

Minutes
Wylie Economic Development Corporation
Board of Directors Meeting

Friday, October 16, 2015 – 6:30 A.M.
WEDC Offices – Conference Room
250 South Highway 78 – Wylie, Texas

CALL TO ORDER

Announce the presence of a Quorum

President Marvin Fuller called the meeting to order at 6:37 a.m. Board Members present were Mitch Herzog, Demond Dawkins and Todd Wintters.

Ex-officio member Mindy Manson, City Manager was present.

WEDC staff present was Executive Director Sam Satterwhite and Sr. Assistant Angel Wygant. Also present was Wylie PD Officer Donald English.

CITIZEN PARTICIPATION

Tommy Pulliam was in attendance but did not request to speak. With no citizen participation, Mr. Fuller proceeded to Action Items.

ACTION ITEMS

ITEM NO. 1 – Consider and act upon approval of the September 21, 2015 Minutes of the Wylie Economic Development Corporation (WEDC) Board of Directors Meeting.

Marvin Fuller called to Staff's attention a typographical error on page 4 of 12. "2.53 acre tract" should read "1.53 acre tract". Staff noted the correction.

MOTION: A motion was made by Mitch Herzog and seconded by Todd Wintters to approve the September 21, 2015 Minutes of the Wylie Economic Development Corporation as amended. The WEDC Board voted 4 – FOR and 0 – AGAINST in favor of the motion.

ITEM NO. 2 – Consider and act upon approval of the September 2015 WEDC Treasurer's Report.

MOTION: A motion was made by Todd Wintters and seconded by Mitch Herzog to approve the September 2015 WEDC Treasurer's report. The WEDC Board voted 4 – FOR and 0 – AGAINST in favor of the motion.

ITEM NO. 3 – Consider and act upon issues surrounding a Performance Agreement between the WEDC and VIAA Properties, LLC.

Staff reviewed that on September 21, 2015 the WEDC Board of Directors approved a Performance Agreement between the WEDC and VIAA Properties (Wylie Village Dentistry). In error, staff included inaccurate square footage for the new commercial facility and required construction costs.

First of all, staff presented a building size of 8,352 square feet which included all attic storage. While this figure was provided by VIAA, staff should have confirmed the square footage on the building permit which is represented as 6,094 square feet. Second, Dr. Kumar indicated to staff that building costs had escalated from an original projection of \$1.12 mm to \$1.3 mm. With a performance measure included in the Agreement of \$1.3 mm, Dr. Kumar did not want to be penalized should savings be identified prior to the end of construction. Dr. Kumar requested that the benchmark for construction cost be reduced to \$1.2 mm.

Staff recommended that the WEDC Board of Directors approve an Amended Performance Agreement between the WEDC and VIAA Properties, LLC.

Todd Wintters noted that the square footage number in the first paragraph under RECITALS still read 8,352 but had been updated in other references throughout the document. Staff noted the change to be made prior to execution.

MOTION: A motion was made by Mitch Herzog and seconded by Todd Wintters to approve an Amended Performance agreement between WEDC and VIAA Properties, LLC with the noted correction. The WEDC Board voted 4 – FOR and 0 – AGAINST in favor of the motion.

Staff noted that Mr. Randy Hullett would not be available to join the meeting until 7:00 a.m. to answer potential questions pertaining to Action Items IV – VIII. Mr. Fuller moved to Discussion Item IX until such time as Mr. Hullett was available.

DISCUSSION ITEMS

ITEM NO. 9 – Staff report: Staff reviewed issues surrounding Performance Agreements between the WEDC and: Woodbridge Crossing, Ascend Custom Extrusions, CSD Woodbridge, Exco Tooling Solutions, Von Runnen Holdings, All State Fire, WEDC Staffing, 605 Commerce, 106 N. Birmingham and regional housing starts.

Woodbridge Crossing

Attached for the Board's review was the Sales Tax Reimbursement Report which identifies all sales taxes received through July 2015 within Woodbridge Crossing for the City General Fund, the WEDC, and the 4B. As a reminder, the City and WEDC reimbursed 85% of all sales tax generated within Woodbridge Crossing through September 2013 with the reimbursement percentage reduced to 65% thereafter. Due to the default under the Amended and Restated Performance Agreement, Woodbridge Crossing is only eligible to receive up to \$6 million in

sales tax reimbursement through September 2021 as opposed to the maximum reimbursement of \$12 million originally contemplated.

\$3,058,369.97 in reimbursement has been earned through September 2015 with net receipts of \$2,336,108.78 after reimbursements. As well, it is estimated that \$3.5 mm has been paid in ad valorem taxes to the City of Wylie (excluding the WISD).

As shown on the Sales Tax Reimbursement Report, \$99,628.08 was generated in sales tax in July 2015 versus \$83,202.25 in July 2014. This increase represents a 20% gain over 2014 receipts.

Ascend Commercial Lease and Performance Agreement

Attached for the Board's review was the Ascend Custom Extrusion Critical Dates Analysis and Performance Agreement Monitoring Procedures. Payment #4 of 5 for the Economic Incentives has been funded with Ascend meeting all Performance Obligations within Sections A and B of the attachment.

Also attached was the summary of a second Performance Agreement between the WEDC and ACE which was approved in December 2013. Payment #2 of 4 has been funded with Ascend meeting all Performance Obligations within Section A of the attachment.

CSD Woodbridge Performance Agreement

On July 15, 2013 a certificate of occupancy (CO) was issued for Kroger Marketplace. Beginning October 1, 2013 and ending October 1, 2023, Clark Street Development is eligible to receive a ½ cent sales tax reimbursement from the WEDC (City of Wylie not part of sales tax reimbursement agreement). Quarterly payments will be made to Clark Street based upon the data provided by the Comptroller. In addition to the \$100,000 reimbursement incentive paid by the WEDC at CO, Clark Street is eligible to receive cumulative incentives of \$1,100,000 over the life of the Agreement.

Along with a summary of the Performance Agreement, a Sales Tax Reimbursement Report was included for the Board's review.

Exco Tooling Solutions

Exco has begun construction of its 30,000 square foot facility within Premier Business Park. All indications point to a temporary CO being issued by November 30, 2015 and Final CO is anticipated by December 31, 2015. As provided in the Summary of Performance Obligations, the WEDC will fund an \$87,000 incentive upon issuance of a CO followed by four payments of \$20,000 over the following four years.

Von Runnen Holdings

Von Runnen has encountered no significant delays in their construction schedule and anticipates a Certificate of Occupancy (CO) being issued no later than January 1, 2016 as required by the WEDC Performance Agreement. Upon issuance of a CO and confirmation of \$1.25 mm in construction costs, the WEDC will issue Incentive Payment No. 1 of \$20,000. Two additional payments of \$10,000 each will be issued over the following two years.

All State Fire Equipment

All State Fire Equipment was issued a building permit on July 2, 2015 and held their Ground-Breaking ceremony on September 18, 2015. Work is progressing well and ASFE appears to be on track to receive a Certificate of Occupancy well before the August 1, 2016 requirement per the Performance Agreement.

WEDC Staffing

Five applications have been received for the Assistant Director position. Staff will leave the posting open approximately two more weeks and then evaluate the application pool and determine a schedule for interviews. Should no strong application be received, staff will reevaluate the process and determine if alternative posting outlets are necessary.

605 Commerce

Representatives from W&M Environmental met with City staff and the City Attorney to begin the process for creating a Municipal Setting Designation (MSD). The Board was reminded that the creation of the MSD establishes a process within the Wylie City Limits by which restrictions on ground water use for a particular area can be established, thus reducing the clean-up requirements for an impacted area. W&M will present the process to the Wylie City Council tentatively in November in anticipation of creating the MSD by January 2016. In addition to Mr. Winters, staff will request an additional Board member attend the Council work session.

106 N. Birmingham

Staff presented a proposal from Taylor & Son under which a reduced purchase price can be negotiated in anticipation of increased value to the WEDC property. The increased value being discussed is potential upgrades to the existing building or demolishing the existing structure and starting over.

Regional Housing Starts

Twenty-four homes were permitted in Wylie for September 2015. Sachse, Lavon, and Murphy permitted a combined thirty-seven homes over the same period.

No action is requested by staff for this item.

Randy Hullett joined the Meeting at 7:05 a.m. via conference call.

ITEM NO. 4 – Consider and act upon a Real Estate Sales Contract between Joe H. Edge & Barbara J. Edge and the WEDC for the purchase of 1.23 acres located at 398 South Highway 78, Wylie, Texas, *further* authorizing President Marvin Fuller to execute all closing documents necessary to effectuate the purchase of said property.

Staff reminded the Board that on September 21, 2015 the WEDC Board of Directors approved Real Estate Contracts under which Edge sells property on Hwy 78 to WEDC, WEDC sells Linduff property to Edge, and a Performance Agreement between WEDC and Mann Made. The Board gave staff some latitude to negotiate the final documents, but required that any change to “business points” be brought back to the Board for approval. Since 9-21-15, the Edge attorney has been much more involved and with significant interaction with WEDC Counsel has developed a final set of documents that are ready to be approved so that all parties can move forward.

Under the previous Real Estate Contracts and Performance Agreement, there were simultaneous closings on all properties and the WEDC was to perform modifications to the Linduff building post-closing. Under the current scenario, Edge and WEDC execute Real Estate Contracts under which the Edge property on Hwy 78 and the WEDC/Linduff property are conveyed to either party, Deeds are executed by both parties and the filing of the same is governed under the terms of an Escrow Agreement with Lawyers Title, WEDC closes on the Linduff property and performs all modifications to the building, and closing on the two Real Estate Contracts takes place after a Certificate of Occupancy (CO) is issued for the Linduff building. Should the WEDC complete all improvements per the final plans and Edge not close per the terms of the Agreements, the Escrow Agent will file the executed deeds with Collin County and take possession of the Edge property

Following completion of the modifications to the Linduff property a temporary CO will be issued so that equipment can be moved from the existing Mann Made location, installed, and become operational. Only after all equipment requiring electricity, gas, or water is installed will a Final CO be issued.

Should the improvements be performed post-closing as was originally contemplated, the Edge’s would incur an immediate tax liability on the cost of improvements (\$549,450). Under the current process, the Edge’s will only pay taxes on the purchase price of the Highway 78 property.

In considering the risk to the WEDC under this process, the worst-case scenario would be that the WEDC closes on Linduff, makes modifications to the Linduff building, and Edge decides not to close and sues the Escrow Agent to stop the filing of the Deeds. While staff cannot provide a 100% guaranty that scenario will not take place, staff believes that our level of risk is limited to not completing the improvements to the Linduff building per the plans and specifications developed by Pulliam Construction Management and approved by Joe Edge. Further, there will

be no open ended ability for Edge to make changes to construction plans without being financially responsible.

While this scenario does create opportunities for problems to arise, it does have all parties acknowledge specifically what must take place for the real estate transaction to close with that being the completion of the improvements of which the WEDC is wholly in control.

Within the Real Estate Sales Contract under which Edge sells 1.23 acres to WEDC, the following summarizes the terms:

- i. Purchase price = \$750,000
- ii. The Contract is executed simultaneously with the Contingent Contract under which WEDC conveys the Linduff property to Edge
- iii. Environmental assessment of the Edge property has been completed and acceptable to Whitehead & Mueller
- iv. Edge shall have the right to maintain possession of the property 60 days post-closing
 - a. WEDC will pursue a CO for Linduff property as quickly as possible to facilitate closing. Additional 60 days allowed to complete the move of all personal property.
- v. \$5,000 escrow deposit will be paid to Lawyers Title within two days
- vi. The closing date which is being considered currently and will be inserted into Contract will be January 22, 2016

While not specifically impacting this Contract but impacting the entire process, the closing date on the Linduff property has been extended until October 21, 2015. Mr. Linduff has indicated that it is his preference that the closing not be extended again.

Staff recommended that the WEDC Board of Directors approve a Real Estate Sales Contract between Joe H. Edge & Barbara J. Edge and the WEDC for the purchase of 1.23 acres located at 398 South Highway 78, Wylie, Texas, and further authorizing President Marvin Fuller to execute all closing documents necessary to effectuate the purchase of said property.

MOTION: A motion was made by Todd Wintters and seconded by Mitch Herzog to approve a Real Estate Sales Contract between Joe H. Edge & Barbara J. Edge and the WEDC for the purchase of 1.23 acres located at 398 South Highway 78, Wylie, Texas, and further authorizing President Marvin Fuller to execute all closing documents necessary to effectuate the purchase of said property. The WEDC Board voted 4 – FOR and 0 – AGAINST in favor of the motion.

ITEM NO. 5 – Consider and act upon a Real Estate Sales Contract between the WEDC and Joe H. Edge & Barbara J. Edge for the sale of property located at 710 Business Way, Wylie, Texas, more specifically known as Lot 10R, Block 1 of 544 Industrial Park, further authorizing President Marvin Fuller to execute all closing documents necessary to effectuate the sale of said property.

Staff reviewed the Real Estate Sales Contract under which WEDC sells 2.107 acres (Linduff tract) to Edge. The following summarizes the terms:

- i. An environmental site assessment has been performed by Whitehead & Mueller and will conform to the requirement identified within Section 3.04 (b)
- ii. WEDC will provide certain build-to-suit improvements as provided for in Section 3.07 and Exhibit C
 - a. Plans have been informally acknowledged as being complete with final and formal acknowledgement created by execution of Real Estate Contract
 - b. Plans will be submitted to the City of Wylie for Permit upon execution of the Real Estate Contract
 - c. WEDC required to achieve Substantial Completion/CO within 150 days
- iii. Closing shall be on or about January 22, 2016 but not later than March 21, 2016
- iv. Edge shall employ a construction manager which will act as “Purchaser’s Representative” (PR)
 - a. PR discretion to determine whether or not Substantial Completion has been achieved is limited to completing the improvements according to the Final Plans
- v. Section 9.02 (e) requires that any changes to the Final Plans after Real Estate Contract is executed will be at the option and expense of Edge

Staff recommended that the WEDC Board of Directors approve a Real Estate Sales Contract between the WEDC and Joe H. Edge & Barbara J. Edge for the sale of property located at 710 Business Way, Wylie, Texas, more specifically known as Lot 10R, Block 1 of 544 Industrial Park, further authorizing President Marvin Fuller to execute all closing documents necessary to effectuate the sale of said property.

MOTION: A motion was made by Mitch Herzog and seconded by Demond Dawkins to approve a Real Estate Sales Contract between the WEDC and Joe H. Edge & Barbara J. Edge for the sale of property located at 710 Business Way, Wylie, Texas, more specifically known as Lot 10R, Block 1 of 544 Industrial Park, further authorizing President Marvin Fuller to execute all closing documents necessary to effectuate the sale of said property. The WEDC Board voted 4 – FOR and 0 – AGAINST in favor of the motion.

ITEM NO. 6 – Consider and act upon an Escrow Agreement between the WEDC and Jo H. Edge & Barbara J. Edge.

Attached for the Board’s review was an Escrow Agreement between Joe & Barbara Edge, the WEDC, and Lawyers Title Insurance Corporation. Staff explained that following execution of the Real Estate Contracts and Escrow Agreement, the executed Special Warranty Deeds will be delivered to the Escrow Agent.

Sections 3 (a) and (b) outline the Escrow Agent’s responsibilities should either party default. Under Section 3 (a), should the WEDC default in its obligations under the contract to complete the Retrofit Improvements or deliver the Purchase Price of the Edge property (\$750,000), the

Escrow Agent will return the executed deeds to each respective party. Under Section 3 (b), should Edge fail or refuse to close with WEDC being in compliance with the Agreements, the Escrow Agent will deliver the executed Edge Deed to WEDC and the executed WEDC deed to Edge. Section 3 (b) will require the Purchaser's Representative to confirm in writing that the WEDC has completed the Retrofit Improvements in accordance with the Plans and Specifications.

Should the parties be in disagreement, the Escrow Agent may choose to do nothing until the parties are in agreement. This scenario does present a potential problem, but staff still believes that the approved Plans for the Retrofit Improvements are key to preventing a disagreement as to the scope of the remodeling and that the WEDC level of risk is limited to not completing those Improvements.

Staff recommended that the WEDC Board of Directors approve an Escrow Agreement as presented.

MOTION: A motion was made by Todd Wintters and seconded by Demond Dawkins to approve an Escrow Agreement as presented. The WEDC Board voted 4 – FOR and 0 – AGAINST in favor of the motion.

ITEM NO. 7 – Consider and act upon a Performance Agreement between the WEDC and Mann Made, Inc. – II.

Staff reviewed a Performance Agreement which incorporated the new structure under which the Real Estate Contracts will be executed. The \$171,000 in Economic Assistance (\$171,000 moving costs) and \$155,000 penalty has not changed, nor have the Performance Measures changed under which Edge will be deemed in compliance/default under the Performance Agreement.

The performance requirements are identified in Section 3 and are as follows:

1. Mann Made principal place of business to remain in Wylie until such time as a certificate of occupancy (CO) is issued; and
2. Mann Made must maintain at least five employees with a weekly payroll of \$1,760; and
3. Mann Made must vacate 78 property within 60 days of CO; and
4. Mann Made must become operational on Business Way as evidenced by the extrusion of billet; and
5. Mann Made must not operate or consult for the operation of a third party extrusion company; and
6. Mann Made must stay current on all property taxes.

Staff recommended that the WEDC Board of Directors approve a Performance Agreement between the WEDC and Mann Made, Inc. – II.

MOTION: A motion was made by Mitch Herzog and seconded by Todd Wintters to approve a Performance Agreement between the WEDC and Mann Made, Inc. – II. The WEDC Board voted 4 – FOR and 0 – AGAINST in favor of the motion.

ITEM NO. 8 – Consider and act upon approval of AIA Document A134-2009 and AIA Document A201-2007 between the WEDC and Pulliam Construction Management, Inc.

Attached for the Board's review was a Standard Form of Agreement between Owner and Construction Manager (A134-2009) and General Conditions of the Contractor for Construction (A201-2007). Staff called to the Board's attention the Schedule of Values Exhibit within A134 which outlines the projected project cost is \$508,750 with a contractor's fee of \$40,700 (8%) totaling \$549,450. Under the cost plus structure, the WEDC will benefit from any savings from bids coming in under projections and conversely be responsible for any overages as well. Staff is aware that this presents a concern for the Board due to the potential for open ended expenses. Being that construction plans have been fully designed and ready to be submitted for permit as well as multiple bids in hand for almost every phase of construction prior to any contracts being executed, staff has a high level of comfort with projected costs. A significant layer of protection that WEDC has in place is that Pulliam Construction Management (PCM) has prepared thoroughly and there is very little opportunity for unknown expenses.

While not a part of this Agreement, a second layer of protection is provided to the WEDC within the Real Estate Contract under which WEDC conveys Linduff property to Edge following the completion of improvements. Under Section 9.02 (e) Changes under which any modification requested by Edge to the scope of work identified within the construction plans made part of the Agreements are the responsibility of Edge.

Mr. Bob Roeder of Abernathy, Roeder has reviewed the contracts and approved the format and substance of the documents. The only modification to the documents as presented is that the retainage fee will be increased from 5% to 10%. Mr. Pulliam was in attendance to answer questions from the Board.

Staff recommended that the WEDC Board of Directors approve AIA Documents A134-2009 and A201-2007 between PCM and the WEDC.

MOTION: A motion was made by Demond Dawkins and seconded by Mitch Herzog to approve AIA Documents A134-2009 and A201-2007 between PCM and the WEDC. The WEDC Board voted 5 – FOR and 0 – AGAINST in favor of the motion.

Mr. Pulliam departed the meeting at 7:43 a.m.

EXECUTIVE SESSION

Recessed into Closed Session at 7:43 a.m. in compliance with Section 551.001, et.seq. Texas Government Code, to wit:

Section 551.072 (Real Estate) of the Local Government Code, Vernon's Texas Code Annotated (Open Meetings Act). Consider the sale or acquisition of properties located near the intersection of:

- Cooper Drive and State Highway
- Regency & FM 544
- Martinez and Alanis

RECONVENE INTO OPEN MEETING

The WEDC Board of Directors reconvened into open session at 8:12 a.m. and took no action.

ADJOURNMENT

With no further business, President Fuller adjourned the WEDC Board meeting at 8:12 a.m.



Mitch Herzog, Vice-President

ATTEST:



Samuel Satterwhite, Director