

Wright County Economic Development

How do cities deal with developments that have gone bad?

Panel Presentation December 10th, 2009

Greg Hayes:

- Real Estate Trends – Housing
- Stats – briefly : Housing sale prices and trends
- Impact on business / commercial retail
- Price to develop and absorption
- Phasing
- Willingness of city to split or break apart properties.

Greg Hayes



Real estate since 1983. Started in residential real estate (member presidents club) then moved to land and commercial real estate. Hold a broker's license. CCIM designation. Qualified 1031 intermediary.

Vice President Real Estate Shingobee Builders 1997 – 2008. Departed to continue my own small real estate/development/property management company, Greg Allen Company.

Tina L. Lannes – City of Albertville

1. Cash Flow/Billing
 - a. Utility Bills – shut off accounts quarterly and assess unpaid utility bills at least 2 times per year
 - b. Associations – shut off water for sprinkler systems until paid and association is re-established
 - c. Developer Bills – make sure to send invoices for bills monthly, collect payments, draw on letter of credit for unpaid invoices and Special Assess to properties for unpaid invoices if they are not collected via letter of credit
 - d. Plats – do not release plat until all fees are paid and all invoices outstanding are collected
 - e. Letters of Credit – have a dedicated person tracking letters of credit, renewing letters, Draw on letters of credit if not being renewed, failed banks and bankruptcy, it is important that draws have been filed before bank failure and start court process.

2. Dedicate Resources – time needs to be set aside to letters of credit and collection
3. Communication with Developers
 - a. City Expectations – be upfront with the developer on what the city expects
 - b. City Process – make sure the developer knows the cities process, procedures, fees and time lines
 - c. Options – be clear on what the city is willing to do for development, if anything

Tina L. Lannes Bio –

Tina has a B.S. Business Administration Accounting Concentration and a B.S. Business Administration Marketing Concentration from the University of Wisconsin – Superior. Also, and MBA from Metropolitan State University.

Tina has worked in local government for 11 years as the Financial Coordinator/Deputy Auditor for Lake County, Two Harbors, MN, and the Finance Officer for the City of Long Lake and currently the Finance Director for the City of Albertville.

Mike Couri, attorney

HOW DO WE FIX TODAY’S UNFINISHED DEVELOPMENT MESS?

The recent housing crash has left many Minnesota cities exposed to unfinished and bankrupt developments. Listed below are some suggestions for cities to consider as a means to limit losses that may have already occurred and to better secure the city’s position to prevent the future outlay of taxpayer dollars to remedy development problems.

1. Monitor the Developer’s letter of credit (LOC) expiration date. If it is going to expire, draw on it if the bank will not renew it. Once you lose it, it’s gone.
2. Consider special assessing any delinquent developer billings that are not covered by LOCs and that the Developer has not timely paid.
3. If you have built road and utility projects for a developer and special assessed the cost of the project to the developer’s land and the developer is not paying the special assessments, begin working with the County Auditor’s office to find out when the tax sale will occur, to make sure that it does occur, and to make sure that the Auditor lets any potential buyer know what the outstanding special assessments are. Once the property is sold back to a private party, there is a statutory procedure to allow the City to put the special assessments back on the property.
4. Meet with the banks that have taken over the properties to coordinate finishing work (mothballing the project) so that existing infrastructure can be left in place without deterioration. Also, coordinate with banks now to anticipate a sale by the bank later. Who will post a replacement letter of credit? Will the City extend time for completion of the development? Will the bank pay the City’s engineering and legal costs to assist the bank?
5. Watch the banks that have issued letters of credit. If the developer is out of business and the bank is shaky, draw on the LOC at the first opportunity. The FDIC will not honor LOCs if the bank fails. One bank in Otsego has already failed, leaving one of our cities holding a LOC that we may not be able to collect on.

6. If the homeowner's association is defunct, call the neighbors in and begin working with them to reestablish the HOA so that common areas will be maintained and private streets will be plowed.
7. Where HOA's can't be easily reestablished, and the development has privately maintained roads, the City needs to be very clear about what it will and will not snowplow. If the City plows a privately maintained road, the law may deem the City to have taken the road over, in which case the City must maintain it forevermore.
8. Check all developer's agreements to make sure that the developer has completed all items. Have your engineer certify via letter or memo to the City Council that the developer has installed all required improvements. If something still needs done, get on it right away as developers are going out of business at a quick pace.
9. When claiming on the LOC, you must get the language exactly right based on what the LOC requires. Use the exact language of the LOC—you do not want to give the banks any reason to deny your draw on the LOC.

HOW DO WE PREVENT TOMORROW'S DEVELOPMENT MESS?

Now that development pressure has fallen to near zero, Cities have an opportunity to amend their ordinances to put in place safeguards that will prevent many of the worst of today's problems from occurring again. A list of effective changes is listed below:

1. Amend subdivision and zoning ordinances now when there are no developers beating down your door
2. Amend ordinances now to require
 - a. At least a 100% LOC for improvements, whether developer or city installed;
 - b. Require developer to pay all city costs, including costs to enforce the developer's agreement and draw on LOCs;
 - c. Require FDIC LOC's from banks with offices located within 100 miles or some other set distance from the City—you do not want to get on an airplane to collect on an LOC;
 - d. Require developer to renew the LOC at least 45 days before it expires. If the LOC is not renewed, the City must be able to draw on it before it expires;
 - e. Require LOCs to be self renewing, meaning that the bank must send the City a letter via registered mail notifying the city that the LOC will expire;
 - f. Do not take bonds, take only LOCs.
3. Have a plat approval checklist and make sure all items are completed before releasing the plat.
4. Make sure all developer bills are paid up to date before releasing the plat.
5. Make sure that you have the LOCs in hand before releasing the plat.
6. Do not release the plat and developer's agreement directly to the developer for recording. Have a City employee accompany the documents to the recorder's office, or require release to a title company with a letter of instruction.
7. Have your City Engineer and City Attorney coordinate to make sure all easements are properly dedicated before the plat is released.
8. Make sure that existing special assessments are reallocated to the new lots and blocks on the plat or the County Auditor will delete the existing special assessments with the recording of the new plat.

BIOGRAPHY OF MICHAEL COURI

Michael C. Couri is a partner with the St. Michael law firm of Couri, MacArthur & Ruppe, which represents 14 cities in the Metro area and central Minnesota. Mr. Couri has been practicing municipal law for 18 years and is the City Attorney for the cities of Albertville, Crosslake, Rockford, and St. Augusta. Mr. Couri practices extensively in the areas of land use law, including commercial and residential development, municipal improvements and special assessments, eminent domain, planning and zoning, and annexation and incorporation.

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