



**Date:** May 19, 2015  
**To:** Thomas J. Bonfield, City Manager  
**Through:** W. Bowman Ferguson, Deputy City Manager  
**From:** Jina B. Propst, Assistant Director, General Services Department  
**Subject:** Proposed sale of various property interests to BH-AG Durham Foster, LLC

**Executive Summary**

BH-AG Durham Foster, LLC (BH-AG) owns the following three (3) parcels: 1) parcel # 104938, 2) parcel # 104939, and 3) parcel # 104942, collectively known as 539 Foster Street. These parcels are adjacent to city-owned parcel #104848, which is located at 501 Foster Street and is part of Durham Central Park (the Property).

BH-AG plans to combine its parcels and construct a building containing approximately 100 residential condominium units (the Project) and will pay the City \$41,788.76 as compensation for a variety of easements that would be located on the Property and would facilitate the Project's construction.

N.C.G.S. §160A-273 states, in part, that “[a] city shall have authority to grant easements over, through, under, or across any city property....”

We also are relying upon the authority of Section 86 of the City Charter authorizing the City Council to publicly or privately sell, lease, rent, exchange or otherwise convey real or personal property or any interest in such belonging to the City upon the affirmative vote of four members of the City Council.

As part of the Project, BH-AG has proposed to make certain improvements to the Property that are expected to increase both the visual appeal and utility of the Property. BH-AG will, for the public's benefit, construct or install the following on the Property: 1) a new portion of the North/South Greenway Trail; 2) landscaping in several different areas; 3) two (2) passive seating areas consisting of granite slabs and boulders; and 4) an enclosure for the Property's trash dumpster.

Both the City and BH-AG would execute a development agreement detailing and defining each party's responsibilities regarding both the Project and the improvements being made to the Property.

**Recommendation**

The General Services Department recommends that City Council 1) authorize the City Manager to execute a development agreement with BH-AG Durham Foster, LLC for a 100-unit residential condominium building adjacent to Durham Central Park (parcel # 104848), with said development agreement containing provisions for BH-AG Durham Foster, LLC to

acquire the following property interests located on portions of the park for a total purchase price of \$41,788.76: a) a non-exclusive fire separation easement that is no more than fifteen (15) feet wide; b) non-exclusive footings and roof extensions easements that are no more than six (6) feet wide; c) a temporary non-exclusive thirty (30) foot-wide construction and staging easement; d) a twenty (20) foot-wide cross-access easement; e) an easement to relocate a portion of an existing storm culvert; f) an easement to relocate an existing sanitary sewer line; and g) a non-exclusive easement to construct concrete stairs; 2) authorize the City Attorney to draft and approve the language for an Easement Agreement consistent with the Development Agreement; 3) pursuant to N.C.G.S. §160A-273 and City Charter Section 86, authorize the sale of the specified property interests to BH-AG Durham Foster, LLC, and 4) authorize the City Manager to sell and the City Manager or the Mayor to convey the property interests by non-warranty deed, pursuant to the terms of the Development Agreement.

### **Background**

BH-AG owns three (3) parcels that are adjacent to the Property: 1) parcel # 104938, 2) parcel # 104939, and 3) parcel # 104942, collectively known as 539 Foster Street. Using these three (3) parcels and the easements BH-AG proposes to acquire from the City, BH-AG plans construction of a building containing approximately 100 residential condominium units.

BH-AG has proposed to make certain improvements to the Property in anticipation that the Project may create additional usage of the park site. The improvements are expected to increase both the visual appeal and utility of the area.

The proposed easements are necessary for BH-AG to construct the Project as planned.

### **Issues and Analysis**

The proposed development agreement details and defines each party's responsibilities regarding both the Project and the improvements being made to the Property. The execution of this agreement is vital to the Project.

The proposed fire separation easement will not affect current use of the Property, although granting the easement will preclude the City from building any permanent structures in the easement area.

The proposed non-exclusive easements accommodate both the proposed building's below-grade footings and roof extensions and the concrete stairs that will be part of BH-AG's improvements to the Property. The footings will be located under the ground beneath the proposed fire separation easement, and the roof extensions will be located above the proposed fire separation easement, an area that the City will not be able to use for permanent structures. The footings and the roof extensions will not have an impact on current use of the Property. The concrete stairs are anticipated to enhance both the visual appeal and utility of the area. The current design shows them located near the northeast corner of the Property, however the Developer will provide an updated design for City Manager approval which attempts to clarify the maintenance and liability, respectively, of the City and the Developer.

The proposed construction and staging easement is temporary and will terminate when construction of the proposed building is complete.

A petition has been submitted to close Roney Street, a public right-of-way that starts at Corporation Street and runs south, providing access to the Property. Once Roney Street has

been closed, the proposed permanent cross-access easement will be established in approximately the same location, thereby ensuring that all vehicular and pedestrian traffic currently using Roney Street to access the Property can continue to do so. Therefore, the proposed cross-access easement will not have an impact on current use of the Property.

The proposed easements to relocate the existing storm culvert and sanitary sewer line onto the Property are needed to accommodate the footprint of the building BH-AG plans to erect. The storm culvert and the sanitary sewer line will be located underground and within both the fire separation easement and the cross-access easement, areas that the City will not be able to use for permanent structures. The easements will therefore have a minimal impact on current use of the Property.

Staff calculated the purchase price for the proposed easements using the Real Estate Division's current practice for valuation of easements.

\$12.50	Approximate dollar value per square foot based on both the tax value of the three (3) parcels BH-AG owns and the value of easements sold on nearby city-owned property
X 9,906.90	Square footage for the easements requested by BH-AG
\$123,836.25	Subtotal (amount BH-AG would pay for 9,906.90 square feet if requesting fee simple)
\$41,788.76	Total BH-AG will pay for the easements, two of which are 50% of the fee simple value, one of which is 25% of the fee simple value (temporary easement that will terminate when construction is complete)

**Alternatives**

City Council could decide not to authorize the sale of the requested property interests to BH-AG. This alternative is not recommended because granting the requested easements serves a public purpose and would allow construction of the Project as currently planned.

**Financial Impact**

The City will receive compensation from BH-AG totaling \$41,788.76, which will be deposited in the Parks and Recreation Department's Fund for Park Renovations (Account 3000H000-661100-CH410).

BH-AG will be responsible for payment of all closing costs.

**SDBE Summary**

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

**Attachments**

- Aerial view of parcels' locations
- Proposed development agreement
- Easement Exhibit, which depicts the proposed easements