

Zimbra

gracel@ci.garden-grove.ca.us

RE: [External] Garden Grove Willowick Meeting

From : Robin Mark <Robin.Mark@tpl.org>
Subject : RE: [External] Garden Grove Willowick Meeting
To : Lisa Kim <lisak@ggcity.org>
Cc : Grace Lee <gracel@ggcity.org>, Omar Sandoval <osandoval@wss-law.com>, Omar Sandoval <omars@ci.garden-grove.ca.us>, Thomas P. Clark <tclark@stradlinglaw.com>, Tily Shue <tily.shue@tpl.org>, Alex Size <Alex.Size@tpl.org>, Greg Blodgett <greg1@ggcity.org>

Mon, Aug 23, 2021 08:06 AM

 1 attachment

Hello Lisa,

Please see my responses to your points below in BLUE.

Robin Mark
323.333.6310

From: Lisa Kim <lisak@ggcity.org>
Sent: Thursday, August 12, 2021 4:45 PM
To: Robin Mark <Robin.Mark@tpl.org>
Cc: Grace Lee <gracel@ggcity.org>; Omar Sandoval <osandoval@wss-law.com>; Omar Sandoval <omars@ci.garden-grove.ca.us>; Thomas P. Clark <tclark@stradlinglaw.com>; Tily Shue <tily.shue@tpl.org>; Alex Size <Alex.Size@tpl.org>; Greg Blodgett <greg1@ggcity.org>
Subject: Re: [External] Garden Grove Willowick Meeting

Good Afternoon Robin,

Appreciate the follow-up email and please see the City's responses below.

As to engaging in a third appraisal, we think that it would be better for TPL to engage an MAI to perform an unrestricted appraisal. TPL has acknowledged that its current appraisal is a "restricted appraisal" which in our view clearly does not come close to estimating the value of the property based on the City team's experience and information. As we have indicated, the City's appraisal was not subject to any restrictions or any specific scope of work.

The term "restricted appraisal" we use is a technical term, characterizing the abbreviated format of presentation of content and limited number of intended users. It does not mean the valuation is less valid or reliable than valuation documented in the format of a narrative appraisal report, nor does it mean what you seem to misconstrue. Our appraisal determined valuation of the property at its highest & best use, without any extraordinary assumptions or hypothetical conditions. We do plenty of transactions where we start off with the restricted appraisal format to set price for negotiation, and then expand the documentation to that of a narrative appraisal report to meet the requirements of different funding sources; the fundamental factual data do not change.

TPL is willing to engage an MAI to establish valuation and document the work in the format of a narrative appraisal report. We made that offer clear in our email below on August 6th. That said, we would like some assurance that the City of Garden Grove will consider this forthcoming appraisal as the agreed-upon basis for establishing valuation, as you have failed to consider our existing restricted appraisal valid despite the many attempts to clarify the value of this type of document. Additionally, we have lost quite a bit of time during this negotiation process due to the City's refusal to consider our existing appraisal. We have only met twice as part of the negotiation process and now, without prior notice, the City is negotiating with all parties. To avoid losing more time and to further demonstrate our willingness to work with the City on the appraisal we repeat our request below, if TPL is willing to engage an MAI to commission a narrative appraisal report, paying for all related expenses, is the City willing to work with us to select a mutually agreed-upon MAI appraiser and to scope the appraisal?

2. As to the City's proceeding with negotiations with all 3 proposers, we intend to negotiate with each in the same manner we have been negotiating with TPL. To ensure transparency, we intend to continue to post all correspondence with all 3 proposers on the website.

Thank you

3. The City's special counsel, Tom Clark, did not state that the City is not willing to sell the property if it is unentitled. Mr. Clark's statement merely recognized that contingent sales normally don't close escrow before entitlements.

Mr. Clark's statement was made in the context of the discussion on valuation and as "rationalization" of the City's projected/desired price range. Given the City's valuation is predicated on the property being up-zoned to residential/mixed use and fully entitled for development as a master-planned community of a certain target density, we seek clarification as to whether the City is not willing to sell the property if it is unentitled, i.e., zoned for open-space use, which is the property as is.

4. Your statement that Tom Clark stated that \$90 million is the lowest bid the City would accept is also misplaced. Tom Clark simply noted that based on the City's experience as confirmed by its current appraisal, the \$90 million would represent a floor. The City is currently

reviewing the proposals submitted by the other two proposers, which as they currently stand, appear to provide a value in excess of \$90 million. We further note that the Willowick Community Partners proposal includes a non-contingent offer at \$50 million.

Mr. Clark's statement was made in a particular context – in conveying his dismissal of TPL's valuation as nowhere near the City's desired \$90million number. In alluding to "the City's experience" – Mr. Clark was referring to offer(s) made to the City prior to the lawsuit against the City, which could not have been accepted, let alone consummated, so we appropriately question the relevance of those abortive offers as reliable data. The City's current appraisal does not take into account that this property is expressly being put up for sale pursuant to the Surplus Land Act, and is governed by the provisions of the statute, in particular, Govt. Code Section 54227(b). (This is quite apart from the questionable value conclusion in the City's appraisal for lack of a credible discount factor even in the context of the extraordinary assumption made, as pointed out by Alex Size in the July 27 call.) The City is currently reviewing the proposals submitted by the other two proposers, which as they currently stand, appear to provide a value in excess of \$90 million. Are these offers predicated on compliance with the SLA? We further note that the Willowick Community Partners proposal includes a non- contingent offer at \$50 million. What is truly non-contingent in this so-called "non-contingent offer"? It's difficult to perform a "reality check" without more details. Offers are made everyday at prices that cannot be sustained.

5. As to our meeting with the City Council in closed session on July 27, 2021, the City reports Council action as required by Govt. Code sect. 54957.1(a)(1). On the other hand, given that we are negotiating with TPL, the City Council authorized me to provide you the follow up response I provided to you based on our understanding at the end of our July 27, 2021 conference. Otherwise, the City Council's discussion is confidential and may not be disclosed without City Council consent under Govt. Code sect. 54963(a).

Thank you for clarifying.

6. As to the last paragraph in your e-mail, we continue to be confused with what TPL is proposing. Govt. Code sect. 54227(b) provides first priority to a governmental entity listed in Govt. Code sect. 54222(b) if that entity "agrees to use the site for park or recreational purposes if the land being offered is already being used and will continue to be used for park or recreational purposes, or if the land is designated for park and recreational use in the local general plan and will be developed for that purpose." Yet, in one of our conference calls with TPL, when we suggested that the land would have to be deed restricted for park or recreational purposes if acquired for open space, TPL objected and asserted that the law did not require a deed restriction for open space. We then understood TPL to still be intent in reserving acreage for Clifford Beers Housing as indicated in TPL's original written proposal.

I find it difficult to understand why the City of Garden Grove remains confused by TPL's intentions to purchase the Willowick property. Not only have we clarified in the email below from August 6th that our intention is to purchase the property for open space as is consistent with the current zoning and as you state is prioritized by Govt. Code sect. 54227(b) to receive first priority, but we have clarified this intention multiple times in our previous communication. Please see the attached letter from December 14, 2020 where we state explicitly the multiple times over the course of the last year where TPL has made our intention to purchase the property for open space purposes abundantly clear. Please explain where your confusion comes from and how we may be any clearer in communicating the following: **TPL proposes to purchase the property for open space and recreational uses as is consistent with the current zoning of the property.** When the City "suggested that the land would have to be deed restricted for park or recreational purposes if acquired for open space" we simply pointed out that there's no such requirement in the SLA. Would the land be deed restricted to only affordable housing purposes if the City were to sell to the other proposers under the different priority assigned to affordable housing developers? TPL's clarification of what the law requires should in no way be distorted to impute an unspoken 'intent.' That said, we remain open to discussing this deed restriction if it will aid in progressing our negotiations with you.

At this point, we are concerned that TPL's actions, including its continuous revisions to its intended use of the property following acquisition, its refusal to provide the City a counter offer for the price it is willing to pay for the property, its continuous suggestion that the City must sell the property to TPL at a depressed price because of the Surplus Land Act, its reliance on a restricted appraisal it will not publicly share, and its insinuated threats of litigation, suggest something other than an effort to negotiate with the City in good faith. We certainly hope that we could move forward with good faith negotiations as two parties dealing with each other honestly and fairly in order to reach a mutually agreed to price and terms for the disposition of the property, free of any pressure to buy or sell, which is in the best interests of the residents of the City of Garden Grove, to whom the Garden Grove City Council owes a fiduciary duty.

We reject this paragraph entirely as it is a total mischaracterization of TPL's actions to this point. The record of our communications is clear. We have clarified, on multiple occasions as demonstrated above and attached, that our proposal is to purchase the property for open space and recreational uses. Additionally we have offered, now multiple times, to secure a third appraisal without financial contribution from the City. We are simply requesting that the City work in partnership to select a mutually acceptable appraiser and confirm a scope of work to ensure our efforts and financial resources are not later dismissed. TPL has in no way insinuated threats of litigation but has pointed out that the City has previously lost lawsuits when you have not acted according to the law, thus reference to pre-lawsuit offers to purchase the property are no longer relevant in these negotiations. We are a national non-profit organization with a mission of 'land for people.' We only operate in good faith and any suggestion by you to the contrary is a gross mischaracterization of how we do business.

Regards,
Lisa

Lisa L. Kim
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