

AGENDA

MINNETONKA ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

Monday, May 24, 2004
5:45 p.m.

Oak Knoll Room
Minnetonka Community Center, Lower Level

1. Call to Order.
2. Roll Call:

Paula Chatterjee	Peter St. Peter
Dan Duffy	Al Thomas
Dave Larson	Tony Wagner
Bunny Robinson	Bob Walker

BUSINESS ITEMS

3. Assignment and Assumption Agreement and Subordination Agreement for the Beacon Hill senior housing development.

Action recommended is approval of the agreements.

4. Other Business.

The next regular EDA meeting is Tuesday, June 8, 2004 at 6:00 p.m.

5. Adjourn.



TO: EDA Commissioners

FROM: Ron Rankin, Community Development Director

DATE: May 20, 2004

SUBJECT: Approve Assignment and Assumption Agreement and Subordination Agreement for the Beacon Hill senior housing development.

Background

The Beacon Hill senior housing development includes 110 congregate apartments and 42 assisted living units in two buildings on Beacon Hill Road in the Glen Lake area. On March 15, 2004, the city council approved the issuance of housing revenue refunding bonds for Beacon Hill, in order to facilitate the refinancing of this project. The transaction is now scheduled to close on May 27, 2004.

As part of the transaction, the Fannie Mae mortgage guarantees require that the Beacon Hill ownership be a "single asset entity". To accomplish this, Presbyterian Homes has changed the project ownership from Presbyterian Homes Housing and Assisted Living, Inc. to PHS/Beacon Hill, Inc., which owns only the Beacon Hill property.

Also, Presbyterian Homes Housing and Assisted Living, Inc. has been party to the Contract for Private Development and Extended Low-Income Housing Commitment Agreement with the EDA and city since the project was originally begun in 1994. These arrangements give Presbyterian Homes tax-increment financing payments to re-coup their original land costs, in exchange for keeping 40 percent of the 110-unit Beacon Hill Terrace building available to seniors at affordable rents.

Now, the EDA and City are asked to approve the Assignment and Assumption Agreement and Subordination Agreement. These approve the assignment of Presbyterian Homes Housing and Assisted Living, Inc. responsibilities to PHS/Beacon Hill, Inc., and make the EDA/City financial and reimbursement positions subordinate to those of the bond trustee and Fannie Mae.

A letter from special counsel Steve Bubul of Kennedy & Graven is enclosed, which describes the requested actions and recommends approval.

Recommendation

Staff recommends approval of the agreements. The city council is scheduled to act on the agreements immediately after the May 24, 2004, EDA meeting, so staff will update the council on the EDA action.

May 19, 2004

Ron Rankin
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345-1597

RE: Presbyterian Homes Project

Dear Ron:

You asked me to comment on two documents to be considered by the City Council and the Economic Development Authority on May 24, 2004.

As you know, the City of Minnetonka is preparing to issue its \$10,710,000 Housing Facilities Revenue Refunding Bonds (Beacon Hill Housing Project), Series 2004 (the "Bonds") to refund the housing revenue bonds issued by the City in 1994 to finance the Beacon Hill senior housing facility. At the time the 1994 bonds were issued, the Economic Development Authority ("Authority") and City also entered into a Contract for Private Development with Beacon Hill Housing, Inc. dated January 31, 1994 (the "Development Contract"), under which the EDA provided certain tax increment financing assistance in connection with development of that facility. The EDA also entered into an Extended Low-Income Housing Commitment Agreement with Beacon Hill Housing, Inc. dated January 31, 1994, (the "Housing Agreement"), imposing certain income and rent limitations needed to comply with the tax increment statute.

At or around closing on the 1994 bonds, Beacon Hill Housing, Inc. assigned its interest in the Development Contract and the Housing Agreement to Gideon Pond Center, Inc., a nonprofit corporation controlled by Presbyterian Homes and Services. Gideon Pond Center, Inc. was the borrower of proceeds of the 1994 bonds. That entity later changed its name to Presbyterian Homes Housing and Assisted Living, Inc., and is referred to as the "Prior Borrower."

In connection with issuance of the current Bonds, the ownership of the property will shift from the Prior Borrower to PHS/Beacon Hill, Inc., another entity also controlled by Presbyterian Homes and Services. The reason for this shift is to accommodate the requirements of Fannie Mae, the entity that provides the primary security for the Bonds. The Prior Borrower owned other assets besides the Beacon Hill facility in Minnetonka, and Fannie Mae required that the borrower for the Bonds be a single-asset entity.

Because of this change, the rights of the Prior Borrower in the Development Contract and the Housing Agreement are being assigned to PHS/Beacon Hill, Inc under a document titled Assignment and Assumption Agreement Regarding Contract for Private Development and Extended Low-Income Housing Commitment Agreement. Further, the City and EDA have been requested to enter into a Subordination

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Agreement with U.S. Bank National Association, the trustee for the Bonds. Under this Agreement, the City and EDA subordinate any interest they have in the Project to the lien of the mortgage securing the Bonds.

In my view, both the assignment document and the subordination agreement are in reasonable form, and I would recommend approval of these documents by both the City Council and EDA board of commissioners.

The assignment of the Contract and Housing Agreement to the entity is not significant, as the City and EDA are not relying on that entity for financial security under those documents. The EDA's primary enforcement mechanism under those documents is control over the payments of tax increment, and the change in identify of the developer does not alter that fact.

Likewise, the subordination agreement is virtually identical to the agreement approved by the City and EDA at the time of issuance of the 1994 bonds. Because neither the City nor EDA have a lien or security interest to protect under the Development Contract or the Housing Agreement, the subordination to the lien of the Bonds is not material.

If you have further questions about this matter, please let me know.

Very truly yours,

Stephen J. Bubul

SJB/dmr