



MEMORANDUM

TO: Mayor and Members of the City Council

FROM: Rich Olson, City Manager

DATE: November 9, 2016

REF: Information - Tabled Request for New Calvary Missionary Baptist Church

BACKGROUND:

As members of the Council will recall, staff presented a request from New Calvary Missionary Baptist Church to lease the Walnut Street Park property from the City during the meeting held on November 23, 2015. During the public comment period of that meeting, a former member of the church advised the Council that litigation was being pursued by the former members against the current members of the church to regain control. The former church member requested that the Council delay any action on the matter until such time as the issue was decided in court. The City Council agreed; and a motion to delay action on the request for a six month period passed unanimously.

ANALYSIS:

During City staff's preparation to bring the matter back before the Council in May, 2016, we were advised that during the April 11, 2016 session of Pasquotank County Superior Court, Judge Sumner denied the Motion for Summary Judgement filed by the current members of New Calvary, which meant that the dispute would go to trial. Judge Sumner did not set a date for hearing the case, however. At that time, Staff advised members of the City Council that the Clerk of Court's office had indicated that this matter would be docketed during the Administrative Court session scheduled for May 2016. That did not happen.

On November 8, 2016, staff was advised by the Pasquotank County Clerk of Court's office that this litigation has still not been resolved. The Pasquotank County Case Number is 14CVS821 (New Calvary Missionary Baptist Church v. Chester Sutton) and it is still open.

Attached is an excerpt from the Council meeting minutes of November 23, 2015 during which this issue was first discussed.

STAFF RECOMMENDATION:

As directed by the City Council.

RCO/vdw

Excerpt from November 23, 2015 Council meeting minutes:

- f. Consideration – Proposed Lease of Walnut Street Park Property:
(**CLERK NOTATION:** This item was discussed by the Finance Committee during their meeting of November 19, 2015. The Committee, by consensus, directed that the item be placed on the Council's regular agenda for discussion.)

Mayor Peel recognized Mr. Olson for his comments on this item. Mr. Olson stated that the Walnut Street Park property was a part of a grant of property received from the developers of Walnut Street Apartments in the late 1980s. He advised that the property consisted of roughly one-half acre located behind New Calvary Missionary Baptist Church. He pointed out that the area is small and secluded.

Mr. Olson stated that New Calvary Missionary Baptist Church ("the church") requested in 2012 that the Parks and Recreation Advisory Board give the property to the church. He said the request was denied at that time. He stated that another request had been received by the Advisory Board recently; and this time, the Board recommended that the City Council move forward with a lease on the property to the church.

Mr. Olson advised that the City had problems lighting the park property adequately because of light spillage into the neighboring homes. He reported that the City has a lot of criminal activity occurring in that particular park; however staff does not feel it is the City's responsibility to fence off the public property and lock a gate to prevent access. He said that City staff's recommendation is that the church be given a lease for under a ten-year period. He said that North Carolina Statutes requires a Public Hearing be held.

Mr. Olson stated that two of the public speakers talked about issues within the church body earlier in the meeting. He said that it was staff's opinion that before the City enters into a lease with the church, the individual executing the document must provide proof of his/her legal right to do so.

Councilman Horton stated that the Parks and Recreation Advisory Board had actually recommended that the City gift the property to the church, not lease the property. Mr. Olson stated that in order for that to be done, the City would have to follow a very specific legal process. He explained recent changes in state law and stated that the Council could take action to lease the property for 364 days without a public hearing. He said if the Council wanted to lease the property for a period of under ten years, a public hearing must be held. He stated that if the lease is longer than ten years, the process would have to be treated as if it were a sale of the property, which would also apply in a gifting situation.

Councilman Horton stated that he was of the opinion that since the church is currently in litigation, he thought the City would be wrong to move one way or the other.

Motion was made by Councilman Darius Horton, seconded by Councilman Michael Brooks, that the matter be tabled until the church comes out of litigation.

Councilman Stimatz asked if the motion included a sufficient definition of time to end the table. He offered a friendly amendment to revisit the issue in six months.

Councilman Donnelly asked if the term "until the litigation is worked out" was specific enough.

City Attorney Morgan stated that it would be better policy to have the matter tabled for a specific period of time. He suggested that the matter could be tabled for a period of six

months at which time the issue could be revisited to determine the status of the litigation. He advised that the matter could again be tabled at that time, if necessary.

Councilman Horton stated that he would accept the friendly amendment.

Councilman Stimatz pointed out that another reason to have a timeframe of six months was to assure that the City Council does not forget the matter.

Councilman Walton commented that he thought the issue should be tabled until the "legal matter is out of the way."

Councilman Brooks asked if the matter would automatically come back up in six months. Mayor Peel responded that staff would bring the matter back to the Council in six months.

Mayor Peel called for a vote on the motion to table the matter for six months.

Those voting in favor were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence and Horton. Against: Walton. Motion carried.