

DATE: November 9, 2016
TO: Board of Commissioners
FROM: Kimberly Branam, Executive Director
SUBJECT: Report Number 16-59
Approving the Terms of a Settlement Agreement

BOARD ACTION REQUESTED

Adopt Resolution No. 7219

ACTION DESCRIPTION

This action by the Portland Development Commission (PDC) Board of Commissioners (Board) will authorize the terms of a Settlement Agreement with Acorn Foster LLC (Acorn Foster) concerning a dispute related to a PDC-owned property in the Lents Town Center URA (PDC Property) (see a Site Aerial in Attachment A).

As described below, the PDC Board approved the conveyance of the PDC Property to Asian Health Services Center, Inc (AHSC) and a PDC loan to help finance the construction of a health services facility (Project) on the PDC Property. Acorn Foster, the adjacent property owner, has asserted that the proposed development of the AHSC Project would create parking pressures on the Acorn Foster Property and that the terms of certain Covenants, Conditions, and Restrictions (CC&R) that govern the development of both the PDC Property and the Acorn Foster Property give Acorn Foster the right to approve development on the PDC Property. PDC agrees that the AHSC Project will create increased parking demand and that the AHSC Project is consistent with the terms of the CC&R.

By this action, the PDC Board is being asked to authorize the Executive Director to enter into a Settlement Agreement in accordance with the terms described in Exhibit A to Resolution No. 7219. If approved, the Settlement Agreement will i) permit the AHSC Project to proceed on schedule, ii) obtain approval from Acorn Foster for the AHSC Project, including approval to build approximately 25 more parking stalls than are depicted in the CC&R, and iii) provide Acorn Foster with a small parcel of property (Bauske Property) upon which it may build additional parking spaces (see Attachment A).

BACKGROUND AND CONTEXT

PDC acquired both the Acorn Foster Property and the PDC Property in 1998. On October 12, 2005, through Resolution No. 6296, the PDC Board sold both parcels to Assurety Northwest (Assurety), which intended to build two buildings in two phases on the parcels for its own use. Assurety formed two limited liability companies: Lents Town Center I LLC and Lents Town Center II LLC and transferred a portion of the property to each of those entities. At that time, Lents Town Center I LLC and Lents Town Center II LLC entered into and recorded a CC&R. The CC&R required that certain aspects of future development of both parcels had to comply with a site plan attached to the CC&R.

In 2010, Assurety deeded back to PDC the parcel owned by Lents Town Center II LLC (PDC Property). In connection with that conveyance, the parties entered into an Amendment to the Original CC&R (Amendment). The Amendment replaced the site plan attached as an exhibit with a revised site plan. The Original CC&R, as amended, are herein referred to simply as the CC&R.

On June 24, 2015, through Resolution No. 7131, the PDC Board approved the sale of the PDC Property to AHSC, for the purpose of developing a medical clinic, office space, and community meeting space. The AHSC Project was developed with wide public involvement and support. On the same date, the PDC Board approved providing AHSC with a Commercial Property Redevelopment Loan of up to \$3,050,000. On February 10, 2016, through Resolution 7170, the PDC Board approved increasing the amount of the Loan to \$4,900,000.

Over the last year, AHSC has prepared a comprehensive design for its Project. Among other things, it sets forth the design and layout of a 26,921 square foot building and sets forth a layout for 57 parking spaces.

In summer 2016, Acorn Foster acquired the property immediately adjacent to the proposed AHSC Project, and contacted PDC and AHSC to express their concern about the size of the AHSC Project and the demand for parking that it would create. They also communicated that they believed that the proposed design for the AHSC Project violated the CC&R. Acorn Foster specifically claimed that the size of the proposed AHSC Project and the modified parking layout violated the CC&R. PDC has responded by expressing its legal position that the CC&R do not cover or restrict the size of the AHSC Project and that the modified parking layout is not inconsistent with the terms of the CC&R.

Ultimately, PDC commenced discussions with Acorn Foster in an attempt to settle the dispute. Since PDC actively promoted the development of the original Acorn Foster site, it desires that the businesses on both the Acorn Foster and AHSC Project site succeed. Therefore it is sympathetic with the parking pressures on both sites. It is also of great importance that the community-supported AHSC Project proceed on schedule. PDC thus proposed a settlement that would allow the AHSC Project to proceed, but also seek to provide a solution to Acorn Foster's concerns about parking.

In the proposed settlement, PDC would convey to Acorn Foster the Bauske Property, a 7,142 square foot PDC-owned property to the west of the Acorn Foster Property. The Bauske Property was acquired by PDC for the purpose of i) demolishing an old blighted building on the site that was a safety concern for the community and ii) to further deed a portion of the Bauske Property to the City of Portland Bureau of Transportation in order to widen SE Foster Road to provide on-street parking and improved sidewalks. Both of these goals have now been achieved. The remaining Bauske Property is not of strategic value to PDC and has significant development limitations. It does, however, have potential advantages if used to supplement the off-street parking behind the Acorn Foster Property and AHSC Property. As such, PDC has offered, subject to PDC Board approval, to convey the Bauske Property to Acorn Foster in exchange for Acorn Foster expressly approving the AHSC proposed development and parking design, which will add approximately 25 additional parking spaces. Acorn Foster intends to seek land use approvals to add additional parking on the Bauske Property to serve the Acorn Foster Property. If Acorn Foster cannot obtain required land use approvals to build parking on the Bauske Property, PDC will agree to buy back the Bauske Property. Acorn Foster has communicated to PDC that they believe the value of the Bauske Property is approximately \$150,000, which is not more than PDC's own estimate of value. Should the PDC Board approve this Settlement Agreement, AHSC can immediately proceed with its beneficial development and Acorn Foster can use the Bauske Property to attempt to provide additional parking for their property.

COMMUNITY AND PUBLIC BENEFIT

There are several public benefits to approving the Settlement Agreement, namely i) it will allow for the AHSC Project, which has broad community support, to move forward, ii) it will approve a development proposal that adds at least 25 additional parking spaces, and iii) it provides Acorn Foster with a small parcel upon which it may be able to build additional off-street parking in the Lents Town Center.

PUBLIC PARTICIPATION AND FEEDBACK

There has been no public participation related to this proposed action. PDC has communicated closely with AHSC, which is supportive of the Settlement Agreement.

BUDGET AND FINANCIAL INFORMATION

There are no direct financial impacts from approving the Settlement Agreement.

RISK ASSESSMENT

If the Settlement Agreement is not executed, there is risk that that the AHSC Project may be delayed and/or proceed with far fewer parking stalls, which is not desirable for the AHSC Project or the Lents Town Center.

ALTERNATIVE ACTIONS

The PDC Board could chose to not approve or to amend the Settlement Agreement, both of which carry significant risks to the AHSC Project, as noted above.

ATTACHMENTS

- A. Property Aerial

PROPERTY AERIAL



8801 SE Foster Road



Bauske Property



Acorn Foster Property



PDC Property (AHSC Project)