

**Request for City Council Committee Action from the Department of
Community Planning & Economic Development - CPED**

Date: March 4, 2008

To: Council Member Lisa Goodman, Chair, Community Development Committee

Subject: Land Sale Public Hearing for Bina Encroachment Parcel

Recommendation: Approve the partial sale of 427 Cedar Avenue South and grant of easement to Bina Investment Group, Inc. for \$13,160.00 plus certain costs.

Previous Directives: CPED acquired 427 Cedar Avenue on December 31, 1986.

Prepared by: Judy Cedar, Senior Project Coordinator, Phone 612-673-5025

Approved by: Charles T. Lutz, Deputy CPED Director _____

Catherine A. Polasky, Director Economic Policy
& Development _____

Presenters in Committee: Judy Cedar, Senior Project Coordinator

Financial Impact

- Other financial impact: Provides for financial compensation to the City of Minneapolis for an illegal encroachment.

Community Impact

- Neighborhood Notification: The West Bank Community Coalition opposes the sale of the subject encroachment parcel. WBCC has issued a resolution that is incorporated within this report. Also, WBCC requests that this legal matter be referred to outside counsel to try and achieve a remedy different than the one recommended in this report. The encroachment issue was formally presented to West Bank Community Coalition (WBCC) on July 17 and September 12, 2007.

This legal issue was formally presented to Cedar Riverside Business Association (CRBA) May 17, July 19, and September 18, 2007. CRBA is extremely disappointed that the encroachment happened. However, that organization did vote to support an equitable settlement between the City and Bina Investment Group in order to remedy the encroachment.

Staff also met with West Bank CDC on May 15, 2007, to discuss their concerns related to the encroachment as it relates to the future development of the Dania Hall Site. Staff has provided the community with periodic updates, whenever appropriate, throughout the past 18 months.

- **City Goals: CONNECTED COMMUNITIES** In five years, Minneapolis will be a connected collection of sustainable urban villages where residents will live within walking distance of what they need or of public transit; there will be a connected network of transportation options; streets will be destinations; a mix of unique small businesses will be thriving; and Minneapolis' neighborhoods will have unique identities and character. More specifically, the Dania Lot, 427 Cedar, is currently encumbered by the unresolved encroachment issue. The sale of the encroachment parcel to Purchaser will allow the City to move on and market the Dania Site for new development, thus making the City goal of Connected Communities a reality for the site.
- **Sustainability Targets:** The sale of this sliver of land does not directly address any of the Sustainability Targets approved by City Council in 2006.
- **Comprehensive Plan:** The encroachment encumbers the Dania Lot. The Dania Lot will become available for new development (which will need to conform to the Comprehensive Plan) once the encroachment is cured. The Bina properties do conform to the Comprehensive Plan.
- **Zoning Code:** Zoning for the 427 Cedar property and Bina's properties is C3A/Community Activity Center District with a PO/Pedestrian Oriented Overlay District.
- **Living Wage/Business Subsidy Agreement** Yes____ No √
- **Job Linkage** Yes____ No √
- **Other:** On October 9, 2007, the Planning Staff completed a Land Sale Review of this parcel and approved the proposed sale to remedy this encroachment. The City Planning Commission approved the proposed land sale on January 14, 2008, stating that the sale of this property as a remedy to an encroachment is not inconsistent with the Minneapolis Plan and Franklin-Cedar/Riverside Transit Oriented Development Master Plan.

Supporting Information

<u>Parcel</u>	<u>Address</u>	<u>Sale Price</u>
CR 28-7A	427 Cedar Avenue South (partial)	\$13,160 + certain costs

Purchaser

Bina Investment Group, Inc.
 413 Cedar Avenue
 Minneapolis, MN 55413

Proposed Development

There will be no new development associated with this land sale. The purpose of this sale is to provide a remedy for an existing encroachment. The dimensions of the parcel are 2.55 x 95.03 feet and the area is 242.23 square feet. The sale includes the grant of an additional easement for underground building footings. The

The City of Minneapolis is the sole owner of 427 Cedar and retains all legal rights to this property. CPED staff is ready to issue a Request for Proposals to seek development proposals for the Dania Hall Site in 2008, pending the completion and approval of the Small Area Plan for Cedar Riverside (anticipated in March 2008). The Small Area Plan process has been ongoing throughout 2007.

Financial Terms of Sale

Bina Investment Group, Inc. (the "Purchaser") will buy the encroachment parcel and associated easement with cash.

In addition, the Purchaser is required to execute a Settlement and Release Agreement that, in part, requires the Purchaser to make the following modifications to their building:

- remove or relocate all HVAC vents which face the Dania Lot;
- remove or relocate the electrical wires and any other utility conduit which encroach upon, beneath or over the Dania Lot; and,
- remove or relocate all decorative columns that encroach upon, beneath or over the Dania Lot.

Lindstrom Construction Company completed the above-listed modifications this past summer.

The cost to the Purchaser for purchase of the subject parcel includes penalty costs that are not normally associated with a closing. The following chart shows a listing of costs:

Sale Component	Description	Value
Value of Encroachment Damaged Parcel	262.42 square feet	\$11,000
Value of Easement Damaged Parcel	144.16 square feet	\$2,160
Subtotal FMV Sale	Established by Appraisal	\$13,160
Footings Easement		
Dania Site Future Design & Construction	Includes estimated additional costs for design, grouting under footings and construction	\$10,000
Inconvenience Penalty		\$15,000
Subtotal Footings Related		\$25,000
Consultant/Services		
Surveyor	Survey of the encroachment, utility placements and	\$7,999

	proposed subdivision of parcels	
Appraisal	Costs to determine FMV of Encroachment Parcel and Easement Parcel	\$3,600
Application for Minor Subdivision	Application fee	\$200
Subtotal, Services		\$11,799
Reimburse Staff Salary & Fringe Benefits	Costs reflect estimation of total staff hours through land sale closing	\$25,543
TOTAL OF PURCHASE PRICE AND ESTIMATED CERTAIN COSTS		\$75,502

* Accrued costs in this report reflect approximate costs accrued, to date. These costs may increase prior to closing.

The following chart illustrates payroll staff hours that are subject to reimbursement by the Purchaser at the time of closing.

Reimburse Staff Hours	Description	Estimated Hours thru Land Sale Transaction *
Senior Project Coordinator	Coordinate encroachment remedy	120 hours
City Assistant Attorney	Legal counsel	98 hours
CPED Appraiser	Review appraisal & consult	12 hours
Professional Engineer	Coordinate survey work & provide engineering information	30 hours
Real Estate Coordinator	Coordinate closing and related documents	20 hours

*Employees are tracking their hours but this report shows projected, estimated hours February 2006 to actual closing.

A minor subdivision review and approval is required for sale. Upon approval of the land sale, a minor subdivision application will be submitted to CPED Development Services. Staff from City Planning, Development Services and Regulatory Services have provided input in negotiations of sale terms and they have previewed the proposed subdivision survey.

Pro/Con Analysis of Alternative Options to Cure Encroachment

Staff has identified four options for treating the encroachment issue as described within this report. The four options are listed in the addendum to this report together with pros and cons of each option. The first option is the option that staff is recommending for approval: Sell the Encroaching Parcel to Bina Investment Company (Bina).

Summary and Conclusion

Regulatory Services issued Violation Order to Permit BINB2001706 on February 22, 2006. This violation order pertains to the encroachment as described within this report. A Certificate of Occupancy cannot be obtained for the encroaching building until this violation is resolved. City staff has been in discussions with Bina to explore various means to cure the encroachment. As part of our analysis to develop a fair and equitable option to remedy this encroachment, staff obtained surveys and appraisals and sought professional perspectives from consultants and legal counsel. The community participated in discussions related to the various cure options. The final result is this report's recommendation to sell the encroaching parcel to the Purchaser at a price established by appraisal.

Addendum to Report for Land Sale, Bina Encroachment Parcel

Pro/Con Analysis of Alternative Options to Cure Encroachment

Option 1. Sell the Encroaching Parcel to Bina Investment Company (Bina).

This is the quickest remedy. The City of Minneapolis receives fair market value and additional payment that takes into account the damages caused by the encroachment. There have been other financial consequences to Bina because the building cannot receive a Certificate of Occupancy until a remedy is approved. The building has stood vacant and unused for 24 months.

Con - This option includes the permanent loss of a 2.55 foot strip of land from the Dania Site. This option is controversial with West Bank Community Coalition and is considered less than optimal with the Cedar Riverside neighborhood in general. Designs for the future development of the Dania Site are limited by a lot that is 81.45 feet wide rather than 84.00 feet wide. Even so, the initial site for Dania Hall was increased by the addition of the adjacent ½ of vacated 5th Street – nearly doubling the original size of the site.

Pro - The financial costs for this option are borne by Bina. The City will receive fair market value for the land and easement purchase and will also be reimbursed for costs of survey work, title work, appraisals, subdivision fees and staff time.

Option 2. File a lawsuit in court asking the judge to order the removal of the building.

This option allows a judge and jury to decide the resolution of the encroachment.

Con - The filing of a “notice of lis pendens” in court will render the Dania Site not available for development until the lawsuit is resolved. There is no way to know how long a lawsuit would take. Any countersuit would lengthen the court process. Consulting with outside counsel, filing pleadings, and going to trial are costs that would have to be borne by the City. Destruction of the encroaching new building (estimated demolition cost of \$75,000) may not be viewed as an equitable remedy in court.

Pro - It is an option that would have community support (at least in part). This option restores the 2.55 foot strip of land to the Dania Site **only** if the City prevails in the court settlement.

Option 3. Stop the process until sometime in the future when additional information is available, such as the Small Area Plan, the identity of a development for the Dania Site, etc.

Con - Once the Small Area Plan (SAP) is completed, the issue of the encroachment still looms, further delaying the issuance of a Request for

Proposals for the Dania Site. City Planning has determined that this encroachment issue is a legal issue rather than a planning or design issue. The City Planning Commission supports the recommended sale. Continuous delays of this matter could be perceived as arbitrary.

Pro – There have been no benefits identified with further delays.

Option 4. The City acquires the Bina property and combines it with the Dania site for development.

Purchaser (Bina) owns three building addresses under one Property ID #25-029-24-32-0011: 413 Cedar, 417 Cedar and 425 Cedar. The 425 Cedar building is the encroaching building and is identified as Lot 13 on the attached survey (Lot 13, Meldal and Sunde's Subdivision of Block 179, Town of Minneapolis). Acquisition of Lot 13 would add 2,183 square feet of land to the Dania site.

Con – Bina is unwilling to sell the 425 Cedar parcel to the City at a price less than \$1.4 million. The City would be responsible for maintenance of the vacant building and lot (or building demolition estimated at \$75,000 and the maintenance of a vacant lot) until a willing buyer could be identified. A source of funding for such acquisition, maintenance and potential demolition is not readily apparent.

Pro – The Dania Site would be a larger development site. This option would enjoy community support, at least in part.

**Authorizing the Sale and Grant of Easement
Disposition Parcel CR 28-7A**

WHEREAS, the City owns 427 Cedar Avenue South, Disposition Parcel CR 28-7A; and

WHEREAS, Bina Investment Group, Inc., herein known as the Purchaser, has entered into that certain Real Estate/Purchase Agreement with the City, agreeing to pay \$13,160 plus certain costs for a portion of the property and grant of easement; and

WHEREAS, the CPED Appraiser has determined this transaction price of \$13,360 plus certain costs to be fair diminution of land and fair grant of easement value and is consistent with accepted methods in aiding the City in determining the fair value for this transaction; and

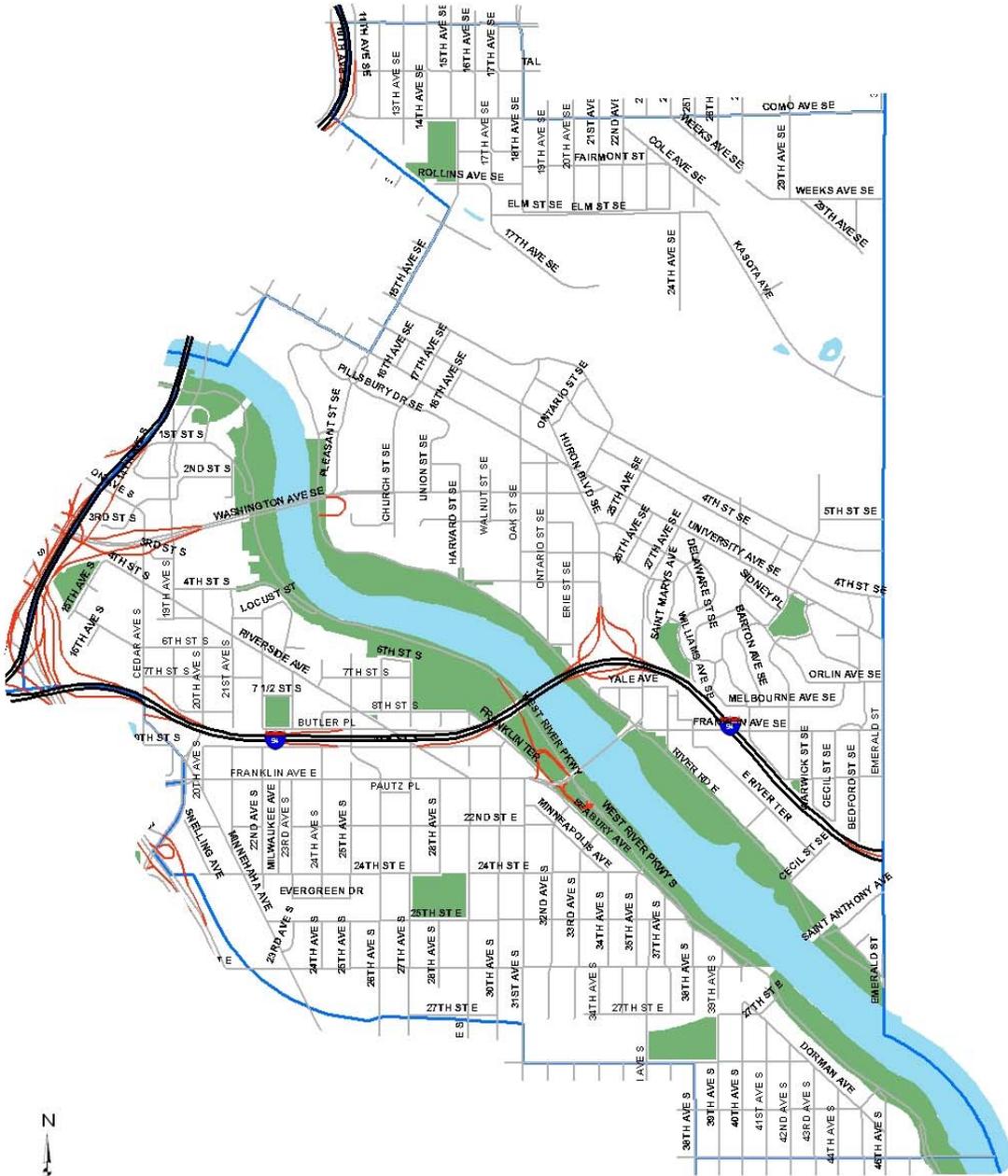
WHEREAS, pursuant to due notice thereof published in *Finance and Commerce* on February 22, 2008, a public hearing on this conveyance was duly held on March 4, 2008, at the regularly scheduled Community Development Committee meeting of the City Council, at the Minneapolis City Hall, 350 South 5th Street, Room 317, at 1:30 p.m., in the City of Minneapolis, County of Hennepin, State of Minnesota;

NOW, THEREFORE, BE IT RESOLVED that the proper City officers be authorized to execute a Quit Claim Deed and related documents for sale and grant of easement interest legally described as:

Parcel CR 28-7A: 427 Cedar Avenue South (partial)

The North 2.55 feet of Lot 14, Meldal and Sunde's Subdivision of Block 179, Town of Minneapolis. Together with an easement for building footing purposes over, under and across the South 1.40 feet of the North 3.95 feet of said lot 14.

WARD 2



TOTAL ACQUISITION COSTS INCURRED BY CPED ATTRIBUTABLE TO THE FOLLOWING PROPERTY:

Date: March 4, 2008
 Subject: Land Sale – Public Hearing
 Bina Encroachment Parcel
 Address: 427 Cedar Avenue South (partial)
 Purchaser: Bina Investment Group, Inc.

Disposition Parcel No. Acq Date	Address	Total CPED Costs	Less Sales Price	Write Off
CR28-7A 12/31/86	427 Cedar Avenue South (partial)	Unknown*	(-)\$13,160	Unable to Determine

*Acquisition costs unknown, part of the Cedar Riverside Land Company/First Trust Company of Saint Paul, as Trustee acquisition.

Re-Use Value Opinion	Less Sales Price	Write-Down
\$13,160	\$13,160	\$0

Write-Down
 Not applicable

Developer History with CPED: None

Developer Information:

- Single Individual(s)
- Married Individual(s)
- Limited Liability Partnership of the State of Minnesota
- Limited Liability Company of the State of Minnesota
- Corporation of the State of Minnesota
- Nonprofit Corporation of the State of Minnesota
- Other