

**MINNETONKA ECONOMIC DEVELOPMENT AUTHORITY  
MEETING MINUTES**

**MAY 11, 2009  
5:00 P.M.**

**1. CALL TO ORDER**

EDA President Peter St. Peter called the meeting to order at 5:00 p.m.

**2. ROLL CALL**

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

Staff present: Julie Wischnack and Elise Durbin.

**BUSINESS ITEMS**

**3. AFFORDABLE HOUSING INDEXING SYSTEM**

Ellen Cousins and Dan Duffy joined the meeting.

Durbin gave the staff report.

Wiersum asked if foreclosed properties are included in calculating the average annual sales price. Durbin believed the average sale prices for houses in the metropolitan area do include prices paid for foreclosed homes. St. Peter understood that foreclosed homes are included.

Yaeger confirmed with Durbin that the recommendation is to continue the system as it currently exists. The report provided clarification.

Wagner reviewed how the 2009 resale price is calculated. Durbin stated that the maximum sales price decreased to approximately \$145,000. The maximum resale price for units at the Gables of West Ridge is significantly higher than the market value of those units.

Duffy asked happens to developments where the 50 percent indexing is used. Durbin explained that the maximum sales price is below the initial sales price. Assessing records indicate the market value is lower than the initial sales price as well.

Wagner questioned if 50 percent would be applied to an increase, then would 50 percent be applied to the decrease. Durbin answered yes.

Wagner asked when the figures would be released and how they could affect sales in process. Durbin acknowledged the time frame is typically between February and March. Calculations are done by the city and the figures are released right away. If a property is already listed, then the listed price is allowed to continue.

The public hearing was opened.

Brad Olson, 12851 Burwell Drive, is the listing agent for 9967 Enclave Drive. The formula creates a hardship for the seller. The 2008 value was between \$170,000 and \$171,000, with the commission built in. The 2009 value dropped to \$145,000. Permission was given to continue with the 2008 price. The seller had refinanced the property at \$160,000, and the 2009 price was going to create a hardship for him. The property was put on the market recently, and sold right away. The buyer got a great bargain, but, the new property owner would have a \$25,000 drop in maximum resale price if they wanted to sell it this year or next year. His solution is for the new price to be the price paid for the unit or the recalculated value if it is higher. That is the only change he wants done to the language of the restrictive covenants. In this situation, he would want it to say that when the buyers sell the property, that the maximum sales price could be at least as high as the purchase price, if not higher. So the purchaser would not be faced with a potentially drastic loss on property that is intended to be affordable.

St. Peter asked how that would be different from his purchasing a residence at fair market value. Mr. Olson responded the property is artificially low. The property is worth between \$200,000 and \$225,000, as is supported by all of the interest and quick sale.

Wiersum asked if a buyer would have been found if the interested buyers were given the option of purchasing the residence for less than it is worth with the condition that if the buyer sold the property within the next year, money would be lost in the transaction because of the formula. Mr. Olson was unsure. Wiersum said he wants to make residences affordable, but not make owners immune to market risk. Wiersum understood Mr. Olson's perspective, but purchasing a residence for \$171,000 that is worth \$210,000 is coming out ahead to begin with. Usually reselling a house within a year would cause the seller to lose money because of real estate commission and other fees. Affordable housing's goal is not to make property owners immune from market risk, but rather an attempt to get people who might not otherwise be able to afford to live in the community

to live in the community. He said there are good points to be made on both sides.

Mr. Olson did not know what lender would finance such a formula. Wiersum asked what the typical finance proportion for one of the typical, affordable houses is usually. Mr. Olson estimated three percent down. Mr. Olson appreciated Wiersum's comments. The formula forces a loss and he did not think that is its intent. It was created for an appreciating market, not a drastic change like this.

Brian Jones, Eden Prairie, stated that he is the potential. He wanted to ensure that he could purchase the residence at \$171,000 and not lose \$25,000 just by taking ownership. He understands that he may incur loss if the market declines further in a year or two. The formula works in an increasing market, but it is tough to take a loss when purchasing a house. He is planning on living there many years.

Jeff Dickhut, father of the seller, 4901 Woodhill Road, stated that the market has changed. The start price was set to be affordable. With the market the way it is, more and more houses are affordable. The formula does not take into account the original price and what the value of the house could be if there is interest in the residence.

St. Peter clarified that the original sales price is not artificially set. The city buys the price down utilizing city funds so there is a conscious choice as to where the price is set.

The public hearing was closed.

Wagner said that resale covenants have been used to protect affordability. The 50 percent cap was implemented when the townhome he was living in went from being valued at \$110,000 to \$220,000 and no longer was affordable. He is concerned with being too restrictive to the market. He advocates for staff's recommendation with a caveat to allow a floor that stipulates if it was purchased at a certain price, it could be resold for no more than that price, but the calculation would still be done. For example, if it was bought today at \$100,000 and the market value said it should have sold for \$75,000 and five years later it is sold for \$105,000. He advocates for a floor so that the buyer does not have to take a loss on the property, but that the percentage is still calculated through the entire time the owner owned the home. He has a tough time with forcing a homeowner to take a loss just to get the affordable property.

Wiersum said he wants a solution to modify the negative impact to the seller. He did not want to see a young couple buy a home to live in Minnetonka and, due to a change in circumstance, take a \$25,000 loss.

He had a problem with affordable houses that, if a loan is not approved based on the covenants in place, is no longer an affordable house, but at the same time, to guarantee a floor does not feel right either. He could see modified floor, with some amount of risk. Modifying the amount of risk and indexing it over 1, 2, or 3 years so that at the end of 3 years the house could be sold at market price. Some floor during the first 2 years seems reasonable. He did not believe the EDA should require the city to take the risk when the buyer takes no risk. He wanted to be balanced in the approach and considerate of the issue that could be created.

Wagner used the term "floor" to mean that the homeowner would still have to sell the property at what the market would dictate. If the house is worth \$200,000, purchased for \$170,000, and tomorrow its value decreases to \$144,000, then the homeowner should be allowed to sell the property for \$170,000.

St. Peter noted that a lender will take the formula into consideration when determining the amount that the property is worth for lending purposes. That may need to be shared between the buyer and the seller because if you cannot close on a loan, you cannot close on the transaction. He suggested that the market does still govern what will happen and the availability of financing will determine the true fair market value of the property given the covenants of record.

Duffy felt the covenants should be in the disclosure forms. Everyone looking at presenting an offer should be made aware of them. He was concerned with setting a price and a minimum in a particular case because that might set a precedent that might warrant other problems later.

Wagner favored more discussion. Affordable housing has been defined as \$233,000. The goal is to keep housing affordable to maintain a diverse population. It is ludicrous to set a purchaser up to take a \$25,000 loss. Calculating the intent of resale covenants over the life of the property does make sense. He does not support staff's recommendation.

Wiersum understands the stickiness of the situation. He sympathizes with the particular situation. The policy needs to facilitate lending under the rules for the target audience that the program is intended. If the system is set up to prevent the buyer from securing a loan, the system does not work. At the same time, if he was buying a house and there is a likelihood he would be moving in a year, he should not have purchased the house. Even in a good market, with real estate commissions, he should not have purchased the house if moving within one year. He did not want to solve a problem for a situation when, in reality, they should not be buying a house. Wiersum said he would rather solve a problem for a scenario where a

buyer stays in a house for five years or more. Protections need to be in place to allow them to receive financing. All of the market risk cannot be taken out of the situation.

Wagner did not see the market risk being taken out of the situation for the end user. The reality is that the sale price is limited because of historical standards. If the market goes down and no one is willing to pay what the seller is asking for, the market will still determine the price.

St. Peter said a lender simply looks at the inherent value or resale value of the property to make the lending decision. Under the formula, if we do not give an artificial increase waiving the application of the indexing policy to the property to the lender now, the property is worth no more than \$144,000 unless it is agreed that the lender or buyers are allowed to recover at the \$171,000 value. The willing buyer and willing seller have not finished the transaction because they do not have a lender willing to lend at the agreed upon price. That frequently happens in the market place. Parties can agree to a purchase agreement which is not bankable.

Yaeger understood that if the house would be put on the market again, the maximum that the seller could ask for would be \$144,000. Durbin clarified that if the current sale fell through, the house would be listed at \$171,000. The \$144,000 would not come into play until the actual unit is sold and the title is transferred. Yaeger asked if the house would be taken off the market completely and put back on the market in October of this year, then would it be listed at \$171,000; or at what point in time would it be listed at \$144,000. Durbin explained that if the house would be taken off the market for several months and then listed, it would be subject to the 2009 resale value of \$144,000. Yaeger felt the market place should be allowed to dictate in this circumstance. Assuming that the seller is selling at \$171,000 and no one can get a loan for \$171,000, the seller would have to lower the price in order to get a loan to purchase the house. Durbin agreed. She noted that the city has 129 resale restricted units, and she is not aware there has ever been a problem getting a loan because of the covenants.

Yaeger stated that the seller is the one in this situation who is setting the price and not willing to negotiate below the high price, but the property will not be sold unless a buyer can get a loan for it. He did not see an issue. The market will make the purchase happen just as it should. The loan will fall through because it is not going to happen and then the price of the house will have to come down to a point where enough of a loan will be approved for a buyer to purchase it.

Duffy noted the disclosure forms have to indicate the covenants to any potential buyers. He asked at what point is the new index given to the

seller. Durbin explained that the new prices are sent out in March or April to set the price whether the residence is on the market or not. If the residence is on the market, it can be left at the listed price or increased. The maximum resale price would be effective immediately. The 2009 price would be effective until March or April of 2010. Duffy confirmed with Durbin that by March of 2009, the \$144,000 price would have to be included in the disclosure forms to potential buyers. Durbin agreed that the disclosure forms should mention that the covenants are in place and that the maximum resale prices are set. The 2009 numbers have not gone out because the issue was brought up prior to those numbers being sent out; however, when the new resale numbers come out, they will be included in the disclosure packet.

Wiersum said the indexing system is in place to maintain affordability. It is designed for an increase in the market; so that the increase in value does not outpace the affordability. The homeowner may benefit from the appreciation of their homes, but, at the same time, not eliminate the affordability. The system is tied to the market and that is appropriate. The banker wants to make sure that the property is worth more than the money being lent to pay for it. The buyer's credit worthiness and the market value are factors. If a home would be foreclosed upon, the bank would consider if affordability rules would constrain the foreclosure.

Wiersum said it is anticipated that housing values will stabilize and go up at a modest rate. If the market increased 5 percent each year, the difference between \$144,000 and \$171,000 would increase at \$7,200 a year and make up the \$27,000 difference in 4 years or 5 years. That is a fairly lengthy time frame for a starter house. He struggled with finding the right answer. He does not want to be driven by one example. The price needs to be tied to the market and affordability needs to be protected. He believes buyers should not have to have to buy an affordable house and after a certain amount of time still lose money on it; however, he does not want to eliminate all risk. That is not the purpose of affordable housing.

Cousins acknowledged that this situation could happen to anyone in the affordable housing market. St. Peter agreed. Cousins considered if four other owners want to move out of their affordable residences this year, they would have a potential loss. St. Peter clarified that the loss would be against the potential maximum sales price in 2008. In this transaction, the seller was allowed to list at that value. St. Peter argued that that does not necessarily mean that is what the fair market value is. The lender will take into account the restrictions that occur after closing. It is the problem that occurs in any transaction near an anniversary date. The EDA and the city council may reaffirm its policy and fully disclose the terms with all of the parties. St. Peter said the house is only worth what the bank is willing to lend. If the bank is not willing to lend more than \$144,000 and he was

mediating between the parties, he would suggest that the value is \$13,500 more than the \$144,000; the seller carry back some financing; or the buyer come up with additional funds. Just because there is an artificial maximum allowable sales price that the city allows it to be listed at, does not mean the city will guarantee that price at closing or that a bank will lend on that price. The willing buyer and willing seller give the market value of a property, not the indexed value.

Wagner disagreed. This situation has a willing buyer and a willing seller. Before the EDA is a policy question. The policy covers resale covenants tied to increases. It needs to be determined if "increases" will remain to mean increases only or if "increases" will be applied to increases and decreases. St. Peter was a part of the commission for the creation of three indexes. The first two discussed the positive/negative aspect. It was agreed that it would be a long-term average, regardless of what happened. He did not think it was included in the policy statement, but that is where the average came from.

Wagner said from a policy decision stand point, he agreed with the long-term aspect of averaging, but disagreed fundamentally with requiring buyers to take a loss immediately because of the formula. The EDA's goal is to maintain affordability. It can be \$171,000 until the market value catches up to it, but the average increase or decrease over time would meet the intent of the goal which is to have affordable housing. St. Peter asked how a lender would be convinced to lend more than \$144,000 this year. Wagner said because it would be defined as a policy decision to say that the increase or decrease would be defined. St. Peter asked if the city would guarantee the lender the recovery.

Wagner moved to continue implementation of the system with the following change: "Continue the maximum resale price to include increases and decreases with a stipulation that an owner buying a property under the resale covenants may sell it regardless of the calculation of the increases or decreases for what they have paid. It is not guaranteed that if someone is willing to buy it for that price that they are able to do that." There was no second. Motion failed.

Yaeger moved to continue implementation of the system as it currently exists. There was no second. Motion failed.

Duffy moved, Wiersum seconded a motion to implement the system with indexing at a 50 percent increase or decrease for the current transaction only. It is conditioned on the acceptance of the buyer, seller, and developer. Duffy and Wiersum voted yes. Cousins, Wagner, Yaeger, and St. Peter voted no. Robinson was absent. Motion failed.

Durbin clarified the 50 percent would be applied to increases as well as decreases for the property. It currently increases at 100 percent of the rate. St. Peter said that would be the compromise that the 50 percent would be applied to both.

Wiersum asked if it would be appropriate to table the item until the next meeting. Wagner clarified that the buyer is scheduled to close on the property this week. Wiersum asked the buyer if financing has been obtained for \$171,000. The buyer responded that the bank has approved a loan contingent on the buyer being able to sell the house for \$171,000; if the wording, dealing with a maximum increase, stays as it is, then the loan is approved.

Wagner says he feels that he has not articulated the situation appropriately enough. If he was the owner of the property, and every buyer has the same issue with the resale covenant, he would not sell his property. He would rent it out and it would not allow for turnover which is needed in Minnetonka. The original policy did not take into account 15 percent decreases each year. A 100 percent increase in 5 years was not expected either, which is what happened at the Gables of West Ridge.

Wiersum did not disagree with Wagner's point. A 15-percent decline is significant. Foreclosures are included in the figure which makes it somewhat of an artificial number. Assessed values in Minnetonka went down three or four percent, which is much more reasonable. Because the figure includes foreclosed properties, which sometimes sell at 30 percent to 50 percent off past value, it is an overly onerous policy. The current buyers want to close on the house. The city is not guaranteeing that the house could be sold at \$171,000 in the future. The market is not being taken out of the equation, but is creating an affordable ceiling. He could see how that could be a disincentive to a lender. It is a complex issue, but he now supports Wagner's proposal. It is not a perfect answer, but a better answer would be that decreases should count, but they should not include foreclosed houses. He can live with Wagner's motion for this particular case. The issue can be discussed again later.

Yaeger felt one issue not discussed is the price of the house is set too high. The house does not need to sell for \$171,000. If a loan cannot be secured at that price, then the house price needs to be negotiated lower. By doing what is suggested here, the high sale price is being guaranteed.

Wagner tried to clarify that owners of covenant-restricted houses in Minnetonka are facing a definition change. Any bank would have loaned \$171,000 for the property today. It is the fact that the resale covenant restricts the sale price the day after closing to \$144,000 that is preventing

approval of the loan. Yaeger saw that as an element of the fair market value. Wagner disagreed.

Cousins asked if there is a way to allow the buyer to be able to sell the residence for up to \$171,000 in 6 months. Wagner said that was his motion. Cousins now understood that Wagner's motion would allow resale up to the purchase price, but not guarantee that price. Wagner explained that the first year the buyer could sell it for up to the purchase price, year 2 up to \$150,000, year 3 up to \$160,000. By year 5, if the value got up to \$180,000 and the math would still work and it could sell for \$180,000, but not until the math caught up.

Duffy was ready to make an exception for the property. There needs to be more discussion on the issue. The 50 percent indexing in 2004 made sense and still does. He questioned how many buyers would be lined up to purchase the property if they knew the covenants.

Duffy moved, Wagner seconded a motion to apply affordable housing covenants, but allow 9967 Enclave Drive to be sold at an amount up to the purchase price. Cousins, Duffy, Wiersum, and Wagner voted yes. Yaeger and St. Peter voted no. Robinson was absent. Motion passed.

Wagner requested staff's policy recommendation include increase and decrease percentages for the next discussion of the issue.

Durbin will be following up with City Attorney Desyl Peterson for documents related to 9967 Enclave Drive.

#### **4. TIF REPORT FOLLOW UP AND TIF/TAX ABATEMENT POLICY**

Wischnack gave the staff report.

Wiersum moved, Cousins seconded a motion to amend the TIF plan for the Beacon Hill district to include using those dollars for support of affordability for housing in the Glen Lake project area. Cousins, Duffy, Wiersum, Wagner, Yaeger, and St. Peter voted yes. Robinson was absent. Motion passed.

Wagner asked if the funds expire at a certain point. Wischnack explained that the TIF plan must be amended by next month to use the funds for another purpose. If they expire August 1, 2009, the funds cannot be used. Wagner asked if it could be said that the funds will be used "for a project to be determined." Wischnack thought for a project located in the "project area" would be sufficient.

**5. STAFF REPORT**

Durbin reviewed the staff report items including the Southwest Transitway station area study and DEIS, the Minnetonka Mills Corridor Development Initiative, foreclosures, Crown Ridge, and upcoming events.

**6. OTHER BUSINESS**

The next regular EDA meeting was announced as June 29, 2009 at 6 p.m.

**7. ADJOURN**

Duffy moved, Cousins seconded a motion to adjourn the meeting. All voted yes. Motion passed. The meeting adjourned at 6:45 p.m.