



**Kalamazoo County Land Bank Fast Track Authority  
Board of Directors Special Meeting Minutes – June 5<sup>th</sup>, 2023  
Riverview Launch**

**Meeting Minutes**

**The Monday, June 5<sup>th</sup> special meeting of the Kalamazoo County Land Bank Authority Board of Directors was called to order by Chair Thomas Whitener.**

Members Present: Thomas Whitener, Qianna Decker, Carl Roberts, Rebekah Kik, Pat Clark, Tami Rey, Shawntel Lindsey

Members Absent:

County Liaison Present: N/A

Staff Present: Sidney Ellis

Community Members Present: N/A

**Public Comments:** N/A

Legal Counsel Rachel Foster with WNJ

Attorney Foster explained the Development Agreement that was entered on August of 2022. The Development Agreement within this discussion is for the Pavilion Township to utilize Brownfield. In exchange for a lump sum payment over the course of five years up to \$500,000, the Land Bank has control of the property. At the time, it was known they would need a construction contract and within the contract there was a provision that said that the Land Bank would subordinate the mortgage of the property for construction lenders mortgage. The construction lender is 1<sup>st</sup> Source Bank. The Land Bank was presented a subordination agreement and an intercreditor agreement. It was presented to the Land Bank, if IPUSA defaults on the obligation to 1<sup>st</sup> Source Bank or the Land Bank then the Land Bank would have to standstill and not take action to make them follow through on their obligation. Attorney Foster has been in discussion concerning this proposal for the week. Attorney Foster proposed to add 90-day time frame for the proposal given. The proposal that Attorney Foster gave was rejected and they have been in the process to come up with other solutions. The three agreements details as follows:

1. The development agreement it was known they would need a construction contract and within the contract there was a provision that said that the Land Bank would subordinate the mortgage of the property for construction lenders mortgage, which is 1<sup>st</sup> Source Bank.
2. Collateral assignment is proposed and would require Brownfield to pay the Land Bank directly if IPUSA doesn't follow through on the agreement.
3. Subordination with 1<sup>st</sup> Source Bank with no time frame on the provision. The concern is surrounding the standstill as to the Land Bank foreclosing on the mortgage. Attorney Foster explains another option that wouldn't require foreclosure, which is looking at breach of contract. Attorney Foster discussed the process of moving between construction financing to permanent financing. It was attempted to negotiate that IPUSA

would not ask the Land Bank to subordinate again. They didn't agree to those terms, but they agreed that if there is another subordination is required it would not come with the standstill requirements.

Attorney Foster asked for the board to authorize finalization of the amendment to the development agreement, subordination with 1<sup>st</sup> Source Bank, and collateral assignment of Brownfield Proceeds.

Attorney Foster answered questions from the board. Decker asked for the agreement not to subordinate to be in writing prior to finalization. Foster clarified that it will be within the amendment of the development agreement and the language will be corrected as the original language was rejected. Kik asked about the Land Bank policies and if there's policies that would assist with intercreditor agreement. This is the first time the KCLBA has gone through this process. Foster suggested that if there is a situation similar to IPUSA there could be further clarification in the original development agreement that avoids a standstill and the Land Bank with exercise its right if there is a default. Additionally, there could be a policy made surrounding subordinating and the Land Bank terms and agreement to exercise certain rights. Discussion ensued concerning if the development agreement standstill for future subordination term is rejected. If the term is not agreed upon, want to present the option to payout the terms of the agreement.

Kik inquired concerning KCLBA policies being different than other Land Banks with deal structures. Foster explained the deal structure and the reason behind why its structure in its current format. In short, it is due to the additional layers and concerns that would've fallen onto the Land Bank as the owner of the real estate. Instead, the Land Bank opted to have stakes within through the mortgage lien.

Decker inquired about the first amendment item two concerning confirmation. Foster explained 1<sup>st</sup> Source wanted confirmation of waiving the entitlement to 550 proceeds in exchange for up to \$500,000 from Brownfield. It was within the original development agreement, but due to confusing language they wanted confirmation that the Land Bank wasn't going to exercise rights for the 550. The board reviewed the agreements and the language within the agreements.

Board asked for Attorney Foster to propose if there is future subordination that there are no standstill terms, regular updates from IPUSA to the board, and correct the language within all the agreements for consistency.

- Decker made a motion to have Director Ellis to contact IPUSA to request a quarterly report for the June 8<sup>th</sup> meeting. Also, ask IPUSA to present this information at the meeting and present to the board in-person quarterly until project completion. Kik seconded the motion.
- All were in favor and the motion carried.
  
- Rey made a motion for Director Ellis to sign the amended development agreement, subordination with 1<sup>st</sup> Source Bank, collateral agreement of Brownfield Proceeds on the terms discussed, changing the reference to the amount the Land Bank will be paid, clarifying that if there is a need for future subordination that there will be no standstill or if there is a request for standstill IPUSA would need to pay the Land Bank early, and allow Ellis, Foster, and Whitener to negotiate further changes to those agreements and update the board. Roberts seconded that motion.
  
- All were in favor and the motion carried.

#### Adjournment

Decker made a motion to adjourn. Clark seconded.

All were in favor and the meeting was adjourned.