



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

OFFICE OF THE CITY ATTORNEY

300 Sixth Street

Allison O. Marsland, Assistant City Attorney
City web: www.rcgov.org

Phone: 605-394-4140
Fax: 605-394-6633
e-mail: allison.marsland@rcgov.org

MEMORANDUM

TO: Legal & Finance Committee

FROM: Allison Marsland, Assistant City Attorney *AM*

DATE: November 28, 2011

RE: City-owned Property located at 820 Lemmon Avenue

Below is a timeline of public meeting events pertaining to the Lemmon Avenue properties: 820 Lemmon Avenue being City-owned, and 706 Lemmon Avenue being owned by NeighborWorks.

Date	Public Body	Item No.	Synopsis – Action Taken
January 19, 2010	Common Council	LF011310-24	Via consent calendar action, acknowledged discussion on the Lemmon Street properties. NeighborWorks' 1/13/2010 memo to Legal and Finance requests an exchange of deeds, and states its intent to "[d]emolish the current blighted structure and rebuild a single family home above the flood plain."
March 9, 2010	Public Works	PW030910-01	NeighborWorks requested funding for water for the community garden at 706 Lemmon Avenue. Item continued to the 3/30/10 Public Works Committee meeting.

Date	Public Body	Item No.	Synopsis – Action Taken
March 25, 2010	Planning Commission	No. 10SR013	<p>The item was titled, “A request by Josh Christiansen for NeighborWorks Dakota Home Resources to consider an application for a SDCL 11-6-19 Review to authorize the acquisition of property for a community garden . . . at 706 Lemmon Avenue.”</p> <p>NeighborWorks’ 2/26/2010 letter to the City lays out certain plans for the community garden, and requests the City “[t]o accept the deed for the land on 706 Lemmon Ave[nue] for public use as a community garden.”</p> <p>Upon staff recommendation, the item was continued to the 4/8/2010 Planning Commission meeting.</p>
March 30, 2010	Public Works	PW030910-01	<p>Motion carried to forward to Common Council without recommendation NeighborWorks’ request for funding for water for the community garden. The motion is also to explore the potential cost of providing the water requested.</p>
April 5, 2010	Common Council	PW030910-01	<p>Motion passed to acknowledge request to research to find funding sources to subsidize water for the community garden. The estimated cost of providing water for twenty-six weeks per year is approximately \$326 per year.</p>
April 8, 2010	Planning Commission	No. 10SR013	<p>Upon staff recommendation, the item was continued to the 4/22/2010 Planning Commission meeting.</p>
April 22, 2010	Planning Commission	No. 10SR013	<p>Upon staff recommendation, the item was continued to the May 6, 2010 Planning Commission meeting.</p>

Date	Public Body	Item No.	Synopsis – Action Taken
May 6, 2010	Planning Commission	No. 10SR013	<p>By way of background, at the time the plans for the community garden were proposed, SDCL 11-6-19 required that “whenever any such municipal council shall have adopted the comprehensive plan of the municipality or any part thereof, then [] [], no street, park or other public way, ground, place, space, no public building or structure, no public utility, whether publicly or privately owned, if covered by the comprehensive plan or any adopted part thereof, shall be constructed or authorized in the municipality or within its subdivision jurisdiction . . . , until and unless the location and extent thereof shall have been submitted to and approved by the planning commission.” <i>Id.</i> SDCL 11-6-19 has since been repealed, but at the time it required Rapid City Planning Commission approval of the community garden plans.</p> <p><u>The following statements were made during this Planning Commission meeting:</u></p> <ul style="list-style-type: none"> - Around the 55:30 mark of the video, then Growth Management Director Marcia Elkins stated the proposal was for the community garden to be gifted to the City, and that before the City could accept the gift the Planning Commission would need to take action on the SDCL 11-6-19 request. - Around the 58:20 mark of the video, Josh Christiansen stated that NeighborWorks was respectfully requesting the City to take over ownership of the property.

Date	Public Body	Item No.	Synopsis – Action Taken
June 15, 2010	Public Works	PW061510-04	Motion carried to recommend approval of request for compost fee waiver for the community garden.
June 21, 2010	Common Council	PW061510-04	Via consent calendar action, compost fee waiver approved for the community garden.
July 28, 2010	Legal & Finance	LF072810-19	<p>Resolution of Intent to Enter into Exchange of Land with NeighborWorks Dakota Home Resources Pursuant to SDCL 6-5-4 and 9-27-34.1 was approved for placement on the Common Council consent calendar.</p> <ul style="list-style-type: none"> - <u>The resolution is not an agreement:</u> <ul style="list-style-type: none"> o The last paragraph states that “[f]ollowing the hearing the City Council <i>may</i> adopt a resolution authorizing an exchange upon the terms and conditions as it shall determine in said resolution.” o The resolution of intent put the public on notice that the City <i>may</i> enter into a land exchange o It also set a public hearing at which the Council, NeighborWorks, and any interested members of the public were free to make comment on a possible exchange. - The resolution contains a minor irregularity, in that it does not specify which property belongs to the City, and which property belongs to NeighborWorks.

Date	Public Body	Item No.	Synopsis – Action Taken
August 2, 2010	Common Council	LF072810-19	Via consent calendar action, the Resolution of Intent was approved, which action set the public hearing as provided in the Resolution – August 16, 2010, at 7:00 p.m.
August 16, 2010	Common Council	LF072810-19	<p>The public hearing was held during the regular Common Council meeting on this date. Mayor Hanks opened the public comment period, asked if there were any speakers (there were none) and public comment was closed – therefore the requirement that a public meeting be held was met. No Council members commented on the item, and neither did NeighborWorks.</p> <p>Motion was made to “attempt to enter into exchange of land . . . ,” which was seconded and subsequently passed.</p>
August 31, 2011	Legal & Finance	LF083111-33	<p>A new Resolution of Intent was brought to committee – this time clearly indicating which property belongs to the City, and which belongs to NeighborWorks.</p> <p>The new resolution also was intended to be a mechanism for the current Common Council to decide whether the new body of policy makers intended to continue to explore a possible land exchange with NeighborWorks.</p>
Nov 21, 2011	Common Council	LF083111-33	<p>Staff recommended the City surplus the property, auction the existing structure, and then demolish the existing foundation and reclaim the land.</p> <p>Council approved the surplus, and requested further information regarding the proposed land exchange.</p>

Options:

1. Auction the existing structure with the stipulation it be removed from the City limits, demolish the existing foundation, reclaim the land, and then dispose of the lot by public auction. Any permit to construct a new structure would require it be built out of the flood plain pursuant to code requirements;
2. Auction the existing structure and the lot together, with the stipulation that the existing structure be removed from the City limits or demolished. Any permit to construct a new structure would require it be built out of the flood plain pursuant to code requirements.
3. Bypass any auction option and proceed with a straight real property exchange with NeighborWorks, whereby NeighborWorks would utilize the existing structure in constructing affordable housing. This option would result in City ownership of the Lemmon Avenue community garden, and further would present flood plain concerns in re-habbing the existing structure.
4. Auction the existing structure with the stipulation it be removed from the City Limits, demolish the existing foundation, reclaim the land, and then proceed with a land exchange with NeighborWorks; with the stipulation that once the land exchange has been accomplished, NeighborWorks would agree to take back the deed to the community garden as a gratuitous transfer of real property to a nonprofit corporation under SDCL 6-5-2. NeighborWorks could then proceed with building affordable housing on the lot at 820 Lemmon Avenue. Any permit to construct a new structure would require it be built out of the flood plain pursuant to code requirements.

Staff recommends proceeding under option four. Option four garners income for the City in auctioning the structure, and accomplishes staff recommendation of removal of the existing blighted structure. Option four also allows for NeighborWorks' ownership of 820 Lemmon Avenue, on which it could build affordable housing out of the flood plain. The final transaction under SDCL 6-5-2 alleviates the City of ownership of the Lemmon Avenue community garden, as it would be deeded back to NeighborWorks.