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March 18, 2016

City Council, City Administrator, and City Attorney
City of Oakland
1 Frank Ogawa Plaza
Oakland, CA 94612

Re: Authorization of East 12th Street Exclusive Negotiating Agreement (Item #13) at March 15th City Council Meeting

Dear Oakland City Councilmembers, Ms. Landreth, and Ms. Parker:

On March 15th, the City Council adopted a resolution authorizing the City Administrator to negotiate and execute an exclusive negotiating agreement (ENA) with UrbanCore Development LLC and East Bay Asian Local Development Corporation (EBALDC) for the development of the 12th Street Remainder Parcel located at East 12th Street and 2nd Avenue. Because the Council moved its meeting to the Mayor's chambers and closed the meeting to the public (in a manner that is questionable under the Brown Act), we were not provided an opportunity to comment on the agenda item before the Council's vote. We have serious questions about the legality of the selection process under the Surplus Land Act that the City must answer before proceeding.

As described in our letter of December 7, 2015 (attached), the Surplus Land Act establishes a number of procedural requirements designed to maximize affordable housing on surplus local government property. When multiple proposals have been submitted, as there were in this instance, the Surplus Land Act requires the City to "give priority to the entity that proposes to provide the greatest number of units [affordable to lower-income households] at the deepest level of affordability."¹ At a minimum, this means that the City must "enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms [for] not less than 90 days" with the developer proposing to provide the most affordable homes at the deepest level of affordability.²

The proposal by Satellite Affordable Housing Associates (SAHA) and the East 12th Wishlist Design Team ("the People's Proposal") is clearly the one that meets the statutory priority. It includes 114 lower-income units, while UrbanCore/EBALDC's proposal includes just 90. Moreover, the People's

¹ Cal Gov. Code § 54227.

² Cal Gov. Code § 54223.

Proposal includes 106 very low-income units (affordable to households between 30 and 50 percent of the Area Median Income), while UrbanCore/EBALDC's proposal includes just 30 units at this income level.

Because the City's selection process has been plagued by a lack of transparency, it is unclear whether the City properly prioritized the People's Proposal. The City should demonstrate how it has fully complied with the Surplus Land Act by explaining the following:

- **The process of good faith negotiations with the entity that proposed the greatest number of affordable units at the deepest level of affordability.** The Surplus Land Act requires that SAHA and the East 12th Wishlist Design Team had a chance to meaningfully negotiate a sales price or lease terms before the City voted to enter into an ENA with another developer.
- **The means of giving meaningful priority to the proposal with the greatest number of affordable units at the deepest level of affordability.** Although "[t]he City prioritized affordable housing in the selection criteria by creating a separate category for evaluating the affordable housing proposal and weighting this category with the highest percentage of points compared to the other six categories,"³ the difference in weighting among criteria does not appear significant. The City awarded just 20 points for affordability out of a total of 100, dissipating its relative importance (i.e., "priority"). Moreover, the City has not shared publicly how many points were awarded to each proposal for affordability (as well as the other selection criteria). The scoring should reflect the substantial differences between the proposals.

We request a prompt written explanation from the City that demonstrates to the public that it has fully complied with the Surplus Land Act before entering into an ENA with any developer for the 12th Street Remainder Parcel. We look forward to your response.

Sincerely yours,



David Zisser
Public Advocates



Sam Tepperman-Gelfant
Public Advocates



Michael Rawson
The Public Interest Law Project



Dan Siegel
Siegel & Yee

³ City of Oakland, Agenda Report for 12th Street Remainder Parcel Exclusive Negotiating Agreement with UrbanCore and EBALDC (Mar. 2, 2016), p.5, available at <https://oakland.legistar.com/LegislationDetail.aspx?ID=2595230&GUID=DEE63D0F-3486-49BD-A62D-1F721915F287&Options=&Search>.

Attachment: December 7, 2015 Letter to Oakland City Council

To: Vice Mayor Rebecca Kaplan; Council President Lynette Gibson McElhaney;
Councilmembers Dan Kalb, Abel J. Guillén, Annie Campbell Washington, Noel Gallo,
Desley Brooks, and Larry Reid; City Administrator Sabrina Landreth; and City Attorney
Barbara Parker



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Madelyn Wargowski
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Assistant

Jesse White
Communication Coordinator

December 7, 2015

City Council
City of Oakland
1 Frank Ogawa Plaza
Oakland, CA 94612

Re: Negotiations with Affordable Housing Developers for Purchase of the East 12th Street Property

Dear Oakland City Councilmembers:

As Oakland considers proposals to develop the surplus East 12th Street Property, we write to remind you that the State Surplus Land Act requires the city to enter into good faith negotiations for sale of the property to the developer that would build the most number of affordable units at the most deeply affordable levels.

As described in our letter of September 3, 2015 (attached), the Surplus Land Act establishes a number of procedural requirements designed to maximize affordable housing on surplus local government property. Since that time, the city has received multiple development proposals for the East 12th Property, including at least one that would provide 100% affordable housing. We understand that the city may now be moving forward with the selection of a preferred developer in a manner that risks violation of the Act.

When multiple proposals have been submitted, the Surplus Land Act requires the city to “give priority to the entity that proposes to provide the greatest number of units that meet the requirements of section 54222.5 at the deepest level of affordability.” Cal Gov. Code § 54227. At a minimum this means that the City must “enter into good faith negotiations to determine a mutually satisfactory sales price . . . [for] not less than 90 days” with the developer proposing to provide the most affordable homes at the deepest level of affordability. Cal Gov. Code § 54223. This language clearly requires that the city enter into an active back-and-forth negotiation with the priority purchaser, not simply a one-way evaluation of submitted proposals.

Selecting a buyer or entering into an Exclusive Negotiating Agreement with a developer other than the one proposing the greatest number of affordable

homes at the deepest affordability levels would violate the Surplus Land Act, unless the city had first attempted in good faith for at least 90 days to reach a mutually agreeable sales price with that developer and was ultimately unsuccessful.

We trust that Oakland will follow these and all other provisions of the Surplus Land Act as it disposes of the surplus East 12th Street Property.

Sincerely yours,



David Zisser
Public Advocates



Sam Tepperman-Gelfant
Public Advocates



Michael Rawson
The Public Interest Law Project



Dan Siegel
Siegel & Yee

Attachment:

September 3, 2015 Letter to Mr. James Golde, Manager, Real Estate Services

To: Vice Mayor Rebecca Kaplan; Council President Lynette Gibson McElhaney; and Councilmembers Dan Kalb, Abel J. Guillén, Annie Campbell Washington, Noel Gallo, Desley Brooks, and Larry Reid

Cc: James Golde, Manager, Real Estate Services
Patrick Lane, Acting Manager, Project Implementation Division
Barbara Parker, City Attorney