




Office of the City Manager

CONSENT CALENDAR
February 5, 2013

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Jane Micallef, Director, Health, Housing & Community Services
Department
Subject: Option Agreement – 3135 Harper Street

RECOMMENDATION

Adopt first reading of an Ordinance approving an Option Agreement between the City of Berkeley and Satellite AHA Development, Inc. (SAHAD) for the disposition and development of the City-owned property at 3135 Harper Street in Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

Satellite entered into a purchase agreement with the former owner to acquire the site located at 3135 Harper Street in March 2010. Satellite commissioned Yovino-Young to prepare an independent appraisal of the value of the property. Pursuant to that appraisal, the April 2010 market value of the property was \$1,460,000. Staff believes that the property has not increased substantially in value since that time. For several years, the Most Worshipful Prince Grand Lodge through its nonprofit affiliate, the Most Worshipful Prince Hall Arms, Inc. (collectively “Masons”), owned the property. In 1999, the City invested approximately \$582,000 in federal HOME and CDBG funds via a HTF loan and worked with the Masons for many years to attempt to develop the site. The City subsequently enforced its deed of trust securing the HTF funds and acquired the property through a trustee’s sale.

The proposed purchase price in the Option is \$500. However, disposition of the property for this price is conditioned upon Satellite obtaining an Affordable Housing Program (AHP) loan from the Federal Home Loan Bank. This conditional price qualifies as a “land donation” under the Federal Home Loan Bank’s Program which defines any purchase price of less than \$1,000 as a land donation. Those projects that qualify as such are significantly more competitive in the AHP application scoring. A higher purchase price would likely eliminate any chances of an AHP award to the project. This award could provide up to a \$615,000 long-term loan as part of the project’s financing. The minimum potential AHP award for the project is \$410,000. If the minimum AHP award would not be granted, the purchase price would then be the current fair market value of an appraisal to be conducted for the TCAC application.

On December 11, 2012, the City Council approved a \$2,300,000 Housing Trust Fund (HTF) reservation for this project. Additionally, in May 1998 Council awarded the former Prince Hall Arms project \$582,000 in HOME and CDBG funds. If the City does not continue to demonstrate progress towards development of affordable housing to HUD, the City may have to pay back the federal funds already expended on the project to date.

CURRENT SITUATION AND ITS EFFECTS

On July 10, 2012, Council adopted a resolution selecting Satellite Housing (“Satellite”) to develop the 3135 Harper Street site (Resolution No. 65,962-N.S.) based on the proposal submitted in response to the City’s January 2012 RFP. Council directed the City Manager to negotiate and work with Satellite to develop a more refined financing plan, including working with the Berkeley Housing Authority regarding a potential allocation of Project Based Section 8 certificates, and developing a plan to facilitate Satellite’s application for Low Income Housing Tax Credits and/or other public or private funding in 2013.

On September 27, 2012, the City and Satellite entered into an Exclusive Negotiating Rights Agreement (ENRA) which expires on February 28, 2013 in order to negotiate and execute an Option Agreement. If an Option has not been executed by the City and Satellite by the expiration date, then the ENRA terminates. The ENRA contemplates the merger of Satellite and Affordable Housing Associates as SAHA. Execution of the Option Agreement is an application threshold requirement for SAHAD to demonstrate site control in its application for tax credit financing and is a competitive requirement in its AHP application. The AHP application submission deadline is April 1, 2013. Therefore, the Council must act to adopt the first reading of the proposed ordinance authorizing the Option Agreement at this meeting with the second reading proposed to take place on February 19, 2013 in order for the ordinance to be in effect by SAHAD’s application deadline for the AHP funding.

SAHA is seeking 21 Project Based Section 8 vouchers from the Berkeley Housing Authority (BHA) as part of its financing proposal. At its January 2013 meeting, the BHA Board did not approve SAHA’s request, but directed BHA staff to review the request and bring it back for its consideration at the February meeting.

If the BHA approves SAHA’s request for 21 Project Based vouchers, SAHA’s proposed July 2013 Tax Credit application becomes much more competitive. SAHA has indicated that the vouchers would provide housing for 21 disabled seniors. These vouchers would also provide a deeper affordability level for all the residents.

BACKGROUND

The City’s involvement with the 3135 Harper Street site dates back to May 1998 when Council initially awarded HOME and CDBG funds to the Most Worshipful Prince Hall Grand Lodge, Free and Accepted Masons of the States of California and Hawaii, Inc. (the “Grand Lodge”). Since the organization was unable to develop the site and incurred more debt on the property, other lenders foreclosed on the Grand Lodge. Satellite

unsuccessfully attempted to purchase the site in 2011 from the lender who had foreclosed on the property. The City, holding the senior deed of trust on the site, acquired the property through a trustee's sale in September 2011. The City has since issued an RFP for the site and Satellite was chosen as the exclusive developer for the site.

RATIONALE FOR RECOMMENDATION

As stated above, SAHA must demonstrate site control in order to apply for tax credits and the AHP loan. However, the proposed Option Agreement is conditioned upon negotiation and execution of a Disposition and Development Agreement (DDA) prior to the end of the Option term (December 31, 2013). The DDA in turn will require that property disposition will not occur until SAHA secures all necessary financing for development of the project as proposed by it. Therefore, disposition of the property will not take place until after SAHA secures all its financing and proceeds to construction loan closing by March 31, 2014. If SAHA does not secure its Low Income Housing Tax Credit financing and the remainder of the project funds in 2013 to permit it to acquire the property from the City, then the property remains with the City. The City would then need to quickly commit and start expending a large portion of the HOME funds included in the \$2,300,000 SAHA Housing Trust Fund (HTF) commitment to the HTF pipeline of projects Council authorized on December 11, 2012 per Resolution No. 65,962-N.S.

Council approval is required for execution of the DDA and staff will, therefore, present it for the Council's consideration at a future meeting.

ALTERNATIVE ACTIONS CONSIDERED

Although BHA has not yet awarded Project-Based Section 8 vouchers, providing the Option Agreement at this time will demonstrate site control and enhance the project's competitiveness for AHP funds and other possible financing sources including an award of tax credits in the July 2013 application round. Without the Option Agreement, SAHA cannot demonstrate site control needed to secure the other sources of financing.

Council could choose not to authorize the Option Agreement. Taking this action would jeopardize the overall financial feasibility of the project. The alternative action would then be to sell the site for the development of a market rate project.

CONTACT PERSON

Roger Asterino, Community Project Coordinator, HH&CSD, 981-5405

Attachments:

1: Ordinance

Exhibit A: Legal Description of Property

Exhibit B: Real Estate Option Agreement

ORDINANCE NO. -N.S.

AUTHORIZING THE CITY MANAGER TO EXECUTE AN OPTION AGREEMENT AND ALL OTHER NECESSARY DOCUMENTS TO SELL CERTAIN REAL PROPERTY LOCATED AT 3135 HARPER STREET

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Council of the City of Berkeley (the "Council") finds as follows:

a. The City of Berkeley (the "City") owns certain real property located at 3135 Harper Street (the "Property"). The Property is more particularly described in the legal description attached hereto as Exhibit A, which is incorporated herein by this reference; and

b. The Property is currently unimproved; and

c. In January 2012, the City issued a Request for Proposals to develop the property as an affordable housing site; and

d. Satellite Housing submitted a proposal to develop: (i) forty-two (42) senior rental units including forty-one (41) one-bedroom units affordable to senior residents earning less than 60% of area median income and one (1) property manager's unit ; (ii) a four (4) story building consisting of approximately forty-two thousand and three hundred (42,300) square feet; (iii) with nine (9) covered parking spaces; and (iv) a senior services meeting room and lobby on the first level as Harper Crossings (the Project). A panel of Housing Advisory Commission members and a public sector lender recommended that Council select Satellite Housing as the developer of the Property based upon its Harper Crossings proposal; and

e. Council approved Resolution No. 65,962-N.S on July 10, 2012 directing the City Manager to work with Satellite Housing to develop a more refined financing plan to develop the Project; and

d. On September 27, 2012, the City and Satellite Housing entered into an Exclusive Negotiating Rights Agreement in order to negotiate and execute an Option Agreement; and

e. The boards of Affordable Housing Associates and Satellite Housing, both affordable housing development agencies based in Berkeley, recently approved a merger of the two organizations into a new entity which is named Satellite Affordable Housing Associates (SAHA); and

f. In December 2012, Council adopted a Resolution approving a Housing Trust Fund (HTF) reservation of \$2,300,000 for the Project; and

g. The City desires to convey the Property to the Satellite AHA Development, Inc. (SAHAD) ("Developer") for the development of the Property in accordance with the terms and conditions of the Option Agreement a copy of which is attached to this Ordinance as Exhibit B and which is incorporated herein by reference (the Option). Exercise of the Option is conditioned upon the City and the Developer executing a mutually acceptable Disposition and Development Agreement (DDA) prior to the expiration of the Option term (December 31, 2013). Execution of the DDA shall be subject to the City Council's future approval and authorization; and

h. Pursuant to the Option, the City shall convey the Property to SAHAD for a price of Five Hundred Dollars (\$500.00) if the DDA is executed prior to December 31, 2013. As additional consideration for conveyance of the Property, Developer shall construct the Project; and

i. City Charter Article VIII, Section 44(7) requires that the sale of public property owned by the City to be approved by Ordinance.

j. City staff recommends the sale of the Property to SAHAD pursuant to the Option Agreement which is conditioned upon future execution of a DDA.

Section 2. The Option Agreement and the sale of the Property pursuant to and conditioned upon the execution of the Option Agreement are hereby approved. The City Manager is hereby authorized to execute the Option Agreement and all other documents necessary and to implement the Option Agreement.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Exhibits

A: Legal Description of Property

B: Real Estate Option Agreement

Exhibit A
Legal Description of Property

The land referred to is situated in the County of Alameda, City of Berkeley, State of California and is described as follows:

Beginning at the intersection between the northerly boundary of Fairview Street with the easterly boundary of Harper Street as said streets are shown upon Map of the Werner Tract filed May 8th, 1893, in Book 14 of Maps, Page 11 Alameda County Records; thence northerly along the easterly boundary of said Harper Street with bearing North 5° 00' 00" West, a distance of 113.36 feet to the true point of beginning; thence, northerly along said boundary line North 5° 00' 00" West, a distance of 89.0 feet to a point on the easterly boundary of Harper Street; thence, North 80° 30' 00" East, a distance of 163.88 feet to a point on the Westerly boundary of Martin Luther King Junior Way (formerly Grove Street) as shown in the Deed of Extension of Grove Street recorded July 6th, 1896, in Deed Book 589, Page 267, Alameda County Records; thence, Southerly along said boundary South 5° 00' 00" East, a distance of 89.0 feet; thence South 80° 30' 00" West, 163.88 feet to the true point of beginning.

Assessor's Parcel No: 052-1551-013

EXHIBIT B
REAL ESTATE OPTION AGREEMENT