

## Committee on Real Estate

March 8, 2021

A meeting of the Committee on Real Estate was held this date beginning at 3:10 p.m. over video conference call.

Notice of this meeting was sent to all local news media.

**Present:** Councilmember Shahid, Chair, Councilmember Appel, Councilwoman Jackson, Councilmember Waring, and Mayor Tecklenburg **Also Present:** Peter Rascoe, Susan Herdina, Chip McQueeney, Julia Copeland, Geona Shaw Johnson, Steve Brown, Leigh Bailey, Christopher Morgan

The meeting was opened with an invocation provided by Councilwoman Jackson.

### Approval of Minutes

On the motion of Councilmember Waring, seconded by Councilwoman Jackson, the Committee voted unanimously to approve the minutes of the February 22, 2021 meeting.

**Approval of a three-year lease with MUSC with two one-year options to renew. The property will be used as a parking lot. The property is owned by the City of Charleston. [Southeast corner of Fishburne Street and Hagood Avenue and known as the 1,143 parking spaces Fishburne Ballpark Parking Lot; TMS: 4600000008 and 4600000022]. This proposed lease is being re-submitted after its February 9, 2021 initial approval by the City Council. After ongoing review at several levels, the SC Department of Administration subsequently amended the proposed Lease by deleting original Paragraph 8.1.(g), submitting that the omitted language is inconsistent with other articles. The SCDOA also amended the proposed lease by adding Paragraphs 11.2 through 11.5 to provide an actual process for handling, continuing, or termination of the lease in the cases of damage/destruction or condemnation of the property. (Ordinance)**

Mr. Rascoe stated that the Department of Administration requested three other quick changes after Council had approved it in February. He and Ms. Bailey looked at it and felt they were insignificant, but they were enough that they had to bring them back to Council. They recommended it for reapproval.

Chairman Shahid said they adopted first reading of the ordinance. Ms. Copeland said they had. Chairman Shahid asked if they had given this ordinance second and third reading. Mr. McQueeney said it had been adopted. Chairman Shahid asked if they approved this, if this would trump the first one they approved. Mr. McQueeney said it was adopted by Ordinance 2021-20 at the last February meeting. So, they need to amend it after-the-fact. Mayor Tecklenburg asked what the minor changes were. Mr. Rascoe said that the ordinance that was adopted in February did not have a process for addressing condemnation and subsequent repairs due to destruction of the property. The State insisted on having a process put in and it required that anything demolished be fixed within 90 days or the lease would be terminated. As everyone knew, this was a parking lot and there were structures there, so they didn't have a problem with that. The other minor change was that the State felt there was a duplication in a repair covenant for the tenant, so they requested that one be deleted.

On the motion of Councilwoman Jackson, seconded by Mayor Tecklenburg, the Committee voted unanimously to approve the above item.

**Approval of an ordinance authorizing the Mayor to execute, on behalf of the City of Charleston, a Memorandum of Agreement with Palmetto Railways; the South Carolina Department of Commerce; and the South Carolina State Ports Authority regarding the Navy Base Intermodal Facility (NBIF) project in Charleston County, South Carolina, under which the City will accept \$11.5 million for (1) the City's conveyance of certain real property, being a portion of Charleston County TMS No. 464-02-00-051, commonly known as the W.R. Grace Site, through separate Purchase Agreement; and (2) mitigation of existing and future impacts related to the construction and operation of the NBIF, including but not limited to freight rail movement in the vicinity of the southern access component of the NBIF.**

Mr. McQueeney said this had been in the works since 2017 trying to negotiate a resolution of this. It involved the southern loop, or southern access route, to the new Navy Base Intermodal Facility which ran through the City. There was an element to this because it ran through City owned property known as the W.R. Grace Site. The red rail on the map he showed would be the new southern loop that Palmetto Railways, as he understood, would own, so cars would be able to come in and out of the facility using that southern loop. His recollection was that Norfolk Southern and CSX said they weren't doing it unless there was the southern loop option. In 2017, the City hired Jennifer Biel with Biel Engineering to put together mitigation projects. There was a long list of projects from this facility. This also didn't cross King Street, but it did cross Meeting Street. The total was somewhere around \$36 million for the mitigation projects. The Palmetto Railways Division of the Department of Commerce had put together their own mitigation study which showed about \$4.2 million in mitigation impacts that should be required. They had been stuck in a holding pattern. There was some talk about going up to \$4.9 million recently, but a lot changed. There was an economic bond that was going through the General Assembly. The South Carolina Ports Authority had gotten involved and they received an offer to pay the City \$11.5 million for both the mitigation impacts with fairly good flexibility on how to use that money as long as it addressed mitigation impacts and for the portion of the W.R. Grace Site to be taken, the area to be taken would run along the eastern boundary. The gentleman who represented the Ports Authority had put together a rough version. The maximum it would be was 2.53 acres. He told T&T that he was asking for permission to sell up to 2.53 acres of that property. He thought that amount would drop down. There had been a lot of questions, understandably, that they didn't know exactly where the boundaries of the property were. They didn't know the exact acreage. It was his opinion that he didn't think the Ports Authority or Commerce would put anywhere near as good of a deal on the table. He thought this would be a situation where it was the best they could get and if they wanted to walk away they could. If not, it wouldn't get better. At least \$4.9 million had to be used for mitigation of the present and future impacts from the southern loop. The remainder would have to be spent on either mitigation impacts or replacement facilities for what would be built on the portion of W.R. Grace that would be sold. They were looking at the Magnolia Development Agreement on how to deal with that issue. That was where the \$11.5 million would have to be spent. Otherwise, the City had discretion as to how much went towards the replacement facility versus the mitigation subject to the \$4.9 million, where the mitigation was as long as it related to this. The City had maximum discretion on how to utilize the mitigation funds and replacement funds within the bounds of reasonableness.

Chairman Shahid said that this was 2.53 acres and they were transferring ownership to the SPCA in exchange for \$11.5 and about \$5 million of that had to be used for mitigation purposes. Mr. McQueeney said that was correct. Councilwoman Jackson said that she saved some of her questions. She knew this

was a plan they had long before her time to move the property yard off of Milford Street and up toward Magnolia. She was curious what would happen to the rest of the Milford Street property and who would want to buy it with the southern loop surrounding it. She asked if they would be managing that kind of land swap down the road with the same entities. She was also curious at if they had made any progress in doing what they had to do for the bottom properties along Milford Street. Mayor Tecklenburg said they didn't own Milford Street. It was sold by the City when they acquired the Herbert Street, and for full disclosure, at the time he represented the Magnolia Development group and was involved with that transaction where they bought Milford Street, leased it back to the City for \$1 per year until such time they gave notice to leave. The City bought the property at Herbert Street to be a replacement of the facilities at Milford Street at that time. At that time, City staff felt that Herbert Street may not be big enough then. So, if you took up to 2.5 acres away from it, it was clear they would need to purchase some additional property to meet the needs of Public Works and of the Fire Department. They were investigating another property to purchase to augment what they had at Herbert Street. Councilwoman Jackson said she misspoke. She called it Milford Street, but meant the property they currently used. She was curious as to what the plan was for that because it would be surrounded by a railway. Mayor Tecklenburg said the mitigation they were planning enabled them to get out in one direction or another depending on where a train may be. That was part of the need for those mitigation funds. Then, they would need to buy another property. In short order, they would be bringing a proposal to the Committee to purchase that additional property.

Chairman Shahid said they would be kicked out of Milford Street in the near future. Mayor Tecklenburg said they were required to give a three-year notice to vacate and they hadn't given notice yet. He would like to state that their goal was to move in 2024 despite any notice they may or may not give. He believed it was time for the City to get serious and officially start a Capital Projects Budget to design and plan for the move of the Public Works Department. He thought they should be able to pull that transition off in a three year period. Chairman Shahid asked if there were any restrictions on the balance of the money and what they could use it for. Mr. McQueeney said the restriction was to use it for mitigation of the southern loop and/or replacement facilities for the planned Public Works Facility, Police Fleet, or Fire Training. He did some research and the Department of Commerce started acquiring properties in 2017/2018. The City's property was zoned Heavy Industrial. The Ports Authority recently filed a condemnation for 3.17 acres of the property owned by Chevron, also zoned HI. The condemnation notice and tender of payment was for \$1.174 million. There was also a condemnation notice on another property that was .5 acres and the amount was \$239,300. The appraisals would be skewed in favor of the governmental entity. For the 105 property, it was .6 acres and it was zoned LI. They paid \$476,000 for that property. 038 sold in 2016 for \$1.15 million and was zoned HI. It was around 2.1 acres.

Councilmember Appel asked if they had an appraisal for the City's property. Mr. McQueeney said they didn't. Chairman Shahid asked if they had time to get an appraisal. Mr. McQueeney said that part of the problem they had with appraisals recently was getting them done quickly. Leigh Bailey said that they had a bit of a slow turnaround with getting appraisals back. She was happy to try to attain one. Mr. McQueeney said the process may have already started. The ordinance did say it would be by separate purchase and sale agreement, so the idea was to get first reading and then when they come back for second and third reading to have the purchase and sale agreement in place. The contingency would be that it appraised for a certain amount. Chairman Shahid said they could give an approval for first reading

contingent on getting a valid appraisal. Mr. McQueeney said they could do that. He told T&T he wouldn't normally come to them in these types of circumstances, but having dealt with the people they were dealing with over the last few years, it would be what they got or not. Councilwoman Jackson said that they may not really want an appraisal based on some of the numbers they were just given. Councilmember Waring said he thought they needed to get the appraisal. It should be part of the process. He asked why they would want to give first reading before they found out what it was worth and if it was a time issue. Mr. McQueeney said it depended on whether they thought it was a good deal. If it was a good deal, they wanted something in writing with the Ports Authority and Palmetto Railways soon. This would bind them, assuming the economic bonds going forward in the General Assembly passed. If they didn't pass, the agreement went away. The primary negotiating point was that property and no one would think it was worth \$11.5 million. The other argument they had was the Municipal Consent Constitutional Provision which was a lot more complicated, but this was the primary negotiating factor they had. Councilmember Waring asked if after it was mitigated, would anyone do an appraisal subject to it being cleaned up. Mr. McQueeney said they would clean up the portion they would take. The mitigation was for traffic improvements and other mitigation related to the southern loop to make sure the inconvenience was as low as possible from building the southern loop. They did have TIF funds available to help construct the Public Works site as well.

On the motion of Councilwoman Jackson, seconded by Mayor Tecklenburg, the Committee voted unanimously to approve the above item.

**An ordinance authorizing the Mayor to execute a Third Amendment to the Memorandum of Understanding between the City of Charleston and the Episcopal Diocese of South Carolina Community Housing Development Organization ("EDCHDO"), a copy of which is attached hereto as Exhibit 1, under which (a) EDCHDO will convey back to the City certain real property located at 83 Hanover Street (TMS No. 459-05-04-124); (b) the City will execute a Quitclaim Deed and release of possibility of reverter as to all properties previously conveyed to EDCHDO and sold as affordable housing; and (c) the City will authorize EDCHDO to utilize any remaining funds provided by the City to EDCHDO to develop and sell affordable housing units on EDCHDO's properties designated as Charleston County TMS No. 4600801215 (24 Humphrey Court) and 4600801216 (28 Humphrey Court).**

Ms. Shaw Johnson stated this was the third amendment to the MOU between the City and EDCHDO. This amendment did two different things. One, it allowed for the transfer of one additional property from EDCHDO to the City of 83 Hanover Street. It also allowed EDCHDO to utilize the remaining funds coming from the Morris Square Development for homes located on Humphreys Court. They had been working with EDCHDO for a very long time. The City took back a number of properties over the years, most of which they had developed or was in process of being developed. They did that because EDCHDO did not believe at the time that they had the capacity to move those forward at the appropriate level. They did do a number of houses, primarily on the Westside of Charleston near Burke High School. This would finalize the last of the properties and allow them to use approximately \$170,000 which remained to develop two more homes at Humphreys Court. Mr. McQueeney said this cleaned up everything that had happened in the last 15 years to make sure that liens and those types of things were taken care of.

On the motion of Councilwoman Jackson, seconded by Mayor Tecklenburg, the Committee voted unanimously to approve the above item.

### **Update on Crown Castle applications and recent Order**

- *Request authorization for Mayor to execute Limited Pole Agreement, in a form approved by legal staff, between City of Charleston and Crown Castle (216 Ashley Avenue, 80 Ashley Avenue, and 147 Broad Street).*

Ms. Herdina said they had an updated on the Crown Castle litigation that had been going on since 2017 dealing with Crown Castle's request to install their Small Cell 5G equipment on poles in the City and to install new poles in the City. There had been a recent order out of the court that Steve Brown, outside Counsel with Clement Rivers, would talk about, but it related directly to the request to authorize a template Limited Pole Agreement which would allow them to give permission to Crown Castle to install equipment on the City's poles which would alleviate the need for a separate pole which was what they wanted to achieve. They also had Jordan Lanier on the line who could answer questions about particular permit applications or permit approvals.

Steve Brown said that they had one round of litigation in front of Judge Norton where Crown Castle attempted to argue that the City's ordinance, as applied, deprived it of the right to apply meaningful service in the City of Charleston. Judge Norton granted in part and denied in part that motion finding that the City had attempted to put in place what was necessary to deal with 5G. He issued a good order and gave 90 days to deal with any applications that had not been dealt with. They went through those applications and the Mayor's Office as well as many others negotiated to try and move them around and put them in the least objectionable locations they could go based upon the limitations they had placed upon them. They worked all that out, except there were four that DRB and the City decided they would have to deny. That was applications #26, across from Rainbow Row at 82 East Bay Street, Charleston #27 on Rutledge Avenue and Gibbes Street with a house undergoing extensive renovation, #28 at Tradd/Limehouse which was a small brick house generally out of culture with the homes around it. The last one was at the Four Corners of Law, #32, and there would have been a big black tower right across from City Hall. Those were the four the City had denied. They went before Judge Norton on that and were concerned because there wasn't a lot of support for denying the towers throughout the country. Judge Norton upheld all four of the denials. There had been many versions, and C was unintentionally left blank which they would fix. They had three locations. One was on Broad Street headed towards the Marina. The City had a pole a few feet away that wasn't being used that could be utilized to do away with the black tower. It was closer to a tree canopy and they had less problems with the traditional poles than with the modern black towers. The second would be where Ashley Street and Cannon intersected. It would be at the corner and the City had a pole on one of the other corners that would work and do away with the need for a black tower. The third was also on Ashley Street and there was an old gas station for sale. They proposed to put the black tower right in the middle of the sidewalk. The gas station had put some bumpers to separate the sidewalk from the open area. Instead, the City had a pole across the street adjacent to an already existing communication pole and there were several trees. It was a buffered area. Those three were City-owned and the City suggested allowing utilization of those to avoid the three black poles. They were asking, and what Judge Norton had told them they had to do, was to tell Crown Castle yes or no as to whether the City would allow them to go on those poles. The way the FCC and the City of Portland case were decided, they had very little choice in the matter, but it did keep them from having three more of the large towers.

Councilwoman Jackson said she had been following this for some time as she was being educated about the concerns of their citizens. She felt like they had done their homework, but they weren't there to debate the merits of their arguments against 5G as a worrisome concern into the future for public health. She thought when Ms. Herdina was introducing that this was some sample of how they could do this and they wouldn't have to entertain any new poles. She was confused because she thought Mr. Brown said they just happened to have existing poles. She asked if they would make existing poles be the rule or if it would only be when it worked out. That was worrisome to her because she thought that when they first had the ordinance in effect that these would be unobtrusive. The infrastructure wasn't supposed to be intrusive into someone's area. Ms. Herdina stated that what she meant by template was that they had opportunities both with Crown Castle going forward and looking at their permits, as well as other companies like Verizon and AT&T. Wherever it was possible to locate to a City existing pole, they wanted to do that. She hoped they could get their authority that this would be the form of a pole application they could use going forward for these three sites and other future permit applications. It was her understanding that they had looked at the option of collocating on a City pole in the other permit situations, but there wasn't anything that was reasonably available to move them to.

Mr. Lanier said that was essentially correct. For almost every application for a new pole, they scoured the area to see if there were any existing poles they could put it on. There was a handful where there just weren't poles nearby or appropriate poles. In many cases, there were Dominion poles nearby that were not suitable by Dominion's standards to attach their equipment on. In most cases, there weren't City poles to attach to for Crown Castle. Chairman Shahid said it sounded like they were just taking advantage of using the poles that were available. Councilwoman Jackson asked what would happen if they said no to this request. Mr. Brown said Judge Norton would most likely issue an injunction that would keep the City from prohibiting them from putting actual towers at the locations they talked about. They would be able to place the black towers at those locations. Councilmember Waring asked if they tried to offer this to Crown Castle before going to court. Mr. Brown said there were a lot they went to court over. The City had a list that was very long through the DRB and other negotiations. They took that long list and got done to this small one through negotiating. His understanding was the collocation came from the City itself. Councilmember Waring said this seemed like such a good plan as opposed to the alternative to what they initially wanted to do. He wondered why they would press the issue to get in front of a judge if the City was working with them. Mr. Brown said they originally had a deal with SCANA who was going to let them go on their non-major electricity poles. Dominion purchased them though and put out a set of guidelines which forced Crown Castle to come back. The original plan put before the City totally changed. Chairman Shahid said it made a lot of sense to do this if they had the coexisting poles there. He asked if there was an inventory of the other poles. Councilwoman Jackson said she thought they all understood, but for the record, if they said 'yes' to the three locations, Crown Castle had already agreed to do the installation on the poles. Mr. Brown said they weren't quite there because they had to get the terms through City Council, but he didn't anticipate issues. They had negotiated on the terms before them. Crown Castle would rather get their equipment up than have to go back to court.

On the motion of Councilmember Waring, seconded by Councilmember Appel, the Committee voted unanimously to approve the above item.

**Request for Mayor to approve a Memorandum of Understanding between Fetter Health Care Network, Inc., and the City of Charleston to establish a temporary COVID-19 Vaccination Site for the**

**community vaccination administration (265 Fishburne Street). (To be sent under separate cover by the Legal Department)**

Ms. Copeland said that MUSC reached out to the City about using this site. They had made a few revisions to the MOU which was almost identical to the MOU they were working on with MUHA, with just the removal of provisions regarding the upfitting of the building. They added a provision they could use alternate sites if necessary or needed. They had agreed to the changes in theory, but she hadn't gotten a hard copy yet with a signature.

On the motion of Councilmember Waring, seconded by Mayor Tecklenburg, the Committee voted unanimously to approve the above item.

**Consider the following annexations:**

*2138 Golfview Drive (0.22 acre) (TMS No. 343-06-00-013), James Island, Charleston County (District 11). The property is owned by Greg White.*

*114 Magnolia Road (0.20 acre) (TMS No. 418-13-00-166), West Ashley, Charleston County (District 3). The property is owned by Matt Prendergast.*

Councilwoman Jackson asked if there was a process, once a property had been passed for annexation, if they were notified officially. Mr. Morgan said they received a welcome letter and info about when they would get their garbage can and other issues like that. Councilwoman Jackson asked how long that normally took to arrive. She had friends who had recently annexed in at the last meeting in February and they hadn't heard from the City. Mr. Morgan said he would find out about that. Councilwoman Jackson said she was glad to know there was a process. Councilmember Appel asked what the story was with 2138 Golfview. It was in Riverland Terrace which had many holes when it came to the City. Mr. Morgan said that they had several over the last six months in Riverland Terrace. Sometimes, people contacted them via web links to ask about tax and fee comparisons. The water rates were slightly lower on James Island. Chairman Shahid said that was part of the reason to push the annexations. The benefits were great for those that came into the City financially. Mr. Morgan said that West Ashley especially had savings because of the St. Andrews PSD tax rates.

On the motion of Councilmember Appel, seconded by Councilwoman Jackson, the Committee voted unanimously to approve the above annexations.

Having no further business, the Committee adjourned at 4:09 p.m.

Bethany Whitaker  
Council Secretary