



**Date:** December 16, 2014

**To:** Thomas J. Bonfield, City Manager

**Through:** W. Bowman Ferguson, Deputy City Manager

**From:** Joel V. Reitzer, Jr., Director, General Services Department

**Subject:** Proposed Sale of No-build Easements at 505 Rigsbee Avenue (parcel 104933) to Liberty Warehouse Apartments, LLC

### **Executive Summary**

Liberty Warehouse Apartments, LLC (LWA), owner of the property located at 611 Rigsbee Avenue and identified as parcel 104932, seeks to acquire two no-build easements from the City that will enable Towers 1 & 2 of LWA's proposed new building to be constructed on the property line it shares with the adjacent city-owned Durham Central Park. The applicable building code requires at least ten feet of separation between structures when one structure is situated on a shared property line and has window openings. LWA has proposed to situate its two towers on the shared property line with the City and plans to install windows in the side of the towers that overlooks Durham Central Park. To accommodate this proposal, the easements are necessary to create the ten feet of separation required by the applicable building code.

The proposed easements extend ten feet from the property line and cover 1,433.00 square feet of the City-owned parcel located at 505 Rigsbee Avenue (parcel 104933).

The Real Estate Division has conferred with City departments to determine if the location of the proposed easements will interfere with the parcel's current use as a public park or with any future public use or purpose. There were no objections from the departments to granting the easements.

The City is authorized to convey these easements to LWA by N.C.G.S. §160A-273, which states in part, "[a] city shall have authority to grant easements over, through, under, or across any city property...."

### **Recommendation**

The General Services Department recommends City Council accept Liberty Warehouse Apartments, LLC's offer of \$11,822.00 to purchase two easements totaling 1,433.00 square feet over a portion of parcel 104933 located at 505 Rigsbee Avenue, and authorize the City Manager to sell and the City Manager or the Mayor to convey the easements by deed.

### **Background**

Liberty Warehouse Apartments, LLC (LWA) has demolished the previously condemned Liberty Warehouse and is constructing an apartment building in its place. The building will

include two towers, each containing a certain number of window openings overlooking the adjacent city-owned parcel and each being built on the property line LWA shares with the City. The applicable building code requires that there be at least ten feet between the towers' window openings and any permanent structure the City builds in the future on its adjacent parcel. Granting LWA two no-build easements, one in front of each tower, will establish the necessary ten-foot separation.

**Issues/Analysis**

The proposed easements will not affect current use of the City's adjacent parcel, which is a public park, but granting the easements will preclude the City from ever building any permanent structures in the easement areas.

The proposed easements will provide LWA the ability to increase the potential use and utility of its property. The approval of these easements increases the property's viability as a fully leased building that further activates existing street level activity in the area. LWA will be responsible for compliance with all applicable building codes and any other municipal regulations.

Staff calculated the purchase price for these two easements using the Real Estate Division's current practice for valuation of easements.

\$16.50	Approximate dollar value per square foot based on the tax value of LWA's property
X 1,433	Square footage for the easements requested by LWA
\$23,644	Subtotal (amount LWA would pay for 1,433 square feet if requesting fee simple)
\$11,822	Total LWA will pay for the easements, which is 50% of what fee simple costs

LWA will be responsible for all costs associated with this transaction. The costs include, but are not limited to, obtaining legal descriptions of the easement areas, paying applicable recording fees, and any other costs such as Planning Department fees and County Land Record fees.

**Alternatives**

City Council has the discretion to not approve the sale of the easements. If the sale of the easements is not approved, LWA will have to account for the ten-foot separation requirement for the proposed towers within the boundaries of its property. This alternative is not recommended, as the granting of the easement serves a public purpose and will prevent the development of the property as currently planned.

City Council also has the discretion to sell the easements pursuant to the upset bid process of N.C.G.S. Section 160A-279. This is not recommended, as it is unlikely that use of the upset bid procedure will garner interest or higher bids from other parties.

**Financial Impact**

The City will receive compensation in the amount of \$11,822.00 for the easements.

**SDBE Summary**

This item does not require review by the Equal Opportunity/Equity Assurance Department.

**Attachments:** location map, depiction of towers, and memo regarding East West Partners contributions to DCP