



Time: 4:04 p.m.

Douglas Fir Room
 Permit Service Center
 2120 Milvia Street – Berkeley, CA
 Secretary – Lourdes Chang, (510) 981-5419

Draft Minutes of the September 23, 2013 Oversight Board Meeting

All agenda items are for Discussion and Possible Action.

1. Roll Call

Present: Arreguin, Decredico, Hardaway, Harper and Riddle. Absent: Brooks (for Keith Carson) and Gerhard. Staff Present: Cosin, Xie and Chang.

2. Public Comments

None.

3. Approval of Agenda

The agenda was approved. Board agreed to discuss Item No. 6 on the agenda before Item No. 5. (M/S/C: Decredico/Riddle. Unanimous)

4. Approval of Minutes of January 7, 2013

A motion to approve the February 25, 2013, minutes was unanimously approved. (M/S/C: Riddle/Harper)

5. Approval of Loan Agreement between the City and the Successor Agency for the Savo Island Project Area Debt Service Payments of the Retiree Medical Trust Fund Loan (Item No. 6 on the agenda)

The Board reviewed staff recommendation to approve and accept a loan from the City of Berkeley to the Successor Agency for the Savo Island Project Area Debt Service Payments of the Retiree Medical Trust Fund Loan. Staff recommended adding the City loan to the ROPS to make sure the City gets repaid in the event DOF's position is overturned under the pending litigation. Board Member Harper did not support staff recommendation since ABx1 26 provides that the Redevelopment Agency shall not enter into new agreements with the Successor Agency or City after January 1, 2012.

Successor Agency or City after January 1, 2012.

A motion was approved to reject staff recommendation to accept and approve the loan agreement because the action is illegal and does not comply with the provisions of ABx1 26 regarding entering into new agreements after January 1, 2012. [M/S/C: Harper/Riddle. Ayes: Arreguin, Decredico, Harper and Riddle. Noes: Hardaway. Absent: Brooks (for Carson) and Gerhard]

6. Approval of Recognized Obligation Payment Schedule 13-14B and Semi-Annual Administrative Budget (Item No. 5 on the agenda)

Staff reviewed the ROPS 13-14B and distributed a revised copy of the ROPS 13-14B with changes. Item No. 3 \$1 Million Bond – City Loan was discussed. Staff clarified the bond must be repaid to the City. Board Member Harper noted that although the City is the trustee of the bond, the City did not market or sell the bond to another party; therefore, the loan cannot be considered an enforceable obligation as defined by ABx1 26.

A motion was passed to approve the ROPS 13-14B with changes and the Semi-Annual Administrative Budget. [M/S/C: Decredico/Riddle. Ayes: Arreguin, Decredico, Hardaway and Riddle. Noes: Harper. Absent: Brooks (for Carson) and Gerhard]

7. Staff Update on Successor Agency Topics

Staff provided a written update on the ROPS IV and pending litigation with DOF, Public Works Capital Projects Implementation, State Controller's Office Asset Transfer Review, Oceanview Garden Apartments transfer of ground lease, and Long Range Management Plan. The staff report was included in the agenda packets.

8. Announcements

- Next regularly scheduled meeting: October 28, 2013

9. Future Agenda Items

- Elections of Officers for Oversight Board (October 28th meeting)
- Oceanview Gardens – Transfer of Asset to the City as Housing Successor Agency (October 28th meeting)
- Long-term Property Management Plan (pending Finding of Completion)

10. Adjourn

The meeting was adjourned at 5:10 p.m. (M/S/C: Riddle/Harper. Unanimous)

Approved on _____

_____, Lourdes Chang, Secretary



STAFF REPORT

Date: October 28, 2013
To: Berkeley Redevelopment Successor Agency Oversight Board
From: Wendy Cosin, Deputy Planning Director
Subject: Approve Transfer the Parcels of Land and Ground Lease associated with the Oceanview Garden Apartments (1715-1735 Fifth Street; 1726-1732 Sixth Street; 1816-1832 Sixth Street and 813-815 ½ Hearst Street) from the Successor Agency to the City Acting as Successor Agency for Housing

RECOMMENDATION

Staff recommends that the Oversight Board approve a Resolution to transfer title of the parcels of land and the Ground Lease associated with the Oceanview Garden Apartments (1715-1735 Fifth Street; 1726-1732 Sixth Street; 1816-1832 Sixth Street and 813-815 ½ Hearst Street) from the Successor Agency to the City Acting as Successor Agency for Housing

FISCAL IMPACTS OF RECOMMENDATION

Fees for the transfer of title should be minimal.

CURRENT SITUATION AND ITS EFFECTS

Under the Redevelopment Dissolution Statute, all housing assets are subject to transfer to the entity acting as housing successor, in this case the City. Once transferred to the City in accordance with the Dissolution Act, the property would no longer be subject to the requirements of the Dissolution Act.

As described in more detail below, Oceanview Garden Apartments (1715-1735 Fifth Street; 1726-1732 Sixth Street; 1816-1832 Sixth Street and 813-815 ½ Hearst Street), a 62-unit affordable rental development for very low and lower income households, was not retained as a housing asset in accordance with State procedures in 2012. Ocean View Gardens LLC, owner of the Property Improvements, has a ground lease with the former Redevelopment Agency, which expires March 29, 2059. There has not been any income to the Agency or City associated with the ground lease.

Staff is requesting that the Oversight Board approve transfer of the parcels associated with the Oceanview Garden Apartments and the Ground Lease from the Successor

Agency to the City, in its role as Successor Agency for Housing. The transfer is subject to approval of the Oversight Board and submittal to the Department of Finance for their review to approve or send back to the Oversight Board for reconsideration.

On September 10, 2013, the Agency adopted Resolution No. 7, authorizing the Executive Officer to transfer title of the Oceanview Garden Apartments Property to the City of Berkeley.

BACKGROUND

Pursuant to ABx1 26, California Health and Safety Code § 34175(b) all assets and properties of a former redevelopment agency were to be transferred by February 1, 2012 to the control of the agency's successor agency. On January 17, 2012 the City Council passed Resolution No. 65,574-N.S. authorizing the City to become the successor agency for the purpose of managing housing assets of the Redevelopment Agency. The staff report listed the following Redevelopment Agency assets.

Asset Description	Notes
1654 Fifth Street – Vacant SFD	Fee title ownership. Plan to sell for market-rate housing
1631 Fifth Street – Community garden	Fee title ownership. Plan to manage lease & possible sale for continued garden use
"D&E" Properties not owned by Agency	11 residential owner-occupied properties on 5 th Street Deed restricted with Agency first-right-of-refusal and rental restrictions through 2017.
Delaware Historic District Properties	5 residential and commercial owner-occupied properties on Delaware Street with loans due in 2018.
1715 Fifth Street & 815 Hearst Oceanview Garden Apartments	Fee title ownership, with ground lease until 2059
1817 – 1819 4 th Street (commercial)	Fee title ownership, with ground lease until 2051

California Health and Safety Code § 34176(a) (2), required the entity assuming the housing functions of the former Redevelopment Agency to submit a Housing Asset Transfer Form (HAT) listing all housing asset transfers and explaining how the assets meet the definition of "housing asset" included in the Section. At the time that the Housing Asset Transfer form was required to be submitted, the Successor Agency determined that the properties were not housing assets as defined in the statute since the properties' original acquisition was not strictly limited to low and moderate income housing. The statute defining "housing assets" was passed by the Legislature in late June 2012 and the Housing Asset Transfer list was required to be submitted no later than August 30, 2012. The Successor Agency has reviewed the definition of Housing Assets and has now determined that the properties satisfy the definition of housing assets because of their ongoing use for low and moderate income housing.

Since none of the above properties were transferred through the HAT process, the assets currently belong to the Successor Agency. There are two methods to dispose the properties:

- The Agency must prepare a Long Range Property Management Plan (LRPMP) that addresses the disposition and use of the real properties, which must be approved by the Oversight Board and the State Department of Finance (DOF). The LRPMP cannot be approved until a Finding of Completion is issued by the DOF, which has been delayed due to pending litigation.
- The Dissolution Act allows the Oversight Board to direct the Successor Agency to transfer housing assets in accordance with Health and Safety Code Section 34176.

The land for Oceanview Garden Apartments was not originally acquired for low-and-moderate-income purposes – it was acquired in March, 1971 as part of the West Berkeley Industrial Park Redevelopment Project, financed under a Neighborhood Development Program by annual increment financing through U.S. Department of Housing and Urban Development (HUD) and local grants-in-aid by the City of Berkeley. However, in 1982 the former Redevelopment Agency entered into a long term ground lease requiring that the lessee construct and operate affordable housing on the property. The ground lease restricts the use of the property to low and moderate income housing for 55 years. The Ground lease was renewed and extended in 2004 for an additional 55 year term.

The purpose of the long range property management plan is to provide for the disposal of properties other than housing properties. This is evidenced by Health and Safety Code Section 34191.5 which specifies the options for use and disposition of the properties covered by the plan. None of the four options include the transfer to the housing successor although the other provisions of the Dissolution Act are clear that the housing assets are to transfer to the housing successor. The HAT process was designed to cover the transfers of the housing assets and 34181(c) provides an alternative to the HAT process if properties were not included in the HAT for any reason.

The Community Development Block Grant (CDBG) Close-Out Agreement dated September 12, 1978, stipulates that the proceeds from the sale of all properties purchased with Federal financial assistance as part of the Neighborhood Development Project, which includes the subject property, must be treated as program income to the CDBG program under the provisions of 24 CFR 570.506. Therefore, sale proceeds must be returned to the City's CDBG Program and treated as program income to support CDBG-eligible activity. Therefore, any transfer or disposition of this property would have a net zero effect on any balance available to the taxing entities.

Additional information about the property is included in the attached "Oceanview Gardens Background" document. In brief:

- The property was originally purchased by the Redevelopment Agency for an industrial park.
- The affordable housing project was constructed in 1982-83 and was rehabilitated in 2004.
- The 62 units are all affordable to very low and lower income households and are subject to a lease, Ocean View Gardens LLC, owner of the Property Improvements, which expires March 29, 2059, and regulatory agreements.

RATIONALE FOR RECOMMENDATION

Oceanview Garden Apartments will be best managed as affordable housing if retained by the City acting as the Successor Agency for Housing. The property was not transferred during the Housing Asset Transfer process due to lack of clarity about the definition of "housing asset". The Successor Agency is charged with unwinding the former Redevelopment Agency as expeditiously as possible. The transfer of this asset will resolve one dissolution issue and assist with moving the unwind process forward. There is no benefit in utilizing the Long Range Property Management Plan process to dispose of the property; furthermore, the Long Range Property Management Plan requirements do not contemplate its use for Housing Assets.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Wendy Cosin, Deputy Director, Planning and Development, 981-7402

Attachments:

- 1: Resolution
- 2: Oceanview Apartments Background

RESOLUTION NO. ##,###-N.S.

APPROVAL TO TRANSFER TITLE OF THE OCEANVIEW GARDEN APARTMENTS PARCELS OF LAND AND TRANSFER THE GROUND LEASE FROM THE SUCCESSOR AGENCY TO THE CITY OF BERKELEY, ACTING AS SUCCESSOR AGENCY FOR HOUSING

WHEREAS, Assembly Bill 1X 26 (the "Dissolution Act") and Assembly Bill 1X 27 (the "Alternative Redevelopment Program Act") were enacted on June 28, 2011, to significantly modify the Community Redevelopment Law (Health & Safety Code §33000, et seq.; the "Redevelopment Law"); and

WHEREAS, on August 11, 2011, the California Supreme Court agreed to review the California Redevelopment Association and League of California Cities' petition challenging the constitutionality of the Redevelopment Restructuring Acts; and

WHEREAS, on December 29, 2011, the California Supreme Court ruled that the Dissolution Act is largely constitutional and the Alternative Redevelopment Program Act is unconstitutional; and

WHEREAS, the Court's decision resulted in the dissolution of that all California redevelopment agencies on February 1, 2012; and

WHEREAS, on January 17, 2012, the City Council adopted a Resolution indicating its intent to become the Successor Agency as well as its election to become the Successor Agency for Housing; and

WHEREAS, the Successor Agency failed to list Oceanview Garden Apartments at 1715-1735 Fifth Street, 1726-1732 Sixth Street, 1816-1832 Sixth Street and 813-815½ Hearst Street on the Housing Asset Transfer Form because the properties were not housing assets as defined in the statute; in particular the properties' original acquisition was not strictly limited to low and moderate income housing; and

WHEREAS, the properties are now assets of the Successor Agency; and

WHEREAS, the Successor Agency has reviewed the definition of Housing Assets and has now determined that the properties satisfy the definition of a housing assets because of their ongoing use for low and moderate income housing; and

WHEREAS, the Dissolution Act allows the Oversight Board to direct the Successor Agency to transfer housing assets in accordance with Health and Safety Code Section 34176; and

WHEREAS, on September 10, 2013, the Agency adopted Resolution No. 7, authorizing the Executive Officer to transfer title of the Oceanview Garden Apartments Property to the City of Berkeley acting as the Successor Agency for Housing; and

WHEREAS, public notice of the proposed action by the Oversight Board was provided as required by Health and Safety Code Section 34181(f).

NOW THEREFORE, BE IT RESOLVED by the Berkeley Redevelopment Successor Agency Oversight Board, that it hereby approves transfer title of the parcels associated with the Oceanview Garden Apartments at 1715-1735 Fifth Street, 1726-1732 Sixth Street, 1816-1832 Sixth Street and 813-815½ Hearst Street and transfer of the Ground Lease from the Successor Agency to the City acting as the Successor Agency for Housing.

Ocean View Apartments Background

Property type

- 62-unit affordable rental development for very low and lower income households; 49 units at 60% Area Median Income and 13 units at 50% Area Median Income*
- Ocean View Gardens LLC, Owner of the Property Improvements, has a lease with the former Redevelopment Agency, which expires March 29, 2059
- The property is governed by a regulatory agreement with CalHFA, TCAC and the former Berkeley Redevelopment Agency (now the Successor Agency)
- CalHFA provides Housing Assistance Payments for 100% of the units at Ocean View Gardens

*Source: Berkeley Redevelopment Agency Resolution No. 1211, Paragraph 17, January 20, 2004

Parcel data, including address, AP number and lot size

Parcel Number: 058-2118-024*
Address: 1721 5th Street, Berkeley, CA 94710-1735
Lot Area: Approximately acres

Parcel Number: 057-2098-017
Address: 1820 6th Street, Berkeley, CA 94710-2062
Lot Area: 28,658 sqft or 0.66 acres

Total Lot Size: Approximately 2.70 acres

*Source: RealQuest.com, 2012 Assessed Year

1715-1735 Fifth Street**
1726-1732 Sixth Street
1816-1832 Sixth Street
813-815½ Hearst Street

**Source: Closeout Agreement between the Redevelopment Agency and the City of Berkeley, September 12, 1978; Exhibit A to the Regulatory Agreement, Federal Credits Tax-Exempt Bond Financed Project.

Purpose for which the property was acquired

Original acquisition (1971): Industrial - acquired as part of the West Berkeley Industrial Park Redevelopment Project, financed under a Neighborhood Development Program by annual increment financing through Housing and Urban Development (HUD) and local grants-in-aid by the City of Berkeley.

Original construction of affordable housing: 1982, E&I Development

Most recent transaction (2004 – Ground lease amendment, new partnership, refinancing): To maintain 62 units of low and moderate income housing and extend affordability period for an additional 55 years.

Permissible use

Affordable housing

Current zoning

Mixed Use - Residential

Regulatory Agreements

(1) CalHFA Regulatory Agreement – CalHFA Development No. 03-037-N: Executed February 1, 2004. Term of Agreement: 30 years, ending January 31, 2034. Section 4, Tenant Income Limitations requires that 20% of all the units in Parcel 1 and Parcel 2 shall be occupied by households whose income does not exceed 50% of Area Median Income. In addition, at least 51% of the total units in the Development must be occupied by households of low or moderate income as defined by California Health and Safety Code.

Section 6 (a) Replacement Reserve (RR): the RR shall be initially funded by lump sum of \$217,000 by the Closing date and thereafter, shall be funded by deposits in the amount of \$1,800 per month. The RR shall be used to replace major structural elements or equipment of the Development or for any purpose consistent with maintaining the financial and physical integrity of the Development.

Section 13 Distributions: Subject to limitation on Distributions provided for in the HUD Section 8 Housing Assistance Payments Contract, the Borrower shall be entitled to an annual Distribution of Surplus Cash, provided that there is no default under all the terms of the Regulatory Agreement and other Loan Documents.

Section 21, Binding of Successors, "...Borrower may not assign this Agreement or any of its obligations hereunder, without the prior approval of the Agency"

(2) Regulatory Agreement for Federal Tax Credits – Tax-Exempt Bond Project: Executed July 31, 2004. Compliance period ends 30 years beginning with the first taxable year of the Tax Credit Period, or June 30, 2034. Per Appendix A of the Regulatory Agreement, the income of Tenants residing in 13 of the Units must be at or below 50% of Area Median Income and the income of Tenants in the remaining 49 of the Units must be at or below 60% Area Median Income.

No restrictions on revenues noted in TCAC Regulatory Agreement.

Section 14, Regulatory Agreement, Assignment by Owner. Prior to any transfer of the Project, the Owner shall notify TCAC in writing of the proposed transfer to a successor owner and operator. The Owner shall require that the purchaser assume an Assignment Agreement acceptable to TCAC, which shall be delivered to TCAC in executed, recordable form prior to any such sale, transfer or exchange.

(3) City's Regulatory Agreement:

- a. Lease and Disposition Agreement between the Redevelopment Agency of the City of Berkeley and E & I Development Associates (original lease agreement, executed September 30, 1982)

Term: 55 years – expires 3/29/2059

Section 3.3 and 10.17 of Lease, Rental Payments for the Land Lease: lump sum of \$220,000 due to Agency at closing and 50% of Excess Earning Distribution, if any, distributed on the anniversary of the lease. The Lessee (E&I) shall use the funds to make capital improvements to the Development and to pay operating costs which are eligible activities under the Community Development Block Grant (CDBG) Program. No Excess Earning Distributions have been provided.

This agreement was assumed by Ocean View Gardens LLC in 2004.

- b. First Amendment to Lease – Extension of Term and Assignment (Executed January 20, 2004)

New Term: March 29, 2059

Resolution No.1211, Paragraph 27 provides that the new financing from CalHFA and TCAC (and the Amendment to the Lease) would guarantee another 47 years of affordability providing 49 units at 60% Area Median Income and 13 units at 50% Area Median Income

(4) Closeout Agreement by and between the Redevelopment Agency of the City of Berkeley and the City of Berkeley relating to the Berkeley Neighborhood Development Program, Calif. A-6:

Executed: September 12, 1978, implementing Contract No. Calif. A-6 (LG) dated March 13, 1970 with the U.S. Department of Housing and Urban Development.

Paragraph 9, Provision 1 of the Closeout Agreement notes "...the proceeds from the sale or lease of (all remaining undisposed properties acquired by the Agency) shall be treated as program income to the Community Development Block Grant program under the provisions of 24 CFR 570.506"*

*The properties leased by Ocean View Gardens LLC, as listed in Exhibit A, are subject to the provision (1) of the Closeout Agreement; therefore, No Excess Earning Distributions have been distributed.

Estimate of any lease, rental or other revenues generated by the property and a description of the contractual requirements for disposition of those revenues

See (3) a. above; no Excess Earning Distributions have been collected.

See (4) above; proceeds from the sale or lease shall be treated as program income to the Community Development Block Grant program under the provisions of 24 CFR 570.506

History of environmental contamination, studies, and/or remediation, and designation as a brownfield site

None known. Project submitted Phase I to CalHFA at time of closing of the loan in 2004.

Description of the property's potential for transit-oriented development

Property is 3.4 miles from nearest Amtrak train station (Emeryville, CA); 1.4 miles from nearest BART station (North Berkeley), and less than 0.25 miles from nearest AC Transit bus line (University Avenue and 6th Street).

Description of the property's advancement of the planning objectives of the successor agency

The property provides affordable rental housing to very low and lower income households. This meets the Successor Agency's goal of providing affordable housing to low income residents in Berkeley. The acquisition of the improvements in 2004 by Ocean View Gardens LLC, with A.F. Evans as managing General Partner, provided the opportunity to extend the affordability period until March 29, 2059. The original term would have ended September 29, 2037.