

Questions on the Center City District draft Development Agreement (June 15, 2017, from Alice Dreger)

1. In the Development Agreement, it appears that the developer can NOT build the buildings but still obtain and keep (and sell) the lease deal. (See p. 27.) Am I reading that wrong?
2. It appears the Development Agreement allows the developer to not build B3 (the senior housing) with no financial punishment. You could refuse the SUP/CO on the Grand River Avenue building, but as we heard previously in discussions of the Park District, in practical terms the City would never do this (and would be sued if it tried it). There is nothing even remotely like the \$2.5 million penalty built into the Park District agreement if Building C is never built. Why is this? (Is the project so financially maxed out that there's no room to build in a penalty for failure to build B3? Or is the City just opting to be comfortable with B3 potentially not getting built?)
3. Why on p. 23, item 4, is the developer not required to commence construction on B3 within 30 days of issuance of the building permit, when with the other buildings this is required?
4. Note there also seems to be no completion date deadline for B3. (Very different from the Park District agreement.)
5. There appears to be no permit submittal deadline for A1 or A2, and also no completion deadlines. Why is that? (Very different from the Park District agreement.)
6. George Lahanas indicated in email on May 11, "We would make satisfactory completion of a financial due diligence process a contingency in the development agreement for moving forward with the project." The Development Agreement draft, however, simply makes reference to Council having *requested* one. Is the plan no longer to make going forward contingent on satisfactory findings in due diligence?
7. Pages 10-11, item (ii) the ELBRA is providing as secondary security "the reimbursement of the Developer for the cost of the City Approved Eligible Activities to the extent such costs are not paid with proceeds of the Bonds, plus interest computed at 5% per year." What are these "City Approved Eligible Activities," and do you mean to have that "not" there? If the "not" is intentional, what does this mean?
8. With regard to the lease renewal, the agreement says it is up to the developer to decide on renewal. Will the parties have no right to reconsider the terms of the lease (amount, terms, etc.)?
9. Do you really intend to provide discounted parking for thirty years? (Very different from the Park District agreement.)
10. Page 35, item m: "The Developer and City agree that the parking provided for by Building B2 will account for the needs of all Parties to this Agreement, as well as any retail and housing tenants, and projected growth, to satisfy the contemplated uses of the Project." Does this commit the City to providing more parking than what is agreed to elsewhere in terms of number of spots and prices? It sounds like the City is promising to meet whatever needs the developer has in the future?
11. Lori Mullins indicated on June 14 that the Development Agreement was being drafted to limit TIF reimbursement to public infrastructure. I don't see that in the Development Agreement. Where is it?
12. Related to last question, what is counting as "public infrastructure"? For example, presumably it includes B2 (parking garage), but does that mean it does NOT include B1

(Albert retail), even though B1 would appear to be a structurally integrated component of the Albert building?

13. Similarly, will the TIF be used to cover the extra cost of building the foundation required to put B3 on top of B2? (B2 without B3 would not require as expensive a foundation according to commercial development experts.)
14. Relatedly, p. 10 of the draft Development Agreement states, “If the proceeds of the sale of the Bonds are insufficient to pay for Building B2 and the Infrastructure Improvements, Developer shall make up any shortfall and pay for, or cause to be paid, the completion of Building B2 (the parking garage) and the Infrastructure Improvements.” This would seem to suggest the bonds are not meant to cover the construction of B1. Is it practically possible for the developer to build B2 without building B1? Plainly: What happens if we require them to build B2 when they don’t have financing to build B1?
15. Are the “infrastructural improvements” (p. 9) all financed by the developer and then paid off with whatever the bond can garner? (Am I reading this correctly that the developer is agreeing to pay for all the specified infrastructure improvements even if they end up costing more than expected and even if the TIF and bonds come in lower than expected?)
16. Page 13 says that the prevailing wage policy will not apply “to any tenant or condominium owner improvements.” This is, I would assume, meant to apply to owners of *individual residential* condominiums (which there are none of in this project, so I’m confused why this is here), but would it not legally also apply to the developer in terms of the *condos that are buildings B1, B2, and B3*? Would it not, therefore, say that the developer doesn’t have to following the prevailing wage policy when building B1, B2, and B3?
17. Page 22 gives the City only two weeks to review infrastructure plans, financial assurances, the performance bond, do permits, etc. The Park District agreement gave the City four weeks. Are you sure you only want two weeks before you forfeit your right to say some things are insufficient?
18. Why in some places does the development agreement say the infrastructure improvements must be done in 10 months, in other places 36 months? (E.g., compare page 16 to page 22.)
19. There appears to be no time frame provided for when buildings B1 and B2 must be completed?
20. On p. 10, there is reference to a “proof of funding” letter. I tried looking up what this is and I don’t see an example. Exhibit L would be good to see (as would all the other exhibits).
21. On p. 11, Does the second on financing suggest that Exhibit L is “private financing” from MSF, or something else? (Again, would be good to see L, and the others.)
22. How would the “super TIF” (transformational TIF) work? What would that be used to reimburse?
23. Am I reading this correctly that the DDA and Library millages are going to the TIF? (I did not see this with regard to the Library millages in the Park District development agreement.)
24. On pages 11-12 “It is also anticipated that as a second level of security for the Bonds....” I don’t know what “It is also anticipated” would mean legally. Do you mean to say “As a secondary level of security...”? (Requiring it?)

25. On page 12, item iii, what is meant by “any debt service payments previously made by the Developer on the Bonds”? What would those be?
26. On page 17, why is there no performance bond for B1? I would note B3 is also not there.
27. Page 19, can you really agree to set out what the cost will be for connection charges in this way? I thought it had to be established by resolutions that apply to everyone equally, and would have to be based on what actually gets built?
28. Pages 20-21, What are the credits in Exhibit F that count as credits against costs of inspections? (Why would the City not have the developer pay for all the inspections, as with the Park District?)
29. Pages 20-21 What are the credits in exhibit F that credit against paying for inspections?
30. On page 33 you have again the “this isn’t done” disclaimer that Erik Altmann pointed out with Park District. Is that supposed to be there?