

MANISTEE CITY COUNCIL

WORK SESSION AGENDA

Tuesday, March 14, 2017 - 7:00 p.m. - Council Chambers, City Hall

I. Call to Order.

II. Work Session Items.

a.) PUBLIC COMMENTS ON WORK SESSION RELATED ITEMS.

b.) DISCUSSION ON PILOT ORDINANCE AND RELATED MATTERS. – City Manager
Thad N. Taylor.

c.) DISCUSSION ON THE HOUSING COMMISSION / CENTURY TERRACE /
HARBORVIEW. – City Council

d.) OTHER.

III. Adjourn.

MEMO TO: Mayor James Smith
Members of City Council

FROM: Thad N. Taylor, City Manager *mt*

DATE: February 14, 2017

SUBJECT: Third Coast Development PILOT



City Manager's Office
231-398-2801

Third Coast Development is moving forward on its plans for the redevelopment of the former Oleson's property. Part of the plan involves construction of a multi-story mixed use building that will feature commercial space and low or moderate income residential units for senior citizens.

In preliminary discussions with City staff, Third Coast Development has indicated a desire to secure a Payment in Lieu of Taxes (PILOT) agreement with the City for the residential unit component of the building. At this time Third Coast believes they will need a PILOT of 4% to make the project economically feasible.

City Ordinance mandates that a PILOT **must** be equal to 10% of annual shelter rents, there's no mechanism for the City to accept a lower PILOT. For Council's reference, Chapter 1489, Subsection 1489.06(A) and (B) of the City's Code of Ordinances sets forth the amount for a PILOT and its term as follows:

Sponsor agrees to pay:

- A. for new construction projects, in each taxable year, the greater of the tax on the property on which the project is located for the tax year before the date when construction of the project was commenced or an amount equal to ten percent (10%) of annual Shelter Rents per annum. Such annual Payment in Lieu of Taxes shall be paid through a term of the exemption as established by the City, but not more than the term of the original Michigan State Housing Development Mortgage Loan or the thirty-fifth (35th) year of the existence of the Housing Development, whichever is shorter; and after which time the property and all improvements shall be subject to any and all ad valorem taxes;
- B. for Rehabilitation Projects, the lesser of the tax on the property on which the project is located and the existing project for the tax year before the date when Rehabilitation of Project was commenced, or an amount equal to ten percent (10%) of Annual Shelter Rents. Such annual Payment in Lieu of Taxes shall be paid through the terms established by the City, but not longer than the shorter of the term of the original Michigan State Housing Development Mortgage (Rehabilitation) Loan or term of the LITHCs; and after which time the property and all improvements shall be subject to any and all ad valorem taxes.

The current ordinance language mandating a 10% PILOT is, in my opinion, overly restrictive. As written it has the unintended consequences of potentially preventing development the community needs or wants, simply for the lack of flexibility in the amount of a PILOT.

I believe City Council has two options. First, you can do nothing and keep the current ordinance language. Second, you can change the ordinance language from “an amount equal to ten percent (10%)” to “an amount up to ten percent (10%).” The wording change gives Council the ability to negotiate, and accept, a PILOT less than 10% and does not rule out the possibility of a 10% PILOT.

A secondary issue with the current ordinance language, noticed by staff and not raised by Third Coast Development, is the term of PILOT in 1489.06(A). As written it references “or the thirty-fifth (35th) year; State law allows up to 50 years.

I recommend that Council have the City Attorney draft an ordinance amendment that changes the wording from “an amount equal to ten percent (10%) to “an amount up to ten percent (10%) and change “or the thirty-fifth (35th) year” to “or the fiftieth (50th) year.”

TNT:cl

Chapter 1489
Low or Moderate Income Housing

1489.01	Adoption	1489.08	Contractual Effect of Ordinance
1489.02	Purpose	1489.09	Payment of Service Charge
1489.03	Definitions	1489.10	Verification of Rent
1489.04	Ownership Entity	1489.11	Development Agreement
1489.05	Class of Housing Developments or Rehabilitations to which exemption(s) shall apply	1489.12	Effective Period of Ordinance
1489.06	Annual Service Charge in Lieu of Taxes	1489.13	Other Ordinances
1489.07	Limitation of Service Charge	1489.14	Severability

1489.01 ADOPTION

Pursuant to MCL 125.1410, et seq. (1966 P.A. 346, as amended), the City of Manistee hereby adopts this Ordinance pursuant to such provisions of the State Housing Development Authority Act of 1966.

1489.02 PURPOSE

The purpose of this Ordinance is to describe the terms and manner by which the City of Manistee may approve, from time to time, the development or rehabilitation of certain low or moderate income housing, or senior housing, financed, in whole or in part, pursuant to and under the auspices of the Michigan State Housing Development Authority Act of 1966, including qualified housing tax credit programs and Federal housing assistance programs, and for a payment in lieu of ad valorem real property taxes for such housing or rehabilitation developments. Nothing herein shall obligate the City of Manistee to approve any particular project for development within the City. The desirability and/or suitability of any particular project for development within the City rests in the sole and absolute discretion of the City of Manistee acting through its City Council.

1489.03 DEFINITIONS

The following terms shall have the indicated meanings for purposes of this Ordinance:

- A. "Act" means the State Housing Development Authority Act, being Public Act 346 of 1966 of the State of Michigan, as amended, MCLA 125.1401, et seq., and MSA 116.144(1), et seq., as amended.
- B. "Annual shelter rent" means the total collections during a calendar year or part thereof from all occupants of a housing development representing rent or occupancy charges, exclusive of charges for gas, electric, or other utilities furnished the occupants.
- C. "Authority" means the Michigan State Housing Development Authority.

- D. "Housing Development" means a development which contains a significant element of housing for low or moderate income persons or seniors, and such elements of other housing, commercial, recreational, industrial, communal and educational facilities as the Authority determines to improve the quality of the development as it relates to housing for low or moderate income persons.
- E. "LIHTC Program" means Low Income Housing Tax Credit Program(s) administered by the Authority under Section 42 of the Internal Revenue Code of 1986, as amended.
- F. "Low or moderate income persons" means persons eligible to occupy a housing development as established by the Authority, from time to time.
- G. "Mortgage loan" means a loan to be made by the Authority to the sponsor for the construction and/or permanent financing of a housing development.
- H. "Rehabilitation of Housing Development" means the substantial repair, renovation and improvement of an existing Housing Development.
- I. "Senior" or "Elderly Person(s)" means a family where the head of the household is 62 years of age or older or a single person who is 62 years of age or older.
- J. "Senior Elderly Licensed" means a Housing Development primarily occupied by Senior or Elderly Persons.
- K. "Sponsor" means persons or entities who or which have applied to the Authority for a mortgage loan to finance a housing development.

1489.04 OWNERSHIP ENTITY

In accordance with the Act, any Sponsor of eligible housing will organize at the time of application to the City for a payment in lieu of taxes as herein provided, a non-profit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association that is eligible for financing under the State Housing Development Authority Act of 1966, as the owner of the contemplated Housing development.

1489.05 CLASS OF HOUSING DEVELOPMENTS OR REHABILITATIONS TO WHICH EXEMPTION(S) SHALL APPLY

It is hereby determined that the class of Housing Development or Rehabilitation of Housing Development to which the exemption herein provided shall apply, and for which a service charge shall be paid in lieu of ad valorem real property taxes, shall be a Housing Development(s) or Rehabilitation(s) of Housing Developments for low or moderate income persons, or Elderly Persons, which is financed or assisted, in whole or in part, pursuant to the Act, including LITHC Programs.

The City Council shall determine, upon application by the Sponsor, whether:

- A. any proposed Housing development seeking the benefits of this Ordinance qualifies for such treatment;
- B. the proposed housing development is needed and desired in the City of Manistee;
- C. the proposed housing development is appropriate and desirable for the specific site proposed for such development; and
- D. all other matters related to such proposed development not within the jurisdiction of the Authority.

Such determinations shall be in the sole discretion of the City Council.

1489.06 ANNUAL SERVICE CHARGE IN LIEU OF TAXES

Those Housing Developments or Rehabilitations of Housing Developments approved by the City Council and upon which property such Housing Developments or Rehabilitations of Housing Developments shall be constructed shall be exempt from all property taxes from and after the date when construction of the project is commenced. The City, acknowledging that the Sponsor and the Authority have established the economic feasibility of the Housing Development or Rehabilitation in reliance, in part, upon the enactment and continuing effect of this Ordinance, and the qualification of the Housing Development or Rehabilitation for exemption from all property taxes and a payment in lieu of taxes as established herein and in consideration of the Authority's offer to the Sponsor to make a mortgage loan to finance the Sponsor's construction of the Housing development, upon satisfaction of all terms and conditions of its loan commitment to the Sponsor, hereby agrees to accept payment of a service charge for public services in lieu of all property taxes from the Sponsor.

Sponsor agrees to pay:

- A. for new construction projects, in each taxable year, the greater of the tax on the property on which the project is located for the tax year before the date when construction of the project was commenced or an amount equal to ten percent (10%) of annual Shelter Rents per annum. Such annual Payment in Lieu of Taxes shall be paid through a term of the exemption as established by the City, but not more than the term of the original Michigan State Housing Development Mortgage Loan or the thirty-fifth (35th) year of the existence of the Housing Development, whichever is shorter; And after which time the property and all improvements shall be subject to any and all ad valorem taxes;
- B. for Rehabilitation Projects, the lesser of the tax on the property on which the project is located and the existing project for the tax year before the date when Rehabilitation of Project was commenced, or an amount equal to ten percent (10%) of Annual Shelter Rents. Such annual Payment in Lieu of Taxes shall be paid through the terms established by the City, but not longer than the shorter of the term of the original Michigan State Housing Development Mortgage (Rehabilitation) Loan or term of the LITHCs; And after which time the property and all improvements shall be subject to any and all ad valorem taxes.

1489.07 LIMITATION OF SERVICE CHARGE

The service charge to be paid each year in lieu of taxes for that part of the Housing development which is tax exempt and which is occupied by other than low or moderate income persons shall be equal to full amount of the taxes which would be paid on that portion of the Housing development if the Housing development were not tax exempt.

1489.08 CONTRACTUAL EFFECT OF ORDINANCE

Notwithstanding the provisions of Section 15(a)(5) of the Act to the contrary, a contract between the City and the Michigan State Housing Development Authority with the Sponsor as third party beneficiary under the contract to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance.

1489.09 PAYMENT OF SERVICE CHARGE

The service charge in lieu of taxes, as determined according to this ordinance, shall be payable in the same manner as general property taxes are payable to the City, except that the annual payment shall be made as follows:

- A. One-half of the minimum payment due on or before December 31 of each year; and
- B. One-half of the minimum payment due plus all additional amounts owing from the previous year by July 1 of each year.

1489.10 VERIFICATION OF RENT

The Sponsor shall verify Annual Shelter Rent revenues to the City with a Statement of Profit and Loss as reported to the Michigan State Housing Development Authority or other form of financial documentation suitable by the City.

1489.11 DEVELOPMENT AGREEMENT

Upon approval of a Housing Development or Rehabilitation of a Housing Development as qualifying for the benefits of this Ordinance by Resolution of the City Council, the City and the Sponsor shall enter into a development agreement, to be approved by the City Council, consisting of the specific construction dates of the Housing development, and other terms that may be appropriate, including but not limited to, the specific amounts of the Payment in Lieu of Taxes ("PILOT"). Such terms may include an option in favor of the City, but not the obligation, to assume for no further cost the ownership of a Housing development upon the full repayment to the Authority of its mortgage loan.

1489.12 EFFECTIVE PERIOD OF ORDINANCE

This Ordinance and approving Resolution for any particular Housing Development or Rehabilitation of a Housing Development shall remain in effect for a term which is the shorter of:

- A. the term approved by the City Council for a particular housing development by Resolution;
- B. the length of the original mortgage loan from the Authority to the Sponsor;

- C. in the case of a rehabilitation of a housing development, for a term equal to the length of the LIHTCs; and
- D. in no event longer than thirty-five (35) years.

1489.13 OTHER ORDINANCES

The Housing development shall be subject to all building, zoning, inspection, maintenance codes and other regulatory requirements maintained by the City of Manistee.

1489.14 SEVERABILITY

The various sections and provisions of this Ordinance shall be deemed to be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of the Ordinance as a whole or any section or provision hereof other than the section or provision so declared to be unconstitutional or invalid.