

Mike Burns

From: Jerry Zandstra <[REDACTED]>
Sent: Saturday, March 09, 2019 8:15 PM
To: Marty Chambers
Subject: RE: Meeting Notes March 8, 2019

Thanks Marty. Really hoping the Council can meet in closed session early next week, get this buttoned up, and approved at the meeting on Monday 11 like we discussed.

From: Marty Chambers [mailto:mchambers@ci.lowell.mi.us]
Sent: Saturday, March 09, 2019 1:24 PM
To: Jerry Zandstra
Subject: Re: Meeting Notes March 8, 2019

Jerry thank you for sending this this is most helpful hope to see you soon have a good weekend thank you

On Mar 9, 2019 1:08 PM, Jerry Zandstra <[REDACTED]> wrote:
Mike, Marty and Todd,

Per Mike's request yesterday from the city attorney, I am writing up the notes from our meeting yesterday and subsequent phone conversations. Please feel free to correct any misstatements or fill in anything I may have forgotten about. Here are the points we discussed in the order we discussed them:

1. 7' Land Swap – Last week, I send an email to Mike and the City Attorney stating that we have withdrawn our request for the 7' of park land. We have figured out a workable solution making it unnecessary. We believed it substantially simplifies the overall deal, removes the need for DNR involvement, and removes what has frequently been referred to as a "bargaining chip" or "leverage" by members of the Parks Commission and members of the City Council.
2. Steelcase – Marty mentioned to Todd that there was a lot of conversation about my dealings with Steelcase with the understanding of some on the Council that Steelcase has sued us. We clarified that that was not the case. We sued Steelcase twice for not fulfilling their contract with us. We are happy to provide proof as requested.
3. Partners – Marty expressed concern of some on the Council that we have not revealed the members of Unity School Investors LLC. The members are Todd Schaal and me and we gave you both papers demonstrating that. We are happy to provide those documents to whomever might desire to see them.
4. Conflict of Interest – Todd and I expressed our belief that Greg Canfield, City Council member, has a conflict of interest and should have recused himself from voting and this process. According to our understanding, Greg has twice attempted to purchase both parcels. His former tenant, with whom he was involved in a lawsuit, is also a potential tenant at our property. Mike said he relayed this concern to the City Attorney and that Dick did not believe it was a conflict. We still believe it is. We agree to disagree on this point.
5. Trust and Moving Forward – Todd and I expressed our concern that, given what has occurred to date, we would face arbitrary and capricious resistance if we moved forward with this process. Mike told us this would not be the case but that the City would work with us according to the law and without retribution.
6. PUD – We discussed needing a PUD to ensure that we can have the parking necessary and other considerations. Mike said that the PUD ordinance has already been passed and that it makes most sense for this project. He anticipates no issues with a PUD.

7. Financials and Performance Bonds – We expressed our concern that we would be required to put up performance bonds on the entire project which would come at great expense. Mike said he would check with the City Attorney to make sure. Mike called me later to inform me that a Performance Bond would only be required as it would in any other situation that involved things like public sidewalks and sewer, if needed. No special requirement would be demanded from us.

8. Flood Mitigation – We have discussed this issue in the past and Mike has stated that it will be no problem for the City to provide fill for flood mitigation. Mike discussed this with the City Attorney and called in the afternoon to confirm that there would be no issue with the City. It would be consistent with what was done with King Milling when they faced the same issue. We would be responsible for the cost of testing material to be moved and moving it to the site.

9. Road Vacation – Marty mentioned that this was the most significant issue with the Council. The plan that was presented to the Council last week was a vacation of the road with 50% going to us and 50% going to the City assuming the City purchased the south property. We would then give the City an easement through approximately 10" of our property to ensure that the Boat Launch would remain workable and even improve. This was rejected by the City. In our meeting yesterday, Todd suggest that we simply move the road to the South, leaving us with 15' to the south for landscaping and parking as needed. None of us knew the process for this but Mike committed to calling the City Attorney to find out. Mike did that and Dick told him that a road vacation would be a better solution in line with what was earlier proposed. I told Mike that either moving the road or road vacation with an easement is acceptable to us. Our goal is to have 15' for landscaping and parking and cleaning up the south property line which currently has 3' or so of the school into the road. I told Mike that as long as we are in agreement on the plan, we are not asking this to be completed in time for the close on the South property if there is one. It will be done through the normal process and normal timeline. According to Dick, Todd and I would need to make this request to the City, the City would need to agree, and then it would need to be reviewed by a judge. As I said, our only request is for the 15'. How the City Council decides to accomplish this is up to them. We will work with the City Council to accomplish it and ensure that the Boat Launch is maintained. It is important to us and important to the City.

10. Purchase of South Property – In our previous discussion, Mike mentioned he had a range to negotiate and was empowered by the City Council to do so along with Steven DonkerSloot from Lowell Light and Power. Mike made the initial offer of \$150,000. We had some back and forth about the possibility of additional property being part of the deal. Mike advised against that. We then countered with \$225,000 and I asked Mike if that was within the range of the Council. He said it was but needed Steve to confirm that price was acceptable because Lowell Light and Power would be contributing to the expense. Mike called me back later in the day and said the price was acceptable to Steve. From there, the proposal went to the closed session of the City Council where the entire proposal was rejected.

In our meeting yesterday, Mike said that the \$225,000 price was not the sticking point for the City Council. The sticking point was the Road Vacation. Marty asked Todd if we were willing to take less. Todd asked Marty if the City was willing to pay more. Mike brought up the rent invoice that was submitted to the City Council. We agreed that the price would remain \$225,000 and that rent invoice would go away. Mike called later in the day to say that having had some conversations, his feeling was that the price was too high to be approved with 4 of 5 votes from the City Council. He said the City Attorney suggested that we have the property appraised and settle on that price. Obviously, powerlines without easements running both East/West and diagonally through the property are a mess for an appraisal. The only appraisal that would make sense would be one in which the appraiser would consider the difference between the property without development because of the powerlines and the property with development without them with damages paid to us, but that is more of a court case than an appraisal that would help us now and that would be a very large number, considerably more than \$225,000. I also pointed out to Mike that the seller/buyer relationship is inverted in our discussion. We are being asked to negotiate against ourselves by giving sale prices we would accept with no real offer from the City Council. Mike is authorized to negotiate but not to actually make an offer. Our call ended amicably with me telling Mike that the asking price is \$225,000. The City Council should meet and put together an offer. Perhaps part of the price is considered for the purchase of the property and part of the price is considered rent. One thing I missed above. We talked about the comment from someone on the City Council that we are asking for rent back to 2014 but have only owned the property since November of 2018. We showed that our purchase agreement included

something Todd puts into every contract we do – any damages or other considerations from the past owner become ours upon close. We can provide that document as requested.

My summary is that we have agreement on all of the points above with the exception of price. I thought we had agreement on price in the morning meeting but by the afternoon, that dynamic has changed. It is my suggestion that the City Council come to us with an offer on the South property for our consideration next week and then we can proceed more consistently with the norm for a real estate transaction. Todd and I expressed our concern that this will drag on into the foreseeable future as it has for the past 4-5 months. That will not be acceptable to us. Our hope is that we can very quickly come to consensus that will be good for the City Council, the City of Lowell and us. If we cannot accomplish this in the next couple of weeks, we will need to take a different path that will be unpleasant for all of us and serve no one well.

Again – please correct any mistakes I've made, fill in any missing details, or add anything I've not mentioned. I did my best to cover these conversations fairly.

One last thing – Todd and I both appreciate Marty reaching out to Todd by phone and the willingness of Mike and Marty to meet in person with us yesterday. I am praying for a peaceful and good resolution.

Jerry

From: Jerry Zandstra [mailto:████████████████████]
Sent: Thursday, March 07, 2019 3:52 PM
To: Mike Burns
Cc: Todd Schaal; Marty Chambers
Subject: Re: Meeting

Take about 20 minutes to get to my office so let's plan on 9 am there.

Sent from my iPhone

On Mar 7, 2019, at 3:43 PM, Mike Burns <mburns@ci.lowell.mi.us> wrote:

Just got off the phone with Marty. Morning works for both of us. I have to get kids on the bus, so I don't leave the house until about 8:30. I am free anytime in the morning.

Thanks,
Mike

Michael T. Burns
City Manager
City of Lowell
616-897-8457
mburns@ci.lowell.mi.us

<image002.jpg>

From: Jerry Zandstra <[REDACTED]>
Sent: Thursday, March 07, 2019 3:32 PM
To: Mike Burns <mburns@ci.lowell.mi.us>
Cc: Todd Schaal <[REDACTED]>; Marty Chambers <mchambers@ci.lowell.mi.us>
Subject: Re: Meeting

Tonight can work too if better.

Sent from my iPhone

On Mar 7, 2019, at 3:29 PM, Mike Burns <mburns@ci.lowell.mi.us> wrote:

The afternoon is probably better for Marty. Let me reach out to him as he is out on the road right now.

Michael T. Burns
City Manager
City of Lowell
616-897-8457
mburns@ci.lowell.mi.us

<image002.jpg>

From: Jerry Zandstra <[REDACTED]>
Sent: Thursday, March 07, 2019 3:27 PM
To: Mike Burns <mburns@ci.lowell.mi.us>
Cc: Todd Schaal <[REDACTED]>; Marty Chambers <mchambers@ci.lowell.mi.us>
Subject: Re: Meeting

This makes my heart very glad. Let's meet ASAP. We can meet at my office - [REDACTED] in GR in the iServ building. By the airport.

If tomorrow morning is possible, I will cancel what I have scheduled. Afternoon can work too.

I agree with not using our conversation against each other. Needs to be open and needs to be fixed.

Jerry

Sent from my iPhone

On Mar 7, 2019, at 3:21 PM, Mike Burns <mburns@ci.lowell.mi.us> wrote:

Good afternoon Todd and Jerry,

I spoke to Marty Chambers this afternoon and he informed of the phone call between Todd and him. I understand it was a very positive phone call and he explained to me the gist of the conversation. If it is amenable

to the two of you, Marty and I would be happy to meet with you and see if there is a way to possibly move forward. I would suggest we probably meet anywhere but in the City of Lowell. I would also hope we agree that we don't use anything in this conversation against each other, if for some reason we can't move forward.

If this is agreeable, please let me know and Marty and I can make ourselves available.

Thanks,
Mike

Michael T. Burns
City Manager
City of Lowell
616-897-8457
mburns@ci.lowell.mi.us

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