

January 3, 2010

John Hieftje, Mayor
Sabra Briere, Ward 1
Sandi Smith, Ward 1
Stephen Rapundalo, Ward 2
Tony Derezinski, Ward 2
Stephen Kunselman, Ward 3
Christopher Taylor, Ward 3
Marcia Higgins, Ward 4
Margie Teall, Ward 4
Mike Anglin, Ward 5
Carsten Hohnke, Ward 5
100 N. Fifth Ave.
Ann Arbor, MI 48104

Re: Position Statement Requesting Appropriate Public Process for RFP #743 and Consideration of Open Space Proposals for Public Land

Dear Mayor and Council Members:

We are a group of Ann Arbor residents who have organized to petition the Ann Arbor City Council to ensure that there is a public process to determine the fate of the public land above the planned underground parking structure next to the downtown library (319 S. Fifth), commonly called the "Library Lot". We are also requesting that Council provide for an equitable discussion of the two "open space" proposals that were eliminated from consideration by the council-appointed advisory committee. **Public land demands a public process.**

Discussion:

In reviewing the proposals for the use of the surface and air rights portions of the "Library Lot" (319 S. Fifth), the advisory committee eliminated both "open-space" proposals. The committee's action, taken on December 18, 2009 was as follows:

"Advisory Committee eliminated two proposals for further consideration because they did not meet the Financial Return Site Development Objective as spelled out in the RFP. The eliminated proposals are Ann Arbor Community Commons and Ann Arbor Town Square." (Extract of published meeting notes)

We believe that this decision violated several established procedures and directives (listed below), including those established by City Council, and also the spirit of open governance. It appears to be designed for a particular outcome without a full public discussion of what is the best use of this public land which is a vital area for the good of the City and its residents and businesses. We have listed them below in some detail.

- **No public input was sought on the desired use of the site per resolution.**

The authorizing resolution (R-09-268, passed July 6, 2009) contains the following Resolved phrase (emphasis added):

RESOLVED, That the Mayor, prior to the deadline for submission of RFP's for this project, will appoint an RFP Review Committee consisting of two members of City Council, one member of the Planning Commission, one member of the Downtown Development Authority, and **one resident** to review all properly submitted proposals. This committee will **conduct a public meeting to solicit public input on the desired use of the site**, as is consistent with current City practice.

There has been no public meeting to solicit public input on the desired use of the site. While the tentative design for interviews of some proposers is to invite the public, that is very much after the fact and no opportunity to discuss use of the site is evident.

- **No citizen or resident at large was appointed to the committee.**

All members of the committee are appointed commission members or council members. Further, four staff have been added to the committee.

- **The weighting and evaluation criteria of the RFP itself have been bypassed.**

The authorizing resolution contained this Resolved clause:

RESOLVED, That the City Administrator shall incorporate appropriate elements of the Downtown Plan for identifying **desired community objectives for the site, including open space, active uses at street level, and clear public benefits**, which should be addressed in site proposals. (Emphasis added.)

Note that all three of these objectives could presumably be satisfied by one of the open space proposals. Objectives stated in the RFP itself are

Beneficial use of the site. Any proposal for this site must demonstrate a clear benefit to the community and be consistent with the recommendations of the Downtown Plan, and A2D2 initiative. Preference will be given to proposals that incorporate a use (or uses) that provides a publicly available service to the community, for instance, building or open space that may be used for public meetings, recreation, or civic/ cultural events.

Environmental benefits. The development proposal should incorporate to the greatest extent possible environmentally sensitive design and energy efficiency features that follow Leadership in Energy and Environmental Design (LEED) standards. In addition, the project should propose innovative and environmentally friendly runoff water management and seek to improve water quality.

Financial return. The proposal must provide a positive financial return to the City. In the absence of other considerations, the City has a fiduciary responsibility to obtain fair market value upon the sale of City assets. Long-term lease or other property arrangements will be considered, but must meet this financial return criterion.

Again, all three objectives could be fulfilled by the open space concept (the Financial Return objective is defined as market value only if the property is sold or leased but does not address other forms of financial return to the City).

In the Selection Criteria, only a 10% weight is given to the “Cost proposal”. (The phrase, “lease return” seems to presuppose a result.)

Past Involvement with Similar Project(s) – Demonstrated experience in design and completion of projects with the following qualities: 1.) downtown infill development 2.) on-going public-private partnerships; 3.) community input for design, and 4.) demonstrated significant impact on the community verified by references.	25% weighting
Proposed Work Plan – alignment of proposal with site development objectives outlined in the RFP. Proposals must include information on the schedule anticipated by the proposer, including timing for site plan development and arranging construction financing.	40% weighting
Financial Capacity – ability to finance proposal, including demonstrated ability to procure financing and complete the work within the proposed timeline.	25% weighting
Cost Proposal – lease return	10% weighting

But as quoted in the meeting notes, the committee eliminated two proposals because of the perceived lack of a financial return. **This is not consistent with the selection criteria nor with the overall objectives for the site.**

Beyond the procedural errors in the committee’s decision to eliminate the open space proposals, there are other omissions and flaws in the process.

- **No definition of what constitutes a financial return for the City was provided.**

The committee has not allowed a discussion of the financial benefits (or even the financial consequences) to the City of choosing an open space option. One of the proposals actually offered \$2.5 million “or more” to the City as a free gift and off-hand statements were made that it “wasn’t enough”. There was no analysis made to support that statement. There are studies and documentation available showing that open space in a downtown area does have concrete financial benefits, but there was no opportunity to make this case or to defend the financial benefit offered.

Further, though the committee has authorized the hiring of a consultant to review finances for the other four proposals, there is no evidence that any one of them actually yields a true financial benefit for the City. Thus, the off-hand analysis that was applied to the open space proposals was not evenly applied.

Finally, a clear definition of what would constitute a financial return has not been given. Is it a hypothetical benefit to business and commerce (as has been claimed by some for a conference center)? A cash payment? A return on investment over many years of a complex relationship in which the city must first issue debt? What are the risks to citizens of a public-private partnership if the enterprise is not profitable? This clarification is needed to estimate the financial impact of choosing an open space option but was not made available or discussed.

- **Best use of the site within a master planning context has not been defined.**

This site is in the midst of an area undergoing transformation. The best ultimate use for the site should be chosen with consideration given to the other (mostly public) uses in the area and should be a result of an area planning process. We have an opportunity to bring vitality and increased public accessibility and usage to this gateway to downtown and should not merely create another project in a “bubble”.

In summary: We respectfully ask the City Council to reinstate the two open space proposals for further review and to ensure that an adequate public discussion of the future use of the 319 S. Fifth site occurs, one that takes into account a diversity of opinions and outcomes. Public land demands a public process.

Thank you for your attention to our concerns. The use of the “Library Lot” is a matter of great importance to every resident, taxpayer, and business operator in Ann Arbor. We hope that you agree that such an important decision requires public participation.

Sincerely,

Nancy Kaplan

Leslie Morris

Karen Sidney

Eric Lipson

Kathy Boris

Ethel Potts

Jack Eaton

Vivienne Armentrout

Rita Mitchell

Lou Glorie

Gwen Nystuen

Barbara Kritt