



Cover Memorandum/Staff Report

File #: 18-0723 CRA

Agenda Date: 12/17/2020

Item #: 5A.

TO: CRA Board of Commissioners
FROM: Christine Tibbs, Assistant Director
THROUGH: Renée A. Jadusingh, Esq., Executive Director
DATE: December 17, 2020

SPECIAL MEETING REGARDING THE DEVELOPMENT OF SW 600-800 BLOCKS OF WEST ATLANTIC AVENUE

Recommended Action:

Discuss and approve or disapprove the negotiation and preparation of a Fourth Amendment to the Purchase & Sale Agreement by and between Delray Beach Community Redevelopment Agency and BH3 Management, LLC dated April 22, 2019 related to the development of SW 600-800 blocks of West Atlantic Avenue.

Background:

On April 22, 2019, the Delray Beach Community Redevelopment Agency ("CRA") and BH3 Management, LLC ("BH3") entered into a Purchase & Sale Agreement ("Agreement") for the SW 600-800 blocks of West Atlantic Avenue CRA-Owned Properties.

A First Amendment to the Agreement was approved by the CRA Board on August 13, 2019, to correct scrivener's errors in the document.

A Second Amendment to the Agreement was approved on November 19, 2019, to extend the Application Date, the date by which BH3 needs to submit their applications to the City of Delray Beach ("City") and other applicable governmental entities for approval, by sixty (60) calendar days from November 18, 2019, to January 17, 2020.

A Third Amendment to the Agreement was approved on January 28, 2020, to allow the CRA to enter into a lease agreement with the Emanuel Jackson, Sr. Project, Inc. The Agreement and all Amendments are included within Exhibit C.

Future Land Use Map (FLUM) and Rezoning Amendments Approval:

On October 15, 2019, BH3 received final approval from the City amending the FLUM designation from Multiple Family Residential - Medium Density District to Central Business District and Zoning designation from Medium Density to Commercial Core for the properties located at 36 SW 6th Avenue, 40 SW 6th Avenue, 46 SW 6th Avenue, 48 SW 6th Avenue, 41 SW 7th Avenue, and 37 SW 7th Avenue.

Application Date & Application Submittal:

At the January 28, 2020, CRA Board Meeting, the CRA Board approved the issuance of a Notice of Default to BH3 for its failure to "file an application for government approvals with the necessary documentation required by governmental entities and an application for conditional use approval necessary for the development, and construction of the Project; with the City or any other governmental entities on or before the Application Date," pursuant to Section 10 of the Agreement, as amended, "Default by Purchaser."

The Notice of Default was formally sent to BH3 on January 29, 2020. Under the Agreement, as amended, BH3 was given a 30-day period to cure the Default.

On **February 27, 2020**, BH3 submitted its *Class V Site Plan Application and Conditional Use Application* ("Applications") for the Fabrik Development Project to the City and said Applications were accepted by the City.

On April 3, 2020, after completing its review of the Applications, the City sent the first round of technical comments to BH3 to address. To date, the City technical comments have not been addressed by BH3.

Approval Date:

Based on the terms of the Agreement, the Approval Date is no later than 365 calendar days after the Application Date on which all governmental approvals are obtained, including but not limited to the Site Plan approval and Conditional Use approval, necessary for the development and construction of the Project. The currently Approval Date is **January 18, 2021**.

June 18, 2020 CRA Workshop:

On June 18, 2020, a CRA Board Workshop was held for BH3 to present any updates on the submitted Applications, any proposed redesign and/or revision to the development program for the SW 600 - 800 blocks of West Atlantic Avenue; and to solicit feedback from the CRA Board regarding any proposed redesign and/or revision; and for the CRA Board to have the opportunity to raise any concerns related to the Applications and/or any proposed redesign and/or revision to the development program. At the Workshop, BH3 stated that any proposed redesign and/or revision to the development program for the SW 600 - 800 blocks of West Atlantic Avenue would be brought before the CRA Board for their consideration and approval. At the conclusion of the Workshop, BH3 was tasked with coordinating a date on which any proposed redesign and/or revision would be presented to the CRA Board.

BH3 Request Letter:

On November 25, 2020, the CRA received a letter ("Request Letter") from BH3 requesting consideration of an amendment to the Agreement and on December 3, 2020, a supplemental clarification memo ("Clarification Memo"). Based on the correspondence, BH3 is seeking amendments to the project phasing, project composition, and timing.

December 10, 2020, CRA Board Meeting:

At the December 10, 2020, CRA Board Meeting, BH3 presented the resigned and revised development program for the SW 600 - 800 blocks of West Atlantic Avenue. The CRA Board provided direction to CRA staff to enter into preliminary discussions and negotiations with BH3 regarding the terms of a potential Fourth Amendment to the Agreement to be submitted prior to the meeting.

Additionally, the CRA Board scheduled a special meeting for December 17, 2020, to approve or disapprove the preparation of a Fourth Amendment to the Agreement by and between CRA and BH3 related to the development of SW 600-800 blocks of West Atlantic Avenue.

Attachment(s): Exhibit A - Request Letter; Exhibit B - Clarification Memo; Exhibit C - FABRIK Proposed Renderings and Site Plan; Exhibit D - Critical Dates Timeline; Exhibit E - Purchase and Sale Agreement and Amendments; Exhibit F - Aerial View of Properties of the SW 600 - 800 blocks of West Atlantic Avenue; Exhibit G - FABRIK Current SPRAB Submitted Renderings and Site Plan; Exhibit H - AtlaWest Renderings and Site Plan