



File #: 20-0500, Version: 1

REPORT TO COUNCIL

SUBJECT

Approve the Purchase and Sale Agreement Between the City of Sunnyvale and MP Land Holdings LLC (MidPen Housing) for the Purchase of 1178 Sonora Court, and Approve a Disposition and Development Agreement, to Construct a new Affordable Housing Development, and Adopt the Resolution to Authorize the Ground Lease (*Continued from the meeting of May 12, 2020*)

BACKGROUND

On November 15, 2019, a Notice of Funding Availability (“NOFA”) was issued for the construction or rehabilitation of affordable housing developments to be funded with the City’s Housing Mitigation Funds (“HMF”), Below Market Rate In-Lieu Funds (“BMR”), and Low Mod Income Housing Asset Funds (“LMI”). A total of \$26 million in HMF, BMR, and LMI funds was made available. Three applicants applied for the funding, and Council approved awards to all three applicants on February 25, 2020. One of the HMF recipients was MidPen Housing (“MidPen”) for construction of a new approximately 147-unit affordable housing development located at 1178 Sonora Court; a \$14 million HMF loan was approved for this development. The loan would be used to offset the cost of the land and remainder used for pre-development.

During the Council meeting, Councilmembers requested that staff work with MidPen to consider City ownership of the property. Since then, the City and MidPen have been in negotiations for the City to purchase the property and to enter into a Disposition and Development Agreement (“DDA”) for MidPen to hold a long-term ground lease with the City for development and operation of affordable housing.

Council met in closed session on April 7, 2020 to provide staff general direction and feedback regarding price and terms for the proposed transaction.

Staff was not able to complete the negotiations regarding the purchase of the property to keep the original hearing date of May 12, 2020. In order to comply with Sunnyvale Municipal Code Section 2.07.060 and to avoid the need to republish the public hearing for May 19 (and to avoid incurring additional costs), the Council opened the public hearing on May 12 and continued this item to the Council meeting of May 19, 2020.

EXISTING POLICY

Council Policy 1.2.7 Acquisition, Leasing and Disposition of City-Owned Real Property

Section 1: Acquisition of Real Property for Municipal Purposes

Real property shall be acquired for current or future municipal purposes, and/or to benefit the community. The City shall acquire real property in accordance with Sunnyvale Municipal Code Chapter 2.07.

Council Policy 5.1G: Provide incentives, such as co-location privileges or rent subsidies, to attract private agencies to provide needed health and social services.

General Plan Housing Element

Goal HE 1: Assist in the provision of adequate housing to meet the diverse needs of Sunnyvale’s households of all income levels.

Goal HE 5: Promote equal housing opportunities for all residents, including Sunnyvale’s special needs populations, so that residents can reside in the housing of their choice.

ENVIRONMENTAL REVIEW

Approving a the Disposition and Development Agreement and Purchase and Sale Agreement for the purchase of real property does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(a), as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Any future development of this parcel shall be subject to CEQA requirements.

DISCUSSION

Purchase and Sale Agreement

The City is looking to purchase 1178 Sonora Court from MP Land Holdings LLC (“MidPen”) and lease it back to them to construct and operate a new affordable housing development. 1178 Sonora Court is a 1.26-acre site, improved with an industrial/flex building of 19,230 square feet. The property is located on the corner of Sonora Court and San Zeno Way. The property is within the Lawrence Station Area Plan, is located directly next to the Lawrence Station CalTrain Station and has a land use/zoning designation of MXD-1 (Flexible Mixed Use which allows the highest intensity of residential or commercial/office development)

The property was recently purchased by MidPen in January 2020 through a competitive purchase process. MidPen paid \$13.55 million and closed escrow on January 9, 2020. MidPen completed due diligence on the property by obtaining an appraisal report, an environmental phase I and II report, and a title report. Nothing of concern was identified.

The property is currently leased to Prototek (formerly Hayes Manufacturing). This lease was assigned to MidPen upon their purchase of the property. It expires on July 31, 2020. Prototek had planned to move-out on this date and had signed a new lease for a property in San Jose. However, due to COVID-19 shelter in place orders, Prototek’s tenant improvements on the new building have been delayed, thus delaying their move-in date. Prototek requested a lease extension from MidPen through December 31, 2020, with one six-month extension option, to accommodate their new timeline. Should the City acquire the property, this lease will be assigned to the City. Once Prototek moves out, the property will remain vacant until the new affordable housing development is built.

A thirty-day due diligence period will occur after signing the Purchase and Sales Agreement (PSA). Once due diligence has been completed, the City will close escrow, no later than June 30, 2020.

Fundamental Terms and Conditions:

- Purchase price: \$13,550,000.

- Initial deposit: \$100,000 payable within 10 days of a fully executed agreement.
- Close of Escrow: no later than June 30, 2020.
- MidPen to pay for all closing costs associated with the purchase.
- City to issue a predevelopment loan in the amount of \$450,000.
- City and MidPen enter into DDA for the development and long-term ground lease for the property.
- Lease agreement with Prototek will be assigned to the City

Disposition and Development Agreement

The property shall only be used for a future affordable housing development of at least 147 affordable rental apartments and one manager's unit. All parking required to serve the proposed development will be provided above ground. The Project shall include resident serving interior amenities including onsite property management office and resident service coordinator office area as well as recreational amenities such as community/multipurpose room and onsite laundry. The affordable units shall be deed restricted for a term of at least fifty-five (55) years.

Land Use Entitlements

MidPen will submit a formal Planning application for land use entitlements ("Special Development Permit") no later than 180 days from the execution of the DDA. The City may consider a one-time 30-day extension, if MidPen cannot finalize the application package on time, subject to the City Manager's approval. MidPen is responsible for the cost of any City permits, impact fees and construction costs.

Tax Credit Application

MidPen has identified 4% Federal Low-Income Housing Tax Credits (LIHTC) as a preliminary source of project financing. In order to qualify for this source of funding, MidPen must secure land use entitlements and all the other required funding in respect to the proposed project. The proposed development cost is anticipated to be approximately \$120 million. MidPen will actively look for other funding options before they can apply for 4% Tax Credit Allocation Committee (TCAC) application. If efforts to obtain 4% Tax Credits are not successful in the first submission, MidPen will continue to apply for 4% Tax Credits for two additional rounds. If MidPen is not successful in receiving an allocation of 4% Tax Credits after three application rounds, they may pursue another method of financing acceptable to the City.

Affordability Restrictions

The units will be rented to households whose incomes do not exceed the income limits set by the Federal Tax Credits' new "Income Averaging" rule. MidPen has agreed to provide the units with the following provisions:

- The average income of tenants occupying dwelling units shall not exceed fifty percent (50%) of Area Median Income (AMI);
- All affordable units shall be rented to households whose incomes do not exceed eighty percent (80%) of AMI;
- The development will include extremely low, very low, and low income units;

DDA Term

The DDA has a three-year term with the possibility of an additional one-year extension at the discretion of the City Manager, if MidPen fails to obtain allocation of tax credits by the third

anniversary of the DDA execution and if both parties would like to continue with the project at that point.

Ground Lease

The City Manager would execute the Ground lease commencing on the construction loan closing and continuing for 65 years. Pursuant to the terms of the Ground Lease, the Partnership shall pay, in arrears, annual rent thereunder in the amount of the lesser of (i) One Million Three Hundred Fifty-Five Thousand Dollars (\$1,355,000) per year or (ii) the City's Pro Rata Share of Net Operating Income (as defined in the Ground Lease); provided, however, that the City's Pro Rata Share of Net Operating Income shall be applied first to repayment in full of the City Subordinate Loan Note according to the terms of the City Subordinate Loan Documents.

City Loan

The DDA and the Subordinate Predevelopment Loan Note (Exhibit F of the DDA) sets forth the terms of the City's loan of \$450,000 predevelopment loan to MidPen (funded through Housing Mitigation Funds [HMF]) including financing terms, disbursement requirements, and general requirements for the project. The proposed loan terms include 3% simple annual interest, with residual receipt payments starting at completion of construction, and a term of 55 years. The loan would fund during close of escrow for City purchase of the property, and the term of affordability runs with the land for the term and does not terminate early if the loan is paid off early.

Development Timeframe

MidPen shall apply for tax credits no later than the second round of TCAC applications in September 2022. If the TCAC funds are awarded, MidPen will prepare and submit complete construction documents (e.g., building permits, improvement plans) to the City. Construction will start six months after the award of tax credits and will be completed 22 months after close of the escrow.

FISCAL IMPACT

The purchase price is \$13,550,000. Funding for this purchase is from the Housing Mitigation Fund and has no impact on the General Fund. The additional \$450,000 predevelopment loan will also be funded through the Housing Mitigation Fund. The total funding for \$14,000,000 is equal to the amount the Council approved on February 25, 2020. At the end of ground lease with MidPen, the City would become responsible for property maintenance and utilities at the property.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, Sunnyvale Public Library and Department of Public Safety; and by making the agenda and report available at the Office of the City Clerk and on the City's website. A notice of public hearing was published in the Sunnyvale Sun on May 1, 2020. At the May 12, 2020 Council meeting this item was formally continued to the meeting of May 19, 2020, which serves as official notification of the meeting date.

ALTERNATIVES

1. Authorize the City Manager to execute the Purchase and Sale Agreement in substantially the same form as Attachment 1 to the report, between the City of Sunnyvale and MP Land Holdings LLC. for the purchase of real property located at 1178 Sonora Court for \$13,550,000.
2. Direct staff to negotiate different terms with MP Land Holdings LLC. as determined by Council.
3. Do not approve the Purchase and Sales Agreement between the City of Sunnyvale and MP

- Land Holdings LLC.
4. Approve the draft Disposition and Development Agreement, Adopt the Resolution to Authorize the Ground Lease, and associated appendices with MidPen, or an affiliated entity, for the establishment of the affordable housing development at 1178 Sonora Court; and authorize the City Manager to execute it in final form substantially consistent with Attachment 1 to the report and in a form approved by the City Attorney.
 5. Do not approve the draft Disposition and Development Agreement and do not adopt the Resolution to Authorize the Ground Lease and provide direction to staff to negotiate different terms, or other action deemed appropriate by the City Council.
 6. Other Council direction.

STAFF RECOMMENDATION

Alternatives 1 and 4. Authorize the City Manager to execute the Purchase and Sale Agreement in substantially the same form as Attachment 1 to the report, between the City of Sunnyvale and MP Land Holdings LLC for the purchase of real property located at 1178 Sonora Court for \$13,550,000; and Approve the draft Disposition and Development Agreement, Adopt the Resolution to Authorize the Ground Lease, and associated appendices with MidPen, or an affiliated entity, for the establishment of the affordable housing development at 1178 Sonora Court; and authorize the City Manager to execute it in final form substantially consistent with Attachment 1 to the report and in a form approved by the City Attorney.

Staff is recommending approval of the attached PSA and DDA to continue moving forward in a timely manner to purchase 1178 Sonora Court and bring a new, much needed affordable housing development to Sunnyvale.

Prepared by: Jenny Carloni, Housing Officer

Reviewed by: Sherine Nafie, City Property Administrator

Reviewed by: Trudi Ryan, Director, Community Development

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Purchase and Sale Agreement
2. Disposition and Development Agreement
3. Resolution to Authorize the Ground Lease