



## **INFORMATIONAL MEMORANDUM**

**TO: Mayor Haggerton  
City Council**

**FROM: Derek Speck, Economic Development Administrator**

**DATE: September 6, 2012**

**SUBJECT: Tukwila Village Proposed Disposition and Development Agreement**

### **ISSUE**

This report is intended to provide an overview of the key terms for a proposed Disposition and Development Agreement between the City and the developer of Tukwila Village.

### **BACKGROUND**

On June 6, 2011, the City Council selected Tukwila Village Development Associates, LLC (TVDA) as the developer for Tukwila Village. Since that time, the City and TVDA have been negotiating a Disposition and Development Agreement (DDA), which is the contract that outlines the roles and responsibilities of the City and TVDA and other conditions for the sale of the Tukwila Village property to TVDA.

On December 19, 2011, City staff presented the key proposed deal terms to the City Council. The City staff and TVDA continued negotiations and work on the project and are now making final edits to a proposed DDA. Staff intends to bring the proposed DDA to the City Council on September 24<sup>th</sup> for discussion and intends to request Council approval in October. The purpose of this memo is to give the Council some advance information and context to make it easier to review the proposed DDA when it is available.

As part of the negotiations, the City and TVDA have engaged in considerable site planning and design discussions. TVDA has been performing due diligence, geotechnical and civil engineering studies, site planning, and architectural and landscape design work for the proposed development. They are on a schedule to submit the project for design review approval within a few months of the approval and execution of the DDA.

The City and TVDA have also been negotiating with the King County Library System (KCLS) in order for a KCLS branch library to be built on the site. In June 2012, the King County Library Foundation committed to raising funds so that KCLS could increase the size of the building from 8,000 square feet to 10,000 square feet. On June 25, 2012, the City Council approved key deal terms for the sale of a portion of the Tukwila Village property to be sold to KCLS. City staff will bring a proposed property purchase and sale agreement for that parcel as soon as possible once the DDA with TVDA is approved. TVDA is still in negotiations with KCLS for TVDA to provide site work and infrastructure and for cross-property easements. Those parties will reach agreement after the DDA is approved.

**DISCUSSION**

In City staff's opinion, the proposed DDA aligns very closely with the deal terms presented to Council on December 19, 2011.

**The Intended Development**

Attached is a concept site plan showing TVDA's intent as of March 19, 2012. TVDA has continued working on the site plan since that time and will continue to revise the site plan. This version of the concept site plan is not binding; we have attached it because it is probably the easiest version for the public to understand. The site plan will change as the project goes through the City's design review and permit approval process. Currently, TVDA proposes the development to include:

King County Library Branch	10,000 square feet
Office (medical/dental)	20,000 square feet
Retail and restaurant	11,000 square feet
Police Neighborhood Resource Center	2,000 square feet
Indoor Community Commons	2,000 square feet
Outdoor Community Plaza	20,000 square feet
Age-Restricted Housing	300 units
Non-age Restricted Housing	80 units

TVDA intends for only about 20% of the non-age restricted apartments to be rented to households earning 50% or less of the area median income (AMI) so that the building is eligible for tax exempt bond financing. In terms of household incomes for the age-restricted apartments (senior apartments), TVDA intends for about 20% to have no household income restrictions, about 12% to be restricted to 80% of AMI, about 40% to be restricted to 60% of AMI, and about 27% to be restricted to 50% of AMI. The rent on some of the age-restricted units would be limited to 30% of the maximum allowable household's income. These income and rent restrictions enable the age-restricted (senior) apartment buildings to be eligible for tax exempt bond financing, federal tax credits, and a property tax exemption. The AMI is based on median household incomes for King County. Attached is a chart displaying the household income limits that would have applied to this project in 2010. The income limits will be updated each year.

TVDA intends to build the project in phases with each major phase having a separate parcel of property boundaries. The first phase will start on the north side of South 144<sup>th</sup> Street. TVDA is still evaluating which building will be the first. In any case, the Plaza and Commons will be built at the same time as the first building. The library branch building will be built by KCLS during the same approximate time frame.

**The Intended Schedule**

Following is the City staff's and TVDA's best estimate of a development schedule at this time. Of course, it is subject to change.

Approval of Disposition and Development Agreement (DDA)*	October 2012
Approval of Development Agreement (DA)*	November 2012
Approval of Statement of Purpose and Design of Plaza	November 2012
Approval of Statement of Purpose and Design of Commons	November 2012

Submittal of Phasing Plan	November 2012
Approval of Street Vacation Ordinance*	December 2012
Submittal of Design Review Application	January 2013
Approval of Phasing Plan	April 2013
Approval of Design Review	April 2013
Submittal of Building Permit Applications for First Phase	April 2013
Notice of Preliminary Approval of Building Permits for First Phase	July 2013
Contractor Commitment for Construction Contract	July 2013
Investor Commitments for Debt and Equity	July 2013
Close Escrow on Purchase of First Phase	August 2013
Issuance of Building Permits	September 2013
Construction of South 144 <sup>th</sup> Street Improvements	2013-2014
Formation of Community Organization	2013-2014
Approve Police Neighborhood Resource Center Lease*	2014
Completion of First Phase	December 2014
Completion of Final Phase	December 2015
Police Neighborhood Resource Center Move-In	2015

\*Council approval required.

### The Approval Process

Council approval of the DDA is one step in a multiple step process. The City Council will also be asked to approve the following:

1. Development Agreement (DA): Although they have similar titles, a Disposition and Development Agreement (DDA) is very different from a Development Agreement (DA). As mentioned in the background section, the DDA is a contract that outlines the roles and responsibilities of the City and TVDA and other conditions for the sale of the Tukwila Village property to TVDA. That agreement reflects the City and TVDA roles as seller and buyer of property. A DDA is significantly more detailed and extensive as compared to a typical property purchase and sale agreement because the DDA includes provisions giving the seller some control over how the property is developed plus other rights and responsibilities. This is the first DDA the City has ever considered.

A Development Agreement (DA) is an agreement between the City and developer that can provide for more flexible development rights under the City's role as a regulator in exchange for additional public benefits related to the development. The City has approved DA's for a variety of development projects in the past. Once the DDA is approved, staff will return with a DA. As an example of the types of items that will be included in the DA, TVDA has indicated it will seek approval for the maximum height of buildings A and D (as shown on the draft Preliminary Site Plan) to be 70 feet instead of the currently approved 65 feet. In exchange, the DA would enable the BAR to take into account key elements of the DDA such as the Tukwila Village vision statement, key focal points to be identified on the Proposed Site Plan, some additional vertical and horizontal modulation to Buildings B and E, and a minimum interior height for the retail space.

2. Vacation of 41<sup>st</sup> Avenue South: The City Council would adopt an ordinance to approve vacation of the portion of 41<sup>st</sup> Avenue South that lies within Tukwila Village. Since this street currently provides access to the Normandy Court Apartments, the DDA includes

some provisions to ensure the developer provides sufficient access for the Normandy Court during and after construction.

3. Boundary Line Adjustments: Where the Tukwila Village property abuts the City right of way, there will need to be some adjustments to the boundary lines.
4. Police Neighborhood Resource Center Lease: We will negotiate the details of this lease once the project is further along.

The Mayor, or his designee or appropriate department, would have responsibility for approving nearly all the other agreements and key obligations outlined in the DDA including:

1. Temporary Construction Easement: We may want to enable TVDA to start some site work and grading even before all building permits are approved and the land sale complete as a way to speed development. If TVDA improves the property but doesn't complete the purchase, the improvements become the property of the City.
2. The Phased Development Plan: TVDA is not likely to construct all buildings at the same time and so they will be phasing the development. There are a number of legal protections that need to be in place to ensure a viable development in case not all phases are completed.
3. Proposed Site Plan: As an exhibit of the DDA, the Council will be approving a Preliminary Site Plan. A draft Preliminary Site Plan dated September 4, 2012 is attached. When TVDA is ready to submit the project for design review, it will submit a Proposed Site Plan. The Mayor or his designee will check to see that the Proposed Site Plan is substantially similar to the Preliminary Site Plan so that we can ensure the project as submitted for design review sufficiently meets the Council's vision. Once the project enters the design review phase, the design approval will go through the city's regular process and be reviewed by staff from various city departments and the Board of Architecture Review (BAR). That review process may necessitate changes to the site plan but those changes are not expected to be brought back to the City Council.
4. TVDA and KCLS Agreement: It is important to the City that TVDA and KCLS reach an agreement for site infrastructure, vehicle and pedestrian access, utility easements, parking easements, infrastructure maintenance, and site design that enables KCLS to own its parcel while still ensuring a site that functions as one integrated development.
5. Statements of Purpose and Design: The DDA provides for the BAR to have the authority for approving the design of the outdoor plaza and indoor commons during the design review process. This is not typically under the BAR's purview but is appropriate in this case since the BAR will be reviewing and approving the overall site plan and design. We need to give the BAR some guidelines to use when reviewing the plaza and commons. Staff and TVDA will mutually develop the guidelines. We will have one "Statement of Purpose and Design" for the plaza and another one for the commons. We will have at least one opportunity for public input on a draft of the guidelines.
6. Residual Land Value Analysis: The price for the property TVDA develops would be based on a calculation of the "residual land value". The residual land value approach is very similar to what is more conventionally called the "income approach" used for

appraisals. The RLV approach uses a financial projection of the development's future net operating income to calculate the market value of the project. The cost of developing the project is deducted from the market value of the project to result in the land value. The DDA provides for this calculation to be performed for each development phase after the project has been preliminarily approved through the City's design review and building permit review, after TVDA has secured financing commitments, and after TVDA has a binding construction contract. The City has hired the real estate advisory firm of Heartland, LLC to provide additional review of the RLV analysis.

7. Formation of Community Organization: The DDA provides for TVDA and the City to jointly form a community organization that will lease the plaza parcel from the developer for \$1 per year for 40 years. The Community Organization will manage and operate the plaza and commons. The DDA states that TVDA will make a one-time contribution of \$50,000 to the Community Organization. The City and TVDA's intent is for the community organization to use the revenues it receives from plaza and commons reservations or outside grants to cover its operating, maintenance, and other costs.
8. Estoppel Certificate of Completion: The DDA provides that when TVDA has met its obligations under the DDA, TVDA may request the City to provide a certificate to that effect, which is called an estoppel certificate of completion. This is a significant document because it is important to not issue the certificate until TVDA's obligations have been met.

#### Other Key Terms and Conditions

In addition to the agreements described above, following are additional key terms and conditions.

1. Uses and Sizes: The DDA provides for the development to have, at a minimum, the uses and amounts (in terms of square feet or units) described above in the section titled "The Intended Development".
2. Age, Income and Rent Restrictions: The DDA provides for the development to have the restrictions on age and household income and rent as described above in the section titled "The Intended Development".
3. Library Architectural Style: The DDA provides for the City to use its best efforts to require KCLS to submit a proposed site plan of the Library Parcel and a conceptual architectural design for the proposed library building by the time TVDA submits a design review application for the first development phase. This is not a guarantee that the two properties will develop with a similar style but is an effort to enable all parties are considering design styles at the same time so they can choose to be compatible.
4. Library Parcel: The DDA acknowledges the City's intent to sell a parcel of property, the "Library Parcel," to KCLS for a library branch. In the unlikely event that KCLS and the City do not close escrow and convey the Library Parcel, then TVDA would have the right to purchase the Library Parcel.
5. Income Restrictions – Non Age Restricted (Non-Senior): The DDA intends for the non-age restricted apartment building to qualify for federally tax exempt bond financing. As

such, to the extent necessary to meet the minimum qualifications for tax exempt bond financing, the non-age restricted apartment units may be restricted to households earning 50% or less of AMI (approximately 20% of the units). The balance of the units must have no income restrictions.

6. **Income Restrictions – Age Restricted (Senior):** The DDA intends for the age-restricted (“senior”) apartments to be available to households earning a variety of incomes while enabling all of the senior units to qualify for property tax exemption and federally tax exempt bond financing and a majority of the senior units to qualify for low-income tax credits. As such, at least 20% of the units must have no income restriction, 30% must have either no income restriction or be restricted to no lower than 80% of AMI. The balance of the units may have income restrictions but not below 50% of AMI. Some of the income restricted units may also have rent restrictions to the extent necessary to qualify for low income housing tax credits.
7. **Plaza Maintenance and Utilities:** The DDA provides for TVDA to maintain the plaza and pay for all related utilities and for the community organization to reimburse TVDA for 50% of the total maintenance costs plus 100% of the solid waste costs related to users scheduled by the community organization.
8. **Commons Maintenance and Utilities:** The DDA provides for TVDA to maintain structural components and mechanical systems and exterior of the commons and the community organization to maintain non-structural interior components. The community organization will be responsible for all utilities related to the commons.
9. **Plaza and Commons Repair:** The DDA provides for TVDA to be responsible for repairs to the plaza and commons due to ordinary wear and tear and damage caused by users not scheduled by the community organization. The community organization will be responsible for repairs to the plaza and commons due to damage from scheduled users.
10. **Non-Fixed Plaza and Commons Assets:** The DDA provides for the community organization to be responsible for maintenance and capital replacement of all indoor and outdoor non-fixed assets for the commons and plaza, such as furniture and equipment.
11. **South 144<sup>th</sup> Street Improvements:** The DDA provides for TVDA to construct any street frontage improvements requested by TVDA or required by the City. An example of the improvements being considered by TVDA is shown on the attached concept site plan. The DDA also states that the City will make the South 144<sup>th</sup> Street project a high priority project and actively seek outside funding. If the road work starts in 2013, it is unlikely the City would be able to secure outside funding in time for the project. The infrastructure costs would be included in the residual land value analysis.
12. **Tukwila International Boulevard Improvements:** The DDA includes provisions to enable TVDA to request City approval to construct some on-street parking improvements along Tukwila International Boulevard. An example of this is shown on the attached concept site plan.
13. **Vesting of Entitlements and Fees:** The DDA provides for property to be vested under entitlements, building permit fees, and development impact fees per regular city policy. There is nothing in the DDA that reduces those fees or provides special vesting. The

permit and impact fees are all development costs that will be included in the residual land value analysis.

14. Encouraged Uses: All parties have expressed interest to have a coffee shop/cafe and diner-style restaurant as commercial tenants. As an incentive to encourage TVDA to attract these tenants, the DDA states the City and TVDA would identify these spaces and that TVDA cannot lease the spaces to alternative uses for 2 years from the date the City issues the estoppel certificate of completion for the residential component of the first phase. This is not a guarantee those spaces will have the intended uses, but it is a reasonable financial incentive.
15. Quality of Construction Materials: The DDA specifies that TVDA will utilize high quality construction materials consistent with mixed-use development and market rate residential rental apartment properties. Examples of the quality of such construction materials include the Developer's Arrowhead Gardens Apartments development in West Seattle and Victoria Park Apartments development in Lake City. Materials such as synthetic stucco, plastic storefront window systems, cinder block, aluminum/plastic/vinyl siding, or faux cladding shall not be used on any building facades.
16. Renegotiation Rights: The City would also have the right to renegotiate the agreement if the residual land value analysis results in an average land value of less than \$10,000 per residential unit plus an adjustment for commercial space. If TVDA rejects the City's proposal, then the agreement for that phase would be terminated. This protects the City from being locked into selling the property at too low of a price. Staff currently estimates this would let the City terminate the agreement with TVDA if it does not result in a land price of at least \$4 million.
17. Termination Rights: Although the City would not desire to terminate the agreement, we would have the right to do so if TVDA is not moving forward with the project prior to conveying the property ownership to TVDA. As an example, if TVDA does not submit an application for Design Review for the first phase within 90 days from when the City executes and delivers the Development Agreement, the City could terminate the agreement and would retain the property.
18. Clawback/Reversion: If TVDA purchases the property but does not progress with developing it, the City would have the right to repurchase the property. Of course, none of the parties intend to use this provision but this protection is important in case unforeseen events occur that prevent TVDA completing the project.

## **RECOMMENDATION**

This item is for information only. Staff is scheduled to return to Council with a proposed Disposition and Development Agreement (DDA) on September 24, 2012 for discussion and in October 2012 for a decision.

## **ATTACHMENTS**

Concept Site Plan Dated March 19, 2012  
Household Income Restrictions  
Draft Preliminary Site Plan Dated September 4, 2012