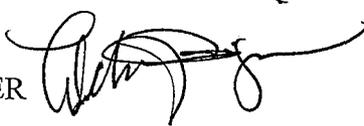




MEETING DATE: 10/4/04  
ITEM NO. 10

COUNCIL AGENDA REPORT

DATE: September 24, 2004  
TO: MAYOR AND TOWN COUNCIL  
FROM: DEBRA J. FIGONE, TOWN MANAGER   
SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE PURCHASE AGREEMENTS FOR BELOW MARKET PRICE HOUSING PROGRAM UNITS IN URGENCY CIRCUMSTANCES, AND RESCIND RESOLUTION 2002-177

RECOMMENDATION:

Adopt a resolution (Attachment 1) authorizing the Town Manager to execute purchase agreements for Below Market Price Housing Program units in urgency circumstances, and rescind Resolution 2002-177.

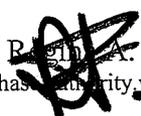
BACKGROUND:

The Town's Inclusionary Zoning Ordinance was adopted in 1979. The ordinance requires developers to provide a specified number of affordable owner-occupied or rental units, as appropriate, in their new housing projects. In some instances, developers may pay fees in lieu of providing affordable units. All units developed under the ordinance are managed under the Town's Below Market Price (BMP) Housing Program.

One of the BMP Program's challenges is to keep owner-occupied units affordable. Los Gatos requires that units remain in the Program at resale, and be resold to income-eligible owners. This affordability requirement is accomplished through a deed restriction recorded on the property. The Town also retains a first right of refusal to purchase each unit.

DISCUSSION:

Under Resolution 2002-177, the Town Council authorized the Town Manager to execute purchase agreements for BMP units that were in bankruptcy or foreclosure proceedings. This authority is

PREPARED BY:  Robert A. Falkner, Community Services Director  
N:\CSD\TCRPTS\BMP purchas...ity.wpd

Reviewed by: DS Assistant Town Manager OL Town Attorney      Clerk SC Finance  
     Community Development Revised: 9/28/04 3:25 pm

PAGE 2

MAYOR AND TOWN COUNCIL

SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE TOWN MANAGER TO  
EXECUTE PURCHASE AGREEMENTS FOR BELOW MARKET PRICE  
HOUSING PROGRAM UNITS

*September 24, 2004*

limited to those circumstances in which adequate time to request purchase authority for a specific unit from Council is not available. Units purchased under this authority would then be sold to income-eligible owners through the standard BMP unit purchase process.

The Town Council gave this authority to the Town Manager in recognition that, as the Town does not hold the mortgage on any BMP unit, occasionally a unit becomes subject to bankruptcy or foreclosure proceedings and is therefore in danger of reverting to market price should the Town not act quickly to exercise its right of first refusal.

The Housing Element of the Town's General Plan emphasizes the importance of affordable housing opportunities, and the need to preserve existing affordable housing in Town. Implementing Strategy H.I.1.9.A of the General Plan states:

If necessary, the Town will exercise its "right of first refusal" to purchase BMP units which may have resale prices that exceed low or moderate income affordability limits...The Town will utilize funds from all available sources, including the Affordable Housing Fund, to subsidize the unit in order to make it affordable to the appropriate low/moderate income group and to ensure that it remains a BMP unit in perpetuity.

Staff believes that it would be appropriate to extend the Town Manager's authority to execute purchase agreements for BMP units, to cover any urgency circumstances in which adequate time to request purchase authority for a specific unit from Council is not available; not limited to units in bankruptcy or foreclosure proceedings. As noted above, the Town retains a first right of refusal to purchase each unit, which it generally delegates to an income-eligible buyer. However, there is a time limit on this first right of refusal; if it is not exercised in time, a unit may be sold at market price. This possibility, though it does not frequently occur, might happen in a variety of circumstances. For example, it is possible that a unit owner could extend the resale process, intentionally or unintentionally, and the time limit could elapse. Staff suggests that, in such a case, the Town Manager could sign a purchase agreement on behalf of the Town, effectively saving the unit from reverting to market price. The unit would then be sold to an income-eligible buyer through the standard BMP unit purchase process.

The Town Manager would request purchase authority from Council of such a purchase as time allowed; the authority provided under the draft resolution (Attachment 1) would be a contingency in the case that a purchase decision must be made before the issue could be heard by Council. If a purchase decision were made under the Town Manager's authority before the issue could be heard by Council, it would be brought to Council to be ratified.

PAGE 3

MAYOR AND TOWN COUNCIL

SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE TOWN MANAGER TO  
EXECUTE PURCHASE AGREEMENTS FOR BELOW MARKET PRICE  
HOUSING PROGRAM UNITS

*September 24, 2004*

CONCLUSION:

Staff recommends that Council adopt a resolution expanding the Town Manager's authority to execute purchase agreements for BMP units, in urgency circumstances only. Staff further recommends that the Town Manager be authorized to use BMP In-Lieu funds to finance the purchase of these units, and that budget adjustments may be made accordingly. This resolution would replace Resolution 2002-177.

ENVIRONMENTAL ASSESSMENT:

The recommended action is not a project defined under CEQA, and no further action is required.

FISCAL IMPACT:

As noted above, in some instances developers may pay fees in lieu of providing affordable units. These funds, referred to as "BMP In-Lieu funds," are held in a deposit account, and may be used to finance BMP-related or other affordable housing projects. Resolution 2002-177 authorized the Town Manager to use BMP In-Lieu funds to purchase BMP units in foreclosure or bankruptcy proceedings. Staff recommends that this authority be extended to the purchase of BMP units in any urgency circumstances. When a Town-owned BMP unit was resold to an income-eligible owner, the purchase price would be refunded to the BMP In-Lieu fund.

The balance of the BMP In-Lieu fund (account 100-26216) as of July 1, 2003 is \$1,441,839.98. The purchase price paid for a BMP unit would vary.

Attachments:

1. Draft Resolution of the Town Council of the Town of Los Gatos authorizing the Town Manager to execute purchase agreements for Below Market Price Housing Program units in urgency circumstances, and rescinding Resolution 2002-177.

Distribution:

Richard Warren, Housing Authority of the County of Santa Clara

RAF:JLM/jlm

**RESOLUTION 2004-\_\_**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AUTHORIZING THE TOWN MANAGER TO EXECUTE PURCHASE AGREEMENTS  
FOR BELOW MARKET PRICE HOUSING PROGRAM UNITS  
IN URGENCY CIRCUMSTANCES,  
AUTHORIZING RELATED BUDGET ADJUSTMENTS,  
AND RESCINDING RESOLUTION 2002-177**

**WHEREAS**, the Town of Los Gatos Zoning Ordinance Sections 29.10.3000 through 29.10.3040 establish a Below Market Price (BMP) Housing Program to assist low and moderate income Los Gatos citizens to purchase homes; and

**WHEREAS**, the BMP Program requires construction of dwellings that persons and families of low and moderate income can afford to buy, and assures to the extent possible that the resale prices of those dwellings will be within the means of persons and families of low and moderate income; and

**WHEREAS**, the Housing Element of the Town's General Plan states, "If necessary, the Town will exercise its 'right of first refusal' to purchase BMP units which may have resale prices that exceed low or moderate income affordability limits."; and

**WHEREAS**, occasionally BMP units come in danger of losing their affordability, through a variety of circumstances; and

**WHEREAS**, the Town wishes to ensure that all BMP units remain in the BMP Program, and retain their affordability to persons and families of low and moderate income.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES HEREBY RESOLVE:**

- 1) The Town Manager is authorized to execute purchase agreements for Below Market Price (BMP) Housing Program units. This authority shall be limited to those circumstances in which adequate time to request purchase authority for a specific unit from Council is not available.
- 2) The Town Manager is authorized to make budget adjustments related to the execution of such purchase agreements. Funds for purchases made under the authority of this Resolution shall be taken from the BMP In-Lieu Fund.
- 3) Resolution 2002-177 is hereby rescinded.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the \_\_\_\_ day of October, 2004, by the following vote.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

\_\_\_\_\_  
MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

\_\_\_\_\_  
CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA