CITY OF NORFOLK, NEBRASKA

The Mayor and City Council of the City of Norfolk met in special session in the Council Chambers, 309 West Madison Avenue, Norfolk, Nebraska on the 11th day of October, 2006, beginning at 7:00 a.m.

Following a moment of silence and the Pledge of Allegiance to the United States of America, Mayor Gordon Adams called the meeting to order. Roll call found the following Councilpersons present: Stauffer, Lange, Van Dyke, Kaspar-Beckman, Wilson, Brenneman, Fauss, and Saunders. Absent: None.

Staff members present were: City Administrator Mike Nolan, Director of Public Works Dennis Smith, City Attorney Clint Schukei, City Clerk Beth Deck, Finance Officer Randy Gates, and Administrative Secretary Bethene Hoff.

The Mayor presided and the City Clerk recorded the proceedings.

The Mayor informed the public about the location of the current copy of the Open Meetings Act posted in the City Council Chambers and accessible to members of the public.

Notice of the meeting was given in advance thereof by publication in the Norfolk Daily News, Norfolk, Nebraska, the designated method of giving notice, as shown by affidavit of publication.

Notice was given to the Mayor and all members of the Council and a copy of their acknowledgement of receipt of notice and agenda is attached to the minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Mayor and Council of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the public.

Councilperson Kaspar-Beckman moved, seconded by Councilperson Wilson to approve the consent agenda as printed. Roll call: Ayes: Councilpersons Stauffer, Lange, Van Dyke, Kaspar-Beckman, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried.

Councilperson Brenneman moved, seconded by Councilperson Stauffer to adopt the regular agenda as printed. Roll call: Ayes: Councilpersons Stauffer, Lange, Van Dyke, Kaspar-Beckman, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried.

CONSENT AGENDA

The City Council approved the minutes of the October 2, 2006 City Council meeting as printed.

REGULAR AGENDA

The Mayor requested a discussion regarding documents related to the original three apartment buildings in the Meadow Ridge Housing Development, located on East Benjamin Avenue. Those documents include:

1) Loan modification agreement and related Allonge with **Meadow Ridge Partners**, LLC, forgiving accrued interest on the $935,000 HOME loan to Meadow Ridge Partners, LLC, and reducing the interest rate from 7.88% to 0%;

2) Subordination agreement subordinating the City's $935,000 HOME loan to Meadow Ridge Partners, LLC, to a loan from JP Morgan Chase Bank;

3) Letter to the Nebraska Department of Economic Development requesting an amendment to Grant Contract M94-SG-3101-13 reducing the number of HOME assisted units from 42 to 19; and

4) Memorandum of Understanding (MOU) with Meadow Ridge Partners, LLC, requiring Meadow Ridge Partners comply with HOME Program requirements and limiting distributions to the Managing Members to $30,000 annually.

Tom Huston, attorney for Meadow Ridge Partners, LLC, provided information to the Mayor and City Council. Huston explained Meadow Ridge Partners built the 84 dwelling unit apartment buildings in 1995. The three primary funding sources included the tax exempt bond issue approved by the Nebraska Investment Finance Authority (NIFA), which funded the first mortgage loan; NIFA allocated low income housing tax credits to the project and a second mortgage in the amount of $935,000 that came to the City because of the efforts of Meadow Ridge Partners in working with the Nebraska Department of Economic Development. The City of Norfolk served as a conduit to bring the $935,000 to the project. The State of Nebraska granted those dollars to the City of Norfolk because of how the low income housing tax credit program works. Those grant dollars were, at the request of Meadow Ridge Partners, converted to a loan. The bond documents also prevented this project from being refinanced for a period of 10 years. That 10 year period expired in December 2005 and, since that time, the partners have been looking at rates to refinance. A new mortgage rate was secured with JP Morgan Chase Bank which allows refinancing of the first mortgage loan from a 7.2% annual rate to a 6.25% annual rate. JP Morgan requires modification of the second mortgage loan to reduce the interest rate to zero percent and also requires the second mortgage holder, the City of Norfolk, to forgive accrued interest to refinance the first mortgage. The real issue is the loan to value ratio for the bank—if the project has a value of approximately $3,000,000, the two debts collectively cannot exceed 100% of that value. The rate reduction and interest forgiveness are covered by the modification agreement and allonge. JP Morgan also requires the City of Norfolk to subordinate the second mortgage position to the first mortgage position of the senior lender.

Huston feels the real questions before the Council are: (1) is this request really to serve as a windfall to the developers, and (2) what happens to the compliance issues.

Huston stated that, from the prospective of the Meadow Ridge Partners, the reason to refinance the first mortgage is to decrease annual debt service costs. The operating costs need to be lowered because, to date, no payments have been able to be made to the City of Norfolk on the second mortgage loan due to a variety of factors one of which is the fact that rents have not been able to be increased over the last ten years to keep pace with the increase in costs. If operating costs can be decreased by reducing debt service costs on an annual basis, the Partners will be able to free up cash flow that can be paid to the City of Norfolk on the second mortgage loan.

There will be about a $2,000 per month savings if the new documents are approved, which will be a true benefit to the City. The loan with the City of Norfolk was structured on a residual receipt basis which means that any excess cash flow, after paying all expenses, will be paid on the second mortgage loan. Without the refinance, the City of Norfolk will not receive any payments on the second mortgage loan. Huston feels the sole beneficiary of the refinancing will be the City of Norfolk because it will enable residual receipts to be paid to the City as principal payments on reducing the $935,000 loan. Huston reminded elected officials that the $935,000 came to the City originally as a grant which was funded through the Home Investment Partnership Program that the Department of Housing and Urban Development, as administered by the Nebraska Department of Economic Development. The principal repayments that will be made are new dollars to the City that can be put into the City's reuse fund. If the refinancing doesn't occur, the City will not receive any payments because there won't be any residual receipts.

On the compliance issue, Huston reiterated the project was funded with three primary sources of financing: tax exempt bonds, low income housing tax credits, and funding from the State of Nebraska through the City of Norfolk through the Home Investment Partnership program. The problem is that each of the programs has their own requirements as it relates to tenant eligibility and rent restrictions. Since 1995, this project has been fully compliant with the tenant eligibility requirements and the rent restrictions as required by the tax exempt bond program and the low income housing tax credit program. Just recently, it was discovered that the State of Nebraska raised a compliance issue on whether the project was in compliance with the home investment partnership program. This is a technical issue and the Partners have been working with the State of Nebraska and City of Norfolk staff to arrive at a mechanism to get the project into compliance with all three program requirements. The proposal will enable Meadow Ridge Partners to remove all doubt of compliance and will add additional units to qualify as Home Investment Partner program apartment units.

Huston explained the proposed letter to the Nebraska Department of Economic Development is a request that ten (10) additional units be counted as Home Investment Partnership Program units which allow compliance with requirements as imposed by the Department of Economic Development. Huston said the "teeth behind that is Item G-4", the Memorandum of Understanding. Meadow Ridge Partners is agreeable to sign the MOU to make sure that the project complies with the Home Investment Partnership Program requirements. The MOU also contains a limitation on what distributions can be made to the managing members of the project to ensure that the project will generate residual receipts that can be made as principal payments on the second mortgage held by the City of Norfolk.

Huston stated Meadow Ridge Partners basically has two choices: (1) City of Norfolk approval of the four agenda items will (a) enable refinancing the first mortgage with JP Morgan Chase Bank; (b) create additional cash flow that can be paid to the City of Norfolk as principal payments on the second mortgage; (c) removal of all doubt that the project will comply with the technical requirements imposed by the State of Nebraska through the Home Investment Partnership Program; and (d) the City of Norfolk, with the assistance of the Meadow Ridge Partners and its managing members, will be in compliance with the Home Investment Partnership Program; or (2) if refinancing does not take place, (a) the project will lose nearly $100,000 in fees and costs to JP Morgan Chase Bank, (b) the City will not be in compliance with DED and may be liable for returning $935,000 in HOME loan funds, and (c) the City will not receive any payments on the HOME loan now or in the near future and the future of the project will be jeopardy.

Huston reminded elected officials that the grant dollars came from the Nebraska Department of Economic Development to fund the second mortgage loan. The agenda packet contains a letter from Lara Huskey of the Nebraska Department of Economic Development recommending that the City approve the documents.

Huston said Meadow Ridge Partners would like to close the first mortgage with JP Morgan Chase Bank by October 31, 2006.

Phil Perry stated this is a very complicated issue. Section 42 of the Internal Revenue Code addressing Low Income House Credit is probably the thickest and most complicated section of the Internal Revenue Code. The use of HOME funds was done because soft funds had never been combined with tax credits for such a project.

Councilperson Van Dyke questioned the $1,092,529 in "Equity" listed in Part III(d) Source of Funds, in the 1995 agreement between the City of Norfolk and the State Department of Economic Development for the Meadow Ridge project, #M94-SG-3101-13.

Huston stated the equity came into the project because of the capital contributions made by the investors in the Limited Liability Company.

Van Dyke questioned whether the "Owner Contribution" of $397,220 was actual cash contribution or property.

Huston stated the $397,220 was comprised from the first developers providing $300,000 and the additional sums were advances made by the owners "to get the project off the ground."

Van Dyke questioned what amount(s) have been taken out of the project by the tax partners.

Huston stated tax credit investment members do not receive direct payments. The sole benefit is limited to tax credits received under IRS Section 42. Because the project received an allocation of low income housing tax credits from NIFA, on an annual basis the investment members get the benefit of those tax credits against federal income tax liability.

Van Dyke stated nothing has been paid on the first mortgage and the City of Norfolk has not received any money on the second mortgage. Van Dyke would like to know where the money went for the first 10 years of the project.

Huston stated the first mortgage was based on a 30-year amortization and during the first 10 years not a lot of principal has been repaid. Part of the problem is that, even though the 10-year lock out period expired in December 2005, there is still a 2% premium that needed to be paid to the bond holders. The reason for increasing the first mortgage amount is to pay for the costs to refinance. This is not a cash-out refinancing.

Perry said that, from an operational standpoint, the property was financed at a 1.15 debt coverage ratio which means the net operating income was 115% above the first mortgage. Fifteen percent

(15%) is a very small margin. Over the first ten years, the developers' fee was paid to the managing members at the rate of $30,000 per year; the four entities split the $30,000 each year. There was some money put aside to be used to pay off additional debt incurred. The project was a breakeven project and J Paul McIntosh had to put money into the project in order to pay the onsite manager and other expenses. There was no excess cash available. The last 5 years of the 10 year plan, rental properties across the country have succumbed to low interest rates and many renters have now purchased homes. Perry said rental income went down and operating expenses increased.

Van Dyke questioned why rent has not increased over the last 10 years.

Perry said rents may have increased "a little bit".

Huston said participation in this project required restricted rents in compliance with NIFA.

Van Dyke serves on both the Boulevard Village Board of Directors and the Norfolk Housing Authority and both entities have been able to raise rents over the years. Van Dyke feels those entities are solvent and questioned why Meadow Ridge isn't solvent.

Perry isn't able to analyze those situations without more information so it is difficult to say why they are solvent. Perry said the Partners have been at or below what can be charged for rent. It was anticipated that rents would go up about 3% per year; however, rents have actually only gone up about 1/2 percent per year. However, expenses have increases and real estate taxes and insurance are two of the major increases. Perry said insurance rates have increased approximately 400% over the years.

Huston said the first mortgage loan required several reserves to be funded—an operative reserve and a replacement reserve. Those reserves have been fully funded.

Perry said the project is audited annually. The City of Norfolk receives a copy of the audit report as well as the Department of Economic Development and also the lenders. The opportunity to view the documents has always "been there". The project is inspected annually by each of those organizations.

Councilperson Stauffer questioned how many tax partners are involved with the Meadow Ridge Apartment project. Stauffer questioned how much credit the tax partners received.

Perry said there were three partners: Elkhorn Valley Bank of Norfolk and banks in St. Edward and Newman Grove. The partners have received all of the "tax credits promised and more"; about 105%. No cash was distributed to the tax partners.

Councilperson Fauss has concerns that no payments have been made on the project but the partners are taking money out. Fauss requested information from Perry and received it last evening. Fauss said the papers indicate $30,000 is being taken out annually as well as another $70,000 out at the end of the year. Fauss said the information shows rents have increased contrary to what Huston previously said. Fauss feels there "is money there to make payments".

Perry said the City of Norfolk is not a bank for this project. The City received grant funds from the State that were based on a residual receipt loan. Payments don't need to be made to the City unless there are residual receipts.

Fauss read from Item G-4, #2, “annual payments of principal and interest on this note shall begin on the 15th day of March in the year after occupancy.” Fauss feels payments should have been made to the City.

Perry said that Item 3 in the Promissory Note states that gross income less vacancy, less operating expenses, less debt service, less preferential cash flow equals residual receipts which would be paid to the City of Norfolk. However, there haven’t been any residual receipts.

Fauss feels that “money taken out is surplus cash” and should be paid to the City. Fauss questioned why the City has a contract and note if the $935,000 is a grant.

Huston stated the grant dollars were, at the request of the Partners, turned into a loan. In 1995, it had to be structured as a loan, a soft-subordinate loan, in order to optimize low income housing tax credits that could be allocated to the project.

Fauss reviewed copies of balance sheets received from Huston and/or Perry. Fauss feels the project “is worth money” and maybe the City of Norfolk Housing Agency could show a profit with the project. Fauss would like to see more financial information on the project. Fauss questioned why City staff didn’t make sure the City received payment on the $935,000 loan.

Finance Officer Randy Gates receives and reviews the annual audit. Gates said the only year there may have been residual receipts was in 2004. The promissory note states how residual receipts are calculated. Gates has been “arguing with Phil Perry about that ever since 2005” after the audit was received. It was insurance proceeds that caused residual receipts in 2004. Perry doesn’t feel insurance proceeds should be counted as part of the income. Gates, City Attorney Clint Schukei and Perry compromised and the City should now be getting one-half of the amount of residual receipts in 2004. Gates said, according to the terms of the note, the Partners could have taken about twice as much out of the project as what has been taken out.

Fauss said the financial information indicates about $100,000 has been paid to the partners annually.

Huston said $100,000 has not been paid out annually to the owners.

Fauss said the entire Council should have received more financial information on the Meadow Ridge Housing project. Fauss said elected officials are being told the partners aren’t taking money “but they are”; “you aren’t raising rents, but you are.”

Councilperson Kaspar-Beckman feels more information needs to be distributed to Council members prior to consideration of the documents. Kaspar-Beckman feels the documents should be tabled at this time.

Mayor Adams would like all elected officials and the public to comment on the issue at this time. Mayor Adams questioned the vacancy rate for the Meadow Ridge Apartments.

Perry said the vacancy rate has been around 5%, which is low.

Mayor Adams questioned when the project went out of compliance.

Perry said Mr. Huston called it a "technical compliance issue". The Meadow Ridge Partners were informed in 2005 by the Department of Economic Development about the discovery of a compliance issue. There are 10 units out of compliance which amounts to about $120/unit. Meadow Ridge Partners met with the Department of Economic Development and came to terms as to how to bring the project back into compliance. It is a compliance issue between the City of Norfolk and the Nebraska Department of Economic Development.

Huston calls it a technical compliance issue because eligible tenants cannot make more than 60% of the area median income as published by HUD. The HOME program uses a slightly different percentage and is based upon what HUD determines to be fair market rents. This is a compliance issue that can be fixed.

Councilperson Brenneman questioned whether a grant needs to go through a political entity. Brenneman questioned why the value of the property hasn't changed over ten years.

Huston stated a grant doesn't have to go through a political entity. If Elkhorn Valley Economic Development Council (EVEDC), now NeighborWorks, had received its 501(c)(3) designation as a tax exempt entity from the IRS in 1995, then EVEDC would be the lender instead of the City.

Perry stated the value of the property has not increased. When the property was initially valued, it was valued on construction costs and also on income. Based on the income approach, the property has not increased in value because net operating income has been stagnant. Rental property is based upon how much money it makes not how much it costs to build. If the property was sold today it would still have rental restrictions; therefore, it would have the same income proforma.

Councilperson Brenneman questioned why a grant would need to be repaid.

Huston explained the grant is a conditional grant which means it is a grant as long as the conditions are met and the condition is a compliance issue. Meadow Ridge Partners is trying to "take that issue off the table" and not have it as a requirement.

Councilperson Stauffer feels the elected officials need copies of all information available before considering the documents.

Councilperson Wilson left the meeting at 7:51 a.m.

Fauss questioned the partnership relationship of NeighborWorks. Fauss requested the Mayor direct the City Administrator to distribute copies of everything related to this item to all elected officials.

Huston stated NeighborWorks is one of the managing members of the property.

Kaspar-Beckman suggested further discussion be held at a Finance Committee meeting because the City Council is not prepared to vote on the issue at this time.

Van Dyke understands the request to refinance the project. However, Van Dyke stated the City will be subordinate to the first mortgage if the Council approves the documents and, the City will be "out in the cold anyway" especially since Section (3) states that acquisition of the senior lender will have title to the property pursuant to a foreclosure. Van Dyke doesn't see that the City is gaining anything in this process except "putting you off the hook to pay back some of the money you should probably pay back."

Huston said the managing members are not personally obligated under the second mortgage on the soft subordinate loan. Meadow Ridge Partners' single asset is the 84 units located on East Benjamin Avenue, Norfolk, Nebraska. The second issue, in the event of foreclosure, is that the City would probably not recover anything in the second position. However, if the first mortgage gets refinanced and the City reduces the interest rate and forgives the interest, this project will then be able to start paying the principal balance of the $935,000 back to the City. Those are new dollars to the City. It seems that the City's position to be able to recover the principal balance of these grant dollars is a benefit to the community.

Van Dyke doesn't see that the City will be in any better position with the second agreement than with the first one.

Huston explained the Memorandum of Understanding will place a limitation on the managing members on what amounts can be distributed. The managing members will not receive anything above the $30,000 per year and the project will generate residual receipts that will be paid to the City of Norfolk.

Mayor questioned how concrete that assurance of repayment can be since the City has received assurance since 1994 that there would be some income from this project. Mayor would like to see that statement put into a "very structured form."

Huston said the Memorandum of Understanding is a structured document. Huston said history and experience indicates what this project can generate on an annual basis. As long as the project continues to operate as it has been, there will be a $20,000 to $25,000 minimum residual receipts that will be payable to the City of Norfolk if the documents are approved.

Perry stated the City has been receiving audited statements "since day one" to show what the project generates. Perry said the City stands to receive income with the new agreement. If the Council votes against the new documents, the City "won't ever receive anything" and the City may have a liability of $935,000 to the State of Nebraska. Perry stated all of the efforts have been to bring the City into compliance and to start allowing the City of Norfolk to have the opportunity to receive funds from the project. Perry said this "has been the hardest battle I have ever fought to try to help a community out."

Fauss is insulted Perry came to the City and requested the Council sign the documents, especially without all of the available information. Fauss requested copies of all balance sheets for the project be sent to Mike Nolan for distribution to the Mayor and Council.

Mike Nolan will request financial documentation from Phil Perry for distribution to the Mayor and City Council.

Van Dyke questioned who would own the property after 15 years if projections had been correct.

Perry stated the property would be owned by the four managing partners once the tax credit partners exit the project and the City of Norfolk is paid back the entire $935,000.

Stauffer questioned whether the partners have been receiving $30,000 annually plus a 7% management fee.

Huston stated "that is correct."

Mayor requested public input on the subject. Mayor has received a lot of phone calls from citizens and it has "not been very favorable". Mayor Adams served on the Norfolk Housing Agency Board of Directors for 25 years and understands there are restrictions in place for these types of projects. Adams said HUD always requires detailed reports. Mayor feels that if HUD is doing its job then probably Councilperson Fauss' concerns have probably been answered.

Huston stated the Nebraska Investment Finance Authority (NIFA) is also very strict on enforcing regulations. The project undergoes annual scrutiny from three agencies on the Federal, State and local levels. Huston has no doubt this project is performing as required.

No one else spoke during the meeting regarding the Meadow Ridge Apartments project.

Councilperson Stauffer moved, seconded by Councilperson Kaspar-Beckman to table consideration of the documents until a future City Council meeting. Roll call: Ayes: Councilpersons Stauffer, Lange, Van Dyke, Kaspar-Beckman, Brenneman, Fauss and Saunders. Nays: None. Absent: Wilson. Motion to table carried.

Councilperson Fauss moved, seconded by Councilperson Stauffer to adjourn the meeting at 8:05 a.m. Roll call: Ayes: Councilpersons Stauffer, Lange, Van Dyke, Kaspar-Beckman, Brenneman, Fauss and Saunders. Nays: None. Absent: Wilson. Motion to table carried.

Gordon D. Adams
Mayor

ATTEST:

Elizabeth A. Deck
City Clerk

(S E A L)

I, the undersigned Clerk, hereby certify that the foregoing is the full, true and correct original document of proceedings of Wednesday, October 11, 2006, had and done by the Mayor and Council; that all of the subjects included in the proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to the meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

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Elizabeth A. Deck
City Clerk

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