

COMMITTEE ON REAL ESTATE

March 23, 2018

A meeting of the Committee on Real Estate was held this date beginning at 4:04 p.m. at City Hall, 80 Broad Street, First Floor Conference Room.

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

PRESENT

Chairman Moody, Councilmember Waring, Councilmember White, Councilwoman Jackson, and Mayor Tecklenburg **Staff:** Colleen Carducci, Rick Jerue, Amy Wharton, and Bethany Whitaker, Council Secretary

The meeting was opened with an invocation provided by Councilmember Waring.

APPROVAL OF MINUTES

On the motion of Councilwoman Jackson, seconded by Councilmember Waring, the Committee voted unanimously to approve the minutes of the March 12, 2018 meeting.

AUTHORIZE THE MAYOR TO EXECUTE THE PURCHASE AND SALE AGREEMENT FOR THE CITY TO ACQUIRE THE ARCHER SCHOOL SITE FROM CHARLESTON COUNTY SCHOOL DISTRICT FOR FUTURE DEVELOPMENT TO INCLUDE AFFORDABLE HOUSING. THE PROPERTY IS OWNED BY THE CHARLESTON COUNTY SCHOOL DISTRICT (220 NASSAU STREET; TMS: 459-05-01-067)

Ms. Carducci stated that at the last meeting it was requested that they extend the due diligence, so they school district had agreed in Section 5a to increase it to 120 days. They changed, additionally, section 8a. They said they wanted to design the improvements to Stoney Field, so where it used to say 'following closing, purchaser shall diligently', it now said 'seller shall diligently pursue the development plans and specifications'. They said that they were in the process of designing field improvements at two other locations and they felt that doing all three together would be helpful. So, the City changed, about midway down it said, 'seller shall work closely with purchaser through the design and construction process and shall incorporate all additional funded improvements in the design'. That was to ensure that, in the event the City was able to come up with the agreement with the college to do the NCAA track, that it would be added to this. In the last sentence, they added a scope of work and payment schedule. Before, it did not include a scope of work, but in the future agreement, to be executed prior to closing; they felt it was important to outline the scope and the funding sources for Stoney Field before they closed. Those were the only changes since they had brought it last time.

Councilmember Waring said he had thought about this in the aftermath and he thought that 'time is of the essence' needed to be removed. He rode around the place and walked around it the previous weekend, and it made a lot of sense for them to find out how much of it could be torn down before they moved forward. If they could tear it down, there would be a lot of different options. If they could tear it down, it would be great to put parking in there, potentially Park and Ride, because CARTA ran up and down Meeting Street and Morrison Drive. They could wrap that with affordable housing, so it could be a combination. They had been asked to approve one option, buying it and turning it into affordable

housing, and when they looked at it that way, to have affordable housing, they had to have several ingredients: cheap/free land, staying away from the Big BAR. They couldn't do affordable housing if they had to go in front of BAR. Williams Terrace was done, but at \$450 per square foot, it didn't meet the economic criteria he was referring to. They may be able to determine what could be torn down in 120 days, but as far as renovation and construction costs, without finding out if they could tear it down, it would be time that was unwise. He would like to see the building come down, and see additional options. One option had been negotiated, and that didn't make sense economically. He thought that Stoney Field and Archer were two separate transactions that needed to be negotiated as such. Even when he looked at the Stoney Field transactions, the \$2.274 million, if they factored in a 3% inflation rate, would be another \$500,000. They couldn't purchase the goods and services today that \$2.274 million would have done 8 years ago. So, when they looked at it that way, they were getting shorted on what should have gone into Stoney Field from the School District. They were really paying \$1.9 million, and he understood the credit, but on the last sheet, it should have been shown as the grant from the LDC. They owed \$2.274 million, without factoring in inflation, the City would pay the \$975,900 and then they would give that back, plus \$1 million. So, they were saving short of \$300,000 doing it this way. They were giving back \$1,975,900, but they owed \$2.274 million, so that was short of \$300,000 that the school district was saving. The City had been a good steward in working with the school district. He understood the land swaps. Three years previous, the City had spent almost \$1 million doing Harmon Field for Burke High School. The City had helped them a lot with baseball and football fields, but when it came to the \$2.274 million, they didn't even want to give the same dollar in value that the City gave them. If they were going to do it, they needed to separate the two transactions, because when this got out of Real Estate, a lot of people would find this swap distasteful. The idea to do affordable housing at the site was a noble one and one that could be worked upon, if they could find out if they could tear down the building. They could create something unique, but it would not be a wise use of tax payers money if it was only one option.

Councilmember White said he was thinking along the same line for the tear down of the building, thinking through the seismic issues, and the asbestos, which he had heard about. That would still have to be abated if they tore it down or renovated. He asked if they knew what the dirt value was. Ms. Carducci said she did not, it was appraised as it was. Councilmember White asked if they included in the appraisal the detraction of value that the seismic issues and asbestos would cause. Ms. Carducci said she would have to go back, but she was thinking the answer was yes. Councilmember White said that he wanted to say on record that just because they were going to go through the inspection period, there was a pretty substantial financial hill to climb, so they needed to be candid with the school district, so they didn't start moving down the path of thinking this was a done deal. They needed to be aware that the City was just 'peeking under the tent' to see what they had, but he did think that from the real estate transaction itself, the value probably was only in the dirt, and that the abatement of asbestos plus the cost to demo the building, they needed to take that into consideration of the transaction. They could have substantial costs. 120 days was a good amount of time to ask if they could tear it down, and get some bids to see what it would cost to demo the site. He did think the school board needed to know that they were going in with a certain value, but that number was likely to go down once the city understood what it had. It was only fair to go into a transaction with everyone on the same page.

Chairman Moody said he wasn't sure whether the \$3.9 million was what they were paying for the dirt. He asked what the value was for housing for teachers. He didn't know if it was worth \$10 million and then the mitigation brought it down to \$3.9 million or if it was \$3.9 million before all of that. If that was the case, it could be a negative value. Councilmember White said they were talking about the affordable housing for teachers and he thought there was a lot of merit to that for discussion. In the negotiation process, he wasn't opposed to taking the whole site and making it affordable housing for teachers. They could help the school board recruit and retain teachers. Teachers needed affordable housing. Taking the 120 days, they needed to lay out the parameters, and make sure the school board had their eyes wide open to what the discussions had been. He didn't want to go to negotiations and have everybody not be on the same page.

Mayor Tecklenburg said he agreed that this was a noble idea and it was all good intentions to try to provide some affordable housing on the Peninsula, and one that was in concert with the school district to provide some affordable housing for teachers. They only needed to use a portion of the property for affordable housing and it wouldn't disallow them from having mixed use or other uses on the property. They would also have to come to a separate agreement with the district about the scope of work and payment schedule for Stoney Field, so even though it was tied in with Archer, at the end of the day it would be separate. He made it clear in his discussions with the school district that, even if Council approved this, they would have a due diligence period, and it wouldn't mean they would buy it. He did think that the intent of the district and the City both were that the renovations of Stoney Field were not contingent on the City buying the Archer site. He didn't have any love for the Archer building and would like to tear it down if they could. Some of it might be salvageable and he thought they should investigate that fully during the due diligence period. The school district had put a new roof on it in the '90s and it was dry inside. The building was in use when they were building Sanders Clyde. He heard them loud and clear and he would like them to move forward so that they could do the due diligence and investigations to decide if it was worth buying, while also being able to work on the agreement for Stoney Field.

Councilmember Waring said he would like to make an amendment to remove 'time is of the essence' in 6a and number 17. Councilwoman Jackson asked if 'time is of the essence' meant that once the due diligence period expired and the buyer was coming forward, then it became time is of the essence for all parties. Councilmember Waring said that the school district owned the seismic issue, the asbestos issue, the lead issue, and the termite issue. If they did their due diligence and this came back that they could tear it down, and they received the price for how much it would be to deal with the asbestos and lead and then backed out, the school district would have to disclose that to any other willing buyer that came along. The price that they were talking about would go out the window, and that was why he thought the transactions should be separate. He had asked in the last meeting why they had to buy something from the school district to get the money to repair Stoney Field. It appeared that they were linked, so it was good they weren't. He believed there was potential here, but not under the parameters of the contract they were being shown, because when they found out the real costs, it would be expensive. It wouldn't be cost effective. They needed to all get around the table and work a deal. It wasn't this deal that would make this work. There were three parties to this transaction to make it affordable. The school district had an annual cost that they were trying to get rid of. If any of the property could be used

for park and ride and affordable housing, there may be money from the half cents sales tax for the park and ride piece. He thought that it confused it when they involved Stoney Field.

Chairman Moody asked if it was a grant or a loan and Mr. Jerue said it would be a grant. Chairman Moody said they would be getting money they wouldn't otherwise get then. He wasn't sure if the wrapping of housing around a parking deck was feasible and asked if there would be any reason that it wouldn't qualify. Mr. Jerue said they had applied for the \$10 million grant for affordable housing and it could be anywhere. Chairman Moody asked if it would make any difference to the Large BAR if the City or the school district made that application. Ms. Cantwell said she didn't know. There had been instances recently where the City had been in favor of demolitions and they said no. She didn't know enough about the history of the building to give them an estimate on what the BAR would do. Councilwoman Jackson said she thought the Historic Charleston Foundation had studied it so they had a report. Chairman Moody said until they got some numbers, he wasn't interested in binding the City in anyway. One bad step and they could be in a hole.

Councilwoman Jackson said she knew the Historic Charleston Foundation had looked at the building to help the school district and they didn't look at anything too long without having done the research. Councilmember White said that part of the BAR was that if there was history behind the building, the BAR would consider that. If someone had taken it upon themselves to study this site, it told him that there must be something of value enough historically, from a preservation standpoint. They could ask for that information. Councilwoman Jackson said her understanding of a due diligence period would answer all the money pit questions. They were asking the seller to obligate the property for the time they needed to peel away all the mysteries of the property, and then at the end they were ready to say 'yes' or 'no'. Chairman Moody said that was where the 'time is of the essence' came in, and if someone wanted to buy the property from the school district he would say go for it. They should sell it. Councilwoman Jackson asked if they would get the same authority and permission from the school district if they were on the outside looking in, even a letter of intent. If they didn't have some sort of paper to commit them to help the City do the due diligence, then the City didn't have the full ability to answer questions. Chairman Moody said his problem was that the motion right now tied Stoney Field to this agreement in some way. He would like to get that out.

Councilmember Waring said he was okay with doing the contract without the 'time is of the essence' because he thought the City would press forward during the 120 days to find out what they could. He believed that what they would find out would change the financial terms. If things came back to where it didn't make sense for the City to pay that much, then they could sit back down with the school district. He thought they needed time to sit down and explore the potential of parking wrapped with affordable housing, possibly for teachers. That was a whole different deal than what they had in front of them, but to find all that out they needed time. 'Time is of the essence', he didn't want to get caught up in a potential specific performance law suit, and if they removed 'time is of the essence' they wouldn't have to worry about someone suing them for specific performance. They may get the right to save the façade, which was the historic part. It may make sense to move forward then, because they could demolish 95% of the building. It would be good to have another conversation with the school district to tell them they were looking at it. They could potentially bring in Carta money. Chairman Moody said his problem with these whole deal was that the \$2.274 million was flowing through and all tied together, so

it looked like the price on the contract was based more on what they money was, rather than the value. Councilwoman Jackson said the school district was paying an additional amount and Chairman Moody said it was based on what they owed. Councilmember Waring said the school district had gotten that money from the City. Chairman Moody said there was just too much wrapped around whether it was real value, or whether they were just trading money.

Councilmember White asked how long the building had been empty. Ms. Carducci said it had been sense Sanders Clyde opened, so about 6-8 years. Councilmember White said if no other buyer had shown up, there wasn't one, or they had gone through the exercises and found out what the City was going to find out. It was likely that this type of transaction would only work with two public entities working together who had the ability to make offsets here and there. He didn't think they would find, in the 120 days, that there were other people out there. They would be prepared with a little more knowledge and understand the value. Then, they could talk about what to do. He thought the school district also saw that they had a liability currently. They had enough information to determine that they couldn't use it, and had determined that the value was zero to them. The City would be more educated at the end of the 120 days, but he believed there would be much more work to be done before they got to the end. Chairman Moody said it kind of reminded him of the property at 88 and 90 Broad Street, very valuable property, but it had been vacant for 15 years because it had zero parking. The school would make the information available, but the City would have to figure out how it could use it, and mitigate whatever it was missing. Mayor Tecklenburg said that after he became Mayor, he asked the school district not to sell it to someone else. It was his desire to find more options for affordable housing. If the expenses exceeded the value, they didn't have to buy it. He believed someone else would buy it if the City didn't. It had seemed like an opportunity to make Stoney Field happen.

Councilwoman Jackson asked for some clarification on the 'time is of the essence'. She asked why it was a worry to them. Ms. Cantwell said if they went through the due diligence and they didn't close in time, it would trigger an automatic cause of action, otherwise the law implied a reasonable time to close, and what was reasonable to one person, may not be to another. So, most contracts had that provision in there, that once they 'looked under the tent' and didn't back off, the person needed to fork over the money and close. Councilwoman Jackson said that at the end of 120 days was when they would decide if they were going to say yes or no. Ms. Carducci said there was a paragraph that tied to all provisions. One statement was that a contingency was the LDC grant, but the City didn't control the timing on that, so she didn't think 'time is of the essence' applied to that. Councilwoman Jackson asked if the school would have to provide, in a timely manner, anything they had. Ms. Cantwell said she thought they had given everything. Councilmember Waring asked if they had given the information on the seismic issues. Ms. Carducci said that at one point, they had given it to the Parks Department, and she wasn't sure if they current staff in that department had located it. Ms. Cantwell said that they needed to work out the Stoney deal during the 120 days, because they didn't want to have a disagreement for Stoney after the 120 days. Councilmember Waring said that was why he thought it should be two separate transactions. Councilwoman Jackson asked if they thought that was a big element to why the school district was ready to agree to this contract. Ms. Cantwell said she couldn't answer that question.

Councilmember Waring said they were paying \$1 million for Stoney. The City had cut the school district a check; they took that and gave it back. Then, the City had the \$2.27 as part of the grant from the LDC, and they cut a check for a million. He was being generous when he said they were saving \$300,000. He said they were getting the \$975,900 from the City. They owed the City \$2.27 million. The net difference to them was \$1 million, after 8 years. Ms. Carducci said that was with the assumption that there was no value to the Archer site. Councilmember Waring said when they did the due diligence they would see

how the value played out. Councilmember Waring said once the school district found that out, they would still own it, but they would have to disclose that to the next buyer.

Ms. Cantwell said they would sit down with the school district during the 120 days to figure out the Stoney Field. Mayor Tecklenburg said that the scope of work and payment for Stoney Field would be separate. It wouldn't be contingent on the closing for Archer. Councilmember Waring said he agreed with that. Mayor Tecklenburg said that they could leave in place that if they closed, then this would be fine. Councilmember Waring said if they found out there was \$2.274 million worth of value, then the City should make that happen. At that time, the money from the LDC would make sense.

On the motion of Councilwoman Jackson, seconded by Councilmember White the Committee voted unanimously to approve the Mayor executing the Purchase and Sale Agreement with the Charleston County School District for the Archer School site, with the following amendments:

1. Provisions of the Agreement pertaining to "Time of the Essence" are to be omitted;
2. Paragraph 8 (a) of the Agreement is to be amended to provide that, following execution of the Agreement, during the due diligence period, the City and the School District will meet to determine and agree on the Scope of Work for Stoney Field renovations and how the renovation project will be managed and paid for. The renovation of Stoney Field will not be contingent on the closing of the Archer School site.

Miscellaneous Business

Councilmember Waring said he wanted to put something on the agenda for the next meeting. He had gotten approached by some vendors at the market. He knew they had that leased out, but the City still owned the market. He asked if the heating issue had been answered. Mayor Tecklenburg said it had been. They were going to add a gas line, and would have a gas heater that people could buy. He hoped it would be installed before next winter. Councilmember Waring said it would be nice to come out with something to let the vendors know. The vendors felt threatened by, as being a tenant, not having any rights. They could be ejected quickly. He asked what the agreement looked like. He wasn't asking for answers that day, but at the next meeting. He wanted to know what the terms were, as a City, when they leased the market, and how much longer they had to go on that. He had two people who wanted to speak, and 18 people had shown up. Councilmember White said there was an appeals grievance process within the management agreement. Ms. Carducci said the appeals process was set up with 4 or 5 members on the grievance committee. Councilmember Waring said they could talk about it at the next meeting.

Having no further business, the Committee adjourned at 5:08 p.m.

Bethany Whitaker
Council Secretary