



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Leslye Krutko

SUBJECT: SEE BELOW

DATE: April 28, 2009

Approved

Date

5-3-09

COUNCIL DISTRICT: 3
SNI AREA: N/A

SUBJECT: REQUEST TO RECLASSIFY \$450,000 OF AN EXISTING FUNDING COMMITMENT, APPROVE A LOAN INCREASE OF UP TO \$2,566,607, FORGIVENESS OF UP TO \$560,000 OF ACCRUED INTEREST, AND APPROVE A LOAN GUARANTEE IN THE AMOUNT OF UP TO \$3,123,330 FOR THE BELOVIDA AT NEWBURY PARK PROJECT

RECOMMENDATION

It is recommended that the City Council adopt a resolution:

1. Approving the reclassification of permanent and construction funds to provide of up to \$450,000 of the previously-approved predevelopment construction/ permanent funding commitment of \$500,000 to CORE Affordable Housing, LLC ("CORE"), or its designated affiliate, for the 185-unit Belovida at Newbury Park ("Belovida") project located northeasterly of the intersection on King Road and Dobbin Drive, to be made available to extremely low-income (ELI), very low-income (VLI), and low-income (LI) households.
2. Approving an increase in the construction/permanent funding of up to \$2,566,607, bringing the total City construction/permanent funding up to \$23,614,937.
3. Approving the forgiveness of up to \$560,000 in accrued interest on the City's predevelopment and acquisition loans.
4. Allowing the project to exceed the City Council policy limiting combined Loan-to-Value ratios to 100%.
5. Approving a City loan guarantee in the amount of up to \$3,123,330, the amount of the State's Infill Infrastructure Grant funds, to be drawn upon only in the event that these funds committed by the State of California are not provided when needed.

April 28, 2009

Subject: Request to Reclassify \$450,000 of Existing Funding Commitment, Approve a Loan Increase, Forgive Interest, and Approve a Loan Guarantee for the Belovida at Newbury Park Project

Page 2

OUTCOME

The City Council's approval of the recommended actions will facilitate the construction of 184 rental housing units affordable to extremely low- and very low-income senior households and one unrestricted manager's unit at the Belovida at Newbury Park project ("Belovida" or "Project") located Northeastly of the intersection on King Road and Dobbin Drive. The incomes for future residents are expected to range from \$22,300 to \$42,450. Approval of the recommended funding commitment for this Project at the May 19, 2009 City Council meeting is necessary in order for the Sponsor to apply to the California Debt Limit Allocation Committee (CDLAC) for an allocation of Tax-Exempt Multifamily Bonds and 4% Low-Income Housing Tax Credits by the May 22, 2009 deadline.

BACKGROUND

On February 4, 2008, CORE filed an application for City funding for the Belovida affordable senior housing project to be developed on a 1.97-acre site located approximately 250 feet East of King Road and approximately 375 feet North of Dobbin Drive.

The site is located on the 25-acre Newbury Park property at the Northeast corner of King Road and Dobbin Drive. San José Transit Village, LLC (SJTV), is the master developer of the property, which will ultimately be developed with between 800 and 1,300 total dwelling units. The Newbury Park neighborhood will be close to the future BART extension to San José, and will include neighborhood-serving commercial uses and a one-acre park. Also to be located at Newbury Park will be the New San José Family Shelter and the Kings Crossing affordable family housing project.

On March 18, 2008, the City Council adopted a resolution approving a funding commitment for up to \$17,925,000 to CORE's designated affiliate, of which \$9,010,400 financed the land acquisition for the development of the Belovida at Newbury Park affordable senior rental project, with the remainder designated as a construction and permanent loan commitment. The City's acquisition loan closed in March 2008. CORE did not request a predevelopment loan as part of its original financing request.

On December 9, 2008, the City Council adopted a resolution approving a reclassification of \$500,000 of the previously approved funding commitment to a predevelopment loan. CORE has already drawn down most of those funds from the City.

The Project received a commitment for \$3,123,000 from the State Department of Housing and Community Development for the Infill Infrastructure Grant (IIG) program on June 30, 2008. In December 2008, the State froze disbursements for many committed obligations, including the IIG program. The IIG funds are to be used for infrastructure costs during construction. Without firm commitments from the State that the funds will definitely be made available at a time certain, private sector lenders and investors have stated an unwillingness to issue their own funding commitments and this lack of commitments could result in significant delays to the

April 28, 2009

Subject: Request to Reclassify \$450,000 of Existing Funding Commitment, Approve a Loan Increase, Forgive Interest, and Approve a Loan Guarantee for the Belovida at Newbury Park Project

Page 3

project. The State has recently sold bonds to enable it to honor commitments, such as this one to the Belovida at Newbury Park Project. State officials have indicated that funds would begin to be disbursed as early as late May. However, the timing of the disbursement impacts the project's ability to meet CDLAC guidelines and to satisfy the project's private sector funders. A guarantee from the City will satisfy these concerns; it is unlikely that funds would ever need to be disbursed.

In spring 2009, CORE admitted EAH Housing, an experienced nonprofit affordable housing developer with four projects in San José, into the development partnership (jointly, the "Developer").

Together with the City, the Developer plans to seek a tax-exempt bond allocation for the Project from the California Debt Limit Allocation Committee (CDLAC) on May 22. Once an application is approved, CDLAC requires that all construction financing close within 90 days of award date.

ANALYSIS

Predevelopment Loan

Given the current conditions in the real estate and financial markets, the Developer is unable to fund the remaining predevelopment expenses fully out of its own resources. Without additional predevelopment funding, the project will be unable to complete the entitlement process, which is a necessary precursor to apply to CDLAC by the May 22, 2009 deadline. The City's existing predevelopment loan does not cover all predevelopment costs, so the Developer is seeking an increase of \$450,000 for a total of up to \$950,000. Staff will ensure that the City receives adequate security for all additional predevelopment funds to be disbursed. The amount of predevelopment funding requested is within accepted local industry standards.

Predevelopment loans are paid back from construction funding, so this increase is not a net increase in funding to the project. Rather, it is an increase in the amount of predevelopment funding originally requested as a part of the construction/permanent financing approved by the City Council on March 18, 2008. Approval of this request will allow the Developer to reimburse development costs incurred to date, and will ensure that the development process continues. If this project proceeds as expected, the predevelopment loan will be repaid from the City's construction loan in September or October 2009.

The Developer has agreed to amend its documents to ensure that all plans, specifications, and development documents related to the Project are pledged to the City in order to provide sufficient security for all of the City predevelopment funds. The value of these expenditures would be transferable to another developer were, in a worst case scenario, the City to need to take ownership of the land and find another developer to complete the Project. The City will ensure that additional predevelopment funds are fully secured before disbursement.

April 28, 2009

Subject: Request to Reclassify \$450,000 of Existing Funding Commitment, Approve a Loan Increase, Forgive Interest, and Approve a Loan Guarantee for the Belovida at Newbury Park Project

Page 4

Construction/Permanent Loan Increase and Interest Forgiveness

The Developer has requested an increase in the construction/permanent loan of \$2,566,607, and forgiveness of up to \$560,000 in interest due for the City's acquisition/predevelopment loans. Both of these requests are a result of reductions in the sources of funding available for the project.

Since the City Council approved the construction/permanent loan in March 2008, equity markets have changed significantly. There is a projected reduction in the equity partner's price to be paid for the project's Low Income Housing Tax Credits ("tax credits") of \$0.12 per \$1 of tax credit. This price reduction has lessened the tax credit equity the Project can access by \$2,760,174.

The Developer also had planned to seek other sources of funding, such as Mental Health Services Act (MHSA) funds and funds from the County of Santa Clara. However, those sources are no longer available for this Project, resulting in a loss of \$3,045,990 in previously anticipated funding. Additionally, the projected construction and permanent interest rates for the senior loan have increased since March 2008.

While the Developer has been able to reduce the estimated cost of the Project from \$53,168,811 to \$50,122,822, due to greater specificity on building plans and to the weakness in the building industry, there remains a funding gap.

Staff recommends approval of this additional funding and forgiveness of interest for several reasons. First, the City has already disbursed over \$9 million to the Developer's borrowing entity to purchase the land and affordability restrictions have been recorded in accordance with redevelopment law. The approval of additional funds for this Project, and forgiveness of interest, allows the Developer to seek approval of a tax-exempt bond allocation from CDLAC and close the project's financing this fall. The resulting City subsidy per unit of less than \$112,000 per unit is a reasonable subsidy level, and would have been recommended for approval were the application to come to the City for the first time today. Lastly, the project is shovel ready, and can start construction as early as the fall.

Loan-to-Value

The security for construction funding will be based on a third-party appraisal that provides an "as improved" value for the Project property. The City will use an appraisal that is commissioned with a senior lender shortly before construction closing. While this precise valuation is not now known, its value is likely to produce a combined Loan-to-Value (LTV) in excess of 100%. Staff projects an LTV of approximately 125%. However, the projected high combined City and senior LTV is mitigated by the fact that the senior lender's projected permanent first mortgage amount represents a conservative 60% of appraised value with a 15% cushion over the expected senior loan mortgage payments. Senior debt LTV and debt service coverage ratio (1.15) is considered to be a better test of the City's risk, as both indicate a high likelihood that the project will be completed according to schedule.

April 28, 2009

Subject: Request to Reclassify \$450,000 of Existing Funding Commitment, Approve a Loan Increase, Forgive Interest, and Approve a Loan Guarantee for the Belovida at Newbury Park Project

Page 5

Loan Guarantee

The Developer has also asked the City to provide a loan guarantee for the Project's awarded State IIG program funds in the amount of \$3,123,330. The need for a loan guarantee is due to the State's inability to perform on its written obligation to provide financing within the IIG program's original award schedule due to the State's funding freeze.

The City would put in place a Guarantee Agreement and would fund the IIG awarded amount only in the event that the State is unable to disburse its funds at the time the Project needs to start construction under the CDLAC 90-day requirements. As the funds have been committed, and as HCD has indicated that the State's bond sale in mid-April would pay for Belovida's IIG commitment, Staff believes the likelihood that the guarantee would be drawn upon is very low. Even if the City's funds must be drawn, they likely would be repaid by the State soon thereafter.

By providing the guarantee, the City can reassure the likely private sector lender and equity investor that the transaction can proceed as planned. This role of Project facilitation is in line with the City's traditional role as gap lender, and can be done with the guarantee itself or with a likely brief outlay of funds.

Without this guarantee, the Project could stall for several more months, adding risk and possibly cost to the Project and to its offsite improvements. The likely lender and investor may well choose not to wait longer for this Project, and the Developer would have to shop the deal to other candidates, potentially resulting in even further delays and an additional funding gap. Even in the worst-case scenario, were the IIG funds not to be reimbursed by the State, the Project's subsidy per unit would still be within the bounds of reasonableness as compared to other projects.

In order to recommend this guarantee request to the City Council, the Housing Department is requiring the Developer to provide the City a letter from the State that confirms there is an existing commitment, that the State intends to fund this grant, and that the City's guarantee funds—if drawn—will not void the eligibility of Project costs for the reimbursement of state funds to the Belovida project. The letter from the State will be obtained prior to disbursement of City funds.

Given the significant delays in the provision of funding from various State programs, approval of the proposed loan guarantee will minimize the negative effect of the economy on the Project's overall development budget and its feasibility.

Consideration

Staff will negotiate adequate consideration for the additional gap funds, interest forgiveness, and loan guarantee provided to the Developer. Consideration will include a larger share of net operating cash flow for the City and/or the extension of the Project's affordability term past 55 years. All business terms will need to be approved jointly with the lender and equity investor before finalization.

April 28, 2009

Subject: Request to Reclassify \$450,000 of Existing Funding Commitment, Approve a Loan Increase, Forgive Interest, and Approve a Loan Guarantee for the Belovida at Newbury Park Project

Page 6

Recommendation

By helping to move this project forward, the City of San José will also benefit. The Project has already paid \$243,024 in City fees to date, and will pay an additional \$1,030,824 at or prior to the expected date for start of construction in September 2009. It is anticipated that the Project's construction will create 363 jobs in San José over two years. To date, the Developer has received bids from over 220 subcontractors for this project; 50% of the firms providing bids are located in San José or Santa Clara County. Support for CORE is also support for a local business, as CORE is headquartered in San José and its principal, David Neale, has been working in the City for over 30 years.

Therefore, for the reasons articulated above, Staff recommends approval of these action items.

Specific business terms for the loans and guarantee will be approved by the Director of Housing pursuant to the Director's Delegation of Authority ordinance, located in Chapter 5.06 of Title 5 of the San José Municipal Code.

EVALUATION AND FOLLOW-UP

If these actions are approved, the City Council will later be able to track the project's construction status through the Housing Department's quarterly construction report available online at the Department's website: <http://www.sjhousing.org/report/quarter.html>.

POLICY ALTERNATIVES

Alternative #1: *The City could deny the Developer's request to reclassify \$450,000 of its existing funding commitment to a predevelopment loan, to provide gap financing, interest forgiveness, and a loan guarantee to the State.*

Pros: The predevelopment funds being requested could temporarily be used to finance other affordable housing projects and programs. The additional funds and forgone interest being requested could be used to finance other affordable housing projects and programs. The loan guarantee of State funds may not be needed, and mainly serves to reduce risks for the senior lender and investor.

Cons: The requested predevelopment funds are part of the overall construction/permanent funds that are already committed to the project, and would be disbursed at the projected start of construction, expected to be in Fall 2009. For such a short duration, the City's savings realized by withholding funds would be minimal. Most importantly, predevelopment expenditures are required to enable the Project to apply for funding and get ready to start construction in a timely fashion. All of the above actions work together as a package to ensure that the developer is able to apply to CDLAC in May 2009 and to potentially start construction in September 2009. The City's land acquisition loan proceeds of over \$9 million have already been disbursed, so it is in the best interest of the City to ensure that the Project can proceed.

April 28, 2009

Subject: Request to Reclassify \$450,000 of Existing Funding Commitment, Approve a Loan Increase, Forgive Interest, and Approve a Loan Guarantee for the Belovida at Newbury Park Project

Page 7

Reason for not recommending: This Project will be a benefit to the City as it will help meet the demand for extremely low- and very low-income affordable housing for seniors and will contribute to the socioeconomic diversity in the new Newbury Park neighborhood. This project has already been approved and these actions are necessary to enable it to proceed. With approval of this recommendation, the City will gain local construction jobs, building permit fees, and the provision of new units.

PUBLIC OUTREACH/INTEREST

- Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)
- Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
- Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

This item meets Criterion 1, Requires Council action on the use of public funds equal to \$1 million or greater. The Housing Department will post a copy of the City Council memo to the City's website for the May 19, 2009 meeting.

A joint notice of the public hearings to be held regarding a General Plan amendment before the Planning Commission on November 13, 2006 and the City Council on December 12, 2006 was circulated to the property owners and residents within 1,000 foot-radius of the Belovida site. Two community meetings were held to provide opportunities for public input on the General Plan amendment. The first community meeting was held on May 4, 2006 and approximately twenty members of the local community attended. A second community meeting was held on July 13, 2006 and approximately ten members of the community attended. A community meeting, with public notification of 1,000-foot radius, was held on June 26, 2007 to discuss the project's Planned Development Rezoning.

COORDINATION

Preparation of this report was coordinated with the City Attorney's Office.

April 28, 2009

Subject: Request to Reclassify \$450,000 of Existing Funding Commitment, Approve a Loan Increase, Forgive Interest, and Approve a Loan Guarantee for the Belovida at Newbury Park Project

Page 8

FISCAL/POLICY ALIGNMENT

This expenditure is consistent with the Housing Department's *Five-Year Investment Plan for Fiscal Years 2007/08-2011/12* in increasing the supply of affordable housing, and with the City's *Consolidated Plan* in providing family units for very low- and extremely low-income households.

COST SUMMARY/IMPLICATIONS

1. COST OF THE PROJECT:

Land Cost	\$ 9,010,386
Hard Costs	\$24,269,709
Soft Costs	\$16,842,727
Total	<u>\$50,122,822</u>

2. COST ELEMENTS OF CITY AGREEMENTS:

Predevelopment Costs (from previously-approved funding commitment)	\$ 450,000
Construction/Permanent Loan Increase (hard and soft costs)	\$2,566,607
State IIG funds guaranteed by City (hard costs)	\$3,123,330
Total	<u>\$6,139,937</u>

3. SOURCE OF FUNDING: Low- and Moderate-Income Housing Fund (Fund 443)

4. FISCAL IMPACT: No ongoing fiscal impact.

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	Total Appn.	Amt. For Contract	2008-2009 Adopted Operating Budget (Page)	Last Budget Action (Date, Ord. No.)
443	0070	Loans, Grants & Site Acquisitions	\$50,000,000	\$5,689,937	XI-53	2/10/09, 28492

HONORABLE MAYOR AND CITY COUNCIL

April 28, 2009

Subject: Request to Reclassify \$450,000 of Existing Funding Commitment, Approve a Loan Increase, Forgive Interest, and Approve a Loan Guarantee for the Belovida at Newbury Park Project
Page 9

CEQA

CEQA: Resolution No. 74196, File No. PDC07-015



LESLYE KRUTKO
Director of Housing

For questions please contact LESLYE KRUTKO, DIRECTOR OF HOUSING,
at 408-535-3855

Attachments

April 28, 2009

Subject: Request to Reclassify \$450,000 of Existing Funding Commitment, Approve a Loan Increase, Forgive Interest, and Approve a Loan Guarantee for the Belovida at Newbury Park Project

Page 10

Attachment 1
Development Timeline

December 18, 2006	City Council approval of PD rezoning
March 18, 2007	City Council approval of an acquisition/construction/permanent funding commitment
March 2008	Land acquisition loan closing
August 2008	PD Permit approval
April 2009	Application to Federal Home Loan Bank/AHP
May 2009	Anticipated application for CDLAC allocation
June 2009	Anticipated Federal Home Loan Bank/AHP award
July 2009	Anticipated award of CDLAC allocation
July 2009	Anticipated application for TCAC allocation
September 2009	Anticipated award of Tax Credits
September 2009	Anticipated start of construction
May 2011	Anticipated completion of construction

April 28, 2009

Subject: Request to Reclassify \$450,000 of Existing Funding Commitment, Approve a Loan Increase, Forgive Interest, and Approve a Loan Guarantee for the Belovida at Newbury Park Project

Page 11

Attachment 2
Site Map

