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
James Golde
Real Estate Manager
Economic & Workforce Department – Real Estate Services
City of Oakland
250 Frank Ogawa Plaza, Suite 4314
Oakland, CA 94612-2033

Re: Surplus Land Act Requirements for Responses to Notice of Intent and Offer to Convey Property for 12th Street Property

Dear Mr. James Golde:

We write on behalf of Eastlake United for Justice (EUJ), an organization of concerned residents who live in Oakland’s Eastlake neighborhood, to remind you of the need to comply fully with all provisions of the Surplus Land Act in connection with the responses to the Notice of Intent and Offer to Convey Property for the 12th Street Remainder Property issued on July 14, 2015. Cal. Gov. Code §§ 54220-54233.

Specifically, the City must ensure that all prospective buyers with whom the City enters into negotiations in the first 90 days have proposed to make at least 25 percent of the housing on site affordable to lower-income households – those at or below 80 percent of the Area Median Income. Cal. Gov. Code § 54222.5. These negotiations must be held in good faith and extend for not less than 90 days, with the objective of arriving at “a mutually satisfactory sales price.” § 54223.

The City must give first priority to proposals that provide the greatest number of affordable units at the most deeply affordable levels. § 54227. We note that while the July 14 Notice appears to suggest that the City may seek to insert into the negotiations issues of height or density minimums, this would not be permissible under the Surplus Land Act. The Act makes clear that the valid subjects of the negotiation are price and maximizing affordable housing. §§ 54223, 54227.

As explained in an August 14 letter to the City from EUJ, the Surplus Land Act explicitly authorizes the sale of land at below market value to facilitate affordable housing. § 54226. Cities may also extend the payment period on the purchase by developers of affordable housing for at least 20 years or up to the length of the affordability covenants on the property. § 54225.
We expect that the City will undertake a diligent, lawful, and transparent process to evaluate proposals that abides by both the spirit and the letter of the Surplus Land Act.

Thank you,

David Zisser  
Public Advocates

Sam Tepperman-Gelfant  
Public Advocates

Michael Rawson  
The Public Interest Law Project

Dan Siegel  
Siegel & Yee LLP

To:   James Golde, Manager, Real Estate Services jgolde@oaklandnet.com

Cc:  Barbara Parker, City Attorney biparker@oaklandcityattorney.org  
Patrick Lane, Acting Manager, Project Implementation Division, plane@oaklandnet.com