

TOWN COUNCIL ACTION REPORT

December 13, 2007

Resolution Authorizing Execution of an Amended Redevelopment Agreement with David D. Shields and Thuan N. Phan Pertaining to the Property at 701 Broadway Avenue

PREPARED BY: Geoff Fruin, Assistant to the City Manager

REVIEWED BY: Mark R. Peterson, City Manager
Steven D. Mahrt, Corporation Counsel

BUDGET IMPACT: N/A

STAFF RECOMMENDATION: Approval

ATTACHMENTS: Proposed Resolution and Amended Redevelopment Agreement

BACKGROUND

701 Broadway Avenue is located at the southwest corner of Vernon Avenue and Broadway. The site is zoned R-1A single family residential and is located in the Town of Normal Tax Increment Financing (TIF) district.

On December 19th, 2005 the Town Council authorized the expenditure of \$190,100 for the purchase of the property at 701 Broadway Avenue. The Town subsequently purchased the property at a foreclosure sale in December of 2005 with the intention to demolish the existing multiple-family structure. Prior to the Town's purchase, the property operated as a non-conforming multiple family use that was home to a fraternity associated with Illinois State University. The multiple family fraternity house was a habitual source of nuisances and neighborhood disruptions. On March 6, 2006 the Town Council authorized the expenditure of \$12,523 for demolition of the structure at 701 Broadway, thus eliminating the non-conforming use.

Shortly after acquiring the property the Town issued a Request for Proposals (RFP). The RFP called for interested parties to submit a concept plan for the property. The RFP stated that the Town's development objective for the property is a high quality development that complements and is compatible with neighboring single family properties. The RFP process culminated on May 15th, 2006 when the Town Council entered into a redevelopment agreement with the Matter Family Foundation.

As part of the development agreement, the Matter Family Foundation agreed to construct an architect designed single family home on the property. It was the foundation's intent to build the home that is consistent with the historical appearance of the surrounding neighborhood structures. Upon completion of the project, the foundation anticipated marketing and selling the property as a single family residence.

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The original redevelopment agreement that the Council approved with the Matter Family Foundation included following two primary components:

- The redevelopment agreement stipulates that the Town will convey the property to the Matter Family Foundation for a nominal cost of \$1.00. The foundation indicated that it plans to invest approximately \$300,000 in the project, which was comparable to their estimated market value. Because of the break-even nature of the project, it was decided that the land should be conveyed for a nominal charge.
- The agreement does not provide any fee waivers or additional financial participation (TIF or otherwise) from the Town. The agreement further provides that the Town will receive all net profits on the sale of the property. Net profits are defined in the agreement as the gross sales price less closing costs, construction costs, permit fees, fees paid to governmental entities that are triggered by the development, real estate broker fees, architectural costs, engineering costs, attorney fees and a miscellaneous expense reimbursement fee equal to 2.5% of the gross sale price. The agreement also states that the Matter's must not sell the property for less than 95% of the fair market appraised value.

Because the initial proposal did not contain architectural renderings, the redevelopment agreement specified that the foundation must submit a preliminary plan for Council review and approval prior to construction. The Council did approve a preliminary plan for the property at the February 5th, 2007 meeting. Since that time the foundation has been working on final construction documents for the property.

Per the redevelopment agreement the property was conveyed to the Matter Family Foundation on April 18th, 2007. As part of that transaction the foundation agreed to convey the west 13 feet of a portion of the parcel to the immediate western neighbor, Ms. Shang Fen Ren, at no charge. Ms. Ren had previously been using a driveway that was located on the 701 Broadway parcel. As a result of the foundation conveying this land and the Town installing a new curb cut, Ms. Ren's property can now accommodate its own driveway.

DISCUSSION/ANALYSIS

The Matter Family Foundation anticipated a start of construction in the fall of this year. However, prior to commencing construction the foundation was able to identify a buyer for the property. Upon reviewing the construction plans, the buyers indicated a desire to make modifications to the interior floor plan, which has delayed construction until the spring of 2008. The minor interior changes are not anticipated to necessitate the approval of an amended preliminary site plan for the property. However, if staff deems that such plans have significantly changed then those would have to be brought before Council prior to construction.

At this time staff is recommending that the redevelopment agreement be amended to reflect the new schedule of construction for the project. In addition, it is being recommended by all parties that the redevelopment agreement be assigned from the Matter Family Foundation to the eventual owners of the property, David D. Shields and Thuan N. Phan. Per the original agreement, the Matter Family Foundation will not profit from the sale of the property. The foundation will only recoup previously incurred legal and design fees associated with the project.

Assuming Council approval of this project, Mr. Shields and Mr. Phan will assume the redevelopment agreement. They have indicated that the project costs, which were previously estimated at \$300,000 are now closer to \$400,000. Mr. Shields and Mr. Phan will occupy the property as their primary residence, therefore staff supports a change to the profit sharing clause in the agreement. As proposed, the Town will only receive profits from sale if the property is sold within one year of occupancy by Mr. Shields and Mr. Phan. If the property is sold within the first year, then the Town would receive any profits from that

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sale. There is an exemption from this clause if either of the new owners are required to relocate due to a transfer at their workplace.

Staff is recommending the approval of the attached amendment to the redevelopment agreement. Upon Council approval, it would be expected that construction would commence in spring of 2008 with completion anticipated in late summer or early fall of 2008.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING EXECUTION OF THE FIRST AMENDMENT TO THE 701 BROADWAY REDEVELOPMENT AGREEMENT

WHEREAS, the Town of Normal is a home rule unit of local government with authority to legislate in matters concerning its local government and affairs; and

WHEREAS, the Town of Normal entered into a Redevelopment Agreement with the Matter Family Foundation for the redevelopment of 701 Broadway; and

WHEREAS, the Matter Family Foundation has found a purchaser to purchase the property and redevelop it according to the terms of the Redevelopment Agreement; and

WHEREAS, the parties desire to amend certain performance dates provided in the original Redevelopment Agreement and to authorize assignment of the Redevelopment Agreement to David D. Shields and Thuan N. Phan; and

WHEREAS, it is in the best interests of health, safety and welfare of the citizens of Normal to authorize execution of an amended Redevelopment Agreement and consent to assignment of said Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES FOR THE TOWN OF NORMAL, ILLINOIS:

SECTION ONE: That the President be and he is hereby authorized to execute a First Amendment to 701 Broadway Redevelopment Agreement and consent to assignment of said Agreement. A copy of said First Amendment is attached hereto as Exhibit 1 and incorporated herein by reference.

SECTION TWO: That the Town Clerk be and she is hereby authorized and directed to attest the signature of said President on the First Amendment and to retain fully executed original of said document in her office for public inspection.

ADOPTED this _____ day of _____, 2007.

APPROVED:

President of the Board of Trustees of
the Town of Normal, Illinois

ATTEST:

Town Clerk
(seal)

EXHIBIT 1
FIRST AMENDMENT TO
701 BROADWAY REDEVELOPMENT AGREEMENT
AND CONSENT TO ASSIGNMENT OF SAID AGREEMENT

This First Amendment to the 701 Broadway Redevelopment Agreement is entered into as of the _____ day of December, 2007, by and between the Town of Normal, Illinois, a municipal corporation (hereinafter referred to as the Town) and the Matter Family Foundation, 5 Broadway Place, Normal, Illinois, 61761 (hereinafter referred to as the Redeveloper).

WHEREAS, the Town and the Redeveloper have entered into a Redevelopment Agreement for 701 Broadway dated May 15, 2006; and

WHEREAS, the Town and Redeveloper desire to amend the Agreement to affect changes in Time of Performance, changes in Scope of Project and assign the Agreement; and

WHEREAS, the parties wish to proceed with the Project as set forth in the Agreement for the purposes set forth therein.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND OBLIGATIONS OF THE PARTIES HERETO, EACH OF THEM DOES HEREBY COVENANT AND AGREE AS FOLLOWS:

SECTION 1: The Town does hereby consent and agree that the Redeveloper may construct the Project in accordance with the time schedule attached hereto as Exhibit 2. In the event the Redeveloper falls behind said schedule, then the Town may regain title and possession of the Project Site as provided in Section 13.3 of the Redevelopment Agreement.

SECTION 2: The parties agree that the Scope of the Project has changed and that the Redeveloper anticipates a construction cost of the Project to be approximately \$400,000.00.

SECTION 3: That Article V of the original Redevelopment Agreement entitled PROFIT SHARING is amended to read as follows:

ARTICLE V. PROFIT SHARING.

5.1 The Town consents to the sale of the Project Site from the Matter Family Foundation to David D. Shields and Thuan N. Phan at a cost not to exceed the costs incurred by the Matter Family Foundation for development of the Project Site to date. Such costs shall be disclosed to the City Manger of the Town of Normal prior to the conveyance of the Project Site to David D. Shields and Thuan N. Phan. In the event the Purchase Price to be paid by David D. Shields and

Thuan N. Phan exceeds the costs incurred by the Matter Family Foundation, up to the date of conveyance, then any excess amount paid to the Matter Family Foundation shall be immediately remitted to the Town of Normal.

- 5.2** David D. Shields and Thuan N. Phan covenant and agree that for a period of one (1) year from the date of this Agreement the Town shall have the right to receive all net profits on the sale of the Project Site by David D. Shields and Thuan N. Phan. Net profits means gross sales price, less closing costs, construction costs, real estate broker fees, architectural costs, engineering costs, permit fees, fees paid to governmental entities triggered by the development, attorney fees and a miscellaneous expense reimbursement fee equal to 2.5% of the gross sales price. Payment shall be made to Town at closing on sale of the Project Site. The Town shall waive its right to net profits if the property is sold as a result of a job related transfer of David D. Shields and Thuan N. Phan.
- 5.3** Redeveloper shall not sell the Project Site for less than 95% of the fair market appraised value as determined by the Town and Redeveloper without prior approval by the Town. If a fair market appraised value cannot be agreed to by the parties an independent appraisal shall be conducted to determine the fair market appraised value.

SECTION 4. The Town consents to the assignment of the Redevelopment Agreement from the Matter Family Foundation to David D. Shields and Thuan N. Phan. A copy of said Assignment is marked Exhibit 3, attached hereto and incorporated herein by reference.

SECTION 5. No change shall be made to the approved preliminary redevelopment plans, without approval by the Town of Normal.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the 701 Broadway Redevelopment Agreement and caused their respective seals to be affixed and attested thereto as of the date first above written.

REDEVELOPER

TOWN OF NORMAL

MATTER FAMILY FOUNDATION

BY: _____
Christopher Koos, President

BY: _____
Anne K. Matter

ATTEST:

Wendellyn J. Briggs, Town Clerk

Consent Assignee

David D. Shields

Thuan N. Phan

EXHIBIT 3

ASSIGNMENT OF REDEVELOPMENT AGREEMENT

THIS AGREEMENT is made and entered into on this _____ day of December, 2007, by and between the Matter Family Foundation (the "Assignor") and David D. Shields and Thuan N. Phan, individually and jointly (the "Assignee").

WITNESSETH:

WHEREAS, Assignor previously entered into a Redevelopment Agreement with the Town of Normal, Illinois, a municipal corporation, dated May 15, 2006 (Agreement); and

WHEREAS, Assignor now desires to assign its interests in the Agreement to Assignee and Assignee is willing to accept such assignment upon the terms and conditions as set forth herein.

NOW, THEREFORE, the parties hereto agree as follows:

ASSIGNMENT. For Ten (\$10.00) Dollars and other valuable consideration, Assignor hereby assigns, transfers, and sets over, all of its right, title, and interest in and to the Agreement to Assignee. By this assignment, the undersigned also delegates to Assignee, David D. Shields and Thuan N. Phan, all the undersigned's duties and obligations of performance under the Agreement. By accepting this assignment Assignee, David D. Shields and Thuan N. Phan, agrees to assume and perform all duties and obligations that the undersigned has under this Agreement and agrees to be subject to all conditions and restrictions to which Assignor is subject pursuant to the Agreement.

CONTINUING VALIDITY. All of the terms, covenants conditions of the Agreement as amended to date shall continue in full force and effect and the same are hereby reaffirmed, remade and rewritten.

ASSIGNOR:

Matter Family Foundation

By _____
Anne K. Matter

ACCEPTANCE. For Ten (\$10.00) Dollars and other valuable consideration, Assignee, David D. Shields and Thuan N. Phan, accepts the assignment described above. Assignee, David D. Shields and Thuan N. Phan, agrees to assume and perform all duties and obligations to be performed by Assignor under the Agreement as if it has been an original party to the Agreement and agrees to be subject to all conditions and restrictions to which Assignor is subject pursuant to the Agreement.

ASSIGNEE:

David D. Shields

Thuan N. Phan

Approved and Accepted:

Town of Normal

By _____
Christopher Koos, President
Board of Trustees

Attest:

By _____
Wendellyn J. Briggs, Clerk

STATE OF ILLINOIS)
)SS
COUNTY OF MCLEAN)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Ann K. Matter of the Matter Family Foundation personally known to me to be the same person whose name is subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal this _____ day of _____, 2007.

Notary Public

STATE OF ILLINOIS)
)SS
COUNTY OF MCLEAN)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David D. Shields, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal this _____ day of _____, 2007.

Notary Public

STATE OF ILLINOIS)
)SS
COUNTY OF MCLEAN)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Thuan N. Phan, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal this _____ day of _____, 2007.

Notary Public