

	Presented
Date Action Taken:	6/23/14
Other:	
Verified By:	<i>K. Smith</i>

**CITY COUNCIL INFORMATIONAL MEMORANDUM**

**IM No. 14-12: Meta Rose Square**

Originator: Public Works Director  
 Date: June 11, 2014

Agenda of: June 23, 2014

Route to:	Department Head	Signature	Date
X	Public Works Director	<i>[Signature]</i>	6/16/14
X	Finance Director	<i>[Signature]</i>	6-16-14
X	Deputy Administrator	<i>[Signature]</i>	6-16-14
X	City Clerk	<i>[Signature]</i>	6.16.14

Reviewed by Mayor Verne E. Rupright: *[Signature]*

**Attachments:** Cameron Sharick Report (4 pages)

**Summary Statement:** Attached is a report from Cameron Sharick where she outlines the options for sale of the Meta Rose Square and limitations with respect to putting restrictions on a sale as suggested by the Planning Commission.

# CAMERON SHARICK

LIMITED LIABILITY COMPANY

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USA

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LAWYER

June 12, 2014  
Archie Giddings  
Public Works Director  
City of Wasilla  
290 E. Herning Avenue  
Wasilla, AK 99654

RE: Meta Rose (Lot 5A, Block 1, Fred Nelson E, Plat 83-178)

Dear Mr. Giddings:

The following points are based on the information identified in this letter.

1. Subject Property.

In December 2009, COW purchased this property (Meta Rose) and another lot (Crazy Moose parking lot). The Meta Rose purchase included personal property (paintings, bench, restaurant fixtures and equipment) and assignments of 9 tenant leases (\$14,994.27/mo.).

The condition of title has not changed. See, 12/09 title policy and 6/14 owner's consultation report. There are currently 6 tenant leases (est. \$9200/mo.): American Lung Assn., Alaska Assn. of Conservation Districts, Pataya Sushi, Area 51 Hobbies, Flowers by Louise, Younique Boutique. A sale of this property would include an assignment of these leases, and restaurant fixtures and moveable equipment (required for Pataya tenant) plus other personal property on the premises which the City does not want to retain. The City's standard tenant lease (Sec. 12.12) says the City will be released from its obligations as landlord if the subject property is sold (with these leases being assigned to the buyer). The City would require a buyer to assume the leases and release the City from its landlord obligations as a condition of sale.

2. Sale with Restrictions.

Tina Crawford, City Planner, and I had detailed discussions on planning concerns that might be addressed by placing land use conditions on the sale of the property. To that end, she provided and I reviewed the Comprehensive Plan, Downtown Area Plan and the following records (including attachments): Wasilla Planning Commission Resolution 13-04AM, and IM 13-12 (Planning Commission Recommendation) and IM 14-03 (Council Discussion). In addition, I walked through the building and talked with the tenants.

- a. Overlay Zoning & Grandfather Rights. The Planning Department is developing design and use standards that will be incorporated in a Downtown Overlay Zoning District. Meta Rose would be included in that district. However, the Meta Rose building and uses (along with other similarly-situated, improved and operating properties) typically would be "grandfathered in" on the date the overlay zoning becomes effective. For this reason, overlay zoning may have little or no initial impact on Meta Rose and other improved, operating properties at the time the zoning district is created. Consequently, it may not matter whether the City sells Meta Rose before or after the overlay zoning district is created in this context.
- b. Restriction on Meta Rose Property. The Planning Department has considered whether land use restrictions should be placed on Meta Rose as a condition of sale. The general types of restrictions identified by Planning relate to design and uses compatible with the Downtown Area Plan, which are intended to be specifically identified through overlay zoning in the future.

In general, design standards in zoning apply to new construction (including after teardown of existing buildings) and exterior renovation of existing buildings (and/or landscaping, exterior signage, walkways, etc.). They do not apply to existing buildings or exterior features on the property. For example, design standards imposed through zoning typically would not apply to the Meta Rose building or other exterior features that exist on the date that overlay zoning becomes effective. Instead, the property would become subject to those rules when a triggering event occurred (post-zoning major renovation or rebuild). This balance preserves the existing property rights of land owners and allows zoning to achieve uniformity over time (including through new development of raw land, such as the Crazy Moose parking lot, and renovation of improved property in the zoning district).

In general, use standards in zoning are intended to achieve the desired mix of uses for district as a whole, not for a specific property. In addition, use standards often prohibit incompatible uses (such as no strip clubs) for the district as a whole, but do not impose use restrictions on just one specific property.

Currently, the Planning Department is in the process of developing specific design or use standards to be incorporated in the overlay zoning district. For that reason, we have no way of knowing whether any land use restriction imposed on the Meta Rose property today will be compatible with the as-yet unknown zoning standards to be implemented in the future. In that context, restrictions may and, likely often do, limit the pool of buyers because restrictions take away an owner's property rights and, in the case of Meta Rose, the buyer will have no guaranty that his neighbors (including competitors) will be subject to the same restrictions (since overlay zoning is not in place). That said, the City should impose specific restrictions on the Meta Rose property in anticipation of a sale if there is an important municipal purpose to be served.

3. Meta Rose Sale. The decision to sell, including timing, involves various factors. For example, the owner may have an immediate need for cash, the property may be too burdensome to retain or not useful, and/or the marketability of the property may seem favorable based on local conditions. Professionals, like brokers, appraisers, lawyers or accountants, may provide opinions and information to assist an owner. In the end, the owner is left to decide whether and when to sell, and those decisions depend on the owner's assessment of the factors which that owner decides are most important.

The following information was provided to me:

- a. Council Ordinance 09-76 (12/28/09): This ordinance says:  
"the proceeds or any net gain from the future sale of said property, over and above cost, will be set aside in an account for the use of a future library."
- b. Council Resolution 10-06 (1/11/10): This resolution says the DeArmoun's sold Meta-Rose to the City with a \$500,000 discount to support a future library.
- c. Council AM 13-07 (3/11/13): This memorandum says Meta Rose was purchased for use as a library. Since a different site has been chosen, Meta Rose "is not needed for, or devoted to, a municipal purpose. Ownership of this property places the City of Wasilla in direct competition with the private sector retail property management entities." The Council directed the administration to proceed with the sale of Meta Rose and authorized the Mayor to obtain a broker's opinion.
- d. Planning Resolution 13-04 (8/13/13): This resolution recommends the City retain ownership of Meta Rose and continue to lease the building until the City identifies targeted land uses that are consistent with the Downtown Area Plan and will create a vibrant, revitalized downtown.
- e. IM 13-12 (9/9/13): This memorandum explained the Planning Commission recommendation above. It makes these points:

The Commission based its recommendation on the 2011 Comprehensive Plan and 2013 Downtown Area Plan Amendment, which “clearly outline the resident’s desire for a revitalized downtown that is walkable and contains a mix of land uses,” and “described the need for a City land bank so the City can purchase properties to incentivize development in the downtown area.”

The Commission agreed Meta Rose is an ideal location to service as a catalyst for future development and improvements in the downtown area. Prior to selling Meta Rose, the Commission proposed that the Council obtain a detailed future development plan and an updated market analysis to create a vibrant downtown. Then, it recommended Meta Rose could be sold through an RFP process to ensure future uses and/or redevelopment of Meta Rose will help stimulate growth and redevelopment in the downtown area.

Alternatively, the Commission recommended that, if the property is sold without taking these steps, the City should restrict the property or impose these conditions of sale: whether the structure can be torn down and rebuilt, whether it should be a single or mixed-use building, etc.”

- f. IM 14-03 (1/13/14): The Council held a Committee of the Whole to discuss the Meta Rose sale. The purpose was to inform the Council about past actions of the Council and Planning Commission, and to discuss this topic with the Administration. The City Clerk attachment said the hope was to see if there is a general consensus on a path forward to sell it now, hold on to it for a few years, give ideas on stipulation from the Planning Commission, and other processes that will need to be considered. The City Clerk also provided direction on Wasilla Municipal Code, Chapter 5.32, Sale or Lease of Public Lands.

The State DCCED Division of Community and Regional Affairs published a manual titled *Municipal Land Acquisition and Disposal in Alaska* to assist local governments. It says (Appendix 6, p. 281):

The essential first step in a local government’s consideration of the sale of public land is to answer the question: “Just what are we trying to accomplish?” Most problems in a sale stem from the fact that the local governing body never had a clear answer to this question in the first place.

In general, the COW information recited above identifies two competing goals: (1) dispose of the property (now or in the short term) because it is no longer needed as a library site; and, (2) retain the property with the intention of selling it at some future time under conditions that would make the property a keystone of the Downtown Area Plan. The Council should choose one of the two goals, which will determine the next steps needed to implement that goal.

The following information might help the Council choose the best goal:

Troy Tankersley, City Finance Director, could explain, in municipal accounting/financial terms, points that he thinks are important, such as:

- What this Ordinance 09-76 language means: “the proceeds or any net gain from the future sale of said property, over and above cost, will be set aside in an account for the use of a future library.” Specifically, what is the City’s “basis” in Meta Rose (one of two properties) and how are the “proceeds,” “net gain” and “cost” terms defined for this sale. This information will help the Council understand how money obtained from the sale will be committed.
- Meta Rose’s performance (income/expense) annually from 2010-present. This data will give the Council hard numbers on income v. cost. (It is important to identify or estimate “hidden costs,” meaning time and resources that City employees devote to operations, accounting, etc.

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for this property.) Also, this information will allow the Council to see the overall trend under Municipal ownership. In that context, AM 13-07 points out that the City purchased this property for a public library, not to become a mall landlord which is now the case. That said, the City can retain the property and continue current operations if, in general, it has a municipal purpose that is in the public interest (for example, to delay a sale for market reasons, or to later use as a Downtown Area keystone per Planning recommendation).

- A projected budget, and/or main expense items (including items in next paragraph).

You might address points that you think are important on the physical plant and mall operations with the Council. For example, the building is about 30-years old. One consideration in retaining the property is whether major maintenance, repairs or replacements will be needed (since there is no reserve fund). Also, you might give the Council a copy of the 12/14/09 Burkhart Croft Analysis, which details the various building condition, deficiencies, etc. on the acquisition date. Given the age and condition of the physical plant, the pool of buyers would probably be reduced if the City decides to sell the property and places conditions related to whether the building can be torn down or rebuilt, single or mixed use and similar restrictions. You should also talk to the Council about the Main Street Couplet/Rehabilitation Project, and whether it would likely be a positive factor to a buyer today.

A broker's opinion might be useful. The Council should also take into account the time that the funds from the sale of this property will be needed for the library, and consider the difference in expected return between retaining the property (FMV) or holding sales proceeds in an account in the interim period.

If the Council decides to sell the property, it will need to identify any specific land use restrictions. Also, it will need to decide whether to sell through a public auction or sealed bid (RFP) to the highest qualified bidder. WMC 5.32.040 A. Then, the Council can direct the administration to prepare the auction or RFP package for Council review and approval, after which the auction or RFP process can proceed and the property be sold. (Side note: WMC requires an appraisal that is not more than 6-months old as of the disposal of property, and that appraisal must include any restrictions on the use of the land. WMC 5.32.030.)

If the Council decides to retain the property, it is not necessary to take any disposal action at this time. However, I want to mention an alternative disposal provision that is useful in special situations, such as the one outlined by the Planning Commission. WMC 5.32.A.1.(d) provides:

The mayor may, with the approval of the city council by ordinance, negotiate a sale or exchange of city land without public auction or sealed bid if the following conditions exists: .... For a particular stated purpose in the best interests of the city, and the council approves the sale with appropriate findings and conditions.

Thank you for giving me the opportunity to work on this project. Please let me know if you have any questions or need further information.

Sincerely,

*Cameron Sharick*

Cameron Sharick