

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2008 OCT 30 PM 6:11

To: Office of the City Administrator
Attn: Dan Lindheim
From: Community and Economic Development Agency
Date: November 12, 2008

Re: An Ordinance Amending Ordinance No. 12726 C.M.S., Which Authorized The Sale Of City-Owned Properties To Toler Heights Estates LLC, To Authorize A Price Reduction For 9724 And 9745 Thermal Street From \$416,000 To Eighty-Five Percent Of The Sales Price Minus The First Mortgage To Allow The Completion Of Two Market-Rate Homes

SUMMARY

Under a 2001 Disposition and Development Agreement (DDA), the developer was to build six for-sale homes on four surplus City lots. Various difficulties delayed construction, which has resulted in the partial completion of two homes. In addition, the real estate market has changed drastically, further reducing the value of these homes. There has been no further progress toward completing construction for months, and the developer has asked both the construction lender and the City to help resolve this problem. The construction lender has offered to write off over half of its \$1 million loan, providing the balance is paid promptly. This report recommends the City take a similar step: to write off most of its \$416,000 due for the lots, provided the remainder is promptly paid in full. The amount will be based on a percentage formula, expected to give the City \$40,000 to \$140,000 (the formula being the City receives 85% of whatever remains after sales proceeds are used to pay off the construction loan). These reductions should allow the homes to be finished and sold as quickly as the current market will allow.

FISCAL IMPACT

Sale of the two partly-finished homes and lots should generate \$40,000 to \$140,000 within several months; however, that amount is \$276,000 to \$376,000 less than was anticipated in the 2006 ordinance being amended. Because of the current real estate market, this is a difficult "something is better than nothing" situation. It should also be noted that the City's original cost for these lots was nearly zero, since they are remnants from parcels purchased for the 98th Avenue street widening.

Proceeds, to the extent possible, will be deposited as follows: First, \$75,000 to the Community Development Block Grant (CDBG) program for past maintenance: CDBG Fund (2108); Housing and Community Development Organization (88919), Sale of Land Account (48111), Vacant Housing Program Project (G08850), Housing Development (SC14).

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69% of any remaining proceeds to the General Fund: Real Estate Surplus Property Fund (1010), Real Estate Services Organization (88639), Sale of Land Account (48111), Surplus Property Disposition Project (P47010), Real Estate Program (PS32).

The remaining 31%, if available, will be split equally between the General Fund (same coding as preceding paragraph) and the Public Works Street and Sidewalk Maintenance Program: State Gas Tax Fund (2230), Right of Way Management Org (30243), Sale of Land Account (48111), Nonproject (000000), Streets and Sidewalks Management Project (IN04).

BACKGROUND

The lots at 9724 and 9745 Thermal Street Avenue were surplus City property offered in a 1999 Request for Proposals for development of affordable housing. In 2000, the lots were awarded to Black Phoenix Development Group for development of six affordable homes. Several matters, including State of California requirements (related to the highway funds used to buy the lots) and misunderstandings of the City's employment programs, led to major delays.

In 2006, in an effort to commence project construction, Council approved a proposal by the developer to merge into a larger organization (Toler Heights Estates LLC), and to terminate requirements for affordability and City employment programs by selling the lots at fair market value. The City carried a note for that value, \$416,000. Although construction began on two homes, difficulties persisted and construction moved extremely slowly, stopping altogether in mid-2008. At the same time, the real estate market was in serious crisis, and construction lender IndyMac was taken over by the federal government.

Because construction on the homes is significantly behind schedule, and because of the depressed real estate market, IndyMac's construction loan became a bad debt it was eager to liquidate. In an effort to do so, it has offered to write down the amount it is owed from approximately \$860,000 to \$400,000, provided the lower amount is paid quickly and in full. This major reduction in the loan will allow the sales prices of the two partly-constructed homes to be lowered into the current price range, which should allow for full repayment of IndyMac.

KEY ISSUES AND IMPACTS

If the \$416,000 City of Oakland loan remains in place, IndyMac's offer of a "short sale" is of little value. Given the current market, the City debt, combined with \$400,000 to pay off IndyMac, far exceeds the current value of the homes. However, with the City's loans substantially reduced, total outstanding debt will be close enough to anticipated sale prices that the developer can expect to sell the properties and repay the reduced loans. Unfortunately, the developer will still lose all it has invested in the project.

Staff anticipates that the City loan must be reduced to between \$40,000 and \$140,000 depending on the final sales prices of the two homes. Though that range is much less than the fair market value of the lots, this is not a fair market situation. The very depressed market, combined with the unfinished construction and the City's lien position behind the construction lender, require that the City accept the best that can be negotiated. A substantial price reduction is essential to obtain the quick sale that IndyMac desires. Because of the City's junior lien position, the options are to accept this reduction, or to receive nothing due to an IndyMac foreclosure.

PROJECT DESCRIPTION

Staff recommends that Council amend the previous ordinance for these lots to reduce the price from \$416,000 (\$208,000 per lot), which was their value in 2006, to a percentage of what can be generated by a quick sale. The construction lender has offered the developer a "short sale," a nearly 60% reduction of its loan balance, to just \$400,000 (\$200,000 per home). Staff recommends a similar approach, but because an exact amount cannot be known at this time, a percentage formula will work best: 85% of whatever price can be obtained, less the \$400,000 construction loan balance due IndyMac.

The homes are each expected to sell for approximately \$260,000; at that price, the City's portion would be \$51,000 for each, or a total of \$102,000; the other 15% of proceeds will be used by the developer to cover closing costs and other selling expenses. If the homes sell for a higher price, the City will receive correspondingly more.

SUSTAINABLE OPPORTUNITIES

Economic: Passage of this item will assist in the fastest-possible completion of the two unfinished homes. Due to the depressed housing market, they will be relatively affordable.

Environmental: The location, near public transit and in an already built-up area, will help minimize the environmental impact of the homes. In addition, completion and sale of the homes will eliminate the blighted condition of these properties.

Social Equity: This item will help get the homes completed, which will provide home ownership opportunities for two households.

DISABILITY AND SENIOR CITIZEN ACCESS

As market-rate for-sale homes, the two homes were built without accessible features, but were designed to be easily adaptable.

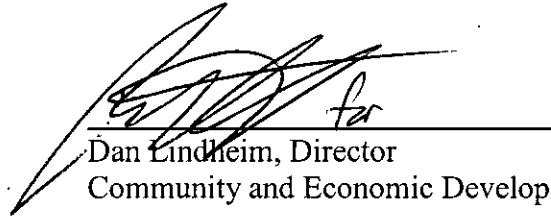
RECOMMENDATION AND RATIONALE

Staff recommends the proposed price reduction so that the City can receive payment consistent with values of the lots in the present circumstances. If no reduction is made, the construction lender will eventually foreclose and the City will receive nothing.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests passage of the ordinance to reduce the sales price of the two Thermal Street properties.

Respectfully submitted,

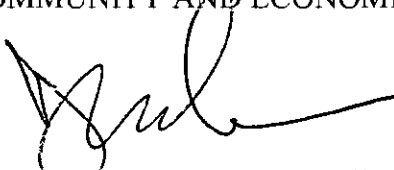


Dan Lindheim, Director
Community and Economic Development Agency

Reviewed by:
Sean Rogan, Director of Housing and
Community Development

Prepared by:
Jeffrey D. Angell
Housing & Community Development Division

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



Office of the City Administrator

Item: _____
CED Committee
November 12, 2008

FILED
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OAKLAND
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APPROVED AS TO FORM AND LEGALITY:


DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C. M. S.

An Ordinance Amending Ordinance No. 12726 C.M.S., Which Authorized The Sale Of City-Owned Properties To Toler Heights Estates LLC, To Authorize A Price Reduction For 9724 And 9745 Thermal Street From \$416,000 To Eighty-Five Percent Of The Sales Price Minus The First Mortgage To Allow The Completion Of Two Market-Rate Homes

WHEREAS, on March 14, 2000 with Ordinance No. 12214 C.M.S., the City Council authorized the negotiation and execution of a Disposition and Development Agreement (the "DDA") with Black Phoenix Development Group, later succeeded by Toler Heights Estates LLC (the "Developer"), for the development of four City-owned properties; and

WHEREAS, pursuant to the terms of the DDA, on July 1, 2005, the City transferred to the Developer two of the four properties, 9724 and 9745 Thermal Street (the "Thermal Lots"); and

WHEREAS, on February 21, 2006 with Ordinance No. 12726 C.M.S., the City Council authorized a second amendment to the DDA, which removed affordability restrictions, allowed for resales at market rates, and provided for the Developer to pay the City \$810,500 for the properties, including \$416,000 for the Thermal Lots; and

WHEREAS, the Developer executed a Promissory Note and Deed of Trust to the City of Oakland for \$416,000 for the already-transferred Thermal Lots; and

WHEREAS, the Developer has completed approximately 75% of the construction of two homes on the Thermal Lots; and

WHEREAS, the Developer is now unable to proceed with construction of those homes because of major decreases in property values; and

WHEREAS, it is in the best interest of the City to reduce the sales price of the Thermal lots to enable the Developer to complete construction of the two for-sale houses, provide housing for the community, and remove a blighting condition from the neighborhood; and

WHEREAS, the construction lender for the homes on the Thermal Lots, in recognition of reduced values and in order to restart the project, has reduced the amount it is due from approximately \$860,000 to \$400,000; and

WHEREAS, the City's loan must be reduced by at least a similar percentage to allow the project to restart; and

WHEREAS, the requirements of the California Environmental Quality Act of 1970 ("CEQA"), the CEQA Guidelines as prescribed by the Secretary for Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City hereby amends Ordinance No. 12726 C.M.S. to reduce the price of the Thermal Lots purchased by Developer.

SECTION 2. The Council hereby authorizes amendment of the terms of transfer to the Developer for the Thermal Lots to reduce the City's price to a cash amount equal to 85% of the sales price obtained by Developer, minus the balance due on the construction loan, for sale of the Thermal Lots and homes in their current condition.

SECTION 3. The City Administrator, or his designee, is authorized to negotiate and execute documents necessary to proceed with this amendment, to make any modifications or amendments thereto, and to take all actions necessary, consistent with this Ordinance, to complete the sale of the properties.

SECTION 6. Proceeds, to the extent possible, will be deposited as follows:

First, \$75,000 to the Community Development Block Grant (CDBG) program for past maintenance: CDBG Fund (2108); Housing and Community Development Organization (88919), Sale of Land Account (48111), Vacant Housing Program Project (G08850), Housing Development (SC14).

69% of any remaining proceeds to the General Fund: Real Estate Surplus Property Fund (1010), Real Estate Services Organization (88639), Sale of Land Account (48111), Surplus Property Disposition Project (P47010), Real Estate Program (PS32).

The remaining 31%, if available, will be split equally between the General Fund: Real Estate Surplus Property Fund (1010), Real Estate Services Organization (88639), Sale of Land Account (48111), Surplus Property Disposition Project (P47010), Real Estate Program (PS32), Real Estate Surplus Property Fund (1010), Real Estate Services Organization (88639), Sale of Land Account (48111), Surplus Property Disposition Project (P47010), Real Estate Program (PS32), and the Public Works Street and Sidewalk Maintenance Program: State Gas Tax Fund (2230), Right of Way Management Org (30243), Sale of Land Account (48111), Nonproject (000000), Streets and Sidewalks Management Project (IN04).

SECTION 7. The City Council has independently reviewed and considered this environmental determination, and the City Council finds and determines that this action complies with CEQA because this action by the City is exempt from CEQA pursuant to sections 15303

(new construction or conversion of small structures) and 15312 (surplus government property sales) of the CEQA Guidelines.

SECTION 8. The City Administrator or his designee shall cause a Notice of Exemption and an Environmental Declaration (California Fish and Game Code Section 711.4) for this action to be filed with the County of Alameda.

SECTION 9. All documents shall be approved as to form and legality by the City Attorney's Office and a copy placed on file in the Office of the City Clerk.

SECTION 10. This Ordinance shall take effect immediately upon adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

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NOTICE AND DIGEST

An Ordinance Amending Ordinance No. 12726 C.M.S., Which Authorized The Sale Of City-Owned Properties To Toler Heights Estates LLC, To Authorize A Price Reduction For 9724 And 9745 Thermal Street From \$416,000 To Eighty-Five Percent Of The Sales Price Minus The First Mortgage To Allow The Completion Of Two Market-Rate Homes

This ordinance authorizes a price reduction for two lots sold by the City. This will allow two partly-completed homes on the lots to be finished.