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To: **Mayor Soglin, Common Council**

From: **Capitol East District Staff Team & District Alders**

Date: **May 28, 2014**

Subject: **Disposition of 800 East Washington Avenue (Don Miller South)**

Purpose

This memo discusses an alternative process to issuing an RFP for disposing of the remaining Don Miller site on the south side of the 800 East Washington Avenue block. It recognizes that two particular project concepts – a Madison Sustainability Commerce Center or Starting Block – have extraordinary strategic importance to Madison and the Capitol East District and may merit additional public efforts to bring to fruition.

Key Differences from RFP Process

This memo proposes a process with several key differences from the RFP process used on recent land-banking dispositions. Specifically staff is proposing to:

1. Give early exclusive preference to a Starting Block or Madison Sustainability Commerce Center concept
2. Delay architectural and design submittals until land-use approvals are submitted
3. Establish specific criteria to qualify as a buyer
4. Establish a no negotiation “Fair Notice” period to allow potential buyers to assemble offers; refrain from establishing a deadline (essentially issue an ongoing request for offers to purchase)

Background

The Don Miller sites were purchased under Madison’s land-banking program. The land banking guidelines adopted by the Common Council state that “Properties will be immediately available for sale or lease upon acquisition by the City.” However, it has been the practice of the City to issue Requests for Proposals to ensure a transparent and open process for selling land to private parties. An RFP for the block in question was previously issued and responses vetted, but the process failed to result in a development project. The Capitol East District Staff Team believes that a new approach should be employed for the disposition of the final site on the south side of the 800 block of East Washington Avenue. Unlike some areas, the Capitol East District has engaged in extensive planning and community engagement resulting in a well articulated vision for the area. Since this planning, two conceptual projects have emerged – a Madison Sustainability Commerce Center and Starting Block, an entrepreneurial hub – that could be catalytic in realizing the vision for the Cap East District. This proposed process will enable the City to attempt to realize the opportunities presented by a Madison Sustainability Commerce Center or Starting Block concept and to be nimble in taking advantage of other opportunities to implement the area vision.

Madison Sustainability Commerce Center and Starting Block Opportunities

The City, in partnership with the HUD and the Capital Area Regional Planning Commission, has studied the feasibility and continues to plan for the creation of a **Madison Sustainability Commerce Center (MSCC)**. (Background on this concept can be found at

<http://www.cityofmadison.com/planning/capitoleast/sustainabilitycenter/>)

A MSCC concept is envisioned as privately developed and owned 50,000-75,000 square feet commercial office and flex/tech building. In an effort to help promote sustainability, the city hopes a MSCC concept will be an energy-efficient facility incorporating the latest in green building technologies.

In addition to traditional employment center amenities, a MSCC may provide shared space for collaboration between tenants and outreach to the broader Madison community. The key objectives the city has envisioned to date include:

- The development of a high-performance commercial building, showcasing the latest in sustainable building technologies
- The collaboration, through co-location, of firms in industries with an environmental sustainability focus, along with their service providers
- The ability to showcase, educate and engage the Madison community on industries and technologies focused on environmental sustainability

Starting Block is a privately planned entrepreneurial hub with a goal to help startups access affordable, flexible office and co-working space, mentoring, education and training, and plug into the broader entrepreneurial community. Starting Block will provide a permanent home for Sector 67, co-working space, short-term and flexible office space for young start-ups, programming and community space, and potentially house investors and accelerator programs such as Gener8tor. The facility will provide Madison-based startups with affordable, flexible office and co-work space, accelerator support, peer and mentoring resources, education and training, and community building activities.

The City recognizes that either of these project concepts may include ancillary or complementary uses such as restaurants, cafes, daycare, etc.

Challenges of issuing an RFP for the south 800 block of East Washington Avenue

Unlike the north side of East Washington Avenue, the south side of the street is planned for employment uses. Where multi-family residential projects can be planned and financed on a speculative basis, commercial uses cannot. To obtain financing for commercial projects, lenders are requiring pre-leasing of up to 75% of a building. This means that the private sector will not be able to acquire the site unless a substantial user(s) is interested during the right window of time. If the City issues an RFP for the south block of 800 East Washington Avenue, it is likely to take approximately 9-12 months to create a committee, draft and issue an RFP, receive responses, and select a developer. In addition, projects such as Starting Block and MSCC may have additional obstacles to overcome that may put them at a competitive disadvantage in an RFP process, even though they are potentially much more strategically important to the City. There are three potential risks for a traditional RFP process:

1. If an end-user exists and is actively looking for a site, the time frame for an RFP can easily exceed the parameters their schedule allows. Hence the City can risk losing active prospects.
2. Developers without end-users may seek to tie-up the land for extended periods of time while they search for an end-user. During this period, the City may lose other opportunities from active prospects.
3. Projects that may require longer periods to secure a more constrained group of like-minded tenants (such as MSCC) or that require additional time for fundraising to subsidize quasi-public benefits (Starting Block or MSCC) may not be able to compete in a traditional RFP process.

Alternative Two-Stage Proposal

The Capitol East District Alders and staff team have worked in consultation to develop a proposed two-stage process that balances the need to:

- Recognize the strategic importance of supporting either MSCC or Starting Block (or both) in the Capitol East District
- Ensure an open, fair, transparent process that allows any interested party an opportunity to acquire the land
- Allow the City to respond to viable commercial interest in the site on a market-compatible timeline
- Prevent granting “indefinite options to purely speculative ventures” (in accordance with land banking guidelines)

To accomplish these objectives, the City would:

1. Create a Capitol East District Committee comprised of two neighborhood alders in the 2nd and 6th districts, two alders at-large, a Marquette Neighborhood representative, a Tenney-Lapham Neighborhood representative, a business representative, a citizen, and a member with real estate expertise.
2. Project team(s) seeking to construct a MSCC or Starting Block concept will have three months to submit a progress report to the committee.
3. After reviewing any MSCC or Starting Block progress report(s) received within three months, the Committee may establish a timeframe and reporting requirements and give one project team the exclusive right to develop proposal that meets timeframe and reporting requirements established by the Committee. The Committee may extend the timeframe as needed if they determine the project team is making adequate progress.
4. If the project team develops the project to a satisfactory point, the Committee may direct staff to negotiate a letter-of-intent to be introduced to the Common Council as a recommendation for consideration.
5. If the initial project team fails to satisfactorily develop their proposal, the Committee may grant another MSCC or Starting Block project team the exclusive right to develop a proposal, repeating the process until a MSCC or Starting Block project is recommended to Council or until last timeframe expires and the committee determines it is not in the City’s best interest to grant additional extensions or select new MSCC or Starting Block project teams.
6. At such time, the Committee may declare the property for sale. Staff will announce this step and initiative appropriate marketing steps.
7. There will be a one-time 45-day “Fair Notice Period.” This 45 day period is intended to ensure that any party who may have an interest in the property has sufficient time to conduct tenant discussions and prepare an offer-to-purchase. During this period, City staff will not conduct any negotiations regarding the property.
8. After the expiration of the Fair Notice Period, staff will begin discussions with any Qualified Buyers (see below) who submit offers-to-purchase. Offers-to-purchase will include proposed terms, identify users, identify conceptual uses and space program, but will not include architecture or design until required through the typical land-use processes.
9. Staff will present offers from Qualified Buyers to the Capitol East District Committee (which may meet in closed session if necessary).
10. Staff, in consultation with the Mayor and the Capitol East District committee, may reject any offer that is judged non-viable or that deviates substantially from adopted plans.
11. If multiple viable, plan-consistent offers are received from Qualified Buyers during the Fair Notice Period, staff will discuss offers with Qualified Buyers and present all offers from all Qualified Buyers to the Capitol East District Committee who will make a recommendation to the Common Council on which offer to accept, if any. If multiple offers are not received, the staff will present offers to the Capitol East District Committee as they are received and negotiate as directed. When

the Committee recommends accepting an offer, the negotiated letter-of-intent will be advanced to the Common Council for consideration. This process will repeat indefinitely until such time as the property is sold or otherwise developed.

Qualified Buyer

Staff will only negotiate with qualified buyers and only after the expiration of the initial Fair Notice Period.

Qualified Buyers are defined as buyers that:

- Are proposing an employment-anchored use (with a preference for technology-related employment and excluding uses that are solely retail and/or hospitality)
- Will purchase the entire south 800 East Washington Avenue property in a single-phase take-down (The City may consider long term ground leases or co-development opportunities as well).
- Intend to construct a building of at least 3 stories (in accordance with Urban Design District #8 guidelines)
- Can demonstrate to the satisfaction of the Economic Development Division staff (typically through a letter-of-intent) a tenant commitment of at least 50% of net leasable floor area
- Can demonstrate financial strength and development experience
- Will post at least 1% earnest money (if applicable)