

CITY OF CHARLOTTESVILLE
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September 12, 2016

By Electronic Mail

Dave Norris
General Manager
Charlottesville Parking Center
108 5th Street, N.E.
Charlottesville, VA 22902

Re: Water Street Parking Garage

Dear Dave:

On behalf of the City Council I am responding to your letter to me dated August 8, 2016 sent on behalf of Charlottesville Parking Center, Inc. ("CPC"). Your letter, as well as Mr. Mondschein's letter dated August 31, 2016, have been shared with the Council. You have posed three "scenarios" to resolve the litigation and the ongoing issues at the Water Street Parking Garage ("WSPG") for which CPC, and CPC alone, bears responsibility. According to a recent article in the *Daily Progress*, you believe CPC's proposals represent an opportunity for the City to end the dispute "quickly" and "in the city's favor". If that is accurate it represents a fundamental misunderstanding of the City's position regarding the litigation and the future of the Water Street Parking Garage.

Your proposals can be summarized as follows:

(1) The City would purchase CPC's 390 spaces¹ for **\$18,323.33 per space**, and acquire CPC's commercial / retail spaces for \$1,849,400. While you have avoided using these amounts in your letter, we have taken them from your newest attorney's letter dated July 11, 2016. Presumably he is aware that the City has no interest in acquiring CPC's separate commercial spaces, and would be under no obligation to compensate CPC for those properties in the context of an eminent domain case involving CPC's parking spaces. We therefore must assume that the \$1.8 million has been included in order to artificially inflate CPC's demand.

¹ For purposes of this analysis only, we are crediting CPC with ownership of the improperly acquired Wells Fargo parking spaces.

Your attorney states that as a prerequisite to eminent domain proceedings, the City is obligated to offer CPC \$8,995,400, the assessed value of CPC's interest in the WSPG (assuming that amount is greater than the amount determined by an independent appraisal). As you may know, \$8,995,400 represents the assessment for 100% of CPC's interest in the WSPG, including its fee simple interest in the land, its parking spaces and its commercial spaces. For clarification, are you saying CPC would accept the payment of the assessed amount to CPC for the acquisition of all of CPC's property interests at the WSPG that are included in that assessment?

(2) In contrast to **CPC's selling price of \$18,323.33 per space**, CPC is offering to purchase the City's 629 spaces for \$4,920,000, or **\$7,822 per space**². That huge discrepancy suggests that CPC either has no interest in seriously negotiating the sale of its WSPG parking spaces to the City, or that CPC continues to mistakenly believe that the fair market value of its spaces is far greater than the fair market value of the City's spaces. We understand, but disagree with, CPC's position that its spaces are worth more because CPC owns the WSPG land, and is the lessor under the ground lease. A comparable argument for the City would be that its parking spaces are more valuable because they are exempt from real estate taxes. Neither "advantage" would be passed on to a *bona fide* purchaser for value; therefore, neither is proper to consider in determining fair market value.

A variation of the proposal for a sale of City spaces adds a component where the City and CPC would engage in a partnership to develop a new public parking garage at 7th and Market Streets, assuming that CPC is given preferential treatment during the City's land use approval process. We believe the actions CPC has taken to force a sale of parking spaces by the City, as enumerated on the next page, have removed any potential for a collaborative approach between the parties. As long as CPC continues those divisive tactics at the expense of rebuilding what was once a very productive relationship, I can unequivocally respond that no one on City Council can imagine any scenario where this type of partnership would be of interest to the City, even without the requested preferential treatment.

While the terms of CPC's offer to sell its spaces suggest that CPC is unwilling to sell its WSPG parking spaces to the City for an amount anywhere close to their fair market value, I will be more direct: the City Council has **no** interest in selling its spaces in the WSPG to CPC. I will reiterate City Council's position in its letter to you dated July 6: "We believe the City's acquisition of CPC's spaces, at a price that fairly compensates CPC, is **the only path forward** that resolves CPC's lawsuits and threats to close the Garage, and addresses long term issues such as the stalemate over the future management of the Garage" (emphasis added). In taking that position City Council is very mindful of the reasons you cite for reaching a negotiated resolution of the pending litigation and issues involving the Garage. I want to respond to those reasons in a larger context, which includes events that predate your arrival at CPC.

² Your reference to "terms and conditions previously agreed to in May" has no basis. CPC made a proposal that the City's negotiating team conveyed to City Council. Not one Councilor found those terms to be acceptable.

The WSPG is the largest single component of the City's undertaking to ensure accessible and affordable parking in Downtown Charlottesville. Members of the Downtown Business Association have made it abundantly clear that they share the City's goals for public parking. It is equally clear that the goal of the current ownership of CPC is to own the WSPG. That is understandable, given the amount of net revenues produced annually at the WSPG under the current fee structure. CPC first made overtures to the City about acquiring the City's parking spaces more than 18 months ago. At that point the rationale was that CPC needed to recoup lost revenue resulting from the ground rent allegedly being set too low by the previous owners and managers of CPC. The offer was made with the explicit representation by CPC that the City "had done nothing wrong". After consideration, the City Council declined to enter into negotiations for a sale of the City's spaces.

After acquiring the WSPG spaces owned by Wells Fargo, CPC used its newfound voting rights to block passage of the annual budget of the Water Street Parking Garage Condominium Association, and claimed the existence of a "crisis". The deadlock, as you probably know, was ostensibly over differing parking rates that had a cumulative difference in projected annual revenues of approximately \$292,500. CPC's share of that difference would be roughly \$96,525³, and the City offered to phase in CPC's requested rates over time. This dispute is not, however, about parking rates and never has been.

Apparently CPC believed the deadlock over rates provided a basis for several subsequent actions that would pressure the City to sell its parking spaces:

- CPC filed a lawsuit against the City, claiming the existence of a "joint venture" which the City violated by operating a "competing" parking garage on East Market Street. We have since learned that CPC was simultaneously secretly attempting to negotiate a deal with Albemarle County that would allow CPC to build, own and operate a competing parking garage on East Market Street.
- CPC claimed the Condominium Association Board of Directors breached its Management Agreement with CPC by not approving the 2016 operating expenses for the WSPG. At a special meeting of the Board called to approve those expenses, CPC voted against the approval of the expenses, which were set forth in a budget prepared by CPC.
- CPC led the Downtown business community to believe that it was contemplating "closing the WSPG" because of the alleged default, despite having no authority to effectuate such a closure.
- CPC filed a second lawsuit seeking the emergency appointment of a receiver, which was dismissed before the City was required to put forth any evidence. Our attorneys are confident that a similar fate awaits CPC's first lawsuit.

³ See footnote no. 1, *supra*.

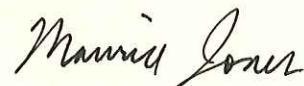
- While not referenced in your letter, the City has been advised that CPC may file more lawsuits against the City if the pending litigation is not settled. If that strategy is designed to force a sale of the City's parking spaces, I suspect you will find it to be counterproductive, and the source of further unnecessary anxiety among the public and antipathy toward CPC.

You have cited the City's escalating legal expenses, the "uncertainty for downtown . . . and the Water Street Garage", and the alleged inability to make physical improvements and upgrades at the Garage as reasons for the City to sell its spaces to CPC. While the first two are important considerations, they are both unequivocally and undeniably attributable to actions taken by CPC in its quest to own the WSPG. With regard to the frequently cited unmet need for Garage capital improvements, CPC has never submitted a specific proposal with a projected budget to the Directors of the Condominium Association, the entity responsible for the condition of the building.

If you are serious about a negotiated settlement, we would welcome a reasonable offer from CPC to sell its parking spaces in the WSPG to the City. Since such a settlement would involve pending litigation, we ask that any such offer be forwarded by CPC's legal counsel to Tom Wolf. Making settlement proposals in public and to individuals that are not parties to the lawsuits may have some public relations benefit, but it does not, in my opinion, enhance the chances for settlement.

In closing, I feel compelled to emphasize that we are motivated solely by what City Council considers to be in the best interests of the public, which is the same goal that has motivated the City all along in the creation of and continued investment in the Downtown Mall. In my opinion additional threats and lawsuits will not change that.

Sincerely,



Maurice Jones
City Manager

cc: City Council
Tom Wolf
Craig Brown
Chris Engel
Larry McElwain