

**HOUSING AND REDEVELOPMENT AUTHORITY  
CITY OF RAMSEY  
ANOKA COUNTY  
STATE OF MINNESOTA**

The Housing and Redevelopment Authority conducted a Work Session meeting on Tuesday, February 28, 2012, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present:                   Chairperson Colin McGlone  
  Commissioner Randy Backous  
  Commissioner David Elvig  
  Commissioner Bob Ramsey  
  Commissioner Sarah Strommen  
  Commissioner Jason Tossey  
  Commissioner Jeffrey Wise

Members Absent:                   None.

Also Present:                       City Administrator Kurtis G. Ulrich  
  HRA Executive Director Heidi A. Nelson  
  Public Works Director Brian Olson  
  City Engineer Tim Himmer  
  Economic Development/Marketing Director Aaron Backman  
  Finance Officer Diana Lund  
  City Clerk Jo Thieling  
  Human Resources Representative Colleen Lasher  
  Fire Chief Dean Kapler  
  Police Chief James Way  
  Park Supervisor Mark Riverblood  
  Planning Interim Patrick Brama  
  Development Manager Darren Lazan  
  Landform Project Principal and Planner Kendra Lindahl  
  Tom Bray with Briggs & Morgan  
  Stacie Kvilvang with Ehlers & Associates

**CALL TO ORDER**

Chairperson McGlone called the regular meeting of the Housing and Redevelopment Authority to order at 5:06 p.m.

**TOPICS FOR DISCUSSION**

**Case #1:           Review Sale of Bonds for The Residence at the COR – Flaherty and Collins,  
Debt Subordination Agreement for PNC Bank Financing and Project Update**

HRA Executive Director Nelson reviewed the staff report.

Tom Bray with Briggs & Morgan presented his memorandum dated February 22, 2012, detailing the Debt Subordination Agreement, remedies available to the HRA under the Purchase Agreement, Development Agreement, Loan Agreement, Promissory Notes, Pledge Agreement, Guarantees, and described the Debt Subordination Agreement impacts on those remedies.

Commissioner Ramsey stated it sounds like the agreements are the same as the original documents the HRA chose to approve. He asked when are the first \$1 million equity call and second \$2 million equity call for Flaherty & Collins (F&C).

Development Manager Lazan indicated equity calls are at 12 and 18 months. He reviewed the past HRA discussion whether a “carrot” or “stick” approach should be taken and decision reached to incent F&C so the documents have been structured in that way, to incent early prepayment and penalize late payment.

Commissioner Ramsey noted that in 12 months the project will not yet be built so there will be no revenue coming in. He indicated if this project defaults, he believed it would be after construction if they can’t lease it, and by then it is a moot point.

Commissioner Elvig asked Commissioner Ramsey what assumption he is using for the equity calls.

Commissioner Ramsey stated the HRA considered whether there should be a penalty if they didn’t pay and consensus was reached that an incentive was a better option. If they do prepay the debt owed to the HRA, they would get back a percentage of the amount.

Commissioner Elvig stated his understanding there would be a “carrot” and a “stick” if they don’t pay on time. He asked whether it is a mandatory pay, noting that is not contained within the documentation

Commissioner Ramsey stated he expects them to pay because they agreed to it and if they don’t make the mandatory payment, a penalty would be assessed.

HRA Executive Director Nelson stated staff believed it was set up to be successful in terms of rent projections and the document addresses the process to use if a troubled situation occurs.

Commissioner Ramsey stated how can it fail prior to leasing because there is no money until that point.

Chairperson McGlone offered the scenario of a lawsuit by a contractor prior to completion of construction, noting this document will provide guidance through such a situation.

Commissioner Elvig stated he did not think the document contained any real remedies and the only remedy offered would put the HRA in a more jeopardized position than if no action was

taken. He believed the documentation contained loopholes for PNC, such as the Right of Reverter and allowing PNC to do a split after foreclosure sale, both of which are uncommon. Commissioner Elvig stated there may be no default while the HRA is in control but if leasing does not go well and they have to drop the perform, the bank may pull back financing that results in stopping the project. He pointed out the HRA would have no ability to jump in at that point without injuring its position. Another scenario offered was that the project is completely built but the leasing is not working out so they are unable to size the loan for permanent financing to balance the appraisals. Commissioner Elvig stated his support to reduce the HRA's exposure. He doubted there would be a "scorched earth" scenario but there may be something in between.

Chairperson McGlone stated he feels differently. He noted this is \$28 million construction project and no matter where the funding comes from, the appraised value once built is \$40 million, which is a good position for any bank or city. On the point of the documentation, he noted its purpose is to help the HRA through the process in case the need arises.

Commissioner Ramsey stated the rents are at 85 cents a foot and if they can't get a lease at that rate, no apartment will last.

Commissioner Elvig stated an appraisal is on land value, comps, and rent and the problem is that this has been raised to \$40 million. In comparison, he described a 210 unit apartment in Uptown appraised at \$40 million that included the cost per unit, land, parking stalls. That rent is at \$2.21 a square foot and appraisal at \$40 million. Commissioner Elvig stated he is concerned that this appraisal came in at \$40 million when it is at half the cost and half the potential price per square foot.

Stacie Kvilvang, Ehlers & Associates, Inc., stated in reality it would need an appraisal of \$30 million to take out the HRA.

Commissioner Elvig stated that is correct if an institution is willing to take out 100%.

Ms. Kvilvang indicated many institutions are willing to do that, but not every institution.

Commissioner Ramsey noted the HRA had these same discussions when the agreement was approved in September. He pointed out the HRA is under a purchase agreement contract and the Subordination Agreement does not change anything, with the exception of one issue.

HRA Executive Director Nelson clarified that the Subordination Agreement does not change the agreement made in September as it relates to equity raises.

Commissioner Ramsey believed the deal had already been negotiated and approved so if the Subordination Agreement was not approved, there could be penalties against the HRA.

Commissioner Elvig stated his intent is not to "kill the deal," but he wants to assure the HRA fully understands that it really has no remedy under this agreement. He indicated that does not surprise him but now it is in "black and white." Commissioner Elvig explained the concern for

him is that the equity calls were to be mandatory equity calls to assure the funds would come in. He asked about the language for a personal guarantee

Mr. Bray stated that is contained in the development agreement exhibits.

Commissioner Elvig asked about the agreement with F&C for a personal guarantee and if they would agree to improve the equity raises or performance guarantees. He also asked if there was a way to guarantee the equity puts via performance milestones.

Mr. Bray stated in terms of the guarantees, there are two notes in favor of the HRA and each is subject to a different guarantee, one by the construction entity and the other by F&C. He described the terms of the notes and development agreement.

Commissioner Elvig asked about a performance guarantee, such as a \$2 million letter of credit that could be used if they don't complete build out or can't get bank financing.

Chairperson McGlone indicated the Right of Reverter addresses some of those issues.

Commissioner Elvig noted under those terms the HRA would have to wait until the bank is done.

Mr. Bray explained if the HRA exercises the Right of Reverter, the bank would have to buy out the HRA and take over. He indicated a performance guarantee such as a letter of credit would be a new concept in the deal.

Chairperson McGlone stated he has no desire to renegotiate at this 11<sup>th</sup> hour on things the HRA should have covered earlier.

Commissioner Ramsey believed the HRA had anticipated a lot of these issues and recalled comments were made that even with a "scorched earth" scenario, which is very slim, the HRA will still have a building that pays taxes.

Commissioner Tossey noted the comment was made that the items Mr. Bray has presented were no different since September, which is a concern for him and why he voted against it. He agreed there are no real guarantees to get the HRA's money back. He stated if there is a "scorched earth" scenario, they why did the City agree and build a \$4 million ramp.

Chairperson McGlone stated before he got elected, the prior Council sought out a grant to fund a parking ramp. He stated he had voted to build the parking ramp because the City already had the money and because of the train aspect.

Commissioner Tossey suggested the train was never going to fill that many parking spots in the ramp. He believed the parking ramp was built for one thing, to have 150 dedicated spaces for F&C. Commissioner Tossey stated he never supported the ramp because the apartment was not yet built.

Commissioner Ramsey stated he sees no real change in the documentation, noting the HRA went into this with its “eyes open,” some supporting it and some not supporting it. He indicated the document may not be perfect but sets out what the HRA wants to do and achieves many things. Commissioner Ramsey stated if this agreement is not supported tonight, the HRA would be in serious trouble.

Commissioner Wise agreed the deal was struck and he does not see a lot of differences. He indicated he may have been a dissenting vote on the ramp if this deal wasn’t almost done.

Commissioner Tossey asked when the purchase agreement with F&C was signed.

HRA Executive Director Nelson stated the development/purchase agreement was approved December 2010 with the subsidy piece and the rest was approved on September 27, 2011.

Public Works Olson stated the parking ramp contract was awarded in August.

Commissioner Elvig stated he is frustrated because he believes a deal is not over until it is over. He indicated the HRA now has the bank’s position but not F&C’s position so he felt the HRA was still in a negotiating position if it wants to be. He asked how the HRA can perfect the equity puts.

Commissioner Ramsey stated in a perfect world that would have been perfected prior to this agreement. However, the HRA has already entered into a purchase agreement and spent a quarter of a million dollars on staff consulting time. He expressed concern that if the HRA tried to renegotiate at this point, they may walk away. Commissioner Ramsey noted the documentation says they will pay a penalty if not paid on time and receive an incentive if they prepay. He asked why the HRA would want to change the agreement.

Commissioner Elvig stated he would like to ask for a little more to be in a more comfortable position.

Commissioner Ramsey restated the HRA is already under contract with the purchase agreement.

HRA Executive Director Nelson explained that with approvals tonight, F&C would close on financing the first week in March and close with the HRA on March 23, 2012. There would be \$750,000 in land proceeds. She reviewed the timeline for this project moving forward.

Commissioner Strommen asked for staff’s input on whether there is opportunity, at this point in time, to better the City’s position and put those options in place.

HRA Executive Director Nelson stated staff has pushed PNC as far as can be pushed and if further modifications are made, PNC will tell the HRA to go away. She noted the HRA talked about using a “carrot” instead of a “stick” and decided to incent. HRA Executive Director Nelson pointed out that the Subordination Agreement does not change their agreement to provide equity raises and there is incentive. She indicated if directed by the HRA to ask for other agreements, staff will do so but she has grave concerns about doing so.

Commissioner Backous stated his position that PNC has pushed the HRA as far as it should be pushed and he has no problem re-dealing. He stated he can't believe the HRA would make a bad decision worse because it felt it was running out of time. Commissioner Backous stated he does not think the Subordination Agreement contains any remedies and if the HRA exercised its Right of Reverter, they will foreclose, which is not a remedy. Commissioner Backous stated he has never supported this project and does not support the Subordination Agreement.

Commissioner Ramsey indicated the remedies were done September 27 when he made the motion and it was seconded by Commissioner Wise to get this done. Commissioner Ramsey stated he is frustrated that this consideration even came back to the HRA, which was not necessary because the purchase agreement was signed and the documents were to be delivered to the buyer.

City Administrator Ulrich stated it was brought before the HRA at the advice of legal counsel. He agreed with the comment by HRA Executive Director Nelson that the HRA cannot renegotiate with PNC because the deal is fixed. However, there may be negotiating with F&C to make the majority of the HRA more comfortable.

Commissioner Elvig asked why the HRA wouldn't go back to F&C to get a more comfortable position.

Mr. Bray stated if the decision is to go back and talk with F&C, the HRA will need to look at the front end of the deal or if they have ability to bring a new guarantor to the table outside PNC.

Development Director Lazan stated the Development Team represented to them that the deal was done, final documents were prepared and provided to F&C and PNC and those documents became exhibits to the PNC loan documents. He believed staff negotiated well on the Subordination Agreement and to change the equity structure now would result in a new set of terms to which F&C would have to agree and require revising the loan documents.

Chairperson McGlone stated this has been under discussion for two and a half years with some of the best minds and top-shelf consultants to get it right. He stated he is comfortable they did the best they could and he has no desire to re-deal at this stage of the game.

Ms. Kvilvang explained the issue before the HRA is calling for the sale of tax increment bonds. As part of the development agreement the City will provide \$6.825 million financing to the project. Previously, staff looked at a three-year temporary bond, bonds that could be prepaid after the first year and paid in full in three years. However, in consideration of the tight project time table and historic low interest rates, there is an option to consider issuing a ten-year bond instead with a three-year call. She explained a ten-year bond would provide flexibility between construction and leasing. Ms. Kvilvang noted there would be additional costs with a ten-year bond, mostly in capitalized interest of \$240,000. However, if the City had to issue an additional bond because payment in three years could not be made, there would be additional costs of about \$100,000, resulting in a net cost of about \$140,000/\$130,000 to create that flexibility.

Commissioner Elvig asked Ms. Kvilvang for her professional opinion on this project and whether the City is in a good and safe position.

Ms. Kvilvang stated the HRA is entering into a real estate transaction that has risks, which were always outlined, and the HRA still decided to move forward. She explained that what the HRA is doing is not unusual and has been done by other HRAs, some successfully and some not. Ms. Kvilvang stated it depends on the goal of the community, the HRA determined to move this forward, and the consultants have done all they can to protect the City and place it in the best position.

Commissioner Elvig asked if other cities have put in this much with such little protection. He stated he had talked with others and all indicated they have never seen this unprecedented level of investment.

Ms. Kvilvang indicated she has seen it in a Brooklyn Park project where they determined to change and transform an apartment complex, hoping to be in and out in three to four years but it took 17 years to get the majority of money back.

Commissioner Ramsey stated he has always known this was a risk, as was buying The COR, but he has always looked at the rewards, which the City is already reaping in the train stop. He stated he understands this risk is too big for some Commissioners to be comfortable with, but not too big for other Commissioners. He believed it was a catalyst project and structured as good as the HRA can get.

## **EXECUTIVE DIRECTOR'S REPORT**

None.

## **COMMISSIONER INPUT**

None.

## **ADJOURNMENT**

Motion by Commissioner Ramsey, seconded by Commissioner Wise, to adjourn the Work Session meeting of the Housing and Redevelopment Authority.

Motion carried.

The regular meeting of the Housing and Redevelopment Authority adjourned at 6:07 p.m.

Respectfully submitted,

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Kurtis G. Ulrich for Heidi A. Nelson  
HRA Executive Director

ATTEST:

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Jo Ann M. Thieling  
City Clerk

Drafted by Carla Wirth  
*TimeSaver Off Site Secretarial, Inc.*