

Committee on Real Estate

January 11, 2021

A meeting of the Committee on Real Estate was held this date beginning at 3:34 p.m. over video conference call.

Notice of this meeting was sent to all local news media.

Present: Councilmember Shahid, Chair, Councilmember Appel, Councilwoman Jackson, Councilmember Waring, and Mayor Tecklenburg

Also Present: Chip McQueeney, Capers Barr, Susan Herdina, Geona Shaw Johnson, Adam Barr, Bill Craver, Leigh Bailey, Matt Fountain, Julia Copeland, Jason Kronsberg

The meeting was opened with an invocation provided by Councilwoman Jackson.

A Resolution authorizing the Mayor to execute on behalf of the City of Charleston a release and all documents necessary to release a use restriction and possibility of reverter applicable to that certain real property designated as Charleston County TMS No. 502-00-00-021, located in the City of North Charleston, and more particularly shown and described as "Tract A 10.07 acres new area," on that certain plat entitled "plat of the subdivision of Tract A (12.84 ac.) To create new tract a (10.07 ac.) and rail parcel (2.77 ac.)," recorded on November 16, 2020 in plat book I20 at page 0430 in the ROD Office for Charleston County, South Carolina, in consideration for \$350,000.00.

Mr. McQueeney said the USA owned property back in 1965, 14.18 acres, and the City held a possibility reverter and a use restriction on it. They traded the reverter and use restriction on that property for a reverter and restriction on 7.78 acres of property located in North Charleston. The property he referred to was owned by the Ports Authority and consisted of about 10.07 acres that the SPA proposed to sell to the lessee of the cold storage warehouse facility that had been built in the last few years on the property. They had asked permission from the State Accountability Office to sell it for \$16.5 million. His estimation was that the City held a reverter and use restriction on about 4.5 and 5 acres of the property and had held that since 1965. The possibility reverter essentially provided that if the Ports Authority stopped operating Ports facilities in the City of Charleston, this property and all the other property conveyed by the City to the Ports Authority would revert to the City. The likelihood of that happening was very small. He had done research on it. It was a remote possibility and even condemnation actions, a possibility reverter unless it was probable that it would be triggered in the near future held very little value. The use restriction restricted the City's portion of the property to uses related to port facilities. According to the Ports Authority, it would continue to be used for such. There was the cold storage warehouse on it, which is who the purchaser would be. There were railroads on either side of the property. The new purchaser would get an easement over the railway. The purchaser's lender had asked that the City released the possibility reverter and the use restriction in order for them to lend the money to the purchaser. The City negotiated with the Ports Authority and came up with the figure of \$350,000. They did not have an appraisal because there had been some time pressure on it and they wouldn't have gotten it in the time that the Ports Authority wanted to close. Normally, with a use restriction, you would value the land with/without the use restriction and find out the value of the use restriction. For this, it was more of a time value of money situation because, assuming the sale went through and they found another lender, they didn't really need the City to release the use restriction and at least not in

the near future. So, it wasn't really about the value of the use restriction, but of what the City was willing to give to allow the transaction to move forward right now. They would retain the reverter and use restriction on the other parcels which included a rail parcel and a 1.89 acre parcel part of a larger tract.

Chairman Shahid thanked him for the information and said he wanted to clarify a few things. The City wasn't the owner of the property. It was 7.78 acres, but the City's interest was only to the 4.5-5 acres. The reverter only happened in the event that the States Port Authority stopped doing business in the City. Mr. McQueeney said that was correct. Councilmember Waring asked why the City had the reverter on the property. Mr. McQueeney said he had been trying to chase down the line and figure out how they ended up with the property. They owned 14 acres that was part of the Port Terminal property he just showed that was transferred from the SPA to the USA in 1965. The City swapped its reverter on that. The City owned about 460 acres before it was North Charleston. Part of it was seized by the government in World War I and II and then given back. When the old Charleston Terminal company that operated the port in the 20's went under, the City stepped in and purchased the property and issued bonds. Many years later, the Legislature stepped in and worked out for the SPA to take it over from the City. That was why there were so many transactions between the SPA and the City.

Mayor Tecklenburg referred to the Port Authority property where the City had about 1.89 acres and the parcel above it. That property was part of the Joint Base Charleston and served the US Army Depot. He was betting that the City used to own that property and they deeded it to the government for deep water access. Councilmember Appel said this was good work by Chip to get to the bottom of this.

On the motion of Councilmember Waring, seconded by Councilmember Appel, the Committee voted unanimously to approve the above item.

Discussion and action regarding alternative location of Dominion Energy utility switch gear boxes on 179 Nassau St. (Property owned by the City of Charleston: TMS No. 459-05-03-001).

Ms. Herdina said she wasn't sure that they were ready to move forward on this. It was her understanding that they needed to defer this matter. Mayor Tecklenburg said he thought they were just getting an update and didn't know they were needing to take action.

Ms. Shaw Johnson stated that the purpose of this was so that they could get the James Lewis Apartments built. There was a switch box they needed to relocate and so the proposal was to have it located to a property the City owned. They were trying to look for the best location and that was what the discussion was about. Chairman Shahid asked how much space they needed for the box. Ms. Shaw Johnson said she couldn't answer that but could find out before Council. Councilmember Waring asked if it would affect the number of units to be built. Ms. Shaw Johnson stated that it wouldn't. The plan was in place and approved for the unit count and that was why they were making sure that placement was in the right location. Councilmember Waring referred to the property they were swapping with the Humanities Foundation to help create affordable housing. He asked if that property could be built up to accommodate the gear box. Ms. Shaw Johnson said she wasn't sure they were quite ready there and this would hopefully move faster than that was moving. This had to be taken care of in the next 2-3 weeks.

Councilwoman Jackson asked if the timing would work out to wait until the next meeting or if they could take some kind of action to trust the staff/builder to handle it. Ms. Shaw Johnson said she thought they were okay with waiting until the next meeting. She wasn't sure if it would come in the form of an easement or agreement. They did a similar deal when they helped to facilitate Grace Homes and they did that quickly. She would reach out to the staff that had been directly engaged to make sure they were ready for the next meeting.

Update and action on the sale of 431 Meeting Street (Charleston School of Law property)

An ordinance authorizing the Mayor to execute on behalf of the City a Quit Claim Deed and elimination of possibility of reverter, such possibility of reverter contained in Deed recorded in Book J-543, at page 031 for the property located at the corner of Meeting and Wolfe Streets bearing TMS # 459-09-01-049 in the City and County of Charleston, State of South Carolina and to ratify and adopt any and all modifications or amendments to Ordinance # 2004-150.

Ms. Herdina said this property was at the intersection of Meeting and Wolfe Streets. There was a long history to this. The transaction started in 2005. She wanted to give a quick background. This was the Charleston School of Law property. The City sold the property to the School of Law in 2005 and envisioned that it would be a permanent campus for the school. In consideration of Mayor Riley wanting to keep the school downtown, the City agreed to sell the property at a 25% discount. The purchase price of \$865,000 was financed. Charleston School of Law took a mortgage and a note payable to the City. The school paid the interest on that note over the years and the note was extended several times. The last extension was about to expire in July 2017. When the property was conveyed, it was subject to the possibility of a reverter that would be triggered if the property wasn't used for Law School purposes. In 2017, before the expiration of the last extension, the school realized that the property may not be a good fit for them for the school. They were growing faster than anticipated, so they came to the City and asked for some options to consider being able to sell or exchange the property. In doing so, they needed to deal with the reverter if, in fact, they were going to be able to sell or exchange the property. In 2017, City Council entered into an agreement in how to value the reverter. The City felt that they did not want to impede the school from going forward with its plans. The intent was to stay on the Peninsula, but the City understood that the school's needs had changed. The question was how the reverter would be valued. A formula was devised that basically said that the cost of the note would be repaid and the City would receive 25% of the net proceeds of the sale or exchange of the property. The agreement in 2017 also provided that any money the City would receive by releasing the reverter would go to affordable housing and that was a provision in the agreement. That agreement was approved by City Council but not incorporated into an ordinance, so they were having City Council bless, through the ordinance, that 2017 agreement.

Moving forward, in 2019, the agreement entered into in 2017 was expiring and City Council made the decision not to extend the agreement. So, what happened was the agreement changed into a different provision. In 2017, it said that if the City should decide not to extend, the note would be due upon termination of the agreement, but the 25% formula would still live on. So, in 2019 the City did not extend the agreement. The school went ahead and paid off the note and mortgage and the City received \$865,000 at that point. Since then, there was now a buyer who was ready to close on the property. That took them into the provision in the 2017 agreement that talked about how they calculated what the City received as a consideration for releasing the possibility of reverter. It provided that the City was entitled

to 25% of the net proceeds of the sale, minus the money they had already received from the paid note. So, right now, the buyer and school were ready to close and they needed, from the City, its approval to give them a quit-claim deed that released the possibility of reverter and, at the same time, the City would receive consideration for releasing the reverter. Attached was an ordinance to authorize the quit claim deed and elimination of the possibility of reverter and to execute any other necessary documents to allow the closing to go forward. Most importantly, there was a distribution of the proceeds attached that showed the sales price of the transaction. 25% of the sale would be \$3,034,492.09. Back in April of 2020, the City received \$166,250 from the school which was the City's share of money that was used to extend the inspection period on the property. They had already paid off the note. So, if they went through all those calculations, at closing the City was due \$2,003,242.09. The City thought this was a fair deal and the timing was wonderful given the situation they were in. They were requesting approval of the first reading of the ordinance and giving the Mayor authorization for the necessary documents.

Councilmember Waring asked what the sales price of the property was. Ms. Herdina said it was \$12,850,000. Councilmember Waring asked if it was still anticipated that a hotel would come in. Ms. Herdina said that was her understanding, but should would defer to Capers Barr or Bill Craver. Mr. Barr stated that he represented the potential buyer which was a hotel group out of Charlotte. This transaction represented a very good day for affordable housing because, in addition to what went to affordable housing from the actual sale, the approval for the hotel was appealed by the Historic Charleston Foundation and that went to Circuit Court but was never heard because they settled it. Part of the settlement was to bring it into compliance with the new Accommodations Ordinance because it had been approved under the old one. So, in addition to the \$2 million that would go to affordable housing, the buyer pledged to pay \$5.10 per square foot payable to affordable housing as well which was about another \$1 million paid into the affordable housing fund before the CO was given after construction. This very well may be the last hotel built in this area. Councilmember Waring said when he sat on Real Estate a few years back and they agreed to that reverter at 25%, they didn't know what the sales price would be. It left some salt in a wound. That was why they voted not to extend the agreement, because they felt the 25% wasn't enough or sufficient. Now, it's coming back again at basically the same amount. It appeared they had a second chance at this. He seconded the motion for discussion because he felt the same now that he did then. He didn't know what other Councilmembers thought because he hadn't gotten to discuss it with them.

Mayor Tecklenburg said he understood Councilmember Waring's concerns and position. He did want to point out that the payments thus far including when the note was paid off were dedicated to affordable housing. More importantly, it reminded him of what they approved a few minutes ago. The reverter for the property had not been triggered. Mr. Craver was on the line and could probably assure them that the School had no intention of letting the reverter get triggered, that they would've just held the property and used it for some other purpose. At the end of the day, between all the transactions the City would have garnered about \$4 million total for affordable housing. The alternative would have probably been that they received nothing. He thought they should support this. Councilwoman Jackson asked what options they had if they chose to not vote in favor of this quitclaim deed. She asked what would happen to the agreement and to the property. Ms. Herdina said that the agreement approved by Council set this mechanism in place. They would be out of compliance with that agreement that had already been approved by Council if this wasn't approved. Some people had asked them how they came up with the 25%. She went back and looked at minutes and that was reached because the City initially

decreased the sale to the school by 25%. So, it was thought that the fair thing to do to have the City recover that sum that equaled the 25%. Chairman Shahid said that the sales price to the school at the time was reduced by 25%. This was getting back to where they would have been at the time of the sale, not the value of the property right now. Ms. Herdina said that was the rationale as she understood it. That was what the record reflected. Councilmember Waring said that if his memory was correct, the City sold it for less than what they had paid for it as an encouragement for the school to expand. When the City found out about the \$12 million, it created bitterness, because had the City known that price, he didn't think they would have agreed to that 25% cut of the price.

Mr. Craver said the only thing he would add was that in 2019, when the school paid off the note, the school and City entered into a modification of the possibility of reverter. It was approved by the Committee and Council. They slightly adjusted the agreement, but at that time the school had a potential sale of over \$10 million on the property and the Committee knew about that. Councilmember Waring said he was on the Committee at that time and he didn't know. They found out the price in the paper. Mr. Craver said that this was a different buyer with a higher price, but the 25% deal was ratified and put into public record. He was at a little bit of a loss at how they were back at wanting to renegotiate the deal. Councilmember Waring said that full disclosure wasn't made originally to City Council. Mr. Barr stated that when Council acted on this in 2019 and agreed to the modification of the possibility of a reverter, he didn't believe that was done by ordinance. There was a State statute that an ordinance could only be amended by ordinance and the original sale to the school was ratified by ordinance. It was very technical. So, while Council approved what they were talking about, it did not actually enact an ordinance and that created a Title issue for the buyer. They were back here because it wasn't done by ordinance when previously approved. He recognized that they were looking out for the City's interests and business. That's what they should be doing. But, his client, from Charlotte, had invested a lot into the project with the expectation and reliance that what the City had recorded would back up. They were there because the City should go back and do the right thing and enact an ordinance because they had already confirmed it by written agreement.

Chairman Shahid said that one of the questions of concern was that the original intent of this transaction was to keep the school on the Peninsula. Since the school had decided they wouldn't use this property, he asked if they could discuss the school's intent to stay in its current location. Mr. Craver said the school's intent was to stay downtown. That was part of the discussion in 2017 and 2019. Chairman Shahid said he knew there was a new person at the helm of the school. The financial health of the school had improved. Councilmember Waring said they said they had ratified/agreed to this, but it wasn't the same buyer as had been discussed in 2019. He thought they needed to talk again on this because it was embarrassing when it was in the newspaper. It's hard to make a decision when they didn't have all of the information especially when they were representing others. Councilmember Appel said that Councilmember Waring had brought up some issues that he was unaware of regarding this. He would like to have a closer look at this and look at all of the agreements. He wanted to know what information was communicated to Council at all times relevant. This was big money and they had a large responsibility. He didn't want to pre-judge anything, but based on what he had looked at, he would feel more comfortable moving forward if he could look at the documents and link it up with the various communications so they could make sure that what they were doing was in the best interest of the taxpayers. Maybe they could defer this and use that to get more information or move it forward and get some more information before Council.

Mayor Tecklenburg said that because they were doing it by ordinance, they were just giving it first reading, and would have to come back in two weeks. That would be plenty of time for them to look at those prior agreements. Mr. Craver said they were available to provide information and have discussions. Councilmember Waring said that if they moved this forward, they would continue to have this discussion in the public square. If they deferred this, the discussions could be held in a better environment that they should be held in. He was willing to go either way. Chairman Shahid said he would suggest they vote on the first reading and delay second and third reading if needed.

On the motion of Councilmember Waring, seconded by Councilwoman Jackson, the Committee voted to defer this item. The vote was not unanimous. Mayor Tecklenburg and Chairman Shahid voted nay.

Request authority for the Mayor to execute a rental agreement in the amount of \$6,808 with St. Andrews Parish Parks and Playgrounds for pool space at St. Andrews Family Fitness Plus, 1642 Sam Rittenburg Blvd., Charleston, SC, from January 4, 2021 to March 25, 2021. Lease is for four lanes and cost of hiring lifeguards as set forth in the attached agreement. (\$6,808)

On the motion of Councilwoman Jackson, seconded by Councilmember Waring, the Committee voted unanimously to approve the above item.

Request authorization for the Mayor to execute a Resolution approving the submission of an application for greenbelt funds for the purchase of the property commonly known as the Howle Avenue tract on James Island, South Carolina, bearing TMS No. 343-07-00-055. (Exhibit to be provided under separate cover by the Parks Department)

Mr. Kronsberg stated that this was a Resolution requested for approval. It allowed them to make application to the Greenbelt Fund for a portion of land at the end of Howle Avenue on James Island. This resolution was a requirement to make that application. It was a 3.6 acre parcel of land. The project came to his desk not long ago and it would be a multi-jurisdictional application with the County, City, and Town. Currently, they were negotiating with the property owner and realtor on price. They had an appraisal they had received from the County. Once they got the price nailed down, they would build it into the application which was complete except that dollar amount. The goal of the agreement was the County would make some created wetland and drainage improvements on this parcel. It could be a pond with a wetland around it that would improve drainage in the watershed. The applications were due on the 29th which was why it was coming before them.

Mayor Tecklenburg stated that approval of this was by no means an approval to buy anything. It just authorized them to proceed. The projected purchase price would be less than the appraised value. They had a willing seller who was sympathetic to the City. He had made request to the Town and the County to partner with them on the application and share in the eventual cost. Since the parcel was in the City's limit, it made sense for them to be the lead applicant. Councilwoman Jackson asked why the Town was involved in this. Mayor Tecklenburg said that he thought part of their territory was in the watershed. They didn't know what action they would take or at what level they would participate at yet. Councilwoman Jackson said this was in the north quadrant of the Central Park basin. They knew they had to improve drainage in this area. The flooding was increasing. She did hope this happened. Chairman Shahid said this was just for the application. They weren't spending any funds yet. Mayor Tecklenburg said that he knew this wouldn't solve all of the drainage problems there. But, the City and County believed it could have some benefit. The County had agreed to do the drainage improvements,

so it seemed like a no-brainer. Councilwoman Jackson said she agreed and was in favor, but they should be aware that at some point they may have to make strategic decisions. Hopefully the County would create a stormwater fund.

On the motion of Councilmember Waring, seconded by Councilmember Appel, the Committee voted unanimously to approve the above item.

An ordinance authorizing the Mayor to execute on behalf of the City of Charleston ("City") a Real Property Exchange Agreement and other documents necessary to convey to America Street Ventures, LLC, or its assigns, the City's property designated as a portion of TMS No. 459-05-04-209 and TMS No. 459-05-04-220, subject to affordable housing restrictions, in exchange for the conveyance to the City of property designated as TMS Nos. 459-05-04-001, 459-05-04-002, 459-05- 04-048, 459-05-04-114, and 459-05-04-115, as shown on the attached map. (AS AMENDED) (See also City Council Agenda Item #L-4) (To be provided under separate cover by the Legal and Housing and Community Development Departments)

Chairman Shahid said he thought they were deferring this item. Ms. Herdina said that was correct. Councilwoman Jackson said that she felt this could be the last public opportunity to speak to this item. But, she wouldn't blame the Humanities Foundation for having to consider whether this would make sense to continue on. She was very disappointed they were still in a cycle of talking about this. This was the keystone of the project that Community Development heard from staff about the East Side neighborhood that had flooding and gentrification. They could not have been more excited and encouraging about the concepts and land use changes that had to be made. This contract should have come back in October or November. They now needed to defer it, and the Humanities Foundation's backs were to the wall begging their seller to defer a closing. This wasn't right. They had led a private partner, who had a reputation in many places for doing the work they wanted to do in Charleston, and they hadn't been able to make it work. They had a contract they could have authorized the Mayor to sign and would have had 45 days to work out all the details and satisfied outside counsel. They could've worked through some of the stormwater concepts to alleviate some of the most unknown concerns. It was bringing up her own memories of her own non-profit work. A private entity would get so far in discussions and agreements with a public entity and then have the rug pulled out from under them. She felt like they needed to take responsibility. It was a failure of their leadership to put a vision forward that they all agreed was one of the best game plans for this part of the City.

Ms. Herdina stated there were a number of issues. She would be happy to reach out privately regarding some of the concerns they had. She knew everyone was interested and intent on moving forward. There had just been some things that weren't in the best interest of the City.

On the motion of Mayor Tecklenburg, seconded by Councilmember Waring, the Committee voted unanimously to go into Executive Session at 4:47 p.m.

On the motion of Councilmember Waring, seconded by Councilwoman Jackson, the Committee voted unanimously to come out of Executive Session at 5:00 p.m.

Chairman Shahid said no actions were taken during Executive Session.

Consider the following annexation:

- (i) *1946 Boeing Avenue (0.25 acre) (TMS# 350-13-00-028), 0.25 acre, West Ashley, (District 5).
The property is owned by James Fitzgerald and Amanda L. Rhoden.*

On the motion of Councilwoman Jackson, seconded by Councilmember Waring, the Committee voted unanimously to approve the above annexation.

There being no further business, the Committee adjourned at 5:01 p.m.

Bethany Whitaker
Council Secretary