

CITY OF BURTON
SPECIAL COUNCIL MEETING MINUTES
MARCH 25, 2010, 4:00 P.M., COUNCIL CHAMBERS
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The Special Meeting is called to order by Council President Steven Heffner at 4:00 p.m.

MEMBERS PRESENT: Heffner, Martinbianco, Ellenburg, Wells, Smith and Haskins.

MEMBERS ABSENT: Zelenko.

OTHERS PRESENT: Atty. M. Joliat and J. Adams, Deputy City Clerk.

PURPOSE OF THE MEETING: Discussion in reference to the Pilot Ordinance for Blackberry Creek.

PRESENTATION:

Sam Arabbo stated he is the general partner for Blackberry Creek Village. He has provided necessary information to arrive at a positive conclusion of moving forward to exercise the option of getting the note purchased from HUD. He invited Linda Yudasz of Plante & Moran, who has been involved in the modification of the loan with HUD, and Jim Rashline with Unified Management Services that has been involved with Blackberry since 2006. The property consists of 228 units. Construction was completed in 2004. We anticipated rents of \$800 to \$1,050, but with the bad economic times, the current rents continue to be a struggle to achieve. Currently, rents are between \$600 to \$830, therefore, it created an issue to make the payment of our obligation to HUD. We approached HUD about a year to 1½ year ago regarding a loan modification. The local HUD office was receptive to some extent, but HUD in Washington asked for the application not to be submitted.

Mr. Arabbo stated further, if the City chooses not to make any decision, or move on purchasing the note, they would be facing the same dilemma that Kings Lane had several years ago till we came to the rescue. The decision will impact 228 families, approximately 1,000 people. They are taxpayers as well and spend money in the local economy. The project is thriving based on today's economy, but we cannot meet the note obligation. There is a chance this project could sustain itself for many years to come without having any financial obligation to the City or the taxpayers.

Ms. Yudasz said she is a partner with Plante & Moran and has been with the firm for over 20 years. She leads the firm's housing and community development solutions practice. She has known Mr. Arabbo for many years and has done various auditing, tax and consulting work with him. About a year and a half ago, he requested that we come in to assist with this partial payment claim to HUD. They are not the auditors on record for the property right now, but she was able to obtain the audited financial statements in progress for 2009. You may have a property worth \$18 million that was the original cost, and it is holding a debt close to 90% of the value. Based on the circumstances Mr. Arabbo alluded to, they were finding it very difficult to make the debt service payment required for a \$17 million dollar loan.

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Ms. Yudasz indicated further, HUD would go in and bifurcate the debt. They have a first mortgage and a second soft mortgage. In the PPC, we did an analysis to see how much debt we thought in the short-term, the property could make debt service payments on. That amount came to about \$11 million dollars. In looking at all the history to date and financial projections going forward, we provided the local HUD office a pretty strong performa to support the fact the property could sustain debt service on an \$11 million loan. Today, the sale from HUD on the loan is close to \$7 million dollars. Financial projections on the new numbers clearly supports on a \$7 million loan, the property could very well make the debt service requirements.

Jim Rashline said he is with Unified Management Services, the managing agent of Blackberry Creek and Kings Lane Apartments. Unified manages over 15,000 units in the mid-west and they are the largest third party management company. Blackberry Creek is 99% leased and 98% occupied. Rents range from \$699 for a 2 bedroom, to \$830 for a 3 bedroom unit. When this property was put together, rents at that time were much higher, therefore, the performa suggested a debt could be covered that today, the property just simply cannot sustain it. We have 227 families and very low resident receivable. It has been a struggle the last couple of years to keep the maintenance of that property where it needs to be.

Mr. Rashline stated further, publications from the Institute & Real Estate Management suggest there will not be northern movement on rents for the next 24 to 36 months in this area. I can keep it occupied and rents are at or above our competition, but there isn't a short-term expectation we are going to be able to raise those rents in this area. We are going to be faced with the unfortunate future of not being able to continue putting dollars in that we need to, to keep this property as nice as it is. We took over Kings Lane at the end of 2006 and began operations in 2007. Today it is 99% leased and 97% occupied. While there are challenges at Kings Lane, with the help the City has provided, we have turned that property around. If we don't do the right thing at Blackberry Creek, it could end up being what Kings Lane was in 2005.

AUDIENCE PARTICIPATION: None.

COUNCIL DISCUSSION:

Mr. Martinbianco said he appreciates the presentation. We are proud of that property. He finds it hard to believe a product that was finished in 2004, over that 5-year period of time, that maintenance has become an issue.

Mr. Rashline said he is talking about the day-to-day dollars necessary to properly maintain a property. When you have performa rents that are \$200 to \$300 above what you are actually collecting, the percentage of income that has to go to cover debt service does not allow enough dollars to properly maintain the property. It is not a deferred maintenance issue today, but when you have to make decisions on whether or not you are going to make utilities payment, at some point you have to start cutting corners. It has the ability to happen and at some point, sooner or later you are going to have to cut back where it is not appropriate.

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Mr. Martinbianco said when we talked about gross rents and the formula used to put together the ordinance that governs the pilot, as well as the pilot itself, the decline in gross rents, because we know the utilities are still going to be up there, has been impacting our ability to collect under the pilot compared to what the numbers that were first offered to us back when the pilot was first designed and ensembled. You are suggesting in the next 2 years, and perhaps years beyond that, we may not have an expectation that this property is going to perform under the pilot the way the City's expectations were, and what our commitments are, not only as a City, but all the other taxing jurisdictions impacted by that.

Mr. Rashline stated it is most likely you are not going to gain back \$250 per unit per month in rent over the next 2 to 3 years.

Mr. Smith referenced the Loan Sales Agreement dated March 18, 2010. He asked if the City took over this program and Mr. Arabbo could not get funding, what would the City's exposure be through the year 2044 in the contract.

Mr. Joliat stated the City of Burton's obligation if it purchased the loan, and Mr. Arabbo did not replace the loan, would be to step in as the operator. The City would be in a position to certify and comply with all the HUD requirements in terms of eligible qualified residents living in the property. You may do that by adding staff and doing it here, using a property manager, a combination of the two, and you would be required to do that till 2044. If the loan was paid off sooner, some of the obligations and covenants in the agreement end after 10 years, but the obligation to maintain it as an affordable property continues until 2044.

Mr. Smith said the City would be responsible for all compliance issues. There are quarterly and yearly compliance issues as well.

Mr. Joliat acknowledged that is correct. If you sold the property, any agreements between City of Burton and anyone that would purchase the property, could include an attempt to shift those obligations to the new purchaser, subject to the approval of HUD. Whether HUD would accept that new purchaser and allow you to assign all those duties and responsibilities for complying with the covenants to that new purchaser. The agreement says HUD approval would not be unreasonably withheld, which is subject to interpretation.

Mr. Smith expressed that in the contract there is a schedule of repairs of \$640,000. Whose responsibility would that be?

Mr. Joliat responded the contract provides that the City of Burton, or whoever is the purchaser, is responsible for overseeing the repair and redevelopment schedule. The City would be obligated to certify to HUD that they are making those repairs and provide a schedule that would indicate a timing of those repairs.

Mr. Smith indicated the City would have the financial responsibility.

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Mr. Joliat stated the City of Burton would have the ultimate responsibility to make sure that it happened. If the current owner remained in place and the City was just the mortgage holder, the first responsibility still falls on the owner. But if the owner didn't do it, the City would be responsible to do it. As long as the owner is in place, it is their responsibility to do those repairs. Our responsibility is to certify to HUD that they are going to be done, and that they are done. Legally, Burton would be responsible to make sure those repairs get done.

Mr. Heffner indicated Mrs. Zelenko's schedule would not allow her to be here today. She sends her regrets.

Mr. Wells said he has been told that the Secretary of HUD now owns it.

Mr. Arabbo said Secretary of HUD owns the note. The City would be involved in purchasing the note. At any given time, there is no transfer of property ownership to the City. As to the City's financial responsibility, there is none what-so-ever as to the repairs. Repairs will be monitored by the City, which is easily done through your building department. HUD has the note in the pool of assets to be sold. If that takes place without City involvement, you will lose 100% control over what will be done at the property.

Mr. Wells said he knows Mr. Arabbo for the past year and a half has been trying to sustain this. He appreciates him coming to us for some help and at least letting us know. He doesn't know how much help we can give him. He appreciates Council showing up for this meeting to at least get the facts. It is part of our due-diligence. We need to know what is going on for that piece of property. HUD seems to be in a rush to put it out for bid. They drastically reduced the price. The deposit is due no later than Friday, March 26th at noon.

Mr. Arabbo said he is grateful and appreciates everyone making time to be here to address this crisis. If we choose not to do anything, we will regret the outcome months from now.

Mr. Martinbianco said he spoke to Mrs. Hinterman of the Genesee County Metropolitan Planning Commission. She corresponded with Debbie Bolen of HUD regarding Blackberry Creek Apartments. Ms. Bolen said she does not find any information on a pending foreclosure and it is not in their inventory at this time.

Mr. Arabbo said it is in their note sale process. HUD is not foreclosing the property.

Mr. Wells said Jake from Congressman Kildee's office is here in the audience. He has been extremely helpful in pushing back the deadlines from HUD. Mr. Wells asked Jake if he had spoken to anyone today.

Jake from Congressman Kildee's office stated they did get a hold of someone today, but essentially they are looking for a commitment from Burton by tomorrow. He will continue to work with them to see if we can push back as long as we can.

Mr. Wells said he wants to clarify they are looking for a 2% deposit as a down payment.

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Mr. Arabbo said the 2% deposit we are making available to the City today if they want to have a meeting and process this tomorrow morning. We can forward that to Mr. Joliat to put in a safe place.

Mr. Joliat said he has had a number of discussions regarding this. As a matter of convenience, if Council decided they wanted to call for a Special Council Meeting tomorrow and act to beat this HUD imposed deadline, from a practical standpoint, it makes sense if you are going to pay for the deposit, to bring the deposit today so you don't have to come back up tomorrow if necessary. Mr. Joliat stated further he does not want to be the one holding it. It can go in the City's safe. It is merely a matter of convenience in case the City scheduled a meeting tomorrow and decided to approve and execute some agreement and wanted to send the deposit with the agreement off to Washington.

Mr. Wells inquired regarding the amount on a 2% deposit.

Mr. Joliat responded the amount is \$6,311,449.

Mr. Wells said at that point, what would the City's obligation be.

Mr. Joliat said if the City were to execute the loan sale agreement and agree to buy the note, send in the 2% deposit within the closing date time that HUD would agree to, the City would be obligated to come up with 98% of the note, whatever the difference between the 6.3 million and the \$200,000 some dollars is. Originally the closing deadline was April 1st.

Mr. Arabbo said for the balance of that money, we are working with a local bank and private funds. We were assured on many occasions, and as recent as this morning, within 3 weeks they will be prepared to close and make the funds available. We will treat that in the same manner that your deposit will come to you, and you forward it provided that we are at that point. Step 1 is to get the 2% to HUD with the documentation no later than tomorrow. Step 2 is getting the fund to close. There would not be even one dollar to come out of the City's fund or obligation. That has always been the case and the way we looked at addressing the whole circumstances.

Mr. Heffner asked what is the risk factor if you can't come through with the loan. At that point, wouldn't we be held responsible for the \$6.2 million dollars?

Mr. Joliat said HUD would expect the City of Burton to close and send the \$6.2 million dollars and then you would be in the position of collecting monthly payments from the property. You would have all the covenants and responsibility that the agreement says in terms of making sure it is managed in affordable property, the repair covenant and everything that is done by the current owners. The City of Burton would be the mortgage holder. You would be treated just like the bank.

Mr. Heffner expressed his fear is that little bit of risk. He asked Mr. Harburn from Plante & Moran, if the City is in any financial shape to purchase this property if Mr. Arabbo couldn't come up with the funds.

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Mr. Harburn said that the question is if the City's Charter allows this. It would be an investment and you are purchasing a note. Typically your surplus funds cannot be used. General fund, sewer fund or any other fund is typically surplus funds defined by the State of Michigan. There are limitations of what you can invest in. Typically, it is short-term governmental-type funds or fully insured FDIC insurance. In the event you would have to come up with the dollars, those general funds could be used to buy this type of investment. If you had pension funds or retiree healthcare funds, the investment laws in the State of Michigan are much more liberal. You could buy real estate and those types of things. The sewer fund has the most cash for the city. You are limited to governmental type secured items such as CD's and so forth.

Mr. Wells stated the City could not be out one penny for this. The residents cannot be responsible. The only way I would agree to it is if the City made money on it somehow to help our General Fund out. If it is \$6.3 million and we purchased that bond and basically, want to flip it back to Mr. Arabbo to make him the owner, the City would be free and clear of it.

Mr. Joliat indicated the owner's proposal is to borrow the funds to take out the HUD mortgage, and take the City out of the picture within 3 weeks.

Mr. Heffner questioned if Mr. Arabbo gives us the down payment, we make the down payment, and then his funding falls through. Can we back out of the entire deal?

Mr. Joliat responded you can back out and I suspect you are going to forfeit Mr. Arabbo's deposit. It would be up to HUD. If they sold the note at an auction and obtained less, they may be able to pursue damages for the difference against the City.

Mr. Harburn said if the City accepts a contribution, it becomes part of the surplus fund pool. In his interpretation, if they were to accept dollars in an agency capacity, in other words you are holding dollars for someone else, which would not fall under the surplus funds. Could this transaction be treated as an agency, is more of a legal question I cannot answer. If it could be treated as an agency capacity, then I think you would be okay.

Mr. Wells inquired if the City would have to create another line item in the budget for this.

Mr. Harburn replied no, it is the substance of the transaction. I am not sure if Mr. Joliat could help us in that regard, or if it would be the City accepting a contribution.

Mr. Joliat stated he suggested when he initially spoke to Mr. Arabbo, that he makes the check payable to HUD so the City does not come into possession of the money, if Council decided to proceed.

Mr. Arabbo said he would sign an indemnification agreement if for any reason the deposit got lost, or the deal didn't happen. There is no obligation for repayment and any sub consequence issues related to this transaction, we would assume responsibility. This is our chance to save the property and I am willing to do everything humanly possible to give you the level of comfort I can provide you with. At the end of the day, we all know there is no 100% guarantee.

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Ms. Yudasz stated there are always risks in real estate today. When you look at the loan to value, you couldn't get a better deal. She seen the soft commitment letters Mr. Arabbo has. She works with a lot of financial institutions and real estate developers about the difficulty in obtaining financing. It is the loan to value here that significantly helps that situation. As Tadd Harburn said, we can't speak to the legal aspects of this. You really need to understand what the City can or cannot do. Even if you were in the position of being the lender, you are holding an asset that is worth greater than the significantly reduced loan that HUD has put on it today. You started at \$17 million and when we stepped in the picture, we were looking at \$11 million. Now you are looking at between \$6 million to \$7 million.

Mr. Rashline said the property sends \$112,000 a month back to the Department of Housing. On the \$17 million loan, the requirement is approximately \$130,000, but the property is producing over \$100,000 a month that can be put towards principle and interest. It is in a position to easily meet the commitment on a \$6 million dollar loan.

Mr. Wells wanted clarification that they are still paying on the \$17 million dollar loan. Mr. Rashline stated yes. Our arrangement now is we forward all surplus cash to the Department every month. The last 2 months was in excess of \$100,000 each month.

Mr. Wells said it is not quite making their payment schedule.
Mr. Rashline said \$129,000 at 17.5 is the total payment with escrow.

Mr. Wells said Mr. Arabbo has been in touch with financial institutions about this property. Mr. Arabbo acknowledged they received soft commitments. Chase is one of the lenders. This morning Chase initiated the appraisal process and they should have that in a couple of weeks. They are anticipating a closing date within 3 weeks. They also have a private lender out of Pennsylvania. Their timetables are a little more flexible so we can get it done even sooner. We want a backup plan to stand in front of Council to confirm our ability to complete this transaction. While their terms are not favorable, the interest rate is about 10% and there were some additional points versus what Chase's loan is, we are still willing to go that route and put our hard deposit with them as well to have a back-up plan. Mr. Arabbo indicated further, he is trying to establish as many safeguards in place so when it comes to the due day with HUD, they can deliver one way or another. We continue to secure our investment in your community. So far we have over \$4 million dollars in Blackberry Creek since construction was completed in 2004. Several million dollars were invested in Kings Lane. We have the opportunity to prevent 228 units from being foreclosed on.

Mrs. Ellenburg asked if the payments to HUD are current.

Mr. Arabbo said HUD recognizes there is a financial hardship the property is experiencing. They accepted to send only surplus cash. Whatever revenue is collected, the monthly income minus the necessary operation expenses. The balance of that goes to HUD.

Mrs. Ellenburg said the payment was based on the higher rent, so what you were paying was probably what they were expecting of \$180,000, and now you are paying \$120,000.

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Mr. Arabbo responded that initially, the mortgage amount with all the reserve was around 130-140. The percentage of rents when down and the net income has been impacted. At a \$100,000 calculation, they will support a loan much greater, close enough to be \$10 million. Therefore, traditional lending institutions should easily accept the loan.

Mrs. Ellenburg said if they want to sell a loan out to bid, they could do that. She talked with the Lt. Governor and that is basically what he told her, for no reason at all they can do that.

Mr. Arabbo stated that initially, you have a loan servicer. Once you are in default, you can't make your payment for 90 days, they will assign the loan to HUD. So it became part of HUD's portfolio for the past 8 or 9 months. HUD came to the management company and said they have the loan and we want you to send a surplus. Some of the deferred maintenance like the exterior painting of the building and roof repairs ultimately affects the curb appeal and the amount of rent you will get. This is some of the things you are going to start seeing from whoever buys the note. If they over paid or under paid, they are going to try to get the return on their money first, and then they will address the balance to the deferred maintenance. We, being the local owners, the maintenance and safety of the residents become number one before we start looking where the return dollars are. If we had to look at the return dollars, we would not have invested an additional \$1.7 million dollars that was part of the PPC in the past year and a half.

Mrs. Ellenburg asked if this would affect their credit rating in trying to get approved for this loan. Mr. Arabbo said the nature of the loan with HUD is called non-recourse, which means it does not impact me personally. If we decide to do another HUD project, it will show up on a computer that I am flagged. The whole focus is not what is in the future of my financials; it is the future of Blackberry and to provide all the assurances as possible.

Mr. Wells said if we do nothing, as of noon tomorrow HUD will put this note on a bid list and anyone from all over the world can bid on it.

Mr. Arabbo acknowledged it would be out to the public. We do not have any control as of noon tomorrow.

Mr. Rashline stated typically, they put it in a pool with a number of under performing properties and it goes out to the highest bidder at that point.

Mr. Wells asked if they put a minimum bid on it.

Mr. Rashline responded that three or four years ago, we wouldn't be having this discussion because they really weren't paying attention to the amount of dollars, it simply went out and whatever the high bid was they took it. Those numbers have dropped so significantly, that even the department is now slowing down enough to try and find other arrangements for properties. When they group Blackberry into a pool, it will be grouped in with less attractive properties and the amount they will get on a per unit will be very low.

Mr. Wells asked if the \$6.3 million dollar amount is too much.

Mr. Rashline said they talked about \$11 million dollars would be a fair number today.

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Mr. Wells said when he spoke to Miss Malone today, she said before the Congressman's Office pulled the note off, they already had bids in the mid to high 7's.

Mr. Rashline said if you look at a per unit price at 6.3, no one would argue that is a great value.

Mr. Wells said his only concern is that the City can't be out a penny. The only way I could possibly see to do this is to make sure we come out ahead in the deal.

Mr. Martinbianco said we are throwing some pretty large numbers around. If we are talking about settling that kind of debt, and Mr. Harburn touched on the legality of whether the State would step in, we go through this exercise and then the State steps in and says I am sorry this is not an acceptable vehicle. The minute we write a check for the balance, assuming we have a fund that is flexible enough to allow us that much margin to be able to exercise that, and we have the authority to do that, I don't see anything in the Charter that would prohibit us from doing that, so it might become a State finance commission issue. It is a pretty good size number if we are looking at float time too. The interest would accrue to us as it would to Mr. Arabbo, assuming that would come through. We would have to be guaranteed that spread.

Mr. Smith expressed that he struggles with this because we are making potentially a large financial decision for the City, and doing this in less than 4 days. We have not had a chance to hear from our residents. This is their money. I do not feel comfortable risking their money without giving them an opportunity to speak before Council. If we make a decision today and it goes out in the media tonight or tomorrow and it is already a mute point, I don't know what to tell them.

Mr. Heffner said we would not be making any decisions tonight. This is an informational meeting only.

Mr. Joliat stated all that can occur today is discussion of the issue and no action can be taken other than what was identified in the agenda. If any action were taken, it would have to be at a subsequent meeting, Special Meeting or Regular Meeting of Council.

Mr. Haskins said in talking about the issue of the City making money, HUD being involved with this and saying they allow the City to hold the note and all municipalities shall have first respect to claiming the note, if there was a way or something happened that backfired on the whole plan, you are talking about 228 units, approximately 1,000 people live there, 98% occupied.

Mr. Haskins stated further, he doesn't know what the loan payments would be on \$6.1 million. If everything went south and didn't go the way planned, there is no possible way the city could maintain this and keep it, and bring in a monthly income on this to be able to put it back into the City for our police officers and everything else we are running short on. If we could bring in \$50,000 a month, that equates to \$600,000 a year to invest back into our City.

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Mr. Harburn said the only issue he is bringing forth is that this is an investment by the city, and is it allowed by State Law for you to do that. Once you accept a contribution, it becomes city dollars that fall under the Surplus Funds Act of the State of Michigan. At that point in time, you can only make investments of U.S. Governmental Securities, CD's, and short-term investments. You could not purchase a note, a real estate note, with surplus funds. That is the issue I see, even if it is going to come from another source. If you had pension funds, pension dollars, you can buy stocks and real estate and anything like that. The City's pension dollars are with MERS and you can't touch those. The only other dollars that fall under those types of investments that you can buy real estate notes, or real estate, would be retiree health care. You have a fund right now with \$1.2 million in it. That is the only surplus dollars you could use to buy real estate or purchase a note. If you can get around that, not have dollars being labeled as City dollars that fall under the Surplus Act, then I think you can make any decision you want.

Mr. Martinbianco asked if this is something that would fall under the scope of Trust & Agency. Mr. Harburn said it is a legal issue, which he can't really give an opinion on. The downside is, if this doesn't go through the obligation would be the City's. If you could structure this so it is just an agency transaction rather than the city taking responsibility for that, then I think you can do things in an agency capacity. If you have to accept contribution dollars, at that point it falls under the Surplus Act.

Ms. Yudasz said the receipt of funds within a housing commission, which is a component unit of the government, is treated differently as well.

Mr. Harburn said from his understanding, once you create a housing commission, it is on it's own.

Mr. Haskins said if the 1% chance that things fall through on this deal and the City is stuck with the note on the property, the money coming in a month off the 98% occupied, would easily pay the \$6.1 million back, plus the city would be making the money. If \$50,000 a month came into the City and \$600,000 a year, that could be used for the City. If this all fell through and there were legalities easily taken care of, the City would be farther ahead.

Ms. Yudasz said we can't speak to the legal aspects of this, but I am certain in the next day, we could come up with examples of municipalities we work with that have things like this set up. There are cities that actually hold these properties and have the debt. It is through a separate kind of component unit, which is a housing commission. Funds treated through that are treated different than the city surplus funds.

Mr. Joliat said a housing commission is established by ordinance, so it would require the adoption of an ordinance. In reviewing the agreement and speaking with different Council members, we have been provided with very limited information. We have been provided only with the loan sale agreement, and that information I got from Mr. Arabbo and multiple phone calls with him. There has been no information about any fund that had sufficient resources to pay the purchase price. I can't give an opinion on whether there are funds available on any fund the city could use to purchase it.

Mr. Haskins said his question was on the legalities of the City making money if somehow we ended up with this whole thing.

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Mr. Joliat said for the proposal that is advanced by Mr. Arabbo, he wants to reserve the profit motive to himself. He ends up with the ownership of the property on a written down mortgage from \$17 million to \$6,133,000.

Mr. Haskins said he heard a couple of statements about protecting the residents. I wanted to look at the worse case scenario to try and alleviate alternate scenarios if something went wrong here. If Council decided to move forward to approve this and the 1% chance this went wrong and Mr. Arabbo was able to put an agreement together like he mentioned saying he will take full responsibility basically alleviating the City of that financial obligation. Understanding the fact that the City and HUD had an agreement.

Mr. Joliat said he spoke with Mr. Arabbo's attorney in a conference call regarding such an agreement. If they were willing to enter into it, it would protect the City on paper. It's a question if everything falls apart, if the City is in a position where you ultimately have to foreclose on this mortgage, is the property worth enough so you can sell the property, recoup the money that you invested in it. I don't know if the property will appraise at \$12 million, \$11 million or \$6 million. I am not sure the business the city is suppose to be in to purchase housing developments to try and flip them for profit.

Mr. Haskins said we are looking at unforeseen situations. You are talking \$6.1 million and it was valued at \$11 million. There were people bidding in the mid 7's on it.

Mr. Joliat said the city could try to sell the note. You are talking about worse case scenario, how do you replenish the funds that you borrow from city funds because you need them for the purposes you are holding them in reserve now. Rather than derive income on a monthly basis, sell the note and replace the money now, if you can sell it.

Mr. Haskins said there is a lot to this with finances and the residents there.

Mr. Wells expressed looking into a housing commission sometime in the future.

Mr. Martinbianco said it would be a co-sponsorship between finance and legislative. Because it is ordinance driven, it would probably initiate there.

Mr. Wells spoke further on the formation of a housing commission. He is not for the City managing an apartment complex and becoming a landlord. This has to be a stand-alone custom-made project. It can't fall back on the City to take care of.

Mr. Joliat said our pilot ordinance states the pilot remains in place so long as the HUD mortgage remains unpaid or the HUD insurance is in place. Mr. Austin and I were not a part of the ordinance. We looked to see what insurance they are talking about. I'm assuming it's the insurance that goes along with the mortgage. If someone buys the mortgage and records a discharge of mortgage from HUD, there is a very good argument that the pilot ends. The property then goes on the tax roll and would be assessed and taxes would be calculated by the Assessor's office as opposed to the pilot. He tried to seek higher counsel from the attorneys that handle things from HUD. They are not familiar with each local municipality's pilot ordinance and weren't willing to weigh in one way or the other on when someone buys their note, if that is going to extinguish the pilot. If an investor buys the note or Burton, the consequences will be the same.

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Mr. Joliat indicated further, if somebody buying that note terminates the pilot, terminates whether the city of Burton buys it or a California investment company buys it, if that note some way stays in place or the insurance stays in play, then the pilot continues.

Mr. Martinbianco stated Mrs. Foster our Controller and the Mayor should be logical participants to weigh in. He asked if there was any written communication from either one on whether they think this is a viable project.

Mr. Wells said both he and Mr. Heffner spoke to Mrs. Foster. She said the City couldn't be out any money on this deal and cannot put any money into this project.

Mr. Joliat said he spoke to the Mayor a number of times since he has been gone. He was supportive of the project, was not fully advised of all the legal ramifications and the issues in the agreement, because when his office had the agreement before he left, it was blank. They didn't have the numbers or the timetables. He was supportive of the project and getting it before Council.

Mrs. Ellenburg said in talking about positive things for the City, if this ordinance in place would be changed, it could be put on the tax base if bought by another bidder. The City would be making more money because this is kind of a smaller amount that this pilot issues for the taxes.

Mr. Joliat stated he couldn't represent to you that if it were put on the tax roll, it would generate more money than the pilot payment. The Assessor would have to determine what the property is worth. If it would have an appraised value or a true cash value today of \$12 million it would go on with a \$6 million dollar assessment. Run the tax numbers and you can see how much you generate as opposed to approximately \$80,000 in a pilot. I have been told it could generate less on the tax rolls than it does on the pilot because of declining property values.

Mrs. Ellenburg said she thought with the pilot, the advantage was that the tax base would be lower. Mr. Joliat responded that is the advantage especially in a market where real estate properties are declining, and assessments and taxes are going up. Unfortunately for this one, the opposite is happening.

Mr. Wells said that according to Mrs. Heidenberger, if the Pilot ordinance went away, which is about \$80,000 a year, would be substantially higher and possibly as much as 3 times higher. Is the next person coming in going to ask for a pilot. If they don't get the pilot, is the project still financially stable enough because that is a huge amount of money to add on if they are struggling already. It doesn't matter how you look at this thing, we are looking at prospective problems down the road, and not just with this project. We are looking at simply a developer coming to us asking for help.

AUDIENCE PARTICIPATION: There was none.

Mr. Wells suggested calling a Special Council Meeting by 11:30 a.m. tomorrow to meet their deadline.

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Mr. Heffner called for a 10 minute recess at 5:30 p.m.

The Meeting resumed at 5:50 p.m.

A Special Council Meeting is scheduled for tomorrow, Friday, March 26th at 11:50 a.m.

Meeting adjourned at 5:50 p.m.

jra