

## MEMORANDUM

TO: The Honorable Mayor and Town Council members

FROM: Anne Marie Knighton, Town Manager

RE: Responses to Councilman Quinn's Questions regarding the Ice Plant Building's Future & Councilman Biggs' questions in the April 12<sup>th</sup> Motion regarding the Building

DATE: May 5, 2016

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Last week I sent you copy of the memo I received from Councilman Quinn where he posed 13 questions regarding the Ice Plant/Conger Building. Below are Councilman Quinn's questions and my responses. I also have included responses to the questions raised in the April 12<sup>th</sup> motion pertaining to the building. We also organized and created a report on all the due-diligence you conducted as part of your consideration of the two proposals to redevelop the building. This report has electronic links to all of the documents and reports. Think of this document as your file folder for the project! I also prepared a time line of the due-diligence, which is also attached. I hope this information is helpful to you as you consider the future of the building.

### **Councilman Quinn's Questions with Responses from the Town Manager:**

1. **Where are the exact physical boundaries of the land surrounding the building that is to be leased or sold?** There have been discussions, and questions about which activities can occur on the 1979 Land Water Conservation Fund Grant's reserved property within legal boundaries of the Park. Both development proposals included plans for exterior decking and outdoor use by patrons, which the plat does not appear to allow. Definitive answers are needed and can't be negotiated after a sale or lease or tolerated without proper endorsements and approvals. Such post sale or lease negotiated answers would be vulnerable to re-interpretation by future Town Councils and vulnerable to litigation. Should additional outside land use become available through favorable negotiation with the Land and Water Conservation Fund, it seems reasonable that the developer involved would be delighted to pay an acceptable fee for such a major asset addition. This would, of course, require negotiation with the developer. All the more reason to have these conversations prior to offering the property for commercial use.

*Town Manager response: We have been relying on a 1978 survey that is the map used by the National Parks Service (NPS) for the Town's 1979 Land & Water Conservation Fund (LWCF) grant. The NPS calls this survey the "6F Map". The map was supposed to be recorded when the Town accepted the grant but for some reason that did not happen. The State Parks and Recreation Division*

*monitors compliance of the NPS's LWCF grants. The State sent me an electronic copy of the survey – it is difficult to read. So, I recently asked Mark Pruden to survey the property of the Conger Building – the property that is excluded from the terms and conditions of the LWCF grant. Mark is finalizing the survey and we should have that early next week. I can tell you that there is more land included in the Conger Building property on the east of the building (entrance of building) than what has been assumed. And there is a 5 ½ foot gap the boundary line on the west side (Steve Leary property). Steve's deed has a boundary line that favors the Town but the Town's deed favors Steve. So that is an issue that will need to be resolved.*

- 2. What are the required set-backs within the boundary defining the building's land limits that a future commercial operator will be required to comply with when receiving or dispatching freight, storing garbage and other objects generally used for traditional business operations? What is to be done if a commercial business simply cannot operate within the platted boundaries?** A decision by current Town administration accommodating the commercial user of adjacent property would not guarantee future Council or staff acceptability. If there are no setback limits within the property line, that needs to be communicated to potential occupants in any pre-sale or lease documents. As evidenced by existing businesses (except in rare cases) within the Town's limits, trash receptacles, and freight movement is generally adjacent to the service entrance or exit (for trash items out of site) of the building. That area must be part of the existing building, unless further space use is negotiated with the Land and Water Conservation Fund.

*Town Manager response: The entire waterfront park is zoned "Downtown Commercial". This zoning district does not have setback requirements so there are no setbacks within the boundary defining the building's land limits that a future commercial operator will be required to comply with. The east side of the building abuts a town right-of-way, Dock Street. If the Council decides to revisit the brew pub proposal or entertain proposals for lease or sale of the building, the boundary survey will assist in determining if all operations can function within the boundaries with access from Dock Street.*

*If additional lands are needed there is a process for the NPS to release land included in the LCWF grant. The Town's park land around the Conger Building property is restricted as stated previously the LWCF grant requires land be used only for outdoor public recreation. The Town can request a conversion of use. This would require an appraisal of the land proposed to be converted to private use. The Town would be required to purchase a like piece of property at the appraised value and add that new property to a public park and place LWCF restrictions on that new property. The NC Recreation Resources Service Parks, Recreation & Tourism Management is the state agency that manages the LWCF on behalf of the National Parks Services. This agency is available to assist the Town with a conversion request. The Staff person assigned to our*

region LouAnn Bryan. Ms. Bryan is aware of the Town's consideration of this redevelopment project. She met with me and Gil Burroughs on March 2<sup>nd</sup> to discuss the LWCF grant conditions and is available to assist us with any questions or request for conversion. Link to LWCF Manual is here:

<http://www.nps.gov/ncrc/programs/lwcf/manual/lwcf.pdf>

3. **We have standard, existing, boilerplate written historic preservation covenants. Have they been made available to potential developers or lessees? That is necessary before either a lease or sale is executed.** We have had much discussion about adhering to covenants, as defined by Preservation NC and the U.S. Department of Interior, but have no evidence they have been reviewed in detail by the developers. They should detail the limits on modifications to the building's exterior or interior, signage requirements (potentially a major concern) and limitations, and other modifications that can be executed without seeking special permission from organizations not controlled by the Town Council. We need to be assured these written covenants are acceptable to the developers. For example, permission must be granted to remove the current paint color and approval received for the new. That is according to preservation. Does town have any authority for input? I doubt so, unless required in usage documents. Can signs be painted on the structure? This may sound petty, but our concern should be for the protection of a Park setting, not a generally accepted commercial business setting. This is a sticky point, but for a harmonious relationship, these thoughts and many other similar concerns need to be vetted.

*Town Manager response: The Town Council reviewed sample preservation easements and I emailed a copy of the sample preservation easements to the developers. The Council also reviewed a report of sample covenants – no action was taken on the sample covenants - I did not email this document to the developers. Both developers were familiar with preservation easements and indicated desire to utilize the State and Federal Historic Rehabilitation Tax Credits.*

*The Secretary of Interior's Standards for Rehabilitation, the standards used in the tax credit programs, focus on significant architectural features. Once tax credit work has been finished and approved, the National Park Service has a five year period after certification of the rehabilitation that the property owner is to maintain the property and seek approval for alterations. This building of course is in our local historic district and falls under the rules and regulations of the Preservation Commission – any changes would also have to be approved by the HPC.*

*Paint color may be reviewed as part of tax credit review, but paint is temporary and again would be reviewed and approved by the Preservation Commission. I did not transmit copies of the Edenton Historic Preservation Commission Guidelines to the developers.*

*Regarding signage, the property is zoned Downtown Commercial, which allows the following:*

*(a) One freestanding sign per street frontage, not to exceed 80 Sq Ft in sign surface area nor 25 ft in height. Free standing sign shall be located no closer than 10 feet from a property line or street right-of-way and shall be set back a minimum of 50 ft from a street intersection, measured along the street right-of-way.*

*(b) A maximum of 2 wall signs per building entrance not to exceed a total of 50 sq feet in sign surface area shall be permitted in CD districts. Projecting signs, each not to exceed 3 sq ft in sign surface area are permissible types of wall signs that may be included in the maximum number of wall signs but need not be included in the 50-foot maximum sign surface area.*

*(c) One canopy or awning sign may be permitted per premises provided the surface area of such signs is included in the 50-foot maximum wall sign surface area requirement in subsection (b).*

*(d) Signs painted directly on a building window or glass door shall not exceed 25 percent of the window or door glass surface area.*

*Without benefit of a sign plan, it does appear that wall signs can be painted directly on a building but the painted wall signs would have to comply with the sign ordinance regulations. . An application for a sign permit and an application for Certificate of Appropriateness must be submitted and reviewed and approved by the Planner and the Preservation Commission.*

4. **Where are the written Conditions of Use that must be available to potential developers or lessees before either a lease or sale is executed?** Based on conversations in Council, I have heard the intention to have such, but have not seen them in any written format. They should define the use of the building as dominantly retail / commercial with production of specific products permitted on premises. It should prohibit warehousing for truck distribution. The function of the property should be specified as an on-site retail operative unit, complying within the bounds of the developer's proposal. They should require retail restaurant operations, as a significant part of their offering. Ideally, the location and from what I hear from the public, they want a place that serves food suitable for family dining, children suitable. Mayor Vaughan stated the current potential developer had suggested shrimp, oyster baskets, oyster roast, and implied outside enjoyment. None of which I have heard before. I like it, but feel it needs to be suggested in the use sections suggestion for food element.

*Town Manager response: It is recommended that if a specific proposal is to be entertained by the Town Council for possible lease of the building, then a list of conditions can be developed for consideration and negotiation. Conditions previously discussed include stipulations that the building be used for commercial or retail purposes (no residential use); hours of operations; and possibly a condition of being open on Sunday. The Town's zoning ordinance will regulate uses and prohibit such uses as warehousing and distribution in the Downtown Commercial District. The Council would need advice from the Town Attorney about what conditions could be reasonably included in the covenants.*

5. **Does the Town have code requirements related to enclosed storage of waste, chemicals, etc. related to fire safety?** This should also be defined by reference to existing written documents or the written documents themselves. Specific references of

steps to be taken to not allow run off, trash or other environmental debris from polluting the sound and or disruptive to an acceptable park setting

*Town Manager Response: The Town does have code regulations related to enclosed storage of waste – we would require a dumpster site to be screened and enclosed. The Preservation Commission would review and approve the materials and design of screen. The Health Department has requirements regarding restaurant solid waste disposal procedures that are highly regulated via Health Department permits. Dumpsters are inspected as part of the Health Department’s sanitation inspection of eating establishments. Dumpsters cannot leak leachate. Public Works periodically sanitizes dumpsters serving eating establishments. The NC Fire Code is enforced by the Fire Chief. Sam Barrow has done some preliminary research which confirms what Mr. Glover stated during his presentation to Council that there are state ABC permits for craft breweries- link here:*

*[http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_18B/GS\\_18B-1104.pdf](http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_18B/GS_18B-1104.pdf) Restaurant + Brewery: Brewery Permit (to operate), Bottler Permit (to bottle, retail sale to customers, and transport product). There also is a Federal Alcohol and Tobacco Tax and Trade Bureau permit for breweries. Of course all ABC permits regarding sales of beer will also be required. We will verify with NC Department of Environmental Quality regarding permits that maybe involved with craft beer. We are unaware of an additional permitting from DEQ for restaurants.*

6. **What written Deed Restrictions are to be placed on the property before consideration of sale or lease?** If a lessee or purchaser were to abandon the property within the duration of the lease, or through purchase what requirement will exist regarding removal or retention of unattached personal/commercial property such as tables, chairs, kitchen equipment, production equipment, etc. Because the sales price discussed in the recent consideration was below market value, additional conditions should exist. For example: If the building were to be sold, the sales document should require that if the business ceases to comply with the permitted uses, the Town of Edenton will have the first option to repurchase the building, within two years of such notification of an intent to sell or abandon the permitted uses at the original sales price received by the Town, adjusted for inflation. Further, has the town considered negotiating guarantees of employment levels in keeping with generally accepted clauses in state or federal grants, within 36 months.

*Town Manager response: The Town Council discussed deed restrictions and covenants. A proposed covenant was presented to the Town Council but no action was taken, it was decided to wait until after the public hearing to address covenants. Council will need to decide what deed restrictions/covenants should apply to the property. The Council never set a sale price for the building – the Council requested proposals. It was intended that if the Council determined one of the proposals was suitable for further consideration, the*

*Council would enter into negotiations to determine sale price. Staff recommended Council use the NC Statute that allows sale of municipal property for economic development purposes. This would require negotiations and considerations for the economic benefit the project would be expected to bring to the community. Using this method of sale requires a public hearing where the terms and conditions are disclosed and the public has opportunity to comment on the proposed sale of property.*

7. **If the Town designs a landscaping plan before consummating a sale or lease and makes it a condition of such, the interest of neighbors and children using the park can be protected.** It is standard in new businesses developments to provide a landscape plan. In this case it is a reasonable concern to soften the view of a commercial development within the park. Such plan should also create sound and site barriers to protect the interest of existing neighbors residing further west on West Water Street and on West King Street as well as the overall ambiance within the park. Has staff investigated other NC municipalities encouraging the use of park space for non-recreational designated private commercial usage? This might give suggestions on how to best handle some of these concerns. We often reach out for such information in working through town matters.

*This is an excellent idea and with the anticipated boundary survey, there is more land than assumed that could be used to create a barrier or buffer between the building and the park. Staff has not investigated other municipal or land use planners concepts for barriers or buffers – but if directed to we certainly can do this! And engaging input from adjoining property owners and users of the park sounds like a terrific opportunity for community input. This would be similar to the process the Council used when deciding on the location for the new Police Station.*

8. **Will the Council act on all CUP or UDO or other use permits as a precondition to either a lease or sale?** Private developers have come to the Town after owning or purchasing property and then been denied the permits they need to use their property as they wish. Because this is public property, potential buyers or lessees could be dissuaded from making their best offer for the property if uncertainty existed and therefore, the Town should act on or at a minimum reach agreement on required permits BEFORE any lease or sale is consummated.

*Town Manager response: Staff would need to know what specific use is proposed for the building in order to determine if a CUP or SUP is required. Restaurants are permitted in CD zone and Brew Pubs are defined as restaurants that serve food and craft beer brewed on site.*

9. **What flood zone issues face potential lessee or buyer?** Very early in this process you expressed concern about flood zone issues and especially if the property was in the hands

of a private party. Are there any such issues that can't be addressed by the engineer's report, which, if I remember correctly, suggested installation of some foundation level water flow through ingress and egress access points?

*Town Manager response: Councilman Bond asked questions about Flood Plain issues. See Due Diligence Report. The property is located in a flood zone. State and Town regulations require that if renovations proposed at a value of more than 50% of the assessed value of the building, then certain improvements to protect the structure from flooding must be made. The engineer's report (August 2014) reference flood improvements and suggest that improvements could be made to protect the building. The Chowan County Building Inspector who manages the Town's flood ordinance is available for consultation and can assist developer with rules and regulations.*

10. **What are the procedural options facing the Council?** In light of the fact the Council has voted 4 to 2 to deny both proposals, how can the subject of sale be reintroduced or a vote changed? Can existing developers and/or potential lessees submit revised proposals based on receipt of the written materials defined earlier or does the law require that the Request for Proposals (RFP) be reissued with such documentation and open to all interested developers? If so, for what period of time? If so, can the Council retain fee-based commercial realtors to promote the sale or lease?

*Town Manager response: I reviewed the Town Council's Rules and Procedures but do not find where this is question is directly addressed. I then reviewed the UNC School of Government's publication Suggested Rules of Procedure for a City Council. This publication says a motion that changes a previous motion is allowable as long as the action is not forbidden by law. So, the Town Council by majority vote could revive the two proposals previously denied or revive the brew pub proposal. This action is under no time limitation. The original invitation for proposals stated the Town Council reserved the right to reject all proposals. Council was under no obligation to act on the previous proposals received.*

*If a council member wants the Town Council to reconsider the brewery proposal, a motion to do so can be made at a Regular Council Meeting. If such a motion is to be considered, I suggest the Council needs to clearly state the process it will follow if the majority votes to revive the brew pub proposal. The Administrative Committee spent ten months reviewing the proposals and ultimately voted to recommend the proposals be denied, and new RFPs for leasing the building be sent out after questions are answered. Does the Council want to send this item back to the Administrative Committee? Does Council want the item to go to a different committee – the project started out being on the Finance Committee agenda but when the RFP was approved and the proposals were received, the Administrative Committee worked on the review process. The project also could be assigned to the Public Works Committee since it involves town property. Another consideration is given the broad public interest and passionate opinions about*

*the future of the building, perhaps the Council wishes to discuss and work towards the point of being able to negotiate a transaction – either a lease or a sale - as the full Council and not assign it to a committee.*

*If Council decides to open up process for new proposals question is asked about utilization of a real estate agent. We are studying state statutes to see if the Town Council contract with a real estate agent to act as an agent on behalf of the Town. Chowan County contracted with PNC to sell the former County Office Building so it is very likely that agents are permissible but I will need to confirm this.*

- 11. While not part of information that the Town should necessarily provide to a potential lessee or buyer, the town needs to develop a plan to best accommodate both the new commercial unit as well as the Sailing Club and or Yacht Club suggestions/requests.** The Mayor’s special committee made recommendations for construction of a facility, I’m aware that the Yacht Club has offered \$40,000 toward a structure. The development of the ice plant as a commercial retail unit would be greatly enhanced with outside space adjacent. This could support events and celebrations typical of waterfront properties, as well as adding greatly to their seating and serving capacity, increasing likelihood of success and tax value to the town.

This all depends on success with the Land and Water Conservation Fund. If any structural buildings, as suggested by the Yacht Club are to be built, there needs to be a defined plan, consistent with the original park plan supporting both initiatives. The outcome of which must be focused on supporting the Waterfront Park in the best manner possible and not random buildings with no plan, with proper landscaping this plan could add greatly to the total Park experience.

*Town Manager response: The Committee appointed by Mayor to study options and make recommendations for enhancing water related activities submitted their report to Town Council in January 2016. Subsequently to this report, the Edenton Yacht Club made an offer to contribute \$40,000 to construct a new facility on the waterfront. Gil Burroughs and I met with LouAnn Bryan, the state representative who is charged with overseeing the LWCF grant restrictions for Edenton. We were advised we can make a request for permission from the National Park Service to construct a structure to store sailboats, kayaks and standup paddle boards – such structures are permissible uses and considered to be supporting outdoor recreation uses. Process to receive permission from NPS takes approximately six months. It is my opinion, based on the meeting with Ms. Bryan, that the Town could receive permission from the NPS to construct boat storage facility on the LWCF land. In addition to NPS approval, a boat storage structure will need to get approval from the Historic Preservation Commission. We have been advised that a storage structure would not require any special flood prevention requirements.*

12. **Use of funds derived from sale or lease.** The Mayor and Councilman Dixon extolled the virtues of using the sale funding in many town supportive ways. None of which have been previously discussed (to my knowledge). How do we intend to utilize this funding and should it not be formal, open discussion?

*The Town Council will discuss and decide best use of funds derived from sale of lease of the building.*

**Questions to be answered per motion made by Councilman Biggs and adopted by Town Council:**

1. “The Administrative Committee makes a motion that the Ice House/Former NC Northeast Building not be sold and both proposals be denied. Also included in the motion that the same building not be considered for lease until the Town has resolved with the park land use with Land and Water Conservation Fund that this should be required to support necessary space around the building, required handicap access, facility maintenance, trash disposal, storage delivery and shipping.”

*The survey being completed by Mark Pruden will help to answer questions asked here – is there enough land within the boundaries of the property that can be leased or sold to support operations. A developer will then be able to determine if there is enough land to support the operations of the proposed project. The building has a handicap ramp in place now. We know from other renovation projects that the Building Code requires a certain percentage of dollars be spent on accessibility when renovations are made.*

2. 2<sup>nd</sup> part of motion: “Furthermore, the Town will have defined usage of the property to conform with zoning, historic preservation guidelines and defined limits on noise and confirming with all safety and flood plain impacts. Only then the Town should receive RFPs for leasing same building.”

*The survey being completed by Mark Pruden will define boundaries of the property. Conformity with zoning – if new proposals are solicited, RFP will again stipulate the uses the Town Council has preference for being in the building. The two proposals denied included uses permitted in the downtown commercial district. Edenton Historic Preservation Guidelines, noise ordinance and flood ordinance requirements are regulations that developer will have to adhere to. Links to these requirements are below and we certainly can include in a future RFP or if the brew pub proposal is reconsidered. Licensed architects and engineers are familiar with these regulations Link to State Fire Code and State Health Department Regulations are also included below:*

Link to Historic Preservation Commission Guidelines:

[http://www.townofedenton.com/index.asp?SEC=5E79DF44-232D-4C2A-B0E7-DA782207BA24&DE=59FEC8F0-9DC0-45A2-A73D-D5316C89A790&Type=B\\_BASIC](http://www.townofedenton.com/index.asp?SEC=5E79DF44-232D-4C2A-B0E7-DA782207BA24&DE=59FEC8F0-9DC0-45A2-A73D-D5316C89A790&Type=B_BASIC)

Link to Town Code Noise Ordinance:

[http://library.amlegal.com/nxt/gateway.dll/North%20Carolina/edenton\\_nc/townofedentonnorthcarolinacodeofordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:edenton\\_nc](http://library.amlegal.com/nxt/gateway.dll/North%20Carolina/edenton_nc/townofedentonnorthcarolinacodeofordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:edenton_nc)

Link to Health Department Food Services Regulations: <http://www.arhs-nc.org/assets/media/pdf/FoodServicePacket.pdf>

Link to NC Department of Insurance Web site and codes:

[http://www.ncdoi.com/OSFM/Engineering\\_and\\_Codes.aspx](http://www.ncdoi.com/OSFM/Engineering_and_Codes.aspx)

Link to Flood Plain Ordinance:

[http://www.townofedenton.com/index.asp?SEC=1DC5A4ED-A5A6-4220-8C8E-2DB197A97653&DE=6AD5F5E6-A9BD-46C5-85B0-4EBEE79AC1EA&Type=B\\_BASIC](http://www.townofedenton.com/index.asp?SEC=1DC5A4ED-A5A6-4220-8C8E-2DB197A97653&DE=6AD5F5E6-A9BD-46C5-85B0-4EBEE79AC1EA&Type=B_BASIC)