

EUGENE CITY COUNCIL

AGENDA ITEM SUMMARY



Action: Resolution 5017 Authorizing Economic Development Project Revenue Bonds as Recovery Zone Facility Bonds to Finance Improvements on the Vacant Parcel Located at Broadway and Willamette Street and adjacent to the Centre Court Building

Meeting Date: December 13, 2010
Department: Central Services
www.eugene-or.gov

Agenda Item Number: 6
Staff Contact: Sue Cutsogeorge
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ISSUE STATEMENT

The council is being asked to approve a resolution necessary for issuance of Recovery Zone Facility Bonds for the proposed redevelopment of the vacant parcel located at Broadway and Willamette streets and adjacent to the Centre Court building. In addition, the council is also being asked to approve updated terms for the redevelopment proposal.

BACKGROUND

At the August 11, 2010, work session, the council supported a redevelopment proposal by Bennett Management Company (BMC) in concept and directed the City Manager to bring back additional project details for consideration.

At the September 15, 2010, meeting, the council took action to approve BMC's redevelopment of the vacant parcel, authorized the City Manager to enter into agreements consistent with the terms included in Attachment A, and passed Resolution 5014 to give preliminary approval for issuance of Recovery Zone Facility Bonds for the project. Also at that meeting, the Urban Renewal Agency Board approved the ownership transfer for the vacant parcel from Beam to BMC or related legal entity, and authorized the Agency Director to enter into the agreements necessary to allow the property transfer and the transfer of Beam's development rights to BMC.

Redevelopment Project Terms: Since the meeting in September, progress has been made on the project. As a reminder, the project includes construction of a 50,000 square-foot 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 Ankrom Moisan was provided to the council at the meeting on September 15. BMC has created Woolworth Properties LLC to own the project.

An outline of terms was also provided to the council in September. The terms were based on a preliminary offer of financing from Wells Fargo Bank that did not materialize. BMC has subsequently received approval of financing for the project from Siuslaw Valley Bank. The approved financing requires the terms of the agreement between the City and BMC/Woolworth Properties LLC to be amended. An updated outline of terms is included in Attachment A.

The following is a summary of the proposed changes in the terms that are needed for the developer to close the bank loan prior to the December 31 deadline for issuing the Recovery Zone bonds:

- To meet the bank's pre-leasing requirement (60 percent of the space), the developer has asked the City to commit to a total of 26,000 square feet (previously 20,000). This would be accomplished by increasing the amount of guaranteed lease space from 10,000 square feet to 16,000 square feet. The City's lease guarantee will be reduced as sufficient private lease commitments are achieved. (The City's commitment to lease and occupy 10,000 square feet remains unchanged.)
- The maximum Downtown Revitalization Loan (DRLP) would be increased from \$1.1 million to \$1.3 million. Consideration of the larger loan is the result of an approved bank loan (\$6.9 million) that is less than projected.

In addition to the requested changes to City terms, BMC/Woolworth Properties LLC has agreed to increase their equity contribution from \$2.25 million to \$2.6 million.

Recovery Zone Facility Bonds: The American Reinvestment and Recovery Act ("ARRA") permits issuance of the Recovery Zone Facility Bonds. ARRA and Section 147 of the Internal Revenue Code of 1986, as amended, require that recovery zone facility bonds be approved by the council after a public hearing. Notice of the hearing was published in the Register-Guard on November 1. A public hearing was held at 11:00 a.m. on November 15, 2010, before a hearing official to receive comments on the proposed issuance by the City of not more than \$8 million dollars of recovery zone facility bonds to finance an approximately 50,000 square-foot mixed-use building that will be constructed on the former site of the Woolworth Building at Broadway and Willamette Streets and will be owned by Woolworth Properties, LLC. No one appeared to testify at the hearing. Resolution 5014 requires that the council give final approval to the sale of bonds for the project prior to the sale of the bonds. The resolution included in Attachment B provides for that final approval

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 set out provisions for the use of conduit financing, which is what BMC/Woolworth Properties LLC 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 project financing will comply with the debt policies related to conduit financings except for the rating or credit enhancement requirement. Because the project will be financed through a bank private placement loan rather than a public bond sale, this policy requirement is not needed. The council waived that part of the policy in Resolution 5014.

COUNCIL OPTIONS

1. Approve the revised outline of terms included in Attachment A, and approve the resolution authorizing issuance of the bonds included in Attachment B.
2. Do not approve the actions needed to go forward with the BMC/Woolworth Properties LLC redevelopment proposal.

CITY MANAGER'S RECOMMENDATION

The City Manager recommends approval of the revised outline of terms for the redevelopment proposal included in Attachment A and approval of the resolution authorizing issuance of the bonds included in Attachment B.

SUGGESTED MOTIONS

1. Move to approve the Revised Outline of Terms included in Attachment A.
2. Move to adopt Resolution 5017 authorizing Economic Development Project Revenue Bonds as Recovery Zone Facility Bonds to finance improvements on the vacant parcel located at Broadway and Willamette Street and adjacent to the Centre Court Building.

ATTACHMENTS

- A. Revised Outline of Terms, December 13, 2010
- B. Proposed Resolution

FOR MORE INFORMATION

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REVISED OUTLINE OF TERMS: December 13, 2010
Redevelopment of Vacant Parcel

*Terms #4 through #6 are the only ones with proposed changes.
All other terms are the same as approved by council on September 15, 2010.*

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 B~~ 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 16,000 ~~40,000~~ 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 \$1.3 million ~~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.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING ECONOMIC DEVELOPMENT PROJECT REVENUE BONDS AS RECOVERY ZONE FACILITY BONDS TO FINANCE IMPROVEMENTS ON THE VACANT PARCEL LOCATED AT BROADWAY AND WILLAMETTE STREET AND ADJACENT TO THE CENTRE COURT BUILDING.

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

A. The City has received a request from Bennett Management Company to issue economic development project revenue bonds to finance improvements (the “Project”) on the vacant parcel located at Broadway and Willamette Street and adjacent to the Centre Court building, and to loan the bond proceeds to Bennett Management Company or an entity formed by Bennett Management Company (the “Borrower”).

B. On August 11, 2010, the City Council supported the Project proposal in concept and directed the City Manager to bring back additional details for consideration.

C. On September 15, 2010, the City Council approved Resolution 5014, which authorized the City Manager 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 recovery zone facility bonds for the Project. The resolution required additional City Council approval prior to issuance of the bonds.

D. ORS 280.410 to 280.485 (the “Act”) authorizes the City to issue economic development project revenue bonds. Bonds issued under the Act are payable solely from the revenues and assets that the Borrower or another private party pledges to pay the Bonds, and are not liabilities of the City.

E. The American Recovery and Reinvestment Act of 2009 (“ARRA”) allows the City’s economic development project revenue bonds to qualify as “recovery zone facility bonds,” but only if the bonds are issued by December 31, 2010. Recovery zone facility bonds allow the Borrower to obtain low-cost, tax-exempt financing that is ordinarily not available under federal law.

F. ARRA and Section 147 of the Internal Revenue Code of 1986, as amended, (the “Code”) require that recovery zone facility bonds be approved by the City Council after a public hearing. A public hearing was held before a hearings official on November 15, 2010, and approval of this resolution will constitute approval of the recovery zone facility bonds that the City issues for the Project for purposes of Section 147 of the Code.

G. The Borrower is working with commercial banks and expects that a commercial bank or similar institution will purchase the bonds by December 31, 2010.

H. ORS 280.445 requires the City Council to consider the following factors before approving issuance of economic development project revenue bonds under the Act:

- (1) The bond market for the types of bonds proposed for issuance.
- (2) The terms and conditions of the proposed issue.
- (3) Whether the borrower, lessee or purchaser is financially responsible and fully capable and willing to fulfill all its obligations under the loan agreement.
- (4) Such other relevant factors as the governing body considers necessary to protect the financial integrity of the city.

I. In compliance with ORS 280.455, the City Council has considered the following:

(1) The bond market for economic development project revenue bonds that are issued as recovery zone facility bonds. City staff has indicated that conditions in the bond market for these bonds are generally favorable. However, the City will not pay the bonds, so the determination of market conditions is most appropriately made by the Borrower. The Borrower has requested that the City issue the bonds.

(2) The terms and conditions of the proposed bonds. The proposed bonds will be secured solely by the Project and rents and other amounts the Borrower obtains from the Project. The proposed bonds will be purchased and held by a commercial bank or similar institution and can not be sold in the public securities markets without the prior consent of the City. The proposed bonds will have terms that are acceptable to the Borrower and the bond purchaser. City staff and the City's bond counsel have indicated that these terms are typical for economic development project revenue bonds.

(3) The bond purchaser will determine whether the Borrower is financially responsible and fully capable and willing to fulfill its obligations under the loan agreement. The City has no obligation to pay the bonds and makes no determination about whether the Borrower is financially responsible and fully capable and willing to fulfill all its obligations under the loan agreement.

(4) Development of the Project will improve downtown Eugene. Recovery zone facility bonds will help reduce the cost of the Project.

J. The City has \$8 million of recovery zone facility bond volume cap available for this Project.

K. Pursuant to the City ordinance establishing procedures for approving economic development project revenue bonds under the Act, the City Council has considered the benefit to the community of the project, the availability of recovery zone facility bond volume cap for the project, and the likelihood that applicant will be successful in having the recovery zone facility bonds issued by December 31, 2010.

L. The City adopts this resolution to authorize the issuance of economic development project revenue bonds as recovery zone facility bonds to finance the Project.

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: Authorization. The City hereby authorizes the issuance, sale and delivery of no more than \$8 million in principal amount of economic development project revenue bonds (the “Bonds”) to finance the Project pursuant to the Act. The Bonds shall be issued so that they are eligible for treatment as recovery zone facility bonds under ARRA and the Code.

Section 2: Security for Bonds. The Bonds shall be special, limited obligations of the City payable solely from the revenues and property provided by the Borrower. The Bonds will not constitute a debt of the City nor shall the Bonds be payable from any funds of the City or any tax levied upon any property within the City nor any other political subdivision of the State of Oregon.

Section 3. Limitations. The Bonds:

1. Shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the City be subject to any liability thereon. No holder or holders of such bonds shall ever have the right to compel any exercise of the taxing power of the City to pay any such bonds or the interest thereon.
2. Shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City, except the revenues and property pledged or otherwise committed by the Borrower.
3. Shall recite in substance that the Bonds, including interest thereon, are payable solely from the revenue pledged to the payment thereof, and that no Bond shall constitute a debt of the City or a lending of the credit of the City within the meaning of any constitutional or statutory limitation.

Section 5. Delegation. The City Manager or the person designated by the City Manager to act on behalf of the City pursuant to this resolution (each of whom is referred to in this resolution as the “City Official”) is hereby authorized on behalf of the City and without further action by the City Council, to:

1. Participate in the negotiation of the terms of Bond documents.
2. Execute and deliver an indenture of trust, a loan agreement, a bond purchase agreement, the Bonds and any other Bond documents the City Official determines will facilitate the issuance of the Bonds and the financing of the Project in accordance with this resolution.
3. Allocate recovery zone facility bond volume cap to the Bonds.
4. Engage the services of and designate pursuant to ORS 280.440(3) paying agents, remarketing agents, trustees, and any other professionals whose services are desirable for the financing.

5. Execute and deliver any related certificates or documents and take any other action in connection with the Bonds which the City Official finds are reasonably required to issue the Bonds or will be advantageous to the City.

Section 6: Effective Date of Resolution. This Resolution shall take effect immediately.

The foregoing resolution was adopted by the City Council on the ___ day of December, 2010.

Acting City Recorder