

**Request for City Council Committee Action from the Department of Community
Planning and Economic Development - CPED**

Date: January 5, 2010

To: Council Member Lisa Goodman, Chair, Community Development
Committee

Council Member Paul Ostrow, Chair, Ways and Means
Committee

Subject: Humboldt Greenway Lot Acquisition

Recommendation: Approve the following actions in regards to the Humboldt Greenway Redevelopment Project:

1. Authorize staff to negotiate and execute a purchase agreement between City of Minneapolis and Builders Mortgage Company, LLC to acquire the 49 vacant parcels in the Humboldt Greenway 5th Addition described in Attachment A and to expend up to \$47,000 of funds from Fund 01SHP for this acquisition;
2. Reduce the May 16, 2008 appropriation from Fund 01SHP from \$240,000 to \$47,000 for this transaction;
3. Authorize staff to consent to the voluntary foreclosure by Builders Mortgage Company, LLC of the vacant properties and improved lots described in Attachment B subject the terms and conditions listed in this staff report; and
4. Authorize staff to negotiate and execute Third Amendment to Land Conveyance Agreement between the City and Hennepin County to reflect the developer's default and City acquisition of vacant Humboldt Greenway lots.

Previous Directives:

- The City Council on September 19, 2008 designated 46 vacant, tax forfeit lots as non-conservation land, and directed Hennepin County to withhold from sale for six (6) months to negotiate the terms of City acquisition.
- The City Council authorized staff on May 16, 2008 to (1) negotiate and execute the Sixth Amendment to Redevelopment Contract between City of Minneapolis and Humboldt Greenway Development LLC and to expend up to \$240,000 of funds from SHP to reacquire 98 parcels in the Humboldt Greenway; and (2) to negotiate and execute Third Amendment to Land Conveyance Agreement between the City and Hennepin County.
- The Redevelopment Contract By and Between the Minneapolis Community Development Agency and Humboldt Greenway Development, LLC was executed on February 13, 2001, amended June 4, 2001, August 3, 2001, November 9, 2004, December 30, 2004 and March 23, 2006.
- The Land Conveyance Agreement by and between the Minneapolis Community Development Agency and Hennepin County was executed on February 1, 2001. This agreement was amended on March 21, 2003 and on October 28, 2004.

- The Board of Commissioners approved the sale of land in Phase I of the project area on July 15, 2000 and in Phase II on July 2, 2004 to CountryHome Builders, Inc./Humboldt Greenway Development, LLC.
- Land acquisition from Hennepin County was approved by the MCDA Executive Director on June 26, 2000, and January 29, 2001.
- Humboldt Greenway Tax Increment Financing Plan was approved by the MCDA Board of Commissioners on February 4, 2000.
- CountryHome Builders, Inc./Humboldt Greenway Development, LLC was selected as developer for this site by the MCDA Board of Commissioners on February 19, 1999.
- The Humboldt Greenway Redevelopment Plan was adopted on December 18, 1998 by the MCDA Board of Commissioners which authorized acquisition of property in the Humboldt Greenway Redevelopment Project.

Prepared by: Matt Goldstein, Senior Project Coordinator, 612-673-5075

Approved by: Wes Butler, Manager, CPED Multifamily Housing _____

Presenters in Committee: Matt Goldstein

Reviews

Permanent Review Committee (PRC): Approval ___ Date _____
 Policy Review Group (PRG): Approval ___ Date _____

Financial Impact

No financial impact
 Action requires an appropriation increase to the Capital Budget _____ or
 Operating Budget _____
 Action provides increased revenue for appropriation increase
 Action requires use of contingency or reserves
 Action is within the Business Plan
 Action requires a change to the Business Plan
 Other financial impact: Reduce the May 16, 2008 appropriation from Fund
 01SHP from \$240,000 to \$47,000 for this transaction
 Request provided to the Finance Department when provided to the Committee
 Coordinator

Community Impact

Neighborhood Notification (Ward 4)- The Lind-Bohanon and Shingle Creek Neighborhood Associations as well as the two active Humboldt Greenway homeowners associations have been notified in writing of staff’s preliminary discussions with Builders Mortgage Company, LLC and the tentative plan to reacquire Humboldt Greenway properties. Each of these associations were notified previously in 2008 as part of the May 2008 previous directive. Hennepin County staff has also been notified. City Goals – Foster the development and preservation of a mix of quality housing types that is available, affordable, meets current needs and promotes future growth

Affordability Targets – Because the original PUD was approved before the adoption of the City’s Unified Housing Policy in 2004, affordable housing targets did not apply.
Comprehensive Plan – 4.9: Minneapolis will grow by increasing its supply of housing;
4.11: Minneapolis will improve the availability of housing options for its residents.
Zoning Code – In compliance with Humboldt Greenway PUD and applicable zoning regulations.

Project History

Following an extensive planning and community engagement process in the 1990s, Hennepin County through its Community Works program completed the \$28 million Humboldt Avenue Greenway / Shingle Creek Regional Pond and Wetland project which included a significant greenway amenity, enhancements to Shingle Creek, and several new residential redevelopment sites as described in the Humboldt Greenway Redevelopment Plan and Tax Increment Financing Plan, both in 1999. A Land Conveyance Agreement was executed with Hennepin County on February 1, 2001 for the purchase of 955,935 sq. ft. of land for approximately \$2,052,250 (\$2.15 per square foot). This agreement has subsequently been amended twice in part to defer the repayment of this land cost and pass on the costs of some completed public improvements to coincide with the City’s redevelopment agreement with the developer.

In February 1999, the MCDA Board of Commissioners approved the selection of CountryHome Builders/Humboldt Greenway Development, LLC, as developer for the project area. The developer was to pay the land and public improvement costs in installments as the developer sold units to homeowners under a note and a mortgage that are tied to a redevelopment agreement.

In total about 120 (59%) of the 202 planned units in the Humboldt Greenway project have been built, and about seven of those built homes are still owned by the developer with construction financing provided by his lender, Builders Mortgage Company, LLC. The first phase is comprised of 94 units (58 single family and 36 townhomes) at a total development and privately financed construction cost of approximately \$23 million. This phase is built-out. The second and final phase is located on the 4900 and 5000 blocks of Humboldt and Girard Avenues North, as well as parcels along 50th Avenue North from Dupont to Humboldt Avenues North. The 108-unit second phase is comprised of three different housing unit types: 65 detached, two story single family homes, 24 town homes and 19 row homes.

Vacant Properties and Available Inventory Homes

There are 98 undeveloped parcels (8.49 acres platted for 83 units, all in Phase II) in two bundles, those that have forfeited to Hennepin County due to non-payment of property taxes and those that are privately owned but at risk of being forfeited or foreclosed upon. The tax forfeit properties are discussed in a later section of this report. Due to the poor residential sales market and economic recession, sales activity stopped in 2008, and the last two homes sold were sold with significant financial losses. The developer made a business decision to stop paying property taxes for the majority of the vacant parcels in 2005 and 2006. The City has declared the developer to be in default of our redevelopment agreement due in part to the non-payment of property taxes. The

developer is financially upside down in this project: the existing homes will only sell for prices that are less than the construction cost. The developer and the lender are not accepting short sale purchase offers for the remaining inventory homes.

The remaining privately held Humboldt Greenway parcels are expected to either be forfeited due to nonpayment delinquent taxes in 2010 or to be foreclosed upon by the developer's lender if the City does nothing. If the lender forecloses, the City's mortgage goes away (along with any preexisting mechanics liens). The City's contractual rights against a limited liability company and reversionary rights in the property would arguably survive a foreclosure, but the LLC has no unencumbered assets and the City could reasonably expect a legal challenge from the lender if the City was to attempt to enforce its reversionary rights. If the lender gained control of the property, the City would have little control over whether the new homes would be consistent with previously built Humboldt Greenway homes and neighborhood expectations on quality of construction. If the lender does not foreclose and the property goes tax forfeit, the City, if it desires, would then reacquire the parcels for fair market value from Hennepin County. The proposed approach achieves City control at a minimal expense.

Acquisition Terms with Builders Mortgage Company, LLC

To keep the remaining, privately held parcels out of tax forfeiture and to further ensure that the original development plan is implemented, Staff has negotiated the following preliminary terms with Builders Mortgage Company, LLC for the City to reacquire the remaining vacant parcels that have not been forfeited:

1. Foreclosure consent: City consents to a voluntary foreclosure by Builders Mortgage Company, LLC
2. Transaction cost: City pays the back taxes for all 47 vacant lots, not to exceed \$46,866.10.
3. Clean title: Builders Mortgage delivers to the City clean title for the vacant lots.
4. Release Girard LOC: City releases Girard Letter of Credit (\$186,955) (which only secures public improvement obligations as described below) conditioned upon Builders Mortgage replacing approximately six sidewalk panels. This does not require Council action.
5. Certificate of Completion: After unit inspection, CPED staff issues Certificates of Completion for the completed units.

The foreclosure removes all of the preexisting encumbrances, including mechanics liens, and notes and mortgages held by the lender and the City. This includes removing the City's mechanisms to collect the \$95,865 that is owed to Hennepin County under the Land Conveyance Agreement. The lender has indicated that taking this step is necessary to reduce outstanding costs that are associated with each home to make them marketable in the current economy and housing market. The lender can complete the foreclosure within 90 days.

The City's transaction cost is paying the back taxes for all 47 vacant parcels up to \$46,855.10. While there is no land cost in this transaction, the back taxes equates to

\$.47 per square foot or \$956.45 per lot. The developer's lender will pay the foreclosure costs and provide the City with clean title, free of preexisting encumbrances such as mechanic's liens, notes and mortgages. The CPED appraiser has estimated that the current land value is greater than \$1.00 per square foot, so it is very likely that the City's transaction and holding costs will be reimbursed through the future sale of these properties for development. Therefore, this cost is likely significantly less than the fair market value the City would have to pay if we were to purchase the lots from Hennepin County after tax forfeiture.

Staff has estimated the acquisition and holding costs over a three year period and anticipates that the City will be able to recover these costs through the eventual sale of the property to a future developer or builder. The total cost through 12/31/12 is approximately \$79,000 (\$1,613 per lot or \$.79 per square foot): approximately \$47,000 for 49 vacant parcels' back taxes, \$6,550 for 2010 taxes (until City exemption takes effect and \$8,500 per year for lawn care and snow removal.

As part of one of the amendments to the redevelopment agreement, the developer provided the City with the Girard Letter of Credit as a guarantee to install and repair public infrastructure related to new home construction on parts of Girard, 49th, and 51st Avenues North. Staff has inspected the site and concluded that the only outstanding tasks that remain related to built development and that must be addressed now are the replacement of six sidewalk panels, which will be replaced by the developer's lender.

County Land Conveyance Agreement Amendment

Nearly all of the undeveloped parcels were Hennepin County properties conveyed on a deferred basis through the City to the developer. A Land Conveyance Agreement was executed with Hennepin County in 2001 as a deferred, no interest financing mechanism to reimburse Hennepin County for land acquisition and public improvement costs incrementally as newly constructed homes were sold to private buyers. Currently, Hennepin County is owed \$911,402.84 for the land and approximately \$58,883.65 for public improvements. This amount includes the outstanding land and public improvement costs that will not be collected for the existing, unsold inventory homes due to the City consenting to the foreclosure. Hennepin County only gets paid if payments are made by the developer.

This agreement needs to be amended to reflect the developer's default, the tax forfeiture of 47 lots in 2009, and the City's possible acquisition of the remaining 47 vacant lots discussed in this report. The basic terms that staff will discuss with Hennepin County include:

1. Preliminary terms of the acquisition of the 47 tax forfeited lots including establishing fair market value (staff anticipates a separate Council request seeking authorization to complete the acquisition).
2. Repay the City's out-of-pocket costs related to re-acquiring and holding the lots.
3. Any remaining proceeds from the sale of the property would go to Hennepin County to repay its foregone deferred purchase price and un-reimbursed public improvement costs up to a negotiated maximum level.

4. Surpluses above this level would be divided equally between the City and Hennepin County.

Hennepin County staff has been briefed on the reacquisition strategy outlined above and is prepared to undertake negotiations consistent with this staff proposal.

Update: Twin Cities Community Land Bank

Staff has had numerous preliminary discussions with Twin Cities Community Land Bank staff about the possibility of utilizing the Land Bank to either hold and maintain the vacant parcels on behalf of the City or to carry the property and participate in their future development. Once staff makes progress on the acquisition of the tax forfeited parcels from Hennepin County, staff will be able to discuss the possibility of working with the Land Bank in greater detail and perhaps bring forward a future Council action request to partner with the Land Bank in Humboldt Greenway.