



MEMORANDUM

To: Members of Bloomington Common Council
From: Mayor John Hamilton
Deputy Mayor Mary Catherine Carmichael
Date: January 13, 2023
Re: Launch of 501c3, City of Bloomington Capital Improvement, Inc.

Executive Summary

Faced with growing demands and opportunities related to managing certain properties owned by the City of Bloomington, the City administration began exploring management models that would allow us to continue to guide the stewardship of these valuable city assets while allowing city staff to focus on their core missions as prescribed by statute and practice. After considerable research, outreach, and discussion with various experts, the administration determined a 501c3 model would best allow us to achieve those goals.

To that end, the appropriate paperwork has been filed with the State of Indiana to establish a 501c3 to be known as City of Bloomington Capital Improvement, Inc., and the administration looks forward to working with the City Council, the new nonprofit board, and community stakeholders on its effective activation and implementation.

Introduction

The City of Bloomington oversees a significant number of major projects involving city ownership of land and structures that do not involve core municipal services yet provide great added value and benefit to the city. Such projects include:

- Arts-sector projects such as the Buskirk-Chumley Theater, the Waldron Arts Center, and recommendations included in the 2022 Arts Expansion (Trahan) report
- Jobs and technology-sector related projects such as the Trades District, including The Mill, the planned federal EDA-funded Tech Center, numerous plots of land to be developed, and the recently sold Showers Kiln and Showers Administration buildings
- Hopewell, encompassing the redevelopment of 24 downtown acres formerly occupied by Bloomington Hospital, especially for major new housing opportunities in this new downtown neighborhood-to-be

Over the past several years, these projects have demanded extensive and consistent attention from a variety of city departments and personnel, including the Departments of Economic and Sustainable Development, Legal, Controller, Housing and Neighborhood Development,

Engineering, Public Works, and Parks, as well as the Office of the Mayor. The level of staff commitment that will be required in these initiatives in coming years is not sustainable in the long term without significant adjustments.

To advance these important projects in recent years, the City has expanded capacities in several of these departments and also budgeted for and relied significantly on specialized contractor support. The City also contracts directly with operating entities (typically nonprofit organizations themselves) to conduct programs and activities in several such properties, including BCT Management (re: the Buskirk Chumley Theater), Constellation Stage and Screen (re: Waldron Arts Center), and Dimension Mill, Inc. (re: The Mill).

For the next five or more years, the level of activity needed to maximize the public value to be realized in all these areas will continue to increase. Our city government staff, at its current level, is not in a position to maximize the opportunities each of these projects offers to our community.

Options

My responsibility as Mayor is to advance such positive public impact in the most efficient way possible. That is why we have considered three possible solutions: 1) continue to expand city employment in relevant departments (with appropriate consulting assistance); 2) build operational capacity at the Redevelopment Commission (RDC); or 3) activate a nonprofit corporation dedicated to undertaking efforts on behalf of the administration and the public.

Option 1 includes expanding city personnel directly for discrete, intense, specialized projects like these. This is difficult and threatens all the core missions of our various departments by spreading staff too thin and sometimes requiring work outside of their usual duties. Option 2 would add an operating division to the RDC. This isn't consistent with current practice and its mission of acquiring and disposing of property central to redevelopment.

We believe option 3 is the best choice. Activating a new 501c3 nonprofit organization, closely affiliated with the city administration, operating with transparency and accountability to the Council and the community, and appropriately resourced to focus on these and similar projects, offers the best combination of efficiency, accountability, and appropriate alignment of resources and mission – including specialties and expertise brought in for particular initiatives.

This option is also consistent with the May 2021 recommendation from the community-based Waldron Recommendation Task Force. Their recommendation for a nonprofit entity to own and oversee the Buskirk and Waldron was not only overwhelmingly supported, but also was seen as the best way to continue to support the growth of arts as a cultural and economic sector within our community.

501c3 Launch and Next Steps

We intend to work with the City Council, a new nonprofit board, and partners, in coming weeks and months to complete remaining organizational steps and to consider funding options and potential property transfers to such an entity. Together, I am hopeful we will be able to recommend a mission statement to be adopted by the nonprofit consistent with the following mutual expectations: *On behalf of the Bloomington City administration and the wider community,*

the nonprofit will provide stewardship and leadership to special projects as assigned, including in the fields of the arts expansion, jobs and technology development, and housing development, to accomplish community and administration objectives for social, cultural, and economic development and redevelopment.

To be clear, this new entity will undertake work that is now centered in several city departments, and collaboration and coordination among all of those departments and all of the community partners involved will be paramount. A nonprofit led by a strong board with new staff resources offers exciting opportunities in full partnership with existing players to bring ongoing and steady focus and energy to the projects outlined above, all of which are accelerating and expanding and need expertise and attention that current city staff will not be able to provide.

Initial steps to facilitate the launch of the nonprofit have been taken, including incorporation as the City of Bloomington Capital Improvement, Inc., (CBCI), obtaining a federal Employer Identification Number (EIN), preparing bylaws and a draft 501c3 application to guide its launch (attached below), and a conflicts of interest policy. At its first meeting, the CBCI board should begin its organization efforts including adopting the bylaws and conflicts policy, considering a mission statement, and developing plans to assist on the potential special initiatives outlined above. We suggest they also consider establishing topic-relevant advisory committees as appropriate for future work, which can bring additional community stakeholders with their specialized knowledge and capacities into these efforts.

The administration looks forward to working with the City Council, the new nonprofit board, and community stakeholders on the effective activation and implementation of this new entity.

BYLAWS

OF

City of Bloomington Capital Improvements, Inc.

ARTICLE I

The name of the corporation shall be City of Bloomington Capital Improvements, Inc..

ARTICLE II

PURPOSES

Section 1. Not For Profit. The corporation is organized under and shall operate as an Indiana not-for-profit corporation, and shall have such powers as are now or as may hereafter be granted by the Indiana Nonprofit Corporation Act of 1991, as amended.

Section 2. Purposes. The purposes of the corporation are to benefit, perform, and carry out the charitable, educational and other public purposes of the City of Bloomington, Indiana (the “City”), within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. These purposes include but are not limited to the following:

a. To encourage, support, and assist in activities, projects, and programs that further social, cultural, and economic development, redevelopment and rehabilitation in and around the City, including but not limited to the management, development, and redevelopment of properties owned by the City or its Redevelopment Commission;

b. To encourage, support, and assist in the economic development and redevelopment of the City through activities and projects that are designed to stimulate capital investment and revitalization in, and improvement of, public and other spaces throughout the City;

c. To promote the social welfare of the City’s residents by enhancing and improving the social, cultural, and economic conditions and sustainability in and around the City;

d. To foster, develop, and maintain conditions that contribute to the growth of business and employment opportunities in and around the City;

e. To provide financial assistance for or undertake, the construction, rehabilitation or repair of commercial property within the Bloomington Redevelopment District pursuant to Indiana Code 36-7-14-12.2(a)(25); and

f. To conduct such other activities as are consistent with or ancillary to the above purposes, in order to enhance the arts, civic engagement, economic development, and sustainability within the City and to lessen the burdens of government.

Section 3. Rules. The following rules shall conclusively bind the corporation and all persons acting for or in behalf of it:

a. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these by-laws, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).

b. Upon the dissolution of the corporation, the board of directors shall, after paying or making provision for the payment of all the liabilities of the corporation, dispose of all the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), as the board of directors shall determine.

c. The corporation shall not adopt any practice, policy or procedure which would result in discrimination on the basis of race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, disability, housing status or status as a veteran.

ARTICLE III

Registered Office and Agent. The corporation shall have and continuously maintain in the State of Indiana a registered office and a registered agent whose office shall be identical with such registered office, and may have such other offices within or without the State of Indiana and such other registered agents as the board of directors may from time to time determine.

ARTICLE IV

OFFICERS

Section 1. Officers. The officers of the corporation shall be a president, a vice president, a secretary, a treasurer and such other officers as may be determined by the board of directors. The board of directors may elect or appoint such other officers as it shall deem desirable, such officers to have the authority to perform the duties prescribed from time to time by board of directors. Any two or more offices may be held by the same person. In describing the powers of officers, the gender-neutral pronouns “they” and “them” are used below.

Section 2. Election and Term of Office. The officers shall be elected by the board of directors for an annual term. The officers shall be elected at the annual meeting of the board of directors nearest the expiration of their term of office and shall serve until their successors have been duly elected and have qualified. Vacancies may be filled or new offices created and filled at any meeting of the board of directors.

Section 3. Removal. Any officer may be removed by the board of directors whenever in its judgment the best interests of the corporation would be served thereby.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the board of directors for the unexpired portion of the term.

Section 5. President. The president shall in general supervise and control all of the affairs of the corporation, and, until such time as the Board appoints a CEO or Executive Director, shall be the principal executive officer of the corporation. The president shall preside at all meetings of the board of directors and shall be the Chairman of the Board. The president may sign, with the secretary or any other proper officer of the corporation authorized by the board of directors, any deeds, mortgages, contracts, or other instruments which the board of directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors or by these by-laws or by statute to some other officer or agent of the corporation; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board of directors from time to time.

Section 6. Vice President. In the absence of the president or in the event of their inability or refusal to act, the vice president (or in the event there be more than one vice president, the vice presidents, in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice president shall perform such other duties as from time to time may be assigned to them by the president or by the board of directors.

Section 7. Secretary. The secretary shall keep the minutes of the meetings of the board of directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these by-laws or as required by law; be custodian of the

corporate records and of the seal of the corporation and see that the seal of the corporation is affixed to all documents, the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these by-laws; and in general perform all duties incident to the office of the secretary and such other duties as from time to time may be assigned to them by the president or by the board of directors. The secretary shall maintain a corporate website that is publicly available and that provides the public access to (1) notices, agendas, and documents to be discussed at board of director meetings; and (2) other corporate records to the same extent required of a “public agency” under the Indiana Access to Public Records Act, IC 5-14-3 et seq.

Section 8. Treasurer. If required by the board of directors, the treasurer shall give a bond for the faithful discharge of their duties in such sum and with such surety or sureties as the board of directors shall determine. They shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for monies due and payable to the corporation from any sources whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of these by-laws; and in general perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to them by the president or by the board of directors.

ARTICLE V

BOARD OF DIRECTORS

Section 1. General Powers. The affairs of the corporation shall be managed by its board of directors. Except as noted herein, the directors shall have all of the powers provided by law, including the power to appoint executive leadership and other employees and agents of the corporation, to define their duties, and to fix their compensation, or to delegate these responsibilities to others. Annual budgets of the corporation, and the purchase of any property at a price exceeding Five Million Dollars (\$5,000,000.00), must be presented to and approved by the Common Council of the City of Bloomington (“Council”).

Section 2. Composition, Tenure and Qualifications. The number of directors shall be five. Directors shall be appointed as follows: four (4) directors shall be appointed by the mayor of the City, and one (1) director shall be appointed by the President of the City Council either directly or through a resolution passed by a majority of the Council. To stagger terms and provide continuity of operations, two of the mayor’s initial appointees shall serve for one-year terms, ending on December 31, and the remaining mayoral appointees and Council appointee shall serve 2-year terms, also ending on December 31. Directors may be reappointed to successive terms of two (2) years. Directors may be removed with or without cause by their appointer, as provided under law.

Section 3. Regular Meetings. A regular annual meeting of the board of directors shall be held at such times and places as may be designated by resolution by the board of directors. The board of directors shall by resolution provide the time and place for the holding of quarterly

meetings of the Board. Notice and conduct of the board's regular meetings shall comply with the provisions of the Indiana Open Door Law, IC 5-14-1.5 et seq., except that public notice of meetings shall be given solely through the corporation's website unless notice by publication is specifically required by law. The president of the board shall specify a reasonable amount of time for public comment at each regular meeting.

Section 4. Special Meetings Special meetings of the board of directors may be called by or at the request of the president or any two directors. The person or persons authorized to call special meetings of the Board may fix the time and place for holding any special meeting of the Board called by them, or may determine that a special meeting shall occur by remote communication i.e. virtually. Notice of any special meeting of the board of directors shall be given to the directors at least three days previously by electronic mail to the addresses provided by the directors for board communications, or other means permitted by applicable law. Notice and conduct of the board's special meetings shall comply with the provisions of the Indiana Open Door Law, IC 5-14-1.5 et seq., except that they may be conducted solely by remote communication and that public notice of meetings as well as meeting agendas and documents to be discussed at the meetings, shall be provided solely through the corporation's website unless notice by publication is specifically required by law. The president of the board shall specify a reasonable amount of time for public comment at each special meeting.

Section 5. Quorum A majority of the board of directors shall constitute a quorum for the transaction of business at any meeting of the Board, provided that if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 6. Manner of Acting The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, except where otherwise provided by law or by these by-laws.

Section 7. Vacancies Any vacancy occurring in the board of directors shall be filled by temporary appointment made by the board of directors. A director selected to temporarily fill a vacancy shall serve for the unexpired term of their predecessor in office.

Section 8. Compensation Directors as such shall not receive any salaries for their services, but by resolution of the board of directors, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board; provided, that nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefore.

ARTICLE VI

COMMITTEES

Section 1. Committees of Directors. The board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees, each of which shall consist of two or more directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the board of directors in management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director, of any responsibility imposed upon them by law.

Section 2. Other Committees. Other committees not having and exercising the authority of the board of directors in the management of the corporation may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. The president of the corporation shall appoint the members of each such committee, who may include one or more directors of the corporation. Any member thereof may be removed by the Board whenever in their judgment the best interests of the corporation shall be served by such removal.

Section 3. Term of Office. Each member of a committee shall continue as such until the next annual meeting of the board of directors of the corporation and until their successor is appointed, unless the committee shall be sooner terminated, or unless such member shall cease to qualify as a member thereof.

Section 4. Chairman. One member of each committee shall be appointed chairman by the president of the board of directors.

Section 5. Vacancies. Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 6. Quorum. Unless otherwise provided in the resolution of the board of directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7. Rules. Each committee may adopt rules for its own governance and activities not inconsistent with these by-laws or with rules adopted by the board of directors. The meetings of each committee shall be conducted in accordance with the provisions of the Indiana Open Door Law to the same extent as special meetings of the board of directors under Article V Section 4 of these by-laws. The records of each committee shall be made available to the public to the same extent as the records of the corporation under Article IV Section 7 of these by-laws.

ARTICLE VII

CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. Contracts. The board of directors may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these by-laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the board of directors. In the absence of such determination by the board of directors, such instruments shall be signed by the treasurer or an assistant treasurer and countersigned by the president or a vice president of the corporation.

Section 3. Deposits. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the board of directors may select.

Section 4. Gifts. The board of directors may accept on behalf of the corporation any contribution, gift, bequest or devise for the general purposes or for any special purpose of the corporation.

ARTICLE VIII

BOOKS AND RECORDS; AUDITS; ANNUAL REPORTS

The corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its board of directors and committees having any of the authority of the board of directors. In addition to any other required reporting, the corporation shall report annually on its activities to the Council in connection with budget approval, and a copy of its report shall be provided to the public via the corporation's website. The corporation's report shall itemize any complaints about its process and address any concerns raised regarding compliance with provisions of these bylaws protecting the transparency of the corporation's meetings and records.

The corporation's financial accounts shall be audited annually by a qualified and independent auditor selected by the board of directors. Audit results shall be reported at a public session of the Council and provided to the public via the corporation's website.

ARTICLE IX

FISCAL YEAR

The fiscal year of the corporation shall be the calendar year unless otherwise determined by the board of directors.

ARTICLE X

WAIVER OF NOTICE

Whenever any notice whatsoever is required to be given under the provisions of the Indiana Nonprofit Corporation Act of 1991, as amended, or under the provisions of the Articles of Incorporation or the by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XI

AMENDMENTS TO BYLAWS

These bylaws may be altered, amended or repealed and new bylaws may be adopted by a majority of the directors present at any regular meeting or at any special meeting, provided that at least fifteen days' written notice is given to directors, the Common Council, the mayor of the City, and the public of intention to alter, amend or repeal and to adopt new bylaws at such meeting. Any changes to provisions of these bylaws affecting the transparency of the corporation's meetings and records, and any amendment that alters the number or appointment of directors, must be approved by the mayor and Council in addition to the directors.

ARTICLE XII

INDEMNIFICATION

The corporation shall indemnify all officers and directors of the corporation to the full extent permitted by the laws of the State of Indiana, as amended, and shall be entitled to purchase insurance for such indemnification of officers and directors to the full extent as determined from time to time by the board of directors of the corporation.

ARTICLE XIII

JURISDICTION OVER LEGAL ACTIONS

The circuit courts of Monroe County, Indiana and the United States District Court for the Southern District of Indiana shall have exclusive jurisdiction over the following: (1) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee, or agent of the corporation to the corporation; (2) any action asserting a claim arising under the Indiana Nonprofit Corporation Act of 1991, as amended; (3) any action asserting a claim arising under the corporation's articles of incorporation or bylaws; or (4) any actions otherwise relating to the internal affairs of the corporation.

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