

Agenda

Minnetonka Economic Development Authority

Monday, April 10, 2017

Following the Regular Meeting

Council Chambers

1. Call to Order
2. Roll Call: Bergstedt-Wagner-Ellingson-Allendorf-Acomb-Wiersum-Schneider
3. Approval of Agenda
4. Approval of Minutes: October 24 and December 5, 2016 EDA meetings
5. Business Items:
 - A. Resolution approving the subordination of a Contract for Private Development and Declaration of Restrictive Covenants to HUD

Recommendation: Adopt the resolution
6. Adjourn

Minnetonka EDA meetings are broadcast live at www.eminnetonka.com and on cable channel 16. Replays of this meeting are available anytime at www.eminnetonka.com or on channel 16 on the following days and times:
Sundays at 9 p.m., Wednesdays at 12 p.m. and Fridays at 9 a.m.
For more information, please call 952.939.8200 or visit www.eminnetonka.com.

Minutes
Minnetonka Economic Development Authority
Monday, October 24, 2016

1. Call to Order

Schneider called the meeting to order at 10:27 p.m.

2. Roll Call

Commissioners Bob Ellingson, Dick Allendorf, Patty Acomb, Brad Wiersum, Tim Bergstedt, President Terry Schneider were present. Tony Wagner was excused.

3. Approval of Agenda

Bergstedt moved, Wiersum seconded a motion to accept the agenda, as presented. All voted "yes." Motion carried.

4. Approval of Minutes: None

5. Business Items:

A. Resolution approving the subordination of payments by CHC Minnetonka Affordable Housing under the Contract for Private Development and Amended and Restated Loan Agreement (EDA Funds) Redevelopment contract for Glen Lake

Wiersum moved, Allendorf seconded a motion to adopt Resolution 2016-006 approving the subordination of payments by CHC Minnetonka Affordable Housing LLC under the Contract for Private Development and Amended and Restated Loan Agreement and related documents. voted "yes." Motion carried.

6. Adjournment

Acomb moved, Bergstedt seconded a motion to adjourn the meeting at 10:29 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk

Minutes
Minnetonka Economic Development Authority
Monday, December 5, 2016

1. Call to Order

Schneider called the meeting to order at 8:00 p.m.

2. Roll Call

Council Members Patty Acomb, Brad Wiersum, Tim Bergstedt, Tony Wagner, Bob Ellingson, Dick Allendorf, and Terry Schneider were present.

3. Approval of Agenda

Bergstedt moved, Wiersum seconded a motion to accept the agenda, as presented. All voted "yes." Motion carried.

4. Approval of Minutes: None

5. Business Items:

A. 2017 HRA Levy

Barone gave the staff report.

Wagner moved, Wiersum seconded a motion to adopt Resolution 2016-007 setting a 2017 H.R.A. tax levy and budget. All voted "yes." Motion carried.

6. Adjournment

Wiersum moved, Bergstedt seconded a motion to adjourn the meeting at 8:02 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk

EDA Agenda Item #5A
Meeting of April 10, 2017

Brief Description Resolution approving the subordination of a Contract for Private Redevelopment and Declaration of Restrictive Covenants to HUD

Recommendation Adopt the resolution

Background

The city of Minnetonka originally approved the Glen Lake Redevelopment contract in 2006. The original development had three parts: the Exchange Building (now the Oaks Apartment building with commercial space on the ground floor); the northern portion of the grocery store property (now St. Therese/The Glenn) and Kinsel Point on Stewart Lane (now Zvago). The city has processed various changes to the contract for private development over the years including: number of affordable housing units, types of units (condominiums to rental) and various time extensions.

The subdeveloper of the Glen Lake Housing and Development and Redevelopment project, Glen Lake Senior Housing, LLC, is in the process of proceeding through the HUD (Housing and Urban Development) process to finalize financing for the project. As a condition of providing the financing, HUD is requesting that the city and Economic Development Authority (EDA) subordinate its interests in the restrictive covenants by executing a subordination agreements for the contract for private development and the declaration of restrictive covenants. The subordination agreements include the following language:

- Subordination of the City and the EDA's interests in the contract for private development and declaration of restrictive covenants to HUD's mortgage;
- Limits the City and the EDA's ability to make claims against the project;
- Requires HUD approval to amend the contract and declaration – we've tried to limit this language to amendments impacting this phase of the project;
- The City and EDA can still enforce the terms of the contract and declaration as long as the terms of the contract being enforced do not conflict with the National Housing Act.
- Both the contract and the declaration would terminate if there was a foreclosure.

A memo from the city's EDA counsel, Julie Eddington, further explains the subordination request. Ms. Eddington will be in attendance at the meeting to answer any questions.

Recommendation

Staff has reviewed the documents and recommend approval of the Resolution approving the Subordination of Contract for Private Redevelopment and subordination of a Declaration of Restrictive Covenants to HUD between Glen Lake Senior Housing, LLC; the Minnetonka Economic Development Authority; and the City of Minnetonka.

Both the EDA and city council are required to take action on this item.

Submitted through:

Geralyn Barone, City Manager

Julie Wischnack, Community Development Director

Originated by:

Alisha Gray, Economic Development and Housing Manager



Offices in 470 U.S. Bank Plaza
Minneapolis 200 South Sixth Street
Minneapolis, MN 55402
Saint Paul (612) 337-9300 telephone
(612) 337-9310 fax
St. Cloud www.kennedy-graven.com
Affirmative Action, Equal Opportunity Employer

JULIE A. EDDINGTON
Attorney at Law
Direct Dial (612) 337-9213
Email: jeddington@kennedy-graven.com

March 28, 2017

Alisha Gray
Economic Development and Housing Manager
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345-1502

Re: Subordination Agreements related to the Glenhaven Tax Increment Financing District within the Glen Lake Housing Development and Redevelopment Project

Dear Alisha,

As you know, the City of Minnetonka (the "City") and the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority") have undertaken the creation of the Glenhaven Tax Increment Financing District (the "TIF District") within the Glen Lake Housing Development and Redevelopment Project to finance certain housing development and redevelopment projects. The Authority and the City entered into a Second Amended and Restated Contract for Private Redevelopment, dated January 4, 2010, which has subsequently been amended (collectively, the "Contract"), with Glen Lake Redevelopment LLC, a Minnesota limited liability company (the "Redeveloper"), which provides the terms and conditions of the housing and commercial redevelopment project constructed in three phases within the TIF District.

Pursuant to an Assignment and Assumption, dated September 1, 2010, the Redeveloper provided a partial assignment of the Contract to Glen Lake Senior Housing, LLC, a Minnesota limited liability company (the "Subdeveloper"), to finance The Glenn Minnetonka located within the TIF District at 5300 Woodhill Road in the City ("The Glenn Minnetonka"), which is part of the second phase of the project. Additionally, the Authority and the Subdeveloper executed a Declaration of Restrictive Covenants – Phase II, dated September 1, 2010 (the "Restrictive Covenants"), with respect to The Glenn Minnetonka.

In order to finance costs related to The Glenn Minnetonka, the Subdeveloper has secured United States Department of Housing and Urban Development ("HUD") insured financing through Dougherty Mortgage LLC. As a condition to providing the financing, HUD requires that the City and the Authority subordinate their interests in the Contract to the lien of the mortgage loan provided by HUD. Additionally, HUD requires that the Authority subordinate its interests in the Restrictive Covenants to the lien, covenants, and enforcement of the mortgage loan provided by HUD. To carry out these subordinations, the City and the Authority are being asked to execute a Subordination Agreement – Contract for Private Redevelopment (the "Contract Subordination"), and the Authority is being asked to execute a Subordination Agreement – Declaration of Restrictive Covenants – Phase II (the "Restrictive Covenants Subordination").

The Contract Subordination and the Restrictive Covenants Subordination essentially subordinate the City's interest in the Contract and the Authority's interests in the Contract and the Restrictive Covenants to HUD's mortgage. Both subordination agreements limit the ability of the City and the EDA to make claims against The Glenn Minnetonka. The Contract Subordination and the Restrictive Covenants Subordination also require the approval of HUD to amend the Contract and/or the Restrictive Covenants as they relate to The Glenn Minnetonka. The City and the Authority will still be able to enforce the terms of the Contract and the Restrictive Covenants as long as the terms of the Contract being enforced do not conflict with the statutory provisions of National Housing Act of 1934, as amended, or the regulations related thereto. Finally, the two subordination agreements provide that, in the event of a foreclosure or deed in lieu of foreclosure with respect to The Glenn Minnetonka, the Contract and the Restrictive Covenants will automatically terminate. The HUD financing is expected to take place on April 15, 2017.

The City Council and the Board of Commissioners of the Authority are being asked to adopt resolutions approving the execution and delivery of the Contract Subordination and the Restrictive Covenants Subordination at their respective meetings on April 10, 2017. Please contact me with any questions you may have prior to the meetings.

Sincerely,

Julie A. Eddington

Resolution No. 2017-_____

**Resolution approving subordination of Contract for Private
Redevelopment and subordination of Declaration of Restrictive
Covenants to HUD**

Be it resolved by the Board of Commissioners (the “Board”) of the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”) as follows:

Section 1. Background.

- 1.01. The City of Minnetonka (the “City”) and the Authority have approved the creation of the Glenhaven Tax Increment Financing District (the “TIF District”) within the housing development and redevelopment project known as the Glen Lake Housing Development and Redevelopment Project (the “Project”), and have adopted a tax increment financing plan for the purpose of financing certain improvements within the Project.
- 1.02. The Authority and City entered into an Amended and Restated Contract for Private Redevelopment, dated May 15, 2007 (the “Original Contract”), with Glen Lake Redevelopment LLC, a Minnesota limited liability company (the “Redeveloper”), which set forth the terms and conditions of the housing and commercial redevelopment project to be constructed by the Redeveloper within the TIF District in three separate phases designated as “Phase I,” “Phase II,” and “Phase III.” The Authority, the City, and the Redeveloper modified the Original Contract and entered into a Second Amended and Restated Contract for Private Redevelopment, dated January 4, 2010 (the “Second Amended Contract”). The Second Amended Contract has been subsequently amended by the First Amendment to Second Amended and Restated Contract for Private Redevelopment, the Second Amendment to Second Amended and Restated Contract for Private Redevelopment, the Third Amendment to Second Amended and Restated Contract for Private Redevelopment, the Fourth Amendment to Second Amended and Restated Contract for Private Redevelopment, and the Fifth Amendment to Second Amended and Restated Contract for Private Development. The Second Amended Contract, as amended, is referred to herein as the “Contract.”
- 1.03. The Board previously consented to the Redeveloper’s partial assignment of the Contract to Glen Lake Senior Housing, LLC, a Minnesota limited liability company (the “Subdeveloper”), as permitted under Section 8.2 of the Contract, by that certain Assignment and Assumption, dated September 1, 2010.

- 1.04. The Authority and Subdeveloper entered into that certain Declaration of Restrictive Covenants – Phase II (the “Restrictive Covenants”), dated September 1, 2010.
- 1.05. The Subdeveloper has secured United States Department of Housing and Urban Development (“HUD”) insured financing through Dougherty Mortgage LLC for its project. HUD requires that the Contract, as it affects Subdeveloper’s portion of the Project, and the Restrictive Covenants be subordinate to the HUD insured loan and related financing documents, including a mortgage and a regulatory agreement.
- 1.06. There has been presented to the Board a Subordination Agreement – Contract for Private Redevelopment (the “Contract Subordination”) and Subordination Agreement - Declaration of Restrictive Covenants – Phase II (the “Declaration Subordination”).

Section 2. Board Action.

- 2.01. The Contract Subordination and Declaration Subordination are hereby approved in substantially the forms on file in City Hall, subject to modifications that do not significantly alter the substance of the transactions and are approved by the President and Executive Director; provided that execution of the documents will be conclusive evidence of their approval.
- 2.02. The President and Executive Director are authorized and directed to execute the Contract Subordination and Declaration Subordination, and any other documents or certificates necessary to carry out the transactions described therein.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on April 10, 2017.

Terry Schneider, President

Attest:

David Maeda, Secretary

Action on this resolution:

- Motion for adoption:
- Seconded by:
- Voted in favor of:
- Voted against:
- Abstained:
- Absent:
- Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a duly authorized meeting held on April 10, 2017.

David Maeda, Secretary

SUBORDINATION AGREEMENT

DECLARATION OF RESTRICTIVE COVENANTS—PHASE II

This SUBORDINATION AGREEMENT (“**Agreement**”) is made as of April __, 2017, by **GLEN LAKE SENIOR HOUSING, LLC** (“**Borrower**”) and the **ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA** (“**Authority**”).

WHEREAS, Borrower has obtained financing from Dougherty Mortgage LLC (“**Lender**”) for the benefit of the project known as The Glenn located at 5300 Woodhill Rd, Minnetonka, MN 55345 (“**Project**”), which is secured by a Healthcare Mortgage, Assignment of Leases, Rents and Revenue, and Security Agreement (Minnesota) (“**Security Instrument**”) dated as of April __, 2017, and recorded in the Office of the Registrar of Titles for Hennepin County, Minnesota (“**Records**”) on _____, 2017 as Document Number _____, and is insured by the United States Department of Housing and Urban Development (“**HUD**”) as FHA Project No. 092-43117;

WHEREAS, Borrower entered into that certain Declaration of Restrictive Covenants – Phase II (“**Restrictive Covenants**”) with respect to the Project, as more particularly described in Exhibit A attached hereto, dated as of September 1, 2010, and recorded September 16, 2010 in the Records as Document Number T4787942;

WHEREAS, HUD requires, as a condition of its insuring Lender’s financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Authority has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Agreement, the provision contained in this Agreement shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**HUD**” means the United States Department of Housing and Urban Development.

“**HUD Regulatory Agreement**” means the Healthcare Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“**Lender**” means Dougherty Mortgage LLC, its successors and assigns.

“**Mortgage Loan**” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“**Mortgage Loan Documents**” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“**National Housing Act**” means the National Housing Act of 1934, as amended.

“**Program Obligations**” has the meaning set forth in the Security Instrument.

“**Residual Receipts**” has the meaning specified in the HUD Regulatory Agreement.

“**Security Instrument**” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“**Surplus Cash**” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions of the Restrictive Covenant are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “**HUD Requirements**”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or the Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Authority’s or the City’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge, the Restrictive

Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower and the Authority acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Authority's reporting requirement, in enforcing the Restrictive Covenants the Authority will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;
- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Authority shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Authority may require the Borrower to indemnify and hold the Authority harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Authority relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Authority harmless shall be limited to available surplus cash and/or residual receipts of the Borrower. Notwithstanding the foregoing, the indemnification obligations contained herein shall not apply to HUD under any circumstances.

(i) Intentionally Deleted.

[The remainder of this page is intentionally left blank.]

GLEN LAKE SENIOR HOUSING, LLC

By: _____
Name: Michael Pagh
Its: Chief Manager

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of April, 2017, by Michael Pagh, the Chief Manager of Glen Lake Senior Housing, LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

This Document Drafted By:
Fredrikson & Byron P.A. (SDS)
200 S. 6th Street, Suite 4000
Minneapolis, MN 55402
60956466_3.docx

Exhibit A - Legal Description

Lot 2, Block 1, Glen Haven Shopping Center, City of Minnetonka, Hennepin County, Minnesota.