

MEMORANDUM

TO: Roger L. Stancil, Town Manager

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

SUBJECT: Proposed Lease of the Wallace Parking Plaza to Kidzu Children's Museum

DATE: November 9, 2009

PURPOSE

The attached resolution would approve a lease with the Kidzu Children's Museum to permit the construction and operation of a children's museum and outdoor display and program area on the roof level of the Wallace Parking Plaza.

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>

Council members attending the October 9 Work Session approved, as next steps, a public forum on the proposed lease. The draft agreement was revised by Kidzu representatives to propose adjustments based on the discussions at the October 9 Work Session.

The memorandum for the public forum noted key provisions of the draft agreement and stated that there were a few pending issues that were still under discussion between Town staff and Kidzu representatives.

<http://townhall.townofchapelhill.org/agendas/2009/10/28/2a>

On the day of the public forum, an additional staff memorandum was distributed showing some further adjustments to the language of the proposed agreement developed by Town staff and Kidzu representatives.

<http://townhall.townofchapelhill.org/agendas/2009/10/28/2a/additional%20info-2a%20kidzu.pdf>

At the conclusion of that forum, held on October 28, 2009, the Council directed that this matter be brought back for Council consideration this evening.

DISCUSSION

Issue raised at public forum.

The proposed lease agreement has been modified in response to an issue raised by a member of Council at the end of the October 28, 2009, work session. In Section 20.18, language has been modified to reflect that, in the event a determination is made by the Town to redevelop the Parking Plaza site, Kidzu's role in determining whether any substituted premises is acceptable is now subject to its "reasonable discretion."

Changes have also been incorporated consistent with the supplemental memorandum distributed just prior to the October 28 public forum.

Additional minor technical adjustments have been made in Sections 5.4 and 5.12.

Key provisions of agreement.

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))
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. (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 the Town would have the option to redevelop the site as long as Kidzu had an opportunity to relocate under the provisions of Sec. 20.18 of the lease. (11.3)
15. 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 redevelopment plans would need to provide that Kidzu is provided a substitute location, acceptable to Kidzu in its reasonable discretion, and that Kidzu be made whole upon any redevelopment. (20.18)

16. The Town would have some opportunity to use the indoor portion of the museum after hours for receptions and similar events. (20.15)

17. The Agreement incorporates a commitment on the part of Kidzu to provide public access for persons unable to afford standard admission fees. (20.17)

18. 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.

19. 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)

20. Construction needs to commence within 4.5 years after the lease begins and the museum needs to be opened to the public within 7 years after the lease begins. (5.10)

NEXT STEPS

Adoption of the attached resolution would authorize the Town Manager to execute on behalf of the Town the lease agreement, subject to non-substantive changes of a technical or typographical nature determined to be needed by the Manager or Attorney. 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 resolution is published, in accordance with the requirements of North Carolina General Statute Sec. 160A-267.

RECOMMENDATION

If the Town Council finds that this proposed lease to establish a children's museum on the Wallace Parking Plaza roof benefits the revitalization of the downtown area, we recommend moving forward with the approval of this lease.

ATTACHMENTS

1. Revised Draft Air Rights Lease Agreement (begin new page 1).