



Date: October 21, 2014
To: Thomas J. Bonfield, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From: Joel V. Reitzer, Director, General Services Department
Subject: Property Exchange between the City of Durham and the North Carolina Department of Transportation for the Guess Road Widening Project and the Mountains to Sea Trail

Executive Summary

The purpose of this agenda item is to finalize a property exchange transaction previously approved by City Council. On November 17, 2003, City Council approved an exchange of property between the City of Durham and the North Carolina Department of Transportation (NCDOT). To date, the deed conveyance of properties has not occurred, however, due to a misunderstanding about the exchange between the City and the State. The agenda that the City Council approved noted that the City would receive a parcel of property and some financial consideration in return for the parcel it was giving up. Subsequent to City Council approval in 2003, NCDOT determined that regulations precluded them from paying monetary compensation to the City. G.S. 160A-274 permits property exchanges between governmental units, "any governmental unit may, upon such terms and conditions as it deems wise, with or without consideration, exchange with, lease to, lease from, sell to, or purchase from any other governmental unit any interest in real or personal property."

The proposed property exchange arose out of NCDOT's Guess Road Widening Project, which impacted a portion of the City's West Point on the Eno Park (parcel #181033 and #177454) (the Park) and necessitated that NCDOT acquire from the City approximately 0.168 acres in fee simple right-of-way; approximately 0.106 acres of temporary construction easement on parcel #18103 and 1.7772 acres in fee simple right of way and approximately 10.747 acres temporary construction easement on parcel #177454.

The City had purchased these parcels of West Point on the Eno Park with the assistance of Land and Water Conservation Fund funding (LWCF). LWCF guidelines dictate that properties acquired with LWCF funding may not be conveyed to another party without first identifying a comparable property to transfer the encumbrance. Suitable replacement property is property that has at least the same fair market value, a reasonably equivalent location, and a reasonably equivalent usefulness as the property the City wants to convey.

The Department of Parks and Recreation (DPR) suggested that NCDOT acquire 6.195 acres (parcel #179765, #179766, and #179767) owned by Edward L. and Jamie K. Walter as the replacement property (the Replacement Property) because of its location relative to the Eno River Trail portion of the Mountains-to-Sea Trail.

Pursuant to LWCF requirements, both the National Park Service (NPS) and the State of North Carolina (the State) approved the City's request to convey a portion of the Park to NCDOT for the Project in exchange for the Replacement Property in September 2003. In

February 2004, NCDOT acquired the Replacement Property from Edward L. and Jamie K. Walter. City staff presented an agenda item to Council to complete the transaction, but because of NCDOT's subsequent discovery that it could only use property for mitigation and not actual funding as well, the transaction was never finalized.

Recommendation

The General Services Department recommends that City Council:

1. Declare 0.168 acres of parcel #181033 and 1.772 acres of parcel #177454 as surplus;
2. Authorize the City Manager to sell and convey to North Carolina Department of Transportation, 0.168 acres of fee simple right-of-way and 0.106 acres of temporary construction easement on parcel #181033 as well as approximately 1.772 acres in fee simple right-of-way and approximately 0.747 acres of temporary construction easement on parcel #177454;
3. Accept the conveyance to the City from North Carolina Department of Transportation of approximately 6.195 acres in fee simple as the replacement property.

Background

The Project has been completed for some time, though it did necessitate NCDOT's acquiring rights-of-way and temporary construction easements from the City across portions of the Park.

The Park must be used for public outdoor recreation in perpetuity pursuant to Section 6(f)(3) of the Land and Water Conservation Act of 1965 (the Act) because the City used funds from the LWCF program to purchase the Park. The perpetual use restriction can be removed only with approval from the NPS and with concurrence by the State.

One of the conditions of the approval received is identification and acquisition of a Replacement Property that has at least the same fair market value, a reasonably equivalent location, and a reasonably equivalent usefulness as the property the City wants to convey to NCDOT. In October 2002, the City proposed acquiring 6.195 acres of property owned by Edward L. and Jamie K. Walter to serve as a replacement. The NPS approved the proposal in September 2003, the State concurred, and NCDOT acquired the Walter's property with the intent of conveying it to the City.

The NCDOT parcel (previously the Walter parcel) provides a link in the Mountains-to-Sea Trail (MST) a state-wide project that connects the coast to the mountains via a hiking trail. The MST in Durham runs between the Eno River State Park, through West Point on the Eno Park, along the north bank of the Eno River to Penny's Bend, and on to Falls Lake. The parcel is the last parcel in the trail in Durham currently not held by a recreation-providing agency.

Issues/Analysis

NCDOT's project has been completed and the City and State have planned for some years the use of the property proposed to be acquired as a portion of the MST. The final deed exchange of property is a necessary step to completing the transaction. The LWCF Act requires that a Deed Restriction for Replacement Property containing an "affidavit/notification of limitation of use" statement be a part of the deed to the City.

Alternatives

City Council may elect not to complete the property exchange with NCDOT. This is not recommended because NCDOT's road improvements are complete and provide a benefit to the City and the public. Additionally, the MST is a project of value to the whole state as well as specifically to the City and County of Durham.

Financial Impact

There is no revenue created by this exchange. NCDOT has already purchased the Replacement Property from Edward L. and Jamie K. Walter and will convey it to the City at no cost. The City is using the Replacement Property for the extension of the Mountains-to-Sea Trail and therefore does not anticipate needing to acquire any additional land in this area.

SDBE Summary

This item does not require review by the Equal Opportunity/Equity Assurance Department.

Attachments: Map of Acquisitions from City to NCDOT, Location Map, Map of Acquisitions from NCDOT to City, Deeds for Recordation (3)