



CITY COUNCIL

Committee of the Whole

Monday, September 14, 2009

Council Office

5:00 pm

Agenda

- I. Ordinance – Liberty Fire Station 5:00 pm
- II. Ordinance – Creation and Funding of the Public Arts Commission 5:30 pm
- III. Ordinance – Requesting a Ballot Question Amending the Home Rule Charter 6:00 pm
- IV. Agenda Review 6:30 pm



COMMITTEE of the WHOLE

CITY COUNCIL

MINUTES
August 24, 2009
5:00 P.M.

COUNCIL MEMBERS PRESENT:

D. Sterner, S. Marmarou, S. Fuhs, M. Baez, J. Waltman, M. Goodman-Hinnershitz

OTHERS IN ATTENDANCE:

L. Kelleher, S. Katzenmoyer, C. Younger, C. Kanezo, W. Rehr, B. Bansner, A. Ratajczak,
F. Bryson, L. Mascotti, T. Votsay, M. Vind, C. Jones, D. Hoag, J. Miravich

Mr. Fuhs called the Committee of the Whole meeting to order at 5:00 p.m.

I. Ordinance – Liberty Fire Station

Chief Rehr stated that the Firefighters Museum is currently housed at the Liberty Fire Station. He stated that the Museum has obtained 501 (c) 3 status and that the Board is comprised of volunteers. The Liberty Fire Company currently owns the building with the City paying for utilities while the fire station is still active. The Board is worried that when the fire station is no longer active that they will not be able to financially sustain the building and that it will fall into disrepair.

Chief Rehr stated that the \$1 transfer would give ownership of the building to the City until the Museum is able to take full financial responsibility. He noted that it is the hope of the Board that they will begin to have a regular source of income. Chief Rehr reminded Council that the City is responsible for the utilities at the building until

August 2010 when the new fire station is scheduled to be complete. He noted his belief that the costs would decrease once the fire station is no longer active and the building is not used 24/7.

Mr. Marmarou questioned if Mr. Younger reviewed the agreement. Mr. Younger stated that the agreement was drafted by Ms. Butler.

Ms. Goodman-Hinnershitz thanked the Board and the City for keeping the historical aspects of the building in tact. She noted her belief that the City must assist in historic areas.

Chief Rehr noted that he contacted George Meiser to determine if the Historical Society was interested in the building. Mr. Meiser indicated that they do not have the resources to assist.

Ms. Goodman-Hinnershitz questioned if an inventory of items has begun. Mr. Bansner stated that it has.

Ms. Goodman-Hinnershitz noted the need for security measures with the items in the museum being in the building and the building unattended much of the time. Chief Rehr stated that the building is equipped with an alarm system. The system would need to be updated and re-activated.

Mr. Bansner reviewed the inventory to date. He stated that this will take more time.

Chief Rehr noted that the timing of this agreement is not optimal with the City's financial state.

Mr. Sterner noted his discomfort with so many valuables being in a building which is generally going to be vacant. Mr. Bansner noted the alarm system which will be operational. He also stated that all rooms holding valuables are locked.

Mr. Bryson stated that members of the Board are in the building often working on projects.

Mr. Sterner questioned if the agreement noted a timeframe in which the City needed to retain ownership. Chief Rehr stated that it did not. He noted that the Liberty may buy the building back for \$1 at any time. He stated that the agreement is not yet finalized and that the Liberty Fire Company must hold a member meeting to vote on the transfer of ownership.

Mr. Waltman noted his belief that the City should not own this building long-term. He stated that he supports the Museum's strategy to use the facility for education. He questioned what major capital improvements are needed to the building. Mr. Bryson stated that most of the major components of the building have been upgraded with the assistance of grants. He explained that in order to be a full-fledged museum, the building would need to be ADA compliant which would require handicap ramps and an elevator. Mr. Bansner also noted the need for a second means of egress.

Mr. Marmarou questioned if the City could sell the building to another party if the Liberty refuses to buy it back as per the agreement. Mr. Younger noted that they could but that this should be specified in the agreement.

Ms. Goodman-Hinnershitz suggested changing the agreement so that Liberty gets first rights and the Museum get second rights before the City put the property up for general sale.

Mr. Marmarou questioned the estimated cost of the elevator. Mr. Mascotti stated that his estimate is \$250,000. He stated that the Museum has applied for grant money for this project and does not expect the City to fund it.

Mr. Fuhs suggested tabling the ordinance this evening to allow for the agreement to be amended and reviewed by Council.

II. Waste Water Treatment Plant Update

Mr. Votsay noted the need for Council to enter executive session for this discussion as it would involve possible litigation.

Council entered executive session at 5:42 pm. Council exited executive session at 6:20 pm.

IV. Agenda Review

Council reviewed this evening's agenda including the following:

- Ordinance amending a \$25 million general obligation bond

Mr. Fuhs requested an explanation of this amendment. Mr. Vind stated that the

original bond was issued as a variable rate bond. This amendment would change it to a fixed rate bond. This would save the City money over the life of the bond and would remove the risk associated with variable rate bonds.

- Ordinance for a \$3.25 million bond for improvements to the Stadium.

Mr. Kanezo stated that this bond is contingent on State RCAP funding. Mr. Vind stated that the City would hold the bond but that the Phillies would make all payments. He noted that the funding for other maintenance needs is included in the City's CIP budget.

Mr. Vind stated that this ordinance would be introduced this evening. He suggested it then go to the Finance Committee for review before final passage.

- Ordinance amending parking trucks, trailers, mobile homes

Mr. Fuhs questioned the changes being made in this amendment. Ms. Kelleher explained that this brings the truck parking into line with the Zoning Ordinance. The Zoning Ordinance allows for 24 foot concrete slabs for parking of vehicles. This adjusts the parking ordinance to the size of the vehicles allowed.

- Resolution denying a sidewalk vendor permit to Tacos Mexicanos

Mr. Waltman stated that this vendor would be in his district. He stated that he walked the area and discovered that there are tacos available from storefronts within close proximity. He stated his belief that vendors should be allowed in neighborhoods for special events only.

Ms. Kelleher stated that Ms. Butler suggested that since the opinion of Council seemed to be that vendors be maintained in the downtown area only that the provision allowing vendors outside the downtown area should be removed from the sidewalk vendor ordinance.

Ms. Goodman-Hinnershitz noted her belief that Council would be requested to review many more such vendors. She stated that this issue should be taken back to committee for review.

- Resolution denying a sidewalk vendor permit to Hogar Crea

Ms. Goodman-Hinnershitz questioned whether, if Hogar Crea were denied these

locations, they would be allowed to sell at any location. Ms. Kelleher stated that a letter will be sent to Hogar Crea informing them that they may not sell in this fashion anywhere within the City.

- Resolution appointing Carl Geffken as Acting Human Resource Director

Mr. Fuhs explained the need for an acting HR Director.

Mr. Waltman noted that he will not support this appointment. He noted his need to see the Administration's plan in full, not small pieces one at a time.

Mr. Marmarou noted that the \$100,000 savings noted by the firing of the HR Director could have been found elsewhere in the budget. He stated that he also does not support this appointment.

Ms. Kelleher noted Mr. Spencer's request to table this resolution until his return.

Mr. Setley arrived at the meeting at this time.

- Ordinance securing a \$6.6 million loan for the Reading Area Water Authority

Mr. Setley stated that the Water Authority has been awarded this money through PennVest. He stated that PennVest requires that the City guarantee the loan. This money will fund projects including the 18th ward pump station and the relining of the pipes under 11th St. He stated that it is the Water Authority's wish not to burden the City with their funding issues but that this cannot be avoided. He stated that this will not be included in the City's debt service.

The meeting adjourned at 6:47 pm.

Respectfully Submitted
Linda A. Kelleher, CMC
City Clerk

BILL NO. _____-2009

A N O R D I N A N C E

AUTHORIZING THE MAYOR TO EXECUTE ANY AND ALL DOCUMENTS REQUIRED TO EFFECTUATE THE TRANSFER OF OWNERSHIP OF PREMISES KNOWN AS 501 S. 5TH STREET, READING, BERKS COUNTY, PA FROM THE LIBERTY STEAM FIRE COMPANY TO THE CITY OF READING.

WHEREAS, the City of Reading is interested in acquiring ownership of property known as 501 S. 5th Street, Reading, Berks County, Pennsylvania (Mapped PIN #530643779326); and

WHEREAS, the owner of said property is the Liberty Steam Fire Company, which is willing to convey said premises for a sum certain of \$1.00; and

WHEREAS, the City of Reading finds that acquisition of subject premises pursuant to said condition is acceptable.

NOW, THEREFORE THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

1. **SECTION 1.** The Mayor is authorized to execute any and all documents, including the Sales Agreement (attached as Exhibit A), required to effectuate the transfer of the ownership of premises known as 501 S. 5th Street, Reading, Berks County, Pennsylvania, from the Liberty Steam Fire Company, to the City of Reading for the purchase price of \$1.00.

SECTION 2. This Ordinance shall be effective ten (10) days after passage and approval by the Mayor.

Enacted _____, 2009

President of Council

Attest:

City Clerk

“EXHIBIT A”

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the "Agreement") made this _____ day of _____, 2009, by and among the Liberty Steam Fire Company with an address at 501 S. 5th Street, City of Reading, (the "Seller"), and CITY OF READING, a municipal corporation, or its assignee or nominee (the "Buyer"), with an address at 815 Washington Street, Reading, Pennsylvania.

BACKGROUND

A. LIBERTY STEAM FIRE COMPANY owns said property known as 501 S. 5th Street, Reading, Berks County, Pennsylvania, as more particularly described in Exhibit "A" attached hereto and made a part hereof, together with all buildings, improvements and fixtures located thereon (collectively referred to as the "Property").

B. Buyer desires to (i) acquire said property and (ii) maintain the building as a fire museum, through its tenant, the Reading Area Firefighters Museum, Incorporated.

C. Seller desires to sell and transfer to Buyer, and Buyer desires to purchase and accept from Seller, the Property.

AGREEMENT

IN CONSIDERATION of the mutual promises contained herein, and intending to be legally bound hereby, Seller and Buyer agree as follows:

1. **Agreement to Sell and Purchase.** Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property, upon the terms and conditions contained herein. This agreement includes part of the adjoining properties owned by Liberty Steam Fire Company at 503 and 505 S. 5th Street¹. The dwellings of 510 and 512 will remain the property of the Liberty Steam Fire Company.

2. **Purchase Price.** The purchase price shall be One Dollar (\$1.00).

3. **Payment of Purchase Price.** The Purchase Price shall be payable by Buyer upon delivery of the deeds at the Closing (as hereinafter defined).

¹ The Liberty Steam Fire Company will prepare and file a revised Deed which accurately depicts the division of the lots known as under 501, 503 and 505 S. 5th Street.

4. **Conveyance and Title.** Conveyance shall be by special warranty deed to Buyer. Title shall be a good and marketable fee simple title, free and clear of liens and encumbrances, and shall be insurable as such at regular rates by a title insurance company maintaining an office in Reading, Pennsylvania.

5. **Defects in Title.** In the event that a good and marketable title, as provided in the previous Paragraph, cannot be given by Sellers to Buyer, Buyer may accept the title without insurance or subject to exceptions or Buyer may, by written notice to Sellers, terminate this Agreement, in which event Sellers and Buyer shall be released from all liability hereunder, and this Agreement shall be null and void.

6. **Existing Tenancies and Maintenance.** Buyer is purchasing the Property subject to the existing tenancies. Buyer agrees to maintain the building as a fire museum, through its tenant, the Reading Area Firefighters Museum, Inc. All collectibles in the museum that are the property of Seller will be inventoried and will remain the property of Seller with the agreement that they will remain on display in the museum for as long as Buyer maintains the museum. If the Buyer decides in the future not to maintain the museum, Seller shall have first buy back rights to the property for One Dollar (\$1.00), in as good, or better condition, as was originally conveyed to Buyer. Should Seller not wish to accept said property, Buyer must offer said property to the Reading Area Firefighters Museum, Inc. for One Dollar (\$1.00). If neither Seller nor the Reading Area Firefighters Museum choose to accept said property, Buyer shall list the property for sale for marketable value.

7. **Use of Building.** Seller shall be allowed to conduct its monthly meetings in the historic second floor meeting room until the completion of the new Southwest Fire Station. The use of any other parts of the building by the company for any other purposes shall be with the permission of Buyer and its tenant, the Reading Area Firefighters Museum, Inc, except as noted below.

Buyer agrees to lease the easternmost one-story garage, along Laurel Street, and its rear rooms to the Reading Fire Department Volunteer Scuba Team for the sum of One Dollar (\$1.00) per year to store its vehicles and conduct its operations. The team shall have no access to the rest of the building except by permission of Buyer. (The "Crewman's Room" at the rear of the garage area will continue to be used by the paid firefighters employed by the City until the completion of the new Southwest Fire Station.)

8. **Expenses.** The costs and expenses of sale and conveyance shall be borne by the parties as follows:

(a) Seller shall pay for the preparation and acknowledgement of the Deeds.

- (b) All other expenses of conveyance shall be paid by the party incurring them.

9. **Closing.** Closing under this Agreement (the “Closing”) shall be made by Seller and Buyer within three (3) months from the date of this Agreement or on such earlier date as Buyer shall, by ten (10) days’ prior written notice to Seller, specify as the Closing Date. The date on which Closing occurs is herein referred to as the “Closing Date.”

10. **Deeds and Possession of Property.** Seller shall deliver to Buyer the deed and possession of the Property on the Closing Date. Formal tender of the deeds is hereby waived.

11. **Due Diligence.**

- (a) Buyer specifically acknowledges that Seller is selling and Buyer is purchasing the Property on an “as is, with all faults” basis and that Buyer will have an opportunity to inspect the property and is not relying on any representations or warranties of any kind whatsoever, express or implied, from Seller, its agents, or representatives as to any matters concerning the property, including without limitation:
 - (i) the quality, nature, adequacy and physical condition of the Property, including, but not limited to, the structural elements, foundations, roofs, floors, appurtenances, access, landscaping, parking facilities, and the electrical, mechanical, HVAC, plumbing, sewage, and utility systems, facilities and appliances;
 - (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater;
 - (iii) the existence, quality, nature and adequacy of any utilities available to the Property;
 - (iv) the development potential of the Property, and the Property’s use, habitability, merchantability, or fitness, suitability, value, or adequacy for any particular purpose;
 - (v) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property;
 - (vi) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity;
 - (vii) the quality of any labor and materials used in any improvements on the Property;
 - (viii) the condition of title to the Property; and
 - (ix) the economics of the operation of the Property.

12. **Environmental Matters.**

Buyer acknowledges that Seller makes no representation or warranty, express or implied, that the Property is free from hazardous or toxic substances, materials or wastes which are or become regulated by any federal, state or local governmental authority or that the Property is in compliance with any federal, state or local environmental laws or regulations. This disclaimer set forth herein shall not be affected or limited by any investigation conducted by or on behalf of the Seller, or the delivery by Seller to Buyer of copies of any reports discussing the results of any investigation or environmental conditions of the Property. Seller has not conducted any independent investigation or verification of the contents of such reports, and makes no representations or warranty regarding the accuracy or completeness of the information contained therein.

(a) In the event that Buyer elects to proceed to Closing under this Agreement, Buyer shall fully and forever release, and waive any claims Buyer may have against Seller and Seller's parents, subsidiaries, affiliates, officers, directors, employees and counsel with respect to and from any and all losses, claims, demands, actions, causes of action, obligations, expenses, attorneys' fees, damages (including claims for punitive damages) or liabilities arising from, resulting from, relating to, or in any way associated with any environmental condition of the Property ("Environmental Costs"). Buyer agrees to undertake any and all environmental remediation work that is required under state and/or federal Environmental Laws ("Remedial Obligations"). For the period of time commencing on the Closing Date and ending after the completion and acceptance by all applicable state and/or federal agencies of the performance of all Remedial Obligations on, at or under the Property, Buyer shall indemnify, defend and save Seller harmless from and against any and all Environmental Costs.

(b) For the purposes of this Agreement:

(i) "Hazardous Substances" mean any petroleum product and any chemicals, materials, or substances at any time defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "biohazardous waste," "pollutant," "toxic pollutant," "contaminant," "infectious waste," "toxic substances," or any other term or expression intended to define, list or classify substances by reason of properties harmful to human health or the environment under any applicable Environmental Laws. Hazardous Substances shall also include friable asbestos and/or friable asbestos containing materials and polychlorinated biphenyls.

(ii) "Environmental Laws" shall mean all common law causes of action relating to environmental conditions and any federal, state, or local law, statute, ordinance, administrative rule or regulation now in effect or hereinafter enacted, pertaining to human health, industrial hygiene or the regulation or protection of the environment, including, without limitation, the Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995, P.L. 1995-2, 35 P.S. § 6026.101 et seq. ("Act 2"); the Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, No. 108, as amended, 35 P.S. § 6020.101 et seq. ("HSCA"); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. (CERCLA); the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, No. 97, as amended, 35 P.S. § 6018.101 et seq. ("Solid Waste Act"); the Clean Stream Laws, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. § 691.1 et seq. ("Clean Streams Law"); the Storage Tank and Spill Prevention Act, Act of July 6, 1989, P.L. 169, as amended, 35 P.S. § 6021.101 et seq. ("Storage Tank Act"); the Clean Air Act of 1970, as amended, 42 U.S.C. § 7401 et seq. ("Clean Air Act"); the Federal Water Pollution Control Act of 1972, as amended, 33 U.S.C. § 1251 et seq. ("Clean Water Act"); the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901 et seq. ("RCRA"); the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq. ("TSCA"); and the rules and regulations promulgated thereunder.

(c) The provisions of this Section shall survive Closing and delivery of the deed.

13. **Seller's Representations or Warranties.** It is hereby understood between the parties hereto that:

(a) the Property is being purchased "AS IS" and not as a result of any representations made by the Seller; and

(b) Seller has not received any notice of any condemnation proceeding or other proceedings in the nature of eminent domain with respect to the Property.

(c) Seller has delivered to Buyer copies of all notices received by Seller from any constituted governmental authority concerning the Property.

- (d) There is no proceeding pending for the increase or decrease of the assessed valuation of all or any portion of the Property.
- (e) Seller has no knowledge regarding the environmental condition of the Property.
- (f) Execution of all documents relating to this purchase transaction and the full and complete performance of the provisions hereof will not violate or result in any breach of, or constitute a default under any agreement, indenture, mortgage, deed of trust, bank, loan or credit agreement or other instrument to which Seller is a party or by which Seller is bound. Seller is not in default under any note, evidence of indebtedness, lease, contract, license, undertaking or other agreement where the liability thereunder might adversely affect such Seller's ability to perform its obligations under this Agreement.
- (g) There are no agreements with governmental authorities, agencies, utilities or quasi-governmental entities which affect the Property except those which are included in the preliminary title report and those matters which would be disclosed by a current survey of the Property.

14. **Buyer's Representations and Warranties.** To induce Seller to enter into this Agreement and to complete the Closing, Buyer makes the following representations and warranties to Seller, which representations and warranties are true and correct as of the date of this Agreement and shall be true and correct at and as of the Closing Date in all respects as though they were made both at and as of the date of this Agreement and at and as of the Closing Date, and which representations and warranties shall survive the Closing:

- (a) Buyer is a political subdivision, which is duly organized, validly existing, and in good standing under Pennsylvania law.
- (b) Buyer has the legal right, power and authority to enter into this Agreement and perform all of its obligations hereunder.
- (c) The execution and delivery of this Agreement and the performance by Seller of its obligations hereunder have been duly authorized by all requisite action, and will not conflict with, or result in a breach of, any of the terms, conditions and provisions of the Charter of the City of Reading, and will not conflict with, or result in a breach of, any law or regulation, order, judgment, writ, injunction or decree of any court or governmental instrumentality, or any agreement or instrument to which Buyer is a party, or by which Buyer is bound, or to which Seller or any portion of Buyer's property is subject.
- (d) This Agreement constitutes, and the documents to be delivered by Buyer pursuant to this Agreement will constitute, valid, legal, and binding obligations of Buyer, enforceable in accordance with their respective terms, covenants and conditions. There are no claims, defenses, or offsets to the validity of or enforceability against Buyer of this Agreement and the documents to be delivered pursuant hereto.

15. **Risk of Loss.** Any loss or damage to the Property by fire, storm, burglary, vandalism, malicious mischief, or other casualty between the date of this Agreement and the time of Closing shall void this Agreement.

16. **Default by Buyer; Remedies of Seller.** In the event that Buyer fails to comply with any or all obligations or agreements to be performed, honored or observed by Buyer under and pursuant to the terms and provisions of this Agreement, and such default is not cured within thirty (30) days after written notice to Buyer, the Seller may bring action for specific performance or Seller may terminate this Agreement. Seller shall be entitled to recover from Buyer all of Seller's out-of-pocket costs and expenses incurred from the date of this Agreement and any and all attorneys' fees and costs incurred by Seller as a result of such default.

17. **Default by Seller; Remedies of Buyer.** In the event that Seller fails to comply with any and all of the obligations or agreements to be performed, honored or observed by Seller under and pursuant to the terms and provisions of this Agreement, and such default is not cured within thirty (30) days after written notice to Seller, the Buyer may bring action for specific performance of Buyer or Buyer may terminate this Agreement. Buyer shall also be entitled to recover from Seller all of the Buyer's out-of-pocket costs and expenses incurred from the date of this Agreement and any and all attorneys' fees and costs incurred by Buyer as a result of such default.

18. **Third Party Brokerage.** Seller and Buyer hereby represent and warrant to each other that neither Seller nor Buyer have dealt with any broker or finder in connection with the transaction which is the subject of this Agreement, and each party hereby agrees to indemnify, save harmless and defend the other from and against all claims, losses, liabilities and expenses, including reasonable attorneys' fees, arising out of any claim made by any broker, finder or other intermediary who claims to have dealt with such party in connection with the transaction which is the subject of this Agreement. The provisions of this paragraph shall survive settlement thereunder.

19. **Notices.** Notices given pursuant to this Agreement shall be in writing, shall be given by actual delivery or by mailing the same to the party entitled thereto at the addresses set forth below or at such other address as any party may designate in writing to any other party pursuant to the provisions of this paragraph. Notices given by mail shall be sent by United States mail, certified or registered, return receipt requested. Notices shall be deemed to be received on the date of actual receipt, in the case of personal delivery, or on the date of mailing, in the case of mailing. Notices shall be served or mailed to the following addresses, subject to change as provided above:

If to the Seller:

Liberty Steam Fire Company

501 S. 5th Street
Reading, Pennsylvania 19602
Attn: William I. Stoudt, Jr.
Telephone No: 610-376-1928
Facsimile No.: N/A
Email Address: N/A

If to the Buyer:

City of Reading

815 Washington Street
Reading, Pennsylvania 19602
Attn: William H. Rehr
Fire & Rescue Services
Telephone No.: 610-655-6137
Facsimile No.: 610-655-6395
Email Address: William.rehr@readingpa.org

City of Reading

815 Washington Street
Reading, Pennsylvania 19601-3690
Attn: Charles D. Younger, Esquire
Law Department
Telephone No.: 610-655-6208
Facsimile No.: 610-655-6427
Email Address: Solicitor@readingpa.org

20. **Time of Essence.** It is agreed by the parties that time shall be of the essence of all provisions of this Agreement, unless extended by mutual consent in writing.

21. **Entire Agreement.** This Agreement constitutes the entire contract between the parties hereto, and there are no other understandings, representations or warranties, oral or written, relating to the subject matter hereof which are not set forth herein.

22. **Assignment; Binding Effect.** This Agreement and all of its terms and conditions shall extend to and be binding upon the parties hereto and upon their respective successors and permitted assigns.

23. **Amendment.** This Agreement may not be changed, modified or amended, in whole or in part, except in writing signed by all parties.

24. **Meaning of Terms.** Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders. Any reference to Sellers shall include a reference to each Seller.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be duly executed the day and year first above written.

SELLER:

LIBERTY STEAM FIRE COMPANY

By: LIBERTY STEAM FIRE COMPANY

By: _____
President

Attest: _____
Secretary

BUYER:

By: _____

Mayor

Attest: _____

City Clerk

EXHIBIT

"A" - Legal Description of 501 S. 5th Street, Reading, PA

Exhibit "A"

Legal Description

All that certain lot or piece of ground being known as 501 S. 5th Street (Liberty Fire Company) located at the southeast corner of S. 5th and Laurel Streets in the City of Reading. Bounded on the North by Laurel Street; on the East by known address of 510 Laurel Street; on the West by 5th Street and on the South by known address of 503 S. 5th Street.



CITY OF READING CITY COUNCIL Brief

Agenda Item: Public Art Commission
From: Shelly Katzenmoyer
Deputy City Clerk

Briefing No.: 3-2009
Date: August 18, 2009

BACKGROUND:

This ordinance will add the Public Art Commission to the City of Reading Codified Ordinances. The ordinance will also establish a Public Art Fund. The ordinance outlines the policy to commission public art and to donate funds for public art.

PUBLIC ARTS FUND

- A separate account will be set up for public art
- 1% of the construction cost of a municipal building project will be appropriated
- 1% of the construction cost of a private entity building project will be appropriated (up to but not limited to \$200,000)
- Donations by the general public
- Other funds allocated by the City through the budgetary process
- These funds shall be used solely for public art
- This will function as a charitable not-for-profit

PUBLIC ARTS COMMISSION

- The Commission shall recommend to the Mayor the amount of money to be allocated for public art as part of municipal construction projects
- The Commission will be comprised of seven members (4 year terms) appointed by the Mayor and shall include:
 - One City Council member
 - One Goggle Works member or designee
 - One landscape architect, architect, urban planner or related design professional
 - One active professional artist
 - Three citizens knowledgeable in public art, education, or community

affairs

- Ex-officio members – Executive Director of the Goggle Works and the Executive Director of the Reading Public Museum
- No member shall serve more than two terms
- The City shall furnish administrative support and office space, including the employment of an administrator and other staff members as required
- The City legal department shall provide legal counsel as required

FUNCTION AND RESPONSIBILITIES

- Implementation guidelines, selection procedures and organizational policies concerning public art
- Program planning, designating sites, determining project scope and budget, overseeing artist selection, commissioning artwork, reviewing designs, execution and placement of artwork and overseeing maintenance
- Invite professionals to serve in the artist selection process to ensure high quality
- Ensure community participation and public education activities
- Coordinate, investigate, review and recommend other means by which artworks may be obtained
- Act as liaison with developers to encourage and facilitate private contributions and installations within construction and reconstruction projects
- Encourage public art throughout the City and educate all citizens in this public/private effort

MEMO OF UNDERSTANDING WITH RIVER PLACE

Council will also be asked to approve a resolution authorizing a Memo of Understanding with River Place regarding public art. This Memo of Understanding outlines an agreement between the City and River Place regarding public art. River Place will contribute \$50,000 to the Public Art Fund with the understanding that the City will match these funds with \$50,000.

STAFF RECOMMENDATION

Council staff recommends that Council request clarification on several issues in this ordinance including:

- Will the 1% be added to the cost of the waste water treatment plant project and all of the related projects? And the Lancaster Ave fire station?
- Why is there a monetary limit on private development but not on municipal development?
- Will the fine arts account be included in the general budget process?
- How does the City plan to fund the additional staff necessary?
- Where will the office space be located?

- Can appointments be based, as many other BACs, with Mayoral recommendation and Council approval?
- Should appointments or a percentage of appointments be Reading residents?
- The terms of the members should be staggered.
- MOU – Are allocated funds restricted to public art or can River Place use some of the allocation to fund administrative or operative expenses?
- Are locations for public art limited to the downtown and River Place areas?

BILL NO. _____

AN ORDINANCE

AN ORDINANCE ESTABLISHING A PUBLIC ARTS COMMISSION IN THE CITY OF READING RECOGNIZING THE CULTURAL AND ECONOMIC VALUE OF PUBLIC ART TO THE CITY OF READING, PROVIDING FOR THE APPOINTMENT OF MEMBERS OF THE PUBLIC ARTS COMMISSION, ESTABLISHING PROCESSES FOR THE SOLICITATION, REVIEW AND AWARD OF CONTRACTS FOR THE PRODUCTION OF PUBLIC ART, ESTABLISHING A FUNDING MECHANISM TO SUPPORT THE CREATION AND MAINTENANCE OF PUBLIC ART, ENCOURAGING PUBLIC INPUT TO THE SELECTION AND PLACEMENT OF PUBLIC ART IN READING, PROVIDING ENCOURAGEMENT FOR INCLUSION OF PUBLIC ART IN THE DESIGN AND CONSTRUCTION OF MAJOR PROJECTS UNDERTAKEN IN THE CITY OF READING.

THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Amending the City of Reading Codified Ordinances by adding new language to Chapter 1 – Administration - Part 5, as attached, relating to the establishment, operation, funding and maintenance of public art in the city of Reading. Portuguese

SECTION 2. All relevant ordinances, regulations and policies of the City of Reading, PA, not governed by the Code shall remain in full force and effect if not repealed by enacted legislation.

SECTION 3. If any section, subsection, sentence, or clause of this ordinance is held, for any reason, to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 4. This Ordinance shall become effective in ten (10) days in accordance with Charter Section 219.

Enacted _____, 2009

President of Council

Attest:

City Clerk

CHAPTER 1

PUBLIC ARTS COMMISSION

§ 1-599.61	Purpose
§ 1-599.62	Definitions
§ 1-599.63	Public Arts Fund
§ 1-599.64	Appropriation of Funds
§ 1-599.65	Commercial Construction Participation
§ 1-599.66	Ownership and Maintenance
§ 1-599.67	Public Arts Commission
§ 1-599.68	Organization, Conduct of Meetings and Legal Counsel
§ 1-599.69	Purpose, Functions and Responsibilities

§ 11-599.61 PURPOSE OF ORDINANCE

1. The intent of this ordinance is to establish a policy for the city in order to enhance its aesthetic environment, to encourage private developers/owners of commercial/industrial properties to commission a piece of art for each new development or structure or, in lieu thereof, to donate monies to the city for Public Art.

2. The private developers/owners should be inspired to invest time, effort and money into the art displayed on their sites, recognizing that the art not only will become integral, lasting components of the cityscape but will be of intrinsic value to their developments.

3. Further, the city of Reading, desiring to expand public experience and exposure to culture through various art forms and to enhance the appearance of public facilities and improve the environment of the city on behalf of its citizens, intends to provide for the incorporation of visual art in the design and construction of public facilities within the city.

4. The City accepts a responsibility for expanding public experience with visual art. Such art has enabled people in all societies better to understand their communities and individual lives. As such and in recognition of the need for public art, artists capable of creating art for public places must be encouraged and Reading's standing as a leader in public art enhanced.

5. People want to live in cities that have a strong, active public arts culture including music, theater, literature, visual arts and related events. These cultural activities will provide the entertainment and educational opportunities that attract visitors and contribute to the healthy development of the city.

6. A policy is therefore established to direct the inclusion of works of art in the City by forming a Public Arts Commission.

§ 11-599.62 DEFINITIONS

Commission means the City of Reading Public Arts Commission.

Commercial/Industrial Structure Commercial/Industrial structure means any building or structure, all or part of which is to be used as a professional or commercial office, bank, manufacturing plant, factory, assembly plant, processing plant, mill, warehouse, shopping mall, store, shop, market, hotel or storage building which is not connected to or incorporated in other structures.

Construction costs means the total value of the construction of, or reconstruction work on, commercial/industrial structures as determined by the chief building inspector in issuing a building permit for the construction or reconstruction. Relative to a municipal construction project, construction costs shall include architectural and engineering fees, site work and contingency allowances. It does not include land acquisition or subsequent changes to the construction contract. All construction costs shall be calculated as of the date the contract is executed.

Municipal construction project means any project to be paid for wholly or in part by the city or any of its related authorities, regardless of the source of the monies, to construct, remodel or reconstruct any public buildings, decorative or commemorative structures, parking facilities and parks, or any portion of any of such buildings, structures, facilities or parks, belonging to the city within its geographical boundaries.

Reconstruction means alterations or repairs made to a commercial or municipal structure within any twelve-month period, which alterations or repairs exceed fifty (50) percent of the value of the existing structure, so that such structure is required to conform to the requirements for new buildings.

Works of art or artworks means tangible creations by artists exhibiting a high quality of skill and aesthetic principles, including but not limited to paintings, sculptures, stained glass, statues, bas reliefs, engravings, carvings, frescoes, mobiles, murals, collages, mosaics, tapestries, photographs, drawings, monuments, fountains and functional art such as public benches, illumination or digital art, or other such art which is accessible for the use of the public.

§ 1-599.63 PUBLIC ARTS FUND

There is hereby created a Public Art fund which shall be a separate account set up by the city to receive monies appropriated for the Public Arts Commission and shall consist of the following:

1. One (1) percent of the construction cost of a municipal building project as bid, contracted and accepted by the city. Unexpended monies in this fund may be used

for works of art at existing public properties and facilities as deemed appropriate by the Public Arts Commission as established in this chapter.

2. One (1) percent of the construction cost of a commercial/industrial structure developed by a private entity. Private developers will participate in the selection of public art which may enhance the private development project. Unexpended monies in this fund may be used for works of art at existing public properties and facilities as deemed appropriate by the Public Arts Commission as established in this chapter.

3. All funds donated to the city by private developers/owners or by others.

4. Other funds allocated by the City through the budgetary process.

5. The Public Art fund shall be used solely for the selection, commissioning, acquisition, installation, maintenance, administration and insurance of the works of art or in relation thereto; and such funds shall be administered by the Public Arts Commission.

6. The Public Art fund shall be structured as a not-for-profit fund for which charitable donations can be accepted either by commercial/industrial developers who choose to contribute their one percent for art to the Public Art Commission; or by any member of the general public, foundation or private entity who chooses to support the work of the Public Arts Commission.

§ 1-599.64 APPROPRIATION OF FUNDS

1. All appropriations for municipal and commercial/industrial construction projects shall include an amount of not less than one (1) percent of the construction cost , in the case of a municipal building project as bid, contracted and accepted by the city; and in the case of a commercial/industrial based on the amount as determined by the building fee process and rate as currently in place.

2. The Public Arts Commission shall recommend to the mayor the amount of monies to be allocated for selection, commissioning, acquisition and installation of individual works of art to be incorporated as a part of the municipal construction project for which the monies were appropriated, or in the case of commercial/industrial projects, for arts project incorporated into the design of the facility or surrounding area.

3. Monies appropriated pursuant to this section as part of one (1) such project but not spent in connection with the project may be utilized to supplement other appropriations for the acquisition of works of art or to place works of art in, on or near other publicly owned facilities.

§ 1-599.65 COMMERCIAL CONSTRUCTION PARTICIPATION.

1. Any private developer/owner who applies to the city for building permits to construct or reconstruct a commercial or industrial structure shall be required to commit one (1) percent of construction or reconstruction costs up to but not limited to the sum of two hundred thousand dollars (\$200,000.00) to the provision of public art in conjunction with such commercial or industrial structure.

2. If the private developer/owner constructing or reconstructing a commercial or industrial structure does not wish to have public art in conjunction therewith, he may donate to the city an amount equal to the percentage of the construction cost of the commercial structure as a charitable donation to the Public Arts Fund.

3. Each building permit issued by the city to any such private developer/owner will include data relative to the private developer/owner participating in the Public Art program in the city.

4. Any building permit for construction or reconstruction of a commercial or industrial structure shall be reported to the Public Art Commission.

§ 1-599.66 OWNERSHIP AND MAINTENANCE

1. Ownership of all works of art acquired by the city shall be vested in the city which shall obtain title to each work of art.

2. Artists, as a part of any contractual agreement with the city for the provision of a work of art, shall be required to submit to the Public Arts Commission "Maintenance and Inventory Sheet," including annual cost projections, which details the maintenance and ongoing care of the artwork.

3. The Public Arts Commission shall determine the amount of funds to be allocated for the annual maintenance of public art and may contract with any entity, public or private, using the existing bidding process as established by the city.

§ 1-599.67 PUBLIC ARTS COMMISSION

1. The Public Arts Commission shall be composed of seven (7) members who shall be appointed by the mayor. City residents shall receive priority

consideration for the Commission. Each member of the Commission shall be appointed for a term of four (4) years, and no member shall serve for more than two (2) terms. Whenever a vacancy shall occur, a successor shall be appointed in like manner to serve for the remainder of such term. Any member who consistently fails to attend meetings without good cause shown or without prior approval of the chairman of the Commission shall be automatically removed; and the vacancy shall be filled as herein prescribed. The Commission shall be composed of the following members:

2. One (1) city council member;
3. One (1) Goggle Works member, or designee;
4. One (1) landscape architect, architect, urban planner, or related design professional;
5. One (1) active professional artist, and;
6. Three (3) private citizens, knowledgeable in the field of Public Art, education or community affairs.
7. Serving as ex officio members shall be the Executive Director of the Goggle Works and the Executive Director of the Reading Public Museum

§ 1-599.68 ORGANIZATION, CONDUCT OF MEETINGS AND LEGAL COUNSEL

1. Organization. The presence of four (4) or more members of the Public Arts Commission shall constitute a quorum.
2. Conduct of meetings. The Public Arts Commission shall adopt rules for governing the conduct of its meetings in accordance with the provisions of this chapter, and specifically:
 3. The officials of the Commission shall be a chairman, a vice-chairman and a secretary who have been elected by the Commission. The only limitation on the number of terms of office to which these officials may be elected is the limitation of the number of terms each member of the Commission may serve.
 4. The chairman of the Commission may call meetings of the Commission. Meetings may also be called by written notice signed by at least three (3) members of the Commission.
 5. The Commission shall convene no less frequently than once every month, unless deemed unnecessary by the chairman with concurrence, either written, in person, or telephonic, of a majority of the members of the Commission. The Commission may meet more often, should the demand necessitate.

6. The Commission may, at any meeting, set a future meeting date.
7. Minutes shall be kept of all meetings, including the vote of each member upon each action by the Commission.
8. The city shall furnish administrative support and office space for the purpose of assisting in the implementation of recommendations and advice of the Commission, including the employment of an administrator and other staff members, as required.
9. Any policy decision requiring approval by the Commission shall be by motion and approved by a majority of those members present and voting, except that at least four (4) members must vote for the action to be official.
10. Legal counsel. The legal department shall provide legal counsel as may be reasonably required by the Commission for the performance of its functions.

Sec. 1-599.69 PURPOSE, FUNCTION AND RESPONSIBILITIES

The purpose, functions and responsibilities of the Public Art committee are as follows:

1. The committee shall prepare implementation guidelines, selection procedures and organizational policies to facilitate this chapter, subject to the approval of the mayor.
2. The committee shall be responsible for program planning; designating sites; determining project scope and budget; overseeing the artist selection process; commissioning artworks; reviewing design, execution and placement of artworks; and overseeing maintenance of the artworks and the process for removal of artworks from the city's Public Art collection.
3. The committee, acting on behalf of the mayor, shall invite professionals in the visual arts and design fields to serve in the artist selection process in order to ensure works of highest quality, or to assist in the determination or artistic merit of works of art offered to the city as donation or for purchase. The committee shall also ensure appropriate community participation in this process and public education activities as part of the Public Art projects.
4. The committee shall coordinate, investigate, review and recommend to the mayor other means by which artworks may be obtained, including donations to the Public Art fund, gifts of artwork, and grant applications for Public Art projects.
5. The committee shall act as liaison with private developers to encourage and facilitate private contributions and private art installations within corporate construction and reconstruction projects.

6. The committee shall encourage Public Art throughout the city and shall educate and stimulate the participation of all citizens in a joint public and private effort to promote art in public places.

7. Prior to the selection and commissioning of artists, reviewing of design and the recommendation of the acceptance of works of art relative to municipal construction projects, the committee shall submit the action proposed to be taken to the mayor for approval.

8. The committee shall record, over the chairman of the committee's signature, its recommendations on each matter considered.

9. The committee shall adopt rules and regulations, including the creation of subcommittees, to implement this chapter.

BILL NO. _____ 2009

AN ORDINANCE

AN ORDINANCE DIRECTING THE BERKS COUNTY BOARD OF ELECTIONS TO PLACE A REFERENDUM QUESTION BEFORE CITY VOTERS ON THE 2010 PRIMARY BALLOT WHICH WOULD AMEND THE CITY OF READING HOME RULE CHARTER BY ELIMINATING THE DEPARTMENTS OF HUMAN RESOURCES AND FINANCE AND CREATING THE DEPARTMENT OF ADMINISTRATIVE SERVICES.

WHEREAS, Section 607 of the Home Rule Charter provides for the Department of Finance and a Director of Finance; and

WHEREAS, Section 705 of the Home Rule Charter provides for the Department of Human Resources and the Director of Human Resources; and

WHEREAS, the general fiscal condition of the City requires strict cost containment, which requires the careful consolidation of comparable services and management functions; and

WHEREAS, other municipalities in Pennsylvania function efficiently and effectively with the functions of human resources and financial administration centralized in one department; and

WHEREAS, the City of Reading Home Rule Charter requires that there be a Department of Finance and a Department of Human Resources and that any change to this structure will require an amendment to the Charter.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Directing the Berks County Board of Elections to place the following referendum question to voters of the City of Reading on the 2010 primary ballot:

Creation of the Department of Administrative Services

Shall the City of Reading Home Rule Charter Article VI Administration, Section 607. Department of Finance and Article VII Personnel System, Section 705. Department of Human Resources be amended as follows:

“Section 705. Department of Human Resources is hereby eliminated and all section numbers within Article VII Personnel System are renumbered

appropriately. Section 607. Department of Finance is hereby renamed Department of Administrative Services” and shall read as follows: “There shall be a Department of Administrative Services, which is established for the purpose of consolidating the functions of the Human Resources and Finance Departments. A Director of Administrative Services shall be appointed by the Mayor with the confirmation of Council. The function, responsibilities, skills, reporting relationships and knowledge requirements shall be set by Administrative Code. ”

SECTION 2. This ordinance shall become effective ten (10) days after its adoption, in accordance with Section 221 of the City of Reading Home Rule Charter.

Enacted _____, 2009

President of Council

Attest:

City Clerk