



City of Gunnison

May 20, 2021

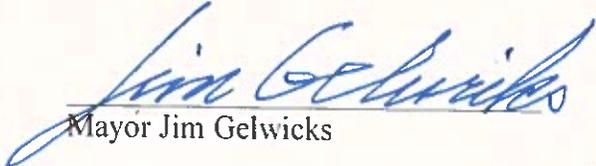
To City Clerk Erica Boucher,

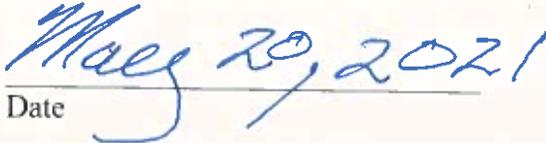
Pursuant to Section 5.2 of the City of Gunnison Municipal Home Rule Charter, I, Jim Gelwicks, Mayor of the City of Gunnison, am directing you, the City Clerk, to set a Special Session meeting of City Council for 1:000 P.M., Friday, May 21, 2021, in the City Council Chambers of City Hall, 201 W. Virginia Avenue in Gunnison, CO and to be conducted remotely, to consider the following agenda item:

- Review, discussion and possible action concerning the language that the Colorado Department of Local Affairs wants the City of Gunnison to include in the infrastructure grant contract for the Lazy K Housing project regarding the deed-restricted units.

I understand the meeting will be properly noticed and posted per Colorado Open Meetings Law.

Thank you.


Mayor Jim Gelwicks


Date



To: Gunnison City Council

From: Russell Forrest

Date: May 21, 2021

Subject: Lazy K Housing Project Update

1. Purpose

The purpose of this special meeting is to review what we believe is the final issue with obtaining the Colorado Department of Local Affairs grant, which is funded by the US Department of Housing and Urban Development for the Lazy K housing project. The issue is that DOLA has in their standard contract a deed restriction which states that, in the event of a foreclosure, the lending institution could **not** strip away the deed restriction. Our collective experience between Willa Williford, Jennifer Kermode and myself is that banks will not lend if they cannot strip out the deed restriction. The Federal Government does not want to lose the deed restriction (nor does the City for that matter). So the alternative to the language DOLA wants is to have a commitment to cure a bad loan or a loan in distress. I have had to do this several times to avoid losing a deed restriction, and in each case, the Town was made whole when a resale occurred or the current owner repaid the city for stop gap funding. However, we need to review the full risks with you and get your approval before signing a contract with DOLA to accept the grant.

The partnership with the Gunnison Valley Regional Housing Authority and the Lazy K project, which already exists, will help minimize that risk. The attached memo from GVRHA explains how that risk can be managed.

2. Action Requested of Council

Staff would request a motion of the City Council to authorize the City Manager to enter into a contract with the Colorado Department of Local Affairs in a form acceptable to the City Attorney, which would include a provision to cure potential foreclosures. Staff should note that this recommendation may change with additional conversation with DOLA between the time of this memo and the special meeting.



May 20, 2021

**MEMORANDUM TO THE CITY OF GUNNISON ON THE
PRESERVATION OF DEED RESTRICTED PROPERTIES IN THE EVENT OF FORECLOSURE**

Background

The intent of investing public funds and benefits into local workforce affordable housing is to preserve the affordability of housing units in perpetuity. In many communities this is best achieved through the use of deed restrictions that run with the land. One of the most common events that causes deed restrictions to terminate is when a property is sold through the foreclosure process and the deed restriction has no provisions for its survivability.

The lending industry has, since at least 2008, pushed back against lending on deed restricted properties when the deed restriction does not terminate at foreclosure. A buyer's only recourse is to attempt to obtain a non-qualified mortgage, which frequently equates to very unfavorable loan terms. This creates an impasse between the purpose of providing affordable housing and sustaining affordability for the buyer. If we preserve our deed restrictions through foreclosure sale to protect our investments, buyers can't get reasonable loans to purchase them.

Strategies

There are strategies that can be used to provide a degree of security for the longevity of a deed restriction – to protect it and keep it in place and in full force and effect. These strategies are used to protect the investment into affordability much like a deed of trust does for a promissory note.

- A. Limited Appreciation Note and Deed of Trust
- B. Memorandum of Understanding
- C. Notice of Lien and Memorandum of Acceptance
- O. Community Land Trust
- E. Underlying zoning regulations
- F. Deed Restriction as Lien Agreement

This Memorandum discusses using the Deed Restriction as Lien Agreement strategy since this is the practice used and recommended by the Gunnison Valley Regional Housing Authority and matches the language used in current deed restrictions.

This strategy utilizes a document known as a Notice of Lien which clearly states that the deed restriction recorded against a property constitutes a lien against said property, and thus, requires priority lenders to give proper notice to the beneficiaries of the Notice of Lien (in this instance the City of Gunnison and the GVRHA) when 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 at minimum 120 days prior to the property being sold through the County Public Trustee. This 120-day time period allows for the borrower to find the means to cure the default.

Process

With the Notice of Lien in place, both the City and GVRHA must get notice of the lender's intent to foreclose. The GVRHA has a process in place when the notice of NED is received:

1. The GVRHA contacts the defaulting borrower immediately and begins a due diligence phase to determine:
 - a. If the borrower wants to retain ownership of the property
 - i. If yes, assess their ability to keep the loan current once the default is cured
 - b. How far delinquent the borrower is in their mortgage payments and/or HOA dues
 - c. Where in the 120-day time period the lender is
2. The GVRHA will determine which of the following procedures can be implemented:
 - a. Have the borrower apply to the GVRHA/VHF's Emergency Mortgage Assistance Fund to obtain a loan or grant to cure the default
 - b. Work with the borrower's lender on a loss-mitigation plan through the HUD Housing Counseling Program – certified agencies are available on the Western Slope
 - c. Assist the borrower in selling the property prior to the foreclosure sale date
 - d. Purchase the property from the owner prior to the foreclosure sale date
 - i. Resell it through the GVRHA
 - e. Allow the property to go foreclosure sale with the possible outcomes of:
 - i. A third party outbids the City or GVRHA at the sale = loss of deed restriction = Division of Housing puts a "call" on the grant funds (all or some)
 - ii. Lender purchases the property = City must exercise option to purchase or lose the deed restriction = Division of Housing puts a "call" on the grant funds (all or some)
 - iii. City purchases the property at sale, but may pay far above the original subsidy invested
3. Should proper notice not be delivered to the City or the GVRHA at the time of the NED filing, the GVRHA will work with the Gunnison County Public Trustee to postpone the sale date according to State of Colorado Statutes.

It is the opinion of the GVRHA that the least favorable option is 2.e above – therefore we recommend the City and GVRHA work on implementing 2.a-d prior to foreclosure sale.

Additional measures can and will be put into place this year through the GVRHA to further support owners of deed restricted properties can adequately afford their homes:

1. Homebuyer education offered for potential buyers (policy decision may be to require it)
2. Homeowner counseling offered to community members on default prevention.

The GVRHA will also monitor the County's Active Foreclosure List available through the Public Trustee's office on a weekly basis, and, will begin actions to obtain a line of credit through its bank so that a 'safety net' is accessible should we need to purchase a property from an owner prior to foreclosure sale.

Submitted by:

Jennifer Kermode
Executive Director