



Engineering and Environmental Services

MEMORANDUM

To: Members of the Board of County Commissioners

From: Jay Gibson, General Manager
Jane Korest, Open Space and Real Estate Manager

Date: May 7, 2018

Subject: Background on the proposed policy for disposition of surplus real property acquired through tax foreclosure.

Background:

Durham County receives a small number of properties through the tax foreclosure process. The tax administration handles the foreclosure process which follows strict procedures under the state law for those properties that have fallen significantly behind on taxes. The minimum purchase amount at auction is the amount of City and County taxes owed plus foreclosure expenses, collectively referred to as the County's "investment". Occasionally a property is not purchased at auction, and Durham County becomes the owner. When this happens, the County's past procedure was to first route these properties to county departments, City departments, and the Durham Public Schools to see if there is a public need for the property. If no public uses were identified, the properties were made available for purchase via the upset bid process under GS160A-269.

The number of properties the County receives through tax foreclosures that have not sold at auction has reduced significantly in recent years. Between 2001 and 2010, the County received 75 properties that did not sell at auction. From 2011 to the present, the County has received a total of 8 properties. As a result, there are a limited number of properties that could be conveyed under this revised policy.

North Carolina counties have legislative authority to dispose of real property in a variety of ways. While the typical method of sale for surplus property has been through the upset bid process in GS160A-269, the County may also convey to a public entity such as the schools or the City of Durham using a different real estate statute, 160A-274. The County may also convey to non-profit entities for the provision of affordable housing using 153A-378(3). This statute permits the County to convey property by private sale to

private entities that provide affordable housing to person of low or moderate income so long as the conveyance includes “covenants or conditions that assure the property will be developed by the entity for sale or lease to persons of low or moderate income.”

The Board adopted an Affordable Housing Policy for surplus property in 2007 which defined a procedure for conveying surplus parcels using GS153-378 to non-profit affordable housing providers for \$10, to support the provision of either new owner-occupied housing, or rental housing for the special needs population. In order to first attempt to recoup the county’s investment, the policy applied to parcels that did not attract any upset bids after one year of advertising on the Surplus Property list. To address the required restrictions on the conveyance, properties conveyed using this policy were required to include a reverter clause in the deed stipulating that construction begin within two years, with a certificate of occupancy issued within three years, or ownership of the property would revert back to the County. While that met the requirements of 153-378, it made use of the policy more problematic for the non-profit providers that needed more flexibility. When properties are conveyed to the City using different legal statute, the requirement placed on the properties can be more flexible.

Attached Revised Surplus Property Policy

The attached revised policy sets forth a process that requires properties to be routed to the City Community Development Department to determine whether they can use them for affordable housing after first ensuring that the County does not have a public purpose for the property. The City has the expertise and staff capacity to deliver affordable housing on these lots, which may involve additional City subsidies. Any conveyances would be via GS160A- 274, and for consideration equal to the county’s investment in the property. The Board of County Commissioners would approve or reject any conveyances to the City for affordable housing purposes.

The majority of County owned lots obtained through tax foreclosure include significant constraints such as floodplain, stream buffers, steep topography, lack of water and sewer or lack of road frontage. There are approximately 10 properties that appear to have sufficient upland buildable area that would be generally suitable for the City’s initial consideration. The City’s Community Department has indicated they would only want those parcels that they determine can be affordably developed for housing within the City limits, so the City may decline the offer of parcels that do not have road frontage, utilities such as water and sewer, or are outside of the City limits.

Parcels that the City does not want for affordable housing would then be routed to other City departments such as Transportation, Stormwater, and Parks and Recreation to ensure that they are not needed for another public use, which typically only affects a small number of properties. The parcels would then be made available for affordable housing non-profit providers for \$10 via a Request for Qualifications (RFQ) process. The RFQ would be open for 90 days during which an interested non-profit can submit a

proposal for developing affordable housing and their estimated timeframe for completion. The RFQ process will give priority to proposals with shorter time frames for development, recognizing that flexibility is needed since many of these properties may lack existing infrastructure or require additional land assemblage to affordably construct housing. Since the County staff does not have affordable housing expertise, the City has indicated a willingness to assist with the review of a limited number of RFQ's for this purpose. The Board of County Commissioners would approve or reject any conveyances to the non-profit providers for affordable housing purposes via GS153A-378.

If there is no formal interest for a property for affordable housing at the end of the RFQ process, the property would be made available to the general public on the County's surplus property list, using the upset bid process. Once a bid is received, the bid is taken first to the Board of County Commissioners to authorize staff to begin the upset bid process. If a successful upset bid is received within ten (10) days, a new deposit is collected, and the highest bid shall be advertised for a new upset bid period of ten (10) days. This cycle shall repeat until no further upset bids are received. Once a final qualifying bid is received, that offer is presented to the Board for a decision to accept or reject the offer. The Board reserves the right to reject any or all offers.

Recommendation

The attached revised Surplus Property policy outlines a tiered and blended approach for the County's surplus property that uses three different real estate statutes available to the County to best achieve the needs of the County and priorities of the Board of County Commissioners. It both addresses prioritizing property for affordable housing purposes while still acknowledging potential public purposes of the County and City. The County Manager recommends approval of the attached revised policy.