

MANLEY BURKE

A LEGAL PROFESSIONAL ASSOCIATION

ROBERT E. MANLEY (1955-2006)

TIMOTHY M. BURKE
SEAN P. CALLAN*
JOHN E. CHRISTOPHER*

JACKLYN D. OLINGER
KATHLEEN F. RYAN***
PATRICK K. HOGAN*
MICAH E. KAMRASS
AMY M. HEBBELER
ILANA L. LINDER

225 WEST COURT STREET
CINCINNATI 45202-1098
TELEPHONE: (513) 721-5525
TOLL FREE: (800) 708-0798
FACSIMILE: (513) 721-4268

COUNSEL

WILLIAM A. McCLAIN (1913-2014)

GARY MOORE EBY*
GEORGE F. MOELLER

*Also admitted in Kentucky
***Also Urban Planner

201901514

Timothy M. Burke
(513) 721-5525
tburke@manleyburke.com

September 23, 2019

Mayor John Cranley
Vice Mayor Christopher Smitherman
Council Member Tamaya Dennard
Council Member Greg Landsman
Council Member David Mann
Council Member Amy Murray
Council Member Jeff Pastor
Council Member Chris Seelbach
Council Member P.G. Sittenfeld
Council Member Wendell Young

Cincinnati City Hall
801 Plum St.
Cincinnati, OH 45202

On behalf of Hilltop Basic Resources, we wish to respond to the issues in the Manager's memo to Council of September 20, 2019 as they relate to the Hilltop.

First, let's be clear. The City administration has not proceeded in good faith in this matter. Here is one example. Early on, representatives of the administration advised Lower Price Hill residents that a concrete plant was coming to Lower Price Hill (which was NEVER the case) and that among other things, that it would damage the plans for Price Landing Park. Since Hilltop has actually offered to dramatically increase the future likelihood of the Price Landing Park (which was clearly identified and planned for in the Lower Price Hill Resurgency Plan which was approved by City Council this year) the administration has changed its tune. Now the administration says the park is never going to happen. The administration should make up its mind. If the

MANLEY BURKE

A LEGAL PROFESSIONAL ASSOCIATION

park is not going to happen, then Hilltop should be allowed and encouraged to occupy the west bank mouth of the Mill Creek. Hilltop would commit to buffer its operation from the potential park site and provide a plan for controlled pedestrian and bicycle access to the City property west of the west bank site.

Second, it was never Hilltop's intention to avoid the due diligence that all sides in a real estate agreement expect. But as has been made clear throughout, it is critical to Hilltop that it own the riverfront property that serves as its off-loading site, as it does its current site on the central riverfront where it has operated since 1968. While there had been discussions with the City Administration earlier, going back several years, regarding Hilltop acquiring a fee interest in City owned riverfront property (those included discussions about the price that would be paid), earlier this year the City Administration took a non-negotiable position that the City would not consider the sale of any riverfront property citing "City policy". While Hilltop and the undersigned were told not to talk with members of council, since council is the City policy maker, we had no choice but to talk with members of council seeking to obtain an agreement that if other issues of concern, including traditional due diligence matters, could be resolved, Hilltop could obtain title to City property on the riverfront. The City administration was informed that Hilltop intended to seek the agreement of council that the transfer of fee title to Hilltop was possible, certainly not that it was guaranteed. The City Administration informed Hilltop's representative that unless Hilltop was willing to abandon seeking fee title to riverfront property and only negotiate for a leasehold interest there was nothing to talk about.

Third, of course, Hilltop is continuing to explore due diligence issues. In fact, it has already spent tens of thousands of dollars in doing so on expenses such as title review, environmental, architectural and zoning. From the very first time this matter was before council, Hilltop made it clear that it understood it would have to comply with the City zoning process and obtain conditional use approval to operate in the MG zone (a process that will involve plenty of opportunity for public input). On top of that the City has imposed an IDC with which Hilltop must comply (although initiated by City Administration representatives through misinformation as previously stated). Hilltop has advised the administration that it anticipates including a traffic study in any zoning application. Among the other due diligence conditions which must be met prior to any closing on City property would be Hilltop's obtaining the necessary zoning approvals. Similarly, Hilltop would require assurances from the City that it will work in good faith to grant whatever approvals are necessary for Hilltop to access between the east bank of the Mill Creek mouth and the Sixth Street Yard site. Without such conditions being met Hilltop would not be obligated to close. No doubt the City would have its own requirements that must be met prior to any closing. Serious discussions with the City Administration have not continued as a result of the Administration's advising that unless Hilltop only wanted to talk about a lease (in this case actually a sublease) there was nothing to talk about.

MANLEY BURKE
A LEGAL PROFESSIONAL ASSOCIATION

Fourth, many of the due diligence conditions in the Manager's memo are yet additional examples of the administration's bad faith.

- A. Recall that CBT's lease on the western portion of its leased property has less than 5 years left. The property proposed to be occupied by Hilltop has not been used in years and CBT pays only approximately \$36,000 rent a year (under the terms of the current lease required to be a fair market rental rate evaluated every 3 years). The City Administration takes the position that Hilltop pay CBT \$500,000 and enter into a sublease with CBT for 40 years paying \$100,000 a year. In addition, CBT would apparently be granted a new lease over all of the property it currently leases from the City with a new 40 year lease term. A very valuable benefit to a company favored by the administration. When the City's lead negotiator was asked what CBT intended to do on the property he responded that he was not authorized to share that. As an alternative, and as previously expressed, Hilltop would be willing to agree to occupy the west bank site for the remainder of CBT lease and move to the east bank site after the current CBT lease on that portion of the property expires.
- B. Valley Asphalt is a valued tenant and customer of Hilltop. While Hilltop wants to relocate Valley Asphalt, the City has done nothing to assist in that. Instead the administration is cooperating in spreading questions about asphalt plants environmental impact making the ability to relocate Valley all the more difficult. Multiple sites have been suggested by Hilltop as possible relocation sites for Valley with only objections raised by the City but otherwise no meaningful engagement by the City on this matter.
- C. The Manager's memo proposes that a property owner must reimburse a third party, in this case the City, if the property owner's tenant (Valley Asphalt) is unable to remain on its current site and is required to relocate. That raises serious constitutional issues.
- D. Noramco has been a month to month tenant on the west bank and sixth street yard property since January 2013, having, according to the County Auditor's website, sold its interest in the west bank property (Parcel 141-0006-0008) to River Container Concepts for \$1,670,000 in 2011.
- E. Equally serious constitutional issues are raised by suggesting that a private property owner must allow a tenant (Noramco) to permanently remain on its property or pay to relocate them specifically into another site in the City.
- F. The City Administration deliberately fails to recognize the value of the west bank site. The comparisons between the west bank and east bank sites have

MANLEY BURKE

A LEGAL PROFESSIONAL ASSOCIATION

- G. been repeatedly documented. While the west bank sold for \$1,670,000 in 2011 on the open market, the City east bank property, which generates a rental income of only \$36,000 per year has, based on that annual income, a value of only \$148,000.

All of this leads Hilltop to conclude that the City Administration does not value Hilltop's presence in the City. Alternatively, and we'd like to believe more likely, is that Hilltop is being intentionally thwarted in its good faith relocation efforts within the City of Cincinnati because of this administration's disagreement with City Council's decision regarding the Music Venue. The positions taken in the Manager's memo only deepens that conclusion.

The City Manager's memorandum raises issues beyond the Hilltop relocation issues discussed in this response. Assuming those issues are resolved to the satisfaction of City Council, Hilltop remains willing to negotiate with the City in an effort to find a mutually agreeable solution. But a good faith effort by all is required and Hilltop needs to know that if due diligence and good faith conditions on both sides can be fulfilled in the end it will own the riverfront property from which it operates.

Sincerely,



Timothy M. Burke

cc: City Manager Patrick Duhaney