



## Rail Yards Advisory Board

Wednesday, March 14, 2012

2:30 PM

Albuquerque/Bernalillo County Government Center  
Council Committee Room  
9<sup>th</sup> Floor, Suite 9081

### MINUTES

#### **Members Present:**

Gilbert Montano/John Soladay for Mayor Berry  
Isaac Benton, City Councilor, District 3  
Leba Freed, Wheels Museum  
Sen. Eric Griego  
Rep. Rick Miera  
Sen. Jerry Ortiz y Pino  
Ron Romero, Barelás

#### **Members Absent:**

Commissioner Art de la Cruz  
Jay Rembe, ULI – New Mexico  
Diana Dorn-Jones, S. Broadway  
Rep. Miguel Garcia

#### **Staff Resources:**

Suzie Lubar, Manager, Real Property Division  
Marti Luick, Council Services  
Kara Shair-Rosenfield, Council Services  
Ben Ortega, Manager, Metropolitan Redevelopment, Planning Dept.

#### **Others Present:**

Jim Trump (Build New Mexico), on behalf of Samitaur  
John Myers (Myers, Oliver and Price), on behalf of Samitaur  
Arthur "Skip" Cook, on behalf of Samitaur  
Alan Clarke, WHEELS Museum

- 1. Approval of Minutes from 11-14-11 Meeting:** The minutes from the 11-14-11 RYAB meeting were approved by a unanimous vote of the Board.
- 2. Jon Zaman, Chief Finance Officer of the City Council,** addressed the issue of whether or not the required 30 units of workforce housing can be developed off site. He explained that the intent in using Workforce Housing Trust Fund monies to purchase the Rail Yards was always to have workforce housing developed on the site. He quoted from Council bill R-07-332, which specifically said "the creation of affordable housing on the railyard property."
  - **Ron Romero** asked if Samitaur has the capability to develop permanently affordable housing.
  - **Councilor Benton** said that his sense is that Samitaur is not specialists in affordable housing but that either Samitaur or the City could partner with an affordable housing developer.

- **Leba Freed** asked how many acres are needed to develop 30 units.
- **Ben Ortega** said that 30 units would require roughly 2 acres, depending on the type of housing that is built.

3. **Negotiations Update:** **Suzie Lubar** provided an update on the negotiations with Samitaur. She recapped that at the last RYAB meeting, staff presented concerns about straying from the RFP. After getting direction from the Board about trying to keep more closely to the RFP, staff consulted the Purchasing Division's legal counsel, who told us to take a step back and go back to what the RFP provided with respect to two main issues: 1) The RFP clearly stated that City would not contribute to any financial assistance for the planning process; 2) The RFP contemplated that there would be two agreements – the first for the master planning process, and the second for implementation/development. The new agreement the Board is reviewing today is about half as long as it used to be. Provisions related to acquiring property, financing, and the City loaning money for planning have all been removed.

Suzie explained that Samitaur met with the Planning Department to find out what studies would actually be required for the Master Plan; the studies that are required are specified in the agreement in order to reassure Samitaur that the City will not require them to incur unknown and potentially extensive third-party costs. Another question has been whether or not housing can be off site; Jon Zaman just addressed that. The final issue that there isn't agreement on, yet, is the provision regarding *force majeure* and, specifically, whether or not being in a recession should allow Samitaur to postpone the development of the Master Plan. Suzie expressed that she could understand that language being in the MDDA but was not sure why it would be in the MPA.

- **Skip Cook**, Samitaur's attorney, explained that he wanted to at least have a discussion about *force majeure* and raise the issue now since it's something that they definitely want to have in the MDDA. He said that the reason for including the proposed *force majeure* language is so that there is an objective process for determining whether or not there is a recession.
- **Suzie** added that both City staff and Samitaur really did try, within the agreement, to make it clear that the WHEELS Museum would be located on the property, as would the workforce housing. She said that, in the minds of those who drafted the agreement, there is no question that the agreement provides for those uses on the site.

4. **Board Discussion:** The Board had the following discussion regarding the contract:

- **Councilor Benton** presented a memo from Bruce Thompson, the City Council's legal staff, regarding WHEELS' "entitlement" to a portion of the property. He explained that he had asked Mr. Thompson to prepare the memo in response to Board member Diana Dorn Jones' request at the last RYAB meeting that the City respond to the issues WHEELS has raise. Councilor Benton stated that the most important thing that Mr. Thompson points out is that, under the anti-donation clause of the state constitution, the City and State cannot donate land/capital to any entity, whether it is a non-profit or not. It is the City's responsibility to make sure that we do not violate the anti-donation provision. If the WHEELS Museum is to receive actual real property as we move forward, WHEELS would have to provide "payment" at fair market value, could be in the form of services, not necessary cash payment.
- **Leba Freed:** I cannot agree with this memo in any way, shape, or form. The State gave us the \$2.5 million for planning, acquisition.
- **Councilor Benton:** A quick housekeeping matter – there have been some emails sent in advance of this meeting that discuss the draft agreement. We should not be conducting our business via email. Open this up for discussion of the Board. Did Samitaur want to add anything?
- **Skip Cook:** No, we're just here to move forward.

- **John Myers:** Regarding Workforce Housing – can this document at least leave that possibility open? If there any legal impediments and they are overcome, it would be good to have the possibility that the workforce housing could be off site.
- **Jim Trump:** We believe that housing should definitely go through the planning process.
- **Ron Romero:** In developing the RFP, it was clear that the community would be opposed to having the workforce housing “off site.” Workforce housing creates the transition of community onto the Rail Yards. The RFP established that there is a need for housing on the site to support businesses on the site.
- **Sen. Griego:** At one point, we talked about whether it would be difficult to locate housing next to certain uses, light industrial for example. Is there another location you had in mind?
- **Skip Cook:** We haven’t looked at it in detail yet. We’re not sure about environmental clean-up requirements. Having not engaged in the planning yet, there are a lot of unknowns. We want to maintain flexibility. And we thought that we had heard the opposite – that the community would prefer that the housing be integrated into the neighborhood.
- **Ron Romero:** What I heard was the Samitaur folks say that they were willing to participate in housing rehab off-site. That isn’t mentioned anywhere in this agreement. It was a verbal commitment.
- **Skip Cook:** It’s part of the whole Master Planning process. Samitaur hasn’t got any preconceived notion that housing belongs on site or off site. We want to ensure that there is adequate space on the site for job creation.
- **Councilor Benton:** I recall that discussion being about two things – 1) development of new housing, and 2) enlisting the master developer in helping with scattered site rehab/infill.
- **Senator Ortiz y Pino:** There was a statement to that effect in Section 1.2 of the agreement.
- **Senator Griego:** There is a process that we need to go through. Without predetermining, is a live/work housing model allowed under WHTF?
- **Marti Luick:** The key is the number of units. How they’re designed, placed would, whether or not they’re part of a mixed-use development doesn’t matter.
- **Skip Cook:** Samitaur has not done live/work, but I believe the architect they work with has done those kinds of projects.
- **Ron Romero:** Section 3.2 talks about transferring densities vis-à-vis Workforce Housing.
- **Leba Freed:** I want to make a few clarifications. We were requested by the City to meet with Samitaur-Smith. We did not have any discussions with SS. We turned over to SS approximately \$200K worth of museum planning. The relationship we’ve had with SS – we’ve had no communication with them for the past year-and-a-half. We do not feel that anything has been forthcoming from Samitaur. We feel that we have been extremely unfairly treated. We have had no back-and-forth with SS. We should be working together to decide these things. There has not been a meeting. Our concerns:
  - The WHEELS investment in the site has not been acknowledged.
  - No site for WHEELS identified.
  - No mention of money for Master Plan.
  - No specific time limits.
  - Entitlements for 12 years – what are those entitlements, based on what?
    - **Suzie Lubar:** Section 3.3 – those entitlements are for zoning, the Master Plan. It’s not a blanket entitlement to have the site. We also added that they needed to be demonstrating that they’re diligently working on the development.
  - No specifics as to funding for environmental, infrastructure, no proof of funding.
  - No acknowledgement of Mayor’s ideas for the site.
  - Don’t know who wrote the draft contract.
  - Don’t know who the primary point of contact is for the City.

- What does it mean that a charitable foundation would take over if the Smiths should pass?
    - **Suzie Lubar:** We were also very concerned about what would happen if Samitaur is no longer part of development. So we added language under section 6.3 (p.21) to clarify.
  - Alternate Master Plan.
    - **Suzie Lubar:** Section 5.1.1 – this language was developed to address Samitaur’s concern that Administrations and Councils change over time and that they didn’t want to get stuck having to implement a Master Plan that they didn’t develop.
  - If the City does not own the property, the City will not be able to tax for the property. Does the City want to be out of the property?
  - Section 2.1.4 – do not remove.
  - Samitaur has the right to subdivide the site.
  - Who buys the 7 acres in question?
  - Says that Samitaur has the ability to own the land that WHEELS is on.
  - Section 5.1.1.4 – Does that say that WHEELS gets to decide how much land/space it needs?
- **Gilbert Montano:** I wanted to report that the Mayor is working on interim uses for the Rail Yards. We want to generate activity on the site.
  - **Senator Griego:** Where are things at with Kellogg and a growers market?
  - **Gilbert Montano:** We were unsuccessful in our first application to Kellogg. A growers market that focuses on workforce development is what Kellogg is looking for, and we’re going to reapply with them.
  - **Councilor Benton** This is supposed to be a collaborative process with Samitaur.
  - **John Myers:** What this document does is lets us loose to start talking about what the plan will be. It would be a mistake for us to have preconceived ideas.
  - **Councilor Benton:** I asked for the “non-meeting” that occurred. Some of what we asked WHEELS to bring to the table has already been presented to Samitaur. But we’re trying to hone it down to find out what WHEELS’ needs and desires are. All sorts of acreage and square footage needs have been thrown around over the years, but aside from how much acreage or building space WHEELS would have, which, by the way, there is no way this MPA can provide. The idea of how to fund it was brought up, and the idea put forward was a public tax. That’s a fair idea, but don’t know how much traction that would gain in today’s environment. That will need to be discussed in the Master Planning process. How is it going to be paid for? It’s not going to be handed to you on a silver platter.
  - **Senator Griego:** I want to be clear on that point. I think we need to have an idea of what WHEELS’ expectations are. If there’s a deal breaker, we need to know that now.
  - **Leba Freed:** In the RFP, we included an addendum that show our needs based on what a professional museum planner said we need.
  - **Councilor Benton:** I get the sense that – this Board is continuing to try to work with you. WHEELS is not in a position to be negotiating this contract. My sense of what Senator Griego was saying is, first of all, the WHEELS appendix to the RFP does not obligate Samitaur to build what you showed in that appendix. We’re all partners. There has been an intent that we would move forward in good faith, not bad faith. In fairness to any partner, we need to understand how WHEELS intends to fund the building and operation of its facility. I don’t think that can be resolved now. If there is a deal-breaker, I don’t know that we can determine that now.
  - **Alan Clarke:** Thanks to whoever put that memo together [Bruce Thompson’s memo] for putting the word “moral” in there. It’s not a surprise, legally. We will know at the same time Samitaur knows where the money will come from. I did most of the planning and expenditure of the Quality of Life tax. We have that kind of capacity still. We don’t have to go to a public vote – I think it would be a terrible idea not to go to a public vote. The

- mechanisms are there. There are at least 5 other options for funding. In order to be successful, we need a certain footprint.
- **Councilor Benton** I think this Board recognizes the moral desire to have a successful museum on the site.
  - **Senator Griego:** General question – going forward, can someone summarize what happens next?
  - **Skip Cook:** Assuming the agreement is approved, we would like to start immediately with community outreach and input into what all stakeholders are looking for. Once we get community input, we'll start putting pen to paper. Then bring ideas back to the community and find out what people like and don't like.
  - **Senator Ortiz y Pino:** The contamination issue had been pretty thoroughly vetted. Are there still concerns?
  - **Skip Cook:** The site has been examined in great detail, but in separate reports. Compilation of all reports/data/info is needed to have a thorough view of the whole site.
  - **Senator Ortiz y Pino:** Is the additional 7 acres owned by the railroad?
  - **Jim Trump:** Yes. It's not really on the market, but we've discussed acquisition in the past with them.
  - **Senator Ortiz y Pino:** National Bureau of Economic Research – what is the current status of the economy according to that group?
  - **Skip Cook:** Quite frankly, I don't know. But the issue is more for the MDDA, not the MPA.
  - **Ron Romero:** Another verbal commitment that was made by the Smiths – have a housing expert (John Molloy) that was going to relocate to Albuquerque and become the liaison. Where does that stand?
  - **Skip Cook:** I think that might still happen.
  - **Ron Romero:** Because in here it says that Samitaur will continue one-on-one conversations with the community. Another question that came up a while back: how does this Advisory Board come to consensus about accepting or not accepting the document?
  - **Councilor Benton:** We're an advisory board; we can vote, in general, but we're not "approving" the contract. We can talk about how we want to phrase that if we're going to take a vote.
  - **Rep. Miera:** First question – the 7 acres that we don't have – what kind of shape is that in? Do you know if BNSF is going to continue to denigrate the property? Are they making it any worse? Is there anything we need to be doing?
  - **Jim Trump:** They're not actively using the property b/c the tracks are not operable right now. Think they just store stuff there for right now.
  - **Rep. Miera:** Question to staff – Did you want us to make a motion today?
  - **Suzie Lubar:** City staff feels pretty comfortable with this agreement. The sooner we can move it along, the sooner they can get to planning.
  - **Rep. Miera:** Is this a City Council vote?
  - **Councilor Benton:** Yes, the contract will go to the City Council.
  - **Rep. Miera:** To Samitaur, can you provide a verbal statement that the current recession would not prevent planning from moving forward?
  - **Skip Cook:** Yes, it would have to be some other recession. We don't envision the entire site to be developed all at once.
  - **Rep. Miera:** Regarding the concern that Leba had, page 18. We're in the process of going to court on the issue in the state constitution – adequate facilities. I think it's well-stated in 5.1.1.4.
  - **Councilor Benton:** Clearly, without the kind of process we've envisioned, these things can go haywire. But that's why we've established this process.
  - **Leba Freed:** Because we have not spoken to you [Samitaur] in a year-and-a-half, I would like to know, before we go any further, if you would be willing to tell us what you do want to do on the property. Do you have specific ideas? Do you have tenants? Money?

- **Skip Cook:** That is what the planning process will get us. If we were to come and tell you we've got all of these ideas...we've got WHEELS' ideas and documents. This is just the beginning.
  - **Leba Freed:** We talk to people every day about different uses that could go on the site – charter school, marketplace. Is your organization interested in talking to us about other uses in addition to the WHEELS Museum?
  - **Skip Cook:** Of course, and we will do so as soon as we have a contract.
  - **Senator Ortiz y Pino:** I wanted to make a motion that the Advisory Board go on record as favoring City Council action on the plan [agreement] as it's been developed so far and as the final loose ends get tied up.
  - **Senator Griego:** Second. I think there will be other opportunities to catch things before the final agreement is signed. I don't think anyone is going to try to pull a fast one.
  - **Ron Romero:** Section 2.3.2 – our concern is that we have worked hard to preserve existing housing stock. We don't want to see things turned into parking lots. Other question, in some parts, the Project Area is well-defined, but in other parts it's blurry. Like in Section "I" Financing for Infrastructure.
  - **Suzie Lubar:** That came up because of a concern about the City requiring more infrastructure/utilities than the Project itself needs.
  - **Councilor Benton:** To clarify, all development has to pay for off-site infrastructure to support that development.
- [Senator Griego left – no quorum. Instead of formal motion/vote, members state whether or not they support Senator Ortiz y Pino's motion.]
- **Ron Romero:** Kind of.
  - **Rep. Miera:** Kind of. Page 18 – the idea that WHEELS Museum has to be reasonably and adequately taken care of. We're a bit behind the 8 ball. I understand why they haven't planned before the planning process. I want to get the planning process going. I like 5.1 in its entirety – we have an out. I'd rather move it along than have it stalemated.
  - **John Soladay:** We support the motion.
  - **Leba Freed:** I'm going to abstain. I'm not ready to agree.
  - **Councilor Benton:** I support this moving forward. I have confidence in the negotiating team. My thanks to you and to Samitaur. I echo what Mr. Romero said. I think we've made a lot of progress since the Board last met. We got off the dime and can move forward.
5. **Next Steps/Adjournment:** Based on Senator Ortiz y Pino's motion and the general support of it expressed by the majority of Board members present, City staff will move towards finalizing the agreement with Samitaur so that the Mayor can submit it for the Council's approval. The meeting adjourned at 4:20 PM.