

The Heritage Building, LLC
Articles of Organization, December 20, 2001

Members:

Barry Pappenheim – In-house construction
Dennis S. Hadley – Building architect
Howard Loucks – Sustainability and owner's rep
John Eric Wentland – Founder/Developer
Steven Foust – Interior/Exterior Designer

Lenders:

Albina Community Bank (ACB)
Portland Development Commission (PDC)

A short and abridged history of a very long project

- October 19, 1999 – 3934 NE MLK purchased by PDC for \$375,000, then known as Weimer Warehouse, mostly vacant or unused for 30 years prior
- Early 2000, first RFP awarded to small local group of first time developers
- January 2001, Barric Investments (Barry Pappenheim and Eric Wentland) make offer to PDC to purchase since first group had failed to make any headway.
- Spring 2001 PDC decides they must put property back through RFP process
- July 27, 2001 PDC issues RFP for redevelopment proposals
- Fall of 2001 The Heritage Building, LLC (THB) selected to be developer through public RFP process
- Selected project total cost approx. \$1.95 million, purchase price offer to PDC is \$188k, PDC to do construction financing, market lender to do \$1 million permanent with PDC to carry \$500k as a 2nd Trust Deed, completion and occupancy in early 2004. Heritage had 50% occupancy commitment for this project.
- December 2001 -- MOU between PDC and THB
- December 2001 – Shilo Inn v. Multnomah County—All PDC deals on hold while it takes several months before PDC changes how they believe they can allocate TIF \$\$\$. See links at http://www.pdc.us/pdf/pubs_general/cafr_2001_2002.pdf and http://www.pdc.us/pdf/pubs_general/cafr_2002_2003.pdf for detailed info on this
- New changes from PDC due to Shilo case, they now refuse to write down their purchase cost from \$375k to \$188k, if we want to purchase we must pay full \$375k (they got \$125K from a State of Oregon grant for this purchase, so PDC investment was \$200K.)
- Summer/Fall 2002 THB revises plan, increases size of project to bring in additional rents to cover new purchase price, total project increases to approx. \$3.75 million for all development costs
- January 14, 2003, DDA approved by PDC commissioners for \$3.75 project with purchase price of \$400k and PDC to provide approximately \$1 mil of financing, construction to begin January 2004, completion January 2005
- Construction financing in unproven neighborhood proves impossible to find. HUD/FHA through Bureau of Housing and Comm. Development Block Grant disappears when BHCD changes focus after 12 months of negotiation with THB. Market financing unavailable to small developer in unproven neighborhood.
- 2003 design review process started by THB continues, with need to satisfy input from PDC, City plans examiner, developer/leasing agent and potential construction lenders

- September 2003 DDA extended to April 2004 – still no funding for construction/permanent financing
- Spring 2004 PDC/Portland Family of Funds announce intention to occupy entire 3rd floor of Heritage and provide project financing, a surprise to us - deal announced prior to any negotiating with THB and their terms turn out to be unreasonable and unacceptable to THB. We counter offer with our terms and conditions.
- 2 months later PFF deal falls apart
- DDA extended to 2005
- Summer/Fall 2004 search for new financing for construction/permanent partner, huge industry wide increase in construction material costs (concrete, steel, lumber, copper) drive budget up \$500K, project now \$4.25 mil
- Key Bank and New Market Tax Credits takes 3 months to say maybe and then no to financing
- Winter 2004-2005 Albina Bank starts loan application process, THB member Jeana Woolley sits on Board of Albina Bank
- February 2005 Albina Bank Letter of Interest for 1st TD loan of \$1.9 million if PDC carries secondary financing, PDC agrees to increase total loan to \$2.45 mil
- February 2005 thru September 2005 legal negotiations for details of closing
- April 2005, Albina Bank requires Jeana Woolley be made Managing Member of The Heritage Building, LLC as a condition of making the loan
- June 2005 PDC requires developer to carry additional \$300K reserve for possible premium on construction, Reserve is created by reducing purchase price of PDC property to \$1.
- September 28, 2005 THB purchases property for \$75,001. Albina Bank provides \$1.9 mil construction/perm with all members signed as personal guarantors. PDC provides \$2.45 mil with guarantee by LLC. Appraised value \$3.375 mil at completion and \$4.2 mil at full lease up.
- October 2005 building permit issued, construction scheduled to begin with completion scheduled for October 2006
- October 2005 Seabold Construction begins project, late season and slow start requires redesign of sophisticated HVAC system and adds \$75K+ to costs
- Scheduled completion October 2006 ends up January 2007 with final inspection July 2007---4 plus months delayed due to City of Portland sidewalk inspection/engineering, newly discovered poor structural condition of existing building adds \$150K+ to cost of construction, using all contingency dollars.
- First tenants move in May and August of 2007, construction loan with Albina cannot convert until we have 1:1 Debt Service Coverage Ratio, construction loan extended by all parties to December 31, 2007
- November 2007 THB hires new Leasing Agent to apply momentum to lease-up.
- November/December negotiating additional extension with Albina Bank and PDC since tenants still staying away from NE MLK in droves. Dec 07 later termed to be official start to US recession
- November 2007 PDC still has \$287,000 of THB loan fund left for disbursement to THB, to be used primarily for Tenant Improvement and Lease commissions
- January 4, 2008 Albina Bank issues Notice of Default for failure of loan to convert from construction to permanent due to low Debt Service Coverage Ratio (http://en.wikipedia.org/wiki/Debt_service_coverage_ratio). Only requirement (of 8 requirements for conversion) that THB was not able to meet by Dec, 31, 07 deadline.
- *January 2008, Albina twice refuses to accept payment of December 2007 interest (earned prior to default notice), no late payments ever made to Albina, \$120K paid in interest in 2007*
- January 2008 Albina requests PDC payoff \$1.9 mil, PDC says they will not pay off 1st TD
- January 2008 THB applies to Bank of the West for \$2.1 mil for refinance
- January 2008, PDC refuses to fund draw request made in November (for tenant improvements completed prior to default). Approximately \$287K still in PDC loan to be funded.
- January/February 2008 Albina Bank asks Jeana Woolley to resign from board due to THB default.

- February 12, 2008, THB submits plan to PDC to correct default. Plan includes request to PDC to release the remaining \$287K TI construction \$'s for new tenants.
- February 22, 2008 Albina files non-judicial notice of intent to sell (foreclosure that precludes any claim for deficiency balance after sale), with July 22, 2008 sale date
- March 2008, new appraisal says completed value of \$4.2 mil as-is with leased value \$4.78, we believe that this is a low appraisal.
- As of April 2008, THB has secured 3 new tenants plus one current tenant expansion, now at Debt Service Coverage Ratio (DSCR) of 1.04:1
- April 4, 2008 Bank of the West gives conditional approval for refinance of Albina Loan, needs minimum 1.25:1 DSCR, several items need to be renegotiated with PDC to match BOTW plus PDC required to subordinate to new loan of \$2.1 million from BOTW.
- April 11, 2008 PDC issues default notice due to default on Albina loan
- April 2008 THB requests Albina extend foreclosure date to give time for lease-up to meet Bank of the West conditions.
- April 30, PDC responds to February 12 letter from THB, gives conditions for approving required loan agreement adjustments, several conditions are unacceptable to THB
- May 2, THB receives LEED Gold Award
- May 6 PDC requests response to proposed adjustments by May 8, 2008
- May 7 Albina requests complete info on proposed refinance
- May 8 THB delivers requested info to Albina
- May 8, 2008 THB delivers counter proposal to PDC
- May 8, 2008 PDC says no negotiation is available to their proposal, take it or leave it, as-is
- Due to construction cost increases and soft cost run-up with foreclosure, cost now exceeds \$4.8 mil+
- May through June 2008 lots of info back and forth, THB answering questions from PDC and ACB while working on details for new loan from Bank of the West.
- May 15, Heritage changes legal counsel to Tonkon Torp
- May 21, Member Jeana Woolley asks to have her share of THB purchased by LLC or other member, Pappenheim agrees to buy.
- June 25, 2008 PDC agrees to minor changes in financing terms to match up to new loan from Bank of the West
- June 27, Albina Community Bank declines to extend the deadline for the foreclosure sale for 90 days to complete requirements for Bank of the West loan.
- July 7, Heritage members vote unanimously to file for Chapter 11 protection to stop foreclosure sale.
- July 9, PDC Board approves bidding on 1st TD at foreclosure sale, authorizes bid up to \$4.4 million (total \$\$ owed at that time to Albina Bank and PDC)
- July 21, Heritage files for Chapter 11 protection.
- July through November 2008, lots of legal wrangling, Heritage share of legal fees for default, foreclosure and Chapter 11 total almost \$100,000 plus additional amounts charged by lenders as a premium for being in default total another \$200,000+.
- November 21, 2008, US Bankruptcy Court issues Order Confirming Plan of Reorganization
- November 21, 2008, PDC agrees to disburse remaining \$287,758 so Heritage can pay liens incurred through PDC refusal to make Loan Disbursements in 2008.
- Recession deepens, Heritage still working with approximately 60% occupancy, enough to pay all ongoing operations costs.
- January 1, 2009, start date for figuring all dates related to Chapter 11 Order of Confirmation.
- February 2009, PDC announces intention to purchase 1st TD from Albina Bank for \$200K discount.
- May 20, 2009, PDC funds \$211K of remaining \$287K
- May 27, 2009 PDC Commissioners vote to purchase \$2.049 mil Albina Bank loan for \$1.836 mil.

A couple of additional notes;

- All Heritage members have had an active roll in the development and operation of the project.
- No Heritage member has received compensation for work performed for over 2 years. Any compensation received earlier was for highly discounted Services rendered to the project that would have been paid to a 3rd party vendor anyway (architectural, development and green services.)
- Although not counted by PDC or Albina, the value of contributed Services is now in the \$400-\$500k range
- Member Eric Wentland was voted in as Managing Member on May 6, 2008
- As of May 28, 2009, total cost to Heritage for effect and fallout of default from Albina Bank over Debt Service Coverage Ratio is now approximately \$375,000 in actual dollars paid and owed, not counting any time for Heritage members. Total cost to Lenders and Vendors, \$000.