

STAFF REPORT

DATE: May 1, 2012

TO: City Council

FROM: Ken Hiatt, Community Development and Sustainability Director
Michael Webb, Principal Planner
Cathy Camacho, Planner

SUBJECT: Operating Memorandum for Timing of Construction for Willowbank Park
Affordable Housing Units

Recommendation

Adopt the attached Resolution and Operating Memorandum thereby modifying the timing for construction of the affordable housing units in Willowbank Park subdivision project.

Fiscal Impact

No fiscal impact results from this action. All costs of processing this Operating Memorandum are paid by developer application fees paid.

Council Goal(s)

- Support market-rate affordability, varying house sizes and models to meet needs and desires of a wide range of demographics and multiple income level.
- Employ policies so the housing supply includes options for a wide range of demographics

Background and Analysis

The Willowbank Park subdivision is located along the west side of Mace Boulevard just south of San Marino Drive; bordered by the Putah Creek channel on the north, residential development on the west and south and Mace Boulevard on the east. The approved project consists of 29 units on a 4.48 acre parcel.

Entitlements for the subdivision were approved by the City Council in March, 2010. The project consists of 20 detached market rate single-family dwelling units, nine market rate townhouse units, and four for-sale affordable housing unit. The affordable housing units are for low/moderate income level households as defined by Yolo County. The affordable homes are to be built as attached dwellings of two units each.

Timing for Construction of Affordable Housing Units

A Development Agreement was adopted for the project requiring various performance measures, including, but not limited to requirements for the timing for construction of the affordable housing units. The Development Agreement calls out the specific timing obligation to the developer for the construction of the affordable housing units. Pursuant to the approved Affordable Housing Plan for the project, the developer is required to complete the construction

of the first two affordable units and obtain occupancy of those units. The section reads as follows (underline added for emphasis):

The affordable units may be constructed in two phases, with a minimum of two affordable units completed in the first phase. Phase 1 shall consist of a minimum of two affordable units. Developer shall complete the construction of the Phase 1 affordable units and obtain occupancy of those units not later than 24 months after the date of recordation of a Final Map for the Project or prior to the issuance of the 16th building permit for a market rate unit, whichever comes first. Developer shall complete (construct and obtain certificate of occupancy) Phase 2 within twelve months of completion and certificate of occupancy of Phase 1.

The Development Agreement provides for possible relief from the timing of construction for the affordable housing units. The Development Agreement states:

A hardship exemption would be available to extend the period prior to the required construction commencement for 12 additional months if hardship can be reasonably demonstrated by the developer to the City Council.

The Developer, David Taormino, is requesting an extension under this provision. The project is currently under construction. All project streets and infrastructure has been installed for the project and accepted by the City. A total of ten homes have been constructed; three additional building permits have been issued as of the date of this report. The Final Map recorded on June 24, 2010; therefore pursuant to the Development Agreement, a minimum of two affordable units would be required to be constructed by June 24, 2012. The developer wishes to proceed with construction of market rate units in the subdivision with relief from the affordable housing provision, ***extending the date to March 1, 2013 or issuance of the 20th building permit for a market rate unit, whichever comes first.*** The current economic downturn and the desire not to have the project entitlements expire unnecessarily was the key impetus for the time extension request.

The applicant has provided a letter to staff stating that in the current economy affordable housing units are becoming increasingly difficult to sell (Attachment 2). This is due to a number of factors including unwillingness of the lender to finance the affordable units in Willowbank Park until at least 50% of the market rate homes in are sold. The developer anticipated that 15 market rate homes would be built and sold at the time the affordable housing units were required to be constructed. However, sales of the market rate units are slower than anticipated, with only 8 homes sold, two of which are still under construction, with 4 additional homes built but unsold. Other factors affecting the sale of affordable units are fewer qualified buyers; approximately 30 homes in Davis are on the market priced at under \$300,000 without equity restrictions; and there is a significant supply of housing choices in Woodland in the low \$200,000 price range. The applicant states that this is an unprecedented situation not generally occurring in the last 10 years.

Staff recognizes that developers are having difficulty finding qualifying and willing buyers for affordable units. This is the case not only for this project, but for other new subdivisions and

developments in the pipeline such as Chiles Ranch. Two new subdivisions, Verona and Willowbank 10, have constructed affordable units that are currently on the market. In the Verona subdivision, the price difference between a market rate duet and an affordable duet is only a few thousand dollars. For a modest increase in price, an unrestricted market rate duet is more attractive to a buyer than an affordable duet with equity and owner occupancy restrictions. In order to attract buyers in the current housing market, Verona and Willowbank 10 subdivisions are pricing affordable housing units at an average of \$30,000 below the maximum selling price allowed. The key factor for calculating sales prices for affordable units is based on the Area Median Incomes for Yolo County established by the California Department of Housing and Urban Development (HUD). Prices are calculated on a project by project basis, taking into account a number of other factors such as changing interest rates, special districts for taxes, property taxes, homeowners insurance, varying HOA fees, and a utility allowance.

In order to better understand the financial dynamics and to evaluate affordable housing options at a broader policy level, staff is in the process of retaining a consultant to review affordable housing policies, given current economic climate and housing market conditions. The consultant will analyze, for example: whether the current affordable housing obligations can reasonably be met by developers under current conditions; other options to promote affordable housing such as developer in-lieu fees that could potentially be used for purposes of down payment assistance to low/moderate income families; determining an appropriate in-lieu amount; exploring the concept of counting second dwelling units toward the required affordable housing requirement in a new subdivision; and the continued viability of land dedication sites in providing affordable housing. This analysis will be provided to the Affordable Housing Task Force that the Council directed to be established at their March 20, 2012 meeting for review and consideration in assessing future affordable housing strategies. Recommendations of the AHTF will be reviewed by Social Services Commission prior to City Council consideration.

The Development Agreement specifies a one-time extension only. Staff believes that the extension request is justifiable based on current economic and housing market factors that are impacting the developer's ability to sell affordable housing units. The extension would allow the developer to proceed with the development of 20 market rate units while the above mentioned review of the affordable housing ordinance is underway.

Attachments

1. Resolution and Operating Memorandum
2. Applicant Correspondence

RESOLUTION NO. 12-XXX, SERIES 2012

**RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER
TO SIGN OPERATING MEMORANDUM, WILLOWBANK PARK DEVELOPMENT
AGREEMENT (BRIX & MORTAR, ETAL)**

WHEREAS, the City of Davis has previously entered into a Development Agreement for the Willowbank Park subdivision with Brix & Mortar Partners, LLC, hereinafter referred to as “Developer”; and

WHEREAS, said agreement provided, that the Developer shall complete the construction of the Phase 1 affordable units and obtain occupancy of those units not later than 24 months after the date of recordation of a Final Map for the Project or prior to the issuance of the 16th building permit; and

WHEREAS, Developer and the City desire to extend the timing for construction of the affordable housing units.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Davis that the City Manager be, and is hereby authorized and directed to sign that certain Operating Memorandum, dated the 1st of May, 2012, and attached hereto by and between the City of Davis, a Municipal Corporation of the State of California, and Developer; and

BE IT FURTHER RESOLVED, that the City Council of the City of Davis finds that the Operating Memorandum does not affect the density nor the intensity of the use of the property subject to the Development Agreement, and finds that the terms of the Operating Memorandum are consistent with the goals of the Development Agreement; and

BE IT FURTHER RESOLVED that all of the terms, conditions, and covenants of said Operating Memorandum, Willowbank Park, be and the same are hereby approved, ratified, and confirmed.

PASSED AND ADOPTED, by the City Council of the City of Davis this 1st day of May 2012, by the following vote:

AYES:

NOES:

ATTEST:

Joseph F. Krovoza
Mayor

Zoe S. Mirabile
City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Davis
Community Dev. & Sustain. Dept.
23 Russell Boulevard
Davis, California 95616

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**OPERATING MEMORANDUM NO. 2 TO
DEVELOPMENT AGREEMENT
WILLOWBANK PARK
DAVIS, CALIFORNIA**

This OPERATING MEMORANDUM NO. 1 TO DEVELOPMENT AGREEMENT WILLOWBANK PARK (this "**Operating Amendment No. 2**") is entered into and effective as of the ____th day of _____, 2012, among the City of Davis, a municipal corporation (the "**City**"), and Brix and Mortar Partners, LLC (herein "**Developer**"). The City and Project-Developer are sometimes referred herein to as the "**Parties**".

RECITALS:

A. Developer and the City are parties to that certain Development Agreement adopted by ordinance 2356 by and between Developer and the City (the "**Development Agreement**"), and subsequently amended by the First Supplement and Amendment to the Development Agreement adopted by ordinance 2366 with respect to the development of certain property located in Davis, California (the "**Property**").

B. Developer and the City desire extend the timing related to the timing of construction of the affordable housing units under the Development Agreement, as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. All terms used but not defined in this Operating Memorandum shall have the meanings ascribed to such terms in the Development Agreement.

2. Timing of Construction of Affordable Housing Units. The Affordable Housing Plan is a part of the Existing Project Approvals. Due to changed economic and housing market factors since the Development Agreement was entered into, the construction of the affordable units in the Project have not moved forward as originally anticipated. The City and Developer agree that the timing for the construction of the affordable housing should be modified so that the Project may progress and the Project entitlements will not expire unnecessarily. The City and Developer agree

to the following to modify the timing set forth in :Section 201 (F). “Affordable Housing Plan Amendments” of the First Supplement and Amendment to the Development Agreement as follows:

(F) Affordable Housing Plan. The affordable units may be constructed in two phases, with a minimum of two affordable units completed in the first phase. Phase 1 shall consist of a minimum of two affordable units. Developer shall complete the construction of the Phase 1 affordable units and obtain occupancy of those units not later than ~~24 months after the date of recordation of a Final Map for the Project~~ **March 1, 2013** or ~~prior to the~~ issuance of the ~~16th~~ **20th** building permit for a market rate unit, whichever comes first. Developer shall complete (construct and obtain certificate of occupancy) Phase 2 within twelve months of completion and certificate of occupancy of Phase 1.

The developer shall provide a marketing plan for the affordable units to the City for review and approval prior to issuance of the Certificate of Occupancy for the first market rate unit.

~~A hardship exemption would be available to extend the period prior to the required construction commencement for 12 additional months if hardship can be reasonably demonstrated by the developer to the City Council.~~

3. Other Terms Unchanged. Except as expressly set forth herein above, all remaining terms and conditions of the Development Agreement and First Amendment and Supplement to the Development Agreement and all timing of obligations set forth therein shall remain unchanged and in full force and effect.

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**SIGNATURE PAGE
FOR
OPERATING MEMORANDUM
REGARDING TIMING OF PAYMENT OF CERTAIN FEES
BETWEEN
BRIX AND MORTAR PARTNERS, LLC
AND
CITY OF DAVIS**

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives effective as of the day and year first above written.

CITY OF DAVIS
("City")

By: _____

Name: _____

Title: _____

Attest: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

**SIGNATURE PAGE
FOR
OPERATING MEMORANDUM
REGARDING TIMING OF PAYMENT OF CERTAIN FEES
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BRIX AND MORTAR PARTNERS, LLC
AND
CITY OF DAVIS**

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives effective as of the day and year first above written.

**DEVELOPER
BRIX AND MORTAR PARTNERS, LLC**

By: _____

David Taormino, Developer

By: _____

Paul Katsch, Developer

By: _____

Jason Taormino, Developer

ALL SIGNATURES ARE TO BE NOTARIZED

RECEIVED

APR 13 2012

City of Davis
Community Development

Brix & Mortar Partners, LLC
505 Second Street
Davis, CA 95616
(530) 758.3080

April 11, 2012

Ms. Cathy Camacho
Planner
Department of Community Development & Sustainability
City of Davis
23 Russell Boulevard
Davis, CA 95616

RE: Willowbank Park Request for Extension of Time to Construct Affordables

Dear Cathy,

One important aspect of our requesting an extension of time to construct the affordables is the limitation on construction financing. When we agreed to the original time frame for the affordables we were expecting a faster absorption rate for the market rate homes which was a concern of our lender. We anticipated 15 homes sold and closed escrow by the time construction of the affordables was anticipated. Currently we have sold 8 homes, two of which are still under construction and have not closed escrow with 4 additional homes completed, but unsold. Our lender is unwilling to finance the affordable homes until at least 50% of the market rate homes (15 homes) are sold which was our original plan and intent. Davis buyers in all price ranges are taking nearly twice as long to decide on home a purchase which is consistent with the markets elsewhere in the region. Simply put, buyers are very cautious and conservative in making financial decisions since prices are stagnant and they feel no pressure to act which reflects in the slow absorption we are experiencing.

The affordables, at an offering price of under \$250,000, reflect current market conditions. This reduced market price is less than allowed under the City's program and causes us a significant loss. Our construction lender recognizes this situation since a substantial subsidy from us is required. This is why having a sufficient number of market rate homes sold is necessary to comfortably provide the additional capital to subsidy the affordables.

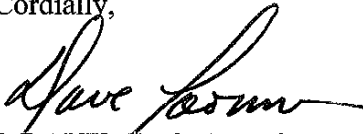
Currently, Mahogany Lane has just completed 4 affordables and is processing applicants to determine their financial capability to purchase these homes. I understand that they anticipate about an additional 60 days to complete that process, arrange FHA financing and close escrow. Verona still has one of their original affordables unsold after several months of marketing with 4 more under construction. Apparently two of these units have reservations. Both Verona and Mahogany Lane are finding that 93% of applicants

whether financially qualified or not require down payment assistance from someone. With new FHA loan changes effective this week which increases buyers' costs, we anticipate some buyers which could have qualified before the increased costs may no longer. These loan changes and new fees may also ultimately require further subsidy from us which is now commonplace with FHA loans.

While buyers under the City's guidelines should be paying in the high \$200,000's well below a comparable market rate home, they are demanding what amounts to a discount due to the equity cap provision. There is also still stiff competition from market rate homes in Woodland in the low \$200,000's. Currently on the Davis Market we have 30 homes under \$300,000 without equity restrictions. This is an unprecedented situation not generally occurring in the last 10 years which creates more selection for buyers and greater competition for sellers. Buyers now have significant choices in Davis as well as unlimited choices in Woodland

In short, we need more sales than we have now to generate capital to fund construction costs of the affordables and satisfy our construction tender. Those additional sales also provide us an alternative funding source should our construction lender not choose to finance the affordable.

Cordially,

A handwritten signature in black ink, appearing to read "J. David Taormino", written over a horizontal line.

J. DAVID TAORMINO
A Managing Member

JDT/so