

**MAY 21, 2021**

**CITY OF GUNNISON COUNCIL  
SPECIAL SESSION**

**1:00 P.M.**

The Gunnison City Council Special Session meeting was called to order at 1:00 p.m. by Mayor Jim Gelwicks with Councilor Boe Freeburn, City Manager Russ Forrest, City Clerk Erica Boucher, and Court Clerk Annie Chaivre present in Council Chambers located at 201 W. Virginia Avenue. Councilor Diego Plata, City Attorney Kathy Fogo, Community Development Director Anton Sinkewich, Senior Planner Andie Ruggera, housing consultant Willa Williford, and Gunnison Valley Regional Housing Authority Director Jennifer Kermode attended remotely. Mayor Pro Tem Jim Miles attended by phone. There was a Council quorum.

**Lazy K Infrastructure Housing Grant with DOLA.** Mayor Jim Gelwicks stated that this Special Session was being conducted under Special Session rules of the municipal charter. This session dealt with the infrastructure grant from Colorado Department of Local Affairs (DOLA). City Manager Russ Forrest stated that the City has been working on completing the infrastructure grant for Lazy K worth a little over \$1.3 million dollars for nearly a year. Prior to finalizing the contract with DOLA, staff must discuss a risk management issue with Council. This agreement needs to be executed by the end of May or beginning of June in order to meet the contractor's construction timeframe.

The final issue with the DOLA grant contract was in regards to the 80% AMI deed-restricted units. DOLA is requiring that the deed-restriction remain with the 80% AMI units; however, most financial institutions do not want to handle deed-restriction units. A person buying a deed-restricted unit is likely to be a time-first homeowner. The City would like to add Early Termination language to Section 19 of the DOLA contract to address such situations. City Attorney Fogo reviewed the drafted Early Termination language. The revised language allows for the City to make every effort to cure or rescue a property that is subject to foreclosure, to keep the covenant in place. The language is only related to the 80% AMI units and the HUD restriction period is five years.

Executive Director of the Gunnison Valley Regional Housing Authority (GVRHA) Jennifer Kermode explained to Council the steps that GVRHA has in place to help prevent foreclosures and their process for addressing such issues. There are a few lenders that will give a loan on a secondary market deed-restricted home, but they often come with adjustable rates and other high-risk factors. Director Kermode reviewed to a number of strategies in her memo that can be implemented to preserve a deed-restriction prior to foreclosure. She specifically discussed the strategy that GVRHA commonly uses. In this strategy, a lien agreement is placed on the property and the foreclosing lender assigns the unit over to a legal firm who performs thousands of foreclosures annually. GVRHA allows the foreclosing attorney to discover if there is a lien against the property in the form of a deed-restriction with a Notice of Lien. This process has been successfully used in Summit and Gunnison Counties. This strategy utilizes a Notice of Lien, which identifies the deed-restriction recorded against a property, thus it requires lenders to give proper notice to the beneficiaries of the Notice of Lien. In this instance the City of Gunnison and the GVRHA would receive the notice. With the Notice of Lien, a Notice of Election and Demand (NED) is filed. The NED is the first step a lender takes when filing a foreclosure action against a borrower. State statute requires the NED to be filed 120 days prior to the property being sold. This 120-day period allows for the borrower to find the means to cure the default. Once the financial assessment has been completed, GVRHA on behalf of the City can work with the borrower to address the issues and hopefully prevent foreclosure. Options available to homeowners are the Emergency Mortgage Assistance Fund, assistance with loss mitigation plans, which is a certified HUD counseling process, assisting the borrower with selling the property prior to foreclosure, or the City or GVRHA could purchase the property from the seller, if there is no potential buyer. The City or GVRHA would resell the property with the deed-restriction attached to the home. The worst and last course of action is to allow the property to go through the foreclosure sale on the 120<sup>th</sup> day or beyond. In this case, there is a high risk of losing the deed-restriction or the City being out bid. Another last effort would be for the City to exercise its option to purchase after the lender purchases the property, but then the Division of Housing puts a "call" on the grant funds. This "call" would require the City to reimburse DOLA for the amount of the grant. Finally, the City could purchase the property at sale, but may pay far above the original investment. It is important to include the Early Termination language in the contract with the grant funder, but the City also needs to have mechanisms in place to reduce foreclosure possibilities.

DOLA is specifically focused on the deed-restrictions for the 80% AMI and a covenant of 25 years. The five years survivability component is from HUD. Because of the ties to the grant funding, the City would be most prudent to cure the properties if needed, and consider that risk tied to these properties with this funding. City Manager Forrest noted that when the City receives a Notice of Lien it allows the interested parties to get involved early in the foreclosure process and mitigate the issue for a few thousands of dollars versus the possibility of extremely high costs at the very end of the process. The biggest risk for the City signing the DOLA contract would be if the City chose to ignore a foreclosure situation and allow the deed restriction to evaporate and then have to reimburse the funder \$1.3 million dollars, the amount of the grant. The grantor wants to see this project succeed and would work with the City to address any issues on deed-restricted units, if called upon to do so.

Willa Williford added the importance of the GVRHA and lenders thoroughly reviewing the qualifications of a buyer at the time of purchase. Early notification of any problems is key to avoiding larger issues later down the line.

Council asked additional clarification questions about curing or rescuing a property. The City cannot retain the property but must find an eligible beneficiary for the 80% AMI units. The City would then promptly sell the unit according to the contract. The GVRHA has funding available to financially assist homeowners who are struggling with payments to avoid foreclosure. If the \$65,000 that is available in the GVRHA's Emergency Fund is not enough, the organization could also go to their local bank and request a line of credit to help protect the property from foreclosure.

Discussion ensued about the preventive measures Director Kermode presented and the risks that City Attorney Fogo and the City Manager presented. One topic was about a decrease in overall real estate values. However, it was explained that the 80% AMI units have been set at a price where they will be more protected from a decrease in real estate values and remain attractive to homeowners who are in the market. There is also a cap on appreciation for these units in order to ensure the affordability. Another topic included the possibility of having multiple foreclosures at once. While this could happen, the likelihood of it happening with the current safeguards in place is unlikely. The 120-day clock begins the day the lender files the Notice of Election and Demand with Clerk and Recorder. A deed-restricted homeowner is required to notify the GVRHA if they miss payments and then get notice from their lender that they will have a NED filed. Typically, a lender will work with a homeowner for 60 to 90 days before they file a NED. GVRHA provides homeowner education to the buyer prior to the purchase. The lender is required by law to make notice to all interested parties, which would include the City and the GVRHA. On average, interested parties have up to 6 months to address and work through all preventive measures. The five-year period for HUD is only relative to the City and will begin the date the 80% AMI unit is sold. It was recommended that all future Councilmembers receive education on the City's investment in these deed-restricted units to prevent future issues.

Councilor Freeburn moved and Councilor Plata seconded the motion to authorize the City Manager to enter into a contract with Colorado Department of Local Affairs in a form that is acceptable to the City Attorney, which would include a provision to cure potential future foreclosures.

Roll call, yes: Freeburn, Miles, Gelwicks, and Plata. So carried.

Roll call, no: None.

City Manager Forrest explained to Council that the developer of the Lazy K housing units has the opportunity to sell a block of five 120% AMI units to a local institution, who would rent the units to qualified employees within the County. City Attorney Fogo clarified that a "qualified business" is one that earns its income here and hires employees living in Gunnison County. The qualified business can then rent the units to qualified employees who also earn their income here and live in the County. Staff wanted to share this information because there is already interest in purchasing the units. All involved parties want to be sure that the overall Lazy K development does not consist mostly of renters. Selling a block of units together would help the qualified businesses management of them. The potential qualified business is the RTA. Identifying qualified businesses now gives the developer assurance of purchased units. It was noted that the need "For Sale" housing is as important as having rental units available. The City should foster both types of housing. As soon as all contracts are executed, development can begin.

**With no further business, Mayor Gelwicks adjourned the Special Session at 1:58 p.m.**

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Jim Gelwicks, Mayor

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City Clerk

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