

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

The Housing and Redevelopment Authority conducted a Special Session meeting on Tuesday, October 16, 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 (seated at the dais at 8:15 p.m.)

Members Absent: None.

Also Present: HRA Executive Director Kurtis Ulrich
 Finance Director Diana Lund
 Public Works Superintendent Grant Riemer
 Development Services Manager Timothy Gladhill
 Assistant Planner/Environmental Coordinator Chris Anderson
 City Attorney William Goodrich
 Development Manager Darren Lazan
 Interim Engineer Shane Nelson
 Tom Bray with Briggs & Morgan
 Stacie Kvilvang with Ehlers & Associates

1. CALL TO ORDER

Chairperson McGlone called the special session meeting of the Housing and Redevelopment Authority to order at 8:02 p.m.

2. CITIZEN INPUT

Jeffrey Wise, 7901 165th Avenue NW, stated at the last HRA meeting, the purchase agreement between the HRA and M&W Holding LLC, of which he is majority owner, was not approved. He noted the HRA had seven unanimous votes for this purchase and asked whether it was an issue of timing or if the HRA was no longer interested in the project as a whole.

Commissioner Elvig stated the HRA learned the action was illegal for the Council and borderline illegal for HRA. In addition, it appeared to be slipped through, an ugly perception. He stated he supports the project and the issue is one of timing. Commissioner Elvig stated that Mr. Wise being on the Council stood in the way for him being able to vote in support of the project.

Commissioner Strommen stated she had indicated at the meeting last week that she is not against the project but new information came to light at the eleventh hour. After careful consideration of the conflict of interest issue and creating process to deal with them, this information came forward at the eleventh hour and in her opinion undermined that public trust. Commissioner Strommen stated it is a timing issue and not the project.

Commissioner Backous stated he echoes what has been stated and believes the previous project 6-0 votes speak for themselves. It is clearly a timing issue.

Mr. Wise pointed out this project started with the HRA and he does not expect anyone to change their minds but he needs to save his business and personal livelihood.

Commissioner Backous stated what is disturbing the most is how difficult it is for some to discern right from wrong, which is basic to him. He stated he cannot vote in support while Mr. Wise is a sitting Councilmember/Commissioner.

Commissioner Ramsey stated he did vote on it, supports it, know the difference between right from wrong, and the law said the HRA can do it. He noted this was an HRA project and presented as an HRA project.

Commissioner Tossey stated he was not in attendance at the last meeting but has been a champion of the project since Day 1. In addition, the Wiser Choice Liquor property is crucial and will eventually accommodate Highway 10 and Armstrong Boulevard. Commissioner Tossey stated he does have an issue with saying “right and wrong” because the HRA/Council had voted in support all year so why is it being questioned now whether it is a “right and wrong” issue. Commissioner Tossey stated if the Council is not to do it, then it shouldn’t do it. He questioned whether the lawyers are incompetent and should be fired or if they are competent but the HRA knows better on the dais.

Commissioner Backous stated he did not have an ethical issue voting for this project before the information came out that it was against Statute, though he understands the burden is on the Councilmember, not the Council. However, when the information came out, it was hard to defend being party to that vote. He noted the membership of the Council and HRA are the same so personally, when the information came out about the State Statute, that changed it for him. Commissioner Backous stated the HRA had been very careful to assure transparency from beginning to end in the process and all agreed to not treat Mr. Wise any better or worse than anyone else because of his position. The City did an independent appraisal and took the extra step to have it reviewed. He stated he did not want anyone to think he is against or had suddenly turned cold on the project. It was the simple fact that the State Statute was discovered too late and if things change in January, then he will support it. It is a timing issue.

Commissioner Ramsey asked Mr. Bray to present his analysis for Commissioner Tossey.

Commissioner Tossey stated it does not matter if he hears it now but would ask if the Statute exists then why is the HRA finding out only a week before the vote.

Commissioner Ramsey stated concern has been raised about public perception but now it is “muddying the water.”

Commissioner Strommen stated she understands the legal arguments and does not question them. But to her, it is a technical thing and while it is technically legal, that does not make it right in her mind as a matter of policy in how to do business as a City, HRA, and Council. Commissioner Strommen noted the HRA spent an entire meeting debating the conflict of interest issue and if she had known the State Statute barred this transaction, she would not have voted in support while on the HRA. She agreed it is a very small technical difference, but it was raised at the eleventh hour, on the consent agenda, and had been known for three weeks. Commissioner Strommen stated she did not care for that process or doing business in that way.

Commissioner Backous stated there is the law and the spirit of the law. He stated it was a technicality and looked like the City was trying to make an end run around the law. Commissioner Backous stated this is why the HRA should not be in the development business.

Commissioner Tossey indicated when the time comes, he will meet with Mr. Bray. He felt the bigger issue is that the HRA members found out a week before. Commissioner Tossey stated he is finding that many things are raised at the last minute, and that is a problem.

Eric Zaetsch, 6521 - 154th Avenue NW, stated Mr. Wise is speaking as a citizen and asked what hardship Mr. Wise will endure by waiting until January.

Mr. Wise stated over the last six months, he has spent \$25,000 on architectural, environmental, and engineering, and hundreds of hours preparing. Unfortunately, the road construction has wreaked havoc on his business and revenues are off but he has obligations to pay bills. That is the hardship.

Commissioner Wise took his seat at the HRA dais at 8:15 p.m.

3. APPROVE AGENDA

Motion by Commissioner Elvig, seconded by Commissioner Backous, to approve the agenda as revised to add Consideration of Comparison of Final Pro-Forma and Current Draw Schedule in Regard to The Residence at The COR to Case 5.05 and to consider it prior to Case 5.01.

Motion carried. Voting Yes: Chairperson McGlone, Commissioners Elvig, Backous, Ramsey, Strommen, Tossey and Wise. Voting No: None.

4. APPROVE MINUTES

None.

5. HRA BUSINESS

5.05: Comparison of Final Pro-Forma and Current Draw Schedule in Regard to The Residence at The COR & Approve Agreement Related to Pre-payment – The Residence at The COR

Chairperson McGlone recused himself due to a potential conflict of interest and left the Council Chambers at 8:16 p.m.

Development Manager Lazan reviewed the staff report.

Acting Chairperson Elvig noted that Development Manager Lazan is the development manager but also a commissioned salesperson with the development and has a partner with this development who is producing the draws being presented, which he found to be a conflict of interest.

Development Manager Lazan clarified he is not a commissioned salesperson but receives a development fee on a monthly basis and on an incentive basis.

Acting Chairperson Elvig stated he had raised questions about the original proforma and potential “leakage” through developer fees being paid prior to the HRA getting paid. He described his review of fees and concerns that the draws include builders overhead, builders profit, contingency, and that travel fees are up to \$150,000. He stated to him that appears to be “leakage.”

Development Manager Lazan explained that builders overhead and builders profit were in the original proforma, have always been an expense, and have always been in the draw. The HRA has never discussed to withhold builders overhead and costs. Development Manager Lazan explained when the first draw came through, those costs were broken out and the travel item moved from developers fee/overhead to an item they could draw from out of their profit. He noted it was submitted prior to closing on the sample draw sheet originally prepared and presented for final approval and documentation. He stated it is correct that travel dollars moved from ineligible to draw to eligible but they also paid \$200,000 prepaid interest on the loan before they drew on the loan. At the end, the HRA always knew there was about \$1.2 million of profit for the developers that would be held until near the end of the project and that is still the case. He recommended the HRA accept the \$500,000 to reduce the HRA’s exposure.

Acting Chairperson Elvig restated that the builders fee was not included in the original proforma.

Stacy Kvilvang, Ehlers & Associates, stated she had prepared the proforma for analysis and assured the HRA that the builders fees/overhead were included in the original proforma in the construction costs. In the draw, the builders overhead and builders profit were broken out. Ms. Kvilvang advised that the overall initial sources and uses of dollars have not changed with the draw schedule.

Acting Chairperson Elvig stated he understands sources and uses balance but was asking about leakage of equity and if they were using HRA money for equity. He stated he does not want to

pay builders fees or developers fees before the HRA is paid or to allow it to be used to capitalize the HRA loan. He asked if it is going back to Flaherty & Collins as equity.

Ms. Kvilvang stated builder's overhead and profit are going to Flaherty & Collins as the builder for doing the construction and drawn appropriately over the loan. The \$500,000 request is part of the developer fee to Flaherty & Collins for time spent on the project but they are choosing to prepay the HRA instead of keeping it for themselves.

Acting Chairperson Elvig asked about the other line items.

Ms. Kvilvang advised it is not viewed as leakage or equity dollars back to Flaherty & Collins. Rather, they are valid expenditures and appropriate within the realm of the proforma.

Bond Counsel Tom Bray of Briggs & Morgan advised that the loan documents allow the developer to recover costs related to construction. Nothing in loan documents prohibit Flaherty & Collins from taking draws their construction company have incurred.

Acting Chairperson Elvig asked why the contractor fee was shown as zero on the proforma.

Ms. Kvilvang explained the proforma includes a larger construction cost that includes contractor overhead and contractor fees. In the actual draw, that detail was broken out.

Acting Chairperson Elvig stated he is satisfied that the extra dollars are not coming from profit to Flaherty & Collins; however, he remained against the request.

Motion by Commissioner Wise, seconded by Commissioner Tossey, to accept the \$500,000 early principal reduction payment, direct the team to execute the agreement, and transfer funds as outlined in the agreement.

Motion carried. Voting Yes: Commissioners Wise, Tossey, Backous, Ramsey, and Strommen. Voting No: Acting Chairperson Elvig. Absent: Chairperson McGlone.

Chairperson McGlone returned to Council Chambers and his seat at the dais at 8:33 p.m.

5.01: Consider Alternative Development Scenario – Sunwood Retail

Development Manager Lazan reviewed the staff report.

Commissioner Elvig noted part of the proceeds are needed to purchase Wisser Choice Liquor for \$1.2 million and asked about the net proceeds.

Development Manager Lazan explained at a previous meeting, the HRA determined it would not have a contribution towards the road and that the proceeds for the sale of Lot 3 would go for the Sunwood Retail project.

Commissioner Strommen asked if staff assumes no deal on Lot 3 or a delay.

Development Manager Lazan stated this budget and development scenario assumes the worst-case scenario with no deal on Lot 3 but if it proceeds in January, the budget would be flush. He stated this past week he vetted the other lot purchasers. SuperAmerica will close tomorrow and he expects that the improvements will be made.

Commissioner Strommen stated she preferred to take the time to fully vet whether the HRA is in a delay scenario and what that will mean with potential purchasers.

Development Manager Lazan stated he can detail the option of delay but has strong belief that SuperAmerica will close and provide proceeds to fund some of the costs. In addition, McDonalds indicated it would execute and hopes to start construction this winter with a spring open.

Commissioner Strommen asked about the development management fees if the sale does not close.

Development Manager Lazan explained the development management agreement has dollars due when a project is put under agreement with adequate earnest money placed to cover those payments, fees at closing, and fees at occupancy. He noted it also indicates: "or as we choose to arrange otherwise." Landform is asking the HRA to consider compensation on work it has done to date to pay \$25,000 of the fee (40%) as part of this project moving forward with credit towards the deal on Lot 3. This is asking for consideration of \$10,000 of the capital improvements and for work with Solomon over the last year, which was considerable.

Commissioner Strommen stated she missed that was being asked of the HRA in the budget. She asked if the Solomon coordination was necessary to facilitate the other projects.

Development Manager Lazan stated it was not because the building could have been backed to their building but the City set the course to work with the developer who has endured through thick and thin to make it work. He indicated Solomon would acknowledge that Landform went above and beyond to restore that relationship from a potential litigation to them being pleased with the outcome.

Commissioner Elvig stated this is considering a "half step" and he has no problem with the dead end scenario because it provides additional parking.

Development Manager Lazan advised this configuration is typical in pad-ready developments to narrow the choices. He reviewed the decision making process and indicated there is a commitment to Solomon to let them re-engage the building fronts and this new parking lot opens more possibilities in being able to flip parking from Lot 2 to Lot 3 and to relieve parking congestion. Development Manager Lazan noted Solomon wants to keep sight lines open to its building.

Commissioner Elvig stated he understands the benefit of having alternatives figured out and that this is where the pad will be located but he is concerned about putting down this much

bituminous and the potential it will be damaged during building construction. He recommended improving only the east side of the parking lot at this point.

Commissioner Strommen noted the case report says the funding source is future land sales. She asked what is the interim funding source.

Development Manager Lazan stated he talked today with HRA Executive Director Ulrich and it was determined there are options with the HRA fund balance.

Commissioner Strommen noted in the mean time, the HRA has bills to pay and needs to know the source of interim funding.

HRA Executive Director Ulrich stated the HRA has a balance of \$300,000 that could be used for cash flow until the SuperAmerica land sale can pay it back.

Commissioner Strommen asked what are the intended net proceeds from the SuperAmerica sale.

Development Manager Lazan reviewed the soft costs and advised the proceeds from Lot 5 for SuperAmerica are slightly over what was anticipated from the sale of Lot 3 to Mr. Wise.

HRA Executive Director Ulrich stated the HRA will not want to proceed without a signed purchase agreement with SuperAmerica to assure those land proceeds will come in.

Commissioner Strommen noted they are interwoven but the downside the HRA faces is when one of the anticipated sales does not go forward so the HRA needs to understand all things are contingent. She noted that without having the cash flow information, it is difficult to vote on these serious issues and she wished the information was in writing before being asked to make this decision.

Commissioner Elvig asked about the process and if staff is seeking the HRA's approval to bring back to potential land buyers that the HRA will build infrastructure ahead of the development.

Development Manager Lazan stated the HRA needs to understand its role to move this forward to create certainty on the other side. He stated he will work with SuperAmerica on its closing and components they will undertake. He will also let McDonalds know it can plan on commitments in the Purchase Agreement, which will be brought before the HRA next week.

Commissioner Elvig asked if staff should draft a resolution indicating the HRA is willing to move forward on this project in order to give SuperAmerica that assurance.

Development Manager Lazan advised that SuperAmerica is under contract so it only needs word that the HRA is moving forward. McDonalds will be under contract next week. He asked the HRA to approve the development scenario to move forward.

Commissioner Tossey stated this is contingent on SuperAmerica closing and if it does not close he would not support paving Lot 3 for \$800,000.

HRA Executive Director Ulrich stated staff needs to clarify soft costs, such as engineering that the HRA would have to absorb, prior to closing. He recommended the HRA act on development fees separately instead of approving through a preliminary budget action.

Development Manager Lazan stated he has soft costs associated with modifying the legal documents, easements, and plans but the hard costs will be held subject to closing with SuperAmerica.

Motion by Commissioner Elvig, seconded by Commissioner Tossey, to approve the COR TWO plat and initial improvements development scenario as outlined in the case report, and direct the Development Team to proceed with the effort to assume the responsibilities related to the development and construction of the initial improvements, subject to a spending cap of \$40,000 and hard costs contingent on planned closing with either Lot 3, Lot 4, or Lot 5.

Further discussion: Commissioner Ramsey noted the HRA has voted seven times to support another project but not approved this one and it is now costing the HRA over \$200,000 to fix due to “public perception.” Commissioner Elvig stated the HRA has the opportunity to earn back that amount at the same time. Development Manager Lazan recommended the utility stubs be included in the Sunwood Drive project, which would result in cost savings. Interim Engineer Nelson stated the contractor is installing utilities in this location so the City could expand the scope. Following a brief discussion of this option, City Attorney Goodrich advised it is a City project and would not require a bidding process if under \$100,000. Commissioner Strommen asked the HRA to act on the motion on the floor since the issue of utility stubs is a Council decision.

Motion carried. Voting Yes: Chairperson McGlone, Commissioners Elvig, Tossey, Backous, Ramsey, and Strommen. Voting No: None. Abstain: Commissioner Wise.

5.02: Approve Development Agreement – COR TWO

Development Manager Lazan reviewed the staff report.

Commissioner Strommen asked if this is also contingent on closing of other properties.

Development Manager Lazan explained it is not because the plat has to be recorded to dedicate the rights-of-way for Armstrong Boulevard and completion of the grant preparation. He stated if a closing is delayed, the projects could be deferred.

Development Services Manager Gladhill advised the time deadline is one year upon approval to complete the improvements and the HRA can also consider an extension, if needed.

Commissioner Strommen asked if the Council also needs to approve the development agreement.

Development Services Manager Gladhill noted the Council had approved it subject to review as to legal form.

Motion by Commissioner Tossey, seconded by Commissioner Ramsey, to approve the Development Agreement related to the plat of COR TWO subject to final modifications approved by the HRA Executive Director and the HRA Counsel and authorizing and directing the HRA Chair and HRA Executive Director to execute the Development Agreement.

Motion carried. Voting Yes: Chairperson McGlone, Commissioners Tossey, Ramsey, Backous, Elvig, and Strommen. Voting No: None. Abstain: Commissioner Wise.

5.03: Approve Documents Related to the Plat of COR TWO

Development Manager Lazan reviewed the staff report.

Motion by Commissioner Ramsey, seconded by Chairperson McGlone, to approve the Final Plat of COR TWO, and Adopt Resolution HRA#12-10-008 Authorizing the HRA Chair and HRA Executive Director to Execute the Plat and all other documents necessary to record; to approve the Agreement related to the Plat of COR TWO, subject to final modifications by HRA Counsel and Adopt Resolution HRA#12-10-009 Authorizing the HRA Chair and HRA Executive Director to Execute the Agreement, Quit Claim Deeds, and all other documents necessary to record; to approve the Agreement and Declarations of Easements, Covenants, and Restrictions subject to final modifications by HRA Counsel, and Adopt Resolution HRA#12-10-010 Authorizing the HRA Chair and HRA Executive Director to Execute the Agreement, Quit Claim Deeds, and all other documents necessary to record; to approve the Agreement and Declaration of Signage and Utility Easements subject to Final Modifications by HRA Counsel, and Adopt Resolution HRA#12-10-011 Authorizing the HRA Chair and HRA Executive Director to Execute the Agreement, and all other documents necessary to record; and, to approve the Restrictive Covenants related to Lot 4, Block 1, COR TWO, subject to final modifications by HRA Counsel, and Adopt Resolution HRA#12-10-012 Authorizing the HRA Chair and HRA Executive Director to Execute the Agreement, and all other documents necessary to record.

Motion carried. Voting Yes: Chairperson McGlone, Commissioners Ramsey, Backous, Elvig, Strommen, and Tossey. Voting No: None. Abstain: Commissioner Wise.

5.04: Approve Contract for Design Services – Sunwood Retail

Development Manager Lazan reviewed the staff report.

Commissioner Elvig asked if the recommendation is to approve a direction to move forward and to look at fees at a later date.

HRA Executive Director Ulrich explained these are soft costs related specifically to the project itself subject to the cap placed in a previous motion. Developer Management fees will come back at a later date.

Motion by Commissioner Tossey, seconded by Commissioner Ramsey, to approve Work Order number RAM 12025 for \$34,600 and direct staff to execute the agreement and proceed with the effort outlined.

Motion carried. Voting Yes: Chairperson McGlone, Commissioners Tossey, Ramsey, Backous, Elvig, and Strommen. Voting No: None. Abstain: Commissioner Wise.

5.05: Approve Agreement Related to Pre-payment – The Residence at The COR

This case was considered prior to Case 5.01.

5.06: Approve Option Agreement – Edgewood Management Group (portions may be closed to the public)

Development Manager Lazan reviewed the staff report and asked if the HRA would like to discuss the option agreement/purchase agreement details in closed session.

The HRA indicated it would discuss this case during open session.

Commissioner Strommen asked if it will come back for site approval.

HRA Counsel Bray stated the consideration is granting Edgewood Management Group an option to purchase one of the two sites on the terms set forth in the Purchase Agreement. If nothing is finalized within 60 days, then it expires. During the 60 days, Edgewood Management Group can sign one of the Purchase Agreements and with the required earnest money, the HRA would be obligated to sell under those terms.

Commissioner Strommen asked if discussion of TIF is a separate issue so the City is not obligated on TIF.

HRA Counsel Bray advised there is no obligation on the part of the City to grant TIF.

Motion by Commissioner Elvig, seconded by Commissioner Wise, to accept the Option Agreement and Purchase Agreements outlined and direct staff to have the HRA Chair and HRA Executive Director to Execute the Agreement.

Further discussion: Development Manager Lazan advised that once the Option Agreement is signed, the details will be public.

Motion carried. Voting Yes: Chairperson McGlone, Commissioners Elvig, Wise, Backous, Ramsey, Strommen, and Tossey. Voting No: None.

6. DEVELOPMENT TEAM REPORT

Development Manager Lazan stated they are preparing for the train station opening.

Chairperson McGlone indicated he watched two semi-trucks negotiate the turnaround with no problem.

At the inquiry of Commissioner Strommen, City Attorney Goodrich stated he will prepare an appropriate amendment to the Landform contract, which currently refers to Deputy City Administrator Nelson.

7. COMMISSIONER INPUT

None.

8. ADJOURNMENT

Motion by Commissioner Elvig, seconded by Commissioner Tossey, to adjourn the special session meeting of the Housing and Redevelopment Authority.

Motion carried.

The special session meeting of the Housing and Redevelopment Authority adjourned at 9:37 p.m.

Respectfully submitted,

Kurtis G. Ulrich
HRA Executive Director

ATTEST:

Jo Ann M. Thieling
City Clerk

Drafted by Carla Wirth
TimeSaver Off Site Secretarial, Inc.