

STAFF REPORT

TO: Planning and Economic Development Comm. DATE: April 21, 2015

FROM: Sam Powers, Community & Economic Development Director

SUBJECT: Update on City Owned Property at 68-76 Haywood Street

Summary Statement: Review of staff work and policy direction on city owned property located at 68-76 Haywood Street. This report offers an update of staff actions since City Council direction on March 25, 2014.

Review and Analysis:

Background. Last year in 2014, PED and City Council reviewed the previous history of city ownership and policy direction for the subject property, which consists of approximately 3/4 of an acre located on the southern side of the intersection of Haywood Street and Page Avenue in downtown Asheville. On March 25, 2014, City Council voted 6-1 to “proceed with an RFQ/RFP process for the City-owned property at 68-76 Haywood Street, with the following preferences (allowable under the law) to help our development partners understand the specifics of what the City leadership is interested in: (1) that the development must support the goals of the Downtown Master Plan; (2) that the project preferably be developed for expanding the tax base; (3) that the street level of the project incorporate uses that adds a vibrancy and public activity on the streets; (4) that the development move forward in the near term and that we avoid partnering with a developer that would acquire the property with a view that they may develop it multiple years down the road; (5) that the development would complement the use of the U.S. Cellular Center; (6) that the development would protect and respect the Basilica and the Basilica's architecture; and (7) that the development favor the creation, along with the development of a publicly-accessible plaza, and that in order to achieve the plaza, that a public-private partnership be pursued to make that economically feasible”.

Status. After Council action, staff consulted with the UNC School of Government Development Finance Initiative (DFI), and contracted with the DFI to provide assistance in developing best practice pathways to construct the RFQ/RFP. The DFI outlined several actions including the development of Innovation Districts which the City has since authorized. Due to staffing changes at the DFI and a desire by staff to pursue other options, the arrangement with DFI ended. Staff subsequently prepared a request for consulting assistance with predevelopment work associated with preparation of a RFQ/RFP for Developers. One of the key components of the predevelopment work was to provide an update to a previous market analysis to identify Market Appropriate uses for the property. After interviewing consulting teams, staff did not find a team that completely met the goals sought to assist in the predevelopment work. Staff also concluded that most if not all market appropriate uses identified in the previous market analysis would likely still apply, including a hospitality use. Concurrent to this timeline, city staff and the EDC/NC Department of Commerce were successful in recruiting a new Biotechnology company to locate in downtown on city owned property. As a result of this successful use of city owned property, staff believes that a proactive marketing campaign for the Haywood Street site targeting office/technology/administrative job creation projects could be worth considering. The

Haywood Street property has never been included as an available site for the EDC or NC Department of Commerce to include in marketing efforts. An effort to market the site would likely take place over several months, likely a 9-12 month period.

Recommendation:

The Downtown Master Plan identified the subject site as appropriate for thoughtful, dense development. The property has repeatedly been shown through independent appraisals to have significant fair market value. The partial removal of distressed buildings from the site removed one of the constraints for a potential purchaser of the property. Land assembly can be the most prohibitive component of urban development projects, and the offering of City owned property reduces risk of the development.

At this point, city staff would seek updated PED direction for an appropriate process to achieve Council goals, revisit the current policy direction to determine if a proactive marketing campaign is of interest to PED/City Council, and consider any Council policy adjustments to the guiding principles in the existing motion from March 2014.

Attached to this Memo is the staff report from last year, which outlines in detail the complete history of the site, as well as the statutes that govern disposition of public property.

STAFF REPORT

TO: Planning and Economic Development Comm. DATE: Feb. 18, 2014

FROM: Sam Powers, Economic Development Director

SUBJECT: City Owned Property at 68-76 Haywood Street

Summary Statement: Review of city owned property located at 68-76 Haywood Street and recommendations for redevelopment for economic development purposes. This staff report offers a brief history of the site and a brief review of the previous RFQ/RFP process utilized for the site. The disposition methods available to local governments in North Carolina will be outlined to assist PED consider the options available for the site.

Review and Analysis:

1. **Background.** The subject property consists of approximately 3/4 of an acre located on the southern side of the intersection of Haywood Street and Page Avenue in downtown Asheville. The U.S. Cellular Center, Vanderbilt Apartments, and Pack Memorial Library are across Haywood Street to the east. Property owned by the Catholic Church, currently vacant, is located immediately across Page Avenue to the North, slightly beyond that, and across Haywood Street, as it curves to the west is St. Lawrence Basilica. The Battery Park Apartments are across Page Avenue to the west. Immediately adjacent to the South are building in various commercial and office uses. The Grove Arcade is located to the south and west. The property is traversed by Battery Park Alley, running north to south.

The City acquired this property in several transactions occurring during 2001 to 2004 in connection with a parking facility that was planned but not built. The property was to be used initially for staging for the parking deck construction. Upon completion of the parking deck, the property was to be developed for commercial or mixed use purposes.

2. **Previous Process.** In 2005-06, City Council asked staff to undertake a review of all city owned property that could be considered for redevelopment to help achieve Council strategic goals, including creation of workforce and affordable housing, higher and better uses of property, returning public property to the tax base, quality job creation, private capital investment, and development of public-private partnerships. After an extensive staff and Council review, the list of properties was narrowed to three sites, all of which were considered "low-hanging fruit" with fewer impediments to redevelopment. The 68-76 Haywood Street site, along with the Parks Maintenance site on Hilliard Avenue, and the Eagle-Market Street sites were the three sites selected. The City also retained a national real estate consulting firm to conduct an overview of the market conditions and to provide recommendations on appropriate development opportunities for each site.

In 2007 – 2008, the City undertook a two-part process; an RFQ process to prequalify potential developers, and after the prequalified developers were selected, an RFP which solicited proposals from developers for the development of the subject property. In February of 2008, the City selected the proposal submitted by McKibbon Hotel Group

("MHG") for a 140 room hotel as the one with which it wished to proceed. The proposal was revised to delete public parking at the request of adjacent property owners and City Council and resubmitted in September of 2008.

The timeline from 2009-2011 included numerous interactions with PED, RENCI, and the public during the development for the Downtown Master Plan. There was also mutual agreement between City Council and McKibbin Hotel Group to prioritize development efforts on a public/private partnership to construct a city parking deck and private hotel project at 51 Biltmore Avenue, which had been identified in the city's parking study as a top location for development of public parking, but which had been previously unavailable for redevelopment. There was mutual agreement that 68-76 Haywood Street would proceed after 51 Biltmore was complete.

In December 2011 the City received an unsolicited offer to purchase the subject property from the Catholic Diocese of Charlotte. The City spent the next several month reviewing the process, and in August 2012 confirmed the city's position and entered into an agreement with MHG to purchase the property and undertake a due diligence period prior to execution of the option. During this period, a lawsuit was filed against the MHG and City. The lawsuit was later withdrawn by the plaintiffs, but MHG has maintained the right to continue the proceedings to recover damages they consider incurred as a result of the suit. MHG in late 2013 notified the city, as allowed in the purchase agreement, that they would not purchase the site.

3. **Disposition Process.** North Carolina General Statutes control the procedures for selling city-owned property, which make several competitive methods of sale available to cities, as well as negotiated sales for certain public purposes. Public methods of sale include upset bids, sealed bids and public auctions. The City of Asheville has most often utilized the upset bid method, although most of those sales have been for small parcels of property. A brief summary of the methods is as follows:
 - a. Public Auction - After advertisement at least 30 days prior to the sale, a public auction may be conducted. City Council may accept or reject the highest offer within 30 days after the sale.
 - b. Sealed Bid - The property is advertised for sale not less than 30 days before a scheduled bid opening, a bid deposit of not less than five percent is required, and the highest responsible bid must be accepted unless all bids are rejected.
 - c. Upset Bids - The process begins when a bid is received whether unsolicited, the result of negotiations or in response to a solicitation for bids. If City Council proposes to accept the bid, the bid is advertised for upset bids. For a period of 10 days after the advertisement, a sealed upset bid may be submitted. If at the end of the 10 days, an upset bid is received, the new bid becomes the current high bid and the process is repeated. This continues until no upset bids are received. A bid deposit of not less than 5 percent is required. Once a final qualifying offer is received, Council must either accept or reject it.
 - d. Economic Development Property - The statute pursuant to which the City proposed to sell the Subject Property to MHG was N.C.G.S. 158-7.1, which authorizes the sale of property by private negotiation and sale for economic development purposes. In order to dispose of property pursuant to this provision, the City must first hold a public hearing with advertised public notice.
 - i) Consideration/Fair Market Value - Another requirement of the statute is that the consideration for the property cannot be less than the fair market value, subject to the conditions placed on the property. An appraisal prepared by Francis Naeger,

MAI, dated March 9, 2012, established the value of the property at \$2,526,000. This appraisal was performed with the following assumptions: (1) The existing parking garage (68 Haywood Street), restaurant building (76 Haywood Street), and office building (33 Page Avenue) have been demolished and removed, (2) The public alleyway located in between the four separate parcels has been relocated to the southern border of the parcels (exiting onto Page Street) to allow for a contiguous site, and (3) The development potential of the property is subject to certain limitations as to the use of the property and the height of the new structures. MHG had offered \$2,526,000 for the Subject Property, subject to a capped reimbursement from the City for the expense of the demolition and removal work that the appraisal assumes has been done. A new appraisal was performed in October 2012 by Kevin Rimbault, MAI of the Marwin Group. This appraisal was subject to the same set of assumptions, and suggested a fair market value of \$2,600,000.

- ii) Economic Development Purpose - Another requirement of the statute is that the conveyance of the property must be consistent with the economic development purposes of the statute, which specifically include commercial and business uses, or otherwise in the public interest. There are some specifics in the statutes that must be met.

Economic development/planning considerations.

Consistency with economic plans. Development of the Subject Property is consistent with the City's economic development plans and the economic development purposes of the statute.

City's 2025 Plan states (p.71) that promotion of infill development ...is absolutely essential in addressing the tax equity, tax base enhancement, and Smart Growth development goals of the City.

Goal VIII of the Economic Development Chapter of the City 2025 Plan (p. 203): Create an inventory of property suitable for development or redevelopment for targeted industrial and commercial uses and implement a program to encourage development or conversion to these uses.

City Council in Nov 2006 agreed to make clearly known and that responders clearly understand that their opportunity to obtain City-owned property for development is dependant on their prior experience and success in meeting similar goals in other situations:

- Consistency with City Plans or policies, including Smart Growth and environmentally friendly/green building development practices
- Place-making design that complements our unique downtown business and residential communities and takes constructive public input into consideration
- Provision of strategically sited public parking
- Ability to accommodate all modes of transportation
- Potential for significant tax base enhancement
- Potential to promote new or revitalized entertainment venues

Downtown Master Plan.

The Downtown Master Plan indicates a need for new development downtown,

stating (p. 19) that "...excellent compatible infill projects within the historic fabric must be a high priority," and that "there is a need for a new focus on larger, more complex projects targeted to sites in the traditional Downtown...". The Plan places this site in the "Traditional Downtown District." It states (p. 68) that in this area "thoughtfully designed new buildings are appropriate..." and that "continued investment in existing and new buildings is necessary for the District to continue to thrive." It further states that "Adding appropriate new development on Haywood can help existing properties - historic or not – gain value." This area is a designated "Intermediate Height Zone", which would allow a 12-13 story building on the site. All projects proposed in the downtown area also have a number of architectural requirements to improve the compatibility of new projects with the existing building fabric. These requirements include windows and doors along street frontages, a building setback at between two and four stories and for taller structures a reduction in the scale of the building tower to assure light and air, improve views and limit shadows.

The site is near a designated "gateway" point – indicated on the page 67 map as being at the intersection of Haywood and O'Henry and the off and on ramps to 240. The Parks and Greenways map in the Appendix (S3-29) notes a recommended park for the tip of that intersection, across from the Basilica (north of the recommended redevelopment site). At some point in time a reconsideration of the street alignments in that area, developed in cooperation with all landowners, could result in more graceful intersections, pedestrian amenities, and the potential for the type of "pocket park" envisioned on the Parks and Greenways map.

- (iii) Conditions/Development Agreement. Council may direct that certain conditions be placed on the property intended to ensure that development there meets the economic development purposes for which it is being sold. These could include some broad design criteria. The contract to be signed by the parties could include a development agreement whereby the purchaser would prepare and submit a development schedule, to include the process for performing due diligence work, getting zoning and building approvals, and obtaining financing.
- (iv) Other Issues. Depending of the size of any development, a project might or might not come to city council for approval. Nevertheless, the City owns the property, and may exercise design control through restrictions or covenants in connection with the sale of the property.
 - Design Control - There are two main vehicles for doing this: (a) deed restrictions; and (b) contractual provisions. Deed restrictions should include conditions, such as the use of the property and broad dimensional restrictions, that are not likely to change, and may be necessary to ensure that the property is used for the purposes for which it is sold. The contract for the purchase and sale of the property covers such basic terms as price, description, and due diligence requirements. It will also specify a design preparation and review process - - following the UDO - - that will result in an approved final design for the project. The final design approval will be incorporated into a development agreement for the property. The property will then be conveyed for development in accordance with the agreement.

- *Financial Assurance* - It is difficult and prohibitively expensive to procure a guarantee of completion in a project of a large size and nature. Commercially reasonable practices include (a) obtaining a list of similar completed projects (b) a requirement for a commitment for financing from a recognized financial institution prior to closing; (c) evidence of satisfaction of financing conditions; (d) a requirement that construction be started by a certain date and completed by a certain date; (e) regular construction progress reports; (f) a right to repurchase the property if the project stalls or is abandoned; (g) a bond for removal or demolition of incomplete improvements, if necessary. It would be appropriate to include some combination of these provisions in a development agreement.
- *Damage to Surrounding Buildings* - The subject property is near or adjacent to several historically significant and structurally sensitive buildings, notably St. Lawrence Basilica, the Grove Arcade, and the Battery Park Hotel, all of which are on the National Register of Historic Places. A development agreement could include a requirement for seismic monitoring.

Recommendation: When the City began the City-owned property redevelopment process it retained a real estate research consulting firm (RERC) to conduct an assessment of the market potential for the sites being considered for redevelopment. RERC's research focused on residential and commercial development including retail, office, hotel/hospitality, and multifamily residential product uses. While a detailed market analysis was not performed for each of the sites, RERC's work was intended to generally test the market support for redevelopment concepts based on prevailing market conditions. The purpose of this analysis was to provide an overview of the identified market sufficient to distinguish land uses and development program implications for the subject sites and to support the development of a real estate asset management strategy that made economic sense, reflecting the prevailing market environment and general economic conditions. The site analysis for 68-76 Haywood Street property suggested (but didn't limit) market appropriate use for an upscale hotel (150 rooms), retail/limited office (10,000 SF), and structured parking.

The Downtown Master Plan, which included months of intense public input, identified the subject site as appropriate for thoughtful, dense development. The property has repeatedly been shown through independent appraisals to have significant fair market value. The pending removal of distressed buildings from the site removed one of the constraints for a potential purchaser of the property. Land assembly can be the most prohibitive component of urban development projects, and the offering of City owned property reduces risk of the developer and should promote increased response.

At this point, city staff would seek PED and City Council direction for an appropriate process to achieve Council goals. Based on the disposition methods available for local governments, the recommended process options include:

(1) Negotiated Offer and Upset Bid - If the primary goal of Council is to return the property to the private sector, have limited conditions on the sale, generate substantial income from the disposition which would be used to further community and economic development goals, staff recommends marketing the property for an upset bid sale. Prior to advertising the property for sale, Council would establish the terms of sale (e.g. minimum price, amount for deposit, conditions of sale, timeline for closing). In accordance with the general statutes, this method of sale is designed to yield the highest and best return on the property, and as such a local government may not restrict by deed the uses to be made of the property if the restrictions will depress the price offered for the property. A notice representing the terms of sale would be

published online and in the local newspaper. Council may direct staff to contract with a private real estate broker to perform marketing services and negotiate offers for the property. Any formal qualifying offer that meets the terms of sale would initiate an upset bid process, with the final bid being subject to Council approval. Council retains the right to withdraw the property from sale at any time and reject any and all bids that were not in the city's best interest.

(2) Request for Qualifications and Private Sale through Economic Development statute
– If the primary goal of Council utilize the property to promote a greater Economic Development purpose, generate fair market value for the property and have greater input over the commercial/business use, then Council may elect to sell the property under the Economic Development Statute. This process requires that the property be sold at Fair Market Value and other requirements as previously discussed. A common method to solicit interest in purchasing property via this process is through a Request for Qualifications. Once qualifications have been reviewed within the context of the economic development purpose, an offer would be negotiated. When the offer is ready to be presented to Council, a public hearing is held on the conveyance. After the hearing is complete, Council may proceed with the transaction.