



**West Point City  
Community Development and Renewal Agency**

West Point City Hall  
3200 West 300 North  
West Point City, UT 84015  
June 2, 2015

**Board Chair**  
Erik Craythorne  
**Board**  
Jeff Turner, Vice Chair  
Gary Petersen  
Jerry Chatterton  
Andy Dawson  
R. Kent Henderson  
**Executive Director**  
Kyle Laws

**Community Development and Renewal Agency Organizational Meeting**

Minutes for the Community Development and Renewal Agency of West Point City held at the West Point City offices, 3200 West 300 North, West Point City, Utah 84015 on June 2, 2015 at 7:50pm, with Chairman Erik Craythorne presiding.

**CDRA BOARD MEMBERS PRESENT** – Erik Craythorne, Chairman; Jeff Turner, Vice-Chairman; Kent Henderson, Board Member; Jerry Chatterton, Board Member; Andy Dawson, Board Member; Gary Petersen, Board Member; Kyle Laws, Executive Director; and Misty Rogers, Secretary

**VISITORS** – Evan Nelson, Boyd Davis, Randy Sant, Troy Wolverton, Rob Ortega and Doug Zaugg

1. **Call to Order** – Chairman Craythorne welcomed those in attendance.
2. **Communications and Disclosures from the CDRA Board** - no comment
3. **Communications from Staff** – no comment
4. **Consideration of Adoption of Minutes from the May 19, 2015 CDRA Meeting** – Mr. Kyle Laws

Mr. Dawson motioned to adopt the minutes from the May 19, 2015 CDRA Meeting.  
Vice-Chair Turner seconded the motion.  
The Board unanimously agreed.

5. **Consideration of Resolution No. R06-02-2015A, the Adoption of FY2016 Tentative Budget for CDRA of West Point City and All Related Agency's** - Mr. Evan Nelson

- a) Public Hearing – no comment

Mr. Petersen motioned to close the public hearing.  
Mr. Henderson seconded the motion.  
The Board unanimously agreed.

- b) Action

Vice-Chair Turner motioned to approve Resolution No. R06-02-2015A, the Adoption of FY2016 Tentative Budget for CDRA of West Point City.  
Mr. Henderson seconded the motion  
The Board unanimously agreed

Roll Call Vote:

Mr. Chatterton – yes  
Mr. Dawson – yes  
Chairman Craythorne – yes

Mr. Petersen - yes  
Vice-Chairman Turner - yes  
Mr. Henderson - yes

6. Consideration of Resolution R06-02-2015B, Approving a Development Agreement between Smith's, Wright Development, and the CDRA of West Point – Mr. Randy Sant

Mr. Sant informed the Board that the Developer's Agreement that had been included in their packet has changed as Smith's has recently submitted comments and changes to the agreement. Mr. Sant expressed the importance of outlining obligations within the agreement.

Mr. Sant stated the following sections have had significant changes that have been proposed by Smith's.

1. Development

iv. Notwithstanding anything else in this Agreement to the contrary, as a condition precedent to each and all of the Agency's obligations to Smith's under this Agreement, Smith's shall:

- 1) Commence construction, subject to the City granting all necessary approvals for the same, of a new grocery retail store, with a minimum of at least 124,000 square feet of retail floor space (the "**Store**"), on the Smith's Property on or before July 1, 2015; and
- 2) Substantially complete construction of the Store, as evidenced by obtaining a temporary certificate of occupancy for the Store, on or before July 1, 2016; provided, that, the foregoing date shall be extended automatically for any delays by the City and/or Agency in granting necessary approvals and/or any force majeure event (as defined below) by the number of days that such condition exists or such greater time as may be agreed to by Smith's and the Agency.

Smith's has requested leeway with the start of construction and opening of the store. Mr. Sant stated these changes are acceptable if Smith's understands that the City has no obligation to fund until the store has been granted a certificate of occupancy. He then expressed the importance of defining times within the agreement.

Mr. Sant stated that Smith's has removed section (vi) from the Developer's Agreement:

- vi. If there is ever, at any time and for any reason, insufficient Available Tax Increment (as defined in Section 2 *below*) for the Agency to timely make a debt service payment on the bonds issued under Section 1(f) *below*, then Smith's shall, shall be responsible for paying any such deficiency of the debt service payment that the Available Tax Increment is not able to cover to the Agency.

Mr. Sant stated removing section vi from the Developer's Agreement is significant and should not be deemed acceptable. Smith's has asked the CDRA to upfront money for the development. In order for the CDRA to upfront the money to Smith's, the CDRA must obtain a bond. The CDRA will need the tax increment from the development to pay for the bond. If there is a shortfall in tax increment because Smith's didn't build a 124,000 sq. foot store or the opening is delayed or the store is closed, the CDRA needs to be guaranteed tax increment to be able to pay the debt. Mr. Sant stated removing section vi from the Developer's Agreement is unacceptable. He recommended the CDRA negotiate an alternative solution with Smith's.

Mr. Sant stated if Smith's is not comfortable with section vi, then the CDRA should not issue a bond and Smith's should be given the increment on an annual basis. He stated that he has requested a meeting with Smith's and members of Staff to discuss his concern with the changes to the Developers Agreement.

- c) Agency's Utility Line Obligations. The Agency shall use its best efforts to cause the relocation of all existing power, communications, and fiber optic utility lines to the area depicted on the Site Plan as "**Utility Lines**". Additionally, the Agency shall use its best efforts to enter into an Interlocal Cooperation Agreement with the City, under which the City shall agree to also use its best efforts, through its various franchise agreements, to cause the relocation of the Utility Lines. If there are any costs relating to the relocation of such Utility Lines then Smith's and the Developer shall be responsible for paying those costs in the proportions and in the manner set forth in the

Shopping Center Development Agreement. The Agency and City shall not be responsible for any costs relating to the relocation of the Utility Lines.

Smith's has removed the "best efforts" from the agreement. Mr. Sant stated the CDRA does not have any franchise agreements, therefore the CDRA cannot agree removing "best efforts". Because the City has relationships with the utility companies, the City will be asked to use their "best efforts" to cause the relocation of the utility lines.

- d) Agency to Pay Certain Development Fees for the Store. The Agency hereby agrees to pay, or otherwise make arrangement with the City for the Agency's payment of, all of Smith's impact fees and building permit fees charged by the City in connection with the development and construction of the Store. Additionally, the Agency hereby agrees to pay, or otherwise make arrangement for the Agency's payment of, culinary water share fees in connection with the Store in the amount of \$17,500.00. For purposes of clarification, the Agency will not pay (or otherwise make arrangement for payment of) any impact or development fees imposed by any other governmental entities (other than the City) including, without limitation, fees imposed by the North Davis Fire District or the North Davis Sewer District; Smith's will pay all development and impact fees imposed by any entity other than the City.
  
- f) Agency to Issue Bonds. The Developer and Smith's have indicated, and the Agency has determined, that without public participation, including the issuance of bonds to pay for certain initial development fees and costs as described in more detail below, the cost to develop and construct the desired improvements on the Shopping Center creates a significant barrier to attracting private capital and investment in the Project Area. Accordingly, the Agency shall issue bonds in the amount of \$1,107,000.00 (plus usual and customary costs of issuance) to pay for certain improvement costs relating to the Shopping Center. From the bond proceeds, the Agency will, within fifteen (15) days after Smith's obtains a temporary certificate of occupancy for the Store, pay cash to Smith's in the total amount of \$1,107,000.00 in order to reimburse Smith's for costs actually incurred as follows: Off-site Improvements in the amount of \$512,000.00; Offsite Sewer Reimbursement in the amount of \$145,000.00.00; and Import, Place & Compact Fill in the amount of \$450,000.00.

Mr. Sant stated the only fee that will be waived is the development fees charged by the City. The impact fees for other entities cannot be waived. He stated the CDRA will issue a bond in the amount of \$1,107,000 payable to Smith's for the items outlined in the agreement.

- 2) Priorities for Use of Tax Increment. Notwithstanding anything else in this Agreement to the contrary, this Section 2 shall govern the priority and payment of tax increment generated from the Project Area and actually received by the Agency under the Interlocal Agreements (the "**Available Tax Increment**") and allocated for use under the "Development" portion of the Project Area Budget. The Agency shall apply the Available Tax Increment according to the following rules of priority:
  - a) First, the Agency shall make all debt service payments on the bonds issued under Section 1(f) *above*;
  - b) Second, the Agency shall use any remaining Available Tax Increment (if any) to repay the City for any loan(s) made by West Point City to the Agency in connection with the creation or administration of the Project Area;
  - c) Third, the Agency shall use any remaining Available Tax Increment (if any) to pay the City for any unpaid impact or permit fees in connection with the development and construction of the Store;
  - d) Fourth, the Agency shall use any remaining Available Tax Increment (if any) to pay the Developer for the dedication of 300 North to the City;
  - e) Fifth, the Agency shall use any remaining Available Tax Increment (if any) to the Developer (in the case of reimbursement for impact fees paid on Pads B, C and E) and/or the City (in the case of reimbursement for waived impact fees on Pads A, D and F), *pari passu*, under Section 1(e) *above*; and

- f) Finally, the Agency may, in its sole discretion, use any and all remaining Available Tax Increment for any other legal purpose.

Mr. Sant said it is unclear if there will be enough funding to payback Mr. Gary Wright, the developer of the project. He expressed his appreciation to Mr. Wright for his willingness to support the project.

- 5) Restriction on Permanent Closure of the Store. ~~Smith's shall not, without the prior written approval of the Agency Nothing in this agreement shall be deemed to create or impose on Smith's a covenant to open or operate a store and shopping center. Smith's failure to open or operate a store shall not be deemed a default hereunder. However, in the event Smith's fails to open a store pursuant to 1(a) above the agency shall have no obligation to pay Smith's under section 1(f)., Moreover if after opening a store Smith's permanently close the Store before until the bonds described in Section 1(f) above have been repaid in full. Then Smith's shall reimburse the agency the amount equal to the difference between amount agency paid Smith's under section 1(f) and the total amount of available tax increment generated by the project are up to and including the Smith's date that they cease to operate the store. If Smith's violates the provisions of this Section 5 then the Agency shall have no further obligation to pay any Available Tax Increment to Smith's for any reason, and Smith's shall not be released of any of its duties, agreements, obligations, liabilities, or responsibilities in this Agreement.~~

Mr. Sant stated section 5 has been reworded. With minor changes it will accomplish what is needed within the agreement.

Mr. Sant stated under the agreement, the CDRA will have obligations as an agency which will include the issuing of a bond in the amount of \$1.7 million and waive impact fees. The CDRA will obtain a bond in the \$1.7 million; the money will be paid to Smith's subject to conditions within the Developer's Agreement. The agency must enter into an Interlocal Agreement with West Point City for the waiving of impact fees and the charging of them to the CDRA. Once the Developer's Agreement has been finalized, an Interlocal Agreement between West Point City and the CDRA will be presented for action.

Mr. Sant thanked Mr. Gary Wright and Mr. Troy Wolverton for their assistance with the project area and the Developer's Agreement. He then stated Resolution R06-02-2015B states the Developer's Agreement will not be signed by the Chairman until a final agreement has been approved by all parties. Mr. Sant recommended the board approve Resolution R06-02-2015B.

On behalf of the board, Chairman Craythorne expressed his appreciation to Mr. Sant, Mr. Wright, Mr. Wolverton and Staff for their assistance with the Smith's project.

Mr. Petersen motioned to approve Resolution No. R06-02-2015B, a Development Agreement with Smith's, Wright Development, and the CDRA of West Point City subject to the final Developer's Agreement.

Mr. Dawson seconded the motion.

The Board unanimously agreed.

Roll Call Vote:

Mr. Henderson – yes

Vice-Chairman Turner – yes

Mr. Petersen – yes

Chairman Craythorne - yes

Mr. Dawson - yes

Mr. Chatterton - yes

**7. Motion to Adjourn**

Mr. Turner motioned to adjourn.

Mr. Dawson seconded the motion.

The Board unanimously agreed.

Approved this 16<sup>th</sup> day of June, 2015

  
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Agency Chairman, Mr. Erik Craythorne

  
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Executive Director, Mr. Kyle Laws



  
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Agency Secretary, Mrs. Misty Rogers