

The Pool Swap Whistle

By Rhona Baron

Leavenworth is buzzing after the July 25 council session where over 100 citizens attended in person and via zoom. I had not planned to swap the series of columns we've started on affordable housing for a pool swap column, but if we can check relevant facts and provide analysis, we'll step up. We appreciate how you did the same when a hot community issue emerged.

The town's thermostat rose quickly when it became known that the city council, under the guidance of Mayor Florea, was poised to sign something called a "Letter of Intent" (LOI) to engage in negotiations with a Leavenworth land owner, Thomas Lin. The intent was to swap Lin's property, the former Car Wash and Quick Lube at the end of town for the local pool and a portion of Lion's Club Park. Part way into the discussion a motion was made by Councilperson Marco Aurilio to accept the LOI.

Florea stated to attendees: "If you want to get up and speak that's fine but I would encourage you to speak about whether we should investigate or not. Not whether we should swap or not, because that's not the issue." As the "parliamentarian" of council sessions, Florea was referring to a rule that when a motion is on the floor, it trumps other concerns and frames comments.

As the community watched and listened, the mayor and council took turns declaring that the Letter of Intent was required to further study the pool swap. Notable exceptions were Anne Hessburg and Sharon Waters. Tibor Lak said the LOI allowed money to be spent on investigating the deal, "It's just a legal form that allows staff and the mayor to start looking into this." Clint Strand commented, "That letter of intent starts the due diligence process because we can't spend (without it.)" Zeke Reister remarked, "Right now we don't have any information that you can talk about...and the way we get it is the letter of intent." Aurilio and Jason Lundgren spoke at length about the potential value of the swap process that must begin with the Letter of Intent. Florea repeatedly gushed over the value of signing the LOI declaring we need to find out if the swap is "too good to be true."

The community was not as convinced. They questioned the need for the LOI and asked what it meant. Some folks took issue with the fuzzy language in the LOI. Councilperson Sharon Waters stated flatly that she didn't trust the LOI. Along with her other comments, Waters earned the only major applause of the evening.

As folks came forward, ways to explore the swap without the letter emerged. One man suggested revising the document to denote "interest" rather than intent, or asking Lin to submit a formal binding offer to exchange the properties before the City expends any funds to evaluate. In the end the council listened and the motion was withdrawn. It will resurface at next council session where the City's attorney will be present to explain implications and discuss whether the LOI is necessary to proceed.

Since the meeting, The Whistle Team has been driving the twisty highway of local politics. With quite a few bumps under our belts, we present some facts. Each one thoroughly researched and backed by data.

First, there is no legal requirement that prevents the council and mayor from moving ahead to spend money on exploring swap options. We offer this explanation from Florea himself, part of the public record, and delivered to me in an email on July 26 regarding my queries about the LOI: "We could have done it piecemeal without such a document, and certainly could have spent money without it..."

If that's the case, why was the LOI presented to the council as a needed tool to work with Mr Lin? Florea wrote me: "...He (Lin) asked for a form of commitment to explore the idea since he had other offers for the property and needed some level of understanding between us to "buy us time" and keep him from selling as long as we were moving forward on the agreed to path." Mayor Florea's account of the genesis of the LOI does not exactly line up with Lin's. We quote Mr Lin from the Council meeting on July 25, "The Letter of Intent was not initiated by me, it was initiated by the city so they can start a conversation."

In plain speak, according to Florea, Lin requested a legal document from the mayor. If not, he'd consider other deals. Leavenworth's attorney composed the letter at Florea's request. Let's find out the rest of the story.

The initial letter was drafted by the city sometime in July and handed off to Mr. Lin's legal counsel for edits. The Whistle has a copy of the redlined letter, deleting or altering the City's verbiage and replacing it with language desired by Lin. Many LOI's include, at a minimum, the intent of the parties, a financial component and the intended use of the property. This letter falls short, most importantly regarding intended use, which remains flexible for the buyer.

Florea's response to me, and to the public at the council meeting was basically that the language of the document doesn't much matter. If the City's lawyer has no problem with Lin's changes, there are no issues. The LOI is "ultimately non-binding" according to Florea and most of the council. But if words don't matter, why were they adjusted by Mr Lin?

Our legal research concludes that Washington law is very nuanced about when oral statements can be used to change the terms of a contract. Even the "not a binding agreement" language in the LOI wouldn't be sufficient to prevent Lin from arguing that oral representations were made to him by the City that fully committed them to proceed with a deal.

And what about the politics associated with a community deal of this magnitude in a mayoral election year? Council chambers became uncomfortable when mayoral candidate Becki Subido came to the podium. She directly and repeatedly declared the letter was not a legal requirement for moving forward. She asserted the LOI should be

“rejected in its entirety.” Subido looped back over her key points, as the council seemed to lose patience. In her remarks, she refuted the notion that the community can’t “handle change.”

Some felt it wasn’t a good look for Subido, but it didn’t make her information incorrect. Lin listened then responded several minutes later. As he wound up to take the swing, he prefaced his remarks, “The last comment I want to make, which is probably not very pleasant...” then went on to make a personal attack on Subido’s character and behavior. As Subido began denying the allegations from the sidelines, the mayor, shushed her and stated, “quiet,” giving the floor back to Lin who proceeded with his remarks, including characterizing Subido as unethical and her conduct “borderline illegal.”

Lin should have left it alone. His comments were unproved and beneath professional dignity. It was definitely not a good look for Florea. As parliamentarian, the mayor is responsible for fostering civility. Florea has no authority to make space for off-topic mudslinging against his opponent. Many people we’ve spoken with were unpleasantly surprised by the entire exchange.

We close by asking how you think we ought to move into the future with our treasured local pool? Let us know through our website whistle.com. Until next time, keep whistling. We hear you!