

**Planning & Development Committee
Minutes of April 14, 2009
Council Chambers 6:30 p.m. – 7:20 p.m.
Evanston Civic Center**

Aldermen Present: S. Bernstein, A. Hansen, L. Jean-Baptiste, E. Moran,
R. Rainey, E. Tisdahl, C. Wollin, M. Wynne

Staff Present: B. Dunkley, D. Marino, J. Murphy, B. Newman, E. Purze, D. Spicuzza,
L. Woods

Presiding Official: Alderman Moran

DECLARATION OF QUORUM

Chair Moran called the meeting to order at 6:50 p.m., a quorum being present.

APPROVAL OF MARCH 9, 2009 MEETING MINUTES

The Committee voted unanimously 8-0 to approve the March 9, 2009 meeting.

ITEMS FOR CONSIDERATION

(P1) Foreclosure Prevention Strategy for HOME-Assisted Development at 241 Callan

Mr. Marino explained that the City invested \$250,000 in HOME funds for rehabilitation of five ownership units and that the \$250,000 has been expended. This recommendation is a foreclosure prevention strategy for the development. Because of severe market conditions, the developer, Neil Davidson of Economic Development Corporation (Econ) has not been able to sell the units so the next strategy is to rent these units for a period of two years in order to generate cash flow to enable him to pay the line of credit that was used to purchase the property and to cover part of the rehab cost with Edens Bank, which is about \$800,000. The objective would be to try to sell the units after two years to achieve the original goal of the project.

Mr. Marino explained further that under federal rules, the City is allowed to substitute local funds for HOME funds already expended, so the City would not investing additional money. This proposal is to invest \$60,000 in affordable housing funds in place of HOME funds, which is permitted by HUD until the federal government closes out the project (meaning all the units have sold and the goal has been achieved). The HOME funds initially invested were \$250,000. This would bring the City's HOME fund investment down to \$190,000. The City is allowed to make this substitution up to this point, even though the money has already been expended, because the project is not finished.

Ald. Jean-Baptiste moved to approve the foreclosure prevention strategy. Ald. Wollin seconded the motion.

Ald. Bernstein asked what position the City is in, in case of foreclosure, to which Mr. Marino replied that the City is in second position. He said he believes the outstanding balance on the first mortgage is approximately \$816,000. If foreclosed, the property would have to sell for more than \$816,000 in order for the City to recover the HOME funds. If the City was unable to recover the HOME funds, it would be obligated by HUD to substitute locally controlled affordable housing

funds for the HOME funds that were lost in the foreclosure sale unless whoever purchases the property agrees to provide a commensurate amount of affordable units to what was the initial obligation. Mr. Marino further explained that there is risk in terms of local funds having to go back to pay for the HOME funds, but those local funds could then be reused within Evanston under the HOME umbrella. It is complicated, but they would not be totally lost to the community, but our exclusive local control of affordable housing funds in that amount would be jeopardized.

Ald. Rainey said she is completely and 100% opposed to this change because: 1) Foreclosures are a reality when people don't pay their mortgages or their taxes. She said we have families and individuals all over our community who are suffering who the City is not able to save and most of the time the City refers them to a counselor. She cited an example of a woman who lives on Dodge who came home to find the Sheriff had locked her out on the street and her husband had a heart condition. His pills and all their furniture were inside with the new owner and all the police could say when they came to her rescue was that she would have to wait and they would get the pills out later. Another woman who owned a two flat for many years on Case also got thrown out on a foreclosure and the City could not do anything to help her. These are people who live in Evanston and this is a bail out plan for a man who lives in Skokie who made a terrible investment by paying way too much for a five unit building and on top of that spent approximately \$500,000 to renovate five tiny units, each under 1,000 square feet, calling them affordable housing and our staff is working day after day, hour after hour to help him bail out.

Secondly, Ald. Rainey continued, we gave Mr. Davidson \$250,000 for writing down the cost of some units. She said she asked staff today, when she read that the \$60,000 is not new money, whether the \$250,000 is still available, to which staff replied that it is not. She said she asked whether it has been spent, to which staff replied that it had been. So she asked how the \$60,000 is not new money, to which staff replied that it is HUD mathematics. She said she does not understand HUD mathematics but she does understand that Mr. Davidson has not paid his mortgage interest in months; there is no foreclosure, unlike many people in our community who are in the throes of foreclosure, who live here. This is an empty building. We would not be saving anyone's home as far as she knows, so she asked how we can do this. She asked why he is the favored person that we are going to help and why we do not refer him to some agencies like we do other people by giving them a bus card and sending them to every agency in town. She suggested making him sell the building, saying there has been no effort to sell the building as a whole unit. She said if that fails, there may be another possibility: the \$250,000 requires two affordable units because it is a percentage point that HUD rounds up to the next whole number. If we take away \$60,000 from the \$250,000, he will only be required to have one affordable unit for rent. She suggested making a motion, which was originally one of staff's thoughts, to reduce the \$250,000 by \$60,000 and he will only be required to have one affordable unit, which will, he says, make his pro forma for renting a possibility.

Ald. Rainey said she also objects to it being a rental because it was a rental before he bought it and there were not any huge problems there and all the people who were living there had to leave. She said he did a \$500,000 renovation on a \$600,000 building and the outside of the building still does not look good. She said there are plenty of rental units in the neighborhood, in fact two doors down there is another mistake where there are nine vacancies. She said she is appalled.

Ald. Bernstein tried to clarify: if we reduce the amount by \$60,000 out of our pockets, the \$250,000 is gone. Ald. Rainey said it is not out of our pockets yet, but it is a possibility that it will be, if the project fails. But, she said, this is not going to solve any problems. It is just going to bail him out and we have other people we need to bail out. Ald. Rainey said she admits that she does not understand HUD mathematics and she defies anyone on the Committee to explain them. She

said she knows some of those on the Committee are very smart. She suggested asking Mr. Davidson for the \$60,000 back. She said there are outstanding fees owed and he wants a break on the permits, which she is absolutely against, and she said he owns the lot next door to the building on which he owes taxes also. She said the total is almost \$3,500 in outstanding taxes on the building in question. She said she believes the City is throwing money down a hole, though it is not real money.

Mayor-Elect Tisdahl said she is also having trouble understanding the HUD math. She said it seems that this project is in trouble and she is not sure that it is going to be viable after they do put another \$60,000 into it. She wondered what would make it viable after the \$60,000 goes into it.

Mr. Marino said the strategy going forward would be for Mr. Davidson to be able to rent the property successfully to five households as a way to generate the cash flow to cover his debt service and operations. In terms of the \$60,000, it is not any new money being invested into the building. It is a transfer from the affordable housing account into the HOME account and removing \$60,000 in the accounting transaction from the HOME account. It is, again, something that HUD allows before a project is completely leased up or sold out. It actually was one of the suggestions of HUD when staff approached them with a number of other possibilities.

Ald. Rainey asked Mr. Marino to explain again how the \$60,000 will reduce the \$250,000, to which Mr. Marino replied that he believes she is suggesting that they are reducing the total funding by \$60,000, but the money has already been paid and invested into the project, so from an accounting point of view they could not do that, since that money is already in the deal. The best they could do is to lower Mr. Davidson's affordable housing obligation, which is usually not our inclination, but in this case, allowing him to restructure the project would enable him to generate more cash flow by reducing the affordable housing units by one unit, from two to one.

Mayor-Elect Tisdahl told Mr. Marino she still does not understand, though one of the units will be made rental, what is going to make it successful. She asked how much rent will be charged vs. how much is currently charged in that neighborhood. She asked what would make the rental project succeed where the other one didn't.

Mr. Marino replied that both projects on this block, the other being the Reba Place project, are ownership projects. In terms of the feasibility of renting, Mr. Davidson has indicated he had a market study done by Kagan Realty and the study concludes, according to Mr. Davidson, that \$1,300 per unit would work for a gut rehab property in that condition. It is high for the neighborhood but also there is not a comparable product. The units are a little smaller than average but in the staff memorandum there is a list of properties in the immediate neighborhood and also in the broader neighborhood going to the east where there are properties in the \$1,000 to \$1,200 range, but it will have to be tested. Mayor-Elect Tisdahl replied that \$1,300 seems high to her.

Ald. Wollin said she was curious if the property was put up for sale, what the obligation would be on the City. Would we have to repay the \$250,000? Mr. Marino replied that if the property sells for less than the outstanding balance due to the first mortgage, then the City would lose the \$250,000. She asked whether the property had been appraised, to which Mr. Marino replied that it was appraised by Edens Bank early in the process of their considering financing it for acquisition and rehab. It was appraised at that time at approximately \$1.2 million (post rehab). But that was in different market than we are in today.

Ald. Rainey said that having once been a licensed appraiser, she does not believe appraisers do

appraisals anticipating a rehab. They might offer an opinion but you cannot call it an appraisal. They might have said if \$500,000 is put into a \$600,000 building, it would be valued at \$1.2 million, but that is not an appraisal. There has been no effort, from what she has been told by staff, to sell this building. When people come to the City when they are in danger of foreclosure, where no paper has been filed, we encourage them if they cannot make it, to face reality and attempt to sell their property for the best price they can get so they don't lose everything. She said she does not understand why special treatment is being administered in this case. She referred to condo owners with vacant units within their association in 20-30 unit buildings, who are starving because they are not collecting assessments, saying we should help those people. She does not understand why the City is spending so much time working on this as she believes it is a failure in progress. She does not believe we are going to be able to save it because he is not going to get \$1,200 on that corner.

Ald. Rainey said we were told early on that two units were sold, not under contract, but sold. She said none of the stories the City was told were true. She said she does not know how this money will help him pay all of his other outstanding debt and that we don't even know if the taxes have already been sold.

Ald. Jean-Baptiste said he also recalls being told that two units were already sold. He asked Mr. Marino to help him understand why the three other units cannot be rented right now and whether this is a condition of the HUD funding. Mr. Marino said the loan agreement that the City has with Econ calls for all the units to be owner-occupied and there is a HUD formula for the number of affordable units required, which states that in order to be able to rent out the development he would have to seek the approval of the City, which is what they are doing through this process. Ald. Jean-Baptiste asked whether the Council could authorize him to rent without funding him \$60,000, to which Mr. Marino replied that we can, but two of the units would still have to be affordable, given the HUD HOME funds that have been invested, which impairs his cash flow.

Ald. Baptiste clarified that he has five units and if he sought and got permission to rent the five units, two of them would have had to be rented at an affordable rate. Mr. Marino said that is correct, assuming that all \$250,000 in HOME funds stay in the project. Mr. Marino clarified that it would be the City Council who would grant him permission to do that. Ald. Jean-Baptiste asked why that was not done earlier when he was going through difficulties, such as when the sales fell through. Mr. Marino said staff had understood that there were four contracts pending and that none of them could get financing. Staff felt that this was the best interim solution to allow him to achieve the end goal of having this as an owner occupied building with the number of affordable units that were originally intended, but they had to wait for Mr. Davidson's okay to change it to rental. The necessity to move \$60,000 out of the local affordable housing account would be done so Mr. Davidson would have a break even cash flow under the rental strategy because you can get obviously more rental income from a market rate unit that you can from an affordable unit.

Ald. Jean-Baptiste asked what makes staff feel obligated to assist him in having a break-even cash flow at this particular point in time. Ms. Spicuzza said the affordable rents would equal \$934, compared to \$1,300 market rate rent: a difference of \$360 per unit.

Mayor-Elect Tisdahl asked Mr. Davidson what the rent was before he acquired the building, to which he responded that it was \$1,100 per unit.

Ald. Rainey said she was wondering how prudent it would be to make this adjustment when Mr. Davidson owes at least \$10,000 in taxes on the building and one year taxes on the lot next door, the outstanding fines and permit fees, plus thousands of dollars in mortgage arrears. She asked

Mr. Davidson when those would be paid, saying that in the past, when property owners have come to the City for favors, we have told them they have to pay all their indebtedness to the City and their taxes before the City would consider their request. In this case we are not doing that.

Mr. Marino asked Mr. Davidson to address his intention regarding the property taxes. Mr. Davidson said the taxes will be paid. He said he could have begun paying the debt obligations if he had the opportunity to rent the units when he made that request, back in November. He could not rent the units until he got permission and the rents he would have gotten would have covered his debt obligation as well as taking care of the other expenses of the building. He is not sure where Ald. Rainey is getting her information regarding the vacant lot. There is no tax obligation. She said she got the information from the County Treasurer today. Mr. Davidson said he had not received a tax bill if there was an obligation. Ald. Rainey said one tax bill is \$1,500 and the other is \$1,800.

Mr. Marino clarified that the last request to the Planning & Development Committee was made in December when Mr. Davidson was asking for interest rate subsidy for this project at the same time as the three CHDO's. After EDC was not recommended for that, staff and EDC met in late December to discuss what Mr. Davidson's options might be, one of which was rental. Two meetings ago, the Committee received a formal request.

Mr. Davidson said he hired a professional firm to market these units to rent. Even though he had gotten contracts to rent the units, he could not rent them because he did not have permission yet.

Mr. Marino called to the attention of the Committee that one of the criteria HUD uses as a standard for HOME funds recipients is whether the local municipality has taken all reasonable available options to prevent failure. Staff had asked HUD whether, instead of taking affordable housing funds to replace \$60,000 of the HOME funds, would HUD, because of the extraordinary economic conditions, waive the requirement for the affordable rental unit, which would allow the City not to have to switch out the \$60,000. HUD would not grant staff's request because they said the City had not done everything it could do to help avert foreclosure.

Ald. Jean-Baptiste asked whether we could have rented the other three. Mr. Marino said Mr. Davidson intends to if that is approved by the City Council. Ald. Jean-Baptiste asked why staff did not recommend renting the three units at market rate and the other two at the affordable rate, to which Mr. Marino replied that staff did recommend that a month ago. Ald. Jean-Baptiste asked why staff did not recommend rental without the \$60,000 fund transfer. Mr. Marino said as soon as staff was able to talk with Mr. Davidson at length and get a sense of market conditions, staff made that recommendation to the Council. But without the waiver on an additional required affordable unit, the cash flow does not break even. So they were trying to structure a project that would work in the transition. Ald. Jean-Baptiste said he has a problem with staff's focus on bringing cash flow as a condition of advancing a request for rental. He said if Mr. Davidson has nothing coming in and he has obligations, it is much worse than if he has the total amount of the mortgage less \$600.00.

Ald. Jean-Baptiste moved to amend the request removing the \$60,000 and granting permission to Economic Development Corporation (EDC) to rent the units. Ald. Rainey seconded the motion.

Mr. Marino clarified that because \$250,000 of HOME funds is invested, Mr. Davidson must still deliver two affordable units.

Ald. Rainey in addressing the motion, asked Mr. Marino if reducing the \$250,000 by \$60,000

were an option, was it not in staff's memo that it would then allow him to rent only one affordable unit: reducing the \$250,000 by \$60,000, allows them to reduce the requirement of two affordable rental units to one affordable unit. Ms. Spicuzza confirmed that because HOME money has been spent, the only way Mr. Davidson could rent only one affordable unit, would be if the HOME funds were reduced by putting the \$60,000 in affordable housing money into the HOME fund account. Ald. Rainey said that is what she suggests they do. He can rent his one affordable unit and that will be the end of it. But she added that any motion made tonight should be predicated on him paying all of his taxes. Ald. Jean-Baptiste asked whether Ald. Rainey was moving an alternative motion to grant what is requested except that he has to pay his obligations. Ald. Rainey said she does not believe the City is in a position to let him rent the whole building out without the set-aside for affordable units and it has to be two, given that we gave him \$250,000. Ms. Spicuzza said it is a two-fold requirement. It is based on the subsidy per unit also, so the maximum subsidy per unit would be approximately \$190,000. Ald. Rainey said she would rather lose the \$60,000 and get this burden off the table.

Ald. Jean-Baptiste withdrew his motion and moved to approve the request, conditional on Mr. Davidson paying his bills to the City and reducing the \$250,000 in HOME funds by \$60,000 by transferring it from the affordable housing fund to the HOME fund.

Ald. Bernstein, in trying to understand, said the \$250,000 was gone. Because of HUD's required ratios, we have to use \$60,000 of affordable housing money to buy down our debt of \$250,000. At the end of the day, we are out \$250,000 plus \$60,000, which equals \$310,000. Mr. Marino clarified that the City is still only at risk for \$250,000 because the \$60,000 is not added to the debt. You will have \$190,000 in HOME funds and \$60,000 in affordable housing funds if you approve the request Ald. Rainey just proposed. Ald. Bernstein said he doesn't understand the accounting. Mr. Marino said because the project is not fully occupied, the transfer is allowed, explaining that the \$250,000 from HUD is allocated if it is used to provide affordable housing. If the project fails and there is not affordable housing beneficiary, it must be repaid, adding that that is what we are trying to avoid. Ald. Bernstein said he has difficulty understanding the HUD system from an accounting point of view, since the money that is being transferred is coming from the City.

Ald. Hansen explained that if the \$60,000 was transferred into the HOME fund from the affordable housing fund, it would bring the HOME fund grant down to \$190,000, which would be the amount that would have to be repaid to HUD if the projects failed (as opposed to \$250,000).

Ald. Wollin said that if this proposal passes she would like to know when the Committee would re-evaluate whether it is working or not and asked how much time the Committee is giving the developer to succeed. She asked whether HUD has given the City a time limit, to which Mr. Marino replied that it does. He said staff recommends reviewing the project within 60 days and report to the Committee. Ald. Wollin said that seems like a reasonable amount of time and she believes the Committee should move forward.

Mayor-Elect Tisdahl said she likes getting the amount down \$60,000 and asked whether it could be lowered even more, because she is concerned that this project is going to fail and she would like to have to repay as little as possible. Ms. Spicuzza said the City would still be out the money because it is being taken from our affordable housing fund, so we would lose the money out of our affordable housing fund. Mayor-Elect Tisdahl asked whether the City would lose \$250,000 or \$190,000, after we give the \$60,000, to which Ms. Spicuzza replied that if the project fails and it is foreclosed or sold and we have mortgage on the property for the amount, we might get some money back, but it will probably not be \$250,000.

Ald. Bernstein clarified that the \$250,000 has been spent on rehabbing the property. In order to allow him to do one unit, we are going to replace \$60,000 of it with affordable housing funds.

The Committee voted by majority of 7-1 with Ald. Bernstein opposed, to approve the request for \$60,000 to be transferred from the affordable housing fund to the HOME fund, and to grant permission for Economic Development Corporation (EDC) to make the units rental units, on the condition that EDC repay its debts to the City.

Ald. Bernstein requested that staff provide him with a hard copy of the accounting showing this transfer of funds.

Ald. Rainey asked where .05% rounded up to a whole, because that is the problem we face tonight. The \$250,000 required 1.05 affordable units, rounded up by HUD to 2. What is their explanation for ½ of 1% rounding up to a whole? Is it in the regulations? Ms. Spicuzza said she does not know off hand where it is written, but all the HUD calculations are rounded up when you are looking at the targeting and the percentage of units. Ald. Rainey asked whether there is any chance we made an error on the calculation, to which Ms. Spicuzza replied that staff has discussed it with our HUD field rep, and she can go over it, but she said that is only one of the criteria for determining the number of affordable units and there is a maximum subsidy per unit, which is \$190,000, so it would still fail on that account.

(P7) Sidewalk Café for Type 1 Restaurant, Zoba, The Noodle Bar

Ald. Wollin moved approval of the sidewalk café. Ald. Rainey seconded the motion.

The Committee voted unanimously to approve the sidewalk café.

Chair Moran apologized to the applicant for the long wait to hear his case.

(P2) Ordinance 19-O-09 Amending the City Code to Authorize Re-inspection Fees for Rental Property

Ald. Wollin moved approval. Ald. Rainey seconded the motion.

Ald. Hansen said in reviewing staff's recommendations for the re-inspection fees, she noticed that the owner-occupied buildings up to 4 units would be exempt from re-inspection fees and there is a table for re-inspection fees for non-owner occupied buildings with more than 4 units, but she would like to see a similar breakdown to the rental registration, by so many units. She asked Mr. Murphy, Assistant Director for Property Standards, whether the ordinance breaks down the fees by, for example, 8-25 units, 25-50 units, etc., to which Mr. Murphy replied that they did not do a further breakdown because in their research and analysis they found that no other cities do that.

Mr. Carliss Sutton said not having access to the law itself, he had questions regarding it. He asked whether there a number of units that this refers to, if it is more than 4 units. He said he has had to stand in for friends who have had to work and when Property Standards inspectors did not show up, they would have had to lose a day of work or another day, and he said there are no arrangements for landlords when inspectors do not show up. He asked how many single property inspectors would come and what would determine the re-inspection fees. He asked whether it is based on the violations of the building or on the fact that the inspector did not have access to the building. He said is concerned about how it will be assessed to owners, asking whether they will be fined on repeated violations or having been previously inspected, just not having access by property inspectors?

Mr. Murphy responded that he would like to get some addresses where the inspectors are not showing up because it is really not the case, saying they do show up for inspections. He said if he does not have an inspector because someone has called in sick for instance, he sends someone in his place. He said it is very rare that they don't show up and if they can't, they make every attempt to call. If an owner hasn't given his phone number to the Property Standards Department or to the Water Department, or the multiple other sources of information that they have available to them, then of course Property Standards can't get a hold of them, but that is just because the owner hasn't provided the phone number. But, he said, he is concerned when he hears time and time again that inspectors don't show up because it is just simply not true. He has been following it for several years. As far as Mr. Sutton's specific questions, he said he would review the proposed ordinance with him.

Chair Moran told Ms. Payden that Mr. Murphy would show her the proposed ordinance as well.

Ms. Tina Payden of 1122 Emerson Street asked why she did not receive notice of the ordinance asking, if she is a landlord, why is she not being notified of what the City is trying to do. Mr. Marino replied that the procedure related to an ordinance in front of the Planning & Development Committee and City Council is posted on the City's website and does not require a notice be sent out, as a zoning change would. He added that this issue has been in front of the community and the Council over the last couple of months.

Ald. Hansen said Jeff did a great job of answering her questions and she appreciates Mr. Murphy reviewing the ordinance with Mr. Sutton.

Ald. Jean-Baptiste said they had a major meeting with landlords regarding the licensing fees, and that this issue had been discussed before.

The Committee voted unanimously 8-0 to approve Ordinance 19-O-09.

(P3) Ordinance 30-O-09, Amending the Amended Planned Development Ordinance for 1890 Maple Development

Ald. Bernstein moved to approve the ordinance. Ald. Rainey seconded the motion.

Ms. Tina Payden asked why there was no notice of the ordinance, saying because they did not get Trader Joe's, they want 24 units. She asked, if it is okay for her to put 24 units at her property any time without notifying the public of what is going on. She said she is 500', they are 500'. She said this is a surprise and that the Committee let them put in a new street to come on Emerson because they had to have Trader Joe's. Trader Joe's didn't work out so now they want to do something else. She said she pays her taxes and they are up to date and she and her family are long time citizens, asking if this is the treatment they get, no notice. She said she guesses she is in the wrong business and that she needs to be a developer because then she will get better treatment than the taxpayer whose family has lived here over 150 years, saying this is outrageous. Where is the notice, she asked again.

Mr. Carliss Sutton asked whether this ordinance would require a zoning variance from commercial to residential. He asked whether there been a study on the increased density or needs for parking. He asked whether there would be any substantial change in the development plans to remove townhouses for 24 units on the first floor and whether parking is available. He said the community would like opportunities to express concern when these kinds of changes are made which they feel may have an adverse affect on the traffic and density in their community. He

thanked the Committee.

Mr. Bill Dunkley, Zoning Administrator, in response to the question raised regarding procedure, reminded the Committee that at the last meeting staff asked for guidance from the Committee on how to handle this amendment to an ordinance since it is somewhat of an anomaly, as it is a planned development that had an option to swap residential for commercial space under certain conditions and the question was should this go to Plan Commission or should this be considered by the Planning & Development Committee. The Committee's response told staff the procedure that is required including the notice. The Committee's unanimous response to that discussion question was that it be brought to the Planning & Development Committee, so staff followed the requirements for notice appropriate for an amendment to an existing planned development, which means it is published in advance in the Planning & Development Committee meeting agenda. He said that is the procedure that was followed, and the citizen is there, so he knew about it, so it is working somewhat.

In Mr. Dunkley's response to the question of a zoning change, he explained that this is a planned development and it needs to follow the guidelines of the zoning district, which is the OP district, and this change does not go beyond those overall requirements. The amendment to the ordinance would allow a change from some type of space to commercial space. In this particular case there was an option granted. All reasonable efforts were made to secure office space on the second floor. If they were exhausted, the developer was allowed to substitute residential space for that space. This is the exercise of that particular option.

Ald. Rainey said there is no increase in height or F.A.R. There is an increase in parking and number of units and she said she believes it is a real positive that there is an increase in retail. So she said she is not sure what the negatives are here. Mr. Dunkley responded that he believed the concern was the increase in the number of dwelling units. The implication of the ordinance was that it was the second floor space that was the option. The concern was that the additional dwelling units were not located just on the second floor but were throughout the development. He said we control developments for numbers of units very carefully as part of the process, so that was an indication that we really wanted to take a look at what was intended in the original ordinance related to that option. He confirmed that the F.A.R. and height are not changing and the number of parking spaces is increasing to accommodate the greater need for the residential space.

Ald. Wynne said she thinks that it may not change the F.A.R. and it may not change the height, but it does add 23 units to the building and Mr. Dunkley is right that we discuss numbers of units a great deal in these planned development applications and she thinks that it would have been a good idea to send out notice. She said it may not be legally required but it is a change in the planned development and it is a change from the Trader Joe's issue to more residential and just as a matter of good government she believes we should give people a notice when there is a change of this significance: it isn't a matter of adding one or two units; this is altering the mix of the building. We should provide people an opportunity to know this is happening. Just because someone is here, it does not mean that they heard about it in that way and how do we know who isn't here because they did not get notice?

Mr. David Reifman, representing the developer, said this kind of change was contemplated by the original planned development and the original retail was approximately 40,000 sq. ft. so the amount of retail has been reduced. The first floor is being reserved for the opportunity for a grocer; it is just expanding that particular footprint that closer to the original footprint from the Trader Joe's-tailored footprint to a more generic footprint that may attract a variety of different grocers. So he believes it is clearly within the confines of what was noticed or approved by the

City Council.

Ald. Jean-Baptiste asked Mr. Marino to review how the City notifies the public of the regular agenda of the City Council. Mr. Marino said the regular agenda of the City Council and the Planning & Development Committee are posted on the City's website. In addition, packets are available the week before the meeting. Those are the two principal ways that are used. There are other ways in which people certainly get access to information by contacting staff.

Mayor-Elect Tisdahl said she agrees that it was all noticed properly but she thinks Ald. Wynne has a point and it is reasonable to ask the developer rather than our staff who are overworked, when they want a change that is this significant, to notify the community. She believes it would be good policy in the future.

Ald. Wynne asked Mr. Marino to explain what the notice requirement would have been if it had been sent back to the Plan Commission. Mr. Marino explained that this Committee had this as an item for discussion at the last meeting, at which the Committee gave direction to staff to draft an ordinance and bring it back to the Committee for consideration, so that is the procedure that was followed. There are a number of requirements related to a planned development notice that he asked Mr. Dunkley to describe precisely.

Mr. Dunkley said staff scoured the ordinance for some assistance in this particular case. If this were deemed a new planned development we would know exactly what to do and that would be a notice within 1,000' around the property and a notice in a newspaper publication, but this is an amendment to an existing ordinance and there is nothing anywhere that tells us what notice is required in this particular case, which is why staff came to the Committee for guidance. He said if it were changed during construction of a development, we would have more guidance than we do in this case, so it was treated as an amendment to an existing ordinance.

Ald. Wynne said she agreed that it should stay in the Planning & Development Committee because it would be much too cumbersome to send it back to the Plan Commission. If staff would have specifically asked the Committee whether they should notice the public again on this, she would have said yes, absolutely, so she does not think that was made clear to the Committee, at least she did not understand that it was, but, she said, at this point, if you are looking for guidance on this, when there is an amendment to a planned development that was clearly a controversial one, even if it isn't controversial, err on the side of notice. It is always better to err on the side of notice and she said that should be the staff policy. She cited an example that happened in her ward a number of years ago, when the Traffic Department changed the parking signs on a number of blocks, waited a couple of weeks, and then started issuing many tickets. She asked them what they were doing and they said they changed the signs and thought everyone would read the signs. She said these people have parked on these blocks for twenty years, that they stopped reading the signs a long time ago, and they needed to flier people. She concluded that we just cannot assume that everyone reads the City's website like we all do. You have to pursue it a little bit more. Mr. Dunkley said we will take that under strong consideration.

Mr. Reifman clarified for the record that the matter was properly noticed, public hearing was properly held, and the issues for relief were properly considered in a very long and controversial process. He pointed out that this specific change was contemplated and adopted by the ordinance, pursuant to the original notice, saying this is not a radical change: it is consistent with what the City Council approved as part of the original process. He said it is not fair to reopen a process when this matter was duly and appropriately considered with notice at that time. So, he said, he wants the record to be clear that this is not a dramatic change.

Ald. Wollin pointed out that it is for introduction only tonight and said she agrees that it is not a radical change. There is still the intent to have a retail grocer on the first floor if at all possible and there are still two weeks for people to come forward if they wish to.

Ald. Hansen stated that she voted no on the original planned development and she will remain consistent in her vote. She said there were issues with ingress and egress out of the building at that location, traffic and parking and to her those issues have yet to be resolved. In fact, this proposal adds more to those issues for her. She said she knows there is an intent to get a grocer and she hopes that if this goes on that they succeed in doing that but, she said, she could have told them that Trader Joe's wasn't coming, so she will be voting no.

Ald. Jean-Baptiste suggested that two weeks before the Committee takes action, staff sends notices. Mr. Dunkley pointed out that the original ordinance 45-O-07, considered duly noticed, includes in Section 8, Subsection L: ". . . the applicant for a nine month period shall make commercially reasonable efforts to locate an appropriate grocery food source" . . . and there are other conditions, however the result of that is granting the ability to the applicant to substitute residential for commercial space. He added that there were no conditions saying the maximum number of units, neither was it specified where those units could be located. He concluded that if it is looked at it to the letter of the ordinance, actually the request may very well be within what was granted. Mr. Dunkley added that perhaps there should have been a maximum number or location specified, but there was not.

Ald. Bernstein said he believes what was discussed at the last meeting was that this is a lesser included amount, plus with respect to the issues raised here by the citizens regarding density and traffic, the inclusion of a Trader Joe's would generate far more density and far more traffic than the inclusion of an additional 23 rental spaces. So he does not think that is an issue. As far as notice, he said, we are giving them the option of doing this. Theoretically, they could come back with a second story tenant and they may ask to rescind it, but this is giving them the option to allow the project to go forward. So he will be supporting it.

The Committee voted by majority to approve Ordinance 30-O-09 by a 5-3 majority, with Ald. Hansen, Ald. Moran, and Ald. Wynne opposed.

(P4) Consideration of a Request for an Extension of the Expiration for the 1700-1722 Central Street Approved Planned Development to June 30, 2012 to obtain a Building Permit

Ald. Bernstein moved approval of the request. Ald. Rainey seconded the motion.

Mr. Jeff Smith of 2724 Harrison said he has 3 and ½ points to make: There is a money aspect to time: He said Assessor Houlihan has issued notice that the Cook County Board has revised the rates at which property and the seven different classes will be valued under the triennial assessment, and the largest reduction in percentages is in vacant land, which will be falling 54% from the current 22% of EAV to 10% of EAV. So especially relative to other property class owners, there is a money cost to additional time being granted by which property can remain as vacant land. He said the question has been asked, what will get this land back on the tax roles as productive property most quickly, remembering that until it was torn down it was at least producing some sales tax, restaurant revenues, people parking at parking meters to go to the restaurant, etc. He said there are five attorneys up here on this dais and I think you would all agree with me that in general, continuances don't get you to trial any quicker. What gets you to a resolution of something and to the result you want is setting deadlines and meeting them. He said he saw some correspondence today that said we have a practice of granting extensions here in

Evanston. He asked if we are going to grant extensions every time they are asked for, why do we even have deadlines to begin with? Why do we have a build-it-in-two-years provision? Why not just say every planned development granted; every special use permit is for an infinite amount of time. It makes no sense. It is like having stop signs but saying that nobody will ever be fined for running a stop sign or a stop light.

His second point regarding the special use permit, he said, is the lack of evidence: When we first granted the special use permit it was apparently based on some evidence. He does not think those assumptions were correct as to the viability of this project at the time, but certainly this extension is being sought without any evidence within the page and a half letter that has been submitted, other than it is necessary. And there is no evidence that if granted, this extension will work in turning this into a financially viable project which is what we all want to see. But, he clarified, he does not want to stop this project from happening. He would have liked to have seen ground broken once this Council made the decision a year ago, but it has been two years since this highly controversial project was passed by this Council, there has been no analysis of the cost to the City and under the circumstances, he thinks all we are really doing is postponing a day of reckoning and acting as enablers in denial that the assumptions on which this project was based have changed. He does not see anything in this application to show him why we are going back to the levels from which we lost approximately 20% in the City of Evanston. He said there were pre-sales going on for a year here and two units were sold, so where are 50 buyers going to come from in the next year or two years?

Mr. Smith said his third point is that the Central Street Plan was passed and turned into ordinance. At the time this project was first granted two years ago, they were still working on the Central Street Plan and that they were happening during about the same time. If this extension is granted, by the time ground is broken, we'll have a law that has been on the books for three years and it seems to him that there is no reason why a project that is being built, for which we are breaking ground in 2011, shouldn't be subject to a law that has been on the books since 2008. So therefore, he would ask that any extension of time here be conditioned on compliance with the Central Street Plan as it currently exists with two exceptions: he would allow the height and the F.A.R. that was granted in the original special use permit to continue, but other than that, all the details of the Central Street Zoning Ordinance should be complied with.

Mr. Smith said his half point is that is that we are now working on a green building ordinance for the City of Evanston and a similar point should apply. This building was not applied for as a green building at the time, but since then the need for buildings to be green has become more salient. Therefore, he would ask that this Council condition the extension being sought on the project being subject to meeting the requirements of any green ordinance that is in place at the time that the building permit is pulled.

Mr. Smith thanked the Committee. Chair Moran thanked him.

Mr. Joe Hill, of Broadway in Evanston, said regarding P1, we have just used \$60,000 of affordable housing funds to make a unit unaffordable. To P4, he said part of the reason for this request is that the banks are getting nervous and want some reassurance that this is still a viable project. He said he does not believe it is within the purview of the City to be telling banks on behalf of developers whether something is a viable project or not. That is for the developer to convince the bank. Ultimately, when this project goes turtle and the bank comes back to us and says you told us it was a viable project, we will sue you too. Do they have a good case? Probably not. Would they win? Probably not. Would it cost the City time and money to defend itself? Definitely. So for these reasons alone he said he believes that this extension of time should be denied. He thanked the Committee. Chair Moran thanked him.

Mr. Jim Hughes of 2518 Hartzell said regarding notice, that they only saw this as a result of reading the agenda, which they do. He said this is going to have an impact on the retailers in that area and he is not sure that they are aware that this building will not be built for another year. He is sure they are thinking if this extension is granted and they hear about it, it will be a little bit of a surprise to them. He suggested considering notification on projects like this and what their impact is. He thanked the Committee. Chair Moran thanked him.

Mayor-Elect Tisdahl asked Mr. Marino, though she understands why it is in the developer's best interest, why it is in the City's best interest to grant this extension and whether there is any viable project that could be being built if we denied this extension. Mr. Marino said, as stated in Mr. Horne's letter, the economy is in a very severe condition. He said the difficulty the developer is experiencing has been experienced by many other developers here in Evanston and elsewhere around the country so the extension of time requested and recommended by staff has been consistent with what has been granted to other developers' extended planned development requests. He said regarding alternative developments that may be possible, it is a very difficult capital market in which to obtain financing for any developments. He said Mr. Horne has expressed that he is very interested in moving forward sooner than this if possible but this was the kind of extension that was requested and is needed for financing commitments and other things.

Mayor-Elect Tisdahl said she has been asked to request of Mr. Horne that the grass and upkeep of the area improve. She asked him whether he is going to plant grass again. Mr. Horne said he concurs with the comment. He said they did not expect this downturn and now that it has happened, they will do more seeding and maintenance. He said they maintained the property with snow removal and he appreciates the request and agrees and it will be kept up better.

Mayor-Elect Tisdahl asked what would happen to him if they listened to Mr. Smith's suggestion and asked them to abide by the Central Street Plan other than height and F.A.R. Mr. Horne said he would have to study it in greater detail than he has. Mayor-Elect Tisdahl asked him to take a look at it before the next meeting when it is an action item. Mr. Horne responded that they did a lot of streetscaping in the plan that was approved.

Mr. Reifman pointed out that the situation here is not dissimilar to other situations that have been presented: This project went through an extremely lengthy, costly process with significant amounts of money expended for design, marketing, and other things and to now take those approvals away, with the amount that has been expended to date, is effectively to make the developer redesign and spend more money at a time when the project is significantly advanced. He reminded Mayor-Elect Tisdahl that this is the developer who was responsible for Church Street Plaza, so he is somebody who has a reputation of having delivered on what he has promised. So he said in that sense you would create a hardship, even if he could look at it, to strip him of the rights that have been granted by the Council. To this point he said, he believes an extension has been granted for a reasonable period of time. He said they are just looking to do this for a period of time that is commensurate with the conditions that we are all seeing in the economy and that is the objective situation we are dealing with. He pointed out that the developer owns the land, he pays interest on his loan on the land and he is looking for the certainty that they can move forward in time with a plan that has already been approved by this Council. Mayor-Elect Tisdahl said she would agree with him except that the developer made a mistake on the market and the market blew up. Mr. Reifman said he thinks the market blew up on every developer in the country. Mayor-Elect Tisdahl agreed, but she said there were some people who thought it was going to and foresaw it and some who didn't and that this is not a mistake on the part of the City, so she is trying to get the best possible deal out of this for the City because the City does have vacant land that is not producing any taxes. She said she thinks she is

going to support this extension, but she wants this up and running as soon as possible so we have some tax revenue because it is not doing the developer any good and it's not doing the City any good. She asked Mr. Marino whether this project is the quickest route to getting something built or whether he sees any other route that would get us a project on that land. Mr. Marino said from a residential perspective, he does not envision any other residential mixed use development that could be done sooner than the extension Mr. Horne is requesting given the state of the economy. As far as other uses such as hotels, the hotel market is dead at this point. Regarding office development, we have a great deal of difficulty developing office buildings in Evanston in normal market times; it would be that much more difficult now. He said he knows from having met with Mr. Horne over the years about this development and other developments, he is constantly looking for alternatives that are feasible, but the residential development that was approved seems feasible within the requested period of time. Mayor-Elect Tisdahl asked again whether he sees any other project that would be faster. He said he did not, at this time. He did mention a dormitory possibility, at which time Mayor-Elect Tisdahl said that is enough.

Ald. Wynne said she thinks we should grant this request. To say that this is vacant land and it is not going to help any other tax payer in town and simply by not extending this we will have another development suddenly appear, is not the least bit realistic. She said if she could say those words and have a development at Main and Chicago, she would and she is sure that every one of the Committee members would say it about the Kendall project. She said the market is what it is. In response to Mr. Hughes concern, she clarified that we are not telling the banks that this is a viable project. We are telling the banks that the zoning will be in place. They will be making their own decision and the City does not put itself at all in any form of risk for liability on the viability of a project.

Mr. Marino clarified that this is an action item tonight at Council: An extension of a planned development does not require an ordinance. It is a vote by motion.

Ald. Jean-Baptiste said that he does not understand the line of questioning and some of the comments around this particular project. He said we have no competition for this particular property to such an extent that we can now pull out the bag of competing developers to come and put any project in place at this time. He said this is the most that we've got and he believes we need to support the extension, get the developer to take care of the property, cross our fingers and hope that the economy that the experts have been working on gets started again, so people can get loans and we can get this and other projects going. He said he does not think this is a departure from anything that we have been doing over the last few months. He suggested they vote for the extension and move on.

The Committee voted unanimously 8-0 to approve the extension for the planned development at 1700-1722 Central Street.

(P5) Resolution 22-R-09, Affirming City Willingness to Establish a Complete Count Committee in Cooperation with U.S. Census Bureau

Ald. Wollin moved approval of the resolution. Ald. Wynne seconded the motion.

Mayor-Elect Tisdahl suggested that Lucille Krasnow be on the Complete Count Committee because she did a wonderful job ten years ago of making sure that Northwestern students were fully counted, for the first time.

Ald. Rainey said that since Mayor-Elect Tisdahl will probably be recommending the Committee, she should be sure to appoint her.

The Committee voted unanimously 8-0 to approve Resolution 22-R-09.

(P6) Resolution 21-R-09 Reserving \$6,831,250 of Bond Volume Cap Allocation for Year 2009 for Single-Family Housing and Industrial/Commercial Revenue Bond Program

Ald. Rainey moved to approve the request. Ald. Bernstein seconded the motion.

The Committee voted unanimously 8-0 to approve Resolution 21-R-09.

(P8) Consideration of Recommended Funding of \$3,000 to Lakeside C.D.C. for Three Condominium Workshops

Ald. Rainey moved approval. Ald. Wollin seconded the motion.

Ald. Hansen asked whether anyone was present from Lakeside C.D.C. She said she had asked that Lakeside C.D.C. include housing cooperatives in the workshops if they have the capability and understanding to do so.

The Committee voted unanimously 8-0 to approve the request for funding for Lakeside C.D.C.

Ald. Jean-Baptiste asked Ms. Spicuzza whether it was an oversight that they did not include co-ops and whether it is in her notes now to include them, to which Ms. Spicuzza said she does not remember whether co-ops were mentioned in Lakeside C.D.C.'s past marketing but she will make sure to include them this time. Ald. Jean-Baptiste asked her to make sure that the leaders have expertise in Co-ops, to which Ms. Spicuzza said she is not sure whether they have expertise in co-ops but they are going to be drawing another speaker so they can find someone who does.

ADJOURNMENT

The meeting was adjourned at 8:35 p.m.

Respectfully submitted,

Bobbie Newman