

MEMORANDUM

TO: David A. Hulseberg, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development

DATE: June 17, 2010

SUBJECT: **300-310 S. Main Street (Prairie Path Villas) – TACO Agreement**

Staff is bringing forward a Resolution prepared by Village Counsel relative to rescinding a Tiered Approach to Corrective Action Objectives (TACO) Agreement previously entered into by the Village and the developer (Gap Development, LLC) of the property at 300-310 S. Main Street, commonly known as Prairie Path Villas. Staff recommends approval of the resolution.

BACKGROUND

Prior to the construction of the Prairie Path Villas, an environmental issue was identified on the site as contaminants were found in the shallow soil from the result of leaking underground storage tanks. The original developer entered in several agreements with the Village that both indemnified the Village and required the developer to clean-up the contaminants within the Main and Ash Street rights-of-way. After construction of the building began, the developer entered into a letter agreement with the Village that, indemnified the Village, and allowed for natural attenuation of the contaminants in the Village right-of-way and an approach to remedy the issue. This agreement was backed by a \$100,000 letter of credit.

Since the execution of the document, the developer's business has dissolved. Additionally, staff was informed by the FDIC that the bank holding the letter of credit, First DuPage Bank, of Westmont, Illinois has been placed in receivership. Staff has been pursuing options to remedy this issue with the new majority owner of the building, First Midwest Bank. First Midwest was apparently not aware of this issue when they purchased these units from the now defaulted original bank. However, their role in this matter is not as a secondary lender but as a majority property owner of seventeen (17) residential units in the building.

First Midwest's asset management company (Bayview Asset Management, LLC) has been looking into options to reestablish the guarantee with the Village. They have been looking into either having the building's association post this guarantee or having it come directly from the bank. However, over the past few months, no definitive actions have been taken to remedy this issue and the asset management company has stated that they do not know when they will have an answer. They also represented that past issues with the developer has depleted Association reserves to cover the letter of credit.

While the asset management company has requested additional time to address this matter, staff believes it is in the best interest of the Village to reconsider the previously executed TACO. Staff believes the lack of a proper letter of credit and developer assurances makes the TACO ineffective and constitutes a breach of the Agreement. By rescinding the TACO, the assurances and liabilities associated with the contamination within the adjacent right-of-way would fall to the adjacent property owners. However, should a future letter of credit be produced, the Village can enter into a new agreement accordingly.

RECOMMENDATION

Staff recommends that the Village Board adopt the attached resolution declaring the TACO Agreement between Gap Development, LLC and the Village voided and to notify the IEPA accordingly.

Should you have any questions, please feel free to contact me.

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