

MEMORANDUM

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TO: CMPA Board of Directors

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RE: Recap and Review of Proposals

Briefly, this memorandum recaps the outcome of my initial review of the two proposals received by the CMPA for the (re)development of the Maritime Park property.

BACKGROUND AND HISTORY

About two years ago, I was involved in helping to establish some general financial criteria for Maritime Park. At that time, it was generally expected that CMPA itself would be directly involved in some kind of development role. Outside participation was discussed but only conceptually.

As I understand the history of the current selection process, CMPA's evolving needs and circumstances resulted in the board issuing a Request for Qualifications (RFQ) last year. After receiving submissions, four organizations were deemed qualified by CMPA to implement the broad Maritime Park (re)development objectives. After these developers were deemed qualified, I was asked to review and edit the subsequent Request for Proposal (RFP). Only two firms elected two remain engaged. The reasons are varied but information suggested a combination of market uncertainty and other obligations precluded a meaningful response.

I reported at an earlier board meeting that it was not uncommon to lose some respondents but it was also necessary to recognize that an RFP of this kind is an excellent means for *testing* the private market's interest in an undertaking such as Maritime Park. The RFP made it clear that any or all proposals ultimately received could be rejected at the discretion of the board. Such an

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option retains the board's right to pursue other proposals and opportunities or altogether new approaches.

PROCESS OF REVIEW

In the course of the review, I confined my evaluation *exclusively* to the materials submitted by Trinity Capital Advisors and Land Capital Group in response to the RFP, at least in part because the respective teams had already been prequalified by CMPA. I also watched the taped presentations made by the two development teams to see how their comments on the record reconciled to the representations made in the proposal documents themselves. In effect, the RFP asked that certain information be provided, and it states "no additional information shall be accepted after the deadline" although CMPA can waive any requirements or limitations. Still, prequalified or not, the information outlined in the RFP should have by itself been sufficient to reach key conclusions relative to the criteria. You may recall that there were seven broad criteria with various dimensions or attributes but no assigned weight. Proposals were examined and compared with the submission criteria and, to be expected, each team's level of compliance varied.

My evaluations addressed compliance, suitability, and/or need for further amplification. I believe it was reported at the last meeting that I was to share my evaluations with you and offer my recommendations regarding the best means of proceeding. Done in this way, I had no specific need to weight the criteria although I placed more emphasis on the apparent business terms which, if unacceptable, make all other aspects difficult if not impossible to achieve. The board for its part has no obligation to accept my choice of weights or my interpretation of the situation. The board also has no obligation to accept any of my recommendations. The board *does not* ratify the choice. It *makes* the choice.

STATUS

Much like the board, I had questions about certain material or representations that were made by the respondents following review of the proposals and after listening to the presentations. Representatives of both teams have called me to inquire about procedures for submitting additional information and/or providing clarifications. At this point, I have stressed the need to work only on the basis of the record which has already been created but I can see, based on the proposals and the questions that were raised, it may be appropriate to spend more time with each respondent directly.

The benefits of direct interaction are that clarifications, if not greater certainty, are received so representations or offers are neither misconstrued nor misunderstood. The major disadvantages stem from the potential additional time to address any perceived informational needs and the perception that a proposal is being changed as the process continues. There is a fine line, to be sure, in clarification of proposals and a repositioning of proposals but the intent of this process is to secure the best business and community outcome possible while operating within legal constraints. Because CMPA can reject any proposals, the community, the board and the bidders profit from further discussions and dialogue. Regarding time, several months have already been invested so it is difficult to envision why a few more weeks of effort compromise this approach.

MAJOR ISSUES

From the information provided, it is not altogether obvious what the financial implications are of the general business arrangements being proposed. To be clear, these are *proposals*, not a *term sheet* so specific items remain to be negotiated. Still, there are many questions, and it is apparent from the board's questions, as well as comments attributed to elected officials of the City, that business and strategic commitments of some certainty are important. There were specific questions raised about the community's covenant, the remediation process, the timelines, budgetary modifications, staging, and status of permits.

To be perfectly candid, these questions are fair and the responses provided by the teams may not be unreasonable but they are not complete and informative at this stage. More information is needed for a thoughtful recommendation.

CURRENT STATUS OF PROPOSALS

While it can be argued that the proposals *are* responsive and the board can make its own determination regarding the appropriate way in which to proceed, I believe enough information is absent or sufficiently undeveloped in both proposals that they could justifiably be judged as unacceptable. The evidence is simply indeterminate in my opinion. This observation is not a recrimination nor should it be construed at this point that one proposal is substantially superior to the other.

ALTERNATIVES

There are only a handful of options at this point, all of which involve specific assumptions. There may be variations but fundamentally there are four discrete strategies.

Provide additional time to converse with the developers and acquire further information.

Effectively, I have explained the advantages and disadvantages of this alternative. Time, however, has a cost. The board absolutely cannot afford to delay this process beyond some 30-60 days or the board will lose control of its negotiation position. Certain aspects of the project have always been time sensitive but even that sensitivity has to be questioned in light of financial, market and legal issues. These externalities should not be confused with the City's commitment to finance certain public improvements even in a difficult legal environment. But these contextual conditions make private development much more challenging. Ultimately, the additional information may be neither helpful nor encouraging.

Select one team and begin to negotiate. The information simply excludes this as a rational choice.

Readvertise the opportunity under the same general terms. The existing proposals would be set aside. It would be disingenuous to suggest that simply readvertising this project would generate greater or more qualified interest at this time. This is absolutely speculative.

The better strategy would be to delay materially the project and advertise it as the market seems to be recovering. Frankly, this is not a good choice because costs and competition for

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developer interest will not change the general attractiveness of the project as it is envisioned. The content and expectations will be no different even if the negotiations themselves assume a different character.

Pursue the project as a more traditional "public" effort and focus exclusively on the public elements. The existing *process* would be set aside. Again, a major purpose of the RFP process is to determine the relative level of private capitalization the market can or will contribute to a venture. Think of the RFP process as selling your house. Different people may disagree about its value but ultimately the business arrangement reflects an economic transaction. If the underlying economics are not present, the home will not be sold or cannot be mortgaged. The deal will be abandoned or take another form.

At this point, the market -- in the guise of two qualified developers -- is telling you that it cannot render an immediate business proposition given what you want to *sell*. In this plan, the relationship between public and private spaces was always economically challenging and the developers are confirming this to be the case. The alternative to private capital is public capital used specifically on the most critical improvements. The remaining outparcels would be retained until the market can rationally price them, generating capital for improvements to occur in subsequent phases and/or offset costs if done in a single phase. This approach would occur as a design-build initiative of key elements and/or it would be supervised by a construction manager. The precise arrangement depends on the elements to be implemented immediately.

Among the most compelling aspects of this approach is that some progress has been made to conceptual design. While I have not confirmed the requirements of design-development with Miller Caldwell, I suspect that substantial progress has been made on a program which can be refined and implemented within some reasonable approximation of the estimated budget.

RECOMMENDATIONS

I am recommending that both teams be given a structured opportunity to respond to detailed and direct inquiries. I would allow 30-60 days to gather my feedback and then report to the board with a final recommendation which may be to change the approach altogether. I have generally outlined my reasons why it is reasonable to keep your options open with the existing respondents. If there is an immediate requirement to make a recommendation *today*, then I would have to advise that in my opinion *neither* proposal is adequately responsive and both should be rejected. I would further advise that immediate consideration be given to a process in which the owner and its agents become directly involved in the design-development of the project.