

**MINNETONKA ECONOMIC DEVELOPMENT ADVISORY COMMISSION  
MEETING SUMMARY**

**MARCH 24, 2011  
6:00 P.M.**

**1. CALL TO ORDER**

President St. Peter called the meeting to order at 6:00 p.m.

**2. ROLL CALL**

EDAC commissioners present: Kathryn Aanenson, Michael Happe, Ken Isaacson, Bruce Smith, and Peter St. Peter.

EDAC commissioner absent: Benita Bjorgo.

Staff present: Community Development Director Julie Wischnack, Community Development Supervisor Elise Durbin, consultant Mark Ruff with Ehlers and Associates, and consultant Steve Bubul of Kennedy and Graven.

**3. APPROVE FEBRUARY 24, 2011 MEETING MINUTES**

Smith moved, Isaacson seconded, a motion to approve the February 24, 2011 meeting minutes. Aanenson, Coughlin, Happe, Isaacson, Smith, and St. Peter voted yes. Bjorgo was absent. Motion passed.

**BUSINESS ITEMS**

**4. MINNETONKA APARTMENTS CONTRACT FOR PRIVATE DEVELOPMENT**

Isaacson recused himself from discussion and acting on the item due to a conflict of interest.

Wischnack reported.

Jeff Von Feldt, development manager for Duffy Development, applicant, thanked commissioners for the chance to discuss the proposal. The applicant agrees with the agreement as written. There are no issues or concerns. He clarified that there would be a limit to the amount the funds could be reduced because it would have an impact on tax credit scoring. If the development would be approved at a certain level and it later turns out that not all of the money would be needed, then the funding would need to stay at a certain level to prevent a negative impact on tax credit scoring.

Mr. Von Feldt said that the reduction in fees, waivers, or amount of money that is paid for city related fees is another scoring item for the tax credit program. The application scores higher if the city is willing to reduce fees on certain things. Each point is very important in the tax credit program.

Mr. Von Feldt is comfortable with the management language in the agreement. Northstar Residential is the same as Duffy Development and would be the managers for the property. He does not anticipate any problems with management of the property.

Mr. Von Feldt noted that Hennepin County should respond to the applicant's application in April. If that response is favorable and the EDAC acts to approve the development agreement, then an application to Minnesota Housing would be submitted in June. Funding would be distributed in October. It would take six to seven months to close on the financing. If the development agreement would not be approved, or Hennepin County would not provide funds, then it would be very difficult to move forward. He wants everyone to understand the importance of the local jurisdiction's involvement in the development. He was available for questions.

Coughlin asked how the area median income (AMI) is determined. Durbin said that the figure represents the seven-county-metropolitan area and is updated every year. The U.S. Department of Housing and Urban Development (HUD) calculates the figure.

Smith asked how distribution of the affordable units came about and how it is reflective of the housing demand. Wischnack explained that the city supports diversity in the number of units. The developer must be willing to provide options. It is common for the city to delineate what types of affordable units it would support. The city would not support one development having all affordable studio apartments. The developer's ability to provide affordable housing and diversity in the types of affordable housing units is needed when the city provides financing.

St. Peter commended staff for implementing a range of affordable unit numbers, rather than just one number. The whole project is a series of simultaneous equations to obtain financing and meet the restrictions and limitations of each tier of financing. Wischnack agreed. Staff has learned that setting a number does not provide enough flexibility. St. Peter appreciated that each level of financing could be negotiated without the EDAC until the final deal.

Happe questioned the sequence of financing. Mr. Von Feldt explained that the application to Hennepin County reported its negotiations with the city and is more flexible than the application to Minnesota Housing. The housing tax credit application is strictly scored. If the requirements are not met, then the application is denied. He wants approval of funding from the city before submitting the application for housing tax credit.

Bubul explained that the city would agree to provide assistance with a full set of terms and conditions—hence the development agreement. Some indication of support must be provided by the local unit of government and included in the application to request housing tax credit. If the development agreement would be approved and the tax credit not granted, then the contract would not be performed and would be terminated. If the tax credit is approved, then the proposal would be set and ready to move very quickly. He felt it is a good way to do it. Wischnack noted that the agreement could be cancelled if any other aspect of the financing did not move forward.

Bubul explained that the city's money would go into a master dispersing agreement with all of the funds. There would be a simultaneous closing so all entities would close at the same time.

St. Peter asked the applicant if he had done any other transactions that included a similar loan to moderate-income population within the property. Mr. Von Feldt stated that this type of project is all he does. In June, a development will open in Elk River and at that time his agency will have over 600 units in the metro area. This is his business' specialty. He answered affirmatively.

St. Peter questioned if his management company has had issues with excessive police and fire calls to any of the properties. Mr. Von Feldt said that his company acts fairly quickly to resolve issues for properties whose number of police service calls goes beyond the normal. He encouraged staff and commissioners to contact the cities where his company's properties are located. He is confident his company will be given a positive recommendation. Wischnack stated that staff will be visiting all of the sites and compiling the statistics for police calls for service to those properties in preparation for the city council meeting.

Smith suggested including a clause in the contract to require adherence to fair-lending laws. St. Peter recalled a court case that jointly charged a bank under the fair lending act for not enforcing fair housing rules.

Bubul said that, in order to maintain its eligibility for tax credits, entities must have scrupulously good record keeping. Tax credit investors depend on that. So, the city is in better shape with tax-credit projects than other projects. The chance of noncompliance with fair-housing rules is extremely minimal.

Happe confirmed with Wischnack that the city council did not decertify the pooled TIF district.

Happe asked what the comprehensive guide plan amendment would include. Wischnack explained that the planning commission would discuss and make a recommendation to the city council regarding the proposed change.

Happe asked where the 10 percent that goes to the developer comes from. Bubul believed it would be 10 percent of the overall project cost. There are two

different limits. Ten percent could be paid out of the actual cash at closing. There is another provision that would be imposed by the first mortgage holder that would allow a payout on an ongoing cash basis and limit how much would go out on an annual basis. It would come out to be approximately 10 percent over the long haul.

Happe noted the overall project cost would be \$10 million. Wischnack said that it just increased to \$12 million. Mr. Von Feldt explained there would be a final audit that would certify the costs at the end of the day. There is some built-in documentation. The contract would require regular reports.

Happe noted that the city would contribute \$1.1 million to the project. Wischnack explained that a portion of the developer's profit would go back into the project itself. Mr. Von Feldt explained that the developer's fee includes profit and costs for overhead operations. The tax credit program with Minnesota Housing allows a developer to receive up to 15 percent, depending on the size of the project. The numbers show a developer's fee of a little over 12 percent and a contribution by the developer of 4 percent back into the project which gets the developer's fee down to the 8 to 9 percent range. It is done that way because Minnesota Housing allows 15 percent and the developer fee is a cost of the project. The developer can receive tax credits for the cost of the project. Putting the money back into the project helps fill a gap caused by the developer fee. The tax credits can be used to fill some of the gap rather than starting with a lower fee to begin with.

Wischnack summarized that the papers that go through the tax credit process show the developer's fee at 12 percent. In the end, the developer would actually get 8 percent. The money would not be paid to the developer until after the project would be completed. The developer is the last entity paid. The project would not be completed until 2013.

St. Peter explained how congress used a similar method.

Ruff added the low-income housing tax credit program came about in 1986. Tax law was even more convoluted prior to 1986 when people were encouraged to lose money on apartments to get a big tax break. The tax credit program is a way that the federal government still could provide for affordable housing, but budget for a tax loss every year. The tax credit program has very little cash flow that comes back to the developer. In this case, maybe \$30,000 to \$40,000 a year. The tax credit investors would take all of that money. The people who would take the risk, in this case Duffy Development, are taking risks by upfronting a fair amount of money and taking construction risk that the project would actually be completed as projected. In exchange, the developer gets a fee up front.

Happe asked if Mr. Von Feldt's company owns any properties in Plymouth. Mr. Von Feldt answered in the negative.

Happe asked if the housing project would happen without a contribution from the city. Mr. Von Feldt answered that the project would be \$1.1 million dollars short. There would be too much cost per unit to be able to complete the project. St. Peter noted that without the local jurisdiction's support, the Minnesota Housing application would probably not be approved.

Smith questioned how affordable housing sales occur and if a new owner would be required to abide by the contract. Mr. Von Feldt explained the tax credit program requires a 30-year compliance period. There is a land-use restriction placed on the property and recorded with the county upon its completion. Duffy Development would be a long-term owner and manager. Duffy Development completed its first tax-credit development in 1983 and is still involved in that development. If the property did sell, the affordability restrictions would stay in place for 30 years. A foreclosure may be able to nullify the restrictions, but with a mortgage funded by the Minnesota Housing Finance Agency (MHFA), that would be very unlikely. MHFA would help resolve an issue rather than foreclose.

Bubul added that, in addition to the tax credit requirements, there would be a declaration of restrictive covenants that is part of the contract on the property and bind any future owner. The contract would stay in place even after refinancing. MHFA may require subordination of the mortgage which would make it possible for them to dispose of the property without following contract requirements, but that is infinitesimally rare and MHFA supports affordable housing.

St. Peter noted that the provisions would be similar to a HUD agreement. Bubul and Wischnack agreed.

Wischnack clarified that the recommendation would be for the city council to approve the contract with or without changes.

Coughlin moved, Aanenson seconded a motion to recommend that the city council approve the contract for Minnetonka Apartments for private development. Aanenson, Coughlin, Smith, and St. Peter voted yes. Bjorgo was absent. Happe voted no. Isaacson recused. Motion passed.

Happe received concerns from residents regarding the time, energy, and resources the city puts into affordable housing projects and did not know how to reconcile that. The current financial times and amount of money the project would cost made him question if this is the right time to be doing this. He did not support the city council's decision to decline decertification of the pooled TIF district. He apologized. St. Peter agreed with the urgency to spend funds wisely. He balanced those concerns with the opportunity to take a property that is difficult to develop and add it to the tax rolls using a method that saves the city money and during a time when construction costs are depressed. The opportunity to build projects where a lot of bank financing is not required is something that developers are jumping at. Capital improvement projects the city has bid out have come in under expected bid amounts.

Wischnack clarified \$200,000, not \$500,000, will be returned to Hennepin County.

## **5. HOUSING REHABILITATION AND DOWNPAYMENT/CLOSING COST ASSISTANCE PROGRAMS**

Isaacson rejoined the meeting. Durbin reported.

Aanenson felt clarifying the goals makes it easier to do the performance measures. It will be helpful to evaluate the program and modify it, if needed.

Smith wondered when the program would be implemented. Durbin hoped late spring, early summer. She encouraged residents to watch for more information in the *Minnetonka Memo* and the city's website: [eminnetonka.com](http://eminnetonka.com).

## **6. STAFF REPORT**

Wischnack and Durbin reviewed the items including: light rail, transit study, Test Drive Your Idea program, St. Therese, and 1707 Hopkins Crossroad/HWR.

Smith asked if consulting sessions are available later in the afternoon for the Minnetonka Open to Business program to accommodate working entrepreneurs. Durbin said that had been discussed. The time could be adjusted if needed.

The next SLUC session, Great Streets, will have presenters from the state, county, and Richfield discuss the transformation of roads and how designers think about doing streets today as opposed to 5 years and 10 years ago. It will review the pedestrian connection issue and how that may be at odds with a county who wants to move traffic as efficiently as possible.

## **7. OTHER BUSINESS**

The next EDAC meeting is tentatively scheduled for April 28, 2011.

Wischnack noted that the old Cattle Company site is being considered by a long-term stay hotel that would have 100 units, but no water park.

## **8. ADJOURN**

Happe moved, Smith seconded a motion to adjourn the meeting. All present voted yes. Motion passed. The meeting adjourned at 7:15 p.m.