



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF COMMUNITY DEVELOPMENT

REDEVELOPMENT COMMISSION REGULAR MEETING

April 25, 2016

5:30 P.M. Local Time

Room 205 – City Hall

Mishawaka, Indiana

Redevelopment Commission – Regular Meeting **Monday, April 25, 2016 at 5:30 P.M.**

1. Approval of the March 28, 2016 Meeting Minutes
2. Review, consideration and potential approval of a Buy-Sell Agreement for 2340 North Main Street
3. Anything else brought before the Commission



REDEVELOPMENT COMMISSION MEETING MINUTES

March 28, 2016

The regular meeting of the City of Mishawaka Redevelopment Commission was called to order at 5:30 P.M., on Monday, March 28, 2016 in Room 205, City Hall, 600 Third Street, Mishawaka, Indiana. Commissioners Pingel, O'Dell, Eberhart, Ermeti, Whitfield-Hyduk and Pemberton were present. Also present were Mayor Dave Wood, Attorney Robert Beutter, Ken Prince, Ryan White, Kate Volker, Dave Majewski, Jim Schrader, Mike Compton, Linda Rogers, Ron Banicki, Joe Dits and Marilyn Nelums-Jones.

APPROVAL OF JANUARY 25, 2016 MINUTES

Commissioner Ermeti motioned that the minutes of the January 25, 2016 meeting be approved; Commissioner O'Dell seconded; motion carried.

APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – CITY CONSULTANTS AND RESEARCH

Commissioner Eberhart motioned that the Professional Services Agreement between City Consultants and Research and the City of Mishawaka Department of Redevelopment be approved; Commissioner O'Dell seconded; motion carried.

RELEASE OF MORTGAGE – 208 Meridian Street

Commissioner Eberhart motioned that the Release of Mortgage for property located at 208 Meridian Street be approved; Commissioner Ermeti seconded; motion carried.

REVIEW, CONSIDERATION AND POTENTIAL APPROVAL – Buy/Sell Development Agreement with Lindy's, Inc.

Mayor Wood gave opening remarks regarding this significant project which has been in the making for some years. It began in the 1980's. The Gumwood wellfield is landlocked. The City needs to build a filtration plant and we do not have the property to do so. The property there (portion of the existing Juday Creek Golf Course) is what we would turn into a wellfield. We began testing and spent months doing so. The water came back with good quality. We continued to work with the Rogers family. We would like to purchase this property for a wellfield. We can lease back to a great family owned business. When we appraised the property we found that there was a significant portion, about 23 acres that appraised for a substantial more amount by property acre. Since we didn't want a club house or golf course, we proceeded with alternatives. We began talking with the Penn family to acquire property to relocate the holes and build our filtration plant and get it out of the way. We looked at infrastructure and widening Douglas Road. We are acquiring about 40 acres to relocate 3 holes at a significant lesser amount than to buy the holes along Fir Road. This is a much more creative solution and will serve us for the very long term. Negotiations for this are complicated and the Mayor feels we could not have had a greater team and he could not be more proud of them. We are here tonight to seek the approval of the

Redevelopment Commission. This project will provide us with the water that we need, we will grow as a City, provide maintenance in the City, serve our existing customers, and it will be great for the growth of Mishawaka. It will open up several hundred acres for prime development. Water is becoming more and more scarce. Water infrastructure is critical. This will allow us to fulfill the City's objectives for a very long term. Mayor Wood believes this to be a win for everyone involved.

City Planner Ken Prince walked the Redevelopment Commission through a synopsis he prepared and the individual points of the agreement. There will be a total of 160 acres acquired and approximately 44 acres of farmland to the East. Mr. Prince stated that clean water is vital. The City could have considered other alternatives but found this to be the best. Division Street wellfield is the closest comparison which is 70 acres and the 160 acres proposed here has a great multiple use. The agreement will allow for the construction and allows it to be leased back to the Operator. When Gumwood wellfield was put in place it was planned as a supplement. As we've been improving there is a difference in the nature of improvements. Gumwood was never meant to have a filtration plant. We encountered in 2008 the condition of the water existed from day one. In 1988-1989 the plant was put in. There was nothing really there. In 2008 the Hospital was added. Pumping over 40,000 gallons of water per day, a 20-30 year development plan has no room for a water filtration plant. The new project will be for the long haul. This is significant. Because of the study and testing there was no idea if it would or would not serve our needs. We went through capital needs assessment. We need an 1.1 and ½ million gallon a day plant. We continued negotiations with the Rogers family and did tests on the property and found it to be the quality needed.

Mr. Prince also shared the appraisals for the facilities and acreage. Looking at the total acquisition, it is about \$25,000 vs. \$200,000 an acre at Gumwood. Knowing change is constant and having the Rogers in golf course business and we are not in that business, 30 years from now if they decide they don't want to be in the business anymore, we will make a decision as a City. We could further evaluate the property and sell a portion off and we could naturalize the golf course like Division Street and leave it as a wild life preserve. By having the 18 holes and 160 acres, there is more flexibility moving forward. There are significant infrastructure improvements being made. Completion ideally will be done in spring 2018. It would be done by design to work in the winter months as to not interfere with usage.

Mr. Prince also walked through the Juday Creek Agreement, explaining the buyer and seller obligations as set forth in the Buy/Sell Agreement.

Mike Compton, 322 Stanley Street, Mishawaka, Indiana asked if we were going to take over the operation and maintenance of their sprinkler system. Mr. Prince stated it is part of the physical improvements of the golf course. We decided to deal with it in the lease agreements. He also inquired what is the current use of fertilizer and Linda Rogers, 14770 Lindy Drive, Granger Indiana stated that there is some but not much. Mike Compton also asked how many appraisals are required by law and Mr. Prince stated 2. The Penn property will be appraised as well. Mr. Compton stated that as a Councilman he understands that we are not going into the golf course business but we are partnering in that business and if it were him he would want to see their numbers and doesn't know if that has been done and he would like to see that. He suggested that someone like Rebecca Miller (City Controller)

could sit down and report back to us if this is a good decision for the City or not. Ken Prince asked what would be the intent and Mr. Compton said for comfort in representing the citizens. He stated at what point are those numbers important or not important, how much debt is appropriate or how much is not. Mr. Compton said that he believes there are people that could make the determination with no disrespect to the Rogers family. Commissioner Pemberton stated that the City has an investment of \$20,000 fee per year for renting the property and on the cities side I would want to be assured that the lessee could make the \$20,000 payment. They are prepaying the first five years of the lease. Mayor Wood stated that while Rebecca Miller is a great government accountant, golf courses are not her expertise. We would have to hire a professional for that. Mrs. Rogers assured that they built the course and that they stay on task with what is new for golf courses. She serves on a national board for golf course owners. They have been in business for 40 plus years.

Ron Banicki, 412 West Berry Avenue, Mishawaka, Indiana asked how many acres are really needed. Ken Prince said it is better to have too much in this case. If needed, we could slice off the area by the toll road. Mr. Banicki asked how many total acres was the Penn Farm – it is 250 acres. He wanted to know why we could not buy the acreage from the farm. Ken Prince stated we took a long term look and we see on average development costs 1-2 million per acre. Reducing the purchase would in long term take value away. He questioned one of the limitations - seller shall prohibit use of underground storage tanks. We just approved across the street for use. Ken Prince said we had to draw the line somewhere. We are much more situated upstream away from any type of catastrophe.

REVIEW, CONSIDERATION AND POTENTIAL APPROVAL – Buy/Sell Development Agreement with Larry J. Penn, Becky L. Penn, Paul D. Penn (the associated revocable living trusts associated with the Penn Family Farm)

City Planner Ken Prince again walked the Redevelopment Commission through a synopsis he prepared and the individual points of the agreement.

Specifically, the City would purchase approximately 44 acres of land at \$14,990.00 per acre for an approximate total of \$656,562.00 for the property total. Improvements will be made to Douglas Road, specifically widening the road to five lanes from a point just east of Fir Road to a point just east of the "Veteran's Parkway." A public sewer and water mains will be installed within the Douglas Road improvements from its current location. Ornamental street lighting on the north side of Douglas Road shall be installed. The City would engage a golf course designer, engineer and survey professional to complete the necessary design of the widening of Douglas Road, the design of Veteran's Parkway, and the reconfiguration of Juday Creek Golf course.

Commissioner Eberhart motioned that the Buy/Sell Development Agreement with Lindy's Inc. be approved; Commissioner Ermeti seconded; motion carried.

Commissioner O'Dell motioned that the Buy/Sell Development Agreement with Larry J. Penn, Becky L. Penn, Paul D. Penn (the associated revocable living trusts associated with the Penn Family Farm) be approved; Commissioner Ermeti seconded; motion carried.

ANYTHING ELSE BROUGHT BEFORE THE COMMISSION

No other business.

Commissioner Eberhart motioned that the meeting be adjourned; Commissioner O'Dell seconded; meeting adjourned at 7:02 P.M.

Jim Pingel, President

Ken Prince, City Planner

Marilyn Nelums-Jones, Clerk

BUY AND SELL AGREEMENT

THIS AGREEMENT, made and entered into as of the 25th day of April, 2016 by and between **Horse Whisperer, LLC**, hereinafter referred to as "Seller", and **CITY OF MISHAWAKA**, acting by and through its Redevelopment Commission, hereinafter referred to as "Buyer", All of St. Joseph County, State of Indiana,

WITNESSETH THAT:

The Seller promises and agrees to sell and convey to the Buyer, and the Buyer promises and agrees to purchase of and from the Seller, for the sum Fifty Two thousand dollars (\$52,000), the property located at 2340 North Main Street City of Mishawaka, St. Joseph County, Indiana, more particularly described as follows:

Lot 317 Ex W 6' 0.008 Ac Normain Hts Sec 4-37-3E 10/11 split to City of Mish for street 622WD 2-1-10

Tax key number 016-2120-4129

Subject to and upon the terms and conditions hereinafter set forth:

1. Buyer shall obtain, at Buyer's expense, a commitment for a \$52,000 Owner's Policy of Title Insurance in which the title insurance company shall agree to insure merchantable title in the name of the Buyer after delivery of a Quit Claim Deed to Buyer from Seller. Any defects in title which tend to render the same un-merchantable shall be submitted by the Buyer to the Seller in writing and the Seller shall be given reasonable time to correct the same. If the Seller shall fail or refuse to cause such defects to be corrected, Buyer shall have the option of accepting title subject to defects, or of terminating this Agreement.
2. After the title to the Property has been approved by the Buyer, and upon payment of the balance of the purchase price by the Buyer to the Seller, the Seller shall execute and deliver all necessary documents conveying the real estate interests above described to the Buyer, free and clear of all liens and encumbrances, except as provided herein, and subject to all covenants, restrictions, easements, and zoning ordinances of record.
3. It is understood and agreed by the parties hereto that Buyer is purchasing the Property and personal property covered by this Agreement in an "as is" condition and that Seller has made no guarantees or warranties, expressed or implied, concerning said personal property, real estate, or any improvements thereon. The Buyer has conducted and chosen to rely exclusively on its own inspections of the Property in proceeding with this

transaction to purchase the Property. The Seller hereby represents that it has not taken any action that would reasonably result in a lien or encumbrance being placed against the Property.

4. This Transaction shall be closed on or before the 18th day of May, 2016, or at such other time as the Seller and Buyer agree. Buyer and Seller agree to each pay half of all closing costs associated with this transaction. The closing shall occur at Metropolitan Title Company at 4100 Edison Lakes Parkway, Mishawaka IN, 46545.
5. Seller shall deliver possession of the Property to the Buyer at the time of closing. The Seller agrees to deliver property possession to the buyer with no tenants occupying the premises nor with any tenants holding any lease hold interest in the Property. The Buyer shall be permitted to inspect the Property on the day of closing to ensure it is not occupied.
6. Risk of loss or damage to any improvements located upon the Property shall remain with the Seller until the time of closing.
7. Seller, at his option, shall have the right to limited salvage rights in the real estate. All such salvage rights are to be approved by the Buyer prior to Seller exercising his salvage rights. The Seller shall have up to the date of closing of the transaction to complete any salvage work.
8. Seller acknowledges that because Federal Funds may be used by the Buyer in the purchase of the Property, that the sale on behalf of the Seller is voluntary. Seller acknowledges that the estimate of the fair market value of the Property is \$52,000 based on appraisal reports accomplished in 2016. Seller further acknowledges that since the purchase is a voluntary, arm's length transaction, Seller would not be eligible for relocation payments or other relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), or any other law or regulation.
9. Seller shall pay all real estate taxes for the current year and all prior taxes. Taxes for the current year, shall be prorated to the date of closing based upon the last official tax rate.
10. The covenants, agreements, and conditions herein contained shall be binding upon the parties hereto and shall also extend to and be binding upon their respective heirs, legal representatives, and assigns.
11. The parties each represent that no real estate commissions are due and owing to any party with respect to this transaction.
12. The Seller represents and warrants the following to be true and accurate as of the effective date of this Agreement:

(a) The Seller warrants and represents that it has no knowledge of: a) any hazardous substance at, under (including the groundwater) or upon the Property; or b) any hazardous substances released from the Property onto any other property or into the waters of the State, the groundwater or any publicly or privately owned well.

(b) To the best of Seller's knowledge, neither the Property nor the Seller, due to any of the Seller's past operations on the Property, are subject to any judicial or administrative proceedings or to any order from, or agreement with, any Governmental Authority respecting: (i) any violation or alleged violation of any environmental laws or (ii) any remedial action or (iii) any claims arising from the release or threatened release of a hazardous substance to, at or from the Property.

(c) The Seller has not received any written or, to the best of Seller's knowledge, any oral communications from any Governmental Authority informing the Seller of any investigation being or to be conducted by a Governmental Authority with regard to the release or threatened release of a hazardous substance to, at or from the Property.

(d) No environmental lien has attached to or been asserted against all or any portion of the Property.

13. This Agreement embodies the entire agreement between the parties and cannot be varied except by the written agreement of the parties. No representation, promise, or inducement not included in this Agreement shall be binding upon the parties hereto.
14. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana and venue for any action shall be the State Courts of St. Joseph County, Indiana.
15. This Agreement shall not be effective or binding until fully executed by the parties hereto. This Agreement may be executed in counterparts.
16. This Agreement will survive closing.
17. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
18. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to accomplish the actions contemplated by this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.
19. This Agreement was negotiated by the parties at arm's length and each of the parties hereto has reviewed this Agreement after the opportunity to consult with independent counsel. Neither party shall maintain that the language in this Agreement shall be construed against any signatory hereto.

20. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.
21. The undersigned persons executing and delivering this Agreement on behalf of each of the parties respectively represent and certify that they are duly authorized and are fully empowered to execute and deliver this Agreement and that all necessary action has been taken and done.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

BUYER

SELLER

CITY OF MISHAWAKA, acting by and
Through its Redevelopment Commission
By:

Horse Whisperer, LLC

Jim Pingel, President

Signature

Kris Ermeti, Secretary

Printed Name and Title