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

Date: March 2, 2010

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

Council Member Betsy Hodges, 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 Attachments A-1 and A-2;
2. Authorize staff to negotiate and execute a purchase agreement between City of Minneapolis and Builders Mortgage Company, LLC to acquire the seven existing built but unoccupied model or inventory homes in the Humboldt Greenway 5th Addition listed as "built" in Attachment B-1;
3. 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, all as further described in this staff report; and
4. 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

- 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.

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Approved by: Charles T. Lutz, CPED Deputy Director _____
Thomas Streitz, Director of Housing Policy & Development _____
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

__X__ No financial impact (the funding appropriation was completed in 2008)
_____ 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:
_____ 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 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 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.

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 and final 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
Phase II lot total	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, not to exceed $48,000.00.
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.

Staff is also seeking separate authorization to negotiate with Builders Mortgage to acquire the existing seven model homes that have been built but are not occupied. Taking this action will enable the City to control who buys and occupies the property. While each of these units has received a Certificate of Occupancy, some require minor finishing improvements to be marketable. The funding source would be NSP1. If staff is unable to negotiate an acquisition that meets the NSP requirements, the acquisition will likely be abandoned because an alternate outside funding source has not been identified. The acquisition cost has not yet been determined. The property addresses are listed as “built” in Attachment B-1 and included below as Table 2.

Table 2: Built Properties

PID	Address	Street
12-118-21-23-0233	5023 1/2	Girard Avenue No.
12-118-21-23-0235	5023	Girard Avenue No.
12-118-21-23-0236	5025	Girard Avenue No.
12-118-21-23-0237	5027	Girard Avenue No.
12-118-21-23-0238	5025 1/2	Girard Avenue No.
12-118-21-23-0243	5033	Girard Avenue No.
12-118-21-23-0244	5035	Girard Avenue No.
12-118-21-23-0245	5033 1/2	Girard Avenue No.
12-118-21-23-0260	5000	Humboldt Lane No.
12-118-21-23-0261	5004	Humboldt Lane No.
12-118-21-23-0262	5006	Humboldt Lane No.

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 up to $48,000.00 ($.42 per square foot or $979.59 per lot) for the back taxes. NSP funds would be used rather than 01SHP funds as authorized in the May 16, 2008 appropriation of $240,000 to acquire the vacant lots in Humboldt Greenway.

Staff has estimated the acquisition and 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 12/31/12 is approximately $80,000 ($1,632 per lot or $.79 per square foot): approximately $48,000 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.

The CPED appraiser has preliminarily 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.

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 possible 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.