

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
_____ Recommendations of Boards, Commissions & Committees (Green)
_____ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager

DATE: June 9, 2010 (BOT) Date: June 17, 2010

TITLE: 300-310 S. Main Street (Prairie Path Villas)

SUBMITTED BY: Department of Community Development *WH*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration a resolution authorizing the Village of Lombard to notify the Illinois Environmental Protection Agency that the Village will no longer agree to have certain right of ways act as an engineered barrier.

Staff recommends approval of this request.

Fiscal Impact/Funding Source:

Review (as necessary):


Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X *Raymond J. Byrne* _____ Date 6-9-10

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



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.

H:\CD\WORDUSER\PCCASES\2005\PC 05-43\BOT memo TACO void.doc

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE VILLAGE OF LOMBARD TO
NOTIFY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
THAT THE VILLAGE WILL NO LONGER AGREE TO HAVE CERTAIN
RIGHT OF WAYS ACT AS AN ENGINEERED BARRIER**

WHEREAS, GAP Development was pursuing corrective action of property located within the Village at the address commonly known as 300 S. Main Street (the "Site"), Lombard, Illinois, and of the Right-of-Ways adjacent to the boundary of the Site; and

WHEREAS, the Village owns, operates, maintains or otherwise controls certain highways and public ways which abut the site, two of which are commonly known as W. Ash Street and S. Main Street; and

WHEREAS, the Village entered into a Tiered Approach to Corrective Action Objectives Agreement (TACO Agreement) and an Authorization, Acknowledgment and Indemnification for Ground Penetration and Remediation Work and Temporary Access Agreement in June of 2006 and a Letter Agreement executed by the Village on March 6, 2008 (collectively referred to as "Agreements") under which GAP Development is obligated to provide to the Village of Lombard an irrevocable and unconditional Letter of Credit for the benefit of the Village until at least March of 2013 to guaranty that GAP Development would remediate contamination on the Village Right-of-Ways within a certain time period; and

WHEREAS, the Village of Lombard has received notification that the Irrevocable Letter of Credit No. 08-157 to Guarantee the Remediation of Certain Contaminants on the Village of Lombard's Property in the amount of \$100,000.00 which was issued to the

Village of Lombard by the First DuPage Bank has been disaffirmed by the Federal Deposit Insurance Corporation; and

WHEREAS, the First DuPage Bank was closed on October 23, 2009, and the Federal Deposit Insurance Corporation (FDIC) was appointed as the Receiver of First DuPage Bank. On December 29, 2009, the Village of Lombard was notified by the FDIC that it has determined that the aforementioned Letter of Credit is burdensome and that disaffirmance of said Letter of Credit will promote the orderly administration of the Bank's affairs; and

WHEREAS, as the FDIC has now elected to disaffirm the Letter of Credit to the full extent, GAP Development, LLC does not currently have a Letter of Credit that it is obligated to provide to the Village of Lombard pursuant to the Agreements; and

WHEREAS, as GAP Development has failed to renew or replace the Letter of Credit as required by the Agreements, GAP Development is now in breach of the Agreements.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Lombard, Du Page County, Illinois, as follows:

SECTION 1: The TACO Agreement is hereby declared void by the Village of Lombard.

SECTION 2: The Village or its representative may take all steps necessary to notify the Illinois Environmental Protection Agency that the Village of Lombard voided the TACO Agreement which provides for W. Ash Street and S. Main Street which are adjacent to the Site located at 300 S. Main Street, Lombard, Illinois, to act as a Highway

Authority Agreement and that it will not maintain said Right-of-Ways as an engineered barrier.

SECTION 3: That this Resolution shall be in full force and effect from and after its adoption and approval as provided by law.

ADOPTED this _____ day of _____, 2010.

AYES: _____

NAYS: _____

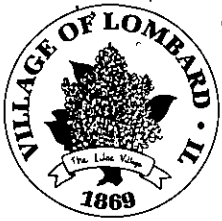
ABSENT: _____

APPROVED this _____ day of _____, 2010.

William J. Mueller, Village President

ATTEST:


Brigitte O'Brien, Village Clerk



#100330

MEMORANDUM

TO: David A. Hulseberg, Village Manager

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

DATE: August 19, 2010

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

At the June 17, 2010 Village Board meeting, staff introduced a Resolution to Rescind 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. At the meeting, representatives for the majority unit owner and the President of the Prairie Path Villas Association requested that the matter be continued to address their issues. The Village Board continued the matter to August 19, 2010 to accommodate their request.

Subsequent to the meeting, the Association and staff has made significant progress on the remaining building code issues within the common areas. Tanner Environmental, the entity that undertook the remediation analysis in 2007, provided an estimate regarding costs to evaluate and/or remediate current levels, and the cost estimates and issues were shared with the parties.

To date, staff has not received direction from the parties as to how they intend to proceed. Staff received correspondence late last week from the Association stating that they have retained Counsel regarding this matter. Village Counsel has been informed of the same and will be responding accordingly. However, in order to address the concerns addressed by their attorney, staff recommends that this matter be continued to the September 2, 2010 Village Board meeting.

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