



City of CHARLOTTE

MEMORANDUM

TO: Mayor Lewis and City Council Members

FROM: Gregg Guetschow, City Manager

SUBJECT: Sale of 128 S. Bostwick Street.

DATE: July 22, 2016

I have previously reported to you that the City received an offer to purchase the former Bank of America drive-through located at 128 S. Bostwick Street. A copy of this offer will be found elsewhere in the agenda packet.

Before discussing the offer, I wish to provide information about the procedures required by the City in selling real estate that it owns. Transactions of this type are governed by the provisions of Section 15.3 of the Charter, the pertinent parts of which read as follows:

(B) The City shall not have the power to purchase, sell, lease, or dispose of any real estate unless:

(1) The resolution authorizing the sale, lease, or disposal thereof shall be completed in the manner in which it is to be finally passed and has remained on file with the Clerk for public inspection for twenty-five days before the final adoption or passage thereof, and unless,

(2) Such action is approved by the affirmative roll call vote of five or more members of the Council...

In addition, section 2-185 of the Code of Ordinances provides as follows:

Whenever any city real property or utility plant is no longer needed for corporate or public purposes, the property may be offered for sale in accordance with the restrictions established in Charter, § 14.12.

Charter section 14.12 addresses the disposal through sale, exchange or lease of utility plant property. In brief, it requires that such a transaction be undertaken only following an election at which three-fifths of the electors vote for its approval.

A three-fifths public vote is also required when disposing of park lands that are included in an official master plan of the City. This provision can be circumvented, however, by going through a master plan amendment process.

Council should also be aware that there are limitations on the disposal of real estate via lease agreement. These leases are limited to ten years unless the matter has been approved by a simple majority vote of electors at an election. An example of this is the lease between the City and the fair board for the fairgrounds property. The duration of this lease is 99 years, I believe, and was approved by voters.

In the case of 128 S. Bostwick, Council must make a finding at the time of its final action that the property is no longer needed for corporate or public purposes. This finding would be contained in a resolution authorizing the sale. The Charter requires that this resolution be prepared in its final form and kept on file in the office of the City Clerk for a period of twenty-five days.

We interpret the requirement that the resolution be in its final form to mean that the deed, purchase agreement or development agreement through which the property is sold must be in its final form. The proposed sale of the small parcel on N. Washington Street was a fairly simple transaction and so a warranty deed was prepared. In other cases, a purchase agreement or development agreement might be used that could include a requirement for the execution of a deed at a later time.

The purpose of the twenty-five day posting is a common one, in my experience. I suspect that its intent is to insure that there is an opportunity for the public to become aware of a transaction that might be structured in such a way as to favor the purchaser's interests over those of the general public. In other words, it is a check on public corruption. It has the effect of slowing down the process of selling real estate but that is not its most problematic impact.

Unlike the City's purchase of real property, the sale of real property may not be discussed in closed session. The public nature of real estate transactions is sometimes at odds with the desire on the part of real estate purchasers for confidentiality. This can come up in sales of industrial park lots, for example, where a company would wish, for competitive or other reasons, to be circumspect about its plans. In those instances, it is important that Council clearly communicate the parameters within which City staff may work. This enables staff to express a degree of confidence about Council's willingness to support the sale of property when conducting its discussions with buyers, site selection consultants, developers, and the like.

The public posting period can give rise to competing offers. This can be a challenge for Council to address. It should be remembered that there are sometimes factors beyond the purchase price that must be considered in determining which of multiple offers is the one which is in the City's and the public's best interests.

In all transactions involving real estate, it is important that the City Attorney be involved in reviewing documents even when a title company is handling the closing. This is our standard practice.

Let us now turn our attention to 128 S. Bostwick and address, first of all, the question of whether the City has need of the property. This parcel was acquired as part of a transaction through which the City acquired a portion of the parking lot behind the Bank of America building that had theretofore been used pursuant to a license agreement. The City had no interest in the drive-through location but the parcels were only offered together. It paid \$125,000 for the pair with funds that had been accruing for parking lot resurfacing projects.

We have discussed at the staff level whether there is any reason to continue to hold this property. Some owners of downtown property have encouraged our continuing to hold this property so that it can be used for parking for downtown employees and residents. We do not believe that there is sufficient justification for our continued ownership at this time. The parcel in question is located only a short distance to the north of another city parking lot that is often lightly used and can be expected to accommodate additional parking as the need arises over the next several years.

During the time that the City has owned the parcel, there have been two other inquiries regarding its sale. One was from an owner of rental properties who wanted at least a portion of the property to use for tenant parking. We have reason to believe that that interest no longer exists. We also had an inquiry from an individual about a business start-up at that and another location. No further interest has been expressed regarding this site, perhaps due to its being zoned for office use. In addition, I reached out fairly recently to developers with other projects in the community about their interest in the parcel but did not receive an indication that they wished to pursue it.

The offered price of \$25,000 is at the low end of the \$25,000 to \$40,000 range that we felt represented fair value for the property. There are some negative aspects to the property that tend to depress the value, we believe. The structure would have limited utility for most users and the pavement shows significant deterioration. A cost of \$10,000 to \$15,000 to undertake demolition and correct other defects seems reasonable. Some of those costs would likely need to be incurred by the City to address its blighted nature if we continue to hold the property.

We think the Congregational Church represents an excellent future owner of the parcel. Because the church maintains its property in an aesthetically pleasing manner, they contribute to the overall attractiveness of the downtown. We have every reason to expect that they would insure that this parcel would harmonize with its adjacent property.

It is our recommendation that we commence the process of selling the property in accordance with the offer we have received.