

Memo

To: Honorable Mayor and City Council
From: Joe Kohlmann, City Administrator
Date: February 14, 2012
Re: Wayzata Bay Senior Housing

Staff was contacted by John Utley from Kennedy and Graven, who represents the Wayzata Bay Senior Housing developer. **Ben Johnson** will be in attendance to represent Kennedy and Graven.

Summary:

Cities are allowed to issue \$10,000,000 in Bank Qualified bonds in a calendar year. These bonds would be issued as revenue bonds and would be secured solely by the revenues derived from the Wayzata Bay Project. There is no moral or general obligation and the bonds would not be secured by taxing powers of Tonka Bay. The Wayzata Bay Project would be using the City as a 'conduit' to finance their project. *Attached is an email from John Utley describing the proposal.*

Considerations:

- 1) Minnetonka issued bonds for the project in 2011-
Minnetonka Staff Memo Attached
- 2) The developer would need to cover fees of obtaining "Issuer Counsel", Staff time, and all other costs.
- 3) An Administrative Fee of \$12,500 or 1/8 of 1% is proposed by the developer. Minnetonka agreed to this fee. *Attached is a list of other cities' fees*
- 4) A Public Hearing will need to occur and a Resolution will need to be passed by the City Council
- 5) Staff does not anticipate any other need to issue bonds in 2012.
- 6) The City should develop a policy and formal application to process this request.

Questions for Ben Johnson:

- 1) What is the total amount the project is looking to finance through cities?
- 2) Which other cities have been you been involved in discussions with? How far along in discussions are you with them?
- 3) Is the developer willing to cover all costs incurred by the City- including Issuer's Counsel, Staff time, and other associated costs?
- 4) What if the City discovers it needs to issue bonds later in the year after \$10,000,000 has been issued for Wayzata Bay?
- 5) How could this impact the City's credit rating?
- 6) Will the developer have all the documentation prepared for any future audits?
- 7) Would the developer be responsible for all compliance with the IRS and any future costs/penalties incurred if there are any non-compliance issues?

Order of Attachments:

*Email from John Utley outlining the proposal
Administrative Fees charged by other cities
Staff Memo from the City of Minnetonka*

Recommend Action:

Staff is seeking guidance on continuing discussions with Kennedy and Graven.

Joe Kohlmann

From: Utley, John C. [jutley@Kennedy-Graven.com]
Sent: Wednesday, January 18, 2012 7:21 PM
To: jkohlmann@cityoftonkabay.net
Cc: Utley, John C.
Subject: Financing of Wayzata Bay Project
Follow Up Flag: Follow up
Flag Status: Red

Joe Kohlmann
Administrator
City of Tonka Bay
4901 Manitou Road
Excelsior, Minnesota 55331-9561

Mr. Kohlmann:

Wayzata Bay Senior Housing, Inc., a Minnesota nonprofit corporation (the "Corporation"), was formed by Presbyterian Homes & Services (also a Minnesota nonprofit corporation) to undertake a major development in the downtown area of the City of Wayzata ("Wayzata") comprised of multifamily housing developments for seniors and commercial retail facilities (the "Wayzata Bay Project"). The Corporation is proposing to finance the construction of a substantial portion of the Wayzata Bay Project through the issuance of tax-exempt conduit revenue bonds (the "Bonds") in a total aggregate principal amount of approximately \$60,000,000. (The technical name for such obligations is "qualified 501(c)(3) bonds.") The proposed purchaser(s) of the Bonds are banks. Banks generally purchase only tax-exempt bonds that are "bank qualified." Every political subdivision in Minnesota is permitted to designate up to \$10,000,000 of tax-exempt bonds per calendar year as "qualified tax-exempt obligations" (more commonly referred to as "bank qualified bonds") as long as the political subdivision does not reasonably expect to issue more than \$10,000,000 of tax-exempt bonds in that calendar year. Both governmental bonds (typically general obligation bonds) and private activity bonds that are designated as "qualified 501 (c)(3) bonds" must be included in determining whether an issuer is within the \$10,000,000 limit for bank-qualified bonds. Wayzata has agreed to issue a portion of such bank-qualified Bonds but cannot issue more than \$10,000,000 of such Bonds. Therefore, requests are being made to several other issuers to participate in the financing of the Wayzata Bay Project through the issuance of bank-qualified Bonds by such other issuers.

Minnesota law and federal tax law permit a city to issue tax-exempt bonds for a facility located in another city, such as the Wayzata Bay Project, if the issuing city is authorized to do so by the city in which the facility is located and if the issuing city is located within the market area of the facility to be financed. The City of Tonka Bay ("Tonka Bay") is located within the market area of the Wayzata Bay Project and Wayzata has expressed its willingness to authorize the issuance of such Bonds by other cities.

It is our understanding that Tonka Bay has no plans to issue any tax-exempt bonds in calendar year 2012. If this is correct, then Tonka Bay could issue \$10,000,000 of bank-qualified bonds in calendar year 2012 to assist in the financing of the Wayzata Bay Project for the Corporation. The bank-qualified Bonds would be issued under Minnesota Statutes, Chapter 462C, as amended, or Minnesota Statutes, Sections 469.152-469.1651, as amended (collectively, the "Act"). The Bonds would be issued under the Act as revenue bonds and, as such, will be secured solely by the revenues derived from the Wayzata Bay Project and any additional security provided by the Corporation. The Bonds would not constitute general or moral obligations of Tonka Bay and would not be secured by the taxing powers of Tonka Bay or be payable from any funds, assets, or other property of Tonka Bay. In addition to assisting the development of senior housing facilities in a neighboring city that will be available to the residents of Tonka Bay, an additional benefit to Tonka Bay would come in the form of an administrative fee payable by the

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Corporation as compensation for the use of Tonka Bay's authority to issue bank-qualified bonds. The Corporation is proposing a payment in the amount of one-eighth of one percent (0.125%) of the principal amount of Bonds issued by Tonka Bay. If Tonka Bay issues \$10,000,000 of Bonds, the administrative fee would be equal to \$12,500. The administrative fee would be payable on the date of issuance of the Bonds.

The Corporation would propose that Kennedy & Graven, Chartered, act as bond counsel on behalf of Tonka Bay in connection with the proposed financing. The Corporation would be responsible for the payment of all fees of Kennedy & Graven. The Corporation would also pay any other out-of-pocket costs paid or incurred by Tonka Bay, including any fees of the Tonka Bay City Attorney, although it is not anticipated that Tonka Bay will be required to pay or incur any such costs.

In order to proceed with this financing, it will be necessary for the Tonka Bay City Council to conduct a public hearing on the proposed financing (preceded by publication of a notice of public hearing in the Tonka Bay official newspaper at least fifteen days prior to the date of the public hearing) and to adopt a resolution approving the documentation for the financing and authorizing the issuance of the bank-qualified Bonds. These two actions can be accomplished at a single meeting of the City Council. A representative of the Corporation and I would appear at the public hearing to answer any questions that the City Council or members of the public may have regarding the Wayzata Bay Project or the legal aspects of the proposed financing.

If you have any questions regarding the foregoing, please contact me at your earliest convenience. Also, if you wish to speak to a representative of the Corporation, please let me know and John Mehrkens or another representative of the Corporation will contact you.

John Utley
Kennedy & Graven, Chartered
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200 South Sixth Street
Minneapolis, MN 55402-1458
612-337-9270
Fax: 612-337-9310
Email: jutley@kennedy-graven.com

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Administrative Fees charged by other cities for conduit financing:

Bloomington:

- \$2,500 application fee
- 0.25% of par on first \$10,000,000

St. Louis Park:

- \$2,500 application fee
- 1/8th of 1% (.125%) of the outstanding principal balance of the bonds

Brooklyn Park:

- \$500 Application fee
- 0.5% of the bond principal being issued (\$85,000 on \$17 million) plus an annual charge of 1/10 of a percent of the average outstanding bonds

**City Council Agenda Item #13A
Meeting of December 29, 2011**

Brief Description: Establishment of housing program and issuance of revenue bonds for Wayzata Bay Senior Housing project (City of Wayzata)

Recommended Action: Hold the public hearing and adopt the resolution

Background

In 2008, the city of Wayzata approved the Wayzata Bay Shopping Center redevelopment plan. The project will redevelop the old shopping center into a mixed use development, with one component being a 255-unit senior housing facility. Wayzata Bay Senior Housing, Inc. (Presbyterian Homes) will be constructing, owning, and operating this senior housing facility.

The total project cost is anticipated to be \$70,000,000. To finance the project, Wayzata Bay Senior Housing, Inc. is approaching several communities, including Wayzata, requesting tax-exempt bond financing. The city of Minnetonka has approximately \$6.5 million, of the city's total bank qualified \$10 million allotment for 2011, available (the other \$3.5 million was approved by the council in August 2011 to assist with the St. David's Center project).

A Housing Program for a Multi-Family Housing Development (pages A1-A3) has been developed, outlining the terms of the project and financing. Up to \$6,250,000 will be provided in a single bond issuance prior to December 31, 2011. Council Policy 2.5 (pages A4-A9) outlines the standards and provisions for any tax exempt financing the city is considering, including application fees. Staff has reviewed the policy and finds the project meets all requirements, where applicable. This issuance of this type of financing is no obligation of the city.

Recommendation

It is common for cities to issue tax-exempt financing for projects located in other communities. For example, in 2009, the city of Victoria issued tax-exempt financing for Emerald Crest Assisted Living located on Lake Street Extension in Minnetonka.

Since the city has available financing left for 2011, and there is no financial risk to the city by issuing these bonds, staff recommends that the city council hold the public hearing and adopt the resolution (pages A10 to A18) approving the housing program and authorizing issuance of the note.

Submitted through:

John Gunyou, City Manager

Julie Wischnack, AICP, Community Development Director

Originated by:

Elise Durbin, AICP, Community Development Supervisor