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DEVELOPMENT: Tardiness will cost Congel

By Jeremy Moule on June 15, 2011

Medley Centre developer Scott Congel has blown an important deadline: according to his tax-abatement agreement, Congel was supposed to have invested $90 million into the project by April 7.

The agreement is between Congel, the county, the Town of Irondequoit, and the East Irondequoit school district.

Local officials say they don't know how much Congel has invested, but it's not enough. Congel's explanations to COMIDA officials have dealt more with spending commitments than actual spending, says Judy Seil, the agency's executive director.

"Nobody who looks at that project can believe he's invested $90 million," says John Abbott, deputy superintendent of the East Irondequoit School District.

The building looks roughly the same as it did when it was closed to the public in 2009.

That leaves the three governments with decisions to make, and everyone involved is in a tough spot. Officials don't have evidence of progress to show an increasingly skeptical public, and Congel now owes the three governments a penalty payment for missing the April 7 deadline. (The penalty will be erased if Congel does prove he invested $90 million by the deadline.)

That investment target was established in a payment-in-lieu-of-taxes agreement approved by the parties in 2009, which grants Congel substantial property tax breaks, but also guarantees tax income for the governments.

The agreement included three specific milestones meant to tie the tax breaks to specific investment. The $90-million investment was the first milestone. The next two milestones are also tied to Congel's level of investment: next year he needs to have put a total of $160 million into the project, and $260 million the year after that.

Missing the first deadline means Congel owes a supplemental payment - essentially a fine - to the town, school district, and county. The amount will depend on when or if Congel proves he did make the investment, but it would range from several hundred-thousand dollars to more than $1 million. The formula for determining the payment is written into the agreement.

Congel could have requested one of the two six-month extensions he's entitled to via the agreement, but he didn't and local officials say they don't know why. Attempts to reach Congel's attorney were unsuccessful.

Congel has proposed transforming the dead mall into a multiuse complex with apartments, offices, retail, hotel, and a large movie theater. But the project has progressed little, if at all, since the PILOT agreement was settled.

One of the most troubling aspects is the funding: Congel has estimated the project will cost $260 million or more, but officials say he hasn't secured that money.

He had funding lined up when he signed the PILOT, but the struggling economy caused the bank to withdraw its offer. Irondequoit and COMIDA officials say they believe that continuing economic sluggishness is the main reason why Congel hasn't been able to line up funding.

Congel made agreed-upon payments to the governments either late or at the last minute, and his firm, Bersin Properties, has been sued by contractors for the Medley Centre project who alleged Congel owed them money. (At least one of the lawsuits has been settled.)

The irony is, the PILOT agreement was meant to discourage Congel from letting the property and the project stagnate. That's the purpose of the clauses that require extra payments if Congel misses investment or job-creation targets.

"It seems to me that the county and the town cut a pretty tough deal with Congel," says Kent Gardner, president of the Center for Governmental Research, which has studied area economic development trends and practices.

The punitive supplemental payment will come due in January, which is when Congel is supposed to submit the next PILOT payment, says the school district's Abbott.

That extra obligation could mark the start of a messy domino effect.

If Congel misses the January payment - either some or all of the regular payment and the supplemental payment - then the town, school district, and county have the option to terminate the PILOT agreement.

A revoked PILOT would put Congel on the hook for the property's full taxes, which would be no small sum. If he can't afford the taxes or doesn't pay them in full, the governments can file liens, and foreclosure could be an eventual, though unlikely, option

For example: the City of Rochester has substantial liens against the Sibley Building, which is owned by a Wilmorite sub-corporation that's millions of dollars behind in taxes. The city hasn't foreclosed, however, because then the city would own the building and be responsible for the cost of security, upkeep, and insurance.

For similar reasons, the governments involved in the Medley Centre deal would be reluctant to take over the mall.

"We're kind of held hostage on something we're not prepared to develop," says Irondequoit Supervisor Mary Joyce D'Aurizio.

Regional planning - more specifically the lack of it - has a role in this problem, too, as do regional economic development policies.

Irondequoit Mall, the old name for Medley Centre, was built by Wilmorite to attract eastside shoppers. It worked for a while, but any chance the mall had at long-term success was crushed by misperceptions about crime and by Wilmorite's decisions to expand its other shopping centers. The retail boom in Webster was salt in the wound.

The local market for retail space isn't improving. The region's population hasn't grown, yet new stores keep opening and other spaces - old and new - sit empty. The Rochester region's retail vacancy has steadily increased since 2005, and right now the rate is 12.6 percent, says a commercial real estate market report from the firm C.B. Richard Ellis. The Rochester area is "over-retailed," CGR's Gardner says.

Rochester's retail, residential, and office-space glut could be a factor in Congel's financing difficulties. It's a simple equation from a bank's perspective: if he can't fill the space, then he can't collect rent. Without rent income, he'll find it harder to pay back a loan.

And the reality is that even if Congel secures financing and opens Lake Ridge Centre - the new name he's given the property - the area's retail over saturation may hinder the project's viability, tax breaks or not.

That's a problem since conventional wisdom holds that the mall is vital to the overall success of the East Ridge Road commercial corridor.

"The property doesn't stand alone," Abbott says.