

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

Date: August 24, 2010

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

Subject: **Award Exclusive Development Rights to Lupe Development Partners, LLC  
for 129 Plymouth Avenue N.**

## Recommendation:

1. Grant Lupe Development Partners, LLC exclusive development rights to 129 Plymouth Avenue N. for one year (through August 24, 2011), contingent upon the City's acquisition of that property from MnDOT, with one potential extension through August 24, 2012, as described in this report.
2. Direct City staff to continue its analysis of Lupe's proposal, negotiate mutually agreeable terms and conditions for a redevelopment agreement under the basic framework outlined in this report, and return to the Council for authorization and further direction when appropriate.

**Previous Directives:** All planning, zoning and land use issues that required City Council consent were approved by the City Council on August 28, 2009. In addition, the City Council approved the submission of an application to DEED for a brownfield investigation grant for this property on April 24, 2009, and accepted that grant on August 14, 2009. The City Council approved the submission of applications to DEED and Hennepin County for cleanup grants for this property on October 30, 2009 and accepted those grants on February 26, 2010. All of the aforementioned grant applications were specifically based on the redevelopment concept proposed for the site by Lupe Development Partners, LLC.

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Approved by: Charles T. Lutz, Deputy Director CPED \_\_\_\_\_

Catherine A. Polasky, Director of Economic Policy & Development \_\_\_\_\_

Presenters in Committee: Kevin Carroll, Principal Project Coordinator

## Financial Impact

Other financial impact -- As noted in the discussion that appears below, CPED management has agreed that the \$208,000 cost of acquiring the property in question from MnDOT can be initially funded through the use of the MILES [Minneapolis Industrial Land and Employment Strategy] Fund pending reimbursement through the subsequent and anticipated sale of the property to Lupe.

## Community Impact

Neighborhood Notification – This project was presented to the North Loop Neighborhood Association [NLNA] on three occasions between March and June of 2009, and the NLNA issued a letter of support on June 25, 2009. The North Washington Industrial Park Jobs Park Committee indicated its support for the project at a meeting on March 17, 2009.

City Goals - Contributes to “Jobs and Economic Vitality,” Livable Communities, Healthy Lives,” “Eco-Focused,” and “A City that Works.”

Sustainability Targets - Contributes (or potentially contributes) to the “Stormwater,” “Brownfield Sites,” and “Employment and Poverty” targets.

Comprehensive Plan – The proposed redevelopment elements conform to the Minneapolis Plan for Sustainable Growth. All required land use approvals for the project were granted by the Planning Commission on August 24, 2009 and by the City Council on August 28, 2009.

Zoning Code - Proposed redevelopment elements comply with the zoning regulations. All required zoning approvals were granted by the Planning Commission as of August 24, 2009 and by the City Council on August 28, 2009.

Living Wage/Business Subsidy Agreement - Not at this time.

Job Linkage - Not at this time.

## **Background Information**

The Minnesota Department of Transportation (hereinafter “MnDOT”) originally acquired the property located at 129 Plymouth Avenue North in 1969 in connection with the potential construction of a new roadway (I-335). When that project was delayed, MnDOT leased the property to a battery reclamation business in 1973. The I-335 project was cancelled in the early 1980’s, at which time the lease to the battery reclamation company was also cancelled. Around that same time, the EPA determined that the property was highly contaminated, and it was added to the State Superfund list under the name “Shafer Metal Recycling” site. MnDOT remediated the site during 2004 and 2005, and the site was thereafter “delisted” by the MPCA on or around September 9, 2005.

MnDOT and the MCDA apparently had discussions in the early 1980’s regarding the potential acquisition of the property by the MCDA, but no such transaction was ever consummated, presumably due to the discovery of the extensive site contamination.

CPED staff initiated new discussions with MnDOT in 2008 regarding the possible redevelopment of the property. MnDOT ordered an appraisal of the property, which was completed on March 1, 2008 and indicated a value of \$293,000.

CPED staff then prepared, with MnDOT’s knowledge and consent, a Request for Proposals [RFP] regarding the site. The RFP was posted on the City’s web site on or around August 18, 2008, and published in Finance and Commerce on or about August 22, 2008. Proposals were due by September 5, 2008. Lupe Development Partners, LLC [hereinafter “Lupe”] was the only party that submitted a proposal for the development of the site.

After discussions with City development and planning staff regarding possible variations and refinements of its original proposal, Lupe began pursuing required planning and land use approvals in May of 2009. Although there were intermittent delays occasioned by various changes in the nature

of the project, all required planning, zoning and land use approvals were obtained from the Planning Commission by August 24, 2009 and from the City Council by August 28, 2009. The development concept upon which the approvals were based included a single-story, multiple-tenant retail shopping center with a drive-through restaurant. The breakdown of the total square footage (10,153 sq. ft.) consisted of 3,375 sq. ft. for the drive-through restaurant, 1,580 for a second restaurant, and one large 5,198 sq. ft. space that could be divided into smaller retail spaces or used for a single retail, office or light-industrial user.

During the time that planning approvals were being sought, and since then, City staff interacted with MnDOT staff regarding the market value of the property in question. At one point, MnDOT agreed to reduce the proposed sale price from \$293,000 to \$266,000 based on a square footage error that City staff had discovered in MnDOT's appraisal. CPED's staff appraiser concurred with this revised amount in a report dated August 27, 2009.

However, the \$266,000 value was based upon an assumption that the site needed no further environmental remediation. MnDOT agreed in January of 2010 to further reduce the sale price from \$266,000 to \$208,000 based on evidence provided by City staff and Lupe's environmental consultant regarding the projected cost of additional remediation that will be required to redevelop the site. Given this additional information on the condition of the site, CPED's staff appraiser has indicated that he concurs with MnDOT's final adjusted market value figure (and agreed upon sale price) of \$208,000.

CPED's original plan for the redevelopment of the site by Lupe envisioned a standard conduit transaction, whereby the City would acquire the property from MnDOT and contemporaneously convey it to Lupe, with the understanding that Lupe would commence construction shortly thereafter. However, Lupe is not currently positioned to start construction in the near future, because it has not yet finalized contractual arrangements with prospective tenants or secured construction financing, so a conduit transaction is no longer considered appropriate by City staff. To increase the likelihood that a purchaser will be able to perform on the terms of a redevelopment contract, City practice is to sell property for development (either directly or through a conduit transaction) only when full project financing has been secured.

Nevertheless, City development staff members continue to believe that the proposed Lupe project has merit. To preserve this development opportunity, and to secure the final sale price proposed by MnDOT, CPED staff would prefer to move forward with the acquisition of the property from MnDOT at this time and concurrently obtain the Council's approval of an exclusive development agreement with Lupe for a period of time consistent with Lupe's current planning approvals (which will remain valid through August 24, 2010 and can be administratively extended upon request for one year after that date). After the acquisition of the property from MnDOT, property management costs during the remainder of the exclusive development period would be borne by the developer through (a) a lease agreement that would also give Lupe the right to post signage on the property to help market it or (b) some other type of contract or agreement that would enable the City to recover its actual property management costs from Lupe.

CPED management has agreed that the \$208,000 cost of acquiring the property from MnDOT can be initially funded through the use of the MILES [Minneapolis Industrial Land and Employment Strategy] Fund, pending reimbursement through the anticipated sale of the property to Lupe for the same price (plus the City's standard 10% fee to cover administrative and legal costs related to this type of transaction). The expected sale to Lupe will require a public hearing and City Council authorization, which will be addressed in a future report when tenants and project financing have been secured and the project is better positioned to proceed.

Granting Lupe Development Partners, LLC exclusive development rights to 129 Plymouth Avenue N. in a manner consistent with recommendations outlined herein will provide Lupe with additional evidence of the City's support for its proposed redevelopment of the site, thereby enhancing Lupe's ability to market the property and secure tenants. In the event that Lupe desires to extend its exclusive development rights beyond August 24, 2011, Lupe must request such an extension from CPED Business Development staff in writing by July 1, 2011 and provide evidence of its progress to date, including a summary of marketing efforts, costs incurred, and updated development/construction budgets. If satisfactory progress is demonstrated to City staff, staff will recommend to the City Council that Lupe's exclusive development rights be extended for an additional year (i.e., through August 24, 2012), contingent upon the contemporaneous extension of Lupe's prior planning, zoning and land use approvals.

### **Benefits**

The benefits that are anticipated to result from the proposed Lupe development include job creation, new construction and related tax base enhancement, removal of blight (the site in question has been vacant and minimally maintained by MnDOT for many years), and the provision of new services and amenities for neighboring businesses and residents.

### **Next Steps:**

- The City and Lupe will continue to collaborate in an effort to effectuate the site redevelopment plan proposed by Lupe and approved by the Planning Commission.
- Lupe will continue to market the property in question to secure tenants and will document its efforts.
- The City will proceed with the steps required to finalize the acquisition of the property from MnDOT.
- The City and Lupe will negotiate and enter into a Redevelopment Contract when Lupe is ready to proceed with construction.
- The City will convey the property to Lupe pursuant to the terms of the Redevelopment Contract, and Lupe will commence construction.

### **Recommendations:**

- Grant Lupe exclusive development rights to 129 Plymouth Avenue N. through August 24, 2011, contingent upon the City's acquisition of the property from MnDOT, with one potential extension through August 24, 2012, contingent upon the contemporaneous extension of Lupe's prior planning, zoning and land use approvals and any further Council authorization that may be required.
- Direct City staff to continue its analysis of Lupe's proposal, negotiate mutually agreeable terms and conditions for a Redevelopment Contract under the basic framework outlined in this report, and return to the Council for authorization and further direction when appropriate.