



CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Date: June 24, 2004
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Phone No.: 7432
RTS No.: 004084
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Meeting Date: July 6, 2004

TO: Vancouver City Council

FROM: Director of the Housing Centre

SUBJECT: Grant Request and Housing Agreement for 2001 Cassiar Street
(Beulah Gardens Homes Society)

RECOMMENDATION

- A. THAT the Housing Agreement for 2001 Cassiar Street appended to this report be approved, provided that this resolution does not create any legal rights or obligations and none shall arise until the agreement as authorized by a by-law is signed.
- B. THAT the Director of Legal Services be instructed to bring forward a by-law to enter into the Housing Agreement.
- C. THAT Council approve a grant in the amount of \$250,000 to the Beulah Gardens Homes Society, to be held subject to signing of the operating agreement with BC Housing. Source of funds will be the 2004 Capital Plan allocation to the Affordable Housing Reserve.

This recommendation provides for a grant and requires eight affirmative votes of Council

GENERAL MANAGER'S COMMENTS

The General Manager of Community Services RECOMMENDS approval of the foregoing.

COUNCIL POLICY

- Council's housing priorities are to maintain and expand housing opportunities in Vancouver for low and modest income households with priority being given to families with children; seniors on fixed incomes or in need of support; SRO residents; and the mentally ill, physically disabled, and others at risk of homelessness.
- In situations where the development of non-market housing projects are not viable because of high land or construction costs in the city, Council has provided grants to non-market sponsors to ensure they can proceed.

PURPOSE AND SUMMARY

Council gave approval in principle to changes to the existing CD-1 for 2001 Cassiar Street on October 23, 2003. The terms of the Housing Agreement have been agreed upon, and it is necessary for Council to review and approve, before a by-law can be presented for approval.

This report overviews the terms of the agreement and further recommends a capital grant of \$250,000 in response to a request from the Beulah Gardens Homes Society.

BACKGROUND

Amendments to the existing CD-1 for 2001 Cassiar Street were considered and approved by City Council at a Public Hearing held on October 23, 2003. Amongst the conditions was a requirement that prior to enactment of the CD-1 by-law, the owner is to:

- "Make arrangements to the satisfaction of the Director of the Housing Centre and the Director of Legal Services to enter into a Housing Agreement, to:
 1. secure the residential units as affordable (50% of the occupants will be income tested at their point of entry, and incomes are at or below the core need income threshold), for the life of the buildings; and
 2. further that the project be operated for low-to-moderate income seniors by a non-profit reporting society registered in British Columbia, except that Phase 3 may be exempted from this provision if clause (1) is satisfied in Phases 1 and 2"

The project involves three phases which will ultimately lead to redevelopment of the existing 136 units. The rezoning application indicated ultimately 299 units will be created. Development application DE408125 for Phase 1 is being processed and is ready for issuance, with one of the few remaining conditions being completion of a Housing Agreement. The 89 units in Phase II of the project have received approval in principle for funding under the Province's ILBC program (Independent Living BC).

DISCUSSION

Terms of the Housing Agreement: The major features of the proposed Housing Agreement are noted below. The Agreement is attached as Appendix A.

- The project is intended for seniors, over the age of 55;
- A minimum of 150 of existing or new dwelling units shall be occupied by core need households or residents whose rent is funded or subsidized by the Province's Independent Living BC (ILBC) program (to a maximum of 89 ILBC units);
- In the event that the Beulah Garden Homes Society (the Owner) chooses to subdivide and sell the third phase of the project, the 150 core need units must be maintained within Phases 1 and 2;
- The Owner will maintain a wait list of prospective qualified residents and all core need household vacancies shall be filled from the waiting list with priority given to those who have waited the longest;
- The Owner shall prepare and maintain a monthly rent roll showing for all core need household and ILBC dwelling units the name of the resident, the identity of the dwelling unit occupied and the current monthly rent;
- The Owner shall demand and receive from each adult occupying a core need household an income statement for the preceding calendar year;
- Not later than July 31, the Owner will provide the City with an audited statement of revenues and expenses for the operation of the project for the preceding year;
- A clause is provided for a relaxation of the requirements of the agreement by the City where the Owner would have to operate the project at a loss as might be the case in the event of a high number of vacant units;
- The Owner may only sell or transfer its ownership of the Lands to a B.C. non-profit society which has made itself a reporting society; and
- The City will give first priority to any CMHC insured first registered mortgage over this agreement. In the case of foreclosure action or other action by CMHC, the City would be in a position to acquire the mortgage.

The last requirement was established in discussion with Canada Mortgage and Housing and the City's Legal Services. While foreclosure is highly unlikely in the case of a well-established society such as Beulah Gardens, the requirement allows the Director of the Housing Centre to review options with Council if this extreme situation should arise. No commitment to actually acquire the mortgage is implied by the agreement.

Grant Request: The Society has approached the City and BC Housing for grants in the amount of \$250,000 each, which are due in large part to mounting construction costs during the planning stage for this project. The Society will increase its equity contribution by \$250,000 as well. BC Housing has agreed to contribute the amount, and the Director of the Housing Centre recommends a matching grant, contingent on confirmation of the Society contribution and the Society signing its operating agreement with BC Housing. The \$750,000 will ensure that the project can attain its affordability objectives. The Housing Agreement will provide sufficient security for the City's interests.

Financial Implications: In order to make the economics work for this phase (Phase I) of the redevelopment, Beulah Gardens Housing Society has had to find an additional \$750,000 due to the increases in construction costs over the last 18 months. Phase 1 will consist of 95 units, of which 61 units will house core-need households.

Since the 89-unit ILBC development proposed for the second phase is dependent on this phase proceeding, the City's contribution is imperative in order to allow the project to proceed and to ultimately achieve the 150 units of core needy housing, secured by a Housing Agreement, to be developed.

Next Steps: The development permit is ready for issuance. The Vancouver Charter requires that the agreement be approved by a by-law, and this will be brought forward within a reasonably short period of time. The text amendments to the CD-1 By-law will be brought forward shortly as well.

CONCLUSION

A Housing Agreement is necessary for the Beulah Gardens Homes Society to be exempt from the development cost levy. As the terms of the agreement outlined in this report will qualify the Society for that exemption as well as meet the October 23, 2003 Public Hearing conditions, the Director of the Housing Centre recommends that the agreement be approved.

The Director of the Housing Centre also recommends that Council approve the requested capital grant, in the amount of \$250,000, source of funds to be the 2004 Capital Plan allocation to the Affordable Housing Reserve.

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Housing Agreement for 2001 Cassiar Street [Beulah Gardens Homes Society]

THIS AGREEMENT dated for reference the ____ day of _____, 2004

BETWEEN:

BEULAH GARDEN HOMES SOCIETY,
3350 East 5th Avenue
Vancouver, British Columbia
V5M 1P4

(the "Owner")

OF THE FIRST PART

AND:

CITY OF VANCOUVER,
453 West 12th Avenue,
Vancouver, British Columbia
V5Y 1V4

(the "City")

OF THE SECOND PART

WHEREAS:

A. The Owner is the registered owner of all and singular those certain parcel or tracts of land and premises situate in the City of Vancouver, in the Province of British Columbia, legally described as:

City of Vancouver
Parcel Identifier: 013-168-240
Block 92
Section 29
Town of Hastings Suburban Lands
Plan 3104

(herein called the "Lands")

B. The Owner is a society incorporated under the laws of British Columbia and is registered under the laws of Canada as a charity.

C. The Owner has requested a rezoning of the Lands to increase the permitted floor area for residential accommodation and this agreement is a condition of the rezoning.

D. The Owner proposes to build out the increased floor area in three phases and the parties intend that this agreement shall apply to all phases including existing buildings, but if the Lands are subdivided and this agreement partially released it shall nevertheless apply with full force and effect to so much of the Lands as continue to be charged herewith.

E. In this agreement the existing buildings and all new buildings situate on the Lands from time to time are together called the "Buildings".

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of Ten Dollars (\$10.00) now paid by the City to the Owner and for other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges) the Owner and the City each covenant with the other pursuant to Section 565.2 of the *Vancouver Charter* as follows:

1. In this Agreement the following terms have the definitions now given:

"Annual Gross Income" means either

- (i) the total income or payments from all sources received at any time during the past calendar year regardless of whether taxable including wages, salary, Self Employment Net Income, rents, fees, interest, dividends, pension payments, annuity payments, awards and payments in compensation for lost income, capital gains, bequests, lottery winnings and winnings from gambling and wagering; or
- (ii) the current total monthly income or payments from all sources regardless of whether taxable including wages, salary, rents, fees, interest, dividends, pension payments, annuity payments, awards and payments in compensation for lost income, capital gains, bequests, lottery winnings and winnings from gambling and wagering multiplied by twelve (12);

"Core Need Household" means either:

- (i) one adult at least 55 years of age whose Annual Gross Income as disclosed by his or her current Income Statement is less than the current Vancouver area studio CNIT;
- (ii) one adult at least 55 years of age whose Annual Gross Income as disclosed by his or her current Income Statement is less than the current Vancouver area one bedroom CNIT; or
- (iii) two cohabiting adults one or both of whom are at least 55 years of age whose Annual Gross Incomes as disclosed by their current Income

Statements together add up to less than the current Vancouver area one bedroom CNIT;

“Core Need Income Threshold” or **“CNIT”** is the maximum annual gross income from time to time at or below which a household, including single person household, occupying a particular type of dwelling unit is considered by the provincial government as being in core need. The CNITs are set annually by British Columbia Housing Management Commission (“BCHMC”) for various categories of dwelling units in the different regions of the province. The CNIT for each category of dwelling unit is determined by estimating the average monthly market rental value for accommodation of that type for a provincial region, dividing that average by 0.30 (30% of income), and multiplying the quotient by 12 (months). If the provincial government (through BCHMC or otherwise) ceases to set CNITs annually or at some other regular period acceptable to the City then the City shall set the CNITs annually using the same criteria and methods last employed by the provincial government;

“Income Statement” means a written statement of a person’s Annual Gross Income for the preceding calendar year and if the person filed an income tax return, it shall include a true copy of such return as well as Revenue Canada’s assessment of such return. The form of the Income Statement shall be as the City may approve from time to time;

“ILBC Resident” means a person whose rent is funded or subsidized by the Government of British Columbia through its Independent Living BC program or like programs which provide housing and support to frail senior citizens. ILBC Residents are not Qualified Residents;

“Qualified Resident” means a person who has completed a current Income Statement disclosing that he or she either alone or together with his or her cohabiting partner constitute a Core Need Household; and

“Self Employment Net Income” means the total income or payments received from all sources for the calendar year resulting directly or indirectly from self employment activities less the total costs and expenses legitimately incurred in undertaking such self employment activities as allowed by the income tax laws, regulations and authority.

2. At all times 150 of the dwelling units in the Buildings shall be occupied only by Core Need Households or ILBC Residents provided that at no time shall the number of dwelling units occupied by ILBC Residents exceed 89.

3. The Owner shall maintain a waiting list of prospective Qualified Residents and all Core Need Household vacancies shall be filled from the waiting list with priority given to those who have waited the longest.

4. The Owner shall demand an Income Statement from all prospective Qualified Residents. Where the household of the prospective Qualified Residents is comprised of more than one adult, each adult of the household shall provide an Income Statement. If the Income Statements of a prospective Qualified Residents disclose that he, she or they will not qualify as a Core Need Household, such prospective residents shall not be treated as Qualified

Residents and shall not be allowed on the Core Need Household waiting list and shall not be permitted to take up residence in the dwelling units reserved for Core Need Households.

5. Not later than June 30th of each year, the Owner shall demand and receive from each adult occupying a Core Need Household dwelling unit an Income Statement for the preceding calendar year. If such statements disclose that the household income of those occupying any of the required Core Need Household dwelling units have Annual Gross Incomes in excess of the Annual Gross Income required to qualify to occupy a Core Need Household dwelling unit, then forthwith such residents shall not be treated as Qualified Residents and in their place as soon as vacancies permit the Owner shall establish replacement Core Need Households so as to fulfill the requirement of 150 of the dwelling units in the Buildings occupied by Core Need Households at all times. If residents become disqualified as Qualified Residents then forthwith the Owner is free to charge such residents whatever rent as to the Owner seems appropriate.

6. (a) Rent shall only be charged and payable monthly. There is no restriction on the levy of a reasonable amount for security deposit.
- (b) For each Core Need Household occupying a studio suite, the Owner shall not charge such household a monthly rent greater than two and one-half percent (2.5%) of the current Vancouver area studio CNIT.
- (c) For each Core Need Household occupying a one bedroom suite, the Owner shall not charge such household a monthly rent greater than two and one-half percent (2.5%) of the current Vancouver area one bedroom CNIT.

7. The Owner shall give to each Qualified Resident a copy of this agreement. Qualified Residents who can show that they have been overcharged for rent shall be given a credit on their monthly rent equal to one hundred ten percent (110%) of the overcharge.

8. All tenancy agreements with Qualified Residents shall expressly be made subject to this agreement and the Owner's obligations herein.

9. The Owner shall prepare, maintain and keep a monthly rent roll showing for all Core Need Households and ILBC Residents the name of the Qualified Residents and ILBC Residents, the identity of the dwelling unit occupied and the current monthly rent. The rent roll shall include the latest Income Statements taken from each Qualified Resident. The Owner shall deliver to the City on September 30th of each year the current rent roll (including all latest Income Statements) covering the past twelve (12) months.

10. (a) If this agreement is causing or will cause the Owner to operate the Lands and Buildings at a loss the Owner may request that the City approve a partial relaxation of the requirements of this agreement by either lowering the required number of Core Need Households or increasing the Core Need Household rent ceiling, or both. Any such request shall include a proposed date for both the commencement and cessation of the relaxation.
- (b) In considering any request by the Owner pursuant to paragraph 10(a), the City shall disregard costs and expenses not directly related to the Lands and the

Buildings or which exceed industry norms for projects similar to the Lands and Buildings.

- (c) If the City approves or partially approves any request by the Owner pursuant to paragraph 10(a), such approval shall be expressed as a written agreement which modifies either paragraph 2 of this agreement or paragraph 6 of this agreement, or both, and such agreement shall also include the date upon which the modification takes effect and the date upon which the modification expires.
- (d) If the City refuses to approve all or part of the proposal made by the Owner pursuant to paragraph 10(a), the Owner may elect to have the disagreement settled by arbitration. The arbitration shall be conducted by a single arbitrator but failing agreement upon a single arbitrator, each party shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator. If there are three arbitrators, the issue shall be determined by majority vote. The arbitration shall be conducted pursuant to the *Commercial Arbitration Act* of British Columbia. The parties shall equally share the cost of the arbitrators and each shall separately bear their own costs. In any such arbitration, in determining whether the Owner has or is likely to suffer a loss in the operation of the Lands and Buildings, the arbitrators are hereby directed to disregard costs and expenses not directly related to the Lands and the Buildings or which exceed industry norms for projects similar to the Lands and Buildings.

11. The Owner shall keep all financial records concerning the operation of the Lands and Building in accordance with good accounting practise. All of the Owner's financial and business records including the rent rolls and the records described in paragraphs 3, 4 and 5 shall be open to inspection by the City upon reasonable notice and all such records shall not be destroyed unless the City gives its written consent to such destruction, which consent may only be given for records more than five (5) years old.

12. Not later than July 31 of each year the Owner shall provide the City with an audited statement of its revenues and expenses for the operation of the Lands and Buildings for the preceding calendar year. The audited statements shall be prepared by a Chartered Accountant or a Certified General Accountant licenced to practice such profession pursuant to the laws of the Province of British Columbia.

13. The Owner shall keep and maintain the Buildings in good repair and in a safe, clean, neat and tidy condition.

- 14. (a) By one or more agreements, the Owner may lease or licence those parts of Buildings providing accommodation to ILBC Residents but no such agreements shall relieve the Owner of its obligations herein.
- (b) Subject to paragraph 14(a), the Owner may not lease, licence, set over or part with possession of the Lands or the Buildings in whole or in part except for the letting of individual dwellings units to the occupants thereof..

15. The Owner will at all times be either a reporting society or a charity registered under the laws of Canada.

16. Except as otherwise provided in this agreement, the Owner may only sell or transfer its ownership of the Lands either to a British Columbia non-profit society which is a reporting society or to a charity registered under the laws of Canada..

17. The City will grant priority, in registerable form, over this agreement to any first registered mortgage of the Lands. In any foreclosure action or other action by any mortgagee of the Lands, the City shall have first opportunity to acquire such mortgage.

18. If a court of competent jurisdiction finds that any part of this agreement is invalid, illegal or unenforceable, then so long as such finding shall prevail such part shall not be of force or effect but nevertheless the rest of this agreement remains in force unaffected by that holding.

19. Subject to paragraph 10, this agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this agreement if the City is entitled to court costs it shall be entitled to court costs on a solicitor and own client basis.

20. All notices, demands or requests of any kind which a party may be required or permitted to serve on another in connection with this agreement must be in writing and shall be served on the other party by registered mail, fax or by personal service to the following address for each party:

(a) City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia V5Y 1V4

Attention: General Manager of Community Services
and Director, Housing Centre

(b) Beulah Garden Homes Society
3350 East 5th Avenue
Vancouver, British Columbia V5M 1P4

(c) If made by registered mail service of any such notice, demand or request will be deemed complete seven days after the day of mailing except where there is a postal service disruption during such period in which case service should be deemed to be completed upon actual delivery of the notice, demand or request.

(d) If made by facsimile transmission service of any such notice, demand or request will be deemed complete on the third business day after the day when the facsimile transmission was transmitted.

(e) If delivered service of any such notice, demand or request will be deemed complete two days after the day of delivery.

Any party from time to time, by notice in writing served upon the other party, may designate a different address, or additional persons to which all notices, demands or requests are to be addressed.

21. This agreement shall enure to the benefit of and be binding upon the City and its successors, trustees and assigns and this agreement shall enure to the benefit of and be binding upon the Owner and its successors and trustees and all parties claiming through them and this agreement shall charge and run with the Lands and enure to the benefit of and be binding upon the owners from time to time of the Lands and their respective heirs, executors, administrators, trustees and successors and all parties claiming through them.

22. Whenever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or body corporate or politic and vice versa where the context or the parties require.

IN WITNESS WHEREOF the Owner, by its authorized signatories, and the City, by its authorized signatory, have signed this agreement as set out hereunder:

Execution Date
Y M D

Officer:

Parties:

BEULAH GARDEN HOMES SOCIETY
by its authorized signatories:

(as to all signatures)

04

Print Name:

Print Name:

CITY OF VANCOUVER by its
authorized signatory:

Joe Stubbs, Solicitor
453 West 12th Avenue
Vancouver, BC V5Y 1V4
(604)873-7504

04

Frances J. Connell/Graham P. Johnsen

Authorized by By-law No. _____

END OF DOCUMENT

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