

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

Date: March 23, 2010

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

Subject: Revised Recommendation for Humboldt Greenway Lot Acquisition

Revised 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 at an estimate of \$100,000* in the Humboldt Greenway 5th Addition described in Attachments A-1 and A-2. The funding source will be the Vacant Housing Recycling program.
2. Authorize staff to consent to the voluntary foreclosure by Builders Mortgage Company, LLC of the vacant properties and improved lots described in Attachments B-1 and B-2, and further described in this staff report; and
3. Authorize staff to negotiate the terms for a third amendment to the Humboldt Greenway Land Conveyance Agreement.

Previous Directives:

- The City Council on September 19, 2009 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 the 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

*The estimated amount will be confirmed by Hennepin County staff and a substitute "not to exceed" number will be recommended prior to the March 23rd CD meeting.

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 was notified previously in 2008 as part of the May 2008 Council 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. The project 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.

Humboldt Greenway was contemplated to have 202 units developed over two phases. The first phase of 94 units (58 single family and 36 townhome units) and a senior apartment complex has been built out. The 108-unit second phase was platted as the Humboldt Greenway 5th Addition and is located on the 4900 and 5000 blocks of Humboldt Lane North and Girard Avenue North, as well as parcels along 50th Avenue North from Dupont to Humboldt Avenues North.

Table 1: Phase II Lot Status Summary	
Lots built and sold	2
Hennepin County tax forfeit lots	46
Builders Mortgage lots & model homes	60
<i>Phase II lot total</i>	108

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 appears to be financially upside down in this project: the existing homes will only sell for prices that are less than the construction cost. The developer and Builders Mortgage Company, LLC (Builders Mortgage) are not accepting short sale purchase offers for the remaining model homes.

In 2008, the City Council confirmed the commitment to the original development plan by authorizing staff to pursue an amendment to our redevelopment agreement so the City could reacquire clear title to the vacant properties, hold them for a period of time, then go through a public process to find a new builder or developer to pick up from where the current developer left off. This action described below is consistent with that previous directive.

Vacant Properties and Available Model Homes

The Phase II lots in Table 1 fall into one of three categories: Built and sold to private buyers, tax forfeit lots controlled by Hennepin County (acting on behalf of the State Department of Revenue) due to non-payment of property taxes, and the Builders Mortgage lots that are controlled by the developer's lender and the subject of this report.

The remaining privately held vacant Humboldt Greenway parcels are expected to either be forfeited due to nonpayment of delinquent taxes in 2010 or to be foreclosed upon by Builders Mortgage if the City does nothing. If Builders Mortgage forecloses, the City's/County's mortgage and note go away (along with any preexisting mechanics liens). The City's contractual rights against a limited liability company (LLC) 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 Builders Mortgage if the City was to attempt to enforce its reversionary rights. If Builders Mortgage 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, could then elect to reacquire the parcels for fair market value from Hennepin County. The proposed approach with Builders Mortgage achieves City control of clear title quicker and 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 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 for the 60 lots listed in Attachments B-1 and B-2.
2. Transaction cost: City pays the back taxes for all 49 foreclosed vacant lots listed in Attachments A-1 and A-2.
3. Clean title: Builders Mortgage delivers to the City clean title for the foreclosed vacant lots.
4. Certificate of Completion: After unit inspection, CPED staff inspects the unoccupied model units and issues Certificates of Completion for the completed units.

Builders Mortgage can complete the foreclosure within approximately 90 to 120 days at its own cost and provide the City with clean title, free of preexisting encumbrances such as mechanic's liens, notes and mortgages held by Builders Mortgage 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 for the seven built but unsold homes. 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 City's transaction cost to acquire all 49 vacant parcels at approximately \$100,000.00 (less than \$2,000 per lot) for the back taxes, interest, penalties and fees. This acquisition amount includes a approximately 15% contingency over the estimated \$84,770.

Staff has estimated the holding costs over a three year period for the 49 vacant lots 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 December 31, 2012 is approximately \$10,000.

The CPED appraiser has preliminarily estimated that the current land value is greater than \$2,000 per lot, so it is anticipated 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.

Update: Tax Forfeit Properties and the County Land Conveyance Agreement

Because Hennepin County and the City have jointly pursued the Humboldt Greenway redevelopment project together, Hennepin County staff has been briefed on the reacquisition strategy outlined above. The Land Conveyance Agreement lays out the terms of this cooperative relationship. The 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. Our agreement states that Hennepin County only gets paid if payments are made by the developer.

If the Humboldt Greenway development project had developed and sold as planned, the maximum remaining amount the County would have received under the terms of the Land Conveyance Agreement would have been \$911,402.84 for the Remaining County Parcels and \$149,732.71 for the Public Improvement costs (\$1,682.38 per unit for the 89 remaining units). 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 and the properties already tax forfeited to the County. Hennepin County Taxpayer Services (who is acting on behalf of the State Department of Revenue) now controls 46 of the developed, vacant parcels that are subject to the Land Conveyance Agreement due to non-payment of back taxes, so the City no longer has the ability to facilitate the reimbursement of these costs to the County through a redevelopment agreement. CPED has hired an outside appraiser to establish a fair market value for our acquisition discussions with Hennepin County Taxpayer Services staff.

City staff has provided a preliminary term sheet for a possible Third Amendment to Land Conveyance Agreement to reflect the developer's default, the tax forfeiture of 46 lots in 2009, and perhaps the City's acquisition of the remaining vacant lots discussed in this report. While County staff is reviewing the preliminary terms, the County Board has not yet authorized staff to negotiate with the City.

The basic terms that City staff have provided to County staff are:

1. Acknowledgement of the tentative arrangement with Builders Mortgage discussed above.
2. An updated reimbursement methodology for the future sale of the vacant lots to reimburse the City for out-of-pocket acquisition and holding costs and to repay Hennepin county's foregone deferred purchase price and un-reimbursed public improvement costs. The current strategy being tentatively and preliminarily discussed is to estimate the total acquisition, holding, forgone, and un-reimbursed costs through the end of 2012 and distribute revenue proportionally on an incremental basis as lots are sold.

A future Request for Council Action will be presented when the terms have been negotiated with County staff.

Update: Twin Cities Community Land Bank and Next Steps

Staff has had numerous preliminary discussions with Twin Cities Community Land Bank staff about the possibility of utilizing the Land Bank to either hold or 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 Builders Mortgage lots and the tax forfeited parcels from Hennepin County, staff will be able to discuss the

possibility of working with the Land Bank or pursuing a Request for Proposals to find a qualified master developer or builder to continue the development.