

CITY OF OAKLAND
Agenda Report

OFFICE OF THE CITY CLERK

2007 JAN 23 PM 4:08

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: January 23, 2007

RE: **A Report And Ordinance Authorizing The Transfer Of Ownership Of Air Rights Above 8500 MacArthur Boulevard Without Cost To E.C. Reems Hope Village I LP For An Affordable Housing Project**

SUMMARY

An ordinance has been prepared transferring ownership of air rights above a proposed affordable housing project, E.C. Reems Hope Village, at 8500 MacArthur Boulevard (APN 043A-4639-001-04) to E.C. Reems Hope Village I, LP, a California limited partnership (no. 200632000009). The prior owners of the vacant parcel deeded the no-build zone to the City in 1966 to assure that police could observe an adjoining public path connecting Seneca Street and Thermal Street with MacArthur Boulevard. The path no longer connects to MacArthur Boulevard. The Police Services Agency stated that they have no objection to the extinguishment of the view corridor. The California Government Code allows the City to transfer air rights without cost to a non-profit organization.

FISCAL IMPACT

Staff costs for processing the proposed transference will be covered by fees set by the Master Fee Schedule and paid by the developer and will be deposited in the special revenue Development Service Fund (2415), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30).

PROJECT DESCRIPTION

Legislation

California Government Code section 50570 allows a City to sell, lease, grant or otherwise transfer real property, including air rights, to a housing corporation, limited dividend corporation, or non-profit corporation without cost provided:

- the air rights are found to be in excess of foreseeable needs; and
- the development project is found to be best suited for housing available to persons and families of low or moderate income.

The statute provides that ownership of the transferred air rights shall revert to the City in the event an affordable housing developer would no longer be the majority owner of the property. This provision preserves the option for the City to reacquire the air rights should the property be acquired by a lender or a for-profit developer, or should the property be used for purposes other than affordable housing.

Funding

As proposed, E.C. Reems Hope Village I, LP, would acquire the air rights from the City without cost. The transfer, however, is a funding subsidy, and the project will be required to comply with the City's construction contracting protocols and restrictions.

Public Safety

Because the path's alignment terminates behind the parcel, pedestrians cannot access MacArthur Boulevard from the streets above. The Police Services Agency (PSA) has determined that public safety would not be jeopardized by extinguishing the view corridor. PSA desires that the developer provide lighting, cameras and other appropriate monitoring, and signage on the new building and along the public path. The property owner is considering making a separate application requesting that the City vacate the public path.

KEY ISSUES AND IMPACTS

In 1964, without cost to the City, the prior owners (deceased) dedicated a public path across their property that connected MacArthur Boulevard with the two streets above – Seneca Street and Thermal Street. During that time, Castlemont High School was being expanded in response to new residential development under construction above MacArthur Boulevard, and the presumption today is that the owners wanted to provide a “short cut” for the expanding student body to attend high school. Two years later, the owners dedicated the air rights above their property without cost to the City to preserve a view corridor for the police to observe the public path. Since then, the path has been re-aligned and no longer connects with MacArthur Boulevard (terminating behind the parcel),

As proposed, the affordable housing project will be a four (4) story, fifty-nine (59) unit building with a parking garage on the ground floor. The building will be approximately forty (40) feet tall, and the air rights (“no-build” zone) begin twenty-six (26) feet above the sidewalk. If the no-build zone were not raised (above the top of the building) or extinguished (as proposed), the number of living units that could be built would be significantly reduced (two stories of the building would be eliminated), and the project's viability would be jeopardized. The property owner has identified the resolution of the air rights encroachment as a critical element for its application for funding.

SUSTAINABLE OPPORTUNITIES

Economic

The project will provide opportunities for professional services and construction related jobs for the Oakland community.

Environmental

Land use approvals and construction permits for property improvements and new buildings require that the permittee comply with City ordinances and regional Best Management Practices for reducing noise, fugitive dust, construction debris disposal, and storm drainage runoff.

Social Equity

The residential project will provide affordable housing opportunities for Oakland residents.

DISABILITY AND SENIOR CITIZEN ACCESS

Construction permits for the proposed building will conform with State and City requirements for handicapped accessibility.

RECOMMENDATIONS

Staff recommends that the Committee accept this report and forward it to the City Council to adopt the proposed ordinance transferring air rights to the property owner.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and adopt the ordinance transferring ownership of air rights above 8500 MacArthur Boulevard without cost to E.C. Reems Hope Village I, LP, conditioned on the construction of a proposed affordable housing project.

Respectfully submitted,



CLAUDIA CAPPIO
Development Director
Community and Economic Development Agency

Prepared by:

Raymond M. Derania
Interim City Engineer
Building Services Division

APPROVED FOR FORWARDING TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR

2007 JAN 11 PM 4:08

Councilmember



City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

ORDINANCE AUTHORIZING THE TRANSFER OF OWNERSHIP OF AIR RIGHTS ABOVE 8500 MACARTHUR BOULEVARD WITHOUT COST TO E.C. REEMS HOPE VILLAGE I LP FOR AN AFFORDABLE HOUSING PROJECT

WHEREAS, E.C. Reems Hope Village I, LP ("Developer"), a California limited partnership (State Registration No. 200632000009) and current owner of the property described in a Grant Deed, recorded November 17, 2006, series no. 2006428294, by the Alameda County Recorder, and identified by the Alameda County Assessor as parcel no. 043A-4639-001-04, and by the City of Oakland as 8500 MacArthur Boulevard, and more particularly described in *Exhibit A* attached hereto, has made an application to the City of Oakland for a Notice of Funding Availability (DET06113) to construct an affordable housing project on said parcel (the "Project"); and

WHEREAS, said parcel is encumbered by air rights owned by the City of Oakland that limit the height of buildings and structures constructed on said parcel; and

WHEREAS, the Developer has made an application to the City of Oakland for the extinguishment of said air rights to facilitate construction of the Project; and

WHEREAS, said air rights were granted without cost by the prior owners of said parcel, Manton M. Moody and La Preal Moody, to the City of Oakland as described in a Dedication of Air Rights, recorded May 17, 1966, series no. AY 62458, real 1770, image 492, by the Alameda County Recorder, and more particularly described in *Exhibit B* attached hereto; and

WHEREAS, said air rights were dedicated for the purpose of preserving and maintaining public safety by providing unobstructed observation by police of a public path that was granted without cost to the City by said prior owners to connect Seneca Street and Thermal Street with MacArthur Boulevard; and

WHEREAS, the alignment of said path has since materially changed so that said path no longer connects to MacArthur Boulevard, and terminates behind said parcel and is unused by pedestrians; and

WHEREAS, the Police Services Agency of the City of Oakland has determined that said height limitation is no longer essential or necessary, and air rights to facilitate observation are no longer necessary for the public purpose of pedestrian safety on said path; and

WHEREAS, section 50570 of the California Government Code provides for the lease, sale or grant or otherwise transferring of any real property, including air rights owned, held or controlled by a local agency and found to be in excess of foreseeable needs, to any housing corporation, limited dividend corporation or nonprofit corporation, upon such terms and conditions as any other provisions of law notwithstanding the local agency may deem to be best suited to the development of the parcel for housing available to persons and families of low or moderate income at affordable housing cost, as defined by Section 50052.5 of the Health and Safety Code; and

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

RESOLVED: That the ownership of said air rights is hereby transferred to the Developer without cost; and be it

FURTHER RESOLVED: That said transfer is hereby conditioned upon the following special requirements:

1. the Developer, by its application for said transfer, agrees and promises to defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, assigns, successors, and volunteers from any and all claims, demands, lawsuits and judgments for damages of any kind and nature whatsoever arising out of or caused by the extinguishment of said air rights and regardless of responsibility for negligence; and
2. the Developer acknowledges that the City of Oakland makes no representations or warranties as to the conditions within said air rights; and that by its application for said transfer, the Developer agrees that it will use the air rights zone at its own risk; and
3. the Developer acknowledges that the City of Oakland is unaware of the existence of any hazardous substances within said air rights, and hereby waives and fully releases and forever discharges the City of Oakland and its officers, directors, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the easement areas or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.); and

4. the Developer further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR" ; and

5. the Developer recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to make an application for a summary vacation, regardless of whether Subdivider's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and

6. the hereinabove conditions shall be binding upon the Developer and the successive owners and assigns thereof; and be it

FURTHER RESOLVED: That pursuant to section 50570 of the California Government Code, ownership of said air rights shall revert to the City of Oakland in the event that the Developer no longer retains majority ownership of fee simple title to said parcel, except with prior approval of City, or the 8500 MacArthur Blvd. property is not developed for, or not maintained as affordable housing; and be it

FURTHER RESOLVED: That said transfer of ownership shall obligate the Developer to comply in all respects with the requirements and restrictions for construction that receives funding subsidies from the City of Oakland, and to install lighting, monitoring equipment, signage and other safety features on buildings constructed in the Project and along the path, as requested by the Police Services Agency; and be it

FURTHER RESOLVED: That the City Administrator or her designee is hereby authorized to negotiate and execute all agreements, documents and any amendments and modifications thereto, and to take all other actions necessary to carry out the intent of this Ordinance and its basic purposes; and be it

FURTHER RESOLVED: That the City Council has independently reviewed and considered this environmental determination, and the Council finds and determines that this action complies with CEQA because this action on the part of the City is exempt from CEQA pursuant to Section 15332 (in-fill development projects) of the CEQA guidelines; and be it

FURTHER RESOLVED: That the City Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it

FURTHER RESOLVED: That all agreements and other legal documents shall be reviewed and approved by the City Attorney as to form and legality prior to execution, and a copy shall be placed on file with the City Clerk; and be it

FURTHER RESOLVED: That the City Clerk is hereby directed to file a certified copy of this Ordinance for recordation with the Office of the Alameda County Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, **2007.**

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