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Title: Action on a First Amendment to the Disposition and Development Agreement with Core Winchester LLC for the development of up to 361 multi-family residential units and 1.5 acres of open space at 1834 Worthington Circle/90 North Winchester (Agrihood Project on the former BAREC site)

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REPORT TO COUNCIL

SUBJECT

Action on a First Amendment to the Disposition and Development Agreement with Core Winchester LLC for the development of up to 361 multi-family residential units and 1.5 acres of open space at 1834 Worthington Circle/90 North Winchester (Agrihood Project on the former BAREC site)

COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

BACKGROUND

The property located at 1834 Worthington Circle/90 N. Winchester, is proposed for development with a mixed use, multi-family project (“Agrihood”) that is located along the west side of North Winchester Boulevard. The subject site consists of a single parcel of Planned Development (PD) zoned land with an area of 5.80 acres (252,806 SF - APN # 303-17-053).

Property History

In 2005, the former Redevelopment Agency executed a Purchase and Sale Agreement (2005 PSA) with the State of California / Department of General Services (State) in the amount of \$11.6 million to acquire a 5.8-acre vacant site located at 1834 Worthington Circle/90 N. Winchester Boulevard (Property). The Property was a portion of the 17-acre Bay Area Research and Extension Center (BAREC) owned by the State of California. The balance of the property (11.2 acres) was sold by the State to SummerHill Homes which in turn developed the Midtown Village project resulting in 110 single family homes and a 1-acre park. The terms of the Redevelopment Agency’s Purchase and Sale Agreement with the State required that the remaining 5.8-acre site be developed with approximately 165 senior affordable housing units.

In 2007, the Council granted multi-family zoning approval for a senior affordable housing project on

the Property. The 2007 affordable project, as planned at the time, required a subsidy from the Redevelopment Agency. The State sold the property to the City's Redevelopment Agency (now City's Housing Successor Fund) on January 5, 2012. As required under the 2005 Purchase and Sale Agreement, the Grant Deed contained a provision that required the start of construction of the senior affordable project by January 5, 2015 or ownership of the property would be subject to return to the State. This type of deed provision is known as a "reverter".

With the dissolution of redevelopment agencies throughout the State of California and the demise of the Santa Clara Redevelopment Agency as of February 2012, the tax increment funds necessary to assist the senior affordable development on the site were lost and the project stalled.

By October 2013, the City sent a request to the State seeking an extension on the commencement of construction. In November 2013, the State determined that justifiable cause existed to grant a 36-month extension, moving the deadline for commencement of development to January 5, 2017 but with the same reversionary requirement if the deadline was not met.

In early 2015, the City issued a Request for Proposals (RFP) seeking new development proposals for the Property. Developers were asked to build 165 senior affordable housing units and to propose a project that would limit (or eliminate) the need for City subsidies. On September 29, 2015, the Council selected Core Affordable Housing, LLC (Core or Developer) as the developer of the Property and authorized the negotiation of an Exclusive Negotiating Rights Agreement (ENA) with Core. Core's proposal was to develop the site with the required senior affordable housing together with mixed income multi-family housing, market rate townhouses, and an area for urban agriculture.

State Agreement

In order to allow for the development of market rate housing and to extend the State deadlines contained in both the 2005 PSA and the 2012 Grant Deed, approval by the Legislature and the Governor was required. SB680, signed by Governor Brown in September 2016, authorized several modifications to the Grant Deed including:

- Requirement for development of a minimum of 165 senior affordable housing units;
- Allowance for a matching number of market rate units;
- Requirement for a minimum 1 acre of open space;
- Requirement for immediate payment by the City to the State of \$4,050,000; and
- Extension of the outside completion of construction date to January 5, 2023 (or the Property would revert to State ownership).

Agreements with the State were finalized, and the City made its \$4 million payment to the State and recorded the amendments in January 2017.

Project Overview

On January 29, 2019, City Council approved a Disposition and Development Agreement (DDA) with Core together with a myriad of land use entitlements to allow for the development of up to 361 multi-family units and 1.5 acres of open space ("Agrihood") located at 1834 Worthington Circle/90 N. Winchester. These approvals included:

- Final Environmental Impact Report (FEIR)
- Statement of Overriding Considerations and a Mitigation, Monitoring, and Reporting Program

(MMRP)

- Rezoning from Planned Development (PD) to allow the development of 165 affordable senior apartments, 160 multi-family mixed-income apartments, and 36 townhouses
- Vesting Tentative Subdivision Map
- Disposition and Development Agreement (DDA)

The City is currently the owner in fee of the Property. Consistent with the original project concept, at closing, the Developer or its assignees will acquire the market-rate and mixed-income parcels at a value of \$15.7 million, which was determined by the City's total cost of acquisition. Upon payment of the property purchase price and satisfaction of the City's Conditions Precedent to Closing, the City will convey the parcels to the Developer or its assignees (excluding the portion to be developed as affordable senior housing). The City is also committed through the DDA to loan \$15.7 million back to the project.

The Agrihood project as proposed includes three separate elements that will provide 361 residential units:

- One building containing 165 below-market-rate (BMR) units reserved for seniors and veterans at an average of approximately 45% Area Median Income (AMI)
- A second building containing 160 mixed-income/market-rate rental apartments (including 144 market rate and 16 BMR units)
- A market rate development containing 36 for-sale townhomes.

The project also features 1.5 acres of open space, programmed for a variety of uses including urban agriculture, the basis of the project name.

Agrihood: Common Amenities and CC&Rs

The agricultural open space will be owned by a master Owner's Association (OA). Its members will include the owners of the two rental buildings and the townhome HOA will contribute to the cost of operations as well. Each member contributes to funding the master OA and ultimately, the master OA and Community Committee will decide how to program and operate the open space. The Community Committee would be comprised of local community members and organizations. Farmspace is the default third-party operator, however, that can change if the Community Committee offers a more favorable programming plan.

Through Conditions, Covenants & Restrictions (CC&Rs), prior to the Closing date, Developer and the City shall agree upon (a) the allocation of any costs and expenses for the construction, development, operation and maintenance of common areas, common amenities, parking infrastructure and subdivision improvements that will be used by the Affordable Project and (b) an open / common space and Agrihood operating plan and budget, which will be reflected in one or more written instruments to be recorded against the City's fee interest in the Affordable Housing Parcel. The CC&Rs shall also govern ownership and the transferability of the Common Amenities Parcel.

DISCUSSION

The applicant is requesting an amendment to their DDA with the City in order to restructure the City's loan commitment for the project from a single \$15.7 million loan into two separate loans: a \$6.7 million loan and a \$9 million loan. The project developers have tentatively obtained \$73.55 million in outside funding. The proposed restructuring of the City loan will enable the project to move forward

consistent with commitments made for the project to be competitive in obtaining this bond funding. The project could not move forward under the original structure because some changes were necessary to allow the project to qualify for tax credits and tax-exempt bond financing. Without approval of the First Amendment, the Developer would lose its \$50 million tax-exempt bond award and jeopardize the feasibility of the project.

Current funding commitments for the project include \$50 million in bond funding awarded by the California Debt Limit Allocation Committee (CDLAC) on September 16, 2020 and a \$23.55 million commitment of funding from Measure A, the Santa Clara County \$950 million affordable housing bond approved in 2016. As part of the CDLAC bond funding award, the Developer is required to close financing and start construction no later than six months after the award of the bond funding allocation, which is March 16, 2021.

When the project was originally conceived, the market for affordable housing bonds was not competitive. However, in 2020, affordable housing bonds became very competitive as CDLAC started to reach its federally mandated volume cap limitation. Given the competitive funding environment, City staff worked with the Developer to evaluate the competitiveness of the project's CDLAC application as well as potential solutions to increase the project's competitiveness. A key criterion for the evaluation is the percentage of the project to be funded by the bonds. At least 50% of the total project costs must be funded by bonds. Based on previous rounds of bond allocation data, the team learned that many projects were awarded based on a scoring tiebreaker, which is calculated based on the average bonds requested per housing unit. Thus, projects with lower total development costs and higher unit counts perform better in the tiebreaker scenarios.

The original DDA contemplated a single loan from the City to the affordable housing developer, Winchester Sustainable L.P., secured by the apartment project and providing to the City residual receipts from the mixed-income/market-rate apartment project. In the original structure the affordable housing development budget also absorbed the full build-out costs of the farm, amenities, commons and commercial space (Common Area). The proposed First Amendment to the DDA would bifurcate the city loan into two loans; one to build the affordable housing project and one to build the Common Area. The bifurcated loan structure will allow the Developer to lower the total development cost of the senior affordable housing project, which ultimately resulted in the Agrihood project receiving the second to last bond allocation of \$50 million in September.

Under the proposed amendment, at the escrow closing of the market-rate and mixed-income parcels, the City will convey a ground lease to the affordable housing developer for the senior affordable component of the project and re-invest the sales proceeds of the market rate and mixed income parcels (\$15,700,000) into the senior affordable housing project and Common Area through two separate Loan Agreements.

The loan amounts are subject to change based on final underwriting; however, the total of both loans shall not exceed \$15.7 million dollars. ***The result of the proposed First Amendment to the DDA would be the same as the transaction contemplated under the original DDA in the following terms:***

- City receives the same project components of affordable housing, amenities, farm, commons and commercial as negotiated in original DDA
- City gets same % Cash Flow from the Residual Receipts Split with the County from the affordable housing project.

- **City expects to receive the same total amount of Principal and Interest in 46 years from the housing project. The difference is it will receive more interest and less principal but same total amount.**
- Core is still responsible to deliver the housing and all the amenities, commons, farm and retail.

The proposed loan terms will include the following:

Loan A Proposed Terms:

- Approximately \$6.7 million loan to Winchester Sustainable, LP secured against the affordable housing project
- The interest rate on the loan shall be increased and shall be finalized by the City based on the closing financial projections to achieve the same aggregate loan payment as under the previous loan structure, currently estimated to be 5.86% simple interest
- Share of Residual receipts split with the County based on \$15.7 million
- Residual receipts flow increases after year 15 from 50% to City and County to 66.67% to City & County (improvement from original DDA)

Loan B Proposed Terms:

- Approximately \$9 million loan for the construction of the Common Area, which may be made to a nonprofit affiliate of the affordable housing developer who would in turn contribute funds to the farm owner
- The owner/developer of the Farm and Amenities will be an owner's association whose members are comprised of, among others, the senior affordable housing owner and the mixed income owner
- 0% interest rate
- Loan forgivable at year 55 if all terms and conditions of loan are satisfied

Affordability and Affordable Requirements

The Affordable Housing Requirements remain unchanged from the original proposal. The Developer will deliver the senior housing parcel with 165 units of housing to be leased as follows:

- (a) 54 permanent supportive housing (PSH) units to help homeless individuals and families with special needs
- (b) 54 units to be leased to 30% AMI Households
- (c) 55 units to be leased to a range between 40% and 80% AMI Households
- (e) 2 units to be leased to 120% AMI Households, provided that units to be leased to 120% AMI Households may be used as two resident apartment manager's units (the "Management Unit(s)") to the extent required under applicable law.

In addition to the 165 affordable units in the senior housing development, there will be 16 moderate-income units in the mixed-income apartment building.

Conclusion

The proposed amendment will allow for the implementation of an affordable housing project that makes a significant contribution toward meeting the City's affordable housing goals. The proposed loan restructuring will not have an impact upon the project or the City's financial position and will enable the project to move forward as currently financed.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

On January 29, 2019, the City Council approved a Mitigated Negative Declaration (MND) and the Mitigation Monitoring and Reporting Program (MMRP) for the proposed project.

FISCAL IMPACT

In total, the City has invested \$15.7 million on the Property. At closing, the Developer will acquire the market-rate and mixed-income parcels at a value of \$15,700,000, which will be deposited to the City's Housing Successor Fund and recoup the City's cost.

If approved, the City's loans of approximately \$6,700,000 for the senior affordable housing project and approximately \$9,000,000 for Common Area would be drawn from the City's Housing Successor Fund using the proceeds from the sale of the market-rate and mixed-income parcels by Core in the same amount. The principal and interest due under the loan to the senior affordable housing project would be paid 55 years from the date of the agreement. Annual payments from the loan to the senior affordable housing project would be made upon the availability of residual receipts and would be proportionally split between the subordinate lenders.

COORDINATION

This report was coordinated with City Manager's Office, City Attorney's Office, Department of Finance, and Department of Community Development.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>>.

RECOMMENDATION

Adopt a Resolution approving and authorizing the City Manager to execute the First Amendment to Disposition and Development Agreement with Core Affordable Housing for the development of up to 361 multi-family residential units and 1.5 acres of open space at 1834 Worthington Circle/90 North Winchester and further authorizing the City Manager to execute all other agreements (including a Ground Lease, Loan Agreements, Deeds of Trust, Promissory Notes, and Affordable Housing Agreement) in a form consistent with the First Amendment to Disposition and Development Agreement and all other documents necessary or convenient to close escrow and implement the purposes and terms of the Disposition and Development Agreement, as amended.

Reviewed by: Andrew Crabtree, Director of Community Development
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. First Amendment to DDA
2. Resolution