EUGENE CITY COUNCIL/URBAN RENEWAL AGENCY AGENDA ITEM SUMMARY

Work Session: Recovery Zone Bonds and Downtown Site Development

Meeting Date: September 15, 2010	Agenda Item Number: A
Department: Planning & Development	Staff Contact: Denny Braud
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ISSUE STATEMENT

The City Council and the Urban Renewal Agency are being asked to approve items necessary for the proposed redevelopment of the vacant parcel owned by Beam Development located at Broadway and Willamette Street and adjacent to the Centre Court building ("Vacant Parcel"), including: 1) the terms for Bennett Management Company's (BMC) project; 2) creation of a Recovery Zone and authorization of Recovery Zone Facility Bonds; and 3) transfer of ownership of the vacant parcel from Beam to Bennett Management Company (BMC) along with the assignment of development rights under Beam's Purchase and Sale Agreement.

BACKGROUND

At the August 11, 2010, work session, the council unanimously supported BMC's proposal in concept, and directed the City Manager to bring back additional project details for consideration including: 1) the transfer of ownership of the Vacant Parcel from Beam to BMC, along with the assignment of development rights under Beam's Purchase and Sale Agreement; 2) a resolution designating a Recovery Zone which would provide Bennett Management Company the opportunity to utilize Recovery Zone Facility Bonds to finance the project; and 3) a resolution authorizing the City to issue Recovery Zone Facility Bonds in support of Bennett Management Company's project financing.

The project includes construction of a 50,000 square feet mixed-use building with ground floor retail and four floors of commercial office space. Onsite parking will be embedded with underground parking being considered based on final construction costs. The total project cost, including land, is estimated at $11 million. A conceptual design from project architects Arkrom Moisan is being developed and is expected to be available prior to the September 15 work session.

An outline of terms for an agreement between the City and developer for the BMC project is included in Attachment A. The terms would allow BMC to acquire the Vacant Parcel from Beam and move forward with the proposed project. Consideration for the property transaction would be limited to BMC's assumption of the existing Downtown Revitalization Loan Program (DRLP) loan on the property. BMC will utilize the City's Recovery Zone Facility Bond (RZFB) authority to allow the bank loan for the project to achieve a lower, tax-exempt interest rate. To help meet the bank's 75 percent pre-leasing requirement, the City will commit to occupy up to 10,000 square feet of office space in the new building, and guarantee an additional 10,000 square feet of office space. Gap financing provided through the DRLP in an amount not to exceed ten percent of the project will be considered after the bank's loan terms have been finalized. Wells Fargo Bank has provided a preliminary outline of financing terms which includes a loan at approximately 65 percent loan-to-value. BMC will invest a minimum of $ 2.25 million equity in the project. Consistent with the terms of the current Beam agreement, BMC will need to be prepared to proceed with construction of the proposed project no later than May 1, 2011.

For BMC to move forward with the proposed project, the following actions are required:

City Council Actions

1. Approval of the outline of terms included in Attachment A.
2. Approval of the resolution included as Attachment B designating a Recovery Zone and authorizing the use of up to $8 million of Recovery Zone Facility Bonds for the project.

Urban Renewal Agency Actions

1. Approval of the ownership transfer for the Vacant Parcel from Beam to BMC, along with the assignment of development rights related to the Vacant Parcel under Beam's Purchase and Sale Agreement.

Recovery Zone Facility Bonds

The City received an allocation from the Federal government of Recovery Zone Facility Bonds of $11,083,000. The bonds may be used by private companies to access tax-exempt financing. The Recovery Zone Facility Bonds proposed for BMC's bank loan of up to $8 million would leave $3.083 million of the City's authorization unused. There are no other private projects identified to use the remaining City authorization. The City's Recovery Zone bond allocation has a limited duration, and the State of Oregon has indicated that it will pursue using the City's remaining allocation for another purpose if that allocation is not committed to local projects in September.

Recovery Zone Economic Development Bonds

The City received a Recovery Zone Economic Development Bonds allocation of $7,389,000 from the Federal government. These bonds may provide a lower interest rate on borrowing for certain projects by public entities, and must also be used by the end of calendar year 2010. The City does not have any projects that would benefit from the use of Recovery Zone Economic Development Bonds at this time. However, Lane Community College (LCC) has inquired about the City's authorization as a possible source of financing for the student housing portion of the Downtown Campus project. The LCC Board is considering action to request the City's $7,389,000 Recovery Zone Economic Development Bonds allocation at its September 8, 2010, meeting. In the event that the LCC Board approves the request, staff will present additional material and an amended resolution prior to the September 15 work session for council consideration along with this agenda item.

Latitude is given to governments in designating the Recovery Zone boundaries. The City's bond counsel recommends that for maximum flexibility in the use of these tools that the City designate the City limits as the boundary for the Recovery Zone.

RELATED CITY POLICIES

Development of the Vacant Parcel addresses many goals for Eugene and downtown, including activity in the core, employment, and sustainability. This project is supported by the Downtown Plan, Downtown Code Amendments, West Broadway Advisory Committee Recommendations, Central Area Transportation Study, Downtown Vision, City Council's Downtown Collective Statements from August 2009, Downtown Policing Action Plan Team Short-Term Public Safety Strategy

Recommendations 2004, Cultural Policy Review, Mayor's 2004 Committee on Economic Development, Growth Management Policies, Sustainable Business Initiative, and JEO's regional economic development principles.

The City's debt policies (which are included in Attachment B) set out provisions for the use of conduit financing, which is what BMC has requested for this project. Under those policies, a project has to meet certain criteria, including that the City not incur any moral or financial obligation from the borrowing, and that the private party requesting the financing pays all of the costs of the borrowing. The Bennett Project financing will comply with the debt policies related to conduit financings except for the rating or credit enhancement requirement. Because the Bennett Project will be financed through a bank private placement loan rather than a public bond sale, this policy requirement is not needed. The resolution included in Attachment C contains a waiver of this part of the policy.

COUNCIL OPTIONS

1. Approve the terms included in Attachment A, and approve the resolution designating the Recovery Zone and authorizing the Recovery Zone Facility Bonds for the BMC project.
2. Do not approve the BMC redevelopment proposal.

AGENCY OPTIONS

1. Approve the ownership transfer for the Vacant Parcel from Beam to BMC, along with the assignment of development rights related to the Vacant Parcel under Beam's Purchase and Sale Agreement.
2. Do not approve the ownership transfer.

CITY MANAGER'S RECOMMENDATION

The City Manager recommends approval of the terms included in Attachment A, and approval of the Resolution included in Attachment B.

AGENCY DIRECTOR'S RECOMMENDATION

The Agency Director recommends approval of the ownership transfer for the Vacant Parcel from Beam to BMC, along with the assignment of development rights related to the Vacant Parcel under Beam's Purchase and Sale Agreement.

SUGGESTED MOTIONS

<u>City Council</u>

1. Move to approve Bennett Management Company's redevelopment of the Vacant Parcel and authorize the City Manager to enter into the necessary agreements consistent with the terms included in Attachment A.
2. Move to adopt Resolution No. 5014 relating to the use of Recovery Zone Facility Bonds for the Bennett Management Company project.

Urban Renewal Agency

Move to approve the ownership transfer for the Vacant Parcel from Beam to Bennett Management Company, and authorize the Agency Director to enter into the agreements necessary to allow the property transfer and the transfer of Beam's development rights to Bennett Management Company.

ATTACHMENTS

A. Outline of Terms

B. Resolution Designating the City Of Eugene as an ARRA Recovery Zone and Authorizing Preliminary Actions in Connection with Conduit Bonds for Bennett Management Company

FOR MORE INFORMATION

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ATTACHMENT A

OUTLINE OF TERMS

Redevelopment of Vacant Parcel

1. Beam Development will transfer ownership of the Vacant Parcel to Bennett Management Company (BMC), or related legal entity. Financial consideration for the transfer will only include BMC's assumption of the existing $404,000 Downtown Revitalization Loan Program (DRLP) loan.
2. The $404,000 DRLP loan will be subordinate to the bank loan, and terms of the DRLP loan will be restructured as needed to allow BMC to meet the bank's loan-to-value and cash flow coverage requirements.
3. The City's Recovery Zone Facility Bonds allocation of up to $8 million will be used by BMC to achieve a lower, tax-exempt interest rate on the bank loan. BMC will be responsible for the legal and transaction costs associated with the Recovery Zone Facility Bonds.
4. The Wells Fargo Bank loan would be serviced by payments from BMC and security for the loan will be provided by BMC as required by the bank. The City will not incur any moral or financial obligation, and will not be responsible for repaying or securing the bank loan or related Recovery Zone Facility Bonds.
5. The City will commit to occupy up to 10,000 square feet of office space in the new BMC building, and guarantee an additional 10,000 square feet of office space. The City's lease guarantee will be reduced as sufficient private lease commitments are achieved to satisfy the bank's pre-leasing requirements. BMC will be required to provide evidence that satisfactory efforts to lease vacant space have been made.
6. A DRLP loan, not to exceed ten percent of the total project cost, will be considered to assist BMC in closing a defined gap resulting from the project proforma and the bank's loan-to-value and cash flow coverage underwriting criteria.
7. BMC will assume Beam's obligation to redevelop the Vacant Parcel by constructing the proposed mixed-use building consisting of approximately 50,000 square feet. The total project, estimated at approximately $11 million, will include ground floor retail, four floors of office space, and embedded or underground parking.
8. BMC will assume Beam's obligation to move forward with the project in a timely manner, including assumption of the May 1, 2011 ready-to-proceed date included in the Beam Purchase and Sale Agreement.
9. In the event that ownership of the Vacant Parcel is transferred to BMC and development does not move forward within the designated timeline, the property ownership will revert back to the Urban Renewal Agency at no cost (other than satisfaction BMC's note on the property). Sale of the property to another entity without prior approval from the Urban Renewal Agency will not be permitted.

ATTACHMENT B

RESOLUTION NO. ____

A RESOLUTION DESIGNATING THE CITY OF EUGENE AS AN ARRA RECOVERY ZONE AND AUTHORIZING PRELIMINARY ACTIONS IN CONNECTION WITH CONDUIT BONDS FOR BENNETT MANAGEMENT COMPANY.

The City Council of the City of Eugene, Oregon, finds as follows:

A. The American Recovery and Reinvestment Act of 2009 ("ARRA") permits the issuance of recovery zone bonds. The City of Eugene has been allocated $11,083,000 of Recovery Zone Facility Bonds ("RZFB") and $7,389,000 of Recovery Zone Economic Development Bonds ("RZEDBs") volume cap.

B. RZFBs are tax-exempt bonds that can be issued before January 1, 2011, to finance depreciable property that is privately owned or used, is located in a recovery zone, and is constructed, reconstructed, substantially renovated or acquired by purchase by a private user after the recovery zone is designated. This type of property ordinarily is not eligible for financing with low cost, tax-exempt bonds.

C. Bennett Management Company ("BMC") has proposed development of a roughly $10 million retail and commercial building that will be located on a vacant parcel directly south of the Centre Court Building (the "Bennett Project").

D. BMC has requested assistance from the City of Eugene to make the Bennett Project financially viable, including (i) the transfer of ownership of the property from Beam Development to BMC; (ii) utilization of the City's RZFB authority to allow BMC to achieve a lower, tax-exempt interest rate on its bank loan; (iii) a City commitment to occupy and/or guarantee up to 20,000 feet of office space in the new facility; and (iv) a potential Downtown Redevelopment Loan Program loan to assist with closing financial gaps.

E. The City's Debt Policies, which are attached hereto, set out requirements for conduit financings like the proposed RZFB financing for the Bennett Project. The Bennett Project financing will comply with the debt policies related to conduit financings except for the rating or credit enhancement requirement. Because the Bennett Project will be financed through a bank private placement loan rather than a public bond sale, this policy requirement is not needed.

F. The RZFBs for the Bennett Project will be payable solely from revenues provided by BMC, related parties and users of the Bennett Project.

G. A "recovery zone" may consist of any area designated by the City as having significant poverty, unemployment, rate of home foreclosures, or general distress. I.R.S. Notice 2009-50 allows the City to designate recovery zones in any reasonable manner.

H. The annual unemployment rate for the Eugene-Springfield MSA has increased from 4.7% in 2007 to 5.4% in 2008. In 2009 the rate rose to 10.2%, and as of June 2010 the rate stood at 10.6%. This has exceeded the unemployment rates of both Oregon and the U.S as a whole for several years. Poverty rates for individuals within the Eugene-Springfield MSA rose from 17% in 2007 to 20.8% in 2008, according to the U.S. Census Bureau, which also reports that in 2008 median household income was only 86.4% of median income for Oregon as a whole, and 83.3% of U.S. median income. In 2009 and 2010 home foreclosures have continued to be high, and in the first quarter of 2010 nearly one-third of all home sales in Eugene-Springfield MSA were either short sales or foreclosures.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Eugene, a municipal corporation of the State of Oregon, as follows:

Section 1. **Designation of Recovery Zone.** Based on the economic statistics reported in Finding H, the Council hereby finds that the geographic area of the City of Eugene is experiencing significant poverty, unemployment, rate of home foreclosures, or general distress for purposes of Section 1400U-1(b) of the Internal Revenue Code of 1986, as amended. The geographic area of the City of Eugene is hereby designated as a recovery zone for purposes of Section 1400U-1(b) of that code.

Section 2. **Preliminary Bond Activities Authorized**. The City is hereby authorized to work with Bennett Management Company, its financing team and the City's bond counsel to develop documents and otherwise prepare for the sale of conduit RZFBs for the Bennett Project. However, the City shall not enter in to any legally binding commitment to sell RZFBs for the Bennett Project until that sale has been approved by the Council.

Section 3. **Conformance with Debt Policies.** The conduit RZFBs issued for the Bennett Project will comply with the conduit financing portion of the City's debt policies (included at Exhibit 1), with one exception. The financing will be a bank private placement and will not comply with the requirement for an investment grade rating or alternative credit enhancement. That portion of the debt policies is waived for the Bennett Project RZFBs.

Section 4. **Delegation**. The City Council hereby authorizes the City Manager and the person designated by the City Manager to act on behalf of the City under this resolution to make reimbursement declarations for the Bennett Project and to take any other actions that are desirable to carry out this resolution and prepare for the sale of conduit RZFBs for the Bennett Project.

Section 5. **Effective Date.** This resolution shall take effect immediately upon adoption.

The foregoing Resolution adopted by the City Council on the 15th day of September, 2010.

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City Recorder

Exhibit 1

Excerpt from City Debt Policies

CONDUIT FINANCINGS

1. Conduit financings are financings that the City provides for the benefit of non-governmental entities to allow those non-governmental entities to obtain low cost, tax-exempt financing. Conduit financings are not secured by any revenues or assets of the City except revenues and assets provided by the non-governmental entities that benefit from the conduit financings.

2. The United States Internal Revenue Code substantially limits the ability of the City to provide conduit financing; conduit financings are only available for small manufacturing facilities, facilities used by qualified 501(c)(3) organizations, certain kinds of low income housing projects, and other projects that can be financed with “qualified bonds” as defined in the Internal Revenue Code.
3. Recognizing that the City is able to issue debt for broad purposes, it may be appropriate to enter into a conduit financing on behalf of another party when the City Council determines that the proposed project will provide a general benefit to City residents and/or the City economy.

4. Conduit financing will be considered only when a project is consistent with the city’s overall service and policy objectives.

5. The City should not incur any moral or financial obligation under a conduit borrowing.

6. The City will only consider conduit financings that will insulate the City from any credit risk.

7. Any financing issued through the City must qualify for an investment grade rating by one of the nationally recognized statistical rating agencies or provide alternative credit enhancement from a third party satisfactory to the City or a corporate guaranty if the corporation carries an investment grade rating.

8. All expenses related to conduit financing will be borne by the third-party applicant for whom the debt is being issued.

9. The City will establish review procedures of the requesting party for projects, including adherence to public contracting requirements, development of a financial feasibility study of the project, and submission of annual financial statements to ensure the ability to repay the debt.