

34336

DATE: June 11, 2013

TO: Board of Acquisition and Contract

FROM: Edward Buroughs
Commissioner of Planning

Mary Mahon
Director of Real Estate

SUBJECT: Resolution authorizing the County to enter into agreements to purchase and subsequently convey approximately 7.71 acres of real property and fund the construction of site work and infrastructure improvements all in support of an affordable AFFH development to be located at Route 6 and Clayton Boulevard in the Town of Somers

The authorizations requested herein are in support of an affordable AFFH development to be known as the Mews at Baldwin Place Phase II (the "Development") which will be constructed on the Property (defined below) and will provide seventy-five (75) one and two-bedroom affordable AFFH rental units for seniors 55 years of age or older.

The attached resolution authorizes the County of Westchester (the "County") to enter into agreements to purchase and subsequently convey approximately 7.71 acres of real property located at Route 6 and Clayton Boulevard in the Town of Somers (the "Property"), as well as to accept and/or release any rights in the Property deemed necessary in furtherance of this project, including, without limitation, easements and/or subordination agreements.

The County will purchase the Property from Somers Realty, LLC or the current owner(s) of record for an amount not to exceed \$2,900,000 (the "Purchase Agreement"), which purchase will be funded with bonds of the County through capital project BPL50 - Fair and Affordable Housing ("FAH").

Upon acquisition of the Property and prior to conveyance, the County will file a Declaration of Restrictive Covenants against the Property requiring that the fair and affordable units constructed thereon will affirmatively further fair housing ("AFFH") pursuant to the Settlement Agreement (defined below) and as set forth in 42 U.S.C. Section 5304(b) (2). The AFFH units will be affordable to seniors aged 55 or older with incomes at or below 50% and 60% of the County Area Median Income for a period of affordability of not less than 50 years.

The attached resolution further authorizes the County to enter into an agreement with Housing Action Council, Inc. ("HAC"), or a nonprofit organization affiliated with HAC, currently anticipated to be Mews Housing Development Fund Company, Inc (the "Non-Profit"), to convey

fee title to the Property for \$1.00 (the "Sale Agreement"). It should be noted that Planning has been advised that it is currently anticipated that the Non-Profit will ultimately hold legal title to the Property as nominee for Somers II Senior, LLC., which will hold the beneficial interest in the Property.

The resolution further authorizes the County to enter into an agreement with the Non-Profit to provide a loan in an amount not to exceed \$1,450,000 in non-county FAH Funds under capital project BPL50 to finance construction of certain site/infrastructure improvements on the Property in support of the Development all in accordance with the Community Development Block Grant ("CDBG") Program and its implementing regulations (the "Infrastructure Loan Agreement"). The term of the Infrastructure Loan Agreement will commence upon execution and continue until the satisfaction of the loan. Interest on the loan will accrue at a rate of .25% for a period of not less than 30 years and thereafter will be paid off based upon the ability of the Development to repay the funds at an annual interest rate of .25% pursuant to a 20 year fully amortizing loan schedule.

The resolution further authorizes the County to accept and/or release any rights in the Property deemed necessary in furtherance of this Development, including without limitation, accepting easements and/or entering into mortgage subordinations, following the completion of construction, in order to allow a new long term mortgage as a part of the conversion from construction financing to permanent financing for the Development.

Pursuant to the Stipulation and Order of Settlement and Dismissal entered into in connection with a lawsuit titled U.S. ex rel. Anti-Discrimination Center vs. Westchester (the "Settlement Agreement"), the County is required to ensure the development of 750 units of affordable AFFH units. In furtherance of these objectives, the County provides funding to assist in the development or rehabilitation of affordable AFFH housing units, including the affordable AFFH units in the proposed Development. It is anticipated that the proposed affordable AFFH units constitute eligible units under Section 7(a) of the Settlement Agreement.

On May 20, 2013, the Westchester County Board of Legislators approved (1) Act No. 92-2013, to purchase and subsequently convey the Property and (2) Bond Act No. 93-2013 which funds (i) the land acquisition costs in the amount of \$2,900,000 as described above, and (ii) the construction of additional off-site infrastructure improvements in a not-to-exceed amount of \$1,900,000 which are not subject to the agreements herein proposed but will be the subject of a future authorization request.

The goal and objective of this Agreement is to carry out the County's obligations under the Settlement Agreement by constructing Affordable AFFH Units in accordance with the terms of said Settlement Agreement. It will also enhance the neighborhood through its design and landscaping. Department of Planning staff will monitor and track construction of the Development, as well as monitor compliance with the affordability requirements.

I recommend approval of these Agreements.

EB/KAR/lk
Attachment

RESOLUTION

UPON A COMMUNICATION FROM THE COMMISSIONER OF PLANNING AND THE DIRECTOR OF REAL ESTATE, BE IT HEREBY

RESOLVED: that the County of Westchester is hereby authorized to enter into an agreement with Somers Realty, LLC or the current owner(s) of record to purchase approximately 7.71 acres of real property located at Route 6 and Clayton Blvd. in the Town of Somers (the "Property") for a total amount not to exceed \$2,900,000, noting that the total purchase price will be funded through the issuance of bonds of the County through capital project BPL50 - Fair and Affordable Housing ("FAH"); and be it further

RESOLVED: that the County will file a Declaration of Restrictive Covenants (the "Declaration") against the Property requiring that it be used for the development of the affordable AFFH (defined below) housing to be known as Mews at Baldwin Place Phase II (the "Development") for a period of affordability of not less than 50 years; and be it further

RESOLVED: that the Development will provide seventy-five (75) one and two-bedroom affordable rental units for seniors aged 55 and older which affirmatively further fair housing ("AFFH"), in compliance with 42 U.S.C. Section 5304(b)(2) and as required pursuant to the Stipulation and Order of Settlement of Dismissal entered into in connection with a lawsuit titled U.S. ex rel. Anti-Discrimination Center vs. Westchester and which, pursuant to the Declaration, will be available to households with incomes at or below 50 and 60% of the Westchester County Area Median Income for a period of affordability of not less than 50 years; and be it further

RESOLVED: the County is hereby authorized to enter into an agreement to convey the Property to Housing Action Council, Inc. ("HAC"), or a nonprofit organization affiliated with HAC currently anticipated to be Mews Housing Development Fund Company, Inc (the "Non-Profit") for One (\$1.00) Dollar noting that the Non-Profit intends to partner with Somers II Senior, LLC to develop the Property; and be it further

RESOLVED: the County is hereby authorized to enter into an agreement with HAC or the Non-Profit to provide a loan in an amount not to exceed \$1,450,000 in non-county FAH Funds under capital project BPL50 to finance construction of certain site/infrastructure improvements in support of the Development in accordance with the Community Development Block Grant Program and its implementing regulations which will commence upon execution and continue until the satisfaction of the loan; and it be it further

RESOLVED: that the interest on the loan will accrue at an interest rate of 0.25% for a period of not less than 30 years and will thereafter be paid off at an annual interest rate of .25% pursuant to a 20 year fully amortizing loan schedule, based upon the ability of the Development to repay the funds; and it be it further

RESOLVED; that the County is further authorized to accept and/or release any rights in the Property deemed necessary in furtherance of this project, including without limitation easements and/or subordination agreements; and be it further

RESOLVED: that the County Executive or his duly authorized designee is authorized to execute any documents and take any actions necessary to effectuate purposes hereof.

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
318	19	BPL50-12-S	6050	N/A	\$2,900,000
318	19	BPL50-12-S	6050	N/A	\$1,450,000

Budget Funding Year(s) (BPL50 Bonded) FY 2013 Start Date: Upon Execution
End Date: Upon Closing

Budget Funding Year(s) (BPL50 Non-County Shares) FY 2013 Start Date: Upon Execution
End Date: Upon Satisfaction of the Loan

Funding Source Tax Dollars \$2,900,000.00
State Aid _____

\$4,350,000.00 Federal Aid \$1,450,000.00
(must match resolution) Other _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 07/11/2013 - JOMARY VIEIRA, SECRETARY