

AGENDA REPORT

TO: Mayor & City Commission
FROM: Ken Hibl, City Manager
DATE: September 16, 2009



RE: Amendment of Ordinance Number 2008-002/Adoption of Ordinance 2009-002

For the Agenda of September 21, 2009

Background. The City Commission approved a Payment in Lieu of Taxes (PILOT) ordinance (Ordinance No. 2008-002, *copy att'd*) for the Fourth Street Senior Housing Project in July 2008. Due to a change in the developer's financing source (originally a loan from the Michigan State Housing Development Authority – now a loan from Isabella Bank), the ordinance needs to be amended (*see copy of att'd proposed ordinance amendment*).

The City Commission conducted a public hearing and a first reading of the proposed ordinance amendment at the scheduled meeting of September 8, 2009. No public comment was received.

In order to complete the process to adopt the proposed ordinance (Ordinance 2009-002, which amends Ordinance 2008-002), the City Commission is required to direct a second reading (all first and second readings of ordinance amendments are Consent Agenda items of the Clare City Commission unless property removed from the Consent Agenda). Thereafter, the City Commission may adopt the proposed ordinance.

Issues & Questions Specified. Should the City Commission direct a second reading of the proposed ordinance and thereafter take formal action to adopt the ordinance amendment?

Alternatives.

1. Direct a second reading and adopt the ordinance amendment.
2. Direct the second reading but do not adopt the ordinance amendment.
3. Do not direct the second reading, thereby disapproving the ordinance amendment in its current form.
4. Set aside decision regarding this matter to a later date.

Financial Impact. There is no fiscal impact to the City other than the administrative costs of publishing the public notice.

Recommendation. I recommend that the City Commission approve the proposed ordinance amendment by adoption of Resolution 2009-100 (*copy att'd*).

Attachments.

1. Ordinance 2008-002.
2. Proposed Amendment.

3. Resolution 2009-100.

CITY OF CLARE ORDINANCE NO 2008-002
TAX EXEMPTION ORDINANCE

ADOPTED: July 21, 2008
EFFECTIVE: August 5, 2008

An Ordinance to provide for a service charge in lieu of taxes for proposed senior citizens dwelling project for persons of qualifying income to be financed or assisted pursuant to the provisions of the State Housing Development Authority Act of 1966.

**THE CITY OF CLARE
ORDAINS:**

SECTION 1. This Ordinance shall be known and cited as the "City of Clare Fourth Street Senior Housing Tax Exemption Ordinance".

SECTION 2. Preamble.

It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its citizens of low income and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the State Housing Development Authority Act of 1966 (1966 P A 346, as amended, MCL 125.1401, *et seq*, MSA 116.114(1), *et seq*). The City of Clare is authorized by this Act to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for persons of low income is a public necessity, and as the City of Clare will be benefited and improved by such housing, the encouragement of the same by providing certain real estate tax exemption for such housing is a valid public purpose; further, that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance on such tax exemption.

The City of Clare acknowledges that Fourth Street Senior Housing, a Michigan LLC having its principal offices at 1574 East Washington Road, Farwell MI 48622, (the "Sponsor") has offered, subject to receipt of a Mortgage Loan from the Michigan State Housing Development Authority, to erect, own and operate a housing development identified as Fourth Street Senior Housing on certain property described on Exhibit A, in the City of Clare, to serve persons of low income, and that the Sponsor has offered to pay the City on account of this housing development an annual service charge for public services in lieu of all taxes.

SECTION 3. Definitions.

- A. Authority means the Michigan State Housing Development Authority.
- B. Act means the State Housing Development Authority Act, being Public Act 346 of 1966 of the State of Michigan, as amended.
- C. Annual Shelter Rent means the total collections during an agreed annual period from all occupants of a housing development representing rent or occupancy charges, exclusive of charges for gas, electricity, heat, or other utilities furnished to the occupants.
- D. Contract Rents are as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to the U.S. Housing Act of 1937, as amended.
- E. Housing Development means a development which contains a significant element of housing for persons of low income and such elements of other housing, commercial, recreational, industrial, communal, and educational facilities as the Authority determines improve the quality of the development as it relates to housing for persons of low income.
- F. Mortgage Loan means a loan to be made by the Authority to the Sponsor for the construction and/or permanent financing of the Housing Development.
- G. Utilities mean fuel, water, sanitary sewer service and or electrical service which are paid by the Housing Development.
- H. Sponsor means person(s) or entities which have applied to the Authority for a Mortgage Loan to finance a Housing Development.

SECTION 4. Class of Housing Developments; Closure of Class.

It is determined that the class of Housing Developments to which the tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be the 24-unit senior citizen apartment project commonly known as Fourth Street Senior Housing located in the City of Clare and which is financed or assisted pursuant to the Act., to be located on the property described on Exhibit A. It is further determined that Fourth Street Senior Housing is of this class. Notwithstanding the provisions of Section 15(a) of the Act to the contrary, the City of Clare will hereby provide tax exemption and accept payments in lieu thereof as described in this ordinance only to the project known as Fourth Street Senior Housing. The City shall not provide tax exemption to any other multi-family, low income or elderly housing projects financed pursuant to the Act or this Ordinance.

SECTION 5. Establishment of Annual Service Charge.

The Housing Development identified as Fourth Street Senior Housing and the property on which it shall be constructed shall be exempt from all ad valorem property taxes from and after the commencement of construction. The City of Clare, acknowledging that the Sponsor and the

SECTION 11. Effective Date.

This Ordinance shall become effective on August 5, 2008, or as otherwise provided in the Charter. All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

MEMBERS PRESENT: Commissioners Jennifer Dancer, Bill Horwood

Tom Koch, Jean McConnell & Pat Humphrey

MEMBERS ABSENT: None

AYES: Commissioners Jennifer Dancer, Bill Horwood

Tom Koch, Jean McConnell & Pat Humphrey

NAYS: None

Pat Humphrey

MAYOR

I, Kay Haven, City Clerk, City of Clare, do hereby certify that the foregoing is a true and correct copy of Ordinance 2008-002, adopted July 21, 2008, effective date of August 5, 2008.

Kay Haven

CITY CLERK

CITY OF CLARE ORDINANCE NO 2008-002
TAX EXEMPTION ORDINANCE, AS AMENDED

ADOPTED: _____
EFFECTIVE: _____

An Ordinance to provide for a service charge in lieu of taxes for proposed senior citizens dwelling project for persons of qualifying income to be financed or assisted pursuant to the provisions of the State Housing Development Authority Act of 1966.

**THE CITY OF CLARE
ORDAINS:**

SECTION 1. This Ordinance shall be known and cited as the "City of Clare Fourth Street –Clare Castle Senior Housing Tax Exemption Ordinance".

SECTION 2. Preamble.

It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its citizens of low income and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the State Housing Development Authority Act of 1966 (1966 P A 346, as amended, MCL 125.1401, *et seq*, MSA 116.114(1), *et seq*). The City of Clare is authorized by this Act to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for persons of low income is a public necessity, and as the City of Clare will be benefited and improved by such housing, the encouragement of the same by providing certain real estate tax exemption for such housing is a valid public purpose; further, that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance on such tax exemption.

The City of Clare acknowledges that Fourth Street Senior Housing Limited Dividend Housing Association Limited Partnership, a Michigan LLC limited partnership, having its principal offices at 1574 East Washington Road, Farwell MI 48622, (the "Sponsor") has offered, subject to receipt of a Mortgage Loanan allocation under the Low Income Housing Tax Credit Program (LIHTC) from the Michigan State Housing Development Authority, to erect, own and operate a housing development identified as Fourth Street Senior Housing on certain property described on Exhibit A, in the City of Clare, to serve persons of low income, and that the Sponsor has offered to pay the City on account of this housing development an annual service charge for public services in lieu of all taxes.

SECTION 3. Definitions.

- A. **Authority** means the Michigan State Housing Development Authority.
- B. **Act** means the State Housing Development Authority Act, being Public Act 346 of 1966 of the State of Michigan, as amended.
- C. **Annual Shelter Rent** means the total collections during an agreed annual period from all occupants of a housing development representing rent or occupancy charges, exclusive of charges for gas, electricity, heat, or other utilities furnished to the occupants.
- D. **Contract Rents** are as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to the U.S. Housing Act of 1937, as amended.
- E. **Housing Development** means a development which contains a significant element of housing for persons of low income and such elements of other housing, commercial, recreational, industrial, communal, and educational facilities as the Authority determines improve the quality of the development as it relates to housing for persons of low income.
- F. **Mortgage Loan** means a loan to be made by the Authority to the Sponsor for the construction and/or permanent financing of the Housing Development.
- GF. **Utilities** mean fuel, water, sanitary sewer service and or electrical service which are paid by the Housing Development.
- HG. **Sponsor** means person(s) or entities which have applied to the Authority for an allocation under LIHTC Program Mortgage Loan to finance a Housing Development.

SECTION 4. Class of Housing Developments; Closure of Class.

It is determined that the class of Housing Developments to which the tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be the 24-unit senior citizen apartment project commonly known as Fourth Street Senior Housing located in the City of Clare and which is financed or assisted pursuant to the Act., to be located on the property described on Exhibit A. It is further determined that Clare Castle Fourth Street Senior Housing is of this class. Notwithstanding the provisions of Section 15(a) of the Act to the contrary, the City of Clare will hereby provide tax exemption and accept payments in lieu thereof as described in this ordinance only to the project known as Clare Castle Fourth Street Senior Housing. The City shall not provide tax exemption to any other multi-family, low income or elderly housing projects financed pursuant to the Act or this Ordinance.

SECTION 5. Establishment of Annual Service Charge.

The Housing Development identified as Clare Castle Fourth Street Senior Housing and the property on which it shall be constructed shall be exempt from all ad valorem property taxes from and after the commencement of construction. The City of Clare, acknowledging that the

Sponsor and the Authority have established the economic feasibility of the Housing Development in reliance upon the enactment and continuing effect of this Ordinance and the qualification of the Housing Development for exemption from all property taxes and a payment in lieu of taxes as established in this Ordinance, and in consideration of the Sponsor's offer, subject to receipt of an Mortgage Loan an allocation under the LIHTC Program from the Authority, to construct, own and operate the Housing Development, agrees to accept payment of an annual service charge for public services in lieu of ad valorem property taxes. The annual service charge shall be equal to four percent (4%) of the difference between the Annual Shelter Rents actually collected and Utilities for those units whose occupancy is restricted to seniors based upon the authorities regulations (age 55 and older).

SECTION 6. Limitation on the Payment of Annual Service Charge.

Notwithstanding Section 5, the service charge to be paid each year in lieu of taxes for the part of the Housing Development which is tax exempt and which is occupied by other than low income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the Housing Development if the Housing Development were not tax exempt.

SECTION 7. 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 Sponsor with the Authority 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.

SECTION 8. Payment of Service Charge.

The annual service charge in lieu of taxes as determined under the Ordinance shall be payable in the same manner as the summer installment of the general property taxes are payable to the City of Clare except that the annual payment shall be paid on or before August 15th of each year.

SECTION 9. Duration.

This Ordinance shall remain in effect and shall not terminate so long as the Mortgage Loan Housing Development remains outstanding subject to income and unpaid or rent restrictions pursuant to Section 42 of the Internal Revenue Code of 1986, as amended; and the Regulatory Agreement of the Authority has any interest in the property; provided, that construction of the Housing Development commences within one year from the effective date of this Ordinance.

SECTION 10. Severability.

The various sections and provisions of this Ordinance shall be deemed to be severable, and should any section or provision of this Ordinance 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 of this Ordinance other than the section or provision so declared to be unconstitutional or invalid.

SECTION 11. Effective Date.

This Ordinance, as amended, shall become effective on _____, 2009 or as otherwise provided in the Charter. All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

MEMBERS PRESENT:

MEMBERS ABSENT:

AYES:

NAYS:

RESOLUTION 2009-100

A RESOLUTION OF THE CLARE CITY COMMISSION ADOPTING ORDINANCE 2009-002.

WHEREAS, a recommendation has been made to the City Commission by the Clare Brownfield Redevelopment Authority to amend Ordinance 2008-002, thereby adopting minor changes to a Payment in Lieu of Taxes Ordinance for the Clare Castle Senior Housing Project, thereby changing the funding source and effective date of the original ordinance; and

WHEREAS, the City Commission held a public hearing to consider comment related to said Ordinance and receiving none, approved the first reading of said proposed Ordinance, and

WHEREAS, the City Commission approved a second reading of said proposed Ordinance at its scheduled meeting and subsequently considered said Ordinance and determined that adoption served the best interests of the City of Clare and its downtown business community.

THEREFORE IT IS HEREBY RESOLVED by the Clare City Commission that Ordinance 2009-002, thereby amending Ordinance 2008-002, is hereby adopted, the effective date of said Ordinance being fifteen days from this date.

ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INsofar AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.

The Resolution was introduced by Commissioner _____ and supported by Commissioner _____. The Resolution declared adopted by the following roll call vote:

YEAS:

NAYS:

ABSENT:

Resolution approved for adoption on this 21st day of September 2009.

DIANE SCHMIDT
City Clerk