



REPORT TO THE COUNTYWIDE OVERSIGHT BOARD OF MADERA COUNTY

Approved by:



Arnaldo Rodriguez, City Manager

Council Meeting of: September 19, 2019

Agenda Number: 3.1

SUBJECT:

Reconsideration of a Resolution Approving Release of Disposition and Development Agreement Executed by Ironhorse Elm, LLC; APN: 008-022-010/008-022-035

RECOMMENDATION:

Staff recommends the Countywide Oversight Board adopt the proposed resolution approving release of disposition and development agreement between Ironhorse Elm, LLC. and Former Madera Redevelopment Agency.

SUMMARY:

The former Madera Redevelopment Agency entered into a Disposition and Development Agreement (the "DDA") with Ironhorse Elm, LLC regarding the property located at the southwest corner of Yosemite and Elm Avenues. The property is in escrow with Armstrong Development Properties, Inc. ("Armstrong" or "Buyer"). The current owner, Muhammad Latif, desires to be released from the terms and conditions of the DDA as Armstrong will not close escrow unless the DDA is released.

On January 17, 2019, the Successor Agency adopted Resolution No. 19-04 releasing the DDA. The resolution was subsequently approved by the Countywide Oversight Board Resolution No. 19-03 and sent to the Department of Finance (DOF) for approval. However, DOF did not approve the release see DOF letter attached as Attachment "A." Staff is seeking reconsideration of this matter. A more detailed resolution substantiating requirements under the Dissolution Law is being proposed. In sum, the resolution explains how the proposed release will reduce liabilities, increase revenues, and be in the best interest of the taxing entities.

DISCUSSION:

The Department of Finance upon review of the resolution number COB 19-04 denied release stating the following:

- The resolution previously submitted did not adequately support the finding that releasing the property from the requirement of the DDA would reduce liabilities, increase net revenues, and be in the best interests of the taxing entities.

- As authorized by HSC section 341749(h), Finance is returning your OB action to the board for reconsideration.

Subsequent to DOF's rejection of the release of the DDA, Armstrong has indicated its intent not to follow through with the purchase and development of the property unless a release is granted.

The resolution under consideration at this time strengthens the findings related to Armstrong's reluctance to purchase the property with the DDA on title. The proposed resolution highlights the following:

- The DDA is an impediment to the development of the subject property. No entitlements have ever been processed or approved until the present proposed project.
- Escrow is open for purchase of the property by Armstrong.
- Armstrong has processed a proposed project with the City which includes development of a commercial shopping plaza to include five buildings encompassing a total of approximately 26,000 square feet.
- On May 14, 2019, the Planning Commission approved five CUPs and a Site Plan for Armstrong's proposed development.
- The new imminent development represents a benefit to the Taxing Entities.
- The imminent development of the subject property would result in increased property value and result in sales tax, transfer, and other taxes paid to and benefiting the Taxing Entities.

ATTACHMENTS:

1. Resolution (Countywide Oversight Board)
2. Department of Finance Letter

RESOLUTION NO. COB 19-

RECONSIDERATION OF RESOLUTION OF THE MADERA COUNTYWIDE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER MADERA REDEVELOPMENT AGENCY OF THE CITY OF MADERA, APPROVING RELEASE OF DISPOSITION AND DEVELOPMENT AGREEMENT EXECUTED BY IRONHORSE ELM, LLC (APN: 008-022-010/008-022-035)

WHEREAS, the Former Madera Redevelopment Agency entered into a Disposition and Development Agreement (DDA) with Ironhorse Elm, LLC in 2010 regarding APN: 008-022-010/008-022-035 (Subject Property); and

WHEREAS, the Subject Property is described in the DDA attached as Exhibit A and incorporated herein by this reference; and

WHEREAS, the Subject Property has not been developed since 2010 and has never received any entitlements for development; and

WHEREAS, the current property owner Muhammad Latif, an individual (the Seller) is in escrow with Armstrong Development, Inc. (the Buyer) for the Subject Property; and

WHEREAS, the Buyer has conditioned purchase of the Subject Property on the extinguishment of the development requirements in the DDA and the Grant Deed; and

WHEREAS, the Buyer intends to develop the Subject Property to the betterment of the project area; and

WHEREAS, on January 9, 2019, the City Council of the City of Madera as the Successor Agency to the Former Madera Redevelopment Agency of the City of Madera approved Resolution No. 19-04 releasing the Disposition and Development Agreement (DDA); and

WHEREAS, on January 17, 2019, the Oversight Board of the Successor Agency to the former Madera Redevelopment Agency approved Successor Agency Resolution No. 19-04 approving Madera Countywide Oversight Board Resolution 19-03; and

WHEREAS, the Department of Finance (DOF) by letter dated February 15, 2019, advised the Successor Agency that based on their review of the law, Madera Countywide Oversight Board Resolution No. 19-03 approving release of the Disposition and Development Agreement (DDA) executed by Ironhorse Elm, LLC (Developer), was not approved; and

WHEREAS, as authorized by Health and Safety Code section 34179 (h), DOF has returned the Successor Agency's action to the Successor Agency for reconsideration; and

WHEREAS, the DDA and the Grant Deed conveying the Subject Property from the former Madera Redevelopment Agency to Ironhorse Elm, LLC, contain provisions mandating the type and timing of the development of the Subject Property and imposing approval requirements for proposed developments at the Subject Property (the "Development Requirements"); and

WHEREAS, the Development Requirements have been and remain an impediment to the development of the Subject Property, as evidenced by the fact that the Subject Property has not been developed in the nine years since the Deed was recorded and a current prospective Buyer has indicated that it will not purchase and develop the Subject Property with the DDA in place; and

WHEREAS, escrow is open for purchase of the property by Buyer (Armstrong Development Properties, Inc.); and

WHEREAS, Buyer, has processed a proposed project with the City which includes development of a commercial shopping plaza to include five buildings encompassing a total of approximately 26,000 square feet; and

WHEREAS, on May 14, 2019, the Planning Commission approved five CUPs and a Site Plan for Armstrong's proposed development; and

WHEREAS, if the Successor Agency were to retake the Subject Property, it would result in further financial detriment to the taxing entities in that the Subject Property would be removed from the tax rolls, the Successor Agency would become liable for maintenance and other carrying costs associated with the

Subject Property, the Successor Agency would face potential liability for occurrences on the Subject Property; and

WHEREAS, development of the Subject Property, including the proposed retail uses, would result in increased property value of the Subject Property and increased property, sales, transfer and other taxes paid to the Taxing Entities; and

WHEREAS, the Subject Property is a former industrial site and its redevelopment, enabled by the removal of the DDA, will have positive effects on the property values in the surrounding area and the tax revenues they generate; and

WHEREAS, a Release of Agreement has been prepared which releases all parties from any further obligations or benefits created by the DDA related to the Subject Property; and

WHEREAS, per Health and Safety Code 34181(e) the Successor Agency has determined that the Release of the DDA will reduce liabilities and increase net revenues to the taxing entities and would be in the best interest of the Taxing Entities.

NOW THEREFORE, THE MADERA COUNTYWIDE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER MADERA REDEVELOPMENT AGENCY RESOLVES AS FOLLOWS:

1. The above recitals are true and correct.
2. The Countywide Oversight Board has reviewed and considered the facts and circumstances concerning the Disposition and Development Agreement (DDA) on Subject Property and the requested Release of the DDA as described above and attached hereto as Exhibit "B" and by this reference incorporated herein.
3. The Countywide Oversight Board finds that development of the Subject Property by Armstrong Development Properties is imminent as evidenced by the land use entitlements processed and obtained from the City of Madera.
4. The Countywide Oversight Board determines that the City and Taxing Entities will lose tax revenues if the pending sale to Buyer does not come to fruition because of the DDA.
5. The Countywide Oversight Board finds that the Release of the DDA as set forth in Exhibit B will reduce liabilities and increase net revenues to the taxing entities and would be in the best interest of the Taxing Entities.
6. The Mayor of the City of Madera is authorized to execute the Release on behalf of the

Agency.

7. This resolution is effective immediately upon adoption.

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MADERA, COUNTY OF MADERA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

That portion of that certain Parcel No. 5 described in Deed dated July 31, 1929, to the Atchison, Topeka and Santa Fe Railway Company, recorded August 10, 1929, in Book 97, page 360, Official Records of said County, as "The Southwestern 93.45 feet of Lots 47 to 54 inclusive; the Southwestern 8.45 feet of Lot 56 and all of Lots 57 to 66 inclusive of said Rio Vista Tract"; (said Rio Vista Tract being that certain tract shown on map recorded in Book 5 of Maps, page 12, records of said County) "Lots 8 and 9 in Block 1 of said Subdivision of Blocks 1, 3, 33, 34, 44 and 45 of Wooley Addition", (which subdivision was filed June 9, 1891 in Book 4 of Maps, page 73, records of said county) "Excepting the Southwestern 75 feet of the Southeastern 90 feet thereof".

Excepting therefrom that portion in the deed to the State of California recorded December 20, 1991, as Document No. 9132985, Official Records.

Also excepting from a portion thereof all minerals contained in the above described land, including, without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, provided that Santa Fe shall not have the right to go upon or use the surface of said land, or any part thereof, for the purpose of drilling for, mining, or otherwise removing, any of said minerals as reserved by The Atchison, Topeka and Santa Fe Railway Company, a Delaware corporation in Deed recorded September 26, 1989 as Document No. 20526, Madera County Official Records, which deed recites, "Santa Fe may, however, and hereby reserves the right to, remove any of said minerals from said land by means of wells, shafts, tunnels, or other means of access to said minerals which may be constructed, drilled or dug from other land, provided that the exercise of such rights by Santa Fe shall in no way interfere with or impair the use of the surface of the land hereby conveyed or of any improvements thereof."

And also excepting from a portion thereof all minerals contained in the above described land, including, without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, provided that Santa Fe shall not have the right to go upon or use the surface of said land, or any part thereof, for the purpose of drilling for, mining, or otherwise removing, any of said minerals. Santa Fe may, however, and hereby reserves the right to, remove any of said minerals from said land by means of wells, shafts, tunnels, or other means of access to said minerals which may be constructed, drilled or dug from other land, provided that the exercise of such rights by Santa Fe shall in no way interfere with or impair the use of the surface of the land hereby conveyed or of any improvements thereon as reserved in the deed recorded December 27, 1991, as Document No. 9133492, Official Records.

PARCEL 2:

That portion of Lots 1 through 16 inclusive and Lots 44 through 56 inclusive of Rio Vista Tract, according to the map entitled, "Rio Vista Tract" filed and recorded in the office of the County Recorder of the County of Madera, State of California, in Book 5 of Maps, at Page 12, lying Northwesterly of the property described in the deed to Madera Redevelopment Agency, a public body, corporate and politic, recorded September 9, 1999, as Document No. 99025174, Official Records.

Together with that portion of Poppy Street, title to which would pass by conveyances describing said lots.

Excepting therefrom the Southwesterly 8.45 feet of Lot 56.

Also excepting therefrom the Southwesterly 93.45 feet of Lots 47 through 54 inclusive.

Also excepting therefrom that portion in the deed to the State of California recorded December 20, 1991, as Document No. 9132985, Official Records.

Also excepting therefrom that portion in the deed to the Madera Redevelopment Agency, a public body, corporate and politic recorded April 25, 2008, as Document No. 2008013805, Official Records.

Also excepting from a portion thereof all minerals and mineral rights, interest, and royalties, including without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, in and under said property; however, Grantor or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of said property in connection therewith, as reserved in the Deed recorded April 27, 1989 in Book 2122 page 587 of Official Records.

Also excepting from a portion thereof all minerals and mineral rights, interest, and royalties, including without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, in and under said property; however, Grantor or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of said property in connection therewith, as reserved in the Deed recorded March 22, 1991, as Document No. 9107142, Official Records, as to Lots 44, 45 and 46.

And also excepting from a portion thereof all minerals contained in the above described land, including, without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, provided that Santa Fe shall not have the right to go upon or use the surface of said land, or any part thereof, for the purpose of drilling for, mining, or otherwise removing, any of said minerals. Santa Fe may, however, and hereby reserves the right to, remove any of said minerals from said land by means of wells, shafts, tunnels, or other means of access to said minerals which may be constructed, drilled or dug from other land, provided that the exercise of such rights by Santa Fe shall in no way interfere with or impair the use of the surface of the land hereby conveyed or of any improvements thereon as reserved in the deed recorded December 27, 1991, as Document No. 9133492, Official Records.

APN: 008-022-010 (Parcel 1), 008-022-035 (Parcel 2)

Recording requested by and when
recorded return to

EXHIBIT B

City of Madera Successor Agency to the Former
Madera Redevelopment Agency
428 East Yosemite Ave
Madera, CA 93638

Space above this line for recorders use

**RELEASE OF DISPOSITION
AND DEVELOPMENT AGREEMENT**

The parties to this Agreement are the City of Madera Successor Agency to the Former Madera Redevelopment Agency ("Agency") and Ironhorse Elm, LLC ("Ironhorse"). Ironhorse Elm, LLC entered a Disposition and Development Agreement ("DDA") then the owner of the Subject Property. The current owner Muhammad Latif desires that the property subject to the DDA be released from all of the rights, restrictions and covenants contained in the DDA for such property including the Grant Deed recorded November 12, 2010 as Document # 2010033106. Accordingly, this Agreement is entered into to effectuate such purpose.

Pursuant to the request of the Owner of that certain DDA dated September 13, 2010 and amendment dated June 11, 2014 (collectively the "DDA"), executed by Ironhorse, Todd Spencer, as Owner, in which Agency is named as Agency, and recorded November 12, 2010 as Instrument No. 2010033107 and amendment recorded July 24, 2014 as Instrument No. 2014016494, Official Records of Madera County, California, the Undersigned, Agency and Muhammad Latif do hereby grant and reconvey to the person or persons legally entitled thereto, without warranty, all of the estate and interest derived to the Agency by the Owner and to the Owner by the Agency in and to the real property described in the DDA. Said property ("Subject Property") is described in Exhibit A and incorporated herein as though fully set forth.

In addition to the reconveyance herein granted, the parties hereto, hereby jointly and mutually release each other from any and all right, privileges, duties and obligation of the DDA as it relates in any manner to the Subject Property.

Dated _____

**CITY OF MADERA SUCCESSOR AGENCY TO
THE FORMER MADERA REDEVELOPMENT AGENCY**

By: _____
Andrew J. Medellin, Mayor

ATTACHMENT A



DEPARTMENT OF
FINANCE

GAVIN NEWSOM - GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

February 15, 2019

Mr. Bob Wilson, Executive Director
City of Madera
428 East Yosemite Avenue
Madera, CA 93638

Dear Mr. Wilson:

Subject: Objection of Oversight Board Action

The City of Madera Successor Agency (Agency) notified the California Department of Finance (Finance) of its January 17, 2019 Oversight Board (OB) Resolution on January 17, 2019. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of the OB action.

Based on our review and application of the law, OB Resolution No. COB 19-03 (Resolution), approving release of the Disposition and Development Agreement (DDA) executed by Ironhorse Elm, LLC (Developer), is not approved.

The former Redevelopment Agency sold its property to the Developer, which was required to develop a project on the subject property in accordance with DDR terms. The Developer sold the subject property to a third party (current owner) and did not complete development as required. The Agency desires to release the property from the requirements of the DDA so the current owner may sell the land with a clear grant deed. According to the grant deed, the Agency has the right to terminate all rights, title, and interest of the Developer and revest the property title to the Agency if the Developer does not adhere to the terms of the DDA. The Agency claims revesting the property will require repurchase of the property. However, the documents provided state the terms of the DDA run with the land and therefore do not support the Agency's claim it would have to repurchase the property.

HSC section 34181 (e) authorizes an OB to approve any amendments to or the early termination of those agreements if it finds the amendments or early termination would reduce liabilities, increase net revenue, and be in the best interests of the taxing entities. While the Resolution makes a finding pursuant to HSC section 34181 (e), the Agency was unable to support how releasing the property from the requirements of the DDA will reduce liabilities, increase net revenues, and be in the best interests of the taxing entities.

As authorized by HSC section 34179 (h), Finance is returning your OB action to the board for reconsideration.

Mr. Bob Wilson
February 15, 2019
Page 2

Please direct inquiries to Cindie Lor, Supervisor, or Sarah Krtil, Lead Analyst, at
(916) 322-2985.

Sincerely,



JENNIFER WHITAKER
Program Budget Manager

cc: Ms. Claudia Mendoza, Administrative Assistant, City of Madera
Mr. Jim Boyajian, Assistant County Auditor-Controller, Madera County