

CITY OF WARREN
FOIA APPEALS COMMITTEE MEETING
November 14, 2013, 2013

A meeting of the Warren FOIA Appeals Committee was called for Thursday, November 14, 2013 at 4:00 p.m. in the Warren Community Center, Conference Room B, 5460 Arden, Warren, Michigan 48092.

Members of the Committee present:

Patrick Green, Council Vice President
Scott Stevens, Council Secretary, Mayor Pro Tem
Robert Boccomino, Councilman

Members of the Committee Absent:

Also present:

Jacqueline Gartin, Assistant City Attorney

1. CALL TO ORDER

Chairman Green called the meeting to order at 4:07 p.m.

2. ROLL CALL

All Committee Members were present.

3. ADOPTION OF THE AGENDA

Motion:

Mr. Boccomino made a motion to adopt the agenda, supported by Mr. Stevens. A voice vote was taken. The motion unanimously carried (3-0).

4. APPROVAL OF THE MINUTES – September 12, 2013

Motion:

Mr. Boccomino made a motion to approve the minutes, supported by Mr. Stevens. A voice vote was taken. The motion unanimously carried (3-0).

5. Ms. Karen Spranger – Freedom of Information Act Appeals of October 12, 2013.

Karen Spranger appeared before the Board and stated that she wanted to make clear what she received and did not receive. On August 23, 2013, on October 11, 2013 subject of a FOIA Appeal. First she would like to review the meeting minutes of the Brownfield Redevelopment Authority from November 2007 to present, August 23, 2013 at the office of the Clerk. She would also like to review the bylaws and rules of procedure

CITY OF WARREN
FOIA APPEALS COMMITTEE MEETING

November 14, 2013

Page 2

established by the authority. The list of the members with effective dates of their appointments and terms of the appointment as well as the names of the current treasurer and secretary of the authority. A review of all financial reports and the audits as outlined in MCL 125.26557 all financial records of the authority shall be open to the public under the Freedom of Information Act (FOIA). A list of current property owners in the City of Warren that qualify under the Brownfield Redevelopment Act, Public Act 381 of 1996. First she received the meeting minutes she requested. They were not stored at the Clerk's Office. She received the bylaws and rules of procedures and it uncertain if they were adopted by the City Council in 2001. The list of the members that she received at the time showed one vacancy and two members with expired terms. Council corrected the problem at the September 2013 meeting and she received an updated list from Brownfield Redevelopment Authority Chairperson, Mr. Paslin. She received that information while attending one of the meetings and that was how she received that information not through her FOIA request. She had not received the names of the current secretary or the treasurer of the Brownfield Redevelopment Authority, because nothing was identified on the list. The list was simply a list of members and not the positions held or who does what. The FOIA response forwarded to her through the City of Warren Website to the comprehensive financial report was not what she had requested. She had requested under the law the detail financial accounting of the Brownfield Redevelopment Authority. #6 the list of the current property owners, the list she was given had a printed date of April 12, 2011 and she knows that General Motors was an active Brownfield so the list was incomplete. That was also discussed at the meeting. The names of the current secretary and treasurer would indicate where the resident agent sits in the registered office and the name of the treasurer would indicate who was in charge of the financial records of the authority. Absence of this information from the public document is a denial of the public records she sought, so the financial records mandate by the State of Michigan as outlined in the Brownfield Redevelopment Act under MCL 125.26663 a, b, c, d, e, f, g, h, i, j, k are the State standards financial records reported to the State of Michigan regarding the activity of the Authority each year. So the Comprehensive Annual Financial Reports or CAFRs did not show the beginning and end balance and there is a local site redemption fund in a Brownfield Account that was maintained by either the City of Warren Controller, Department of the Treasury Office to detail the income and outgo of the tax increment revenues. There are laws in this State that require the paperwork to be in order and after reviewing the Brownfield Redevelopment Authority audio it appear that the City of Warren departments are not able to advise these authority members of their requests through involvement with their own authority members. The last minute information does not appear to make this an effect authority if the financial records cannot be accounted for. The

CITY OF WARREN
FOIA APPEALS COMMITTEE MEETING
November 14, 2013
Page 3

administration involvement regarding the legal action when information was introduced to the Board members at the last minute for a rushed decision for a resolution and settlement. In conclusion, she appeals the FOIA request. The FOIA responsive custodian of records to provide all the requested information as is shown to be considered public record documents as outlined under the Brownfield Redevelopment Financing Act 381 of 1996.

Mr. Green stated that there was a letter that was provided to the FOIA Appeals Board that stated that the FOIA was granted in part and that some information does not exist or that it was already publicly available such as the comprehensive annual financial report.

Jacqueline Gartin, Assistant City Attorney stated that was correct there was nothing in FOIA that indicates that the person making the FOIA has the ability to direct the City as to the manner in which to provide it and the City provided it through a website that she could go to and observe the information necessary of that she was requesting. She does not need to see the records when they are online.

Mr. Green clarified that the City does not have to create a document and the Brownfield Redevelopment Act requires a Chairman and Vice Chair but not necessarily a Treasurer or Secretary.

Mrs. Gartin stated that was correct. She cited the actual language in that so currently there was no Secretary or Treasurer and the Board was not required to have one and the Board Members have elected not to assign those positions so there are not any and the City cannot give positions or create positions that do not exist.

Mr. Stevens stated that the law was very clear that the City was not to create documents that do not exist in any format. If it does not exist the City cannot give it someone.

Karen Spranger stated that state law says that it should exist because of the financial accountability.

Mr. Stevens stated that was another matter. If that was the case that was another matter.

Mr. Green stated the Board did not agree or disagree with Ms. Spranger to that point but it was not within their purview. The Board could not direct all they could do was interpret what was in front of them in the FOIA Appeal Request.

CITY OF WARREN
FOIA APPEALS COMMITTEE MEETING
November 14, 2013
Page 4

Karen Spranger stated so the record keeping for whatever records they have, they have nothing of the records that she was asking for?

Mr. Green stated if she wanted to ask a question on it he would suggest the next time Plante & Moran were in front of the Council she could ask Council to get this information clarified. Making it a question that the Council could ask Plante & Moran when they do the physical audit of all the books and that and actions, to have them interpret whether the proper controllers were in place, which was something that was requested here that we pick up snippets all the time every single year and it was put on a list to please ask this question and make a note of it during the audit.

Karen Spranger asked if she was allowed to have a copy of the document from her appeals records.

Mr. Green stated she could not have the one stamped attorney-client privilege.

Joseph Hunt stated that the law states that the local governing body should be getting every year, this information. This was not a request to create documents it was a request for documents that state law says should already exist, MCL 125.6666. He would also like to see the complete list of the people that are getting Brownfield consideration.

Mr. Stevens stated and that was what she was saying was missing from the CAFR?

Joseph Hunt stated that the City of Warren Administration and the Brownfield Redevelopment Authority were in violation of the State Law in his opinion.

Mr. Green stated with their other hats on (meaning Council Members) they would bring that request or inquiry up.

Mr. Hunt stated that the important thing was the area that the resident agent can be registered office should be in charge of these documents on behalf of the state sanction authority and the members of Council should be receiving this report every year. Warrior Sports threw a lawsuit at the City back in July and he thought it very questionable as to why Warrior Sports would do that and in looking into it he saw it was clear that only Universal and DKM Warrior Sports were retrieving any kind of remediation. The issue here regarding the research and the visit to the Board, the Board did not know until that very day that they were being sued and the City of Warren said this was the settlement in front of them

CITY OF WARREN
FOIA APPEALS COMMITTEE MEETING
November 14, 2013
Page 5

that evening with no time to review. The bottom line was the state law says this information shall be provided.

Motion:

Mr. Stevens made a motion to affirm the denial of the FOIA Coordinator based on the fact that the information does not exist. Mr. Boccomino supported the motion.

Roll Call:

A roll call was taken on the motion to affirm the denial. The motion carried (3-0).

6. AUDIENCE

Joseph Hunt stated there was a complaint and the idea for the City was to go to the CAFR and see the end result. Someone in this City was collecting ½ million dollars in tax capture. He looks at tax capture as taking from the schools so the state gives back and he has looked at the DDA and TIFA and the Brownfield and the Tool and Die and everything that has a planner or special privilege company he has looked into it. However, with the Brownfield when he went to that specific meeting over at Paslin Industries it was very interesting because the chairman asked what it was about and he was told he was being used and he began asking the audience what the lawsuit was about. Apparently no one from the City explained to the Board what was happening and he gave the Chairman very cliff note type version. Universal and DKM are the only ones that get checks and the checks are basically they pay the taxes then all of a sudden the paperwork is processed and they get a check from the City. When the City says they may have missed one or two payments and that was what the job of the Brownfield was to do. Review plans and issue checks. The excuses that were there about new personnel etc, while DKM has been collecting \$84, \$81, \$77, and this was the fourth of the fifth year of the remediation fund. If this fund exists then it should basically be accounted for by the Treasurer whoever that may be. The Brownfield Redevelopment Act says these people should be meeting every year and they are not even doing that. That is the concern, these are barons of industry but at the same time for them to not know what was going on and for the audience to have to say this was what was going on, meaning a settlement was reached which meant they were going to write them a check for two years, but in the end it should have never reached that point. Either the \$827,000 in the CAFR was either drained by giving it to Universal or it does not exist and that was where his issue came in and the state law was clear on what shall be done and the City of Warren local legislative body apparently has not been

CITY OF WARREN
FOIA APPEALS COMMITTEE MEETING
November 14, 2013
Page 6

receiving this information since 2001 which was yet another failure of this administration.

Karen Spranger stated that she feels as a citizen she was trying to be workable and when shall is written and laws are written and it was nice that the City Attorney was pretty slick today in saying her opinion which can be challenged in Court because that was part of her right in the appeals process and she thinks heads are going to roll because the law was simply the law and she would have to have a fair assessment of the law because if she was miss reading it the Judge could tell her nicely because she believes all attorney's do not go off the same page and some of them have different ideas. So when the Judge rules on it and it was a matter of semantics of secretary and treasurer or the definition of a Board, which the Open Meetings Act gives a very good definition of a Board, paperwork and what should be accountable for. So again there were a lot of things that are not being worked out from her perceptive as a citizens because if she cannot trust the entity and the paperwork was not clear then she had a responsibility to challenge.

7. ADJOURNMENT

Motion:

Mr. Stevens made a motion to adjourn. Mr. Boccomino supported the motion.

Roll Call:

A roll call was taken on the motion to adjourn, all voted in favor. The motion unanimously carried (3-0).

The meeting adjourned at 6:18 p.m.