Centre City Development Corporation

DATE ISSUED: November 9, 2005 REPORT NO.: CCDC-05-37

ATTENTION: Chair and Members of the Redevelopment Agency
Docket of November 15, 2005

SUBJECT: Broadway Square - Revised Second Implementation Agreement - Broadway & 9th, LP (Bud Fischer) -- Core Redevelopment District of the Expansion Sub Area of the Centre City Redevelopment Project

Public Hearing

REFERENCE: Notice of Joint Public Hearing
Staff Report from March 23, 2005 Board Meeting
Staff Report from November 9, 2004 Redevelopment Agency Meeting
Second Implementation Agreement

STAFF CONTACT: Dale Royal, Senior Project Manager

SUMMARY

Issue - Should the Redevelopment Agency approve the proposed Second Implementation Agreement to the Owner Participation Agreement ("OPA") between Broadway & 9th, LP ("Developer") and the Redevelopment Agency of the City of San Diego ("Agency") for the Broadway Square affordable housing project located at the southeast corner of Broadway and Ninth Avenue?

Staff Recommendation - That the Redevelopment Agency approve the proposed Second Implementation Agreement to the Owner Participation Agreement ("OPA") between Broadway & 9th, LP ("Developer") and the Redevelopment Agency of the City of San Diego ("Agency") for the Broadway Square affordable housing project located at the southeast corner of Broadway and Ninth Avenue ("Site").

Centre City Development Corporation Recommendation – On September 21, 2005, the CCDC Board of Directors voted unanimously in favor of staff's recommendation.

Centre City Advisory Committee ("CCAC")/Project Area Committee ("PAC") Recommendation - On June 15, 2005, the CCAC voted to include the proposed project as one of its Fiscal Year 2006 Low- and Moderate-Income Housing Fund priorities.

Other Recommendations - None.

Fiscal Impact - Pursuant to previous actions, the Agency has encumbered $10,000,000 of low- and moderate- income housing set-aside funds for this project. As anticipated by the proposed Second Implementation Agreement, the Agency would obtain an option to purchase the site and other items from the Developer for an amount not to exceed $8,800,000. The existing encumbrance is sufficient at this time. Ultimately, the Agency may need to consider additional financial assistance for the project. The extent of this level of assistance will be determined based on the responses received to a proposed Request for Qualifications and Proposals.

BACKGROUND

The project would advance the Visions and Goals of the Centre City Community Plan and the Objectives of the Centre City Redevelopment Project by:

- Developing a range of housing to meet the needs of an economically- and socially-balanced population;
- Contributing to the vision of downtown as a major residential neighborhood;
- Expanding the supply of low- and moderate-income housing;
- Providing replacement units for potentially lost units;
- Creating high-density housing; and
- Eliminating underutilized parcels.

On March 25, 2003, the Redevelopment Agency approved an OPA with the Developer to construct a 12-story, 394-unit, affordable housing project on a 25,000 square-foot site on the southeast corner of Ninth Avenue and Broadway. The project included a mix of Living Units, one- and two-bedroom apartments, plus approximately 2,000 square feet of commercial/retail space, and two levels of underground parking. The OPA provided for a $6 million Agency Loan.

In November 2003, the Housing Authority of the City of San Diego issued Multi-Family Housing Revenue bonds in the amount $29.5 million for the project. The Developer did not expend the proceeds and the bonds have since been redeemed. In addition, an Agreement Affecting Real Property (the restrictive covenants) was recorded against the Site which limits its use to require affordable housing to be developed on the Site.

On August 24, 2004, the Developer sent a letter to Ms. Janice Weinrick, CCDC Vice President of Real Estate Operations, requesting termination of the OPA. CCDC staff and the Developer agreed to continue working towards a solution that would allow the project to proceed.

On November 9, 2004, the Redevelopment Agency approved the First Implementation Agreement to the OPA which amended the Schedule of Performance, accounted for the loss of one Living Unit due to plan check requirements, and approved a Second Agency loan in an amount not-to-exceed $4 million, increasing the total Agency participation in the project to a not to exceed amount of $10 million.

On February 17, 2005, the Developer informed staff that additional Agency funding would be required in order to proceed with the project. Staff agreed to work with the Developer to address this new funding gap.

On March 9, 2005, a joint meeting of the Centre City Development Corporation's Budget/Finance and Real Estate (Planning & Projects) committees considered the Developer's request for additional funding to address unforeseen cost increases. The committees voted to approve additional funding of up to $4 million to the project with up to $2 million to be allocated from the Centre City Low and Moderate Income Housing Fund and $2 million from Inclusionary Housing in-lieu fees which are administered by the San Diego Housing Commission.

On March 23, 2005, the Board was informed of the Developer's request to terminate the OPA. No discussion of the Developer's request was held at that time. Subsequently, staff discussed the Developer's request to terminate the OPA with the Board and received direction from the Board to deny the Developer's request and attempt to find a way to proceed with the project. The Board had the following concerns: the Agreement does not provide for the Developer to terminate the Agreement without certain conditions being met, the fact that there is a critical need for affordable housing, the significant Agency investment to date in this project, and the fact that the Board was willing and able to address the additional funding shortfall as indicated by their actions at the March 9, 2005 Joint Meeting of the CCDC Real Estate and Budget/Finance committees.

The original Development Team consists of the following:

ROLE/ FIRM	CONTACT	OWNED BY
Developer Broadway and 9th, LP	Bud Fischer, Managing Partner Frank Goldberg	SJS, LLC Goldberg Family Trust (Privately Owned)
Architect Architects Bundy & Thompson	Dick Bundy	Dick Bundy/David Thompson (Privately Owned)
General Contractor Douglas E. Barnhart	William Sharp, President	Douglas E. Barnhart (Privately Owned)
Loan Servicer Berkshire Mortgage Finance Limited	Martin Meagher	(Privately Owned)
Construction Lender Bank of America	David Ricker/Stephanie Sievers	(Publicly Owned)

The composition of any future development team may or may not include any of the firms listed above.

DISCUSSION

Scope of the Project - The Agency entered into an OPA with the Developer for the development of a 394-unit affordable housing project. The Developer requested that the Agency terminate the agreement. The proposed Second Implementation Agreement provides the Agency an opportunity to find a replacement developer.

Disposition of Property - The Site is privately owned by Broadway & 9th LP, represented by Bud Fischer and Frank Goldberg.

Participation by Agency - The Agency would obtain an option to purchase the Site and other items from the Developer for an amount not to exceed $8,800,000.

Proposed Schedule - The Agency option would expire on September 1, 2006.

Project Benefits - The project represents an opportunity to expand the supply of low-income rental housing in downtown with a significantly shorter time frame to start construction by utilizing a design that has already been reviewed by the City.

Unique Circumstances

Earlier this year, the Developer requested that the Agency terminate the agreement and remove the Agreement Affecting Real Property (restrictive covenants) that has been recorded against the Site. For reference, staff reports of the March 23, 2005 Board Meeting and the November 9, 2004 Agency Meeting are included as attachments A and B.

The Developer's request to terminate the agreement has created a multi-faceted problem that must be addressed on several fronts. From an affordable housing perspective, the potential loss of this project is troubling. The Agency was counting on this project to develop 293 affordable units. While there are projects in the pipeline, none have the potential of creating this great a number of units. On the contractual side, the Agency and the Developer have entered into a contractual relationship. The Agency risks setting an unwanted precedent if it were to allow a Developer to walk away from its obligations.

The Developer's situation is unique for a variety of reasons. Unlike many affordable housing projects, the Developer had a substantial equity contribution to the project which at the time of the First Implementation Agreement was over $8 million in cash and land. The Developer has a long track record of providing housing, particularly SRO, in the Downtown area, and has successfully completed several projects with CCDC and the Redevelopment Agency. Due to industry-wide price escalations, the cost of the project rose substantially to the point that the Developer believed that the project was no longer economically viable. The Developer had expressed a reluctance to proceed on more than one occasion, but continued to work with staff to attempt to develop the project. At this time, staff believes that the Developer was truly conflicted about proceeding with the project and has generally negotiated in good faith to reach a reasonable and amicable solution.

In an effort to make the best out of this unfortunate situation, staff and the Developer have had numerous discussions consistent with the Board's direction to try to come to a resolution which would give the Agency an opportunity to develop affordable housing on the Site. Today, the Agency is being asked to recommend approval of a compromise which we believe accomplishes that goal.

Proposed Implementation Agreement

The essential terms and conditions of the Second Implementation Agreement to the OPA with Broadway & 9th LP, included as Attachment C, which would preserve the opportunity to develop affordable housing on the Site, are as follows:

- The Agency shall receive a one-year option effective September 2005 to purchase the site and plans from the Developer as described below. The option would terminate on September 1, 2006;

- The Agency shall pay no interest for this option and is under no obligation to exercise this option; and

- Price shall be $8.8 million. This price includes the land, the Developer's rights to the plans for the project, an easement executed between the Developer and an adjacent- property owner to allow for underpinning, an executed agreement between the Agency and the Developer for underpinning on property owned by the Developer adjacent to the site, and shoring plans for the project.

The value of the land by itself is estimated to be $7.6 million. This represents a land price of $304/per sf with a date of valuation of October 2004. This date was chosen as it is consistent with the date of the First Implementation Agreement and represents a discounted price from today's land values. Keyser Marston Associates ("KMA"), economic consultants to the Agency, conducted an analysis of comparable land values from that time period and supports the proposed land value as representative of land values at that time.

- CCDC would immediately, pending Agency approval of the Second Implementation Agreement and Committee approval of a proposed Request for Qualifications and Proposals ("RFQ/P"), issue an RFQ/P to secure a replacement developer for the project;

- In the event the Agency fails to exercise its option, it shall agree to release the Developer from any further obligations under the OPA and remove the restrictive covenants that have been placed on the Site;

- The Agency also agrees that the land shall be used for the development of an affordable housing project similar to the one contemplated by the original OPA. Similar is understood to mean that any future project will have a significant number of units (at least 75%) restricted for rent by low- and moderate- income persons; and

- To make the above provision enforceable, Special Agency Counsel and the City Attorney's office have drafted a Repurchase Agreement which states that if the Agency chooses to not exercise its option, or fails to convey the property to an affordable housing developer after holding the land for five years, the developer has the right, but not the obligation, to repurchase the property for $8.8 million plus interest at the rate of 2% per year. Several details of the Repurchase Agreement still need to be finalized such as the timeline for close of escrow and title insurance charges.

The primary benefits of the proposed recommendation are as follows:

- The Agency gains site control and the ability to control the process;

- Due to the fact that a development permit has been issued, the project can proceed under current zoning and land use regulations;

- The Developer, while still benefiting greatly, is accepting less than he could likely receive for his property in today's open market;

- The Agency retains the ability to develop an affordable housing project which should produce at least 250 affordable units;

- At least 12 affordable housing developers have expressed interest in the project, indicating a level of interest that should result in a viable project;

- Obtaining the plans and other items allow the Agency to significantly shorten the time frame it would take to start construction of a project and should reduce the costs of architectural services to complete the project; and

- If the Agency is unsuccessful in securing a replacement developer, it has no obligation to exercise the option.

While the proposed solution is not ideal, staff believes that it represents a reasonable solution that preserves the opportunity to develop affordable housing on the Site and which represents that both parties have acted in good faith.

Alternatively, the Agency may still pursue legal action against the Developer; however, staff does not recommend this option for the following reasons:

- Under this scenario, even if it were to be successful, it would not result in affordable housing units being built in the near future;

- The Developer has had a long and successful track record in providing housing downtown. Several of his projects were completed pursuant to agreements with CCDC and account for many of the SRO units currently available such as the Island Inn and J Street Inn;

- The Developer had begun to express reservations about the viability of the project quite some time ago, but continued to try to make it work at the urging of staff;

- The project suffered from industry-wide cost increases which added significantly to the estimated construction cost of the project and for which the Developer had no control; and

- Staff and the Developer have reached a reasonable compromise which does give the Agency the opportunity to potentially develop affordable housing on the Site.

Proposed Request for Qualifications and Proposals

Subject to Redevelopment Agency approval of the Second Implementation Agreement, staff proposes to issue a RFQ/P to solicit a developer to serve as a replacement developer for the project. As mentioned earlier, staff has had discussions or received interest from at least twelve affordable housing developers that are interested in the project.

The basic parameters of the RFQ/P are proposed as follows:

Requirements

- Project must create rental housing;

- Project must utilize existing building design, subject to limited modification;

- Project must include a minimum of 250 units;

- At least 75% of the units must be affordable to low- or very low-income persons at or below 80% of area median income;

- Project may contain up to 25% market rate or moderate-income units; and

- Project must include minimum of 30 two-bedroom units (Equals number of two-bedroom units in current design).

Target Population

- Consistent with the original project. Priority would be given to projects targeted towards lower-income workforce housing/SRO replacement housing; and

- Other target populations that would be considered include seniors, special needs, supportive housing or some combination.

Plans/Architect

- Developers would have the ability to use current plans which previously had been submitted to the City for plan check;

- Plan check process was not completed and developers would need to complete the steps to obtain permits; and

- Dick Bundy, Architects Bundy and Thompson, is the architect of record on the project. Developers would be given the option of continuing to utilize Mr. Bundy's services.

Financing

- Developers shall be encouraged to explore all available funding sources to provide the greatest leveraging of Agency funds including:

  - Low Income Housing 9% Tax Credits;
  - Tax-exempt bond financing with 4% tax credits;
  - Federal Home Loan Bank, Affordable Housing Program;
  - State Proposition 46 funds - Multi-family Housing Program; and
  - San Diego Housing Commission Inclusionary Housing In-Lieu Fees.

Tentative Schedule

Issue RFQ/P	November 2005
Receive Proposals	January 2006
Selection Committee	January 2006
Agency Approval	February 2006

Environmental Impact - The Redevelopment Agency as the Lead Agency under CEQA, has reviewed and considered the Master Environmental Impact Report (MEIR), certified on April 28, 1992 by Resolution No. 2081, and Final Subsequent Environmental Impact Report (SEIR) certified on October 26, 1999 by Resolution No. 3058. An Environmental Secondary Study has been prepared for this activity in order to evaluate the activity's compliance with the Community Plan and PDO and, therefore, the findings and conclusions of the MEIR and SEIR. The Secondary Study found that this activity is adequately addressed in the previous environmental documents, and there is no change in the circumstances, additional information, or project changes to warrant additional environmental review.

SUMMARY/CONCLUSION

The proposed Implementation Agreement preserves the opportunity to develop affordable housing on a 25,000 square-foot site in downtown on the southeast corner of Ninth Avenue and Broadway. Based on the level of interest in the project, it appears reasonable to expect that the Agency will be able to secure a developer to replace Broadway & 9th LP to develop affordable rental housing on the site. If the Agency is unable to find a replacement developer and decides not to exercise its option, it incurs no additional costs with the exception of administrative costs.

Respectfully submitted,	Concurred by:
Dale Royal Senior Project Manager	Peter J. Hall President

Attachment(s):
- A - Notice of Joint Public Hearing
- B - Staff Report from March 23, 2005 Board Meeting
- C - Staff Report from November 9, 2004 Redevelopment Agency Meeting
- D - Second Implementation Agreement

S:\Royal\9th and Broadway\Staff Report - Agency - Revised Second Implementation Agreement - 10.11.05.doc