

COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION

DATE: October 1, 2021

TO: Supervisor Marcelia Nicholson, Chair, County Board of Supervisors

FROM: Aaron Hertzberg, Director, Department of Administrative Services

SUBJECT: From the Director of the Department of Administrative Services, an informational report providing an update on Ballpark Commons project Community Benefits reporting

REQUEST

There is no request at this time; this report is for informational purposes only.

BACKGROUND

File 21-760 – An action report audit “Between The Rock and a Hard Place: Former Landfill Becomes Entertainment Center with Unresolved Community Concerns Beyond the County’s Ability to Solve.”

File 19-619 – An informational report on the status of compliance with Milwaukee County agreements by the developer of the Ballpark Commons Project

File 19-455 - An informational report regarding the Ballpark Commons development, including compliance with insurance standards, community benefits, noise and light requirements, the continued operation of the ski hill, and the operation and maintenance of the methane monitoring and extraction system

File 17-598 - Proposed Contribution and Participation (Trust) Agreement with BPC County Land LLC, for the sale of the Crystal Ridge landfill; and authorization to execute a new Lease Agreement for land zoned as parkland between Milwaukee County and The Rock Sports Complex, LLC for the ski hill property located in the Village of Greendale

File 17-334 - Proposed Ballpark Commons Development and potential impact on Milwaukee County

File 17-366 -The Rock Sports Complex Cancellation and New Lease for Ski Hill in Village of Greendale

File 17-373 - Amend Sections 68.01 and 71.12 of Ordinances to remove County Trunk Highway K (W. Old Loomis Rd)

REPORT

At the request of the Board, this report is provided to offer more information related to the developer’s obligations and the status of Community Benefits goals and reporting outlined in the project’s development agreement.

Background

Following approvals by the County Board (File 17-598), Milwaukee County sold the property now known as Ballpark Commons, in the City of Franklin, to developer BPC County Land LLC. As a part of that sale, the parties entered into a development agreement outlining the terms of the

project, including the establishment of Community Benefits goals, and the developer's obligation to provide timely and accurate reporting on their compliance with those goals.

Community Benefits Goals

The development agreement specifies the following Community Benefits goals on this project:

TBE Participation Goals: The developer committed to ensuring Targeted Business Enterprises (TBEs, including Disadvantaged Business Enterprises, minority- or women-owned businesses, small businesses, etc.) have an equal opportunity to participate in the project. Specific goals were set of (1) a minimum of 25% TBE participation for project costs relating to hard construction, and (2) a minimum of 17% TBE participation for project costs related to professional services. TBE participation compliance is measured in contracting dollars paid to TBE-qualifying contractors and subcontractors, as a percentage of total dollars paid to all contractors and subcontractors on the project.

Apprenticeship and Training Opportunities: The developer also committed to a goal of at least 10% of on-site construction hours performed by apprentices or members of applicable job training programs. Apprenticeship goals are measured in hours worked by apprentices, as a percentage of total hours worked by all employees.

Community Benefits goals apply only to those parts of the Ballpark Commons development that are constructed by the developer directly, and only those projects located on the property purchased from the County. (The larger mixed-use development also includes projects constructed by third parties, and additional land that was not purchased from the County, which Community Benefits goals do not apply to.) No Community Benefit goals were required or set related to residential hiring, or minority or other hiring.

Compliance Deposit

At the time of closing, the developer was required to submit a \$10,000 compliance deposit, to be held by the County to insure against compliance with the stated Community Benefits goals, and to be repaid to the developer upon substantial completion of the project, if Community Benefits goals are met (or the developer has, in the County's estimate, utilized a "good faith effort" to achieve such goals). The County continues to hold the deposit.

Community Benefits Reporting Status

Prior to commencement of the project, the developer hired Cross Management to help fulfill Community Benefits reporting requirements in the County's B2Gnow and LCPTracker reporting systems utilized by the County. Cross Management submitted regular reporting on TBE participation and apprenticeship goals as required until the summer of 2020. In September 2020, County was informed that Cross Management was no longer involved in the project, and all TBE and apprenticeship compliance reporting ceased at that time.

There are currently still open projects in both the B2Gnow and LCPTracker systems, which were at or near completion in September 2020, but final reporting was never entered or confirmed. The County is unable to close out such projects without further reporting and confirmation from sub-contractors.

Since Cross Management's departure from this project, Milwaukee County Economic Development has reached out several times to the developer directly. Staff has sought final reporting to allow for closing out existing projects, and to request information on any new projects that may require additional or new reporting. Though the developer has responded to other requests, no further reporting on Community Benefit goals has been provided.

The data reported in the Audit (File 21-760) is the latest information available.

From available reporting*:

- Apprentice & Job Training:
 - o Goal: 10% Current Status: 12.4%
 - o This represents an exceedance of the goal by 3,031 hours

- TBE Participation on Professional Services:
 - o Goal: 17% Current Status: 54.1%
 - o This represents an exceedance of the goal by \$1,253,721

- TBE Participation on Construction Services:
 - o Goal: 25% Current Status: 4.7%
 - o This represents an underachieving of the goal by \$8,581,257

* it should be reiterated that the presented numbers are not finalized as the total project remains incomplete, the owner/developer is deficient in its obligation to provide timely reporting and confirmation by subcontracts.

Contract Enforcement

As noted in Economic Development response to the Audit report, the County generally prefers to see the developer complete their Community Benefits reporting in our systems before making a final determination as to whether a developer has complied with its requirements. As of drafting, the developer is clearly trending towards no compliance in the area of TBE participation on Construction Services. Furthermore, the developer has violated its Community Benefits Compliance Plan, by not providing timely reporting.

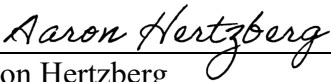
Contract remedies for failure to comply with Community Benefit goals are outlined the County's development agreement with BPC County Land, LLC, a draft of which is included in File 17-598 (Sections 2.4-2.8). The compliance deposit, or so much as determined by the County to be reasonable, may be retained if the developer fails to comply with the Community Benefits goals (and has not utilized a good faith effort to achieve such goals). In addition, if the developer fails to comply with Community Benefits goals, the developer may be disqualified from participating in future County projects for a period of up to three years.

Milwaukee County Economic Development is prepared to make a final determination on this by the end of 2021, if no further reporting or response is provided by the developer. Regardless, staff will continue to seek compliance and advocate for the inclusion of contracting goals as required.

RECOMMENDATION

Informational only. No action requested at this time.

Submitted by:



Aaron Hertzberg
Director, Administrative Services

cc: David Crowley, County Executive
Economic and Community Development Committee Members
Guy Smith, Director, Parks Department
MaryJo Meyers, Chief of Staff, Office of the County Executive
Kelly Bablitch, Chief of Staff, County Board of Supervisors
Scott Manske, Comptroller
Steve Cady, Research & Policy Director
Jennifer Folliard, Director of Audits