

**MINNETONKA ECONOMIC DEVELOPMENT AUTHORITY
MEETING MINUTES**

**NOVEMBER 30, 2009
6:00 P.M.**

1. CALL TO ORDER

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

2. ROLL CALL

EDA commissioners present: Ellen Cousins, Dan Duffy, Peter St. Peter, and Bill Yaeger.

EDA commissioners absent: Bunny Robinson, Tony Wagner, and Brad Wiersum.

Staff Present: Julie Wischnack and Elise Durbin.

3. APPROVE MINUTES OF OCTOBER 19, 2009

Duffy moved, Yaeger seconded a motion to approve the October 19, 2009 meeting minutes. Cousins, Duffy, Yaeger, and St. Peter voted yes. Robinson, Wagner, and Wiersum were absent. Motion passed.

BUSINESS ITEMS

4. 2010 HRA LEVY

Wischnack introduced the item.

Yaeger asked for clarification of the highest income limit that would be accepted into the housing programs. Wischnack stated it could be up to 115 percent of area median income with size of household taken into consideration.

Cousins asked if the loan would be absolved after 30 years. Wischnack answered in the affirmative. Wischnack thanked Cousins for noting an error, and said program details will be worked out at a later date.

Duffy asked if anything has changed since discussing the \$75,000 amount for the village center process to warrant changing the amount. Wischnack felt \$75,000 would be enough. It would depend on the amount of detail of the master plan, but the public engagement piece is predictable. St. Peter noted the EDA's review would take place after the city council review.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Cousins moved, Duffy seconded a motion to approve the \$175,000 HRA Levy. Cousins, Duffy, Yaeger, and St. Peter voted yes. Robinson, Wagner, and Wiersum were absent. Motion passed.

The city council is tentatively scheduled to review the item December 7, 2009.

5. ITEMS CONCERNING GLEN LAKE REDEVELOPMENT

Wischnack introduced the item.

Wagner joined the meeting.

Wagner requested additional commentary regarding a 5-year look back. Sue Steinwall, attorney at Fredrickson and Byron and representing St. Therese, stated her original request was to delete the look back provision section as it applied to St. Therese in its entirety, but a 5-year look back period was settled on. She said much of the reason for delay of the project has to do with financing, but the applicant is now on track with the lender, which is HUD. She said a deal of this magnitude is complicated, and she anticipates the 5-year look back period to cause complications in securing HUD financing. Steinwall said the applicant is paying a retail price for the site to develop it as if it were a site for which no public participation had occurred. The public has invested in the site, and St. Therese is ready, willing, and able to provide the affordable housing units that the EDA values. This is a project in which the public has a role and interest. The applicant is willing to provide the affordable piece. St. Therese is a non-profit corporation and in the business of providing services. The look-back provision is more appropriate in those cases where property is sold to a real estate developer who might be in it for a purpose other than to be a member of the community and provide services on a long-term basis. The St. Therese board has no intention of flipping the property to make money. The bottom line is that she anticipates having problems with HUD accepting the 5-year look-back provision, particularly since St. Therese is purchasing the property from a private party. She hoped to keep the transaction simple and on track, and the applicant hopes to be in the ground this spring.

Duffy asked if HUD has issues with the affordable units. Ms. Steinwall stated that, to her knowledge, HUD has no issue with the affordable piece.

Wagner relayed that Wiersum is concerned with a change related to the look-back provision.

St. Peter shared that concern. The EDA started with a 30-year look-back provision and compromised to 15 years. There is a significant amount of public money in this project, and in all likelihood, the city would be subordinating one way or another to HUD. If HUD would be the lender, then there would not be a

problem; however, if it would be another entity or if it would be refinanced, then there potentially could be a problem. The retail purchase is an issue between the primary developer and St. Therese. It is part of the EDA's consideration and responsibility to look to the value and long-term investment that the city tax payers have made and see that there is no windfall somewhere along the line, even to a non-profit organization. The bonds repay the cost the city has incurred. He strongly recommends leaving the look-back provision at 15 years. The developer will have an opportunity to modify it since the EDA has a recommendation that goes to the city council. His sense is the city council will have the same difficulty with the drop from 15 years to 5 years. The EDA determined that the restrictions would be applied fairly across the board rather than make a whole series of exceptions. His recommendation is to adopt staff's recommendation, but with the 5-year look back reverting back to a 15-year look back.

Cousins wondered if there could be a provision that would change the look back to 5 years if the financing would be done by HUD, but all other financing would require a 15-year look back. She did not know exactly how that could be worded, but it seemed that HUD is already having a difficult time with any look back, but 5 years might be acceptable. She acknowledged that St. Therese is not in the market to flip properties. If a 15-year look back causes the project not to move forward, then she would have a problem with that.

Wagner asked Mr. Bubul to explain the benefit of a look back. Mr. Bubul clarified that he did not know for sure if HUD may require subordination. He said a look-back is a contractual promise to pay. In this case, the actual TIF note is held by the developer and St. Therese, as the subdeveloper, who would have to make a payment. He did not know exactly what HUD would do. He knows from other experiences in dealing with HUD-financed projects that a look back does raise major concerns. He assumes the 5-year look back is more reasonable to HUD because it is unlikely that it would ever come into play. He does not know what HUD may actually require. The worst-case scenario would be if HUD made the applicant subordinate completely, or it could mean some type of role to be determined as the deal moves forward.

Wagner stated the primary purpose of the look back is to prevent quick resale and profit, and that any recapture of profit would go to reduce the TIF or for other affordable housing purposes. The basic concept is that even though the subdeveloper would be acquiring the property and not directly receiving assistance there was assistance provided for the project and if the property is sold at a profit by an indirect beneficiary that would indicate that there was more subsidy than was needed and that profit should come back to the EDA to reduce the level of assistance. The assumption is that as time goes on that argument gets less compelling. St. Peter recalled that was the argument used to reduce the look back from 30 years to 15 years.

Duffy agreed with everyone. He wants the project to move forward, but wants to ensure the city's best interests are kept. He questioned if there is a way to reword the contract if the property is sold by St. Therese to someone else within a designated time frame or without a time frame. A sale would trigger repercussions the city could benefit from. He asked if a stipulation like that could be used instead of a look back. Mr. Bubul answered that that is more or less what the contract states now. It simply says if the property is transferred within the 15-year or 5-year period, then some sort of a look back would be negotiated. That was left undecided because there are too many unknowns right now. From the buyer's perspective, not setting a time limit would be a worse condition.

St. Peter noted the limitation set by state law is 30 years. He observed from working with other development projects that one of the ways to get around subsidy financing limitations is to refinance them out from under HUD mortgages and thus strip out the limitations and convert them into market-rate units. That occurred in the 1980s and 1990s with regularity, and is another reason he requests the EDA stand firm on the requirements and come back and look at the condition on a case by case basis if the needed. The project has continually moved forward on the basis that it is an integrated, 3-phase project, and all of the phases share in the benefits. If St. Therese overpaid by buying retail, then that is between St. Therese and the seller.

Wagner was okay with moving the application forward. The cause for concern with the look back is twofold. On one side, it is a protection and only comes into play if the property would be sold. At the same time, he does not want to hold up the development. Additionally, the look back has not been defined, and has less of a tangible value. He was willing to move the application forward and discuss his concern with staff and the city council. He challenged staff and consultants to consider some scenarios to make the look back valuable. The look back could be waived or shrunk down to 5 years if the building would be in the ground by a certain date, and would go back to 15 years if it is in the ground after that date. The overall goal for the neighborhood, EDA, and city council is to have Site A move forward quickly.

Mr. Bubul commented staff was willing to reduce the number of years to 5 because in other deals that he has worked on where the developer is an entity that tends to buy and hold, 5 years is about average. It is not completely out of line with deals that he has seen. He noted that if the EDA's decision is to recommend the application be approved with a 15-year look-back period, that the EDA give the city council the discretion to drop the number of years to 5.

Wagner said it would be up to St. Peter, and he was fine with either. Mr. Herman said there are two points to consider. The subdeveloper paid the developer \$3 million for the property when the EDA was thinking 15 years. Now the payment is substantially less. The effect of that net in the overall transaction is that the amount of subsidy that Mr. Wartman, as the master developer, is receiving has

been diminished by that amount. It may be the market price today, but he has taken quite a sacrifice to get there. If the look back really is to remove some excess subsidy, then he is already in an economic straitened circumstance. Mr. Herman added it is easy when sitting here to say that there is another lender out there, but he works in the market and right now there are no other lenders. HUD is the only lender. For whatever reason, if HUD is concerned about it being 15 years rather than 5 years, then he would first consider the idea that Cousins suggested and allow the lender to have the look back for 5 years. Mr. Herman explained that he is involved in at least four other FHA processing situations. It is incredibly difficult to work with HUD on their processing. HUD has been given direction to be more stringent and worry about what happens during a transaction. What HUD often likes to do if it has a project in trouble, is to try to have the owner sell it. If HUD views the deal as a detriment to bringing in a mutually agreeable alternative owner, then that is what is really worrying HUD. There might be some unknown impediment that would cause St. Therese to have to come up with additional money in order to make a managed sale to a new buyer who would operate basically in the same fashion. Mr. Herman knows HUD has incredible problems with all kinds of things. He said Cousin's suggestion is a good one.

St. Peter asked if the agreement had a snap back with an entity other than HUD, then would he agree that 15 years would be better. Mr. Herman noted that a lock is used in many cases for 5 years. He guessed that there would be less concern if it was less seasoned. The initial financing by HUD is the primary concern.

Ms. Steinwall commented HUD is the primary game in town at the moment and Cousin's idea would go a long way in resolving the applicant's concerns. There is little chance within the first few years the project will be refinanced. Transaction costs are enormous, and there is generally a prepayment penalty. The applicant is anxious to minimize the dialogue and the problems that need to be dealt with in respect to HUD financing and, in the event of a sale.

St. Peter observed the discussion at the inception of the contract with Mr. Wartman, Mr. Herman, and consultants focused on utilizing a look back to set a threshold based on values paid at the inception of the project and did, in fact, look at profitability over and above that coming out over the term of the project. It was not in the event of a foreclosure or sale where the property is under water, but, in fact, if the property has appreciated over time, that the city would be looking for participation in the appreciation because the city made a significant public investment in the area. The project was presented as three phases, and all participated in the benefits of the TIF and benefits beyond the TIF in the other public improvements, thus, if there is a profit or a benefit over the original purchase price then some of it should be repaid, but not to force a party to come up with a check if the property depreciates in value.

Ms. Steinwell covered what would happen with a sale to a third party during a look-back period. It certainly would complicate negotiations that St. Therese would be in the middle of if, for whatever reason, a sale to a third party would occur in the future.

Mr. Bubul felt comfortable modifying the language to specify a 5-year look back as long as HUD is involved, but with an overriding 15-year look back over the course of the project if HUD does not remain the lender for the full 15-year period. It may be appropriate to specify the baseline threshold against which it is measured as was done in other projects.

St. Peter felt that could be done. He asked if the look back should be defined right now as opposed to in the future.

Mr. Bubul's sense is that by the time the application is reviewed by the city council there will be a firm number. He would rather not continue discussion and have it come back through the cycle, but give the city council the opportunity for the final determination. It would be appropriate to at least set a threshold so that people are on notice as to the value of the look-back calculation. St. Peter clarified that "the threshold" referred to the base-line sale price.

Wagner was torn between protecting interests and moving the application along. The subsidy of the project has declined.

In response to Wagner's question, Mr. Bubul stated the initial analysis of the need for TIF assumed a particular level of land-sold revenues which were a little over \$3 million. In fact, less than that will be received. There is no excess profit. It is safe to say that there is unlikely to be an actual look back right now on any of the projects because of the poor economic climate.

Wagner preferred to get the project moving. He supported the 5-year look back with HUD financing and 15-year look back with other financing.

St. Peter recommended a 5-year look back for purposes of HUD financing and a snap back for a 15-year period if financing is done by an entity other than HUD. The period between now and the city council meeting may be used to research and clarify the position with the knowledge the EDA would support that decision.

Wagner moved, Cousins seconded a motion to adopt resolution 2009-006 with a 5-year look back provision if financing is provided by HUD and in the event that the property is financed by another party or refinanced during that period it would move to a 15-year look back; and should the city council change the recommendation to a 5-year look back that this body concurs with that decision; and recommends that the city council set a threshold evaluation amount for the look back in the contract. Cousins, Duffy, Wagner, Yaeger, and St. Peter voted yes. Robinson and Wiersum were absent. Motion passed.

Mr. Bubul stated that the changes done for approval of the first resolution should be the done for the second resolution.

Wagner moved, Duffy seconded a motion to adopt resolution 2009-007 with a 5-year look back provision if financing is provided by HUD and in the event that the property is financed by another party or refinanced during that period it would move to a 15-year look back; and should the city council change the recommendation to a 5-year look back that this body concurs with that decision; and recommends that the city council set a threshold evaluation amount for the look back in the contract. Cousins, Duffy, Wagner, Yaeger, and St. Peter voted yes. Robinson and Wiersum were absent. Motion passed.

6. POLICY NUMBER 2.5 (TAX-EXEMPT FINANCING)

Wischnack provided the report.

Wagner asked if requests to issue bonds from other cities fall into the same policy and resolution. Wischnack confirmed that Minnetonka would play host to the debt, but not issue the debt. Mr. Bubul clarified the facility happens to be located here. Under federal and state law, a city must give its “host approval.” Minnetonka’s policy requires the borrowers to pay a modest application fee.

Wagner noted sometimes Minnetonka will do it for other cities and sometimes other cities will do it for Minnetonka. Wischnack agreed. Wischnack provided an example of Victoria issuing the debt for a place in Minnetonka. That would not be governed by the ½ of 1 percent fee. Mr. Bubul said when Minnetonka issues the debt, the fee would be paid. The rules vary depending on the type of bonds. There is a bond for a manufacturing project. Those are not eligible for the ½ percent; only the 1/8 percent. Some kinds of housing bonds, even though they are affordable housing, if owned by a private entity, are limited to the 1/8 percent. The caveat is added for situations where it would have to be reduced.

Yaeger asked if going from 1/8th to ½ of 1 percent makes Minnetonka less competitive in the development market. Wischnack mentioned the discussion she and Mr. Bubul had regarding raising the fee. The financial consultant is seeing ½ of 1 percent more often. It is a struggle determining whether or not to charge the higher fee and be less marketable. Once Wischnack found that ½ of 1 percent is more common, she felt it important to make the change. The debt Minnetonka has issued over time goes back into the development fund.

St. Peter noted it could be possible to lower a rate during negotiations. It would be easier to lower a rate rather than try to increase a rate during negotiations.

Yaeger moved, Duffy seconded to change the Policy Number 2.5 Tax-Exempt Financing, including the substitute of page 4. Cousins, Duffy, Wagner, Yaeger, and St. Peter voted yes. Robinson and Wiersum were absent. Motion passed.

7. STAFF REPORT

Durbin reviewed items including:

- Hennepin County Regional Rail Authority held a meeting on October 20, 2009 voted approval on alignment 3A on November 3, 2009. The next step is the Metropolitan Council. That will occur after January 1, 2010.
- The old Cattle Company site will be demolished next week. Wagner thanked staff for taking care of the eye sore. Wischnack provided that it will cost approximately \$70,000.
- Minnetonka's "green" house received a full-price offer of \$405,000 after 5 days on the market. The sale will close in January.
- Minnetonka's Housing performance score is 83. It speaks well to the city's efforts for affordable housing.
- The CDBG rehabilitation housing program was opened October 7, 2009 and closed November 4, 2009. A total of 55 applications were received. Durbin reviewed the statistics on the applications. Many residents are thankful for the opportunity, even if it is only \$5,000.
- Glen Lake plaza was redesigned based on what the city council discussed in October. Staff will be working on providing more detail on the fountain for the next review by city council. Wagner noted that staff will be looking at how it would be funded because there will be shortfalls in TIF.

6. OTHER BUSINESS

Durbin announced that there is a Sensible Lane Use Coalition meeting this Wednesday. A participant may show up without prior registration. The city will reimburse EDA members who attend the program.

Durbin noted that the 2010 EDA calendar is available.

St. Peter stated that the next regular EDA meeting will be Monday, December 28, 2009.

7. ADJOURN

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