

ITEM #:	<u>17</u>
DATE:	<u>07-23-24</u>
DEPT:	<u>Planning & Housing</u>

COUNCIL ACTION FORM

**SUBJECT: BAKER SUBDIVISION - SECOND AMENDMENT TO RESTRICTIVE
COVENANTS FOR AFFORDABLE HOUSING**

BACKGROUND:

Since around 2007, the City has had a partnership with our local Habitat for Humanity (Habitat) to create homeownership opportunities for lower-income households, mostly utilizing the City's federal CDBG funding. To date, the City and Habitat have partnered on 15 properties throughout the City.

This past year, the City entered into agreements with Habitat for it to acquire lots and construct eight single-family homes in the Baker Subdivision. Habitat received a HOME-ARP grant through the Iowa Finance Authority (IFA) to construct six of the homes. The IFA grant requires Habitat to construct the six homes within a specific timeframe, which would then be reimbursed as the homes are constructed. Habitat would receive an additional up to \$20,000 of down payment assistance for each homebuyer. Like the City's CDBG/HOME grant requirements, the homes must be sold to qualified LMI households whose annual income is 80% or less of the Ames Area Income Limits.

The City's goal with development of affordable housing and with Habitat has always been to add recapture and/or resale provisions to its homebuyer programs to ensure longer-term affordability for LMI households. The affordability period has varied over the years depending on the program. **The Baker agreements with Habitat state that the City must verify that purchasing households meet the income limits of the CDBG/HOME programs before Habitat can close on the purchase of a lot from the City and Habitat can then sell to the qualified homebuyer.** To assist Habitat in finding qualified buyers, City staff began accepting and processing applications for potential buyers that are at or below the 80% income requirements and sending that list of potential buyers to Habitat for their consideration.

From the beginning of the City's relationship with Habitat, the City has considered Habitat's mission consistent with City affordable housing goals and requirements. Habitat sells to qualified homebuyers and provides 0% interest rate mortgages and has always had a "first right of refusal" provision in its mortgages that gives it the opportunity to purchase the property back and resell it to another LMI homebuyer in the event that the first LMI buyer would like to sell the property.

Recapture/Resale provisions in agreements with Habitat have typically been for 10 years; however, for the Baker Subdivision, it was increased to 20 years to reflect the increased level of investment. The eight Baker agreements also include the qualification for and timing of first-time homebuyer requirements. **In these agreements with Habitat, the City has continued to require that Habitat's mortgage requirement grants to Habitat a right of first refusal with the homebuyer. Also, to track the status of the term of the LMI buyer, a provision is included that Habitat must notify and obtain consent from the City before Habitat can assign its mortgage to another Lender. Staff learned at the beginning of July that these provisions have not been followed and that the City's interests have not been met.**

In recent conversations with Habitat, it has come to staff's attention that the following has occurred:

1. Habitat has assigned at least four mortgages (for properties located outside of Baker Subdivision) to First National Bank without City notification or consent.
2. Staff was also informed on July 22nd, that the 320 Wilmoth property (Lot 7 Baker Subdivision) was assigned to First National Bank without City consent on July 19th, after conversations with Habitat staff about the requirements of the agreement.
3. After the City closed with Habitat on 316 S. Wilmoth in May, Habitat failed to notify the City that the property at 316 S. Wilmoth could not be sold to a qualified buyer as planned and the property is currently vacant. Habitat has been given written notice of a date by which to have the property sold to a new qualified buyer: on or before August 31, 2024.
4. Habitat has shared that due to the slow turnaround in receiving its HOME-ARP grant reimbursements, it wants the City to consider allowing Habitat to assign/sell to First National Bank all future mortgages without further City consent.
5. Habitat has also indicated that although its first right of refusal provisions have consistently been in our agreements and have been effective, depending on the timing of when the family would want to sell the property, Habitat may or may not be in a position to act upon that option in the future. This is due to Habitat, as a local affiliate, considering getting out of the mortgage business altogether. If Habitat will not exercise its right of first refusal, the City has limited ability to ensure that low-income buyers will continue to own the property through the expected affordability period.

In light of these recent occurrences and conversations with Habitat staff, City staff has concluded that in order to protect the City's interest in the affordable housing programs and to preserve the City's ability to maintain housing for LMI households for the designated affordability periods, it would be in the City's best interest to modify the Baker Subdivision Covenants. The modified covenants would obligate all the lots designated for affordable housing to remain for low-income households, rather than relying on other partners to protect our interest.

Therefore, staff has prepared a Second Amendment to the Restrictive Covenants for the Baker Subdivision that is attached for the City Council's consideration and approval. Staff is requesting Council approval of this amendment to the covenants prior to the closing on another property within Baker Subdivision, which is scheduled for August 7. The Council should note that Lot 7 has been sold by Habitat to a buyer; this amendment to the restrictive covenants would apply to this lot as well.

In regard to assigning the future mortgages to First National Bank without notification or consent of the City, staff recommends that this provision remain in the agreements with Habitat. However, staff recommends that City Council clarify that the Housing Coordinator can approve future assignment request after consultation with the City's Legal Department.

The 320 Wilmoth and the four mortgages (at least) outside of Baker Subdivision that have been assigned by Habitat to First National Bank without City consent are not addressed by this Council Action Form. These mortgages are not time-sensitive to resolve; staff will investigate the responsibilities of the prior agreements and these mortgages and bring a staff report to the City Council at a later date with options to address these properties and their mortgages.

ALTERNATIVES:

1. Approve a Second Amendment to the Restrictive Covenants for the Baker Subdivision related to affordability periods and authorize the Housing Coordinator to approve requests from Habitat to assign mortgages within Baker Subdivision to First National Bank after consultation with the City Legal Department.
2. Modify the proposed amendment to the Restrictive Covenants for the Baker Subdivision.
3. Do not approve a Second Amendment to the Restrictive Covenants for the Baker Subdivision.

CITY MANAGER'S RECOMMENDED ACTION:

In order for the City to protect its interest in its affordable housing programs and preserve the City's ability to maintain housing for LMI households for the designated affordability periods, it would be in the City's best interest to modify the Baker Subdivision Covenants to obligate that all of the lots designated for affordable housing be restricted to low-income households. This would reduce reliance on outside agencies to enforce the City's affordable housing interests. Clarifying the role of the Housing Coordinator to approve mortgage assignments will also assist in prompt review of mortgage changes requested by Habitat.

Therefore, the City Manager recommends that the City Council adopt Alternative #1, as described above.

ATTACHMENT(S):

[Second Amedment to Restrictive Covenants for Baker.pdf](#)