

Town Council approved the “Downtown Development Project Agreement” (“DDPA”) for the “Academy Park Project” to help fulfill a long-held vision for Cary’s downtown and under authority of N.C.G.S. 160A-485.3 *Downtown development projects* (the “Statute”). The Statute authorizes cities to sell city property as part of a downtown development project without following the typical property disposition requirements of Article 12, Chapter 160A. Instead, a city may sell property subject to covenants, conditions and restrictions at private sale for its *appraised* value.

The Academy Park Project is located in the South Academy Subarea, one of six Downtown subareas identified in the Imagine Cary Community Plan (the “ICCP”). This Subarea serves as Cary’s cultural and historical center and includes the block formed by East Park Street, South Walker Street, Walnut Street, Kildaire Farm Road and South Academy Street. The ICCP identifies this block as having Opportunity Areas for the Downtown Park, Regional Library and Mixed-Use Development. Town Council recognized this block as the “Park/Library/Mixed-Use Community Development Project Area” (or “Area”).

Private developers recognized the opportunity presented by the ICCP for private mixed-use facilities in the Area and several asked to work with Cary to develop the mixed-use facilities. Cary ultimately interviewed three potential developers. One of the developers was a team consisting of Triangle Real Estate Company, Knier and Associates and Mackenan Investment Group, LLC, (collectively “Academy Park Cary” or “APC”). Cary chose to negotiate, and ultimately contract, with Academy Park Cary because APC demonstrated a commitment to ensure that the private mixed-use facilities harmonized, integrated and connected with the public facilities in the Area (the Park, Wake County Regional Library and parking deck) and with neighboring development. Other important reasons Cary chose Academy Park Cary are described in the Recitals for the DDPA on page 5 of the DDPA.

Under the DDPA Cary will impose carefully crafted covenants, conditions and restrictions (“CCRs”) on the property that will be sold to APC (New Lot 1 and New Lot 2 or the “Lots”) that, together with requirements in the DDPA, impose substantial requirements on Academy Park Cary. As the appraisal for New Lot 1 and New Lot 2 states:

*The new lots are proposed to be sold subject to **extensive CC&Rs that are outlined in 19 pages that require very specific design and construction specifications** that are intended to provide a visual “wrap” around the parking deck and **with significant upgrades over the typical market that will make construction of these required buildings more costly than a similar sized building in this area.** The CC&Rs also includes a required **lot reservation ongoing expense for spaces in the parking deck.** Another important point is that the CC&Rs have **specific requirements on the timing of construction that would require development to start regardless of typical market timing considerations.** (emphasis added)*

Cary also retains certain rights to repurchase the Lots and limits Academy Park Cary’s ability to sell the Lots or assign the DDPA.

The tax value of the Lots and other sales are not indicative of the value of these Lots because of the extensive restrictions on their development. The appraisal explains:

*Considering the value based on a traditional sales comparison approach does not work for property subject to significant CC&Rs unless you can find sales that are subject to similar CC&Rs. **As the CC&Rs for this site are very specific to this site then a land sales comparison approach would necessarily provide an unrealistic value as the land being sold does not have the same development rights as similar land in the area.** I have therefore shown a traditional sales comparison approach in this report to illustrate the value with no restrictions, but I have relied on a land residual valuation to determine the value of the site subject to the significant limitations of the CC&Rs. (emphasis added)*

North Carolina law contemplates and authorizes projects like the Academy Park Project, permitting cities to follow specific authority like the Statute described above to accomplish important redevelopment goals. The Resolution and DDPA included on this web page provide more detail about the Academy Park Project. The recitals contained in both the Resolution and the DDPA help explain the history and importance of this Project.