

**MINNETONKA ECONOMIC DEVELOPMENT AUTHORITY
MEETING MINUTES**

**FEBRUARY 10, 2009
6:00 P.M.**

1. CALL TO ORDER

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

2. ROLL CALL

EDA commissioners present: Ellen Cousins, Dan Duffy, Bunny Robinson, Peter St. Peter, Brad Wiersum and Bill Yaeger. Tony Wagner was absent.

Staff Present: Julie Wischnack and Elise Durbin.

3. APPROVE MINUTES OF JANUARY 13, 2009

Wiersum moved, Duffy seconded a motion to approve the January 13, 2009 meeting minutes. Cousins, Duffy, Robinson, St. Peter, Wiersum, and Yaeger voted yes. Wagner was absent. Motion passed.

Wagner joined the meeting.

BUSINESS ITEMS

4. Resolution approving an Amended and Restated Contract for Private Redevelopment between the City of Minnetonka, the Economic Development Authority in and for the City of Minnetonka, and Glen Lake Redevelopment LLC

Wischnack introduced Steve Bubul, attorney for the city, Mark Ruff, financial consultant for the city, and gave the staff report.

Wiersum asked if some of the changes could be approved without others. Wischnack suggested that specific requests for changes be recommended to the city council.

Wiersum asked when the measurement of 15 years begins in relation to "15-year affordability." Mr. Bubul explained that the first year of occupancy is typically considered year one.

Wiersum questioned if it would be reasonable to have the affordability begin when the last affordable unit is occupied. Mr. Bubul stated that it could be set up that way. Wiersum was concerned with the current unusual market, and he wanted to make sure to receive the full 15 years.

Wiersum asked if the date could be changed retroactively for the restaurant. He said extending deadlines damages the credibility of the developer, EDA, staff, and city council. He really did not want the \$1500 a day penalty, but it would be a powerful incentive. He was willing to grant the extension if the restaurant opens by April 30, 2009. Another extension on April 30, 2009 takes the power of the fine away. Mr. Bubul stated that the contract could be set up that way.

Robinson felt June 30, 2013 was quite a jump for the Kinsel Point project. Wischnack explained the intent would be to provide a realistic time frame for condominiums to be built. The date could be changed, but June 30, 2013 is the developer's realistic time frame for when things will progress on the site.

Wagner talked about the original intent of the development contract with the developer. As he recalled, the original contract was 100 percent owned by Mr. Wartman. He confirmed that a section of that would be sold. In the original contract, he specifically remembered that the affordable housing was "back loaded" from Site C into Site A. He asked how the dynamics of a development agreement, where one person controls all properties, changes when parts of the project are split up. It was originally treated as 1 large development and included 31 affordable units and 17 mid-range units. Now, Site C is being exempted from any due diligence as part of its commitments. He asked staff if this situation has happened before and what considerations were included in that situation. Mr. Bubul answered that it is not that uncommon for similar large scale, multi-phased projects to have a component of a phase transferred to a subsequent party. The original contract has provisions that address subdevelopers, where one piece of the project is transferred to another party with the provision that it would be subject to the city's approval. That is what is happening now. The component has changed and the affordability requirements have changed. Those are items of policy that are up to the EDA to make.

Wagner saw the policy decision as also a business decision for the original developer and the subdeveloper. Mr. Bubul agreed. Wagner reviewed that tax increment financing was used to buy down a number of things and fund some public and private improvements. In addition, there was, as part of that agreement, an expected rate of return. Wagner asked how that rate of return has changed for the developer and how that would get split up in a subdeveloper scenario. Mr. Ruff explained that the language related to the measurement of profit dealt with the developer as a constructor of the eventual facilities. Under the original contract, because the developer was going to construct each of the condominiums at the time the buildings were completed, there would be a measurement to say how much profit was made in the construction and if there

was more than a certain rate of return then part of the profit went to reduce the tax increment finance assistance.

Mr. Ruff stated that when the change was made for The Exchange building, the rental portion of the development was exempted from the look-back provision, but the commercial was not. Under this transfer of ownership to St. Therese, given the fact that St. Therese is a non-profit business, the preliminary business arrangement is that St. Therese would not be subject to a look-back provision simply because it is expected to be a long-term holder.

Wagner understood that markets have changed, but he has a significant problem with Site C and that portion of the development not carrying any affordable housing since it was originally back loaded in Site A. He requested recommendations, from a policy stand point, on what changes could be made to have Site C fund its portion of affordable housing as part of the contract. He did not believe St. Therese should be burdened with that, but that is his position. He wanted staff and advisers to comment how that could be accomplished and what it would do to the project.

Mr. Ruff asked if Wagner referred to funding affordable housing in Site C. Wagner meant "fund" in a looser term. He did not know if it had to be in that building, but he wanted to value what the contribution should be. It could potentially be done off site.

Duffy asked which TIF would give the city its funding back sooner. Mr. Ruff stated that the hope is the TIF wrap, the inclusion of St. Therese's portion of the TIF being funded by the FHA-insured mortgage, would be more advantageous to the city since future tax increment to repay the city is always subject to market value changes and state law changes that could affect the income stream in the future.

Duffy asked at what point extensions are denied and another developer should be considered. The Gold Nugget is wanted, but perhaps a deadline should be determined to seek out other developers.

Cousins felt that the Gold Nugget's first extension was not doable. At that time, more of an extension was needed. An extension to April 30, 2009 is very reasonable.

Wagner asked if senior affordable assisted living housing has been provided in the city. Wischnack was not aware of any. Wagner noted that one of the intents of affordable housing is to have a good mix of residents over time and it creates affordable housing for younger families. Providing for seniors in the city is also a priority. He questioned if a preference can be written into the covenants for Minnetonka residents to have an advantage to gain occupancy. Mr. Bubul felt

that was a grey area. The practical reality is that it can affect the marketing of the property and overall ability to keep the project full.

Wiersum wanted to understand the mechanics of what occurred in Presbyterian Homes and how that worked. He said with St. Therese the rent is affordable, but the required minimum care package is at market price. St. Therese would be required to use "reasonable efforts" to help occupants who need additional financial support. He questioned what qualified "reasonable efforts" and if other places have examples. Senior housing is quite expensive, and affordable rent with non-affordable services is not a good combination.

Wischnack viewed the assisted living affordability component as the biggest challenge during the negotiation of the contract. There is a fear that service costs would be raised for every other resident to compensate for the affordability. The insurance from the developer of the reporting mechanism and how that would function is something that would need to be monitored closely. It is now done annually for Presbyterian Homes. The best safeguards have been included in the contract. Staff and St. Therese want to spread the affordable units to all different types of living areas, not just independent living.

Robinson asked if the rent rates would be tied to the HUD financing package. Mr. Ruff stated that the federal government has been insuring these types of mortgages for a long time. He explained how additional funds above the mortgage price would be given to the applicant based on the taxes to be paid. This is available to St. Therese because the facility's taxes could go up and down and if the taxes would go up too fast and the rent was unable to make up the difference, the development could be in financial difficulty. It offsets and helps insulate rents from dramatic increases. That is the tie between the rents and TIF through the insurance program. At the same time, there is a cap on the overall amount that cannot be exceeded.

The public hearing was opened.

Ivan Fox, 6008 Pinewood Lane, stated that:

- He was trying to understand the purpose of the EDA. He understood it set up the HRA levy so that the city council can do additional property taxation for homeowners for development projects and approve TIF for projects to ensure the city meets its affordable housing goals. He is a financial analyst and has worked for Blue Cross. He advised the city to not "deal with this." It is totally insane. The tax code is tough.
- The purpose is to provide affordable housing. The high density for three different buildings in 2005 was approved to provide cheap, affordable housing for our community for young families and young adults.

- The nursing home was scary to him. It is way out of wack. It is not what affordable housing should be for the community. There is a lot of senior housing right now, more than enough.
- It seems like a decent nursing home, but the proposal is a bait and switch. It is a fraud. The project is supposed to provide affordable housing “for the community. Not for seniors who are going to need beds in rooms.”
- Condominiums would be affordable homes owned by people. That is a nice concept. This proposal is not.
- He did not want the proposal. It would not help the community at all.
- What is being called affordable housing is a joke. It would not be affordable for families or young adults.
- The affordable housing went from 17 percent to 14 percent.
- The whole project has been a nightmare for the last 3 years. Promises were made and rarely kept. The grocery store is great, but the rest of it has been changes and delays.
- The application must be denied.
- He was insulted by the explanation given to not provide the original number of affordable housing units. Economic constraints are the developer’s problem. TIF financing is not needed. The applicant can provide its own financing.
- The city needs to use TIF to provide the kind of homes the community needs. Families are needed.
- Do not get involved in claims and medical things.
- The city is being victimized by the proposal.

Ann Malm Hossfeld, 14616 Glendale Street, stated that:

- She was unclear on who the contract would be with.
- She expected something for Site C to be handled separately.
- She did not understand where St. Therese would be linked to the contract.
- She questioned who the owner would be.
- She heard the developer of the Gold Nugget say that he had every confidence that he would be able to get the restaurant done by January. She had no faith that anything would happen by April. It is another not-holding-a-developer-to-any-standard situation. At some point, the city must cutoff negotiations with a developer, call in the penalties, and look for someone else to develop. The April deadline will not be met.

Mr. Bubul explained that the city has a contract with the original developer, Glen Lake Redevelopment, LLC. The proposal recognizes that there is an expectation that there is a purchase agreement for St. Therese to assume the obligations of

Phase 2 on that site. That is a fairly standard way of handling multi-phase projects and recognizing that one developer is still in the role of master developer and one piece of it would be reassigned. St. Therese would be taking on the legal responsibilities described in the contract.

Grace Shelly, 14325 Grenier Road, stated that:

- She wanted to know how to contact EDA members to provide her opinions. It needs to be known that there are public comment points for the EDA.
- She was tired of meaningless dates regarding the project. The deadlines need to have a consequence. She understood the economy is bad, but contractors will start not getting work done because "Minnetonka doesn't care." Not having a date for the restaurant might be better.
- She would take over the \$400,000 mortgage.
- The Gold Nugget needs to be in place.
- TIF should not be used for senior housing. It would be a disservice to Glen Lake. It already has a ton of senior housing. The city is not delivering what it promised, which is single-family homeownership and new residents. The housing would be rented instead of resident owned and downsized to be affordable. That is not affordable housing.
- She is very disappointed. There are better ideas. She was willing to participate in a forum to get other ideas.
- Use TIF for something else.
- The contract is meaningless and not getting the results the city wanted.
- She did not want to see new urbanism setbacks because that was a concession for affordable housing.
- She was willing to work with and help staff.
- Do not look for more tax dollars unless there is improvement.

The public hearing was closed.

Mike Pagh, CEO of St. Therese Southwest, stated that:

- St. Therese has operated in Hopkins for over 20 years very successfully and has been drawing Minnetonka residents. There is very high demand for the project. The non-profit agency is looking for an opportunity to expand its mission and vision.
- St. Therese would provide a functional, new commitment to the city that would free up housing stock for younger families to move into the community. The primary demand for this type of facility is within a 3 mile to 5 mile radius of the facility.

- He was present to answer questions. Staff has done a great job presenting an overview of its design. The facility would meet the needs of a variety of different seniors. A creative way to utilize affordable housing has been included in the proposal.
- This is one type of facility that remains viable in the economy. In part, because HUD financing is available.

John Herman, attorney for Glen Lake Redevelopment, LLC, stated that:

- He hoped the commission would endorse the changes because there are not a lot of alternative paths for the project. The city has benefited from an energetic and committed developer who has stuck with the project and brought to bear quite remarkable resources of personal energy and commitment.
- Most architectural firms are decreasing staff by 65 percent. There are no projects on the drawing board for most of the firms and contractors for the start of 2010.
- This was not only a project to provide affordable housing, it was a project to provide much higher density, encourage use of transit in the area, encourage removal of significant blighting influences, and keep the characteristic businesses in the area as well as bring back the community focus of a grocery store.
- Two condemnation proceedings ultimately entered into voluntary sale agreements.
- Two relocations which went above and beyond usual developer participation were completed for Danny's Liquor and Dragon Jade.
- This project hit the market place with a condominium proposal at the moment the market place tipped. A couple of weeks after a huge grand opening, 25 percent of Kinsel Point condominium units had been reserved. Zero units are reserved for the next year. No Exchange condominiums were sold, therefore a rental proposal was created. The rate of exchange is below the target rate of return for the private side of the development.
- The only projects that are working in the market place right now are senior projects. St. Therese primarily provides independent living with transitions into other stages of care. It is a good product in the market.
- There would be the same number of affordable units as previously. It would make available a substantial number of houses within the surrounding area.
- The Gold Nugget proposal in October had financing available from a bank. If that financing had not been accomplished, many of the payments for demolition and etcetera would not have been covered. That TIF note would not be able to be financed today. An entire new team of people have been recruited to fund the restaurant. Construction has started. The majority of plumbing and

electrical is completed. The concrete will be poured in the next day or two.

- The unavailability of financing is a real problem.
- The developer is paying for public redevelopment costs of the project. Mr. Wartman does not make more money depending on type of use or relocation of businesses. The public redevelopment costs have all been spent. In the best case scenario, that money would not be recovered. The city will take a loss as well. The contract with St. Therese will allow the city to get some of its funding back sooner.
- If Kinsel Point Condominiums would be completed in 2.5 years, there would be no TIF and no return. The losses would balloon into the multiple millions of dollars. There would be no profit on the St. Therese part of the project. The site would be sold to St. Therese for a little less than the appraised value.
- The proposal is a fair change in the redevelopment contract. There is no other market alternative available.
- There was a well-attended meeting where most residents spoke in strong support of the St. Therese project.
- April 30, 2009 is a realistic deadline for the Gold Nugget.
- He has practiced real estate and development law for 35 years and has never seen an economy like this. There has been market downturns before, but never the inability of lenders to act. He provided examples.
- HUD is functioning well now.
- He requested the EDA recommend approval of the project to the city council and he would continue to work hard to see it happen.
- Tom Wartman was present to answer questions.

Wischnack reviewed that the 2007 project included 8 additional affordable units. The subsidy would be about \$300 a unit to make affordable, independent units work; approximately \$400,000. That is the challenge for the project.

Wischnack provided one option available to the commission would be to tighten the time frame for the Kinsel Point portion of the contract to 2010 to force a developer to renegotiate that portion of the contract.

Duffy questioned how a person who would qualify for affordable rent qualify for the market-place priced services and how the rent would stay affordable in the years to come. Mr. Pagh explained that the numbers actually work out. The service bundle includes three meals a day, health care, housekeeping, and a variety of activity services so it is a fairly inclusive number. Any and every outside source available is utilized to assist folks in need. Internal programs for financial assistance are also available. As a non-profit organization, it cannot be guaranteed, but the facility is willing to commit resources if available. Medicaid and Elderly Waiver are currently utilized.

Wagner asked if staff discussed doing a trade off for affordable housing through the mortgage note to provide affordable housing off site. Wischnack responded that contributions "in lieu of" do not happen very often. Payment in lieu of was not discussed. Affordable housing was one reason TIF was considered. There is a deficiency in rental affordability in the city. Only 65 percent of that goal is being met.

Wagner understands the history. He is concerned with the complexity associated with affordable housing and assisted living. Although the goals are short on the rental side, he is troubled by how big of a trade off the proposal would include. The affordable triggers have dropped from 30 years to 15 years. There are too many unanswered questions for him to make a motion or vote on the proposal positively. He wanted to provide specific concerns and questions to staff so that some options can be evaluated. He wanted to understand the risk to the city of unfunded public improvements. That was not clear to him in the staff report.

Duffy agreed that some things need to be looked into further. Concessions have been made due to the economy. The proposal moves away from the goal of owner-occupied housing. It may be time to step back. Senior housing is a good solution for the site and there is a need. Kinsel Point seems like it has been taken off of the table. Maybe there would still be an opportunity to renegotiate. He did not know the solution or the numbers. He would like to see further study in that portion of the development before he would be comfortable going forward.

Cousins is bothered by the possibility of pushing a project to satisfy date requirements. If senior housing is wanted, then, great, get the project going. If, long term, something else would be preferred, then that should be talked about. If owner-occupied, affordable housing for young families is wanted, then maybe the deadline is not as important.

Cousins wanted to see data regarding how many affordable houses would be made available by St. Therese providing housing for seniors. She questioned how many of the houses would be valued over \$600,000 and how many would be around \$150,000 to \$300,000.

St. Peter was concerned with the level of affordable housing in the project. He was not concerned with the switch from owner-occupied to rental, because, in the bigger picture, that was part of the city's overall commitment with the Metropolitan Council as demonstrated by the city signing on with the Affordable Living Communities Act and other programs the city has received benefits from. The type of housing is market driven and consistent with long-term goals that have been adopted as an EDA and put forth as part of a work plan. He was concerned with the level of affordability. Affordable units went from 48 of 177 units to 33 of 247 units with the current proposal. He understood how the St. Therese model works. His parents lived in a St. Therese facility for a year. He

saw the facility as a fit for long-term efforts to meet the needs of Minnetonka residents. Senior housing comes in second or third for needed projects. Given the availability of financing and overall need in the market, he saw the use as a fit. The number of units bothers him greatly.

St. Peter liked Wagner's idea of receiving more information regarding the Kinsel Point project. It would be most appropriate to change the Kinsel Point review to 2011 rather than 2013. It is appropriate to give some extension, but he did not see it waiting until 2013. He liked the idea of penalty computation going back to January for The Gold Nugget. It would provide the incentive to go forward.

St. Peter stated that Mr. Herman has done an outstanding job representing the project. He appreciated his effort. St. Peter had represented developers with similar projects that had to use all of the profit. Staff needs to look at whether there is likelihood of deficiency or shortfall in the TIF coverage. The backend needs to be looked at to protect the city. As it relates to trading dollars for units, it would be difficult. The difficulty would be to make the investment and buy the affordable units. It is not easy to provide affordability. Property is still very expensive. The land value of property is the primary underlying value. Minnetonka land is still more valuable than neighboring communities'. Property taxes reflect that. That is why creative ways are necessary to provide affordable housing.

St. Peter hoped that the city attorney would provide guidance on the ability to designate a preference for Minnetonka residents to obtain a housing transition of one form or another. Property owners do not want to sell land in a depressed market. The buyers do not have financing to buy in. Minnesota Housing Finance might have a program to provide assistance. He suggested Mr. Bubul discuss this with City Attorney Desyl Peterson. It is a grey area, but this project would be the perfect opportunity to provide lifestyle housing, repopulate the school population, and continue to develop the spirit seen in Minnetonka.

St. Peter wanted the look-back provision to remain. He would add, to qualify for the exemption, an affidavit from the non-profit organization that there are no outstanding negotiations or contracts to purchase the property until the restrictions expire.

Wischnack requested direction regarding what commissioners consider the "level of affordability." Wagner felt it was all tied together. The project that was approved had 48 units. The midrange has lost 15 years. The use has changed to rental. The risk to the city for public improvements that would not be reimbursed before 2013 would be optimistic. He wanted to look at what would be the sum total profit and what type of a negotiation would make that bridge. He was hesitant to say he was looking for a number. The intent of the original contract does not exist in the current agreement. That greatly concerns him. Wagner continued that this is about analyzing the city's risk against the original goals. He

needs the numbers listed on a couple pieces of paper to see what they total up to be and then decisions can be made. Part of the reason why he suggested looking at affordability "in lieu of" is because maybe it negatively impacts St. Therese. That discussion can be held. He questioned if there are other ways the city can leverage cash to create more affordable housing units in the city than can be provided at St. Therese.

Wagner noted that Site A had a purchase option. At a certain point, he would like staff to entertain what a purchase option would look like if the purchase of Site C would be defaulted.

Duffy wanted to shoot for 18 percent of units being affordable units.

Yaeger concurred with the 17.5 percent to 18 percent of units being affordable goal.

Wischnack asked if the commission is open to a special meeting to follow up on the matter. Commissioners responded affirmatively. Wischnack would work on an agreeable date.

Yaeger moved, Duffy seconded a motion to table action on a resolution approving an amended and restated contract for private redevelopment between the City of Minnetonka, the Economic Development Authority in and for the City of Minnetonka, and Glen Lake Redevelopment LLC. to the next EDA meeting. Cousins, Duffy, Robinson, St. Peter, Wagner, Wiersum, St. Peter, and Yaeger voted yes. Motion passed.

5. STAFF REPORT

Durbin reviewed items concerning the Southwest Transitway Station Area Study, DEIS Light Rail study, and Opportunity City Pilot Program.

6. OTHER BUSINESS

The joint city council and EDA study session originally scheduled for Monday, March 2, 2009 has been cancelled.

Durbin asked anyone interested in attending the December Sensible Land Use Coalition Program to let her know at the end of the meeting.

March 1, 2009 is the annual Home Remodeling Fair.

The next regular EDA meeting will be on Monday, March 30, 2009.

St. Peter stated that he received a document from the Hennepin County Housing Authority that describes projects in Minnetonka.

7. ADJOURN

Duffy moved, Robinson seconded a motion to adjourn the meeting. All voted yes.
Motion passed. The meeting adjourned at 8:14 p.m.