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Developers Will Start Paying for City?s Downtown Land on October 1 [1]

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Above: The project as seen from Albert Avenue in a photo by Raymond Holt.

Four months after the City?s Director of Planning asked the developers of the Center City project to start paying for use of the City?s central downtown land, they will.

East Lansing?s City Council voted Tuesday night to an agreement with the developers to start the ground lease payments on October 1.

The first monthly payment is expected to come to about $10,560. By next September, the payments will rise to the full amount of $16,667 (that?s $200,000 per year), with an annual inflationary index of 1.5 percent or the change in the Consumer Price Index, whichever is less.

Center City District is the name for the redevelopment by Harbor Bay Real Estate and Ballein Management that has resulted in the construction of the Target store and Landmark apartments on Grand River Avenue in addition to the construction of the parking garage, new retail space, and Newman Loft rental apartments (for people aged 55+) on Albert Avenue.

The project has been made possible by Council?s decision to lease the public land ? what used to be Parking Lot 1 ? to the developers for 49 years.

The ground lease deal allowed the developers to build private property in the form of the retail space and Newman Lofts on the public land. If Council had sold the land, the voters would have had to approve the sale, according to the City Charter.

The City of East Lansing owns and operates the parking garage, and after 49 years, the City will own the retail space and Newman Lofts, too, unless the lease is renewed.

The lease payments will be the primary source of income for the City from the deal, because the new property taxes from the property have been promised in a Tax Increment Financing (TIF) deal for 30 years to repay costs of the development, including primarily the new parking garage. That TIF deal is expected to mean diversion of about $56 million in property taxes.

Dispute over when the lease should start

Originally the City expected the ground lease payments to start in March 2019. Construction delays meant that didn?t happen.

Results of a Freedom of Information Act request received by ELi on Tuesday show [2] that on June 28, 2019, then-Director of Planning Tim Dempsey told Harbor Bay?s owner Mark Bell that payments to the City for the ground lease would be due starting July 1.

But Bell did not agree.

Below: Bob Trezise and Mark Bell at a ceremony celebrating construction of the project (photo by Alice Dreger)

Answering on July 2, Bell noted that the Master Development Agreement on the project said the developers did not have to start paying for the use of the City?s land until there was a permanent Certificate of Occupancy for the new Albert Avenue parking garage on the land. That would be the point at which the City inspector approved the whole garage and it was fully open to the public.

As of the start of July, Bell noted correctly, the parking garage was only allowed to be occupied by Target employees under a special arrangement with the City.

?We are obviously not at a point of ?Certificate of Occupancy,?? Bell told Dempsey in July.

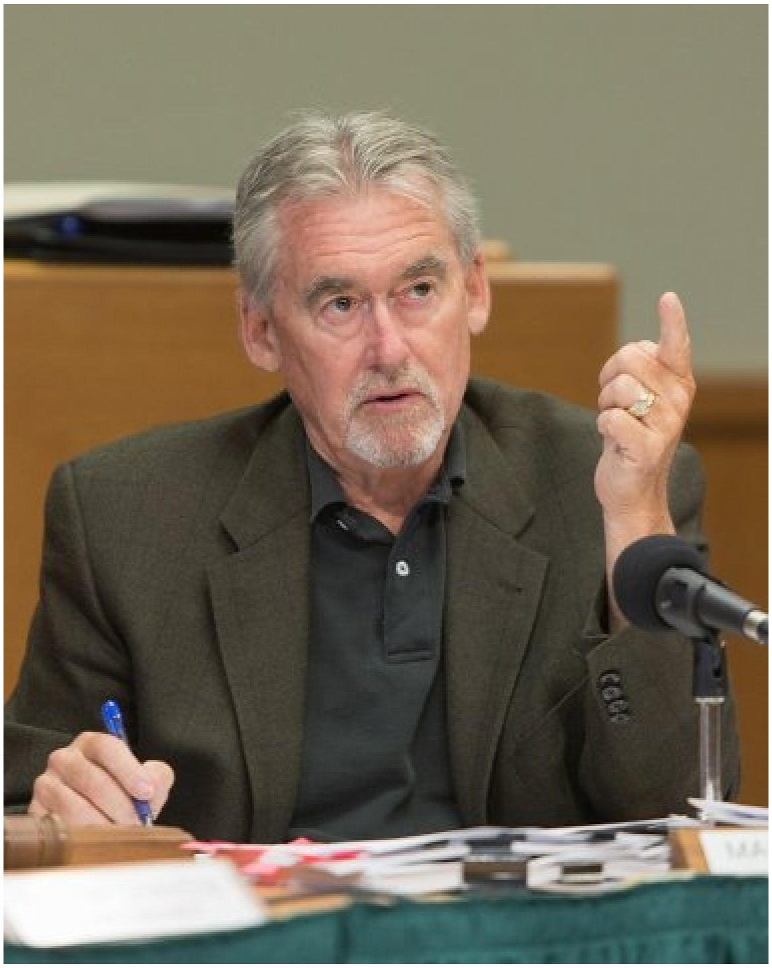
A lease deal that?s still being worked out, two years after the project?s approval

Back in June 2017, City Council approved the major terms of the $125 million Center City District deal, including general terms of the lease. But the actual lease document didn?t get worked out for several more months.

At that June 2017 meeting, Council was supposed to authorize the Mayor to sign off later on all the missing parts of the Master Development Agreement, including the ground lease. But Council?s motion and vote on the deal accidentally omitted that authorization.

There?s also a question about whether the Council *could* legally authorize the Mayor to sign off alone on all those missing pieces, as Council?s powers to delegate legislatively are limited. But at this point, that question lies under several hundred tons of concrete. Meadows did in fact sign [3] , without an additional Council review and vote, in late October 2017.

Below: Mayor Mark Meadows (photo by Raymond Holt)



In November of 2017, the redevelopment project closed Lot 1 to public use. At that time, Lot 1 was by far East Lansing?s most lucrative property. When the lot was closed and the structures on it demolished, the developers did not have the construction-completion performance guarantees required by the Development Agreement with the City [3]. But the City didn?t stop closure [4] of the lot.

A month later, in December 2017, following reports by ELi [5] that the Development Agreement did not seem to contain what Council and the public had been told to expect in terms of the lease, Council voted to revise the ground lease terms [6] with the developers.

Following the more recent dispute between Bell and the City over when the payments on the ground lease should start, the Council voted this Tuesday night on yet another Development Agreement amendment, in order to clarify the ground lease.

What the deal now says

Assuming a majority of the Downtown Development Authority agrees to the new terms [7] when they vote on the amendment, starting on October 1, the developers will pay the City $10,000 per month for rights in the ?ground lease? that let them construct and own the Newman Lofts apartments above the new parking garage on Albert Avenue. (Those apartments are restricted to people age 55 and up, and are not yet open.)

Also starting October 1, the developers will pay the City for the ground lease rights to the retail space they constructed and own along Albert Avenue, on the front of the parking garage. Until next September, that rent will be prorated based on how much retail is actually open for use.

On October 1, because only Foster Coffee will be open in the new retail strip, the rent on the retail space paid to the City will be about $560 per month. Next September, the rent payments to the City for the retail space rises to $80,000 per year, or $6,667 per month.

Dempsey?s newly-named replacement [8], Tom Fehrenbach, explained the deal at City Council this week. (Dempsey left his position with the City in late July.) Fehrenbach told Council that the contract amendment before them was ?intended to clarify some language? and set out a ?schedule and methodology? to calculate the lease payments.

The problem has been that the agreement made did not match what really happened.

The original agreement was based on an assumption that the parking garage would be issued its own Certificate of Occupancy, but the City?s building inspector has explained that a single ?CO? will be issued for the whole structure ? parking garage, retail space, and Newman Lofts ? because they all make up one building.

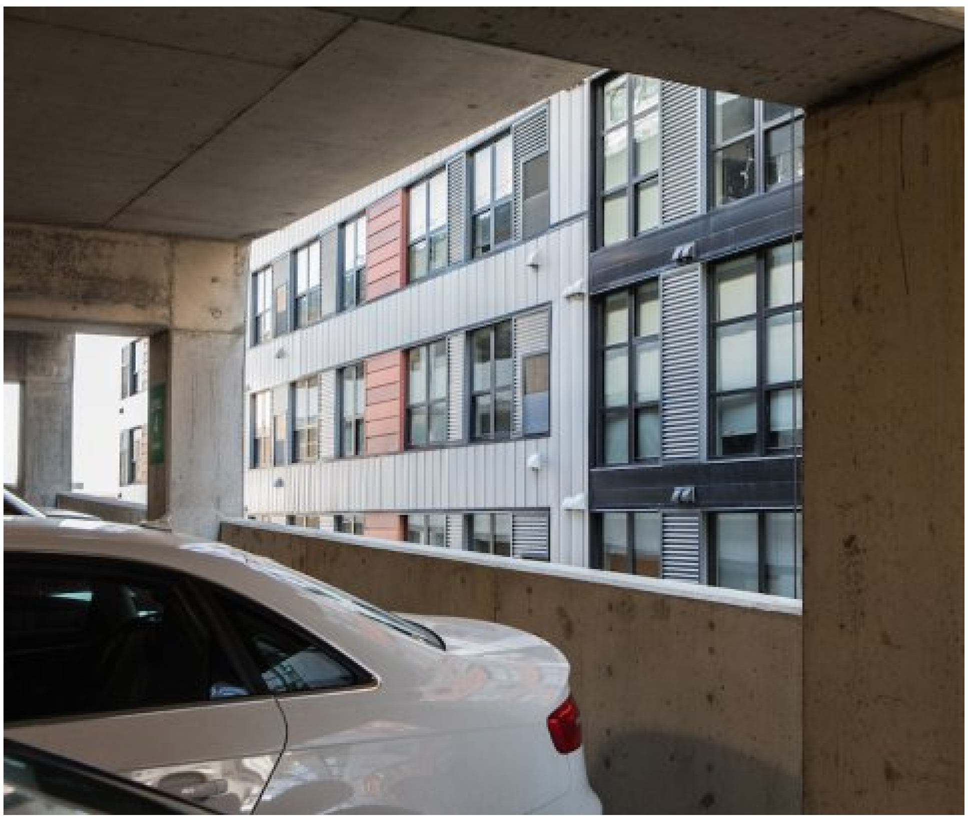
The original agreement also was unclear about how the prorating in the first year should be calculated. Now all that?s been clarified in a ?Second Amendment to the Master Development Agreement.?

Income to start flowing soon

Getting the lease started sooner rather than later matters not only because it means the City will finally get income from the lease and get to the full lease amount sooner. It also matters because the 49-year lease has that yearly inflationary increase built in, so the sooner the lease starts, the sooner the payments go up.

Before it was closed, Lot 1 grossed about $750,000 per year for the City. The City says it expects to now gross about $878,000 per year from the new parking garage. It also expects extra revenue from income tax on the property, $25,000 in ?personal property taxes? (which are really taxes on business), and a $15,000 per year fee charged for managing the TIF.

Below: View of the back of The Landmark apartments from the new parking garage (photo by Raymond Holt)



The City also says it will receive ?$29,300 in Downtown Development Authority millage funds,? but the City does not ordinarily obtain the DDA?s millage funds, so it?s unclear why that is spoken of as City revenue. Additionally, the amount the City is now naming as expected new DDA revenue ($29,300) does not match the original amount named by the City ($37,000), so we have questions into the City about that.

Under the December 2017 first amendment to the Development Agreement, the contractors and/or developer also have to pay the City at least $350,000 total in parking fees to make up for the lost income from Lot 1 during construction. The City has not said whether it has yet received that amount.

ELi started asking questions about the ground lease two months ago. You can see our correspondence with the City and developers here [9].

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