

City Council – Action Request Form

Date: July 8, 2013

To: The City Manager

From: Derwick Paige, Assistant City Manager

Council Action Requested:

Approval of an Amendment to an Agreement for Housing Production at Drayton Pines with the Housing Authority of Winston-Salem and Execution of a Release Deed and Declaration of Covenant Pertaining, Thereto.

Summary of Information:

On January 28, 1986, the City and the Housing Authority of Winston-Salem (the “Authority”) entered into an agreement (the “Agreement”), whereby the City conveyed to the Authority two parcels of property, identified as PIN #s 6836-01-3400 and 6826-91-6834, for the production of affordable housing for low-income families, which housing is colloquially known as “Drayton Pines”. The Authority now desires to obtain federal funding from the U.S. Department of Housing and Urban Development and/or other funding for the rehabilitation of the housing thus produced. A stipulation for the receipt of funding is that the housing be conveyed to a single-asset or single-purpose entity, which the Authority is not. The purpose for the conveyance to a single-purpose entity, presumably, is that this type of arrangement insulates the collateral, which is the housing, from competing creditors’ claims, insofar as the lender is the single-asset entity’s only creditor. In order to qualify for funding, therefore, the Authority proposes to convey the housing to a single-purpose entity.

The Agreement requires the Authority to obtain the City’s consent prior to conveying the housing, the underlying property, or any part, thereof, to another entity. A contemporaneous deed, executed by the City to the Authority and recorded at Deed Book 1622, Page 2953 at the Forsyth County Register of Deeds, (the “Deed”) also contains restrictions prohibiting the Authority from conveying the property, or any part, thereof, and providing that the property may revert to the City if the Authority permits such a transfer, without the City’s consent. A similar Deed restriction allows the property to revert to the City if the Authority experiences a change of control in its corporate structure or the ownership or distribution of its stock.

Committee

Action

For

Against

Remarks:

In any of the aforementioned events, the City is empowered to re-enter and re-take possession of the housing and property and to terminate the Authority's interest, therein.

However, the Deed also contains language which indicates that once construction of the housing was complete, the City should have furnished the Authority a recordable certificate of completion, release deed, or other appropriate instrument certifying to the satisfactory completion of the housing and the fact that the Authority had acquitted itself of its contractual obligation to re-develop the property. Said certificate, release deed, or other instrument would have nullified and extinguished the City's right to re-enter and re-take the housing and property. Construction of the housing was completed more than two decades ago, but a certificate of completion, release deed, or other instrument was never recorded.

Now, in order to accomplish the rehabilitation of the housing, the Authority must obtain financing, a pre-condition of which is that the housing be conveyed to a single-purpose entity, as mentioned above, which, in turn, requires that the City relinquish its right to force a reversion of the housing and property if either is transferred. If the City does not so agree, then the Authority could, per the terms of the Agreement, request that the City provide subsidies sufficient to rehabilitate the housing and, if the City fails to do so, require the City either to accept a deed to the housing, relieving the Authority of further responsibility, therefor, or allow the Authority to sell the housing, the net proceeds of which would belong to the City. Therefore, City staff now proposes to execute a release deed and an amendment to the Agreement (terms to be approved by the City Attorney's Office) to effectuate the release of the City's right to re-enter and re-take the housing and property if either is transferred, while adding a restrictive covenant to run with the land to ensure that the housing will remain affordable housing in all subsequent transferees' hands.

Finally, the Deed contains certain covenants and restrictions regarding fencing, confines, paling, palisades, pickets, weirs, rail balustrades, walls, garden walls, parapets, espaliers, trellises, gates, ditches, and water channels, which covenants and restrictions run with the land, but which no longer appear to serve a purpose and which, in fact, hinder the Authority's current effort to erect a fence to separate the housing from an adjacent public park. The Authority would like to erect an ornamental fence, which mimics the look of wrought iron, between the housing and the park, in order to improve security at the housing units and to respond to residents' complaints pertaining, thereto. Staff, therefore, recommends including language in the release deed and amendment to the Agreement to eliminate the Deed restrictions and covenants pertaining to the fencing, pickets, garden walls, gates, ditches, water channels, etc.