



Chestnut Neighborhood Revitalization Corporation  
2211 East Martin Luther King, Jr. Blvd.  
Austin, TX 78702

*"A neighborhood of caring and sharing"*

September 27, 2016

Ms. Rosie Truelove  
Interim Director, NHCD, City of Austin  
1000 East 11<sup>th</sup> Street  
Austin, TX 78702

***Re: Additional Funding Needs for The Chicon***

Dear Ms. Truelove:

I am writing in my capacity as President of the Chestnut Neighborhood Revitalization Corporation (CNRC) to give you an update on CNRC's mixed-use, mixed-income development in East Austin, known as The Chicon, and to request additional funding from the Austin Housing Finance Corporation that is critically needed for the project to move forward and be completed.

As you know, The Chicon is well underway. We have poured our foundation and podium, and have many materials on-site for finishing construction. Moreover, we have entered into sales contracts and obtained earnest money on all but 1 of the 28 residential units and all but 3 of the 8 commercial units. **Unfortunately, there are several serious, unforeseen issues that have prevented our ability to move forward.** First, there is an issue with the utility work at the site and with sidewalk access. The second issue is related to the title of one of the properties CNRC purchased for this project.

**Utility Work & Sidewalk Access**

According to OSHA standards, overhead electric lines cannot be within ten feet of any person or building. At the same time, a variety of City of Austin zoning and development regulations for our site prevent the building from being placed any further away than ten feet from the overhead electric lines. This City of Austin requirement means The Chicon *cannot* be constructed within the OSHA guidelines. For example, a worker who needs to apply masonry to the exterior of the building would violate OSHA by being less than ten feet from an overhead electric line while on scaffolding.

There are numerous examples of this situation around Austin. New construction along South Lamar Boulevard, for example, faces the same issue. In *most cases*, Austin Energy has allowed a project to raise the lines temporarily or "swing" them out and away from the building during construction, then restore the lines to their original position after construction. At The Chicon, after several months of negotiations, Austin Energy has determined that these options are not desirable, and that the power lines in front of the Southeast Building must be buried. **The estimate for this work is \$1.1 million.** The entire development team worked diligently to come

up with a less costly solution, but unfortunately we have no alternative.

In addition to unexpected utility work, we are also facing unexpected sidewalk costs related to the zoning and code. A Mixed Use Development must have a sidewalk in front of it in order to meet land development code requirements. Regardless of who constructs them, sidewalks are in the right-of-way and are owned by the City of Austin. The use of sidewalk space by a private citizen or company requires a licensing agreement with the City.

It was our understanding that this type of agreement was required for *optional* sidewalk uses – such as placing planters, benches or other amenities in the sidewalk space. In our view, these were optional items that could be added at a later date as funding allowed. However, it has come to our attention that a licensing agreement is actually required for items that are not optional – planters and landscaping required by code and awnings required by Green Building, for example. **The cost of this work is in excess of \$150,000.**

### **Land Title Issues**

During the final stage of due diligence for the Construction Loan, the lender's attorney discovered an error in one of the deeds. The error meant that CNRC did not own all of the property on which it was preparing to build. A scrivener's error in the deed for one of the lots meant that in effect, there was a "donut hole" in the land that was not owned by CNRC. The title company took full responsibility for this issue and worked diligently to fix it. However, the cure for the title issue took more than four months, and during this time we were unable to move forward with construction, nor with closing on our construction loan. We also incurred costs that are not covered by the title insurance. As a result we have increased legal costs, increased general conditions (keeping the general contractor on the site) re-stocking costs for materials and a variety of costs related to re-mobilizing subcontractors.

We now have our final estimated bids from all engineers, the general contractor and subcontractors for the electrical work, the licensing agreement and costs related to the delays. The breakdown of the work is as follows:

#### *Changes to Power Lines*

Austin Energy Fee for Design and Line Relocation	\$179,467
Additional Permits	\$18,000
Engineering and Architecture Work	\$150,000
Traffic Control	\$32,456
Trench Excavation and Fill	\$796,000
Alley Power Line Relocation	\$9,258
Potholing to Locate Lines	\$35,038

#### *Licensing Agreement & Use of Sidewalk*

Licensing Agreement	\$150,000
Legal Review of Licensing, Adjustments to Condo Docs	\$25,000
Grading Changes and Revisions to Plans re Streetscape	\$38,056

#### *Title Costs*

General Conditions for Contractor Delays	\$316,725
<b>TOTAL</b>	<b>\$1,750,000</b>

We are writing to respectfully request an additional \$1,750,000 to go towards this unexpected work, and therefore, permit construction to resume. CNRC has executed sales contracts with more than 25 buyers for the commercial and residential spaces. Prices on all commercial units and any market-rate residential units have been raised to the maximum the market will bear. Therefore all funds will be used to support affordable housing for low-income homebuyers.

Furthermore, the issues we have encountered point to the need to modify the land development code to allow more infill development – a goal of Imagine Austin. Our team met with City planners for several hours to review our issues and how the new land development code could ameliorate the issues we have encountered for future infill development projects.

I appreciate your consideration of this urgent request. If you have any questions, contact me at [sean@pegasusplanninganddevelopment.com](mailto:sean@pegasusplanninganddevelopment.com) or 512/300-7270.

Sincerely,

A handwritten signature in black ink, reading "Sean Garretson". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Sean Garretson, AICP  
Board President  
Chestnut Neighborhood Revitalization Corporation (CNRC)