

Special Meeting Agenda

Manistee Downtown Development Authority

Friday, August 23rd, 2019 at 8 am

City Hall Council Chambers, 3rd Floor

1. Call to order – Chair
2. Approval of Agenda
3. Public comment. (Limit 5 minutes per person).
4. Consideration of Design Committees recommendation for the approval of the Elk's Façade grant
5. Consideration of Real Estate Purchase Option Agreement for 285 River St, aka, American Cleaners
6. Old Business
7. New Business
8. Public Comment. (Limit 5 minutes per person).
9. Board Comment.
10. Adjournment

REAL ESTATE PURCHASE OPTION AGREEMENT

This Option Agreement is made on this the ____ day of _____, 2019, by and between Little River Holdings, LLC, hereinafter referred to as the Purchaser and Manistee Downtown Development Authority, 70 Maple Street, Manistee, MI 49660, hereinafter referred to as the Seller.

FOR AND IN CONSIDERATION of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

I.

GRANT OF OPTION: The Seller does hereby grant unto the Purchaser the exclusive and irrevocable option to purchase, upon the terms and conditions hereinafter set forth, Seller's property situated in Manistee County, Michigan, "as-is, where is" including without limitation all improvements located thereon, to wit: Commonly known as 283-285 River Street, 49660 Zip Code, with the following legal or tax description: FILER + SMITHS ADD PT LOTS 1, 2 + 7 COM 16.7 FT W OF NE COR LOT 1, SLY ALG W LI US 31 TO W LI LOT 7, N 35.3 FT, W 31.35 FT, N TO N LI LOT 2, E 80.89 FT TO POB. BLOCK 7

II.

EXERCISE OF OPTION: This option to purchase may be exercised by the Purchaser at any time prior to midnight as further described herein by notice in writing via first class mail to the Seller at their address above or via email to: _____.

III.

DEFAULT BY PURCHASER: In the event of the failure of the Purchaser to exercise this option, all money paid by the Purchaser to the Seller upon the execution of this Agreement, or upon any extension, shall be returned to the Purchaser and all rights of the Purchaser under this Agreement shall terminate.

IV.

TITLE: Within thirty (30) days after the Purchaser has exercised this Option as hereinabove provided, the Seller shall deliver to the Purchaser, at Purchaser's expense, a Certificate of Title covering the property described above which shall reflect that marketable fee simple title to the subject property is vested in Seller, and that same is insurable by that title company. Said Certificate shall be subject only to taxes for the current year, if applicable, easements, and rights of way of record, and prior mineral reservations. Should said Certificate reflect any other exceptions to the title unacceptable to Purchaser, Purchaser shall notify the Seller in writing of any defects within fifteen (15) days (the title review period) and the Seller shall have a reasonable time in which to make the title good and marketable or insurable, and shall use due diligence in an effort to do so. If title is acceptable to Purchaser, the closing shall as further described herein.

V.

PURCHASE PRICE: The purchase price for the property shall be \$1.00.

VI.

OPTION MONEY: Upon execution of this Option, Purchaser has paid unto Seller the sum of \$1.00 as "Option Money". In the event that Purchaser exercises the option to purchase this property within the initial option period or any extension thereof and is not in default in any other terms of this Agreement, said Option Money shall apply toward the purchase price at closing.

VII.

EXPENSES OF SALE: In the event Purchaser exercises this option to purchase the subject property, Purchaser agrees to pay all costs and expenses of the sale including its attorney fees, recording fees, and any other costs attributable to their due diligence inspection(s) of the property.

VIII.

POSSESSION: Purchaser shall be entitled to possession of the property at closing.

IX.

RIGHT OF ENTRY: During the term of this Option or any extension hereof, Purchaser shall be entitled to enter upon the property for the purpose of conducting soil tests, engineering studies, and surveys upon notification to the Seller.

X.

TAXES: Taxes, if any shall be prorated as of the date of closing.

XI.

CLOSING: The purchase and sale contemplated herein shall be consummated at a closing ("Closing") to take place at the local offices of the Title Company, or a location as otherwise agreed by the parties. The Closing shall occur on or before the later of: February 14, 2020 or (180) days after Purchaser obtains the necessary Governmental Approvals, but no later than the close of business Two (2) years from the date of the granting of this Option, or at such other time as the parties may agree upon in writing (the "Closing Date").

XII.

DEFAULT: This contract shall be binding upon and inure to the benefit of the heirs, administrators and assigns of the parties hereto and upon default in any of the terms of this Agreement the defaulting party agrees to pay all costs of Court and a reasonable attorney's fee.

XIII.

SOVEREIGN IMMUNITY: This Option Agreement and subsequent Land Contract shall be construed to have been entered into upon the reservation lands of the Little River Band of Ottawa Indians, a Native Sovereign Nation, possessing full sovereign immunity. It wholly-owns the Purchaser, which is protected by this same sovereign immunity. Any legal action, if allowed, shall be in the Little River Tribal Court and under the jurisdiction of its laws.

IN WITNESS WHEREOF, the parties have executed this Agreement on this the ____ day of _____, 2019.

SELLER

PURCHASER

STATE OF MICHIGAN

COUNTY OF MANISTEE

PERSONALLY appeared before me, the undersigned authority in and for the county and state aforesaid, the within named _____, who acknowledged that he signed and delivered the foregoing Purchase Option on the day and year therein stated.

GIVEN under my hand and official seal this _____ day of _____, 2019.

NOTARY PUBLIC

My Commission Expires:

STATE OF _____

COUNTY OF _____

Memorandum

To: DDA Board
From: George V. Saylor, III
Date: August 15, 2019
Subject: Open Meetings Act

I am using the Memo to review with the DDA Board the general requirements of the Michigan Open Meetings Act (OMA). Also, some specific questions recently arose for the Board regarding application of the OMA and the ability to hold closed sessions to discuss specific matters. The Michigan OMA is a group of laws that ensure that decisions of government take place in view of the public. The OMA mandates that deliberations of a public body take place in a setting where the general public is able to observe the debate and are able to offer their comments with regard to matters of concern. When there is some question regarding the application of the OMA and whether a particular discussion is subject to the OMA, we have always taken the position that the OMA applies.

1. **Bodies Covered by the OMA.**
 - a. The Michigan Open Meetings Act (OMA) requires that all meetings of a “public body” be open to the public and held in a place available to the general public.
 - b. The definition of a public body includes local legislative or governing bodies (like City Council) including boards, and Authority (like the DDA), committees, and sub-committees that are empowered by law to exercise a governmental function.

2. **Notice.**
 - a. Meetings of a public body cannot take place unless there has been proper notice provided and the meeting is open to the public. The Notice requirements of the OMA are:
 - i. A public notice must be posted at the principal office of the public body and contain the name of the public body, telephone number and address (for the DDA Caitlyn would post a notice at City Hall and also preserve a copy with her signature verifying the date of posting). The notice may also be posted in other locations that the public body may consider appropriate;
 - ii. A person designated by the public body must post within 10 days of the first annual meeting of the body the dates, times and places of its regular meetings for the year;

- iii. If a change is made to any regular meeting date the new schedule must be posted within 3 days of the meeting at which the change was made;
- iv. For a rescheduled regular or special meeting a notice, including the date, time, and place of the meeting, must be posted at least 18 hours before the meeting and if the public body maintains an internet presence, as does the DDA, the notice must be included on the body's website. The 18 hour requirement dictates that the posting be accessible to the public for the 18 hour period (if posted on an interior location not accessible after hours, the posting must be made for 18 hours when the location is accessible to the public).

3. Meetings Covered.

- a. A quorum of a public body, meeting to discuss the business of the public body, is subject to the OMA. Purely social or chance gatherings, that do not involve the discussion of the business of the public body, or attendance of a quorum at a conference or training that does not involve a presentation tailored to the public body, are times when notice would not necessarily be required even though a quorum of the public body is present in the same location at the same time.
- b. If the public body delegates to a group the authority to take action on behalf of the body and not just make an advisory recommendation, then the meeting of that group is subject to the OMA, even if a quorum is not present.
- c. All decisions of a public body must be made at an OMA compliant meeting. While case law indicates that polling does not necessarily violate the OMA, consensus building and debate on an issue that ultimately is decided by the public body is a violation. Distinguishing between polling and consensus building is not a bright-line test and while it is expected that members of a public body will discuss matters involving the body, outside of a public meeting, care must be exercised to avoid debate on an issue that may be decided by the body.
- d. Committees and subcommittees of a public body that are merely advisory and are not delegated authority to act are not subject to the OMA. As a matter of policy, the City of Manistee requires all meetings, of advisory boards and committees, comply with the OMA notice requirements, including the requirement for the keeping of minutes (Council Policy – 10).

4. Impact of technology on the OMA. The use of e-mail, texting and other forms of electronic communication among members of the DDA Board during a meeting constitutes deliberations toward decision-making or actual decisions and violates the OMA. In effect, such communication would constitute a closed session under the OMA. The principle is that the deliberation of the DDA Board must take place in the open and should be something that the public is able to observe. If e-mail communication, texting or other forms of electronic communication

takes place between DDA Board Members during a meeting, the public is unable to observe that debate. Whether communication from outside the members of the DDA Board during a meeting is acceptable would depend upon the nature of the communication. DDA Board Members being available by phone, text or e-mail during a meeting regarding matters that may be unrelated to DDA business would be acceptable, but the DDA should maintain care in managing other types of communication during Board Meetings.

5. Straw Polls, Communication Among all Members of the DDA and “Reply All” E-mails. E-mail communication between DDA Board Members where it includes debate on a topic or soliciting the position of all members of the Authority (such as a straw poll) can result in a violation of the OMA. Even though you may not be meeting with a quorum of the DDA Board, and even when your discussions are on a one-on-one basis, if the objective of the discussions is to solicit the position of all the DDA Board Members on a particular issue and offer your argument in favor or against a particular issue, it may be considered the debate/deliberation on a topic among the DDA Board and constitute a violation of the OMA. Similarly, if an e-mail is exchanged on a particular topic, which is to be decided by the DDA Board, and is sent to all members of the DDA Board, and then multiple members respond to the e-mail by the “reply all” button, it may constitute a violation of the OMA. It certainly is not improper to distribute material to all members of the DDA Board, but the Authority should not deliberate over the information exchanged by communicating positions within the Board through e-mail. Avoid the “reply all” response.

6. Meeting Procedures. The OMA contains a number of provisions that affect the procedure at a public meeting.

- a. All members of the public must be permitted to attend a meeting of a public body and can only be excluded for a breach of the peace occurring at the meeting.
- b. While the OMA does not permit a public body to require members of the public to register in order to attend a meeting, the public body may require that an individual speaking at a meeting identify themselves if they wish to speak.
- c. A public body may place limitations on public comment, but may not establish a rule that prevents public comment (if multiple people are speaking in favor or against a particular subject, the body may encourage them to designate one or more individuals to speak on their behalf in order to avoid cumulative comments).
- d. A public body must have a time for public comment, but whether at the beginning or end of the meeting is something up to the public body.
- e. There is no right to address the public body during its deliberations on a particular matter, although the chair may do so if desired.

7. Minutes. The OMA requires that minutes be taken for all meetings of a public body. The minimum requirement of the OMA is that the minutes reflect the date, time, place, members

present and members absent at a meeting of the public body. As to the substance of the meeting, the OMA requires that the decisions be described and if there is a roll call vote the specific votes recorded. If a public body decides to have more detail in its minutes it may do so.

8. Quorum. The public body must follow parliamentary procedures in managing its meetings, including the requirement of a majority vote of members present at a meeting where a quorum is also present, unless the law requires some different number. If a meeting that is properly posted lacks a quorum when it convenes, the members present may receive reports, comments from the public and ask questions, although no matter should be debated or decision made. If a member of a body is disqualified from voting on a particular matter due to a conflict of interest, they cannot be counted as to whether there is a quorum present at the meeting.

9. Voting. Unless authorized by rule or law, members present at a meeting may not abstain on an issue put to vote and the chair votes on all motions (not just to break a tie in voting).

10. Closed Session. The OMA permits the calling of a closed session to discuss DDA Board business under certain circumstances. The DDA Board is currently considering the possible acquisition of property and the potential sale of DDA held property. Here are some of the more relevant circumstances that may permit the DDA Board to go into closed session to discuss DDA business:

- a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions. **(So if you have a set procedure for evaluation of your executive director and he or she requests, the evaluation may be conducted in closed session).**
- b) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained. **(This provision allows for a closed session to consider the purchase, but not sale, of property. Remember, no action may be taken in closed session and if you anticipate board action may be taken as a result of the closed session that should be reflected in your Agenda).**
- c) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.
- d) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all

interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j).

- e) To consider material exempt from discussion or disclosure by state or federal statute. **(The most common example of this provision is when you may want to meet to discuss the opinion of your attorney. Attorney communication is protected by law as privileged communication. So, if you were considering the sale of real estate, but that potential sale included some specific legal issue that was communicated to you in writing by an attorney, you could meet in closed session for the limited purpose of discussing the attorney's opinion.**

The above are just a few of the closed session provisions of the OMA, but the particular sections that would most likely apply to the DDA Board. Except for the periodic review of your executive director or the consideration of dismissal or suspension of your executive director, a 2/3rd roll call vote of the members appointed in favor of the closed session is required. I believe you have 9 members, so no matter how many are present at a meeting, to call a closed session you must have the affirmative vote of 6 members (so if you only had 5 members at the meeting, while you have a quorum you could not go into closed session). Minutes are required for a closed session and are preserved in a spot separate from the regular minutes and not accessible by the public. Minutes of closed sessions must be kept for 1 year and 1 day, and then may be destroyed.

GVS