

---

## COMMUNITY DEVELOPMENT

### MEMORANDUM

Planning,  
Zoning,  
Building Safety,  
Construction Inspection Services,  
Public Health,  
Housing Inspections,  
Code Enforcement

**To:** Mayor and City Council Members  
**From:** Jodi Royal-Goodwin, Community Development Director  
**Cc:** Gregg Mandsager, City Administrator  
**Date:** October 3, 2019  
**Re:** Supplemental Information Regarding Carver Corner Redevelopment Request for Proposals

---

**INTRODUCTION:** This memo is intended to provide additional information following the discussion about the proposed designation of Merge Urban Development Group as the preferred developer of Carver Corner and authorizing staff to negotiate a Development Agreement for Council consideration and to enter into negotiation for the transfer of property.

#### **BACKGROUND:**

*References:* Following the September 3 meeting of the review panel, references were checked to evaluate performance on projects in other communities to finalize the recommendation of Merge as the preferred developer. Responses from all seven individuals, representing a variety of roles within three communities, were very positive. Overall the responses indicated projects were:

- Well received by the public;
- Responsive to community needs;
- High quality; and
- Completed on time and within budget.

Incidentally, staff randomly met staff from the City of Des Moines currently working with Merge on a project. The Des Moines staff reported that working with Merge has been very positive. Merge has worked with community members to insure the project meets community expectations.

**Location:** Location is a significant aspect of development, but every place has pluses and minuses. This continues to be true with the Carver Corner site. This site has a number of positive attributes:

- A. It is of significant size;
- B. It is close to the river and trail network;
- C. It is on a major thoroughfare;

- D. Infrastructure is in place;
- E. It is in an Opportunity Zone; and
- F. It is largely cleared.

However, while the land significantly is cleared it is not pristine. This is an infill location, and, as such, comes with some conditions that impact how it may developed, processes that need to be observed, and potentially requiring additional resources to manage mitigation. In the case of Carver Corner there are three main issues.

- A. Portions of the site are a brownfield, impacting how development may occur.
- B. While the site runs beside the river and trail, it is not immediately adjacent to either and access is constrained.
- C. The presence of the rail tracks in the vicinity will require noise and vibration mitigation for the project to be successful and maintained long-term.

The positive attributes of this site establish conditions that allow a developer to manage the issues. This with reasonable access to natural and economic resources, allow for size and scope to distribute the costs of developing over brownfields and mitigation.

**Community Input:** Staff discussed processes and soliciting community input with Joy Hannemann from Merge last week. Once Council designates Merge as the preferred developer, Merge and City staff will begin work to insure the negotiations and development are completed in a thoughtful and responsive manner, including the following components:

- 1) Project Team Meeting – Representatives from Merge and the City will meet to ascertain the necessary tasks and timeline to collect input, maintain feasibility, and identify stakeholders.
- 2) Stakeholder Meetings – Merge will host small group meetings with stakeholders identified during the Project Team Meeting. These groups will include those vested in implications of the project, such as community leaders, local businesses and community groups, to assure it supports local needs and goals.
- 3) “Idea Lounge” – A neighborhood meeting for citizens to review project plans and provide feedback will be conducted.
- 4) Technical Committee – Throughout this process City staff will work with Merge on the details of the project, including details of the development agreement, terms for the transfer of property, design and land use aspects of the property, and other details, many of which will be brought forward for Council input and approval.

**Negotiations & Commitment:** As previously indicated, identifying Merge as the preferred developer and authorizing staff to initiate negotiations is the first step in a process that will culminate with the approval and execution of a Development Agreement, Deed, and Purchase Agreement; approval of rezoning and site plan; and agreement on associated and ancillary infrastructure improvements, all of which require approval of the City Council.

As stated during the September 19 Council meeting, identifying Merge as the preferred developer merely allows for the initiation of negotiations and input. This approval allows for the crafting of a more refined plan acceptable to the community, with multiple opportunities for public and Council input.

With the expense and time put into the acquisition and clearing of these properties, it seems unlikely that it was not envisioned to result in a substantial, mixed-use development addressing a number of City goals. In this vane a Request for Proposals was issued and Merge provided a responsive plan and has indicated they are very interested in working with the community, including the World Peace Park initiative, who Merge reached out to even before making a submission and continues to hope there is a way to incorporate their idea.

Based on the September 27 correspondence from World Peace Park, it seems this may be an ideal way to leverage resources and partner in a project that can promote our community and address a number of community needs and goals, as identified in the original memo. Staff does not make this recommendation for fear of losing a developer, rather in support of a robust proposal that will benefit our community.

**RECOMMENDATION:** Staff continues to recommend Council accept the responses to the RFP, designate Merge Urban Development as the preferred developer, authorize staff to negotiate a development agreement and to enter into negotiations for the transfer of property.



Attorneys & Counselors at Law

MATTHEW S. BRICK

T: 515-274-1450

F: 515-274-1488

[matt.brick@brickgentrylaw.com](mailto:matt.brick@brickgentrylaw.com)

## MEMORANDUM

**TO:** Gregg Mandsager  
**FROM:** Matt Brick  
**DATE:** October 1, 2019  
**SUBJECT:** Implication of Selecting Merge as Successful Proposer

## INTRODUCTION

Earlier you requested an opinion on whether any binding obligations form to proceed with the Carver Corner Development Project if the City Council votes to select Merge as the successful proposer at the October 3, 2019 Council meeting.

## DISCUSSION

As you know, the City issued an RFP soliciting bids for the Carver Corner Redevelopment project. Responses were due to the City on or before August 14, 2019. After reviewing the responses, it was determined that only one responsive proposal was submitted to the City. This responsive proposal was submitted by Merge Urban Development Group. As this was the sole responsive proposal, staff recommends that the City Council accept this proposal and authorize the Staff to proceed with the next steps.

As a result of Staff's recommendation, you have asked for clarification on whether the City is bound to proceed with Merge and the Carver Corner Development Project by virtue of the fact that its proposal may be selected and approved by City Council at the upcoming October 3, 2019 Council meeting.

I have reviewed all of the pertinent documents including the Request for Proposal, Merge's response to the RFP, and staff's recommendation regarding the same. After reviewing these items, it is my opinion that no obligations form by selecting Merge as the responsive bidder. This opinion is based on the following two reasons.

First, Iowa Code, Muscatine City Code, and related case law specifically require approval of all contracts by City Council before those contracts can be enforced against the City. *See* Iowa Code 364.1; Muscatine City Code 1-12-6; *See e.g., City of Akron*, 659 N.W.2d at 223.; *Riley*, 565 N.W.2d at 346 (Iowa 1997)(stating that contracts not binding against city unless passed by city council). As there is no contract being presented to Council at the time of its vote selecting Merge's proposal, its vote will not create any binding obligations on the part of the City to proceed with the planned development project.

Second, the request for proposal that was issued in this case contained, in pertinent part, the following limitations:

- PLEASE TAKE NOTE: This document constitutes a Request for Proposal, and is not a request for professional services, a request for a bid or a construction contract. *Acceptance of a proposal may result in a binding contract between the City and the proposer, contingent upon certain legislative acts of the City Council related to the sale of land and a Development Agreement.*
- The City retains the right to reject proposals as non-responsive, to ask for clarification, to enter into negotiations to discuss cost, scope of work, procedures and the final work product. *Acceptance of a proposal does not constitute contract approval or approval for construction purposes. Normal administrative and legislative procedures and actions will be required, including but not limited to property sale, approval of financing, site plan review and building permit approvals.*

These two provisions specifically state that acceptance of the proposal does not create any binding obligation between the City and the successful proposer, and, further, specifically states that additional council action is required vis-à-vis a development agreement before any obligation will form.

Based on the limitations set forth in the request for proposal, there is no obligation created by selecting Merge as the successful bidder. City Council is not authorizing Merge to proceed with the development project at this time, but, rather, is merely authorizing staff to enter into negotiations with Merge to discuss the particulars of their proposal and the City's expectations.

As a result, it is my opinion that no binding legal obligation will exist to proceed with the development proposal until and unless a development agreement is entered into with Merge and subsequently passed by City Council. Moving forward, the City and Merge will negotiate the terms of any contract and property transfer and each of these items will be subject to public input and council approval before any binding relationship can form.

City of Muscatine  
c/o City Clerk / Department of Finance  
215 Sycamore Street  
Muscatine, Iowa 52761

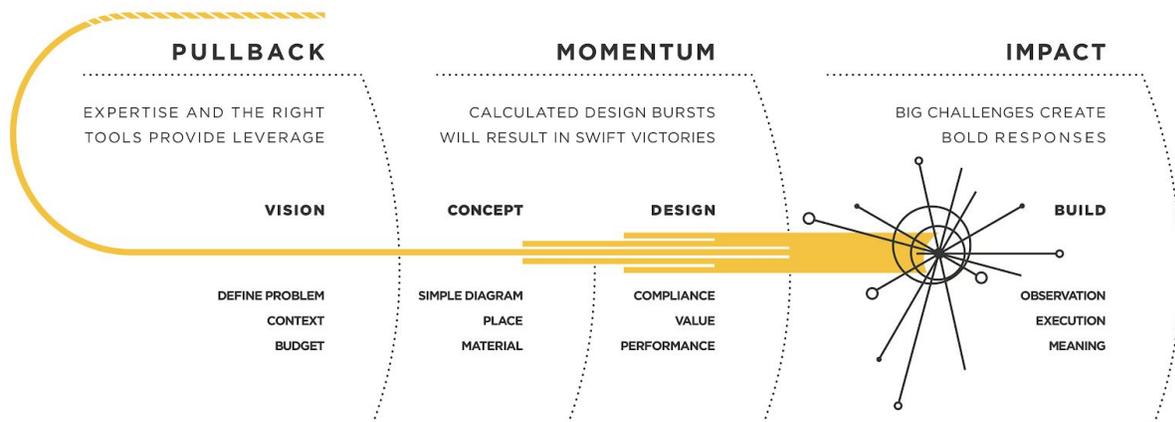
**TO WHOM IT MAY CONCERN:**

Thank you for considering Merge as the potential development partner for this vital piece of Muscatine’s built history. We are encouraged by City Staff’s enthusiasm and commitment to the betterment of the waterfront.

As outlined in our RFP and pending Common Council approval to proceed, we have scheduled a community engagement period to take place this winter. With the support of City Staff, our team will begin this effort to further refine the building’s design and program to reflect its place on Muscatine’s riverfront. We will work with the Chamber, business leaders, major employers, and other stakeholders to identify opportunities, gaps, and potential public/private collaborations.

In other cities, our community engagement process has taken different formats - from casual conversation over coffee to large public input sessions. No matter the format, we always come away with feedback and considerations that improve the project and help tie together both the area’s history and its future. We expect no less in Muscatine.

The architectural team at Slingshot Architecture also takes special care to build momentum in collaborative front-end engagement. Visually represented here:



During the community engagement process, the project team often uncovers both tenant needs and unmet demand for urban retail concepts. Merge mixed-use projects always include a micro-retail component. The purpose of these spaces is to serve businesses with compact space needs: startups, makers, and unique offerings that would not otherwise be able to attain move-in ready space that suits their businesses. Affordability is a component of these small spaces – the build-out is provided under a gross lease structure with shared mechanical and restrooms among neighboring micro-users. In addition, the capital group is committed to establishing an Opportunity Zone Business Fund to invest in early-stage companies located in QOZs.

The Merge team does not intend to compete with local entrepreneurs but we do have a proven network of entrepreneurs that we can tap if the community supports it: kombucha, fresh juice, donuts, fitness uses, fast casual food, etc. Other concepts include food halls and collaborative brew projects (owned and managed in partnership with the development team) if compelling local users do not express interest.

Again, we want to thank City Staff and Council for preparing this RFP and making the opportunity available. We look forward to your decision and next steps.

Sincerely,



Brent Dahlstrom

