



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 16-00330

City Council

1/12/2017

LEGISLATIVE ACTION ITEM

SPONSOR: Ashton J. Hayward, III, Mayor
City Council Member Jewel Cannada-Wynn

SUBJECT:

Acquisition of the Former American Creosote Works Property (ACW) at Tax Sale Auction

RECOMMENDATION:

That the City Council authorize the Mayor to enter into the County Tax Sale Auction, if necessary, for the potential acquisition of the former American Creosote Works property, reference number 00-0S-00-9080-001-164 located at 700 BLK South I Street.

AGENDA: Consent

Public Hearing Required: No Hearing Required

SUMMARY:

In 2001, EPA provided a reuse planning grant to the City of Pensacola to develop a plan identifying potential future site uses and strategy for returning the ACW Site to reuse. After an 18-month community-based planning process, the ACW Site Steering Committee adopted a reuse plan for the Site (2003 Reuse Plan).

A change in remedial action levels for dioxin contaminated soils prompted EPA to re-evaluate site constraints that may need to be considered in implementing the 2003 Reuse Plan. Therefore, the 2003 Reuse Plan was updated in 2010 by an EPA contractor, SKEO. The 2010 Reuse Assessment documents community site reuse goals, summarizes previous site and neighborhood reuse planning efforts, analyzes property ownership, remedial considerations and recommends potential modifications to the 2003 Reuse Plan that could allow for the implementation of the plan under a range of potential remedial action alternatives.

The site wide remedial design has begun and the Pensacola Yacht Club ditch was cleaned up in the Summer of 2016. With the commencement of site remedial design, EPA, the City of Pensacola and SKEO are currently conducting an update to the 2010 Reuse Assessment. The Update goal is to confirm the community desires and gain input regarding site reuse alternatives.

Coincidentally, on December 5, 2016 three of the primary parcels that make up the site went to Tax Auction. The property received a bid but the bidder defaulted once it was disclosed the site was an active Superfund Site and the Property Appraiser zoning was incorrectly listed as M-2 Industrial. In August, the property was rezoned to Conservation.

Defaulted Tax Sale properties typically return to the monthly auction until there is either a successful bidder or no bidder. In the case of the latter, the properties then reside on the County surplus lands list for three years. If not purchased by that point, the properties escheat to the County.

To facilitate compliant and revitalizing redevelopment, it is incumbent on the City to acquire title to the property. However, when acquiring title to a Superfund site it is important to employ measures to avoid potential liability by qualifying for “bona fide prospective purchaser” (BFPP) liability protections. To qualify as a BFPP an entity must meet certain threshold criteria and satisfy certain continuing obligations found in Section 101 (40) of the Superfund law (CERCLA). The BFPP provision is designed to be self-implementing. This means that the purchasers are responsible for achieving and maintaining BFPP status. To do so, a purchaser must satisfy each of eight statutory requirements necessary to achieve BFPP status and continue to meet the applicable conditions. Those eight requirements are: 1) Obtain a Phase 1 Environmental Site Assessment, 2) Confirm all hazardous waste disposal occurred before the purchaser acquired the property, 3) Verify the purchaser has no affiliation with a liable or potentially liable party, 4) Comply with land use restrictions and not impede the effectiveness of the institutional controls, 5) Take reasonable steps to prevent the release of hazardous substances, 6) Provide full cooperation and access, 7) Comply with information requests and administrative subpoenas, and 8) Provide legally required notices.

The EPA and the City have held numerous teleconferences, meetings and community workshops on ownership and reuse planning of the American Creosote Works site. The City hosted the most recent community site reuse workshop on December 12, 2016.

PRIOR ACTION:

November 17, 2016 - City Council voted against a recommendation to authorize a bid of up to \$10,000 at the American Creosote Works Tax Sale, December 5, 2016, and conduct necessary due diligence to comply with the Bona Fide Prospective Purchaser (BFPP) criteria under CERCLA Section 101(40) to protect from Superfund Liability.

FUNDING:

Budget: \$0

Actual: \$0

FINANCIAL IMPACT:

Funds are available within the Local Option Sales Tax Fund to provide funding for the costs associated with qualifying for BFPP status as well as the purchase of the property.

CITY ATTORNEY REVIEW: Yes

12/27/2016

STAFF CONTACT:

Eric W. Olson, City Administrator
Keith Wilkins, Assistant City Administrator

ATTACHMENTS:

- 1) Property Appraiser Sheet
- 2) American Creosote Works Superfund Site Status Letter dated July 5, 2016
- 3) EPA Fact Sheet (EPA-330-F-11-003) CERCLA Liability and Local Government Acquisitions and Other Activities
- 4) Conceptual Reuse Plan for Reuse of the American Creosote Works Superfund Site October 2003
- 5) Reuse Assessment for the American Creosote Works Superfund Site June 2010

PRESENTATION: No