

CITY OF NEW HOPE
4401 XYLON AVENUE NORTH
NEW HOPE, MINNESOTA 55428

EDA Minutes
Regular Meeting

December 12, 2011
City Hall

CALL TO ORDER

President Hemken called the meeting of the Economic Development Authority to order at 8:35 p.m.

ROLL CALL

Present: Kathi Hemken, President
John Elder, Commissioner
Andy Hoffe, Commissioner
Eric Lammle, Commissioner
Daniel Stauner, Commissioner

Staff Present: Kirk McDonald, City Manager
Curtis Jacobsen, Director of Community Development
Gordon Jensen, City Attorney's office
Guy Johnson, Director of Public Works
Rich Johnson, Human Resources Manager
Valerie Leone, City Clerk
Steve Sondrall, City Attorney

APPROVE MINUTES

Motion was made by Commissioner Hoffe, seconded by Commissioner Elder, **to approve the Regular Meeting Minutes of October 24, 2011.** Voting in favor: Hemken, Elder, Hoffe, Lammle; voting against: None; Absent: None; Abstained: Stauner. Motion carried.

**IMP. PROJECT 893
Item 4**

President Hemken introduced for discussion Item 4, Resolution approving purchase agreement and authorizing submittal to Gator New Hope LLC for the Kmart property, 4300 Xylon Avenue North (project no. 893).

Mr. Curtis Jacobsen, director of community development, stated the city has been considering the acquisition of the Kmart property for some time, and at the November 21 work session Council directed staff to work with the city attorney to draft a purchase agreement. He explained that Gordon Jensen of the city attorney's office has drafted the purchase agreement and a draft copy has been sent to Gator New Hope LLC for review and comment.

Mr. Jacobsen pointed out the language contained in the purchase agreement (pages 6 and 7) that is intended to bring Kmart to the table prior to the closing. He also pointed out the indemnification clause to protect the EDA from claims for relocation benefits.

Mr. Gordon Jensen was recognized. He stated the approach with the purchase agreement is to address the risks and concerns regarding the use of the property and potential relocation benefits. He stated the lease attached to the purchase agreement could run 100 years. He stated there are some limits on the amount of taxes that the tenant has to pay instead of the landlord. He

noted it may not be an economically viable lease in today's market. He recommended terminating the lease agreement and purchasing the property in a vacant state or it may be palatable for the city to obtain a renegotiated lease through the redevelopment. He stated the EDA is able to take a second look the entire time up to the point of closing. He stated the EDA can walk away from the potential purchase if it finds items unacceptable.

Mr. Steve Sondrall, city attorney, noted the property is owned by Gator New Hope, LLC, which he believes is a one asset LLC. He noted after the sale takes place it may be impossible to enforce the indemnification clause if Gator's resources are depleted. He pointed out the key to the purchase agreement is to negotiate something acceptable between the city and Kmart. He stated Kmart is a tenant with a subtenant (automotive business). He shared that he discussed the situation with Evergreen Land Company and it would be best to purchase the building vacant. He stated Kmart has until December 31 to give its intentions to renew the lease. He stated the purchase agreement was drafted with controls held by the city. Mr. Sondrall indicated the city needs an agreement with Kmart prior to a closing on the property.

Discussion ensued regarding the right of first refusal, the fact that Kmart currently pays for all maintenance, and the city will not lose earnest money if the purchase does not occur.

Commissioner Stauner initiated discussion regarding the 4200 Xylon parcel (bank drive-thru property). It was noted that Gator verbally indicated they would assign the purchase agreement from Wells Fargo to the city. Commissioner Stauner recommended the assignment of 4200 Xylon Avenue be incorporated into the purchase agreement.

Mr. Jacobsen indicated a draft of the purchase agreement was submitted to Gator but no comments have been received to date. He indicated his intent to follow up this week.

The EDA agreed to postpone action regarding the purchase agreement until January 9, 2012.

MOTION
Item 4

Motion was made by Commissioner Stauner, seconded by Commissioner Elder, **to postpone approval of the purchase agreement Gator New Hope LLC for the Kmart property, 4300 Xylon Avenue North (project no. 893) to the January 9, 2012 meeting.** All present voted in favor. Motion carried.

ADJOURNMENT

Motion was made by Commissioner Lammle, seconded by Commissioner Elder, **to adjourn the meeting.** All present voted in favor. Motion carried. The New Hope EDA adjourned at 9:05 p.m.

Respectfully submitted,



Valerie Leone, City Clerk

