

**Tooele City Redevelopment Agency  
Business Meeting Minutes**

Date: Wednesday, March 04, 2009  
Time: 6:00 p.m.  
Place: Large Conference Room  
90 North Main Street, Tooele Utah

**RDA Board Members Present:**

John Hansen, Chair  
Steve Pruden  
Mike Johnson  
Scott Wardle  
Dave McCall

**City Employees Present:**

Mayor Patrick Dunlavy  
Roger Baker, City Attorney  
Glenn Caldwell, Finance Director  
Cary Campbell, Public Works Director  
Randy Sant, RDA Consultant  
Michelle Pitt, RDA Assistant

**Others Present:**

Shawn Milne, Planning Commission  
Debbie Winn, Chamber of Commerce  
Terri Ellsworth

Minutes prepared by Elisa Jenkins

Chairman Hansen called the meeting to order at 6:00 p.m.

**1. Approval of Agreement with Sostanza for RDA Participation**

Presented by Randy Sant

Mr. Sant distributed a copy of the March 5, 2008 RDA Minutes to the board. These minutes contain the original agreement of the Sostanza project. Mr. Sant indicated that when this agreement was approved RDA funding was subject to the completion of the following items: (There was a 90 day period to get these done, but the board extended it another 90 days because there were problems with the appraiser.)

1. Written evidence of a private loan. The RDA did receive that evidence that Sostanza did obtain the money.
2. Loan has to be enough to complete the project. Mr. Sant indicated that the loan plus the equity that is required by the developer is close to \$300,000 plus

the RDA's \$150,000 was adequate to complete the project. That was verified by the bank.

3. All improvements are to be bid, and reviewed by Agency. All the improvements have been bid. Ms. Ellsworth sent them to Mr. Sant. He felt like he reviewed them and they were adequate, there was nothing out of line.
4. Total capital investment \$1,150,000. He said that today it is closer to \$1.3 million.
5. Owner provides an accurate pro forma. Mr. Sant said that happened as they went through the dealings with the lender.
6. Agency funds to be used for building improvements. He said that will happen the RDA money will go into making building improvements.
7. Upper floor must be renovated. He said that has not been done, Ms. Ellsworth will update the board on this progress.
8. Building construction plans completed and approved by the City. He said the building permit was issued, so the City would have reviewed the plans.
9. Building Permit is issued by the City.
10. Owner complies with all conditions of the building permit. Mr. Sant assumes that inspections are being done as required by building code if there was a problem there would have been a stop order to correct. He has not heard back from the building department that there have been any issues.
11. City and owner agree to a deed or easement for the alley way. Mr. Sant said that is something that still needs to be worked on. He suggests that as they get a little further into the project they will discuss the easement.

Mr. Sant said what is recommended to protect the RDA investment was a deferred loan grant agreement. That agreement would be a promissory note and a lean. The deal would be that this would start out as a loan with an interest rate of 4.5% for a 5 year period of time. For every year Sostanza stays in business 20% of the loan is forgiven, that would convert into a grant. At the end of 5 years if they are still in business it is a grant to them. If something happens during that time and they leave it would be a loan that would need to be paid back. That loan would have provisions that say 1) owner operates restaurant and owns the building for 5 years after completion of all improvements, 2) owner renovates the upper portion of the building according to the approved plans and 3) owner completes all the requirements as set forth by Mr. Sant. Mr. Sant said that they have done everything that has been required of them except for the upstairs has not been renovated. Ms. Ellsworth has a plan for the upstairs that he feels is a good idea. They still need to talk about the alleyway. Mr. Sant then turned the time over to Ms. Ellsworth.

Ms. Ellsworth indicated that they are 30-45 days away from opening. Their drywall is almost complete, then they will have painting and carpeting to be completed. The kitchen equipment has been delivered. The contractor says that 30-45 days should be enough time to have everything completed. Ms. Ellsworth said they spent several months trying to get the upstairs to work. They have had one issue after the other. Building 23 is in worse shape than 29, some of the problems are structural. Originally, they could bypass some of the restrictions that existed if they only used 1/3 of the portion of the

upstairs of building 29. There are a lot of technical issues upstairs to be able to use it for commercial purposes. Both of the second stories in each of buildings do not go all the way to the back of the building. There are varying degrees of where the second story begins. They have looked at many different ways. They have concluded the best use for the second story space would be residential. There are a lot less restrictions for residential than commercial. That is what they are attempting; they have pre-planned for electricity and roughed in the plumbing on the second story. They are trying to get the restaurant up and running first before they complete the upstairs.

Chairman Pruden asked if there needs to be a timeline for the upstairs to be complete.

Mr. Sant said that the board should consider a time line. He said their number one goal is to get the restaurant open so they can start receiving cash flow. He recommends maybe a year or so after the restaurant opens.

Councilman Wardle said that it is great that these buildings are being finished and it is looking good. He doesn't have a problem with the upstairs being residential it gives other people ideas of what can be done in the downtown area. He suggested extending the time line and fronting half the money of the loan grant now and when they receive a certificate of occupancy for the restaurant to give them the other half of the money. He would also like a letter from Ms. Ellsworth that they would have one year to finish the upstairs and if it is not complete they would re-negotiate the loan grant and portions of it would go to a loan. This is a demonstration project and they are looking for the full building to be renovated. It puts the RDA in a position that they can recover and go after other projects if the upstairs is not completed in the said time frame.

Ms. Ellsworth did not want to speak for Mr. Makris, the owner, but she feels that sounds like that is a good solution. Before she agrees to the year time frame she would like to understand the challenges of finishing the upstairs. Building 23 is not as structurally sound as building 29. Building 23 is the easiest to go into for residential but physically it is not sound. They have not spent the money identifying the solutions because they are concentrating on the restaurant. She would like to talk to Mr. Makris first.

Councilman Wardle said that going longer than a year would concern him.

Ms. Ellsworth said that they have pre-planned to make the upstairs residential.

Councilman Wardle said he thinks that is great idea.

Ms. Ellsworth stated that with a residential use they do not have to worry about two flights of stairs, access up the front is all that is required. She indicated that it a much softer commitment in terms of code for residential than commercial.

Councilman McCall said that he has concerns for people living above the restaurant. He wondered if you were upstairs if you would be able to hear the people downstairs. He asked if it they are going to soundproof the floor.

Ms. Ellsworth said that part of the restaurant would be designated for private dining. That will not be utilized everyday like the restaurant will. The residential is in the opposite building. They already have a tenant, Mr. Makris' father.

Councilman McCall asked if they will meet the fire code.

Ms. Ellsworth said they will take care of all of the building issues.

Mr. Campbell asked if there will be one occupant.

Ms. Ellsworth said that it would be a residential apartment; she does not know what all the requirements are.

Mr. Campbell said he has not done any research on that and he does not know what the codes are right now.

Ms. Ellsworth said she is going by what the architects have said.

Councilman McCall agrees with Councilman Wardle that he would like to see the upstairs completed in a year. He asked if in a year they would renovate the upstairs to be part of the restaurant.

Ms. Ellsworth that is what they intended. Because of the complications they have abandoned the idea of making it part of the restaurant and making it residential. They expanded the footprint for the restaurant downstairs.

Mr. Baker noted that for a long time residential uses in Tooele were prohibited above retail and other commercial uses in the downtown. He indicated that there has been a movement across the country to reintroduce that kind of mixed use to encourage business owners to live in the same building or close by. This use allows people to live and work in downtown. In 1997 when they overhauled the zoning ordinance they reinstated residential as an allowed use mixed with commercial. This will be the first opportunity to see that concept implemented. He feels that it is exciting; it used to be a very popular way of living.

Councilman Hansen concurred with Mr. Baker. He said that he and Mr. Baker went and looked at the project today and he said that it is gratifying to see this project progressing. He feels that it is optimistic that they will open in a month, but Ms. Ellsworth is going by what the contractor is saying. He feels that this will be a great addition to the community. He also indicated that apartments would also be a great addition to the downtown area. Councilman Hansen said that the board needs to discuss what money they will give to this project. He said that \$130,000 was for the loan grant and \$20,000 was for the façade grant.

Mr. Sant said that they have to meet the guidelines for the façade grant. The money is broken into two phase's 1) \$20,000 façade grant which is an outright grant to them and 2) \$130,000 is the deferred loan which converts to a grant if they remain there for five years.

Councilman Johnson asked if they have a trust deed.

Mr. Sant indicated that they will have a lien and a promissory note.

Councilman Wardle said that the board really wants to see the upstairs completed on this project. They have talked about 50% of the money now and 50% upon completion and certificate of occupancy. Councilman Wardle suggested that they could give Sostanza two years to complete the upstairs and if it is not completed then a portion of the loan grant would not be granted to them.

Ms. Ellsworth said that sounds more than reasonable. She is hesitant with a year is because this is taking so much longer than was anticipated.

Councilman Wardle indicated that would protect the City and would protect them and it is a good demonstration project for downtown.

Chairman Hansen clarified that half of the money now would be half of \$130,000. The other \$20,000 is part of a façade grant. It makes a difference.

Councilman Wardle stated that he does not want to see the upstairs abandoned. He would like to see some assurances.

Ms. Ellsworth said they already have pre planned for the electrical and roughed in the plumbing upstairs.

Mayor Dunlavy noted that the façade grant is a reimbursable grant. They spend the money and the RDA reimburses them.

Mr. Baker said that another possibility is to give them period of time for them to come back (i.e. 30 or 90 days) as to how long they will need.

Councilman Wardle asked if they could come back within the next four months and let the board know how much time they will need to finish the upstairs.

Mr. Sant said that the goal is to get them open and the restaurant going. They need some money to finish the building. The bank made the loan based on the RDA commitment. He likes the idea of giving them 50% of the money now; then they go through the façade grant to get the other \$20,000. Half of the \$130,000 would give them \$65,000 which would go a long way to get things completed in helping them get occupancy. He would get a letter and bring it back in two weeks for the board to approve. He also said to keep in mind that the board is doing this as if it were a loan if it doesn't happen in two years they have 60% of the money they can convert over to a loan that they would have to pay

back. Then they would have given them \$52,000 to open up a restaurant and renovate it and the rest would become a loan. After two years of operation they would have a good feel of their cash flow. If this gets delayed, they don't have adequate funding to complete everything they need to do. The restaurant needs to be opened as soon as possible. It would be a condition of the agreement that they would have to come back in two years. If the upstairs is not done in two years 60% would then become a loan that would have to be paid back at 4.5% interest.

Mayor Dunlavy suggested that they give them the full \$130,000 so they can use it to get things done, with the assurance that they will complete the upstairs within two years.

Councilman Johnson said that there is no assurance that they will ever see that money if they go out of business.

Mr. Sant noted that they will try and lien some of the equipment to help secure them. They will put a lien on the building. The RDA wanted to do this project because they wanted someone to take a building and make it a productive use to show people what can be done on Main Street. He feels protected doing a deferred loan grant because it can be converted over to a loan whether it \$130,000 or \$60,000. They have to get some credit for coming in and opening up a restaurant. The RDA would normally participate with anyone on that minus the upstairs. If you give them all the money now they would have all the cash flow they need to get things done. They have spent to date almost 86% of the budget. This last little bit will take care of the finishing. They have held off as long as they could before they came to the RDA asking for the money. He feels like they should give them something whether it is 50% or 100%. He understands that the board did not want to upfront all the money and have them not open. If you give them 50% now and 50% at occupancy you know that they will be opening. He would prepare an agreement that gives them 2 years to renovate the upstairs and if they do not it becomes a loan.

Councilman Johnson said that they could give them 50% now to get the rest of the restaurant done. When they come back with a plan to get the upstairs done that can be done as a separate agreement for them to get the rest of the money.

Chairman Hansen asked Mr. Sant if that would cause any problems recording.

Mr. Sant said he does not want to one lien and then a partial. They want one agreement, one lien, one promissory note for the entire amount of money. They could do it in two agreements if that is what the board prefers.

Councilman Johnson said that the \$65,000 to do the upstairs is a grant. It will not generate sales tax; it is a grant to finish the upstairs. The other one is a loan convertible to a grant by staying in business and generating sales tax. He feels that they are two separate transactions.

Councilman McCall asked if it is possible for them to ask for more money down the road. He asked if it is going to cost them a lot of money to finish the upstairs, he wondered if they could come back and ask for more money to defer that cost.

Mr. Sant said no, they made an agreement that \$150,000 commitment was for both buildings.

Councilman Wardle said that he has questioned this project from the beginning. He realizes that they will need to generate cash flow to finish some of the problems in building 23. If they are holding back money because the upstairs is not done, they are holding up the generation of capital to finish what the RDA board is asking them to complete.

Ms. Ellsworth said that what they have done is based upon the whole amount of the grant, not the grant being portioned out two years down the road. A million dollar plus investment has already taken place which shows a significant amount of faith on their part.

Councilman Pruden asked if their renovations include the parking lot.

Ms. Ellsworth stated that they have intentions to “spiff it up”.

Councilman Pruden asked if it will be “spiffed up” for the grand opening.

Ms. Ellsworth said not necessarily. They want to get the restaurant opened. They do not have to have the parking lot done in order to generate cash flow in the restaurant. They have opened up the back and taken down the fencing. The master gardener is looking at trees. That is their front door and they want it to look nice. But what is most important to them is getting the restaurant opened.

Councilman Pruden concurred with the Mayor, he feels like they should give them the \$130,000 to help them get opened. Everything is speculative; they are not going to know how it will all work out unless they give them the full cooperation that they can.

Chairman Hansen said that this project was a demonstration project to show others what can be done downtown. The Board has to contend with others asking for money. They are hoping that this will spark other businesses. It is important for the board to get the upstairs renovated as well.

Councilman Wardle considered a motion to give Sostanza 50% (\$65,000) of the money today and the other 50% (\$65,000) when the certificate of occupancy permit is issued. In the event that the upstairs is not completed when the restaurant is opened, Sostanza will have two years to complete the upstairs, if it is not completed than 60% of the grant loan will turn into a loan.

Councilman Johnson asked what if the restaurant does not open.

Mr. Sant said if the restaurant does not open. They are protected in the fact that the \$65,000 becomes a loan that they have to pay back.

Councilman Johnson said the motion sounds like it is a grant for 40%.

Councilman Wardle stated that for every year that they are open 20% is forgiven, however if it is not completed in two years whatever the balance is converts from a loan grant to a loan.

Mr. Sant stated that this is a deferred loan grant. It is a loan for \$130,000 at 4.5% interest to be paid back over five years. For every year they stay in business 20% of the loan is converted over to a grant. If any of those terms are violated during that time they have to pay back whatever the amount is. He used for example if they are open for one year and then go out of business they owe would owe 80% of the \$130,000 that they would have to pay back. If they are in business for two years and the upstairs is not completed under this scenario it would automatically convert over to a loan, it is not forgiven. He would add until the upstairs is completed then they would have the right to consider to convert it over to a grant at that time. The RDA wants the demonstration project. 60% of that money is for the upstairs renovation.

Councilman Wardle said that they have invested a million dollars they are in this for the long haul.

Councilman Johnson understands that they have every intention of opening and being successful or they would not invest that kind of money. However, the economy is in a recession and they do not know what the business will do. His question was what happens if they do not make it.

Councilman Wardle said they have a provision built in to the original agreement.

Mr. Sant said when they first talked about it and the worst case scenario. They have a million dollar trust deed in front because the bank has the first position. They could put a lien on the personal property and sell it and get what they can. They could find someone to take over the project as well.

Councilman Johnson asked Ms. Ellsworth if they financed their equipment.

Ms. Ellsworth said no.

Councilman Johnson said that he would support Councilman Wardle's motion if they have adequate security. They will be 2<sup>nd</sup> or 3<sup>rd</sup> on the building. He realizes that it converts to a loan, but if they can't pay the loan back they will look to the collateral and they are in 3<sup>rd</sup> position they are not going to get any money back.

Mr. Sant said that the City's collateral would be the personal property.

Councilman Wardle considered a motion to give Sostanza 50% (\$65,000) of the money today and the other 50% (\$65,000) when the certificate of occupancy permit is issued. In the event that the upstairs is not completed when the restaurant is opened, Sostanza will have two years to complete the upstairs, if it is not completed than 60% of the grant loan will turn into a loan. The RDA will make sure that they have adequate security written into the agreement on the personal property and real property.

Councilman Johnson stated that they needed to maintain the commitment on the alley.

Mr. Sant stated that would be good security.

Mr. Baker indicated that an agreement has not been reached yet on the alleyway. They have agreed to discuss an agreement.

Mr. Sant read part of the minutes from March 5, 2008. "Ms. Ellsworth then asked for an addendum. She mentioned she has spoken with Spiros Makris, the owner, regarding most of these items. She had a question on the alleyway and how they will deal with that. They want to make it clear that they are still not clear on how that will be taken care of. Obviously the alleyway will be open and they do not want the access blocked in any way but they do want to use it for the restaurant. There appear to be a cement dividers or planters. Inside those planters there is only 12 feet. With 12 feet, there isn't a lot of room for a walkway and tables. We need to discuss how that alleyway is going to be handled." "Councilman Johnson emphasized that the Council is not asking her to agree to their position just that it all needed to be resolved within 90 days."

Mr. Sant said that it still needs to be resolved. His recommendation is that they give the City the easement and they allow them to use it however they want.

Councilman Johnson suggested than an agreement be in place on the alley way before the second half of the money is distributed. He would like that in the motion.

Ms. Ellsworth asked for clarification on the alleyway.

Mr. Sant said that they would deed the City the alleyway and the City will give them an easement or a license to use it.

Councilman Johnson would rather see it as a license. He does not have a problem letting Sostanza have exclusive use of the easement but if it is a recorded document because than the bank would have it if it went into foreclosure.

Ms. Ellsworth said that part of the issue with the alleyway is who is liable. The property owner is liable. If there are people out there eating who assumes the liability. That was where the confusion was before.

Councilman Johnson suggested that the City take title of the alleyway and give Sostanza a rent free lease.

Mr. Baker said that the last time they spoke about this in the Mayor's office it was suggested that Sostanza would keep ownership and liability of the alleyway and give an easement to the City. That would give the public access from the front to the back.

Ms. Ellsworth remembers that conversation that they would maintain ownership and give an easement to the City.

Mr. Sant suggested that Ms. Ellsworth, Mr. Makris, Mr. Baker and himself sit down and come up with a solution that works for everyone concerning an alleyway.

Mr. Baker said that the main objective was to have the alleyway open so people could walk from Main Street to the parking lot.

Councilman Wardle suggested adding as a condition to the motion to have the alley way agreement completed before the certificate of occupancy.

**Councilman Wardle moved to give Sostanza 50% (\$65,000) of the money today and the other 50% (\$65,000) when the certificate of occupancy permit is issued. In the event that the upstairs is not completed when the restaurant is opened, Sostanza will have two years to complete the upstairs, if it is not completed at that time 60% of the grant loan will turn into a loan. Also, the RDA will make sure that they have adequate security written into the agreement on the personal property and real property, and the alleyway agreement is completed before the certificate of occupancy is granted.** Councilman Johnson seconded the motion. All members present voted "Aye".

## **2. Economic Update**

Mr. Sant indicated that he is still pursuing the 1000 North funding. Mr. Sant distributed a copy of the 1000 North Options with an option A and an option B to the board. (This sheet is included with the minutes as Exhibit A). Mr. Sant reviewed the options with the board. Mr. Sant asked which option the board would prefer him to pursue. Most of the board prefers option B.

## **3. Minutes: December 17, 2008**

**Councilman Pruden moved to approve the minutes as presented.** Councilman Wardle seconded the motion. All members present voted "Aye".

## **4. Adjourn**

**Councilman Wardle moved to adjourn the meeting.** Councilman Pruden seconded the motion. All members present voted "Aye". The meeting adjourned at 6:57 p.m.

Approved this 1<sup>st</sup> day of April 2009

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Chairman Hansen