


Approved & Filed
3/20/19

City of Cincinnati 201900436

March 13, 2019

To: Mayor and Members of City Council

From: Patrick A. Duhaney, City Manager 

Subject: **2010 Auburn Avenue – Status of Corban Early Learning Center**

REFERENCE DOCUMENT #201900262

City Council at its meeting on February 19, 2019, referred the following item for report:

COMMUNICATION, submitted by Council Member Mann, from Olivia Darks, President, Corban Early Learning Center, regarding Corban Early Learning Center Offer to Purchase 2010 Auburn Avenue

BACKGROUND

In August 2011, the City entered into a 5-year lease (the "Lease") with Sunnyside Child Development Center, dba Corban Early Learning Center, owned by Olivia Darks (the "Tenant"), for the City-owned property at 2010 Auburn Avenue, which is under the management and control of the City's Department of Community and Economic Development ("DCED"). Additional relevant background information includes the following:

- **Rent:** At the commencement of the Lease, the fair market rental value for the property equaled \$33,426/year (under a "triple net" lease, with the Tenant being responsible for real estate taxes, insurance, and building maintenance costs). The City agreed to lease the property to the Tenant at a subsidized base rent of \$1.00/year to facilitate the Tenant's operation of a daycare center. The rent subsidy to the Tenant over the initial 5-year term, based upon the initial lease rate, equaled \$167,130. The rent subsidy to the Tenant during the month-to-month tenancy, to date, equals approx. \$83,589. The City's total rent subsidy to date, based upon the original appraised fair market rental value, equals approx. \$250,719.
- **Real Estate Taxes:** Prior to the City's lease of the property to the Tenant the property was exempt from real estate taxes. The tax exemption was due to the City's ownership and its qualifying public purposes as a voting precinct and former senior services center. Upon awareness of a lease to the Tenant for a private business, Hamilton County removed the real property tax exemption for tax year 2012, and consequently real estate taxes became due and payable beginning in 2013.
- **Initial Notice of Default:** As of April 2013, the Tenant had not commenced operation of a daycare as required under the Lease and had not paid the real estate taxes for the

property for Tax Year 2012 as required under the Lease; therefore, DCED sent a notice of default to the Tenant requesting that the Tenant cure the defaults. Following the initial notice, DCED undertook various efforts to cause the Tenant to bring the Lease into compliance. The Tenant eventually began operating a daycare center in April 2014 but has failed to pay the real estate taxes and has remained in default under the Lease since 2013.

- Term: The Lease had an initial 5-year term, which expired in August 2016, and the Tenant has been occupying the property on a month-to-month basis since that time, terminable on 30 days' notice by either party.

EFFORTS TO CURE

Following is a brief summary of some of DCED's efforts to help the Tenant bring the Lease into compliance:

- April 2013: Notice of default sent to the Tenant based upon failure to operate a daycare and failure to pay the real estate taxes.
- August 2015: Email correspondence with the Tenant discussing non-compliance with the Lease, specifically mentioning the delinquent real estate taxes. The Tenant responded with a commitment to enter into a payment plan with the Hamilton County Treasurer to pay the taxes but failed to do so.
- July 2017: In an effort to resolve the default and avoid the termination of the Lease and the closure of the Tenant's business, DCED proposed amending the Lease to extend the term for a short while, and possibly selling the property to the Tenant, provided the Tenant (i) entered into a payment plan with the Hamilton County Treasurer to pay the delinquent real estate taxes, (ii) commenced paying fair market rent for the property, and (iii) made various needed repairs to the building. The Tenant declined to accept that proposal.
- September 2018: While still in default under the Lease, the Tenant submitted an offer to purchase the property to DCED, stating that the Tenant had obtained financing to purchase the property, pay the delinquent real estate taxes, and make the needed repairs to the building.
- October 2018: In an effort to assess the Tenant's financial ability to satisfy her financial obligations under the Lease, DCED responded to the Tenant's proposal with a request for information, including financial statements, organizational information, and financing commitment, which the Tenant provided in Nov 2018. As DCED was evaluating the information provided by the Tenant, the City's Law Department advised DCED that Cincinnati Municipal Code Section 321-153 precludes her from submitting a bid or proposal to purchase the property from the City until the existing contract default has been cured.
- January 2019: In a letter dated Jan 10, 2019, DCED informed the Tenant that DCED would not negotiate with her for the sale of the property until she brought the Lease into

compliance by paying the delinquent taxes in full, or by entering into a payment plan with the Hamilton County Treasurer to pay the taxes over a period not to exceed 6 months; which the Tenant declined to do. On Jan 31, 2019, the 1st Half 2018 semi-annual tax bill of \$5,776.46 came due, which the Tenant declined to pay. According to the Hamilton County Treasurer, the total amount of the delinquent taxes, including penalties and interest, now totals \$58,273.13.


- February 2019: In various communications from the Tenant over the years, including the Tenant's Feb 5, 2019 memo to the Mayor and City Council, the Tenant has stated that the City "agreed" or has "committed" to sell the property to her. Although the original Lease included a statement acknowledging that the Tenant was interested in purchasing the property at that time, no commitment to sell the property has been made.

CURRENT STATUS

The Tenant has proposed to pay off the delinquent taxes through a purchase of the property where the Tenant would borrow against the value of the building. Under the Tenant's proposal, the Tenant would take out a loan in the amount of \$215,000, pay the City a below fair market purchase price of approximately \$42,000 for the property, which is currently appraised by the Hamilton County Auditor at \$342,000, and use the balance of the loan proceeds to pay off the delinquent taxes and finance some needed improvements to the building, including without limitation repairs to the roof and HVAC system. Because the building was in good condition when leased to the Tenant, and because the Tenant, at the Tenant's expense, was obligated to maintain the building in good condition throughout the term of the Lease, the City would expect to receive fair market value for the property, as determined by appraisal, if the property were to be sold. Due to the Tenant's on-going default under the Lease, Cincinnati Municipal Code Section 321-153 precludes her from submitting offers to purchase the property until the contract default has been cured.

It should be noted that the City's Department of Transportation and Engineering ("DOTE") is currently finalizing construction drawings for the widening of Auburn Ave at this location (known as the "Auburn Avenue improvements phase 2" project), which will likely entail taking a portion of 2010 Auburn Avenue for the roadway. The City's retention of a portion of the property for DOTE's project would reduce the appraised value of the remainder of the property. Until such time as DOTE's right of way needs for the project have been determined, the Administration does not intend to sell the property.

In summary, to date the Administration has refrained from exercising its rights and remedies under the Lease to terminate the Lease and/or pursue a breach of contract action against the Tenant, while permitting the Tenant to remain at the property on a month-to-month basis despite her on-going default under the Lease for failure to pay the delinquent taxes and make needed repairs. The Administration continues to evaluate its options to determine what is in the best interests of the City.

cc:  Phillip Denning, Director, Department of Community and Economic Development