



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Grants Management Division

m e m o r a n d u m

TO: Bruce K. Walden, Chief Administrative Officer

FROM: Elizabeth H. Tyler, AICP, City Planner/Director

DATE: April 1, 2004

SUBJECT: Property Acquisition – 401 ½ and 403 East Kerr Street

Description

Included on the agenda for the April 5, 2004 meeting of the Urbana City Council, is the acquisition of property located at 401 ½ and 403 East Kerr Street through the CDBG/HOME programs.

Issues

The issue before the Council is whether to approve the acquisition of the property located at 401 ½ and 403 East Kerr Street. City Council authorization is necessary for the city to acquire property.

Background

The subject property is located within the North Broadway Area). The dimensions of lots are approximately 124.31 feet by 508.10 feet and zoned R-3, general business.

If this property were acquired, the City could utilize the parcel to support the development of affordable housing opportunities.

Options

1. Approve the acquisition of the parcel per the sales contract.
2. Approve the acquisition of the parcel per an amended sales contract.
3. Do not approve the acquisition of the parcel.

Fiscal Impacts

Acquisition of the subject property would cost \$121,000. Administrative costs are estimated at \$500. The project will be financed with Community Development Block Grant funds, which are budgeted in a proposed amendment to the FY 03-04 Annual Action Plan. The amended version of the FY 03-03 Annual Action Plan will provide \$130,000 for property acquisition.

Recommendations

Community Development Services staff recommend that the Urbana City Council approve the attached ordinance authorizing this purchase.

Memorandum Prepared By:

**Bob Grewe, AICP
Manger, Grants Management Division**

Attachments:

- (1) An Ordinance Authorizing the Acquisition of Certain Real Estate (401 ½ and 403 East Kerr Street)
- (2) Contract for Sale of Real Estate

ORDINANCE NO. 2004-04-039

AN ORDINANCE AUTHORIZING THE PURCHASE OF REAL ESTATE

(Scott Plunk - 401 1/2 and 403 East Kerr Street)

WHEREAS, the City Council of the City of Urbana, Illinois, has found and determined that acquisition of the real estate specified in the attached agreement is desirable and necessary to carry out one of the corporate purposes of the City of Urbana, to wit: the *Urbana HOME Consortium and the City of Urbana Consolidated Plan for Program Years 2000-2004*.

WHEREAS, the City of Urbana has an option to purchase the real estate parcel described in the Real Estate Contract herein; and

WHEREAS, the subject parcel is vacant land owned by Scott Plunk.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, that the Chief Administrative Officer is authorized to exercise the Real Estate Contract herein, a true copy of which is attached hereto, under the terms and conditions set forth therein.

PASSED by the City Council this ____ day of _____, 2004.

AYES:

NAYS:

PRESENT:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this ____ day of _____, 2004.

Tod Satterthwaite, Mayor

REAL ESTATE CONTRACT

This Real Estate Contract (the "Contract") is made as of the date of the last to execute of the parties hereto (the "Effective Date") by and between the City of Urbana, Champaign County, Illinois ("Purchaser" or sometimes "City") and Scott Plunk ("Seller").

W I T N E S S E T H:

WHEREAS, Seller is the owner of certain real estate as later more specifically described in this Contract; and

WHEREAS, Purchaser desires to purchase said real estate on such terms and conditions as are provided for herein.

NOW, THEREFORE, in consideration of the representations, promises, covenants, agreements and undertakings set forth in this Contract, Seller and Purchaser hereby agree as follows:

Section 1. Sale. Seller agrees to sell the following real estate, together with all improvements and appurtenances (if any), situated in the City of Urbana, Champaign County, Illinois, the legal description of which is:

The East 3 ½ acres of the North 30 rods of Lot 30 of a Subdivision of the Northeast Quarter of Section 8, Township 19 North, Range 9 East of the Third Principal Meridian, as per plat recorded in Plat Book "R" at Page 238, EXCEPT the East 205 feet 4 inches thereof, situated in the City of Urbana, in Champaign County, Illinois.

(PIN #91-21-08-280-008 and 91-21-08-280-009)

(the "Real Estate"), together with all and any of Seller's interest in any real estate adjacent to the above-described parcels.

Section 2. Payments to Seller.

(a) Purchase Price. Purchaser agrees to pay to Seller at closing the sum of \$121,000.00, less any amount to be credited to Buyer for prorations and credits allowed in this Contract.

Section 3. Leases. Seller affirms that the Subject Property is vacant as of the date of this Contract. Seller further affirms that it is not party to a lease or contract sale with respect to Subject Property as of the date of this Contract. Seller shall not permit or allow or create any leases or allow or permit the renewal or extension of any lease, with respect to the Subject Property. It is agreed that the non-leasing provisions of this Contract are material, and, if Seller violates this provision regarding the non-leasing of the Subject Property, Buyer may, at its option immediately declare this contract null and void.

Section 4. Evidence of Title. Buyer shall, within a reasonable time, order a commitment for title insurance issued by a title insurance company regularly doing business in the county where the Real Estate is located, committing the company to issue a policy in the usual form insuring title to the Real Estate in Purchaser's name for the amount of the purchase price. Buyer shall be responsible for payment of the owner's premium and Seller's search charges.

Permissible exceptions to title shall include only the lien of general taxes and special assessments; zoning laws and building ordinances; easements, apparent or of record; and covenants and restrictions of record which do not restrict reasonable use of the Real Estate. If title evidence discloses exceptions other than those permitted, Purchaser shall give written notice of such exceptions to Seller within a reasonable time. Seller shall have a reasonable time to have such title exceptions removed, or any such exception which may be removed by the payment of money may be cured by deduction from the purchase price at the time of closing. If Seller is unable to cure such exception, then Purchaser shall have the option to proceed with closing with no further claims, or by written notice to terminate this Contract, in which case this Contract shall be terminated and of no effect.

Section 5. Conveyance. Conveyance shall be by general warranty deed to Buyer with release of dower and homestead rights.

Section 6. Taxes and Assessments. General taxes and special assessments (if any) shall be paid by Seller for annual amounts owed through the date of closing. The proration thereof shall be calculated upon the basis of the most current tax information, including confirmed multipliers. Transfer tax and all special assessments which are a lien upon the Real Estate as of the date of this Contract shall be Seller's expense. All such taxes and special assessments shall constitute a credit to Purchaser against the purchase price, and shall release Seller from any further liability to Purchaser in connection therewith.

Section 7. Closing and Possession.

(a) Closing. The closing of this transaction shall occur on or before April 19, 2004 at 400 South Vine Street, Urbana, Illinois 61801.

(b) Possession. Possession shall be delivered to Buyer at time of closing.

Section 8. This agreement is expressly contingent upon approval by the Urbana City Council.

Section 9. Special Contingencies. Purchaser may obtain an environmental analysis of the Real Estate described in section 1 above, and this Contract is contingent upon Purchaser receiving that analysis showing no substantial environmental defects. If Purchaser does not approve the environmental analysis, then Purchaser shall give notice to Seller so that the notice is received on or before 5:00 p.m. on April 5, 2004. Such notice shall indicate the substantial deficiency causing Purchaser to enforce this contingency and shall indicate that Purchaser chooses to terminate this Contract. If Purchaser does not so provide Seller with such notice by said time, then the contingency in this paragraph is of no effect, and the

Contract will be in full force. If the City chooses to acquire the Real Estate, it agrees to take it "as is," and the City agrees to hold Seller harmless from any and all claims against the property or the owners of the property, if such claims are related to any environmental issue; and such agreement shall survive the closing date.

Section 10. Salvage Rights. Buyer intends to raze the existing building on the subject premises. It is agreed that Seller, and only Seller, may enter upon the subject premises after closing for the purpose of salvaging anything in or on the existing building (hereafter "Salvage Rights"). It is expressly understood, however, that Buyer neither assumes nor accepts any liability or responsibility for any injury to Seller while Seller is on the subject premises for this purpose; Seller hereby expressly assumes all risk of injury to himself and agrees to indemnify and hold harmless Buyer for any amounts of money paid by the Buyer as a result of judgment or settlement, including all costs of defense, on account of injuries either only alleged or real, arising out of this privilege reserved to Seller. The "Salvage Rights" herein granted shall expire on June 1, 2004.

Section 11. Conveyance. Seller agrees that it shall convey to Buyer, or its nominee all right, title and interest that Seller now has or may hereafter acquire in adjacent Kerr Avenue right-of-way.

Section 12. Notices. All notices to Seller shall be addressed as follows:

Scott Plunk
403 Kerr Street
Urbana, IL 61801

All notices to Purchaser shall be addressed as follows:

Bruce K. Walden, Chief Administrative Officer
City of Urbana
400 South Vine Street
Urbana, IL 61801

All notices provided for herein shall be deemed to have been duly given, if and when deposited in the U.S. Mail, postage prepaid and addressed to Seller at the above address, or when delivered personally to such party.

Section 13. Memorandum of Contract. Purchaser may and is hereby authorized to file in the appropriate county real estate records either a copy of this Contract, or an appropriate memorandum of the existence of this Contract, identifying the Real Estate, Seller, Purchaser and a brief summary of this Contract.

Section 14. Default and Enforcement. Default under this Contract shall mean failure to timely and fully perform any term or provision hereof after proper notice. The party claiming a default on the part of the other party shall provide a written notice of that claim to the other party. The other party will have 30 days after receipt of said notice to cure said alleged default. If a cure is not reasonably possible within a 30-day cure period, then the cure period will be extended to a reasonable time, so long as the party which would otherwise be in default continues to diligently pursue the resolution of the potential default. Seller and Purchaser shall

have all rights and remedies available to them in law and in equity. Seller shall be liable for any consequential damages to the City with respect to any willful default to close on the Real Estate transaction as hereby contemplated. A willful default is defined, for the purposes of this agreement, as a refusal to continue with obligations under this agreement under circumstances where, but for the refusal of the seller, the transaction could otherwise be closed as hereby contemplated. No failure by Seller or Purchaser to elect to declare a default hereunder shall be deemed a waiver of their respective rights to make such election, and a waiver in one case shall not be a waiver of another. Default by Seller or by Purchaser shall entitle the non-defaulting party to claim as damages all reasonable costs, attorneys' fees and expenses incurred in connection with enforcement of this Contract, whether by suit or otherwise.

Section 15. Agreements and Binding Effect. This Contract shall be binding upon Seller and Purchaser and their respective successors and assigns, according to its tenor and import. When any term or provision of this Contract directs that any party hereto perform or undertake a particular action, such party hereby covenants and agrees to timely and fully perform. Time is the essence of this Contract.

Section 16. Amendments. This Contract may be amended from time to time, but only in writing by Seller and Purchaser.

Section 17. Execution and Counterparts. This Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. By executing this Contract, the persons executing it as Seller covenant that they are the record owners of the Real Estate, and all of the record owners thereof, and have full power and authority to so execute and deliver this Contract. Section headings are for convenience only and do not limit the effectiveness of any section.

Section 18. RESPA/TRA. Seller and Buyer hereby agree to make all disclosures and to sign all documents necessary to allow full compliance with the provisions of the Real Estate Settlement Procedures Act of 1974, as amended, and the Tax Reform Act of 1986.

Section 19. Entirety of Agreement. This Contract contains the entire agreement between the parties and NO ORAL REPRESENTATION, warranty or covenant exists other than those herein set forth. References to singular parties shall apply to plural parties as well.

Section 20. Time of the Essence. The time for performance of the obligations of the parties is of the essence of this Contract.

Section 21. That this Agreement is binding upon successors, assignees, heirs and devisees of the parties.

IN WITNESS WHEREOF, the parties hereto have signed this contract as of the date of the last to sign below.

SELLER'S SIGNATURE

BUYER'S SIGNATURE

SCOTT PLUNK

THE CITY OF URBANA, ILLINOIS

By: _____

By: _____

Bruce Walden
Chief Executive Officer

Social Security # _____

Date _____ Time _____

Date _____ Time _____