

MEMORANDUM

TO: Roger L. Stancil, Town Manager

FROM: Butch Kisiah, Director of Parks and Recreation
Ralph D. Karpinos, Town Attorney

SUBJECT: Public Forum on Proposed Lease of the Wallace Parking Deck to Kidzu Children's Museum

DATE: October 28, 2009

PURPOSE

This public forum has been scheduled to afford the community an opportunity to provide input and comment to the Town Council on the proposed Lease of the roof of the Wallace Parking Deck to the Kidzu Children's Museum.

BACKGROUND

On September 8, 2008, the Town Council authorized the Town Manager to execute a non-binding letter of intent and good faith agreement stating the Town's intent to enter into good faith negotiations to provide the upper level of the Wallace Parking Plaza to Kidzu Children's Museum. The letter stated it was "intended to establish a basis for future definitive discussions and contract negotiations. . . ."

Following the signing of that letter, attorneys for Kidzu prepared a preliminary draft of an Air Rights Lease Agreement (the Agreement) detailing proposed terms and conditions for use of the roof of the parking deck structure.

Town staff and Kidzu representatives met a few times and developed the proposed Agreement which was introduced and received by the Town Council on September 28, 2009. As our memorandum of September 28 noted, the proposed Agreement identified a number of issues remaining unresolved between Town staff and Kidzu representatives.

<http://townhall.townofchapelhill.org/agendas/2009/09/28/7f>

On September 28, the Council asked Town staff and Kidzu representatives to continue their discussions of pending issues and set a work session for October 9 to discuss the proposed Agreement and key issues with Kidzu representatives. The October 9 work session memorandum identified topics for which the Town staff sought further Council guidance.

<http://townhall.townofchapelhill.org/agendas/2009/10/09/1>

Following that work session, a revised proposed Agreement has been prepared by Kidzu's representatives to reflect revisions to the Agreement they are proposing in response to the issues discussed with the Town Council. (Attachment 1 shows the draft Agreement reviewed by the Council on October 9, with the changes proposed by Kidzu following that work session highlighted.) Town staff is sharing some concerns we have regarding these proposed changes with Kidzu's representatives and will provide the Council with an update on those conversations at the beginning of tonight's public forum.

Council members attending the October 9 Work Session approved, as next steps, this public forum and Council discussion this evening, with the possibility of a further work session with Kidzu representatives, if needed, and possible Council action on the proposed Agreement at the Council's next business meeting, on November 9, 2009.

DISCUSSION

The key elements of the draft Agreement include the following:

1. Kidzu would lease the west side of the Plaza roof and would build a children's museum. Kidzu anticipates building a structure of several thousand square feet, based on financing available and construction costs, and considering building additions, within the area leased for such purposes, at some time in the future. The initial structure would be a minimum of 10,000 square feet. (Sec. 1.1 of Agreement; Sec. 5.3 (a))
2. Kidzu would lease the north east quadrant of the Plaza roof for an outdoor display area (1.1).
3. The north east quadrant would be structured and gated to provide visual and physical access and use by the Town for special events in conjunction with Town programs in the south east quadrant. (1.2)
4. The Town would maintain the south east quadrant and would commit to not develop any habitable buildings greater than 400 square feet in size on the south east quadrant. (1.3(a))
5. Kidzu would have use of the south east quadrant, subject to the public's use as well, during museum hours. (1.3(b))
6. The Lease is for 99 years. (2.1); \$1.00 per year (3.1)
7. The property may be used for not-for-profit children's museum. Accessory uses permitted include a snack bar and gift shop (up to 25%) and workshop area (up to 20%). (5.1)
8. Kidzu would use best efforts to design and construct the building consistent with requirements for LEED certification. (5.2(g))
9. The Town would have input regarding design plans for the museum and would have 30 days to approve, as Landlord, plans for the museum building. (5.3(a) and (b))

10. Subject to Town approval, the entire plaza level could be used as a construction staging area.(5.4)
11. The Town would be obligated to continue annual inspection and maintenance of the parking deck (6.1) After the museum has been open for ten years, the Town's obligation to make substantial investment to maintain the deck would be linked to the Tenant's maintaining its museum building and demonstrating that it was operating at a level set in the Lease. (6.3(e)) Remedies and procedures related to this matter are detailed in the subparagraphs of this section. (6.3(e))
12. The Town would be committing to long term major repairs to the deck, if needed, subject to a limit based on the age and estimated cost of such repair. A process is established for determining if such repairs are needed and if the cost of such repairs exceeds the amount which the Town would be obligated to invest to repair the deck. (6.3) (The Town would set up a reserve account to fund its maintenance responsibilities and make contributions to the fund on an annual basis.)
13. Kidzu would also be committing to long term maintenance of its improvements and continued operation of the facility. (6.1, 6.2)
14. In the event of a substantial casualty loss to the Parking Deck after January 1, 2059, the Town would have the option to terminate the lease, rather than rebuild. If the Town chose to terminate the lease, it would be obligated to pay the Tenant the replacement value of the improvements and exhibits and the value of the remaining leasehold interest. (11.3)
14. If conditions change after ten years of the museum's opening such that the Town determines that it is in its best interest for the property to be redeveloped due to economic changes or for other reasons, there would be an opportunity to do so. Any such plan for redevelopment would be subject to Kidzu's approval. Kidzu would need to determine that the redevelopment plans or alternatives are acceptable to Kidzu and provide Kidzu with an opportunity to relocate without out of pocket costs. Kidzu would have the option to disapprove the redevelopment plan on any other reasonable basis. (20.18)
15. The Town would have some opportunity to use the indoor portion of the museum after hours for receptions and similar events. (20.15)
16. The Agreement incorporates a commitment on the part of Kidzu to provide public access for persons unable to afford standard admission fees. (20.17)
17. The proposed museum development would be subject to the Town's normal regulatory review process. A special use permit would be required for the museum.
18. The Agreement acknowledges the Town's contribution of the space for the museum and Kidzu's intention not to ask for operating funding from the Town on an annual basis. (20.16)

NEXT STEPS

Certain legal steps are required under North Carolina law for the Council to enter into this transaction:

--The proposed Lease is for 99 years and, pursuant to N.C. General Statute Sec.160A-272, is to be treated as a sale of property.

--A museum open to the public is, under G.S. Sec. 160A-488, a public purpose for which the Town can provide financial support. Under G.S. Sec. 160A-279, because the Town can provide funding to the museum, it can also sell property to Kidzu by private (non-bid) sale.

--In order to convey the property by private sale, G.S. Sec. 160A-267 requires that Council adopt a resolution authorizing the sale. If adopted by the Council, the resolution would be published after its adoption and the execution of the Lease could take place 10 days after the transaction were approved.

Following this evening's public forum, we propose to respond to any public comment on November 9, 2009. The Council will have an opportunity on that date to consider approval of the Air Rights Lease Agreement to Kidzu and adoption of the resolution authorizing the transaction.

RECOMMENDATION

We recommend that the Town Council open this forum on the proposed Lease, receive public comment and refer any public comment to the Manager and Attorney for a follow-up report and further consideration by the Town Council on November 9, 2009. If Council determines, based on comment received this evening and its review of the proposed Agreement, that a further work session with Kidzu representatives is needed, we would recommend that one be scheduled in early November and that this matter be considered for possible action at the November 23, 2009 business meeting.

ATTACHMENTS

1. Revised Draft Air Rights Lease Agreement (p. 5).