



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Grants Management Division

m e m o r a n d u m

TO: Mayor Laurel Lunt Prussing

FROM: Elizabeth H. Tyler, FAICP, Director, Community Development Services

DATE: May 7, 2009

SUBJECT: AN ORDINANCE APPROVING AND AUTHORIZING AN AMENDMENT TO A CONTRACT FOR SALE OF REAL ESTATE (1007 West Fairview Avenue / Ecological Construction Laboratory)

Description

Included on the agenda of the May 11, 2009 Special Meeting of the Urbana City Council is an ordinance authorizing an amendment to the contract for sale of the real estate located at 1007 West Fairview Avenue, to Ecological Construction Laboratory (e-co lab). The amendment is needed to expedite Federal Housing Administration (FHA) approval of the mortgage financing in order for an income-qualified person to purchase the property.

Issue

The issue is whether the Urbana City Council should approve the ordinance approving the amendment to the contract for sale of 1007 West Fairview Avenue.

Background

Community Development Block Grant (CDBG) Funds were used to acquire the subject property as part of the Grants Management Division's Property Acquisition Program. This program supports the development of affordable housing opportunities by the City through the purchase, clearance, and maintenance of such lots until they are conveyed to non-profit housing developers.

On September 18, 2006, the Urbana City Council approved the ordinance authorizing the sale of 1007 West Fairview to e-co lab to be used for the development of the e-co lab's second Super Energy Efficient Home (copy of ordinance and contract for sale attached). To ensure long-term affordability, the standard contract for sale of City-owned property for affordable housing development requires the developer of the property to record a deed restriction, in the form of a Land Use Regulatory Agreement, at the time the property is sold to an income-qualified buyer. The Land Use Regulatory Agreement restricts subsequent sales of the property to income-qualified buyers and remains in place for a designated period of affordability. In the case of 1007 West Fairview, the Land Use Regulatory Agreement requires an affordability period of ten years.

The CDBG program does not require enforcement of an affordability period for income-qualified buyers. The CDBG program only requires that property acquired with CDBG funding must meet one of three major national objective categories of the program. In this case, the national objective category is "LMI" to benefit Low and Moderate Income clientele.

While no formal City policy exists regarding enforcement of an affordability period for CDBG funded projects (other than to comply with the HOME Program regulations), staff believe that the Land Use Regulatory Agreement has been used for CDBG funded projects for consistency with the requirements of the HOME Program. (Note: The HOME Program does require enforcement of an affordability period for an assisted property based on the amount of HOME funding that is expended on a project for buyer assistance. To ensure affordability, the City must impose either resale or recapture requirements.)

The construction of the home at 1007 West Fairview is complete, and a Certificate of Occupancy was issued on April 21, 2009. The buyer, whose annual income meets the recently released HUD 2009 income-qualification requirements, has been approved for FHA financing through Busey Bank. The loan was scheduled for closing on April 30, 2009. However, closing has been delayed indefinitely because FHA has balked on final approval of the loan due to the Land Use Regulatory Agreement required by the City.

Because the buyer's financing commitment will expire on May 18, 2009, removal of the Land Use Regulatory Agreement requirement would allow the loan closing to proceed without further delay. Successful marketing of this home has been difficult for the developer due to current housing market conditions and the challenge of finding a buyer who would income-qualify for HUD requirements and meet the lender qualifications. If this buyer is unable to proceed with the purchase, identifying another buyer could take an extended period, which would increase the project financing costs.

The buyer has also qualified to receive downpayment assistance from the American Dream Downpayment Initiative (ADDI) Program, which is funded through the HOME Program and requires a five-year affordability period. The City enforces the ADDI affordability period by recording a second mortgage on the property that requires the buyer to pay back a portion of the net-sales proceeds in the event the property is sold during the affordability period.

The buyer and lender have requested that the City consider foregoing the Land Use Regulatory Agreement requirement of the contract in order to complete the sale and allow the buyer to occupy the home at 1007 West Fairview. The proposed amendment to the sales contract would eliminate the Land Use Regulatory Agreement requirement and allow the closing of the permanent financing to proceed soon after Council approval. Because of the ADDI downpayment assistance, there would be a five-year affordability period for this project, which would be enforced with a second mortgage.

The use of a Land Use Regulatory Agreement for City donated lots has not caused problems for buyers in securing permanent financing in the past. However, it will likely become more of an issue in the future because of the more strict underwriting guidelines recently adopted by lenders. It is possible the City will need to revisit this policy and consider removing the Land Use

Regulatory Agreement requirement from future donations of lots to non-profits for affordable housing development. An affordability period would still be in place because, in addition to lot donation, these projects typically receive HOME funds in the form of buyer assistance. The affordability period, based on the amount of HOME funds provided, would be enforced using a second mortgage and note instead of the Land Use Regulatory Agreement.

Options

1. Approve the Ordinance Approving and Authorizing an Amendment to a Contract for Sale of Real Estate (1007 West Fairview Avenue).
2. Approve the ordinance with changes.
3. Do not approve the ordinance.

Fiscal Impacts

The completion of the home and sale of this property will generate real estate taxes and will likely have a positive effect on surrounding property values. If the amendment is not approved, e-co lab will incur additional construction financing and marketing costs until another income-qualified buyer is identified for the home.

Recommendations

Staff recommends that the Urbana City Council approve the ordinance.

Memorandum Prepared By:

John A. Schneider
Manager, Grants Management Division

Attachments:

1. AN ORDINANCE APPROVING AND AUTHORIZING AN AMENDMENT TO A CONTRACT FOR SALE OF REAL ESTATE (1007 West Fairview Avenue / Ecological Construction Laboratory).
2. Amendment to Contract for Sale of 1007 West Fairview Avenue.
3. Copy: Ordinance No. 2006-09-117 Authorizing the Sale of Certain Real Estate (1007 West Fairview Avenue).
4. Copy: Contract for Sale of Real Estate (1007 West Fairview Avenue) Between the City of Urbana and Ecological Construction Laboratory.

ORDINANCE NO. 2009-05-052

AN ORDINANCE APPROVING AND AUTHORIZING AN AMENDMENT TO A CONTRACT
FOR SALE OF REAL ESTATE

(1007 West Fairview Avenue / Ecological Construction Laboratory)

WHEREAS, a contract for the sale of 1007 West Fairview Avenue was approved in Ordinance No. 2006-09-117; and

WHEREAS, the City Council of the City of Urbana, Illinois, has found and determined that execution of the attached amendment to a Contract for Sale of Real Estate is desirable and necessary to carry out one of the corporate purposes of the City of Urbana, to wit: implementation of Strategies and Objectives to Address the Affordable Housing Needs of Low and Moderate Income Households described in the *City of Urbana and Urbana HOME Consortium Consolidated Plan for Program Years 2005-2009*,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That an amendment to a Contract for Sale of 1007 West Fairview Avenue dated January 17, 2007 between the City of Urbana and the Ecological Construction Laboratory, in substantially the form of the copy of said Amendment as attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Amendment as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this _____ day of _____,
_____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____,
_____.

Laurel Lunt Prussing, Mayor

AMENDMENT TO A CONTRACT FOR SALE OF REAL ESTATE

(1007 West Fairview Avenue)

WHEREAS, the City of Urbana, (Seller) and Ecological Construction Laboratory (Buyer) previously entered into a contract for the sale of 1007 West Fairview Avenue, Urbana, IL to the Buyer on the 17th day of January, 2007; and,

WHEREAS, the parties agree that Part 9 of the said contract should be amended immediately and such amendment has been approved by the Urbana City Council in Ordinance No. _____.

NOW, THEREFORE, it is agreed that Part 9 of the contract is hereby amended to read as follows:

- 9. Use of Subject Property. The primary purpose of Buyer activities undertaken pursuant to this Contract shall be construction of a single-family residence for sale to a low-income household through the Buyer’s Homeownership Program.

All other provisions of said Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and corporate seals affixed hereto, all on the day and year first above written.

CITY

BUYER

By: _____
Laurel Lunt Prussing, Mayor

By: _____

Date: _____

Date: _____

Attest: _____
City Clerk

Attest: _____