

MEMORANDUM

TO: Mayor Rick Davis and Hailey City Council Members

FROM: Ned C. Williamson

DATE: January 25, 2010

RE: River Street land transfer

ARCH has been working with Hailey to develop affordable housing on the River Street property. If you recall, Hailey acquired the River Street property from Sweetwater pursuant to the Sweetwater PUD Agreement. Title to the property was conveyed to Hailey without any restriction. But, under the Sweetwater PUD Agreement, the River Street property was designed to provide community housing.

Michelle Griffith of ARCH has raised the question whether Hailey would convey fee simple title to the River Street property to ARCH by deed or whether Hailey would enter into a long term lease. Michelle has confirmed that any lease would have to be at least 99 years in length. A 99 year lease would be qualify as a "permanently transferred" property under HUD guidelines.

Before we proceed with the drafting of any document, I would like direction whether Hailey would prefer a deed or a lease. To assist in this determination, I will outline some of the benefits and drawbacks to each technique.

Deed (benefits)

- Hailey could divest itself from any lawsuit previously threatened by Sweetwater.
- Hailey would not have liability if the project was not successful.

Deed (drawbacks)

- Hailey would lose a significant asset. I believe that the property may be used for other governmental purposes after expiration of a 99 year lease.

Lease (benefits)

- Hailey would retain title to a valuable asset.
- Hailey could negotiate an indemnification provision against a claim by Sweetwater.

Lease (drawbacks)

- If the project was unsuccessful, Hailey may acquire significant liabilities.

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I am also attaching an e-mail from Michelle which outlines some of the pros and cons of a lease vs. a deed. Please note that Michelle has suggested limiting any reversion language to a deed. Notwithstanding this suggestion, Hailey may want to pursue a reversionary clause that would allow title to be conveyed to Hailey if the property was no longer used for affordable housing.

If you have any questions, meeting, please contact me. Thank you.

cc: Michelle Griffith (w/ encl.)

Mary Cone

From: Heather Dawson
Sent: Friday, January 22, 2010 9:10 AM
To: Mary Cone
Subject: FW: River Street Land transfer information
Attachments: MOU-Hailey[1].doc

From: Michelle Griffith [mailto:michelleatarch@gmail.com]
Sent: Tuesday, January 05, 2010 6:33 PM
To: Heather Dawson; Ned Williamson
Subject: River Street Land transfer information

Dear Heather and Ned,

We've been doing some research regarding the long term lease v. outright donation of the land.

In the case of a donation, the document we need from the city to document site control is an MOU between Hailey and ARCH (or possibly the project ownership entity) I have attached a draft from which we can work. Based on conversations with IHFA, it would show intent and commitment from the City and adequate site control. Practically speaking, It should be as effective and binding as a purchase agreement or option agreement from IHFA's perspective.

I have asked IHFA to confirm if the lease path would work for HOME Match (the secondary source of funding after tax credits) purposes. The Plan uses the terminology "permanently transferred" to qualify for match. They are checking with HUD to make sure that a 99 year lease qualifies as "permanently transferred". If we can't consider the lease a permanent transfer, we may need to scramble around to contrive a way to prove match amount for the value of the lease. "Match" is anything given to us, land, labor, goods and donations. The more match you have the more scoring points you get. For Walnut Street we had match in the value of the land or nearly 500k which was a huge factor in getting the HOME grant.

Lease Characteristics/Benefits:

The lease should be structured for 99 years. At a minimum it would likely need to be 55-60 years to meet investor requirements. The ultimate lease would have to be between the City and the project entity and be recorded against the real property. It will need to be subordinated to the IHFA regulatory agreement. At a minimum lenders will require that the lease be assignable to them, and they may also require subordination to their liens, with full rights to correct any defaults. From the City's perspective, they would still maintain ultimate "control" of the property at the lease expiration. It would require additional administrative actions by the city (signing assignments, etc.) through the process. Also, as owner of the fee interest in the property, the City would continue to have potential for liability claims on the property. From our perspective, dealing with the lease is more complicated when it comes to the investors.

Land Transfer Benefits:

This is the mechanism we used with Walnut street and the County Land. The County gave title to IHFA

(because that is the only entity they are permitted to give land to) and IHFA then transferred the land to ARCH. The cost was \$1,500.00. From both the City and our perspective, it is probably a cleaner means to donate the ground since it wouldn't involve any of the later assignments, subordination's, etc. As far as property control, the City could include provisions in the MOU or other documents to make sure that the property is used for the proposed affordable residential development. We can probably include income targeting language if that would help. If possible, we would want to limit any reverter language because it makes the lenders and investors uncomfortable.

While it is nice for everyone to do a transfer, it really depends upon what is easier politically and if HOME funding will view a 99 year lease as "permanently transferred".

Please let me know how to proceed from here.

Michelle

Mary Cone

From: Heather Dawson
Sent: Friday, January 22, 2010 9:10 AM
To: Mary Cone
Subject: FW: River Street Project

From: Michelle Griffith [mailto:michelleatarch@gmail.com]
Sent: Friday, January 15, 2010 6:29 PM
To: Heather Dawson; Beth Robrahn
Cc: Rick Davis
Subject: River Street Project

Dear Heather and Beth,

I wanted to let you both know that we have accepted a joint proposal for architecture of the River Street Project from Anderson Architecture and The Architects Office. The decision was made by a committee of two ARCH board members and Greg of New Beginnings Housing based on experience, design, price and local presence. We are very confident that this team of Architects have significant senior tax credit experience and have demonstrated quality in local projects. This was one of eight total proposals received.

Sincerely,
Michelle

MEMORANDUM OF UNDERSTANDING

(Development of Walnut Street Property)

This Memorandum of Understanding, entered into this ____ day of _____ 2010 by and between the City of Hailey, Idaho ("HAILEY"), located at 115 South Maine Street, Hailey, Idaho 83333 and the ARCH Community Housing Trust, Inc. ("ARCH"), a community based membership nonprofit organization located at 160 Second Street, Suite 217, Ketchum, Idaho 83340, is made with reference to the following facts:

- A. ARCH is a not-for-profit charitable corporation of the State of Idaho that was formed in 2004 for the public, charitable purpose of assuring a diverse, livable community by providing permanently affordable housing throughout Blaine County for moderate and lower income households.
- B. One goal of ARCH is to supplement the efforts of municipalities in Blaine County to increase the stock of housing, in perpetuity, for the served population through the development of for-sale and rental residential units, the purchase, sale and/or rental of which is restricted by deed, covenants and/or agreements to insure affordability.
- C. HAILEY acknowledges the need for permanently affordable community and workforce housing in the county.
- D. HAILEY owns an undeveloped lot commonly known as 730 N. River Street, Hailey, Idaho ("Hailey lot") and desires to make it available for development as rental housing for senior citizens.
- E. By statute, HAILEY is precluded from entering into a long term lease of the Hailey lot or from donating the Hailey lot to a non-profit private organization. In order to accomplish its objective of developing affordable senior housing on the Hailey lot, it will use the Idaho Housing and Finance Association ("IHFA"), a public body corporate and politic of the State of Idaho, as an intermediary.

Based upon these facts, the parties agree as follows:

1. Pursuant to Idaho Code 31-836 HAILEY will deed the Hailey lot to IHFA, who will in turn be authorized to transfer the Hailey lot to ARCH on the condition that the residential units constructed on the Hailey lot will be leased only to qualified senior citizens.
2. In association with New Beginnings Housing, LLC, a limited liability corporation registered in the State of Idaho, ARCH shall construct a residential apartment complex consisting of 22 to 25 apartments with a mix of one and two bedroom units, with features and amenities developed in consultation with HAILEY (the "Project"). The Project will be financed with Low Income Tax Credits and HOME funds and any other financing required for the Project. The Project shall be constructed in

- conformity with all local and state ordinances.
3. Upon completion, ARCH will manage the Project and lease the units to qualified senior citizens.
 4. ARCH shall apply for predevelopment funds and construction financing through the Idaho Housing and Finance Association ("IHFA"), a source of low interest HUD funds available to ARCH as a Community Housing Development Organization ("CHDO"). In the event there are impediments to the project such that it does not proceed beyond the predevelopment phase, repayment of predevelopment funds may be waived by the IHFA. In the event the project does not proceed through no fault of ARCH and such a waiver of repayment cannot be obtained, HAILEY shall be responsible for repayment of predevelopment loan funds.
 5. This Memorandum of Understanding relates only to the specific project defined herein, and does not impose any obligations (financial, legal or otherwise) upon the other for any other or future projects of either party.
 6. In the event ARCH dissolves, the Hailey lot shall be assigned and transferred to another government or non-profit entity, to ensure that it remains permanently affordable community housing in accordance with the intent of this agreement.

CITY OF HAILEY

ARCH COMMUNITY HOUSING TRUST, INC.

By _____
Mayor

By _____
Executive Director

