



UWF Business Enterprises, Inc. Board of Directors Teleconference

Scenic Hills Country Argonaut Ballroom

September 16, 2013 Minutes – Approved 11/15/2013

Present

Chair K. C. Clark, Vice-chair Jay Patel, Secretary Suzanne Lewis, Treasurer John Todorovich, Member C. Ray Jones, Member Hal White, Associate General Counsel Pat Lott, ICEO James Barnett, Vice President Susan Stephenson, and Staff Support Secretary Marie Glass.

Guests: President Judy Bense, Dave Scott, Lewis Bear, Ed Fleming, Ellen Till, Ruth Davison, Betsy Bowers, Brendan Kelly, Megan Gonzalez, Kevin Bailey, Kim Brown, Jim Hurd, Sheri Pope, Angela Wallace, Anita Schonberger, Vieste Recorder Rebecca Fussell, Don Currise and Rita Powers from Vieste, Lee White and David Adams from George K. Baum & Company (via conference call), and Tiffany Nisewonger.

Welcome/Opening Remarks

Chair Clark called the meeting to order at 9:03 a.m. Ms. Glass called roll and confirmed that a quorum was present.

Action Items

- 1) East Campus Argonaut Village Discussion – Dr. Barnett stated that following a public solicitation process this board entered into an affiliation agreement with Vieste Development, LLC for development of a hotel conference center and affiliated housing to be located on the East Campus. He stated that staff had received many proposals from Vieste Development but wanted to ask the Board for direction concerning the final proposal received from Vieste Development on August 30, 2013 which indicates it is their best and final offer. He stated that it was the staff's best judgment that the final proposal is not in the best interest of BEI and should not be approved. He said that staff is still committed to and excited about the long term vision for use of this parcel of property as part of the overall campus master plan and that staff wants to focus on that vision and not allow BEI's long term plan to be sidetracked by making decisions in the short term that are inconsistent with our vision and long term goals. This campus has many excellent resources; it deserves our continuing efforts to develop those resources in the best interest of the University of West Florida.

Ms. Lott noted that the recommendation was accompanied by information that was received from Vieste Development in response to staff's request for Vieste Development's best and final offer. That information did come in from Vieste Development on or about August 30, 2013 indicating that it was their best and final offer. All of that information has been furnished to the Board, including various documents that accompanied Vieste Development's letter of August

30, 2013. She noted that in BEI's work with the proposals and discussions with Vieste Development, from the beginning, BEI used two key consultants during the process. George K. Baum & Company, who is BEI's financial advisor, and the law firm of McDonald, Fleming, & Moorhead, who along with BEI staff and counsel have spent many hours reviewing the many proposals received from Vieste Development. BEI staff has reflected in their recommendation based on its own analysis and on the advice of BEI's financial advisor that they believe that the project described in the final proposal is not financially feasible and presents unacceptable risk to BEI and the public assets it is charged to administer. In addition, she advised that staff believes that the proposal is different in significant respects in the project and financial structure from what was anticipated in the solicitation process and from what was agreed upon in the affiliation agreement. For these reasons, BEI staff have recommended that the Board not approve the best and final offer from Vieste Development, that BEI not continue these discussions with Vieste Development, and that the Board direct staff to so advise Vieste. Vieste's best and final offer was accompanied by correspondence from their attorney indicating that Vieste would pursue litigation if BEI did not approve the best and final offer and proceed to execute the ground lease with Quality Housing Foundation One, Inc. which is an unrelated 501(c)(3) corporation. In light of the threat of litigation, staff consulted with McDonald, Fleming, & Moorhead who confirmed they believed that staff's recommendation is well within BEI's rights and authority under the affiliation agreement and the solicitation process undertaken in connection with this project.

Ms. Lott then called upon Mr. Fleming to address the board. Mr. Fleming stated they looked at two issues, one being the threat of litigation. Was the threat one that was well founded, or was the recommendation from staff well founded and did BEI have a good solid basis for discontinuing negotiations? He indicated that his firm looked at that from two perspectives, one from the business judgment rule, which essentially says that an entity such as BEI is charged with administering public assets has a right and duty to act in a way that it deems to be in the public's interest. The court is not going to second guess that. He stated that the court would grant great discretion to BEI's decisions, especially when the decision is based on BEI's financial advisor saying the project is not financially feasible as proposed. He stated that his firm also looked at the legal perspective. Would granting a contract under the final and best proposal be one that would be legally permissible? He said that they concluded that the contract would not be legally permissible because the competitive award statutes of the State of Florida says that if you are going through a competition process such as issuing an RFP that the contract you award has to look like the contract you solicited. He stated that the contract that BEI solicited and Vieste's best and final proposal substantially deviate from one another, right down to having another entity that was not even mentioned in the response to the RFP be the entity that would be awarded the ground lease, which is the heart and soul of the business transaction. He said that either one of those reasons are valid reasons for discontinuing the negotiations. He pointed out that staff is recommending it is not in the best interest of the university to proceed. Member White asked if it was fair to say that the law on competitive solicitations presents a strong defense to accepting the staff's recommendation against any lawsuit in regard to it. Mr. Fleming responded yes, the first defense is your professional advisors tell you it is not in the best interest of the public, and your decision based on that in the exercise of your discretion is going to be accepted by the court. Absent fraud or collusion, these are reasons that indicate that the Board is making a good faith decision that it is not in the public's best interest to proceed with the Vieste proposal. He said that it is not necessary to go beyond that. In addition, he advised that the Board has the duty to lawfully follow the procedure that was adopted. He stated that

the Board has a duty to lawfully assure that the contract that is awarded is consistent with the one you have solicited. Either ground would be strong basis for defending any lawsuit.

Chair Clark asked Mr. White and Mr. Adams, from George K. Baum & Company, to give a brief summary. Mr. White, Executive Vice President, explained that they looked at the project from two points of view. First, as the Vieste Development banker; could I have brought that transaction to market on a reliable basis? He stated that he concluded that he could not. He stated that the project has several requirements in order to be sold to fixed income investors. The project had changed significantly from a project, which was to have been owned and operated by a private company under a ground lease from the university. There would have been very few risks to the university. The burden of ownership would have been with Vieste Development. He indicated that the proposed transaction has changed to become one where Vieste Development is just really a key developer that has no ownership or obligation with regard to the project. He stated that they concluded that the projects are not feasible financially in today's capital markets. Unfortunately, interest rates moved dramatically against the project over the period of time since the solicitation was conducted to today. He advised that his firm believes that the interest rates that are in Vieste Development's pro formas are well below the actual interest rates that are going to be required to provide debt financing for the project at least 50 basis points. The project requires 1.20 debt service coverage to be even looked at by long term investors. The project barely meets that 1.20 test now and that is with rates that he felt were artificially low. He stated that if you use actual rates the project financing would not achieve the 1.20 debt service which makes it feasible. In addition, he advised that the rental rates proposed for the rooms and the proposed occupancy levels test the upper limit for feasibility for the rates available in that marketplace. From a policy perspective, Vieste Development has changed from taking the operating expenses from mostly above the line to mostly below the line and in reality the project expenses would be pushed onto BEI and/or the university. He stated that BEI was expecting to earn a ground lease payment and have no financial risk to the project, with no exposure to the project's operation, but the Vieste proposal would push operating expenses below the line. With the university as the manager of the project, and the use of a 501(c)(3) corporation that is a shell with limited assets, this structure could put a substantial amount of risk onto the project. Unfortunately, he advised that his firm's conclusion is that there is substantial risk to the university under the current version of the proposal as compared to the original proposal, which was to have been a developer owned/developer equity deal, especially because the financial structure proposed in the last and final offer pushes too many risks onto the 501(c)(3) corporation and therefore onto BEI.

Staff advised that the staff recommendation is to direct BEI staff to advise Vieste, LLC that it does not approve the "best and final" offer and to discontinue further discussions with Vieste, LLC.

Motion to approve: Secretary Suzanne Lewis

Second: Member Hal White

Motion passed unanimously.

There being no further business the Chair adjourned the meeting at 9:20 a.m.

Respectfully submitted,

Tiffany Nisewonger, Assistant Staff Support Secretary