ACTION - 2

RESOLUTION NUMBER 02-17: Authorization to Schedule and Advertise a Public Hearing on the Proposed Amendment to the Interim Agreement with CHPPENN I, LLC for the Redevelopment of the North Hill Property (Mount Vernon District)

ISSUE:
Fairfax County Redevelopment and Housing Authority (FCRHA) authorization is requested to schedule and advertise a public hearing to occur on January 26, 2017, regarding the proposed Amendment to the Interim Agreement with CHPPENN I, LLC (Developer) pertaining to the redevelopment of the FCRHA-owned North Hill property in the Mount Vernon District under the provisions of the Public-Private Education Facilities and Infrastructure Act of 2002, as amended (PPEA).

RECOMMENDATION:
Staff from the Fairfax County Department of Housing and Community Development recommends that the FCRHA authorize the scheduling and advertisement of a public hearing on the Proposed Amendment to the Interim Agreement with CHPPENN I, LLC. (CHPPENN).

TIMING:
Immediate. Authorization on January 19, 2017 will permit the public hearing to be held on January 26, 2017.

BACKGROUND:
The North Hill property (Property) consists of approximately 34.9 unimproved acres fronting Richmond Highway in the Mount Vernon District. North Hill is part of a larger 48.62-acre parcel that the FCRHA acquired in 1981 through condemnation using Community Development Block Grant (CDBG) funds to finance the acquisition. In 1991, approximately 15 of the 48.62 acres were redeveloped into the present day manufactured home community of Woodley Hills Estates, which consists of 115 mobile home pad sites.

The remaining approximately 34.9-acre North Hill site is currently comprised of three areas: approximately 5 acres zoned C-8; 11 acres zoned R-MHP; and 18 acres zoned R-2.

In 2012, the FCRHA received an unsolicited proposal from a local developer under the Public Private Education Facilities and Infrastructure Act of 2002 (PPEA). This submission proposed to redevelop the 34.9-acre site as a mixed income, affordable and market-rate housing community comprised of multifamily apartments and townhouses.

In accordance with PPEA requirements, and consistent with its adopted PPEA guidelines, the FCRHA then issued a “Request for Competing Proposals.” The solicitation envisioned a dynamic, mixed-income development and included criteria calling for development of 350 or more units on the Property, with the undeveloped balance to be preserved as park land, and certain affordability expectations.

Of the responses received, the proposal from CHPPENN– a partnership between Community Housing Partners, Inc. and the Pennrose Company – was determined by the county staff Selection Advisory Committee to be the most responsive to the Request for Competing Proposals.

Interim and Agency Agreements: In March of 2015, the FCRHA entered into an Interim Agreement with CHPPENN to conduct on-site studies and other due diligence to determine whether their proposed development was viable. Additionally, in March 2016, the FCRHA granted a limited revocable agency to CHPPENN to pursue, as agent for the FCRHA, applications for land use approvals, at CHPPENN’s sole cost.

Land Use Approvals: In furtherance of the proposed development, the Fairfax County Board of Supervisors amended the Comprehensive Plan for the Property on December 6, 2016, to allow for, among other things, the density envisioned by CHPPENN’s proposal. CHPPENN has also filed for a related rezoning and proffered condition amendment - Rezoning / Final Development Plan RZ/FDP 2016-MV-014 and Proffered Condition Amendment PCA 78-V-125 – which are currently on track to go to the Board for a decision on February 14, 2017.

Summary of Current Redevelopment Proposal:

- CHPPENN plans to construct a 279-unit multifamily apartment complex on approximately eight acres of the site under multiple long term, nominal rent ground leases, with 10 percent of the units affordable to households earning 30 percent of the Area Median Income (AMI), 20 percent of the units affordable at up to 50 percent of AMI, and the balance affordable at 60 percent of AMI. The multifamily units will be constructed in five separate buildings, one of which shall be comprised of 60 senior independent living units.

- Additionally, approximately 11 acres of the site will be sold to a residential developer, who will construct approximately 175 for-sale townhomes.

- The undeveloped balance of the property, approximately 12 acres, will be retained by the FCRHA and at a later date developed and maintained for use as a public park.

- Due to the FCRHA-required affordability levels, CHPPENN intends to pursue low income housing tax credits (LIHTC) from the Virginia Housing Development Authority (VHDA) to help finance the multifamily portion of the development. VHDA's deadline for applications for the 2017 LIHTC cycle is March 3, 2017.

- The site development costs of the Property are significantly higher than normal, due in large part to the site's challenging topography – much of the site includes a steep hill – and the presence of difficult soils. Given these costs, as well as the FCRHA-required affordability levels, the multifamily portion of the project is financially challenging. To enable the multifamily portion of the project, the majority of the proceeds of the sale of the townhouse land bay will be applied toward the site and infrastructure work for the multifamily portion of the project. Specifically, CHPPENN will perform the site and infrastructure work for the multifamily site.

- All proceeds of the townhome land bay sale will constitute CDBG program income and will be expended in accordance with CDBG laws and regulations. Relatedly, because the sale proceeds will constitute CDBG program income, the Board of Supervisors must amend its Consolidated Plan to approve this use of program income; the Board is currently scheduled to vote on this amendment on January 24, 2017. If the Board approves the proposed Consolidated Plan amendment, it will be forwarded to the U.S. Department of Housing and Urban Development (HUD) for final approval.

- At this time, several aspects of the deal – discussed below – are ready for FCRHA review. The proposed documentation is styled as an amendment to the existing Interim Agreement because there are other components that are still to be negotiated and brought back to the FCRHA.

- FCRHA approval – following a public hearing, as further described below – is being sought at this time in connection with certain documents to ensure that CHPPENN can meet the March 3, 2017 application deadline for the 2017 cycle of LIHTC.

Components of the Amendment to the Interim Agreement:

The Amendment to the Interim Agreement (Amendment) contains the following agreements:

- Contracts to Ground Lease: In order to apply to VHDA for LIHTC, CHPPENN must be able to demonstrate that they have control of the site. Therefore, Amendment includes the Contracts to Ground Lease.

There will be three Contracts to Ground Lease (and thus three Ground Leases) because CHPPENN intends to pursue a “9% / 4%” structure, meaning that it intends to pursue both more valuable (and competitively awarded) 9% LIHTC as well as the less valuable but more available 4% LIHTC. The 9% LIHTC will be used on one ground lease. Further, in order to provide a senior housing building in compliance with fair housing laws, CHPPENN will need to develop that building under a freestanding ground lease. Thus, it is currently contemplated that there will be two ground leases utilizing 4% LIHTC – one for seniors, and one for low/moderate-income households generally.

Closing on the actual Ground Leases is conditioned upon, among other things, CHPPENN’s obtaining of, and closing on, LIHTC. If CHPPENN does not obtain LIHTC in the 2017 cycle, CHPPENN has the option of trying again for the LIHTC in each of 2018, 2019, and 2020. Closing on the townhouse parcel will occur simultaneously with closing of the Ground Leases for the multifamily property, though the FCRHA has the flexibility, in its sole discretion, to allow one or more of the ground leases to close after the townhouse parcel.

HUD must also approve of the use of the townhouse sales proceeds for multifamily site work before any of the ground leases can close.

- <u>Option to Ground Lease</u>: So as to maximize its chances of obtaining the 9% LIHTC, CHPPENN has also requested an Option to Ground Lease for each leasehold. The Option works together with the Contract to Ground Lease to provide CHPPENN with a right to lease the applicable leasehold, but presents the terms in a more streamlined format. The Option expressly notes that it is subject to the terms of the applicable Contract to Ground Lease.

- <u>Ground Leases</u>: The Ground Leases will require CHPPENN to, at no cost to the FCRHA, design, develop, construct, own and operate the 279 multifamily units. The Ground Leases will run for terms of 99 years and require that the properties be 100 percent affordable, with income tiers as described above. Since the multifamily units will be 100 percent affordable, there will be only nominal ground rent.

  Please note that CHPPENN was recently awarded sixty (60) Project-Based Vouchers (PBVs) for the North Hill development. Due to the importance of these PBVs to the financial viability of the project and the possible political uncertainty surrounding the future funding of the Housing Choice Voucher program, the Ground Leases provide that if federal funding of the HCV program is reduced, then the FCRHA would prioritize the funding of its PBVs in accordance with federal laws and regulations.

- <u>Amendment</u>: The Amendment itself contains a number of terms relating to CHPPENN’s rights vis-à-vis the future purchase agreement for the townhouse land bay. First, the amendment provides that the FCHRA will not amend the purchase agreement (after its execution) without CHPPENN's consent, nor will the FCRHA terminate the purchase agreement without first attempting to discuss the matter with CHPPENN. Further, the amendment states that if the original purchase agreement terminates, CHPPENN will attempt to identify a replacement purchaser on terms substantially similar to those in the initial purchase agreement, with any deposit actually received from the initial purchase agreement being applied if needed to facilitate the deal.

Finally, the Amendment provides that if CHPPENN is unable to find such a replacement purchaser (or if CHPPENN finds a replacement purchaser above a certain price), then the FCRHA will share any deposit received from the termination of the initial purchase agreement (or the available portion thereof) on a 50-50 basis with CHPPENN. This split of any such forfeited deposit is contingent upon HUD's confirmation that such split will not raise any CDBG concerns and that CHPPENN provides the FCRHA with any drawings, plans, or other project materials produced in furtherance of the development. The FCRHA would also have the option of paying such amount, if owed under the terms of the Amendment, from another funding source.

Additional Documentation: For affordable / LIHTC transactions, it is possible and perhaps likely that CHPPENN will seek financing from or through a large governmental loan program, such as those run by HUD, VHDA, and Freddie Mac. These lenders often offer the most competitive financing, but they also tend to insist on stringent underwriting requirements with respect to ground lease transactions.

The form of ground lease proposed in this item contains various protections for the tenant's lenders and investors but of course does not include every potential request of every conceivable lender and investor. Although it is impossible to predict every such request, Attachments 4 and 5 reflect many terms that staff anticipates a lender or investor may seek. Attachment 4 is the HUD-form-based rider to the ground lease for the Lewinsville project, which the County agreed to in 2016. Attachment 5 is a list of provisions sought by Freddie Mac for ground lease projects on which it is willing to lend. As part of this process, HCD staff seeks an authorization from the FCRHA in which Thomas Fleetwood, in his capacity as Assistant Secretary to the FCRHA, will be authorized to negotiate and, in his discretion, agree to any amendments to the form of ground lease that are substantially similar to one of the provisions appearing on either Attachment 4 or 5.

The need for this limited and clearly defined delegation is necessary because of the unique requirements of the PPEA approval process as described below. Without this provision, any change to the Ground Lease in the nature of those shown on Attachments 4 and 5 may necessitate a complete re-advertisement, public hearing, and decision on that change—a process that creates additional uncertainty and risk to the development.

Timing: The proposed development is governed by the PPEA statute. As such, any Amendment to the existing Interim Agreement must be approved through a certain, statutorily-prescribed process. First, the public body must conduct a hearing on the proposed agreement, which necessarily requires appropriate advertisement. Under long-standing practice, HCD staff seeks formal authorization from the FCRHA before issuing any such advertisement. Finally, at a meeting that is at least 30 days after the public hearing, the public body may then approve the agreement.

If the FCRHA, on January 19, 2017, approves the advertisement and scheduling of the public hearing, then the hearing would occur on January 26, 2017. It is anticipated that the FCRHA will schedule and hold a special meeting on February 28, 2017, –a date is at least 30 days after January 26. The February 28 meeting will accommodate the March 3 deadline for applications for the 2017 cycle of Tax Credits.

FISCAL IMPACT:
Apart from the cost of advertising the public hearing, there is no fiscal impact to authorizing and conducting the public hearing on January 19, 2017.

ENCLOSED DOCUMENTS:
Attachment 1: Resolution Number XX-17
Attachment 2A: Amendment to the Interim Agreement
Attachment 2B: Form of Contract to Ground Lease
Attachment 2C: Form of Option to Lease
Attachment 2D: Form of Ground Lease
Attachment 3: Notice of Public Hearing
Attachment 4: Lewinsville HUD Lease Rider
Attachment 5: Freddie Mac Ground Lease Guidelines

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