



COUNTY OF ALLEGHENY

OFFICE OF THE COUNTY COUNCIL

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TO: PRESIDENT AND MEMBERS OF COUNCIL

FROM: JENNIFER M. LIPTAK

DATE: NOVEMBER 6, 2009

SUBJECT: CHIEF EXECUTIVE DAN ONORATO'S VETO OF COUNCIL BILL 5154-09, ENTITLED, AN ORDINANCE APPROVING THE SALE OF CERTAIN REAL PROPERTY OWNED BY THE COUNTY OF ALLEGHENY, PENNSYLVANIA TO A DEVELOPMENT GROUP COMPRISED OF: MASSARO PROPERTIES LLC; LANGHOLZ WILSON ELLIS, INC.; KRATSA PROPERTIES; AND TASSO KATSELAS ASSOCIATES, INC. FOR THE SALE PRICE OF \$4,900,000.00 FOR THE PURPOSE OF DEMOLISHING THE CURRENT BUILDING LOCATED THEREON AND CONSTRUCTING A NEW DEVELOPMENT INCLUDING A HOTEL, OFFICE BUILDING, AND PARKING GARAGE.

This memorandum is to inform you that on Friday, November 6, 2009, Chief Executive Dan Onorato returned to me, with his veto, Council Bill 5154-09 referenced above.

Attached is a copy of the bill and Chief Executive Onorato's written objection to the bill.

Article IV, Section 5(b) of the Home Rule Charter provides that County Council may override a Chief Executive veto by an affirmative vote of at least two-thirds of the Seated Members of Council and that the override vote must occur within 30 days of the veto, which means that Sunday, December 6, 2009, is the last day you could consider a vote to override the veto, otherwise the veto would be sustained.

A hardcopy of this information will be placed in your mailbox.



E-MAILED
11-6-09



DAN ONORATO
COUNTY EXECUTIVE

COUNTY OF ALLEGHENY

OFFICE OF THE COUNTY EXECUTIVE

101 COURTHOUSE • 436 GRANT STREET
PITTSBURGH, PA 15219
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November 6, 2009

The Honorable President & Members
Allegheny County Council
119 Courthouse
436 Grant Street
Pittsburgh, PA 15219

I hereby return, with my veto, Council Bill 5154-09. I have vetoed this legislation because it conflicts with several provisions of the Allegheny County Home Rule Charter.

Specifically, this legislation was amended in a way that has caused the final bill to conflict with Article IV, Section 5, Subsection C of the Charter. The ordinance, as amended, now contains two subjects, namely the sale of County-owned real property and also the establishment of a special account wholly unrelated to the sale of that property. In addition, the establishment of the fund is not clearly expressed in the title of the proposed Ordinance, which also violates this section of the Charter.

Further, this Ordinance, as amended, violates Article VII, Section 7 of the Charter, in that it has amended the County's 2009 Operating Budget. This legislation, as proposed by Council, directs a deposit of funds immediately without a corresponding revenue increase. This action has caused the Ordinance to violate Article VII, Section 7, Subsection C of the Charter, which requires any operating budget amendment to result in a balanced budget.

For these reasons, I have vetoed Council Bill 5154-09.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Onorato'.

Dan Onorato
Allegheny County Executive

cc: Mr. James M. Flynn Jr., County Manager
Mr. Michael H. Wojcik, Esq., County Solicitor

Bill No. 5154-09

No. _____

AN ORDINANCE

An Ordinance approving the sale of certain real property owned by the County of Allegheny, Pennsylvania to a development group comprised of: Massaro Properties LLC; Langholz Wilson Ellis, Inc.; Kratsa Properties; and Tasso Katselas Associates, Inc. for the sale price of \$4,900,000.00 for the purpose of demolishing the current building located thereon and constructing a new development including a hotel, office building, and parking garage.

Whereas, the County of Allegheny, Pennsylvania (the "County") is the owner in fee simple of certain real property located in the 4th Ward of the City of Pittsburgh, identified as Block & Lot Number 28-J-97 and known as 3333 Forbes Avenue, Pittsburgh, Pennsylvania 15213 (the "Property"); and

Whereas, an as-yet unnamed development group comprised of local real estate development firms: Massaro Properties LLC; Langholz Wilson Ellis, Inc.; and Kratsa Properties and local architecture firm Tasso Katselas Associates, Inc. (the "Development Group"), desires to purchase the Property from the County for the purchase price of \$4,900,000.00 (the "Sale") for the purpose of demolishing the current building located on the Property and constructing a new development thereon, which will include a hotel, an office building containing classroom space for Carlow University, and a parking garage which will also include retail space (the "Project").

WHEREAS, Article IV, Section 2 (k) of the Allegheny County Home Rule Charter AND Article 5-701.03 of the Administrative Code of Allegheny County vests the County's Council with the power and duty by ordinance to convey County owned land, buildings or other real or personal property owned by the County; and

WHEREAS, the County Manager has determined that it is no longer in the interest of Allegheny County to maintain the Property; and

WHEREAS, the County and the Development Group have agreed upon the consideration for the Property which the Department of Economic Development feels is fair and reasonable under the circumstances; and

WHEREAS, Allegheny County has a longstanding commitment to ensuring equality of opportunity for minority, women's and other disadvantaged business enterprises; and

WHEREAS, the Council of Allegheny County is of the belief that the sale of the Property will inure to the benefit of the citizens of the County, provided that adequate, verifiable

provisions are made for the participation of M/W/DBE entities during the construction of the development project described herein and throughout the lifetime of the Development Project;

The Council of the County of Allegheny hereby enacts as follows:

Section 1. Incorporation of Preamble.

The provisions set forth in the preamble to this Ordinance are incorporated by reference in their entirety herein.

Section 2. Terms Defined.

Terms used in the preamble to this Ordinance are herein used as therein defined.

Section 3. Approval of Sale and Project.

The County, acting by and through its County Council, hereby approves the Sale of the Property to the Development Group for the purchase price of \$4,900,000.00 for the purpose of undertaking and completing the Project, provided that the Development Group agree to adopt the County's goals for the participation of M/W/DBE entities during the construction of the Development Project and throughout the operation of the Development Project after construction is completed, and establish a means of verifying such participation. The proper officials of the County are hereby authorized to, in the name of and for and on behalf of the County, execute and deliver any and all contracts, agreements of sale, deeds, and/or other documents in order to consummate the Sale and convey the Property to the Development Group and/or the entity it forms for the purchase price of \$4,900,000.00, on terms determined as satisfactory to such proper officials; provided, however, that all such contracts, agreements of sale, deeds, and/or other documents shall be subject to review and approval by the County manager and approval as to form by the County Solicitor.

Section 4. Public Funding.

The approval contained within this Ordinance is contingent upon the Development Group neither soliciting nor accepting public funding in the form of grants or Tax Increment Financing for the new development project described herein.

Section 5. Establishment and Operation of Fund.

Allegheny County hereby establishes a restricted fund, to be known as the "Allegheny County Special Reserve Fund (hereinafter "Fund" or "the Fund"). The Fund shall consist of those specific accounts and investments as are identified for the purpose of this Ordinance. The Fund shall not be co-mingled with any other funds of the County or any other entity, and shall be operated and administered as follows:

- A. Deposits. The initial deposit into the Fund shall be the sum of \$4.9 million, which is the full amount of the proceeds of sale received from conveying the County property described in the preamble and Section 3 of this Ordinance. The County may, from time to time, make additional deposits into the Fund from any sale, lease or other disposition of County property, or from any sums received from any source other than taxation, unless said sums were received for particular purposes inconsistent with the Fund. All future deposits shall be made by motion or resolution of Allegheny County Council, duly enacted at a meeting lawfully assembled. Any unexpended and unappropriated interest shall be deemed a part of the principal of the Fund and shall be further deposited as principal into the Fund.
- B. Investment. The principal and any unexpended and unappropriated interest deemed to be principal pursuant to the terms of Subsection A of this Section, shall be invested and/or reinvested in funds, accounts and other investments consistent with the terms of all applicable federal, state, and local laws. The investment of any revenue from the Fund shall be authorized in advance by motion or resolution duly enacted by County Council, unless otherwise appropriated or expended by Council as set forth in this Ordinance. Such motion shall be continuing unless otherwise stated, or limited by the terms or nature of the investment itself, or unless otherwise abrogated by Council.
- C. Appropriations. The County may make appropriations from the Fund under the following circumstances only:
1. County Council may from time to time by motion or resolution duly enacted, authorize the appropriation and expenditure of all or any part of the interest earned or to be earned by the Fund for any lawful purpose. If Council has not authorized the appropriation and expenditure of interest pursuant to the terms of this Subsection or does not act to do so within 60 days from the payment or credit of such interest to the Fund, then such interest shall be deemed unexpended and unappropriated and made part of the principal of the Fund, pursuant to the terms of Subsections A and B of this Section. The motion required under the terms of this Subsection may be enacted in advance of the payment or credit of interest revenue to the Fund.
 2. Once each fiscal year, County Council may, by resolution passed by at least two-thirds of the seated Members of Council, authorize the appropriation of not more than the greater of \$100,000 or 10% of the principal from the Fund for, and only for, the specific purposes set forth in Subsection D of this Section. In the event that the County desires to expend and appropriate more than the greater of \$100,000 or 10% in any fiscal year, or if Council, after already exercising the once per fiscal year appropriation and expenditure, desires to exercise another appropriation of principal from the Fund; the same may be so undertaken provided a resolution is adopted without dissenting vote cast by any Member of Council present for such vote.

D. Any and all appropriations and expenditures of principal from the Fund shall be limited to the following:

1. As part of a plan of economic development for all or any part of Allegheny County.
2. In conjunction with, or as security for, any loan or bond issue which is for capital purposes.
3. For tax anticipation borrowing purposes, provided the moneys so appropriated are subject to the same constraints and repayment provisions as are standard and customary for tax anticipation borrowings within the Commonwealth of Pennsylvania; and provided further, no monies from the Fund shall be used for tax anticipation borrowing purposes until all outstanding sums for such purposes have been first re-paid.
4. For any capital expenditure lawfully undertaken by the County.

Notwithstanding any provision in this Ordinance to the contrary, no part of Fund principal may be used, directly or indirectly, for the payment of any item which is lawfully or traditionally a charge to the County's general fund, including, but not limited to, the following: salaries or other compensation to any employee, officials, representatives, agents or independent contractors; any debt, charge, claim or damage sought against the County; or any other sum which may be owed the County and not explicitly listed in this Section.

E. Submittal of Plan of Repayment. In addition to the provisions of Subsection D.2. to this Section, each and every appropriation and expenditure of principal of the Fund must include, as part of the authorizing resolution, a written plan of repayment consented to and approved by the person or entity charged by the County with primary responsibility for its financial management. In the event that the plan or repayment extends for more than one calendar year, the plan must included a provision remitting to the Fund interest on the principal so appropriated and expended. Said interest must be at a rate at least equal to the discount rate being charged by the County's depository to its preferred customers upon the date of enactment of the resolution.

F. Terms Defined. For the purposes of this Ordinance, the following terms shall have the following meanings, unless context clearly indicates otherwise:

1. "Economic Development" shall mean any project enumerated in the Municipality Authorities Act of 1945.
2. "Capital" as used in conjunction with "purpose" or "expenditure" shall have the same meaning generally ascribed to the term "capital" by generally accepted accounting principles, but shall not include any automobile, truck, or other vehicle, nor any depreciable tangible personal property.

Section 6. Effective Date.

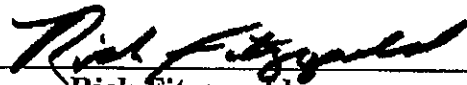
The provisions of this ordinance shall take effect immediately and shall remain in effect unless otherwise amended or terminated by ordinance passed without any dissenting vote(s) cast by any Member of Council present at the meeting at which such ordinance receives its second reading and final vote.

Section 7. Severability. If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.

Section 8. Repealer. Any resolution or ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.

Enacted in Council, this 4th day of November, 2009.

Council Agenda No. 5154-09


Rich Fitzgerald
President of Council

Attest: 
Allegheny County Council

Chief Executive Office _____, 2009

Approved: _____
Dan Onorato
Chief Executive

Attest: _____
Donna Fodi
Executive Secretary

SUMMARY OF LEGISLATION
SALE OF PROPERTY AT 3333 FORBES AVE., PITTSBURGH, PA 15213
SUBMITTED FOR COUNCIL MEETING SEPTEMBER 8, 2009

The approval of the Council of the County of Allegheny, Pennsylvania is requested for the sale of certain real property owned by the County and located in the 4th Ward of the City of Pittsburgh, identified as Block & Lot Number 28-J-97 and known as 3333 Forbes Avenue, Pittsburgh, Pennsylvania 15213 (the "Property"), to an as-yet unnamed development group comprised of local real estate development firms: Massaro Properties LLC; Langholz Wilson Ellis, Inc; and Kratsa Properties and local architecture firm Tasso Katselas Associates, Inc. (the "Development Group").

The purchase price for the Property shall be \$4,900,000.00, and the Development Group shall demolish the current structure located on the Property and shall construct a new development consisting of a hotel, an office building (including classroom space for Carlow University) and a parking garage (including retail space). Approval has been requested and granted for the County to enter into any and all contracts, agreements of sale, deeds and/or other documents necessary to consummate the sale and convey the Property to the Development Group.