

Legislation Text

File #: BILL NO. 23-145, **Version:** 1

An Ordinance approving the Third Amendment to the Real Estate Sale Agreement between the City of Lee's Summit, Missouri, and Archview Properties, LLC, for the sale of City property at 15 and 25 NW Tudor Road. (Note: First read by Council on July 11, 2023. Passed by unanimous vote)

Issue/Request:

A request by Archview to extend the approvals period a third time from June 28, 2023 to the latest date of December 1, 2023. The resulting closing date would be approximately December 21, 2023.

Key Issues:

Extension of the Approvals Period for an Agreement to sell City surplus property from June 28, 2023 to a date as late as December 1, 2023 after the exercise of extensions and the payment of additional funds to the City.

Proposed City Council Motion:

I move for adoption of an Ordinance Approving the Third Amendment to Real Estate Sale Agreement Between the City of Lee's Summit, Missouri, and Archview Properties, LLC, for the Sale of City Property at 15 and 25 NW Tudor Road.

Background:

The City holds fee simple title to property located at 15 and 25 NW Tudor Road (the "**Property**"), which was originally purchased as part of a larger parcel for the purpose of constructing and operating a police and municipal court facility. The Police and Court Facility continues to be operated on the north side of Tudor Road. The Property located on the south side of Tudor Road is no longer needed by the City and therefore can be sold as surplus property pursuant to the general authority as set forth in Section 2.1 of the City Charter and as authorized by Article 6, Section 19(a) of the Missouri Constitution.

The City Council passed Ordinance No. 9337 on February 22, 2022, which approved a Real Estate Sale Agreement between the City and Archview Properties, LLC ("**Archview**"), for the sale of the Property, which was executed by the parties on February 23, 2022 (the "**Agreement**"). The Agreement includes two 30-business-day extension periods which may be exercised at the option of Archview upon the payment of additional Earnest Money, as defined in the Agreement.

The parties executed a First Amendment to the Agreement on July 13, 2022 which had the effect of extending the Governmental Approvals Period to March 30, 2023 after Archview exercised two extension periods. The parties executed a Second Amendment on March 21, 2023 which extended the Governmental Approvals Period to June 28, 2023.

A timeline of the relevant dates associated with the Agreement is:

February 22, 2022 - Ordinance No. 9337, Contract approved

February 23, 2023 - Agreement executed

July 12, 2022 - Ordinance No. 9461 approved First Amendment to Agreement

July 13, 2022 - First Amendment executed

September 21, 2022 - Original expiration date of the approvals period, superseded by First Amendment

December 22, 2022 - Archview delivered first notice of extension of approvals period to February 15, 2023

February 14, 2023 - Archview delivered second notice of extension of approvals period to March 30, 2023

March 21, 2023 - Second Amendment executed

June 28, 2023 - Current expiration of approvals period

If the Third Amendment is approved by the Council, then the following will be applicable to the pending transaction under the Agreement:

- Archview will have the right to make a series of non-refundable payments on a monthly basis through the remainder of the year to extend the approvals period. Archview will make a payment to the title company for each monthly extension.
- December 11, 2023 would be the latest expiration of the approvals period under the Third Amendment.
- The additional payments under the Third Amendment to extend the approvals period will be non-refundable if Archview ultimately does not close on the property. The additional payments will be credited to the purchase price if Archview does complete the purchase.

Archview will be present at the Council meeting to explain the basis of the requested extension.

Impact/Analysis:

The City will sell the Property for fair market value pursuant to the Real Estate Sale Agreement. The sales price and all extension payments will be maintained as a closed record, as allowed by Section 610.021(2) of the Revised Statutes of Missouri, until the transaction closes. This is to maintain the sales price as a closed record in the event that the transaction set forth in the Agreement fails to close and the City seeks to sell the property to another buyer at a later date. Disclosure of the current sales price might adversely affect the sales price to a different buyer, in the event the pending transaction under the Agreement that is authorized by this Ordinance fails to close.

The Third Amendment would extend the approvals period to December 11, 2023 at the latest. Archview may elect to close sooner than December 2023, at its election. The Agreement provides that the closing will take place on the date that is selected by the Purchaser which date shall be no later than ten (10) days after the end of the approvals period. **Therefore, under this Third Amendment and assuming no further extensions and assuming Archview elects to complete the purchase, the closing would occur by Thursday, December 21, 2023 at the latest.**

Timeline:

The Agreement sets forth time periods for due diligence and seeking governmental approvals by the Buyer, and would close by the date stated above.

David Bushek, Chief Counsel of Economic Development & Planning

Recommendation: Staff recommends approval of the ordinance in accordance with the prior directions of the City Council.