

MINUTES

MEETING OF THE DEVELOPMENT AND CONSTRUCTION COMMITTEE OF THE BOARD OF DIRECTORS CAPITOL AREA DEVELOPMENT AUTHORITY

OCTOBER 25, 2011

Page Robbins called the meeting to order at 9:35 a.m. at the CADA Administrative Office, 1522 14th Street, Sacramento, CA 95814.

1. Roll Call

Ron Alvarado - Present
Page Robbins - Present

2. Approval of Minutes of September 22, 2011

Member Alvarado suggested a change in the wording in Agenda Item 3) A to read: "Mr. Alvarado stated that although he is not opposed to Developers making a profit, there is concern in using public funds on a project that does not yet have financing so cannot make projections about profit." With this change, the minutes were approved as amended.

3. Items scheduled for the October 28, 2011 Board Meeting

- A. East End Gateway Sites 2 and 3 Ratification of Fourth Amendment, Subordination Agreement and Fifth Amendment to the Disposition and Development Agreement (Northwest and Southwest Corners of 16th and O Streets):

Tom Kigar reported the following:

Scott Rasmussen reported to staff that final loan approval was granted from Union Bank. CADA staff will have this in writing by the Board Meeting on Friday.

Staff recommends that the Board adopt a resolution that ratifies the action of the Executive Director entering into the Fourth Amendment to the Disposition and Development Agreement (DDA) which facilitates a loan commitment and authorizes the Executive Director to:

Enter into a subordination agreement with the Developer and Union Bank that subordinates CADA's power of termination and option to acquire and allows CADA a 60-day period during which to cure any Developer default under the proposed Union Bank construction loan to the Developer and enter into a Fifth Amendment that revises the Schedule of Performance to extend the date to close on the Site to January 31, 2012 and to commence construction no later than April 1, 2012.

The Fourth Amendment to the DDA incorporated the following:

1) Commitment of additional financial assistance by providing an annual tax increment rebate for a period of ten years that is calculated on what the Project generates in tax increment less CADA's expenses related to the Site. The rebate is estimated to range from \$53,695 to \$78,135 per year based on what the Project generates in yearly tax increment.

2) Modification of the DDA to re-allocate previous cash contributions for soil remediation and undergrounding of overhead utilities to general project costs and to make CADA's financial contribution after the Developer's equity contribution and before the construction loan disbursement,

3) Revision to the Schedule of Performance in the Third Amendment to the DDA extending the required date to close on the Site and commence construction to November 1, 2011 and the required completion date to May 2013,

4) Authorization for the Executive Director to take any and all actions necessary to close the transaction transferring the Site and funds authorized under the DDA to the Developer.

On October 4, 2011, the attorney for Union Bank advised CADA's Legal Counsel that the bank requires that CADA subordinate its rights under both the option and power of termination provisions. The DDA expressly states that neither of these remedies is to be subordinate to Developer financing. The Union Bank attorney also advised that the bank would only allow CADA a 45-day period in which to cure a default by the Developer. CADA has since negotiated a 60-day cure period—pending loan committee acceptance.

The Developer has informed CADA that he deposited his \$4.5 million in equity with the bank and it is expected that final written loan approval will be forthcoming soon.

The terms of the DDA provide CADA with several remedies in the event the Developer or its general contractor fails to develop the Project within the times permitted. These include both an option and a power of termination, each of which allow CADA to re-acquire the property in the event of a default prior to completion of construction. The DDA expressly states that neither of these remedies is to be subordinate to Developer financing. However Union Bank, the construction lender on the Project has requested that CADA subordinate its rights under both the option and power of termination provisions. If the Board agrees, any default by the Developer would allow Union Bank to foreclose on the property, sell it and use the proceeds of such sale to satisfy its construction loan to the Developer.

The DDA requires the Developer's general contractor to provide payment and performance bonds to secure the completion of the construction of the Project. The draft Subordination Agreement proposed by Union Bank allows CADA 45 days to cure or correct any default (monetary or non-monetary) by Developer. CADA requested that this 45 day period be extended to 180 days to give adequate time to work with the surety issuing the payment and performance bonds to complete the Project, but Union Bank has indicated that it is unwilling to agree to a period longer than 45 days.

Member Ron Alvarado stated that 45 days is not ideal, but there might not be other options at this point. Ms. Robbins suggested that CADA prepare now by thinking through some options for curing a possible future default. Mr. Schmidt stated that CADA staff will explore that option. Ms. Robbins stated she has confidence with the Developer. Staff will work with Legal Counsel for the Friday Board Meeting.

Committee's Recommendation: The committee supported Staff's recommendation pending approval from the loan committee for a 60-day cure period for CADA action.

B. Site 9B Review and Approval of Revised Valuation and Disposition Plan (1610 17th Street):

Tom Kigar reported the following:

Staff recommends that the Board adopt a resolution that authorizes the Executive Director to establish the listing price of the 40' x 40' vacant lot at 1610 17th Street at \$64,000 (\$40/sq. ft.) and offer the Site for sale in the open market until an acceptable proposal(s) is received and report back to the Board with a recommendation to select a proposal and enter into a Purchase Agreement with a prospective developer.

An appraisal was completed for CADA and DGS in May 2006 that established the value of the Site at \$111,000. This was the price CADA paid to DGS for the Site in November 2008. This original listing price of \$111,000 was reduced to \$85,000 in September 2009 to reflect

market conditions at that time. Since 2006 a total of five developers indicated the Site is currently overpriced. As a result staff contracted with H.I.S. Appraisal Services (Appraiser) to complete an appraisal to identify the current market value. The Appraiser completed their appraisal on October 20, 2011 establishing a value of \$64,000. Mr. Kigar discussed the comparable properties surrounding the Site and provided an overview of the schedule for selection of a Developer.

Based on the conservative approach that the selected developer will build a single family unit with a projected sales price of \$520,000 it is projected that the project would generate approximately \$5,200 in tax increment per year. At this amount, it will take CADA nine years to make up the loss of \$47,000 as a result of reducing the sales price.

Mr. Schmidt stated that CADA typically is required to provide a \$40,000 per unit subsidy in order to make projects feasible and suggested that this also applies to 1610 17th Street. There are developers who think they can make it work. The other option is to take it off the market, but fears that the Site will remain vacant for many more years.

Mr. Alvarado stated that he is disappointed in the loss of value but unfortunately this is everywhere in the current climate. Mr. Alvarado suggested that if there are not many proposals this time around to consider taking the site off the market for a while. Ms. Robbins stated this fits with what is going on in the market, and it's better to be realistic to make something happen than to not be realistic. Ms. Robbins also agreed to take the site off the market if there is little or no interest.

Committee's Recommendation: The committee supported staff's recommendation.

- C. Capitol Lofts Disposition and Development Agreement and Promissory Note Forbearance Letter (Northern Half Block Bounded by 11th and 12th Streets/R Street and the R-S Street Alley):

Marc de la Vergne reported the following:

Staff recommends the Board adopt a resolution authorizing the Executive Director to issue a DDA and Promissory Note forbearance letter for a 90-day period.

In January 2011, the Board approved a Second Revised and Restated DDA reflecting the Developer's proposed revised Schedule of Performance. In April 2011, when it was becoming apparent the Developer was not going to be able to meet the key initial milestones in the revised schedule, including presentation of a "further revised project design" and a "further revised project budget," Staff and the Developer met in Sacramento, and the Developer informed staff that the project had less than a 10% chance of being financed. Staff responded by suggesting a phased approach to development of the site, starting with the CADA Warehouse or the B&G Building.

The Developer met with staff in August to report that the B&G building was not profitable and that it wished to focus on developing the vacant lot immediately adjacent to the CADA Warehouse first as a 100-unit apartment building. In September, the Developer again met with Staff and reported that its proforma for the 100-unit project showed a deficit of \$2,000,000 and that the project would require higher rents than it has proposed in the CADA-Capitol Lofts, LLC Prop 1C application.

In September, staff briefed the Board on its August meeting with the Developer and on key questions it felt the Developer needed to answer, including how the Developer proposes to fill the \$2,000,000 gap and whether the Department of Housing and Community Development (HCD) will agree to the proposed increases in the rents. Staff gave the Developer until October 3 to submit its proposal answering these questions. In a letter dated September 29, the Developer responded that it requires additional time to answer these key questions and asked for 90 days. On October 4, the Developer reported that the project cannot pay off the predevelopment loan and that tax increment will be needed.

Staff is recommending the Developer be given until January 26, 2012 to answer the questions outlined in its September 29 letter, conditioned on the following:

1. That past due monthly cost reimbursement fees of \$13,500 for the months of August, September and October have been paid.
2. That the November, December and January monthly fees be paid when due.
3. That the Developer will submit a proposal for a viable project and with a balanced budget by January 26, 2011.

Staff will review the proposal in early February, after it is received, and develop a recommendation for the Board to consider at the March meeting. CADA's mechanism for granting the requested extension is the issuance a forbearance letter, whose conditions the Developer will acknowledge by signing and returning it to CADA.

The key factor driving staff's recommendation to the Board is the importance of preserving the HCD Proposition 1C Infill Infrastructure Grant of \$4.7 million, without which the Developer says its Phase I project will be infeasible. The grant represents 29 percent of the estimated \$16 million Phase I budget.

HCD staff has contacted the Developer and CADA to determine the project's viability. CADA staff explained that a phased development approach with the affordable units contained within Phase I of the project is acceptable to CADA and that staff is recommending that the Board provide the Developer with a 90-day extension of time to answer project-related questions. Staff also said that we believe the Developer will return in January with a feasible Phase I project. HCD Staff confirmed that the deadline for CADA, HCD and the Developer to enter into HCD's Standard Agreement and its Disbursement Agreement is June 2013. The deadline to expend all grant funds is February 2016.

When a developer is in default of the terms and conditions of its DDA with CADA, staff may issue a notice of default, which the Developer must cure within the document's specified cure period, or risk termination of the DDA. Alternatively, the Board may decide to forbear issuing a notice of default subject to the Developer agreeing to meet conditions the Board may decide to impose. In this instance, the Developer has requested a 90-day period in which to provide CADA with a proposal for a revised project and to answer questions staff had previously asked it to answer. The 90-day period commences on October 26, 2011, consistent with the maturity date of the Developer's 2007 predevelopment loan from CADA. The CADA conditions for agreeing to forbear issuing a DDA notice of default are discussed in this staff report.

The committee agrees with staff that a forbearance letter will not be issued if staff does not receive a response by Friday. Mr. Alvarado suggested adding language for the Developer to stay current with payments by putting November, December and January in place.

Committee's Recommendation: The committee supported staff's recommendation with conditions.

D. 16th Streetscape 30% Design and Strategic Growth Council Grant Application:

Mr. de la Vergne reported the following:

Staff recommends the following: Board review of the 16th Street Streetscape 30% design and Board adopt of a resolution authorizing staff to submit a grant proposal to the Strategic Growth Council.

The improvements are intended to improve pedestrian safety and connectivity, improve environmental quality, beautify 16th Street, and contribute to the vitality of the street's businesses and residences, as well as that of the surrounding neighbourhoods.

In June 2010, the Board reviewed and accepted a concept plan for 16th Street which provided a concept-level outline of recommended improvements. In January 2011, the Board authorized staff to enter into an MOU with the City of Sacramento under which the City's Department of Transportation (DOT) would prepare 30%-level construction drawings based on the CADA concept plan, prepare the required CEQA and NEPA documentation, prepare a project budget, and present the 30% design to the City Council for approval in early 2012.

In June 2011, CADA submitted a concept proposal to the State of California Strategic Growth Council's Urban Greening Project Grant Program outlining the "16th Street Greenscape Project" seeking approximately \$1 million for additional design and construction.

In September 2011, the Strategic Growth Council invited CADA to submit a grant proposal on November 17, with notification of the project's acceptance or denial in late spring 2012. On October 5, 2011, CADA and DOT staff presented a draft of the 30%-level design to the public for review and comment. The project was well-received by the twenty people in attendance. Between now and November 17, staff will prepare the Strategic Growth Council grant application.

The 2010 Concept Plan outlined a design approach for each block within the 16th Street Streetscape project area. But many questions about specific design issues remained unanswered at that point. The 30% design reflects many of the answers to these and other key questions. The City completed its first draft of the 30% plans in June, circulated it to City departments and CADA staff for revisions and comments.

The project is being designed to be low-maintenance. Maintenance of the improvements would be carried out by a combination of participants. Prior to his departure from the Midtown Business Association (MBA), staff had held two meetings with MBA Executive Director Rob Kerth to discuss setting aside a portion of the revenues collected by the Midtown PBID to maintain the bulb-outs, bioswales and banner signs, and possibly other improvements. As a member of the MBA board Todd Leon is working with other board members to continue these discussions despite the MBA's staff changes in hopes that CADA can secure a letter from MBA in early November expressing its intention to work with CADA to develop a funded maintenance program. Staff is working with the Del Paso Business Association, which maintains the bulb-outs along Del Paso and the City of Davis to understand how they maintain their bulb-outs. When our research is finished, we will prepare a budget and share it with the MBA.

The storm water planters will be installed in the planting strips of CADA's East End Gateway Sites 1, 2, 3 and 4. They will be maintained by the Developers of these projects in keeping with City policy that states that property owners are responsible for maintaining the planting strips fronting their properties. Streetlights and trees are maintained by the City of Sacramento.

Maintenance of the bioswale along Fremont Park has not been addressed yet, but the Friends of Fremont Park would be a candidate to take this responsibility on until such time as the Parks Department has the revenues to resume full maintenance of the park. If the mid-block bulb-outs and crosswalks are constructed, ideally they would be maintained by MBA using PBID funding.

Mr. Alvarado stated he appreciates staff working on the parking issue and encourages the effort to obtain more parking.

Committee's Recommendation: The committee supported staff's recommendation.

E. R Street Property and Business Improvement (10th – 13th Streets):

Todd Leon reported the following:

Staff recommends the Board adopt a resolution authorizing the Executive Director to execute a second amendment to the consultant contract with Civitas to further assist and complete the formation of a Property and Business Improvement District (PBID) for a section of the R Street Corridor and sign a petition to establish the R Street Property Business and Improvement District.

In August 2010, CADA contracted the services of Civitas Advisors to collect data, map, strategize, conduct stakeholder outreach and prepare of a draft service plan for a PBID for the R Street Area. After completing their study in December 2010, Civitas concluded that R Street had both the potential need and support for a PBID.

In March 2011, CADA amended and extended the Civitas contract to work on the formation of an R Street PBID. During the initial outreach period in May and June, one of the property owners in the initial PBID boundary area requested to be left out of any proposed R Street PBID. In order to secure his property's exclusion, the property owner lobbied other large property owners to oppose the R Street PBID. The lobbying effort impacted the R Street PBID formation timeline, initial boundary area, and resources of Civitas.

In response, a new PBID boundary area was drafted and the formation timeline was adjusted for the R Street PBID. After adjusting to draft boundary map, a new draft management district plan was created outlining the details of the district's formation, budget, cost, duration, and services to be established. This management district plan includes an estimated budget of \$113,369. In the proposed PBID's five year duration, the yearly budget will provide services that include enhanced landscape and street maintenance, area advocacy, and marketing.

The petition process for PBID formation began in August 2011 with meetings between Civitas and the key property owners within the proposed district. To date, many of the large property owners in the new boundary area have already been signed indicating that the possibility of formation looks promising. The proposed R Street PBID, if approved by Spring 2012, would begin operations in January of 2013.

The \$22,300 contract amendment can be accommodated through R Street's Professional Services fund in the current FY 2011-2012 budget. If this second amendment is approved by the Board, CADA will be spending \$79,300 to establish the PBID.

Committee's Recommendation: The committee supported staff's recommendation.

F. Presentation Regarding Sale of CADA Properties: Jackie Whitelam reported the following:

There will be a closed session at the Board meeting on Friday to discuss this matter further. The resolution currently has blanks but will be filled out during the closed session.

The Department of General Services (DGS) has advised CADA that they are taking a thoughtful and collaborative approach in their review of state-owned properties managed by CADA. To assist DGS, CADA is conducting a study with four objectives:

- 1) Work with DGS on the preparation of a comprehensive report of state-owned property leased to CADA from 1978 to 2011
- 2) Assist DGS in addressing the current State budget crisis by identifying properties which may be considered for sale in FY 2012-13
- 3) Quantify fiscal requirements to complete CADA's legislative mandate to implement the residential and neighborhood commercial components of the State Capitol Area Plan
- 4) Consider long term strategies for state-owned properties leased by CADA

This agenda item addresses CADA Study Objective 1 and CADA Study Objective 2. CADA Study Objectives 3 and 4 will be addressed at the 2012 CADA Board Workshop, tentatively scheduled on February 24, 2012.

Ms. Whitelam discussed objective 1, which is to work with DGS on the preparation of a comprehensive report of State-owned property leased to CADA from 1978 to 2011. Ms. Whitelam provided an overview of CADA's role in the implementation of the State's Capitol Area Plan and State-Owned Properties leased to CADA. There are 33 total acres, 18.96 acres formerly managed by CADA, and 13.68 acres are currently managed by CADA.

CADA Study Objective 2 is to assist DGS in addressing the current State budget crisis by identifying properties which may be considered for sale in FY 2012-2013. Ms. Whitelam discussed the State office future development, CADA development, CADA development ground lease and property management (regulatory agreement, built improvements, and pre-existing improvements).

Ms. Robbins asked if the regulatory agreement properties are self-supported or are they subsidized. Noelle Mussen stated that CADA does subsidize but other costs are not directly allocated to those funds.


Committee's Recommendation: The committee will review and hold comments until the Board Meeting.

4. Staff Reports/Updates/Transmittals

- A. Jefferson School (1619 N Street): Paul Schmidt reported that the superintendent asked CADA to be their developer proponent and now staff is waiting to hear about schedule. The School Board approved for a land lease only on the property, and not to sell it.
- B. Downtown Sacramento Revitalization Corporation: Mr. Schmidt reported that there are two new positions for the Board. The idea was to look for private people with a development background to add to the City Council and public agency representation. The Downtown Sacramento Revitalization Corporation is being looked at as an alternative to SHRA so it is important to keep CADA's role in it.
- C. O Street Streetscape; Artwork and Improvements; Regional Transit Stations: Mr. de la Vergne reported that Regional Transit has reviewed the scope and bid package and is close to finalizing the color to paint the pole/fixtures on 1000/1100 Blocks of O Street. The color options are black and dark blue. The committee suggested dark blue instead of black.
- D. Capitol Lofts (11th/R Streets) and HCD Infill Grant: This item was reported on in Agenda Item 3 (C).
- E. Mercury Cleaners (Northeast Corner of 16th and O Streets): Mr. de la Vergne reported that staff submitted the draft MOU/Option Agreement. Mr. Schmidt and Ms. Whitelam discussed the key legal issues with DGS. Mr. Schmidt stated that there is no final decision but attorneys from DGS have entertained the option for DGS to take the property back as owners and clean the site. Staff is waiting to hear back from DGS.
- F. East End Gateway Site 1 (Northwest Corner of 16th and N Streets): Mr. de la Vergne reported that the Developer has an October 31 deadline to provide evidence of financing, and the Developer reported that the deadline will be met.
- G. Streetscape Project; 16th Street: This item was reported on in Agenda Item 3 (D).
- H. Loan and Grant Research: Mr. Kigar reported that there will be a new look to the loan and grant spreadsheets in time for the December Board meeting.
- I. East End Gateway Sites 2 and 3 (Northwest and Southwest Corners of 16th and O Streets): This item was reported on in Agenda Item 3 (A).
- J. East End Gateway Site 4 (Southeast Corner of 16th and P Streets): Mr. Kigar reported that staff will have a conference call with the Developer this afternoon on status of financing.

The Developer will provide the status by November 4. A report regarding the evidence of financing will be presented at the December Board Meeting.

- K. East End Gateway Site 5 (1614 N Street): Mr. Kigar reported that staff is waiting to hear back from HUD regarding Section 202 financing. Staff should hear by the end of December.
 - L. Site 9B (1610 17th Street): This item was reported on in Agenda Item 3 (B).
 - M. Fremont Park and Roosevelt Park Improvement Project MOU; CADA and the City of Sacramento: Mr. Schmidt reported that staff has crafted one master agreement between CADA and the Department of Parks and Recreation for small projects in Fremont Park and Roosevelt Park (such as benches) to avoid additional legal fees, then preparing an assignment for each project.
 - N. R Street PBID: This item was reported on in Agenda Item 3 (E).
 - O. Phase I – R Street Streetscape Implementation: 10th – 13th Street and 11th Street Sidewalk: Mr. Leon reported that construction on R and 12th Street will finish next week. There are some design defects on the curb and edges of the driveways, but otherwise the feedback has been positive. The bike racks will be installed in November and the footings for the archway have been installed. The archway itself will be installed the week of Thanksgiving. The dock extension work at Fox and Goose begins today and will take about 4 to 5 weeks to complete. The celebration for lighting the archway will be December 1 at 4:30 p.m.
 - P. Phase II – R Streetscape Implementation Market Plaza: Mr. Leon reported that Phase II is on hold and staff is waiting to hear back from the City with regards to a hybrid option with the 60% drawings.
 - Q. R Street Affordable Housing: Mr. Leon reported that the focus will shift to this project after Phase I is complete.
 - R. Development Schedule: Received as transmitted.
5. Opportunity for the Public to Address the Committee Regarding Matters not on the Agenda
None
6. Adjournment
The committee adjourned the meeting at 11:47 a.m.



Rachel Mercurio
Development Assistant