

Memorandum

To: Detroit City Planning Commission

From: Bruce N. Goldman, Chief Assistant Corporation Counsel

Date: September 30, 2020

Subject: State Fair Grounds Appraisal, Establishment of Purchase Price; and Applicability of Detroit Community Benefits Ordinance

Questions Presented:

This memorandum is the Law Department's response to the Detroit City Planning Commission's request for:

- (1) an explanation of a recent appraisal of the State Fair Grounds as well as legal verification as to whether proper and consistent procedures were followed with its preparation and the setting of the purchase price of \$16 million for the portion of the State Fair Grounds proposed to be sold to State Fair Partners, LLC (the "SFG Property"), and
- (2) a determination as to whether the purchase price based upon the appraisal violates of the Community Benefits Ordinance.

1. State Fair Grounds Appraisal and the Establishment of the Purchase Price for the SFG Property

The Law Department has reviewed the following documents in connection with this matter:

1. a summary of the appraisal of the entire State Fair Grounds obtained in 2018 by the Michigan State Land Bank Authority (the "2018 MLBA Appraisal");
2. the Purchase Agreement for Real Property, effective 9/28/18, between the State of Michigan Land Bank Fast Track Authority (also known as the "State Land Bank Authority") as the Seller and the City of Detroit as the Purchaser for the then entire State Fair Grounds less an approximately 5 acre parcel or portion and another approximately 11 acre parcel or portion (the "2018 City-SLBA PA");
3. the draft appraisal of 135 acres of the State Fair Grounds property obtained in 2020 by the ;Detroit Economic Growth Corporation (the "2020 DEGC Appraisal");
4. the partially executed but unapproved Agreement between the City of Detroit and State Fair Partners, LLC for the proposed sale and redevelopment of the SFG Property (the "2020 City-SFP PA"), and
5. a certain widely distributed Memorandum from Luke Polcyn to Nick Khouri dated August 24, 2020, analyzing and summarizing the 2018 MLBA Appraisal and the 2020 DEGC Appraisal, in light of the 2018 City-SLBA PA and the 2020 City-SFP PA (the "8/24/20 Memo").

The Law Department also reviewed the State of Michigan Department of Licensing and Regulatory Affairs online database and confirmed that the individuals responsible for the 2020 DEGC Appraisal, H. William Hansen, Jr. and Anthony Sanna, are duly licensed as State Certified General Real Estate Appraisers.

After a thorough and careful legal review of the documents described above, and confirmation of the licensure of the preparers, the Law Department has determined that:

- a. it has found no legal deficiency or impropriety in the 2020 DEGC Appraisal, it having been prepared by state licensed professionals and represented to be in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, and applicable state appraisal regulations;

- b. it has found no legal deficiency or impropriety in the explanation of the 2018 MLBA Appraisal or the 2020 DEGC Appraisal in the 8/24/20 Memo;
- c. the analyses of the 2018 MLBA Appraisal and the 2020 DEGC Appraisal set forth in the 8/24/20 Memo were legally consistent and proper;
- d. the use of and reliance upon the 2018 MLBA Appraisal and the 2020 DEGC Appraisal in establishing the fair value and the purchase price for the SFG Property for purposes of the 2020 City-SFP PA were proper and legally consistent with applicable law.

2. Applicability of the Detroit Community Benefits Ordinance to the sale of the SFG Property

The Detroit Community Benefits Ordinance (“CBO”) is codified at Article 8 of Chapter 12 of the 2019 Detroit City Code. The CBO applies only to development projects in the City of Detroit that meet the definition of either a Tier 1 Development Project or a Tier 2 Development Project. The initial distinction between a Tier 1 and Tier 2 Development Project is the amount of the investment during the construction of facilities or to begin or expand operations or renovate structures. Even assuming the SFG Property development would be of sufficient financial scale as to qualify as a Tier 1 Development Project, the determination of the amount of investment is only relevant “where the developer of the project is negotiating public support for investment either in the form of in one or both of (a) a transfer to the developer of City-owned land parcels of certain cumulative market values ”as determined by the City Assessor or independent appraisal, without open bidding and priced below market rates where allowed by law;” or (b) the City’s provision or approval of tax abatements or other tax breaks that inure directly to the developer.

The purchaser has not currently requested, and has expressly agreed in the Agreement of Purchase and Sale to not request from the City, any economic incentives applicable to the SFG Property. The applicability of the CBO thus depends on whether the developer is negotiating public support for investment in the form of a transfer of the SFG Property “without open bidding and priced below market rates where allowed by law.” There was no open bidding. The CBO would apply then if the City’s transfer of the SFG Property would be “priced below market rates where allowed by law.”

The applicability of the CBO to the development of the SFG Property is at bottom a question about the valuation of the property, whether the SFG Property was “priced below market rates.” While it is a normally a question of fact, the analysis above with respect to the recent appraisal of the State Fair Grounds and the agreed upon \$16 million purchase price for the SFG Property supports only one conclusion, that the proposed purchase price for the SFG Property is not “priced below market rates,” such that the CBO does not apply to the proposed sale of the SFG Property as a matter of law.