THE CITY OF PLEASANTON.

CITY COUNCIL AGENDA REPORT

February 19, 2013
City Manager's Office

TITLE: RATIFY THE APPROPRIATION FROM THE LOWER INCOME HOUSING FUND OF $14,864.25 FOR A LOAN AMENDMENT AND UP TO $184,000 TO PRESERVE FROM FORECLOSURE A BELOW MARKET RATE AFFORDABLE HOME ON WHISPERING OAKS WAY

SUMMARY

One of the City's below market rate affordable homes on Whispering Oaks Way was subject to a foreclosure sale on Feb. 21, 2013. To preserve the home in the City's affordable housing inventory, the City has been working with the homeowner to determine if the default on the primary loan could be cured to prevent the foreclosure. Because the homeowner lacked sufficient funds to bring the primary loan completely current, staff agreed to amend an existing second mortgage by an additional $14,864.25 to bring the primary loan fully current. Notwithstanding this action, staff remains concerned that the homeowner may not be able to meet its ongoing financial obligations and therefore, it has drafted the loan amendment such that the City may step in and redeem the entire primary loan for $156,391.92 and become the owner of record. Should this occur, the City would make necessary home improvements and sell the property to a qualified lower income household.

RECOMMENDATION

1. Ratify an amendment to an existing Promissory Note by adding $14,864.25 to the existing outstanding balance of approximately $16,200.
2. Appropriate $184,000 in anticipation of the potential need to redeem the existing primary mortgage and to make necessary physical improvements to sell the property to a qualified lower income household.
3. Both of the above will be funded using the Lower Income Housing Fund (271).

FINANCIAL STATEMENT

The full amount of the funds used to prevent the foreclosure will be restored to the Lower Income Housing Fund when either: (a) the existing homeowner becomes current on the primary mortgage and completes repayment of the secondary loan plus the $14,864.25 advance; or (b) the home is sold to a new buyer who obtains a primary mortgage which proceeds repay the City's $156,391.92 redemption plus costs related to home improvements and closing costs.

BACKGROUND

The City has long worked with home builders to have their projects include below market rate ownership homes available to qualified moderate and low income families, whether through development agreements, planned unit developments (PUDs) or the Inclusionary Zoning Ordinance (Municipal Code Chapter 17.44). Once provided, the properties are subject to recorded City restrictive covenants and resale restrictions that establish ownership guidelines including ownership income restrictions, maximum resale pricing, allowable equity at time of resale/transfer, maintenance and upkeep, ownership transfers, first time homebuyer requirements, etc. Currently, there are 88 Pleasanton homes subject to restrictive covenants with 56 of these located on the Bernal Property.

Consistent with City policy, the homes are made available to first time homebuyers that meet annual income requirements and applicants are reviewed consistent with the City's preference criteria which provide priority to households working and living in Pleasanton. For the Bernal Property homes (which includes the subject property), applicant income limits are 80% of the Area Median Income which is currently $71,300 for a family of four. While program participants are required to obtain primary mortgage financing from a private lending institution, the City does offers second mortgages of up to $20,000 to qualified buyers through its Pleasanton Homeownership Assistance Program (PHAP).

The subject home on Whispering Oaks Way has 3 bedrooms, 1,387 square feet, and was built and sold in 2002 as part of the Bernal Property development. The builder sold this home for $199,000 to the current homeowner who was qualified through the City's homeowner selection/qualification process. The homeowner obtained a $173,000 primary mortgage, as well as a $20,000 PHAP secondary mortgage.

This homeowner recently notified the City that the homeowner has not been able to stay current with either the primary loan or the PHAP loan due to what the homeowner has described to City staff as a loss of employment during the recent recession, underemployment and the medical crisis of a parent. The homeowner advised City staff that while new full time employment has recently been resumed, the primary lender refuses to accept any partial payment and demands the full $14,864.25 required to bring the primary loan completely current. The homeowner advises that such amount is not available.

DISCUSSION

A Notice of Trustee's Sale for the home was received by the City. If the home proceeded to a foreclosure sale on Feb. 21, 2013, the home would have been lost from the City's affordable housing inventory. This is because any buyer purchasing the home as part of the foreclosure purchase is exempt from the Restrictive Covenants, Resale Restrictions and Option to Designate Eligible Purchasers.[1] As a result, household income and first time homebuyer status would no longer apply and the home

[1] Based on Fannie Mae and Freddie Mac underwriting requirements, lenders have advised, and the City has agreed that the City that resale restrictions cannot survive foreclosure.

could be resold on the open market at a significant profit. Current resale pricing restrictions are tied to adjustments in the Area Median Income and the current maximum resale price is approximately $251,300 under the affordable housing program.[2]

Because the City also provided the PHAP secondary loan, the City has rights as a junior lienholder. To address this current foreclosure situation, the City has three primary options as follows:

1. Bring Primary Loan Current (Reinstatement). The City can reinstate the primary loan by directly paying the lender (in this case, Chase Bank represented by the Wolf Law Firm as collection agency with trustee) the $14,864.25 that is needed to bring that primary loan fully current. This represents 10 monthly payments of $1,338.36 (interest, principal, and an impound account for property taxes and insurance), plus fees and costs.

   The Deed of Trust securing the City's PHAP loan includes a provision that allows the City to make monetary advances to protect the home as the security for the City's PHAP loan. Any such advance is then added to the principal of the PHAP loan, and is subject to repayment plus interest by the homeowner.[3]

   The public benefit of reinstatement is that the home is not lost from the City's affordable housing inventory. This option allows the City to continue to work with the homeowner and the Tri Valley Housing Opportunity Center (TVHOC) to try to see if the homeowner can afford to remain in the home, which may include modification of the PHAP loan terms due to the $14,864.25 advance being added to the balance.

   This option was presented to the homeowner who has agreed to the PHAP loan modification terms which have been memorialized in an amendment to the outstanding Promissory Note. The immediate advantage of this option is that foreclosure is avoided and the home remains affordable. Also, the executed Amendment to the Promissory Note requires the homeowner meet with the TVHOC to review financing options and to cooperate with the City to sell the home to another qualified buyer if future mortgage obligations are unmet. The TVHOC review may involve the homeowner qualifying for a new primary mortgage and also could include amendment of the PHAP loan repayment terms. Further, the TVHOC will review the homeowner's current financial situation and may determine if the homeowner has sufficient income or assets to remain in the home.

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[2] In comparison, fair market value without restrictions would be $546,000 to $560,000 (per on-line estimates).

[3] The PHAP loan was for $20,000, deferred payment for the first 5 years, has a 4.69% simply interest rate, and has monthly payments of $154.92. Homeowner made payments as required when repayment began in 2007, then had sporadic late payments stating in late 2009, and has missed payments since 2011. The remaining loan balance, plus late fees, is approximately $16,200.

2. Redeem Senior Loan. Under California Civil Code §§ 2904, 2924c, the City has the right to fully pay the senior loan and become the owner of record. The full payoff amount is currently $156,391.92. This represents the principal balance, accrued interest, escrow costs, fees and costs (less the balance in the impound account).

   An immediate benefit of redemption is that the home is not lost from the City's affordable housing inventory, and the City retains more control over its occupancy and any potential resale.

   As indicted above, the Amendment to the Promissory Note requires that if a subsequent Notice of Default is issued by the Primary Mortgage that the homeowner is unable to cure and reinstate, then the homeowner will cooperate with the City to sell the home to another qualified buyer. If the home is eventually resold to another qualified buyer that new buyer would obtain their own primary loan, which proceeds would be paid to the City as the purchase price and reimburse the Lower Income Housing Fund for the redemption amount and additional related costs.

3. Submit Claim for PHAP Loan. Under California Civil Code §2924k a junior lienholder can submit to the trustee of a foreclosure sale a claim for amounts due under a junior loan. The City has already advised the trustee that the City is owed approximately $16,199 by the homeowner for the PHAP secondary loan. Then, if the home ends up in a foreclosure sale and sells for more than the $156,916.92 amount due on the primary loan, the City gets paid up to $16,199 of any additional proceeds from the foreclosure sale for its PHAP loan.

   This claim option, while preserving the principal of the PHAP loan (which would be returned to the Lower Income Housing Fund), is not preferred because the home is foreclosed and lost from the City's affordable housing inventory.

Based on the above options, the time-sensitive nature of foreclosure proceedings, and the fact that the homeowner has been dealing with an acute family medical crisis, staff has not had the opportunity to work with the TVHOC and the homeowner to fully determine the long term viability of avoiding a future loan default. However, the homeowner is now reemployed and is moving toward regaining financial stability. With that in mind and in consideration of the fact that a foreclosure would result in losing the home from the City's affordable housing inventory, staff has entered into the above stated Amendment to Promissory Note for $14,864.25.

Because of the provisions included in the Amendment to Promissory Note, it is unlikely that the City would need to step in and fully pay-off / redeem the existing Primary Mortgage. Rather it is anticipated that the homeowner would inform the City of financial difficulties and work with the City to sell the home to another qualified buyer. Nevertheless, to avoid any potential loss of the home, staff's recommendation includes an appropriation of funding that would allow the City to step in immediately and cure any future default by redeeming the primary loan.

As with all regulated homes in Pleasanton, staff will continue to monitor this situation closely and will report to the City Council any required actions as they develop.

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