

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK
2006 JAN 12 PM 1:23

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: January 24, 2006

RE: AN ORDINANCE AMENDING ORDINANCE 12214 C.M.S., WHICH AUTHORIZED THE SALE OF FOUR CITY-OWNED PROPERTIES AT 9724 AND 9745 THERMAL STREET AND 2656 AND 2660 98TH AVENUE TO BLACK PHOENIX DEVELOPMENT GROUP FOR THE DEVELOPMENT OF SIX HOMES AFFORDABLE TO MODERATE-INCOME HOUSEHOLDS, TO AUTHORIZE THE SALE OF THE PROPERTIES TO TOLER HEIGHTS ESTATES LLC, SUCCESSOR TO BLACK PHOENIX, FOR THE TOTAL FAIR MARKET VALUE OF \$810,500 FOR THE DEVELOPMENT OF SIX UNITS OF MARKET-RATE HOUSING.

SUMMARY

In 2000, Black Phoenix Development Group was awarded rights to develop six affordable homes on four vacant City-owned parcels on 98th Avenue above MacArthur Boulevard. The development, known as Toler Heights Estates, has been repeatedly delayed by a variety of problems, including increasing construction costs, delays in financing and bonding, negotiations with state and federal agencies with links to the sites, and negotiations over terms of affordability.

Because solutions to the above problems are available, but cannot be implemented under the terms of the original agreement, staff recommends termination of that agreement, which can be done by sale of the land to the developer for the fair market value of \$810,500. This means the homes will not have affordable (restricted) prices, but construction can start as soon as weather permits, and the City will receive a substantial return on its investment, with \$621,000 going to the General Fund.

FISCAL IMPACT

Approval of this ordinance will authorize amendment of the existing Disposition and Development Agreement (DDA) to allow for the sale of four City-owned parcels of land at fair market value. Sales proceeds of \$810,500 will be paid with short-term promissory notes held by the City. The notes will be repaid as the six homes are built and sold; all payments are anticipated in fiscal year 2006-07. The current DDA would transfer the land to the developer

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with specific performance benchmarks; the amended DDA will have similar requirements. Funds will be distributed as shown below.

First, a reimbursement of \$75,000 will be deposited to the Community Development Block Grant (CDBG) program for the cost of maintaining the lots since 1992: CDBG Fund (2108); Housing and Community Development Organization (88919), Sale of Land Account (48111), Vacant Housing Program Project (G08850), Housing Development (SC14).

Of the remaining funds, 69%, or about \$507,000 is attributable (based on land area) to the parcels at 2656 and 2660 98th Ave. That portion will go to the General Fund: Real Estate Surplus Property Fund (1010), Real Estate Services Org (88639), Sale of Land Account (48111), Surplus Property Disposition Project (P47010), Real Estate Program (PS32).

The remaining 31% portion, reimbursement for the lots on Thermal Street, will be split equally (about \$114,000 each) 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). (This split is due the original use of state gas tax money to buy the Thermal parcels for street widening.)

The City will save future maintenance expenses for the parcels of about \$5000 per year. The City will also receive increased property taxes, and one-time transfer taxes from the sale.

BACKGROUND

In 1999, the City issued a Request for Proposals for development of affordable housing on City- and Agency-owned vacant residential lots. Black Phoenix Development Group responded with a proposal for Toler Heights Estates, six homes on four City-owned parcels on 98th Avenue above MacArthur Boulevard, and was selected by a panel of community representatives that heard several competing proposals. In early 2000, Council authorized a Disposition and Development Agreement (DDA). Execution of the DDA was delayed until December of 2001 because of complications with the state and federal agencies whose funds were originally used to acquire these and other parcels for the widening of 98th Ave.

To improve their finances and development capacity, Black Phoenix added a business partner in 2003, and restructured as Toler Heights Estates LLC. All of the developer principals are residents and homeowners in the project neighborhood.

Progress toward development was stalled several times by program requirements including strict limits on housing cost (what buyers pay in housing-related expenses), developer bonding requirements, prevailing wages, and the requirement for all units (rather than only a majority) to be affordably priced. Staff and the development team managed to solve these problems, and in

August 2004 all conditions had been met for transfer of the first two home sites to the developer. Those two sites were transferred, but construction did not begin because the general contractor failed to perform, primarily due to increasing costs. A new contractor has been identified, and that firm will be under contract shortly. If the action recommended below is approved, work will begin as soon as weather permits (plans and building permits are already approved, and construction financing is in place).

KEY ISSUES AND IMPACTS

During the time that the problems above were being resolved, several general contractors insisted that construction costs – which have risen dramatically in recent months – will exceed the budget that the DDA allows. There are two major limitations affecting the budget:

- **Cost inefficiencies:** At just six units, this project is too small to get the various discounts and economies of scale that would reduce per-unit costs in a larger project.
- **Revenue limitations:** Sales revenue is limited because the DDA caps prices at affordable levels – prices below what the surrounding market will bear.

As a result, the developer has been unsuccessful in securing a contractor to build the project within the required budget.

The proposed development enjoys significant neighborhood support, since the developers sought comments on several occasions. Per the original RFP and the existing DDA, the six homes in the project were to be affordable to households earning no more than 120% of area median income; that restriction will be removed by the action proposed here. While buyers will lose the advantages of below-market housing cost and financing assistance, removing our program restrictions will allow buyers to get larger home loans, and to sell later without price restrictions.

PROJECT DESCRIPTION

Staff has negotiated the following solution with the developer, to be implemented by amending the DDA:

1. Sell the four parcels to the developer for fair market value. Sale at market value allows development to go ahead without most of the original restrictions.
2. Provide a promissory note and deed of trust to secure a loan of \$810,500 against the project sites; this loan enables the developer to purchase the sites.
3. Require the developer to commence construction within 60 days and to finish within 15 months.

SUSTAINABLE OPPORTUNITIES

Economic: As a new construction project, the proposal will create a number of new jobs in that field. Although there will be no requirements for Oakland residents or firms, the developer is Oakland-based, and plans to use Oakland-based construction firms and workers as much as possible.

Environmental: The City's construction waste recycling program and related green building programs will be followed.

Social: The long-standing blight of four highly-visible vacant parcels will be removed from the neighborhood, and replaced by six owner-occupied homes.

DISABILITY AND SENIOR CITIZEN ACCESS

The developers plan for 9745 Thermal Street, one of the first two homes that will be built, to be handicapped adaptable, so that it can be easily converted into an accessible unit.

RECOMMENDATION AND RATIONALE

Staff recommends that the City Council approve the ordinance authorizing the sale of the four City-owned parcels for the fair market value of \$810,500. This will allow for development of six market-rate homes to proceed as quickly as possible, providing both new housing and an end to a neighborhood blight problem.

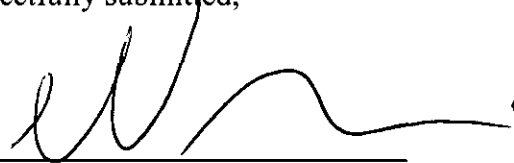
ALTERNATIVE RECOMMENDATION

Staff examined the alternative of terminating the DDA and auctioning the property as surplus land. That approach would cause major delay in the development of these blighted lots, and could also involve significant legal expenses for the City and the developer. Additionally, construction by any other developer would almost certainly be done without the considerable neighborhood input that the Toler Heights group has obtained.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the ordinance authorizing the amendment to allow sale of the parcels for the fair market value of \$810,500, and sale of the planned homes at market rate.

Respectfully submitted,



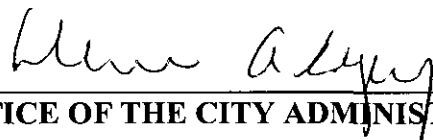
DANIEL VANDERPRIEM

Director of Redevelopment, Economic
Development and Housing

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

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

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:


OFFICE OF THE CITY ADMINISTRATOR

OFFICE OF THE CITY CLERK
COUNCIL

2006 JAN 12 PM 1:23

APPROVED AS TO FORM AND LEGALITY:



DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C. M. S.

AN ORDINANCE AMENDING ORDINANCE NO. 12214 C.M.S., WHICH AUTHORIZED THE SALE OF FOUR CITY-OWNED PROPERTIES AT 9724 AND 9745 THERMAL STREET AND 2656 AND 2660 98TH AVE. TO BLACK PHOENIX DEVELOPMENT GROUP FOR THE DEVELOPMENT OF SIX HOMES AFFORDABLE TO MODERATE-INCOME HOUSEHOLDS, TO AUTHORIZE THE SALE OF THE PROPERTIES TO TOLER HEIGHTS ESTATES LLC, SUCCESSOR TO BLACK PHOENIX, FOR THE TOTAL FAIR MARKET VALUE OF \$810,500 FOR THE DEVELOPMENT OF SIX UNITS OF MARKET-RATE HOUSING

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

WHEREAS, Toler Heights Estates LLC (the "Developer") is successor to Black Phoenix Development Group, and has assumed all its assets and obligations; and

WHEREAS, the Developer has completed plans and obtained building permits and construction financing for two of the six planned units; and

WHEREAS, the City has already transferred title to the two properties on Thermal Street to the Developer; and

WHEREAS, the Developer is unable to proceed with development of the properties due to increased construction costs and the limitations of the DDA; and

WHEREAS, given the Developer's significant progress to date, it would be impractical to restart the process of selecting a developer; and

WHEREAS, the City Real Estate Department has determined that the fair market value of the properties totals \$810,500; and

WHEREAS, the property will be sold in accordance with requirements of the California Government Code sections 54220 et. seq; and City Ordinance No. 11602, C.M.S.; 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 HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines that the herein described real property is not needed for any public purpose, is surplus to the needs of the City, and the City has followed the requirements for sale of surplus properties under Government Code sections 54220 et seq. and City Ordinance No. 11602 C.M.S.

SECTION 2. The City hereby amends Ordinance No. 12214 C.M.S.

SECTION 3. The Council hereby authorizes amendment of the terms of transfer to the Developer for the properties at 9724 and 9745 Thermal Street to provide for payment by Developer of the total fair market value of \$416,000, for development of housing.

SECTION 4. The Council hereby authorizes the sale of the properties at 2656 and 2660 98th Ave. to the Developer for the total fair market value of \$394,500 for development of housing.

SECTION 5. The City Administrator, or her designee, is authorized to negotiate and execute documents necessary to proceed with the amendment, including without limitation grant deeds and promissory notes, and to take all actions necessary, consistent with this Ordinance, to complete the sale of the properties

SECTION 6. Payments on the promissory notes will be deposited as follows:

\$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 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% 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).

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 her designee shall cause a Notice of Exemption 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.

SECTION 10. This Ordinance shall take effect immediately upon final 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, _____, 2006

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST:

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



NOTICE AND DIGEST

AN ORDINANCE AMENDING ORDINANCE NO. 12214 C.M.S., WHICH AUTHORIZED THE SALE OF FOUR CITY-OWNED PROPERTIES AT 9724 AND 9745 THERMAL STREET AND 2656 AND 2660 98TH AVE. TO BLACK PHOENIX DEVELOPMENT GROUP FOR THE DEVELOPMENT OF SIX HOMES AFFORDABLE TO MODERATE-INCOME HOUSEHOLDS, TO AUTHORIZE THE SALE OF THE PROPERTIES TO TOLER HEIGHTS ESTATES LLC, SUCCESSOR TO BLACK PHOENIX, FOR THE TOTAL FAIR MARKET VALUE OF \$810,500 FOR THE DEVELOPMENT OF SIX UNITS OF MARKET-RATE HOUSING

This Ordinance authorizes the City of Oakland to sell the real property at 9724 and 9745 Thermal Street and 2656 and 2660 98th Ave. to Toler Heights Estates LLC for the fair market value of \$810,500, for the development of six market-rate homes.