


OFFICE of the CITY ATTORNEY

To: Council President Wingate and Members of City Council
Chairperson Cannada-Wynn and Members of Community
Redevelopment Agency

From: Lysia H. Bowling, City Attorney 

Date: December 14, 2017

Re: Conditions on the Sale of 216 North "A" Street

You have requested an opinion on whether the Community Redevelopment Agency may place conditions or restrictions on the sale of a property located within the Urban Core Community Redevelopment Area under the particular facts which have led to this request for an opinion.

The City of Pensacola Community Redevelopment Agency ("CRA") owns certain real property in the Urban Core Community Redevelopment Area ("Urban Core") located at 216 North "A" Street. The subject property comprises 0.06 acres and was acquired by the CRA in 2008. It is currently vacant and undeveloped and zoned as Residential Neighborhood Commercial (R-NC) with permitted land uses including single-family residential, multiple-family residential, offices, retail, restaurants, banks, motels, appliance repair shops, gasoline service stations, and automobile service garages which perform minor repairs.

On December 5, 2016, the CRA declared the property as surplus and available for disposition. An earlier appraisal performed in September 2016 estimated the market value of the property at Thirteen Thousand Dollars (\$13,000). In compliance with Section 163.380, Florida Statutes, the CRA published its intent to dispose of the property and invited proposals from interested parties as required by Section 163.380, Florida Statutes. As you are aware, the CRA staff received a single purchase offer for Five Thousand Dollars (\$5,000) from the Tucker family which owns and resides upon the adjacent parcel at 218 North "A" Street. The Tucker proposal involves acquisition of the property for residential use, maintaining its undeveloped status and fencing the property. The Tucker's propose to eventually develop the property with a residence

for their son. You are also aware that the Five Thousand Dollar (\$5,000) offer is below the fair market value of Thirteen Thousand Dollars (\$13,000) as determined by the appraisal.

Property owned by a redevelopment agency may be conveyed for less than fair market value. In any such case, the statute require that the purchase price must be determined to be in the public interest for uses in accordance with the redevelopment plan. That determination is made based on various factors including limitations and restrictions agreed to and assumed by the purchaser which may include assurances that the property is used in ways which prevent the recurrence of blight. Any sale at less than fair market value must be approved by the governing city after public hearing.

Section 163.380(2), Florida Statutes, requires that the sale price be at a value determined to be in the public interest for uses in accordance with the redevelopment plan, and that in determining the value the agency shall take into account and give consideration to, among other things, "the restrictions upon, and the covenants, conditions, and obligations assumed by, the purchaser ... " In the event the value of such real property being disposed of is for less than the fair value, such disposition requires approval of the city which created the agency following a duly noticed public hearing.

Section 163.380(1), Florida Statutes, provides that the agency may enter into purchase contracts providing for residential, commercial or other uses of the property in accordance with the community redevelopment plan, subject to such covenants, conditions and restrictions as it deems necessary to assist in preventing the development or spread of blight. Purchasers and their successors and assigns are obligated to use the property only in accordance with the redevelopment plan and such other requirements as the agency may determine to be in the public interest.

The Urban Core Redevelopment Plan contemplates development and redevelopment of property for residential uses. The plan states that: "[i]n order to continue growing, new residential development must occur," and, in fact, recognizes that the plan itself "supports significant residential growth within the Redevelopment Area ... [with] the emphasis on making downtown more family friendly... "

While the plan does not expressly address the property nor does it specify any particular use for the property, I have reviewed the proposal and find that nothing in the Tucker proposal is inconsistent with the redevelopment plan.

Section 163.380, Florida Statutes, contemplates disposal of property subject to conditions and restrictions upon the sale which prevent the recurrence of blight. The

placement of such conditions and restrictions upon the sale of the property would therefore be consistent with the statute. The CRA's authority to place conditions restricting the use of property is not without limitations. The conditions imposed must be consistent with the statute and the plan.

To that end, the CRA may wish to consider imposing restrictions on the purchaser which prohibit developing the property in ways conducive to elements of slum and blight. For instance, as the property is zoned for a wide range of permissible uses, the conveyance documentation could include restrictions - agreed to and voluntarily assumed by the purchaser - that the property must be used for residential purposes, or may not be used for businesses that sell smoking or drug paraphernalia, bars or package stores, an adult bookstore, cinema or other venue that offers entertainment of an illicit nature, games of chance or gambling of any kind, etc. The conveyance documentation could further specify that in the event the purchaser (or successors and assigns) violates the restrictions, the property may be reacquired by the CRA or the City.

Based on Section 163.380, Florida Statutes, the CRA may sell the property to the Tucker family for less than appraised value, provided (1) the sale is approved by the City after noticed public hearing, and (2) the sale price is determined to be in the public interest for uses in accordance with the redevelopment plan (i.e. residential uses), subject to appropriate restrictions set forth in the conveyance documentation which would prevent the property from uses conducive to blight. Presumably, such restrictions will present no hindrance to the Tucker family in light of their stated intent to use the property for residential purposes as described in its proposal.

Accordingly, you are advised that it would be legally permissible to include restrictions upon the use of the property which are agreed to and assumed by the purchaser in that such restrictions would constitute consideration for the sale.