



There was no proponent testimony. There was no opponent testimony. There was no public comment.

Motion by Mr. Weinhardt to release Temp. Ord. A-76 with a favorable recommendation. Seconded by Mr. DeRemer. Motion adopted by acclamation.

Temp. Ord. A-78

An ordinance authorizing the purchase of the Mill Pond Property owned by First Akron Development Corporation to assist in redevelopment by Menard's to create job and employment opportunities, to protect open space and to create recreational and storm water management opportunities; and declaring an emergency.

Motion by Mr. Weinhardt to amend Temp. Ord. A-78 by substitution with Sub. Temp. Ord. A-78 dated 7/28/14. Seconded by Mr. DeRemer.

Motion adopted by acclamation. The amendment was approved.

Proponent testimony was offered by the Law Director, Russell Balthis. Mr. Balthis stated that the ordinance has been amended to add that the cost shall not exceed \$600,000 for the purchase of the property. It does include customary services, survey costs, recording fees, title company fees, taxes and insurance. Title insurance will cost as high as \$5,100. The contract provides for the City to pay one-half of the title insurance cost. The survey is estimated to cost not more than \$10,000. Recording fees are nominal. \$12,000 to \$15,000 is a reasonable estimate for total incidental costs.

The Chair recognized Mr. Weinhardt, who asked if the title insurance cost is based upon the \$325,000 appraised value of the property or the \$600,000 purchase price. Mr. Balthis stated it is based on the purchase price.

The Chair recognized Mrs. Pyke, who asked if the ordinance could be amended to cap the City's liability

for incidental costs at \$15,000. Mr. Balthis stated that these costs are paid to third parties in amounts less than the threshold for Council approval, and would normally not require Council approval. Mrs. Pyke stated that lack of a cap leaves the ordinance open-ended as to what the amount of incidental expenses would be. Mr. Balthis stated that these expenses are estimates, but applying a cap this is up to the Council's discretion.

The Chair recognized Mr. Colavecchio, who asked why the Council received the purchase agreement via e-mail at 4:09 p.m. that afternoon. Mr. Balthis stated that the parties were negotiating details of the agreement up to today and negotiations are still ongoing. Of particular note is the issue of a deed restriction requested by First Akron Development Corp. which would limit the City's use of the parcel. Mr. Colavecchio asked when the deed restriction issue came to the City's notice. Mr. Balthis stated he became aware of it last week, but it has been an issue for a number of years. Mr. Colavecchio stated he is uncomfortable voting on an agreement that is "still in flux." Mr. Balthis stated that the discussions involved recreation, preservation of the natural environment and storm water uses. The language at this point provides an opportunity for Council to replace any restrictions agreed upon in this agreement with restrictions that Council deems appropriate. Mr. Colavecchio stated that the agreement should be clear so that "issues down the road don't need to be litigated." Mr. Balthis stated that the City is negotiating toward this goal. Mr. Colavecchio asked if the vote on the agreement can be delayed until there is a final agreement with Mr. Hunter. Mr. Balthis stated it is important to "move the opportunity forward" because there is a deadline in the purchase agreement between Menard's and First Akron Development Corp. for the latter to reach agreement with the City. If the deadline is breached, Menard's can cancel the agreement. Mr. Colavecchio

asked whether the City would be able to back out of the agreement if the Council votes to approve it at this meeting. Mr. Balthis stated that the ordinance does not require the Mayor to sign the agreement. It must be acceptable to the Mayor. If agreement is not reached, the Mayor has the ability to “not sign the agreement.”

The Chair recognized Mr. Rubino, who stated that the ordinance does not approve the contract. It allows the Mayor to approve the contract. Mr. Balthis stated this is correct. Mr. Rubino asked if it would not be preferable to have the Council approve the contract. Mr. Balthis stated that typically the Council approves a form of contract with minor changes made by administration officials authorized by the ordinance. Mr. Rubino stated that Section 8(c) of the contract, which was only provided today, contains substantial restrictions on the City. The Council does not have a complete understanding of the current and future impacts of those restrictions. To have the deed restrictions in the contract while relying on Council's ability to reverse these restrictions in the future is a “troublesome situation.” The City should determine the future of its assets according to the will of the people. While the Council wants this to move forward, the Council should not authorize the Mayor to bind the City to something Council would not have approved. Mr. Balthis stated that the City will not sign an agreement that does not permit passive recreational use of the property.

The Chair recognized the Mayor, who stated that Mr. Hunter met with the City last Friday. Mr. Hunter understood from that meeting that the restrictions are not needed because the City is subject to other legal requirements that would make it very difficult to change the use of the property to something other than open space. Mr. Hunter may have a different interpretation.

The Chair recognized Mr. Rubino, who stated that the parties may have different interpretations of the restrictions, which presents an argument for Council approving this. The Mayor stated that all parties were satisfied at the end of the meeting on Friday.

The Chair recognized a member of the public, David Hunter (no address given), who stated he has not seen the document circulated, but both parties agreed that Section 8(c) needed to be revised. The version before the Council may not reflect any editing of that. Language has been exchanged. There are three issues: 1) what the constraints on land use will be, 2) who will have oversight, and 3) how long the constraints will be in place. The resolution arrived at on Friday is that "passive recreational use" will be permitted. However, the parties agreed that to give flexibility to the City in case of changed circumstances, the Council will be permitted to make changes. The language needs to be worked out. There is a 15-16 acre parcel that needs to be protected so that it is not "disturbed from effective residential use." There are 5 developers interested in developing this parcel. They need to be assured that the Mill Pond will not be changed to an incompatible use. The parties have an understanding and now it's just an issue of language. This agreement needs to be signed in order to comply with the time limit contingency contained in the agreement between First Akron Development Corp. and Menard's.

The Chair recognized Mrs. Snyder, who asked if it is days or weeks before the City and First Akron Development Corp. will finalize the contract language. Mr. Hunter stated it could be resolved as soon as tomorrow. Mr. Balthis stated he agreed with this. Mrs. Snyder asked what is the deadline in the contract between First Akron Development Corp. and Menard's. Mr. Hunter stated he could not recall. Mrs. Snyder stated the Council could meet in August to approve final language.

The Chair recognized Mrs. Pyke, who asked who is responsible for defining “passive recreational use,” and whether under Section 30, there is an escape if the property requires extensive environmental remediation. Mr. Balthis stated that if the environmental assessment misses something, the City would bear the cost. However, this would be rare where, as here, the property has never been developed. Mrs. Pyke stated the Council needs more time to review the agreement, and she would be willing to meet during August to consider this ordinance.

The Chair recognized Mr. Rubino, who stated that the Council should approve the actual terms of the contract, and not simply hand authority over to the administration to approve the contract. There appears to be time to accomplish negotiation of the actual language and approval by Council. The Planning Director stated that the term “passive recreational use” refers to the fact that the parcel is mostly water, wetlands, and steep slopes. The City’s goal is to establish a natural open space corridor, with trails and observation areas open and accessible to the public.

The Chair recognized Mr. Colavecchio, who stated that the issue is the restrictions contained in Section 8(c), which may be inconsistent with the City’s goals. The issue is fraught with language that is subject to interpretation. Mr. Balthis stated that he and Mr. Hunter agreed to remove the language in Section 8(c) cited by Mr. Colavecchio.

The Chair recognized Mr. Weinhardt, who stated that the Council needs to review the contract language before it approves the contract, and should meet in August to do this if it is necessary.

The Chair recognized Mr. Mader, who asked if there would be adequate time for the final language to be negotiated and reviewed by Council prior to the

deadline in the contract between First Akron Development Corp. and Menard's. Mr. Balthis stated that Council could be noticed to meet in 48 hours. The language may be finalized in a few days. Council would need some time to review the language once finalized.

The Chair recognized Mrs. Pyke, who asked that, if a special meeting is called, a timeline be established to provide the final language with enough time for Council's review before the meeting. Mr. Balthis stated he would defer to Council as to how much time is necessary for review.

The Chair recognized Mr. Rubino, who asked that the final contract be an exhibit to the ordinance and the terms be approved by the Council.

There was no opponent testimony.

Motion by Mr. Weinhardt to hold Sub. Temp. Ord. A-78 (7/28/14) in committee. Seconded by Mr. DeRemer. Motion adopted by acclamation. The ordinance was held in committee.

Non-Agenda Items

None.

Adjournment

Without objection, Chairman Pallotta adjourned the meeting at 7:51 p.m.

  
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Victor Pallotta, Chair

  
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Paul A. Janis, Clerk of Council