual action. That is the reason the body makes the decision as opposed to Mr. Armor signing off on documents. For this easement, the HEB owns the property. The Board has now made a decision that the easement has been granted on this property for anything that the Board owns.

DISCUSSION – PATTEN TOWERS LAWSUIT

Mr. Noblett stated that the Board has previously been involved in a PILOT agreement with a group called Elmington Capital Group, Elmington Property Management, Patten Affordable Partners, LP. The HEB is currently the owner of title to the property of Patten Towers. This should be a claim under the Tort Liability Act if there is an argument to the City. This is the first one Mr. Noblett has been aware of that we have been sued. A management group is operating an extended stay place and a person actually decides that they will lean out of the window talking to somebody down below, maybe in particularly an inebriated state, fall out of the window down five floors, and the hit the front sidewalk.

We have body cam information of where that incident occurred. We were actually talking to one of the police officers about this case being filed. He said he was there whenever the incident occurred and went up and did a search of the room. We have all the body cam information where the fellow was staying. The room he was in was not necessarily a room he was supposed to be in. There was a whole lot of beer bottles in that room showing up on the body cam. He fell out of the window and a lawyer in Knoxville is suing everybody in sight for \$2.5 million in connection with that incident. We were served on May 13th.

Mr. Noblett wanted to make sure the Board is aware that they are simply naming the HEB, because the HEB is the owner of record of that property during a PILOT deal. We are going to be looking at the Lease Agreements in connection with the City and Elmington Capital and Patten Affordable Partners which should say if there is any risk in their operation that they will indemnify

and hold the City and HEB harmless. We are the actual owners of the property of record, and they are suing for so much money. They are looking for any contribution they can get from any source.

Mr. Noblett does not anticipate that we would pay any money in this case, but we are looking at what is going on, and thought the Board should be aware since this is the first one Mr. Noblett has seen. Potentially, that could occur anytime that you have ownership to the property through a PILOT agreement. The Summons went to the whole board. Mr. Noblett will file an answer or Motion to Dismiss. Mr. Noblett's only concern is getting in affidavits and things like it and will probably file an Answer then a Motion for Summary Judgment. Mr. Noblett will represent the HEB unless the Board wants someone else.

Mr. Armor stated that this is where taking title to the property, just like the easement, puts the Board in a unique position because we grant a PILOT which is basically a tax exempt loan or bond issue, we hold title. When you do a PILOT or bond issuance, what they can do in that building is listed can't do, and we specifically eliminated the short term issue with the Market Center, the same type of thing. The intent is for low to moderate or for permanent housing or apartments. It is not meant to be a quasi-hotel. Whoever is managing the complex that this not fulfilling the term of the lease or agreement with them, they are outside the scope of what they are doing.

Mr. Noblett stated it will be a question about did Elmington or Patten Affordable Partners do anything wrong or is it just simply a situation where somebody is leaning out too far after drinking and fell out the window. The argument is there should be some sort of protection like screening or bars over the windows to keep people in, but that also sounds a whole lot like the Hamilton County Jail if you are not careful. The Board members were not sued personally. There is no personal liability involved. We have agreements stating that it is the Board as a whole whenever something issued. It simply sued the Board because the HEB is the title owner of the property during the PILOT.

Mr. Armor stated it would be different if you owned personal property and rented it, it would come back to you, because it can be used by anybody. Whereas this one is limited on what they can do. If they were doing short term rentals and outside the scope of what they could do, puts a different piece on it.

Mr. Paty asked if the Elmington or Patten Affordable Partners have insurance? Mr. Noblett stated they are required to have insurance. This is simply a lawyer who is filing his complaint on the statute of limitations date trying to preserve something on a wrongful death claim. Mr. Paty said that it exceeded the recovery amount in Tennessee anyway. Mr. Noblett stated that as to the City on any claim, if the HEB is a governmental entity, which he believes it is under the Tort Liability Act, is \$300,000. The pain and suffering you are limited anyway.

Mr. Noblett is just informing the Board. If the Board wants somebody else to represent the Board, you can choose that, but Mr. Noblett will file an Answer.

DISCUSSION – COUNTRY VILLA APARTMENTS

Mr. Noblett stated this was a bond issuance for property in 1983 and 1985 for a unit called County Villa Ltd. This particular property went into a default situation on bonds that were issued by First American National Bank and the federal government with HUD got involved. The Board

was sued in 1997 and ended up getting dismissed as a result of the defaulting bonds. Mr. Noblett has been in contact with the U.S. Attorney's office representative, Kent Anderson, who handled this case with Shelly Parker before Mr. Noblett and they got the suit dismissed.

Mr. Chan had either his or his family's bonds and was holding them for 30 years. At the end, they were supposed to be paid off on a \$5,000 bond, and he was wanting to know where his money was. Mr. Noblett told Mr. Chan that it looked like everything went out of the way back 25 or 30 years ago whenever the default occurred. Mr. Noblett does not know if Mr. Chan is going to get so excited that he brings a suit or something else to this body for a \$5,000 amount. Mr. Noblett would not think that this is much of a big deal except we have three different groups of people asking about those bonds, some of which were two years ago, and some were back in 1997. We told everyone the same thing that there was a default that occurred, went into some type of HUD receivership, and HUD may have had some sort of money. The bank was telling people where they could file a claim with the state about uncovered funds which would probably be two cents on the dollar from a state claim fund. No one has done that to this point.

Mr. Chan has not filed suit but called several times. He is out in California and all the other people who have bought these bonds are in California. It is a frustrating thing on who is responsible for those bonds issued by this body and supposedly they were in the bank to be able to be paid out and then the default on the bonds occurred. Mr. Noblett would argue there is clearly a statute of limitations issue in this case since things were going on since 1997 but wanted the Board to be aware in case we get anything more filed.

TRAINING SESSION

Mr. Noblett stated that the Board should have a training session on open meetings, sunshine law, bonds, and PILOTs. Everyone will look for the previous slide show presentation. It was decided to do the training before the next meeting from 10:45-12:00.

Mr. Armor thanked the Board members for agreeing to serve and does not want the Board to feel inadequate on what they are voting on. We will try to remind the Board each time of what they are voting on, what it is about, so they will have at least some grasp of what we are doing.

There being no further business, the meeting adjourned at 12:30 p.m.

Respectfully submitted,


Amanda Jelks, Secretary

APPROVED:


Gregg T. Gentry, Vice-Chair