

City of High Point

*Municipal Office Building
211 S. Hamilton Street
High Point, NC 27260*



Meeting Agenda

Tuesday, October 4, 2022

4:00 PM

Council Chambers

Community Development Committee

*Christopher Williams, Chair
Wesley Hudson
Cyril Jefferson
Tyrone Johnson
Mayor Jay Wagner (Alternate)
Mayor Pro Tem Monica Peters (Alternate)*

Community Development Committee - Council Member Williams, Chair

CALL TO ORDER

PRESENTATION OF ITEMS

[2022-472](#)

Update-D-UP Property Conveyance

Staff will be providing an update regarding D-UP Property Conveyance.

ADJOURNMENT



DATE: October 4, 2022

TO: Community Development Committee of City Council

FROM: City Attorney's Office

RE: Disposal Options for City-Owned Properties

Background

The City of High Point currently owns two vacant parcels of land located at 621 and 627 Washington Street (the "Properties"). D-UP, INC., a North Carolina non-profit corporation formed in 2010 ("D-UP"), has requested that the City convey the Properties to it for its new Washington Street project. This memorandum provides property disposal options.

Property Disposal Options

Option 1: "Donation" / Private Sale with Non-Monetary Consideration

- Under North Carolina General Statute § 160A-279, the City is authorized to make a real property conveyance to a non-profit organization – but only if the property is conveyed to an entity carrying out a public purpose for which that the City is authorized to appropriate funds
 - Procedural requirements
 - City Council adopts a resolution authorizing an appropriate official or employee to convey property
 - Publish notice summarizing contents of resolution once after the resolution is adopted
 - Complete conveyance at least 10 days after notice is published
 - Allowable covenants / conditions
 - Ensure recipient puts property to public use
 - No subsequent sale
 - Public use must continue or return property to local government. Brumley v. Baxter, 251 N.C. 961 (1945).
- **Statutory construction**
 - Requires the conveyance to be subject to covenants ensuring that the property will be put to a public use by the recipient entity

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- This statute incorporates the constitutionally mandated standards by requiring a promise to use the property for a purpose for which the local government has authority to appropriate funds (consideration)
 - Local government may make a conveyance of property for less than fair market value just as it would make an appropriation through its general fund
 - Constitutional requirement (appropriations) – all public funds, no matter what their source, be expended for the benefit of the citizens of a unit generally (and not solely for the benefit of particular persons or interests)
 - Statutory requirement (appropriations) – the appropriations ultimately must be used to carry out any public purpose that the local governments are authorized by law to engage in
 - Private entity that receives the public funds is limited to expending those funds only on projects, services, or activities that the local government could have supported directly
 - The property must revert back to the local government when it is no longer used by the nonprofit for that purpose
 - The North Carolina Supreme Court has not specifically defined the term “public purpose,” but the Court has set forth two guiding principles to analyze whether a government activity satisfies the constitutional requirement
 - (1) The activity must involve a reasonable connection with the convenience and necessity of the unit of government
 - Consider whether the activity is an appropriate one for a local government to engage in
 - There are some activities that should be reserved for the private sector of the economy, and, therefore, are not appropriate for government action
 - (2) The activity must benefit the public generally, as opposed to special interests or person
 - Generally, if an act will promote the welfare a local government and its citizens, it is for a public purpose
 - But this does not mean that the proposed expenditure of public funds cannot significantly and directly benefit specific individuals or entities – so long as overall purpose is to benefit the unit and its citizens

Option 2: Sale

- **(1) Competitive Bidding Sale:** Unless another method of conveyance is specifically authorized (See § 160A-279 discussion above), North Carolina law requires real property to be disposed without conditions on buyers through one of three competitive bidding procedures:
 - Sealed bid (N.C. Gen. Stat. § 160A-268)
 - Real property
 - Procedural requirements
 - Board adopts resolution authorizing sale by sealed bid
 - Publish advertisement for sealed bids at least 30 days before the bid opening for real property

- Receive and open sealed bids
 - Award to the highest responsive, responsible bidder or reject all bids
- Upset bid (N.C. Gen. Stat. § 160A-269)
 - Real property
 - Procedural requirements
 - Unit received offer to purchase property
 - Board adopts resolution accepting offer and authorizing upset bid procedure
 - Offeror deposits 5% of bid amount with clerk while upset procedure takes place
 - Publish advertisement for upset bids – qualifying upset bid must be an amount of at least 10% of the first \$1,000 of the original offer and 5% of the remainder
 - Bidders must submit qualifying upset bids within 10 days after date of advertisement and be accompanied by a 5% bid bond or deposit
 - If qualifying upset bid received, repeat advertisement and upset bid process until no additional qualifying upset bid is received
 - Then award to highest bid or reject all bids
- Public auction (N.C. Gen. Stat. § 160A-270)
 - Real property
 - Procedural requirements
 - Board adopts resolution authorizing sale by auction
 - Publish advertisement of auction at least 30 days before auction is conducted
 - Conduct auction
 - Report highest bid to board – must accept or reject within 30 days of date bid is reported to board
 - Complete sale to highest bidder at any time after board approval
- **(2) Private Sale for Fair Market Value**
 - Real property conveyance authorized
 - Sale of public property generally – the buyer must either participate in a public bidding process (where the winning bid is assumed to be fair market value) or, if private sale is authorized, pay fair market value
 - The fair market value should be determined by an appraisal in order to comply with constitutional provisions prohibiting making gifts of public property

Option 3: Lease

- **(1) Lease – total term one year or less (N.C. Gen. Stat. § 160A-272)**
 - Real property lease authorized
 - Procedural requirements
 - NO procedural requirements

- Board may delegate authority to approve such leases
- **(2) Lease – total term more than 1 year and less than 10 years (N.C. Gen. Stat. § 160A-272)**
 - Real property lease authorized
 - Procedural requirements
 - Publish notice at least 30 days before regular meeting of the board at which resolution authorizing lease will be considered
 - At a regular meeting, board adopts resolution authorizing lease
 - Execute lease at any time after board adopts resolution
 - The City may attach conditions, “[a]ny property owned by a city may be leased or rented for *such terms and upon such conditions as the council may determine*” N.C. Gen. Stat. § 160A-272(a).
- **(3) Lease – total term more than 10 years (N.C. Gen. Stat. § 160A-272)**
 - Leases for terms of more than 10 years shall be treated as a sale of the property and may be executed by following any of the procedures authorized for sale of real property (see discussion above).