

Corrales International School

Governing Council Regular Meeting

5500 Wilshire Ave. NE

Albuquerque, NM 87113

November 24, 2020 – 5:00 p.m.

Final Meeting Minutes

1. Call to Order 5:02 pm
2. Roll Call: Stacy Blackwell Raj Shethia, Justin Sawyer, Mark Tolley (Head of School), Kimberly Romero (Scribe)
Absent: Rhonda Ledbetter, Nicole Palacios
3. Adoption of agenda November 24, 2020 meeting.
Motion to adopt agenda for November 24, 2020 meeting
Motion Stacy B
2nd Raj S
Discussion: N/A
No opposition
Motion Passed
4. Public Comment: This is an opportunity for members of the public to address the Governing Council ("GC") for up to 5 minutes with comments or issues, whether they are posted on the agenda. The Chair may reduce the time for each participant to speak to ensure adequate time to conduct GC business. The GC, by law, cannot act or have any discussion or deliberation on any presentation made to it concerning an item not listed on the agenda. Any item presented may be noticed on a future agenda for deliberation or action.
No Public: No Comment
5. G.C. Business
Mr. Tolley: The purpose of this meeting is to have Discussion of the "Development Consultant Agreement" and "Building acquisition". Governance Council members have asked questions and brought up concerns related to the "Development Agreement and Building Acquisition", therefore, Mr. Tolley invited Mr. Fuentes to answer the boards questions and/or concerns that have been mentioned in previous board meetings. This will be recorded and shared with the Foundation. This is a good time to ask questions of Mr. Fuentes.
Raj S: Were lines added to the agreement?
Mr. Fuentes: This agreement is a representation of Mr. Chappelle, as he wrote this agreement. Keep in mind, this is the developer and the agreement includes Mr. Chappelle, the school and the Foundation. This will allow for the framework to construct the facility, constructed to your specifications.
Raj S: Why the revisions?
Mr. Fuentes: Mr Chappelle and I revised this agreement, to its present form, to follow PED guidelines. Language was implemented and adopted by the developer due to what the school will be required to do.
Justin S: Do you have an opinion on whether we should go into executive session for the purposes of the nature of the developer?

Mr. Tolley: Closed session is not necessary at this point as we are not making any decisions .

Mr. Fuentes: It is not necessary for purposes of maintaining the privilege. You are collectively the deciders regarding providing privilege to the sharing of this information with the public or the Foundation. This is more of an understanding, rather than a decision being made.

Raj S: It appears that Mr. Fuentes, with the developer, discussed and agreed upon what is in the agreement. What are the red lines for?

Mr. Fuentes: The language, in the form given to you is more of a draft format. Some of the language may be deleted or kept depending on what may arise during the overall process, however, there had to be some changes made to meet PED guidelines. Suggestions were made in the document.

Raj S: It appears to be a one-sided agreement. I was unable to see where the school would have the option to opt-out.

Mr. Fuentes: The optout provision is in the “termination language”, allowing for either party to terminate. The issue would come down to what would be owed to the developer and that would be any out of pocket costs, referring to paragraph 7, page 2. Approval from the PED would occur once all parties involved have agreed on the site and facility. At this point no construction has occurred. The normal process would be to take a lease purchase option, tightening it up, and making more concrete plans. Once we have the architectural drawings made up, we would have what the overall price would be . If an appraisal is requested and we don’t have an agreement, the school can opt out with certain fees being owed. One example, “the developer would likely ask you to pay certain fees already incurred by the developer, (architectural drawings, engineering items, etc.), if we don’t go through with the project as at that point and these would be reasonable expenses paid to the developer.

Raj S: What would occur beyond that what is noted in section 12-Default?

Mr. Fuentes: The developer puts up the money for the land and building. PED approves agreement and payment is scheduled. At that point construction starts. The school has committed to acquire the building through the Foundation. Paragraph 12 is speaking to after the construction has begun. Up to this point, everyone has agreed to move forward. The default would be on the school due to loss of charter or decline in students, (resulting in a decline of funding), therefore showing the school, (Foundation), cannot make its payments.

Raj S: What happens in those situations?

Mr. Fuentes: Concern is terminating present lease. You already have a commitment date that the developer has to have. If he were to default (different agreement), he would be responsible for the fees incurred. This is different and noted in a future agreement. Your school is on a tight timeline right now, therefore this meeting tonight is to clear up these questions so we can move forward.

Mr. Fuentes: the expense in terminating the lease can be severe. We are looking at a 3 year timeline which is not long. The longer the board waits the more expenses that may be incurred.

Justin S: I was under the impression we were already looking at sites.

Mr. Tolley: Yes, Ms. Hershey is helping with this.

Mr. Fuentes: we need to move forward to be more selective in our choosing and that is the first step once there is an understanding of this agreement. When a site is found, and it is agreed to by the school board, the next step (again, we are talking), preliminary architectural plans are drawn up along with other pertinent steps that need to be taken by the developer. We are on a timeline and this process or processes can take up to six months. This timeline is to finalize the plans and any other pertinent steps that need to take place. At this point, the developer, using his own money, acquires the property. He doesn’t buy the land for the

school and the school doesn't move forward until they have an agreement, with a deadline. If any issues were to occur, the lease purchase agreement would be revisited and likely adjusted in the event the building is not ready for move in by the deadline noted.

Raj S: Question on language after section 7: Are these relevant for this document or a future document/agreement?

Mr. Fuentes: The warranties noted would be in the lease purchase agreement, with the exception to this agreement, where it states the school is satisfied with moving forward and then obligated items would be added to the lease purchase agreement. This document provides an integration into the developers package.

Justin S: Since we are discussing the warranties, one of my notes was to discuss paragraph 9 (last section), stating the developer would assign all the warranties to the school, as this was struck through on the developers agreement.

Mr. Fuentes: this is an example of what was stated earlier in that it is assigned to the Foundation, not the school, since the Foundation will eventually step into the shoes of the developer. The developer would transfer the lease purchase agreement to the Foundation as the owner of the lease purchase agreement. They would then have the responsibilities of the warranties. For example, a roofing warranty. This would go to the developer as they paid for the roof, however, the Foundation would assume this warranty once all is transferred. If there was an issue with the roof, the school would go to the foundation for the warranty in regards to any issues with the roof. The agreement is for all parties to move forward and will state that the warranties were transferred to the foundation, This is noted in the lease purchase agreement, making it more iron clad and clear when that time comes. The school income is contingent upon generating the money which is then run through the Foundation.

Justin S: Section 10, paragraph C: Execution of agreement, state agencies as required. Which happens first? Do we get approval from PED before signing document or after?

Mr. Fuentes: The development agreement assumes that an understanding is accepted between the developer and the school. This document is stating that the school will, once PED approves the process, move forward. If the PED denies, then the school would be responsible for certain fees. We know going in, what we are liable for if not approved. I cannot talk to the exact cost but the kind of costs that are to be expected. We can always resubmit to PED after changes are made to meet their specifications if not approved initially.

Justin S: The school will take all responsibility, would this mean the school would be liable for all incurred costs.

Mr. Fuentes: your concerns are addressed in the agreement. We the school will, in good faith, do what is necessary over time to obtain a new building. They use the word "warrant" in the legal term, stating that the school will take all responsibilities if for some reason the school defaults at any point. A timeline is deliberately not in this agreement to allow the time needed for PED to approve.

Mr. Tolley: A lot has changed since Mr. Fuentes and Ms. Hershey completed 21st century and it is not as much of an impeding process on the part of the PED.

Raj S: Termination of lease or agreement; do we need any language in the agreement if the developer were to walk out.

Mr. Fuentes: This question is answered in two parts. The sooner you get to the point where you get a lease purchase agreement, you have more flexibility. The developer backing out would not be probable as he would lose what he has put into it. Once the school knows they cannot perform under the lease purchase agreement, the school can opt out. It is to the advantage on both sides to get to a point where the purchase agreement is approved by the PED so all parties are more protected. Obligations necessary to pay the lease payments, the school can drop off, with only having to pay for fees already paid but no more than that.

Raj S: When we are at the step of getting approval from PED, if there is a delay, the clause, in Paragraph 7, still states the developer can walk out. The school is then liable for the termination fees.

Mr. Fuentes: The termination, at this point, is to protect the school. You want it as wide open as possible. If the developer were to pull out or terminate and walks away, the school is not at all responsible for the fees, the developer pays. There is not penalty to the school.

Raj S: Paragraph 7, termination fee is still in question.

Mr. Fuentes: Either side can terminate. The side that terminates is responsible for the fees. It is not likely the developer will walk away since they won't make the money. He is not going to start construction until school has a lease purchase agreement. No obligation to the school if the developer terminates.

Justin S: Can we clarify the language to be more concise?

Mr. Fuentes: We can revise and make the language more clear, stating no damages will be put on the school.

Justin S.: Can we change this language to make it very clear that the developer will be responsible for the termination fee?

Mr. Fuentes: Yes this is a reasonable request. That language would need to be in the developer's contract and the final construction agreement.

Justin S: There are a number of exhibits in the agreement. Are these prepared yet?

Mr. Fuentes: If you look at timing and sequence of events, there is not yet a lease purchase agreement and we can't have one without some of the exhibits noted. Once they exist they will be merged. What this agreement is saying is that once all is agreed upon, we have an agreement on price and location, we would complete the lease purchase agreement, (LPA). The LPA would occur prior to PED approval. All details are negotiated prior to the lease purchase agreement.

Justin S: Nervous about exhibits not in an existence. For example, Exhibit A.

Mr. Fuentes: The only item that requires funds, is when the lease purchase agreement is completed and approved. This document allows the school to lock in a price, before the build.

Mr. Fuentes: Definitions are going to be for the school, the developer, etc., They are definitions and I can provide a copy of an existing one document that will show how the definitions are explained.

Raj S: We have been asked to sign this developer agreement, correct?

Mr. Tolley: This is not for signature. This meeting was set up to answer your questions only, set up, at your request, to have your questions and/or concerns addressed.

Mr. Fuentes: The signatures are not needed until the agreement with definitions are understood by the board.

Mr. Fuentes: You will be provided the agreement with definitions and exhibits prior to any signatures being requested.

Raj S: page 9 asks school to sign?

Mr. Fuentes: The Foundation will only commit if the board approves. The school either signs along with Foundation or there will be a separate agreement drawn up to support the Foundation. The school alone cannot sign.

Justin S: Amount of termination fee is blank on agreement. My concerns are largely alleviated about the termination fee and due to us not being asked to sign the agreement as is, (without exhibits attached and without termination fee being noted). Out of curiosity, do you have an idea of what that fee might look like?

Mr. Fuentes: I do not because there may be items that will be needed that I cannot anticipate. Each project is different depending on several variables.

Justin S: What is the process with the negotiations and commitments?

Mr. Fuentes: Negotiations will occur but commitment will be made by the Foundation.

Justin S: Are there any other comments from the board?

Mr. Fuentes: It is difficult with so many variables to consider.

Stacy B: I feel better and appreciate your time in clarifying.

Justin S: Thank you for attending Mr. Fuentes.

Mr. Fuentes: One more comment: if this recording will be passed on to the foundation, please understand that you will need to make an affirmative statement, in your notes, that will be shared.

Mr. Tolley: I don't think anything discussed in this meeting we would not want shared

Mr. Fuentes: I do recommend you release this, allowing them to understand the process.

6. Other Business/ GC Member Comment: This is an opportunity for any GC member to make a comment.

Justin S: It was determined, in the best interest of the school, to release this information to the Foundation for its use in connection with the discussions of agreements in these minutes.

What is the next step with the building (directed to Mr. Tolley)?

Mr. Tolley: As long as you are okay with where we are, the next step will be to discuss actual building sites presented by Ms. Hershey and/or Mr. Duponte.

Raj: It appears we are on track for next steps.

Mr. Tolley: The process starts out slow and then moves quickly.

7. Adjournment at 6:20pm

Motion to adjourn Raj

2nd Stacy B

Discussion: N/A

No Opposition

Passed

The next regular meeting of the Governing Council will be on December 14, 2020 at 5:00pm and will take place at 5500 Wilshire Ave. NE, Albuquerque, NM 87113.

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