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Royal Deal

Through multiple twists and turns, Royal Oak's plan to build a new city center includes selling land it owns to a private developer for \$1, and investing \$5.5 million in cash for an office building it won't have an interest in.

BY NORM SINCLAIR

📷 HAYDEN STINEBAUGH

For those following the proposed redevelopment of Royal Oak's city center, there's a cautionary tale of a similar project that was scrapped last year in Warren. The developer at the center of the Warren proposal that went off the rails is Ron Boji, president of the Boji Group in Lansing — the same firm behind the Royal Oak plan.

Boji, along with Surnow Co. in Birmingham, is a partner in the Central Park Development Group, the entity selected by Royal Oak city officials, without a public bid, to reinvent an aging city center. The similarities in Boji's proposals that were rejected in Warren and ones that were

accepted in Royal Oak are eerily striking.

In the plan Royal Oak officials announced in early 2016, Central Park Development Group was to construct a seven-story, 190,000-square-foot office building for 700 workers on a city-owned parking lot near Main Street. The city would exchange the parking lot for ownership of up to 30,000 square feet of office space to house a new city hall. City officials placed a value of \$900,000 on the parking lot, which the city would later agree to sell to Central Park for \$1.

Also included in the project was a six-story, 565-space parking garage on another city-owned surface lot north of the new office building. A new police station would be erected next to the 44th District Court building and



» REAR GUARD

A series of surface parking lots located behind several shops and eateries that line the east side of Main Street, south of 11 Mile Road, in downtown Royal Oak, could see the development of a seven-story office building and a multi-level parking deck.

adjacent to the Royal Oak Farmers Market.

The current city hall, which opened in 1952 and houses the police station, would be razed for the creation of a central park that would front the office building. Under the original deal, the city would own the park, the two-floor city hall space, the police station, and the parking deck.

Royal Oak and Central Park were to split the \$100 million price tag almost equally, with the city selling bonds to pay its share.

About the same time plans were taking shape in Royal Oak, Boji was working with Warren officials on a \$39.6-million development that, at the beginning, included a centerpiece five-star hotel, a four-story parking structure, a banquet facility, shops, and an upscale nightclub. The development was to be built on a vacant, city-owned parcel across Van Dyke Avenue from the General Motors Technical Center.

Warren Mayor Jim Fouts and other city officials were initially impressed with Boji's proposal. Fouts said Warren was prepared to offer a commercial facilities tax incentive that would have saved the Boji Group between \$5 million

and \$6 million in taxes over 12 years.

In May 2016, however, Fouts said he became apprehensive as the Boji Group presented the city with a revised proposal with new financial demands. Instead of a five-star hotel the facility was downgraded, with fewer and smaller rooms. The parking structure was to be eliminated, unless the city assumed the cost of building it.

Fouts said Boji wanted Warren to borrow \$7 million from the sale of bonds to help finance the project. Boji also asked for \$2.5 million from the Warren Downtown Development Authority to pay for infrastructure needs, along with waiving \$500,000 in building inspection fees.

As for the six-acre site that Fouts said was worth \$1.8 million, Boji proposed a 100-year lease at \$10,000 per year, a suggestion the mayor said was "outright ludicrous." Soon after, Fouts and the Warren Development Authority killed the project.

Boji Group spokesman John Truscott says Warren didn't want the project. "At the 11th hour, the mayor decided he didn't want it," he says. Boji declined to be interviewed.

Fast-forward nearly a year to Royal Oak, where plans previously announced for the new city center development were undergoing substantive changes. No longer would the development be a public-private partnership. The new city hall would not occupy the first two floors of the new office tower. Instead, a restaurant with a liquor license and retail outlets would share the first floor with other retail outlets.

In turn, Boji's Central Park Development Group would solely own the office building, now reduced to 138,000 square feet from 190,000 square feet, and the city would be responsible for building a new city hall and constructing the parking deck, a new police station, and the park.

The 565 spaces in the new parking deck in the original agreement were reduced to 492 spaces. Three hundred of those spaces are reserved for the office building.

Furthermore, city officials agreed to give Central Park Development \$5.5 million in cash to help the developers obtain a construction loan from Flagstar Bank in Troy.

Under the deal, Central Park Development



» GOING UP

Etkin Equities Inc. in Southfield is building a four-story office building in downtown Royal Oak that is fully leased. The city sold the site to Etkin for \$1, but it didn't invest any money in the deal.

would put \$8.5 million of its money into an escrow account, along with the \$5.5 million from city taxpayers that would serve as gap financing for the building. The city's money represents the gap between current market rates and construction costs for the building, according to Central Park's legal papers.

In addition, the parking lot valued at \$900,000 would be sold to the developer for \$1. Royal Oak's City Commission approved the new terms on a 5-2 vote on June 26.

David Gillam, Royal Oak's city attorney, says after much discussion and with input from its project manager, city officials decided to opt out of moving its operations into the new building.

"With help from outside legal counsel, the City Commission decided that kind of structure wasn't going to be in the best interest of the city in the long run," Gillam says. "The decision was made for the city to take control of the construction of its own facilities."

The vision of a new city center built around a central park came from Jeffery Surnow, who operated Surnow Co., a development and commercial real estate management firm in Birmingham.

Tragically, Surnow was struck and killed while riding his bicycle on vacation in Hawaii in 2015. His sons, Sam and Max, now run the company. To bolster their project in Royal Oak,

they brought in Boji to lead the effort.

When details for the revised agreement with Central Park Development became public in spring 2016, 11 downtown businesses and property owners — most of whom own stores and restaurants along Main Street that back up to the surface parking lots — cried foul and formed a resistance coalition and hired a law firm to push back against the city.

The owners and landlords say they cannot survive the loss of the three city-owned surface parking lots behind their businesses in a downtown area already plagued with chronic parking shortages. They claim the city entered into agreements with the developer without consulting professional planners to first determine what impact the loss of the lots and altered traffic patterns would have in their area.

Also at risk, they say, is the historic Royal Oak Farmers Market, where nearly half of the parking spaces used by vendors and customers would be taken out to make room for the new city hall and police station.

Shepherd Spencer, owner of the Little Tree Sushi Bar and Dixie Moon Saloon along Main Street, south of 11 Mile Road, has been a fixture in the city for years. "When the city showed us the site plan they had approved, with three parking lots taken out, we said, 'Oh my God, this is going to destroy all of our businesses in

the year to 18 months or even longer that they're going to be under construction,'" he says.

When a surface lot on the west side of Main was closed and sold to a private developer, Etkin Equities Inc. in Southfield, for construction of an office building last year, the impact on his two restaurants was almost immediate, he says.

"Little Tree Sushi Bar has been there almost 20 years, and it's so consistent. My wife and I can tell the time of year by any change in sales, that's how consistent it's been throughout the years," Spencer says. "It's fluctuated maybe \$100 to \$200 to \$300 on any given week. Now, all of a sudden, they knock out that parking lot for that building and we're 9 to 11 percent off (of our weekly sales)."

Jean Chamberlain, a 50-year resident of Royal Oak who served as the executive manager of the Royal Oak Chamber of Commerce for seven years, says she finds a lot of the proposals for the city center development troubling.

"I'm concerned about the no-bid contract (with Central Park Development), the \$1 sale of the parking lot, and the loss of parking lots when we don't have enough parking as it is," Chamberlain says. "We have a movie theater downtown that doesn't have enough parking, so they (customers and employees) go across the street and park at the library."

Chamberlain says she's particularly troubled



» GRAND PLANS

Royal Oak wants to build a large park and a parking deck on surface lots it owns east of Main Street (above). The rendering at left shows a proposed office building by Ron Boji, who has asked the city to invest \$5.5 million in public funds so he can qualify for a loan to build the commercial tower next to the park. The project wasn't put out for a public bid.

by the loss of surface parking used by customers and vendors of the Royal Oak Farmers Market. She says that market shoppers have a particular rhythm that requires close-in parking.

"The customers park, they come in and buy, they go back to their cars and unload, and come back again for the watermelon or the dozen ears of corn they couldn't carry on their first or second trip to their cars," she says. "They're not going to park blocks away, or in a structure, and go back and forth to the market."

A parking study conducted in early 2015 by Rich and Associates in Southfield, and commissioned by the Boji Group, determined that parking for the city center project would be inadequate for the development. Rich says a

600-space garage to support the original office building wouldn't be enough to compensate for the loss of the surface lots. The report suggested adding another level to the parking deck to bring the number of spaces to 690.

The parking study, which Royal Oak officials had denied was conducted, came to the forefront during the discovery phase of the lawsuit. Asked to respond, Gillam says a new report the city commissioned now shows there will be adequate parking with the addition of two decks. "There will be enough parking in the daytime to accommodate the office users, and there will be enough parking at night," Gillam says.

Oakland County Executive L. Brooks Patterson says after talking to businesspeople in Royal

Oak about the project, he has reservations. "It was a no-bid contract, and that raises all kinds of red flags for us in government," Patterson says. "They sold the parking lot to Boji for \$1, and the market value on that property is probably \$2 million to \$3 million now. You just can't take public land and sell it to a private investor for \$1. Under a no-bid scenario, it just doesn't pass the smell test."

From lawsuits filed in Oakland County Circuit Court, lawyers from Jaffe Raitt Heuer and Weiss in Southfield, who are representing the downtown property owners, demonstrated the city was committing to invest \$5.5 million in cash to help Boji construct his office building, on top of selling the land to the developer for \$1. In addition, the city is committing \$55 million to \$73 million in bond issues to pay for the new city hall, a police station, and the park.

Jaffe Raitt's team claims the deal is illegal. They further allege that city officials didn't follow established practices and processes when they granted special use permits to Central

Park Development for construction of the office building with the first-floor restaurant.

Judge Cheryl Matthews dismissed one of the two lawsuits in August, after lawyers for Central Park Development made the case moot by withdrawing the special use permits that were at the center of that litigation. The legal maneuver allowed the developers, in complete cooperation with the city, to retrace their steps and begin the process of getting a new agreement that didn't include special use permits.

The \$5.5 million of city cash going into a privately owned office building continues to be a focus of the remaining lawsuit.

Ethan R. Holtz, a Jaffe Raitt partner, says prior to filing the lawsuit, city officials repeatedly said the money was an investment. Such use of taxpayers' money would be illegal, he contends. "There's a specific state law that spells out how, and in what capacity, municipalities can invest taxpayers' money, and it doesn't say you can put it in a private speculative real estate deal," he says.

Gillam says Holtz's claim rings hollow in light of incentives being offered by similar municipalities around the state to entice development. "The \$5.5 million is not going to the developer, but into an escrow account to help fund the construction of the office building," he says. "Incentives come in a variety of forms, and this is just another shape or form of an incentive to get a development that the City Commission has determined that, in the long run, is going to have very positive implications for the city."

That cash infusion for the project, however, is in contrast to the other new Class A downtown office building under construction — the one Spencer says is impacting his Little Tree Sushi Bar and Dixie Moon Saloon. The 74,000-square-foot, four-story building, which will be home to private office users and serve as the headquarters for Etkin Equities, is going up

without any cash from the city.

Like the Central Park building, the city provided a parking lot it owned as an incentive. The city sold the parking lot to its affiliated Downtown Development Authority for \$1 million. The DDA then sold it to Etkin for \$1.

"The Etkin lot for \$1 is just another example of how an incentive works," Gillam says. "The \$1 million the city gave to the DDA would be on paper. The Etkin building is within the DDA district, so it probably was structured that way so any future tax revenue from the Etkin building

"THE JUDGE IS GOING TO TAKE A LONG, HARD LOOK AS TO WHETHER THEY HAVE THE LEGAL RIGHT TO CHALLENGE THE CITY'S DECISION AS TO WHAT TO DO WITH A PUBLIC SURFACE PARKING LOT."

— DAVID GILLAM

will go to the DDA and not to the city directly."

According to an exchange of emails between a city lawyer and a lawyer for Boji's group, the \$5.5 million cash contribution from the municipality to Boji was a sensitive issue that needed further explanation. In May, Brandy L. Mathie, an outside lawyer representing the city, asked John N. Hindo, a partner at Mekani, Orow, Mekani, Shallal, and Hindo in Birmingham who is representing Boji, for information to explain the cash contribution to the City Commission.

"It's about helping the commission explain the investment of public dollars (in Boji's deal) in light of the Etkin project proceeding without cash investment, and reaching 100 percent occupancy without coming out of the ground,"

Mathie wrote. "It's about getting them comfortable (again) with (their) cash investment in light of the new reality of Etkin's building proceeding without it."

Mathie, an attorney with Kerr Russell in Detroit, went on to say it involved "getting the (Commission) to think about how they might respond to the Monday morning quarterback who suggests that the developer's profits were padded instead (of the money) plugging a financial gap."

In another email on Aug. 11, Mathie told another lawyer to drop a reference of the \$5.5 million as a loan in a document he had prepared for the City Commission.

"The city has no statutory or constitutional power to provide a loan to a private entity," she wrote. "Any suggestion that the tax payments (or gap payments) inure from a debt obligation is contrary to the entire defense the City and (Central Park Development) have mounted in the existing litigation."

The business group's lawsuit also contends that the city won't be able to sell up to \$73 million in bonds to finance its share of the project because Royal Oak has already exceeded its debt-borrowing limits set by the City Charter.

Holtz says a \$126 million health care/bond offering the city completed earlier this year pushed Royal Oak over its Charter-mandated borrowing limit.

Gillam, however, says the city's bonding authority can go beyond the mandates of the Charter. He says Royal Oak can raise that money under a state law that he says provides for more expansive bonding rules. Instead of being restricted to borrowing up to 5 percent of its state-equalized value of about \$2.8 billion, which would be \$169 million, he says the state law he cites would allow bond debt of 10 percent of its state-equalized value, or about \$280

» DOWN ON MAIN STREET

A group of business owners along Main Street in downtown Royal Oak is suing the city to prevent it from giving \$5.5 million to Ron Boji to build an office building behind their stores and restaurants.



» ETHAN R. HOLTZ

million — more than enough cushion to cover the bonds.

Gillam says the business group's position is against their best interests in the long run. "The judge is going to take a long, hard look as to whether they have the legal right to challenge the city's decision as to what to do with a public surface parking lot," Gillam says. "These are property owners and business owners who, for the most part, are adjacent to a public parking lot. They don't have any more legal interest in that parking lot than anyone else who has a business in the downtown area, or anyone else who owns property or a business in the city."

Nevertheless, the city now seems to be hedging its bet and has changed course on how it will handle the bond financing, according to the latest development agreement reached in late September with Central Park Development.

The Royal Oak Downtown Development Authority will now step in and take on half the load of the bond issue.

The Authority, which has its own bonding capability apart from the city, will issue bonds to pay for the parking structure and the park, while the city will be responsible for the bonds to cover building a new city hall and a police station.

"They (city officials) are worried that if we're correct, the city won't be able to issue the bond to pay for the park and the parking structure," Holtz says. "If it turns out we're right (about the city's bonding limit), Royal Oak will get a new office building, the park, and a parking garage — everything Boji wants — but the city hall and police station, which was the stated reason for the development in the first place — well, not so much."

Holtz also warns that the city's cash investment of \$5.5 million has a caveat. It would be subordinate to Central Park Development's debt to Flagstar Bank, and could be wiped out in case of a foreclosure or other failure.

"If you step back and look at this deal, it's fairly obvious Boji doesn't have \$14 million to get a construction loan from Flagstar Bank for the project, so he's getting the city to come up with \$5.5 million in cash to help him out," Holtz says. "Plus, the city isn't asking for the money back, saying it will come back from future property taxes. But they would get property taxes without investing in Boji's deal. It makes no sense."

As the case winds its way through Oakland County Circuit Court, things could change, as the mayor and three city commission seats are up for re-election in early November. "You could have a whole new majority (on the seven-member commission, which includes the mayor)," Holtz says. "That could change things drastically and send this back to the drawing board so that it's done properly." **db**

Political Connections

How the Boji Group convinced the Michigan Senate to acquire an office building in downtown Lansing that was "three times" higher than comparable space. **BY NORM SINCLAIR**

MOST ROYAL OAK RESIDENTS PROBABLY never heard of developer Ron Boji until he was selected last year to lead the makeover of their downtown city center, the largest redevelopment project in city history.

In Lansing, however, Boji and his family are well known in real estate management and development circles. They're also major political players and donors to the state's Republican leadership and the political action committees that support them.

Boji and his family firm, the Boji Group, were at the center of a still-smoldering political maelstrom in the capitol city that began three years ago when the Michigan Senate decided to leave its longtime home in the Farnum Building and move one block away into a newer building, Capitol View, owned by the Boji Group. The short move could wind up costing taxpayers \$134 million.

Initially, Senate leaders agreed to pay Boji's lowest bid price of \$16.75 per square foot to lease seven floors of the Capitol View building. But shortly after former Majority Leader Randy Richardville (R-Monroe) signed a lease with Boji, the deal changed. Instead of leasing space, Richardville struck a new agreement to buy the seven floors of space for \$41 million.

The Michigan Strategic Fund issued \$70 million in tax-exempt bonds to pay the purchase price and renovate the seven floors, before leasing it back to the Senate. With projected debt service over 32 years, the price tag could hit \$134 million, according to the Senate Business Office. The state paid \$3 million for the Farnum Building in 1978.

The Boji Group will also collect more than \$500,000 in management fees over five years. The deal touched off a firestorm among Democrats and others.

Lansing Assessor William Fowler said the Capitol View building, which opened in 2005, was assessed at \$12 million — a figure he said was closer to its worth. He said the state paid "three times greater than anything that has sold downtown of comparable use and utility."

The sale came against a history of years of large political donations from the Boji family to

Republican politicians and their political action committees. In recent political cycles, the Bojis gave \$27,000 to former Majority Leader Mike Bishop, now a congressman; \$32,700 to Gov. Rick Snyder; \$35,000 to Attorney General Bill Schuette; \$61,000 to the Senate Republican Campaign Committee (since 2005); \$70,000 to the Michigan Republican Party; \$28,000 to the House Republican Campaign Committee; and \$1,000 to Richardville's leadership PAC. In addition, they gave five years of free office space to the Decider PAC, donors of \$72,000 to the Republican Senate Leadership campaign in 2014.

The controversial sale was preceded by another deal with the Senate that benefited Boji. While he was majority leader, Bishop (R-Rochester) negotiated a lease for space for a Senate hearing room and offices in the Boji family's crown real estate jewel, the 23-story Boji Tower, a downtown Lansing landmark. The city's tallest building, the Boji Tower is located a short block from the front door of the Capitol.

After the deal was announced Democrats called on Schuette to investigate whether all government procedures had been followed, but he has declined to pursue the matter.

Democrats said Boji should have been disqualified from the bid process because he didn't answer a questionnaire that asked bidders if they owed back taxes. Led by party head Brandon Dillon, the Democrats produced records at a press conference showing the Bojis had \$1.8 million in outstanding state and federal tax liens dating back to 1979.

Although most of that amount had since been paid, \$65,000 of liens was still on properties, including the Capitol View building, when the Boji bid was submitted.

Caleb Buhs, a spokesman for the state Department of Technology, Management and Budget, told the *Lansing State Journal* that the Legislature isn't bound by the same purchasing rules as the executive branch. Nothing in the law prevents a vendor with a tax lien from contracting with the state, he said.

Since leaving the Legislature, Richardville has worked as a consultant for a Boji company, but he denies any quid-pro-quo. "I don't work for them. I do some work for a related company," he told the *Lansing State Journal*.

Senators moved into their plush new offices in January. The 11-story Farnum Building, meanwhile, is up for sale. ■