



CITY OF CONCORD

REPORT TO MAYOR AND THE CITY COUNCIL

FROM: James W. Kennedy, City Solicitor
DATE: May 1, 2023
SUBJECT: Termination of RSA chapter 79-E Covenant

Recommendation

Accept this report and set the attached Resolution for a public hearing for the May 8, 2023 City Council meeting to authorize the City Manager to terminate the attached, RSA chapter 79-E, Declaration of Covenants, recorded at the Merrimack County Registry of Deeds, at Book 3711, Page 717 (“Covenant”), attached hereto, relative to the property located at 10 Pleasant Street Ext, Concord, New Hampshire (“Property”). Due to an anticipated closing on the Property on May 12, 2023, the current owner and the prospective buyer of the Property have requested termination of the Covenant, and that the City Council suspend Section 4 of the City Council rules to hold this public hearing at the May 8, 2023 meeting.

Background

On January 13, 2020, the City Council approved Resolution #9266, which granted a Community Revitalization Tax Relief Incentive, in accordance with RSA chapter 79-E, to the Declarant to redevelop the Property in accordance with the purpose of RSA chapter 79-E. In consideration of the tax relief incentive, and, in accordance with RSA 79-E:8, the Declarant granted the Covenant to ensure that the Property would be maintained and used in a manner that furthers the public benefits for which the tax relief incentive was granted. In the event that the redevelopment occurred, the tax relief period was to start April 1, 2021, and expire March 31, 2030.

Due to delays that occurred with respect to redevelopment of the Property, on November 9, 2020, the City Council passed Resolution #9327, amending the tax relief period. The redevelopment of the Property was to occur “no later than March 31, 2022.” Subject to the redevelopment, the amended tax relief period was to commence on April 1, 2022 and expire on March 31, 2031.

On December 4, 2020, the Covenant was recorded at the Merrimack County Registry of Deeds at Book 3711, Page 717. Also, on December 4, 2020, the Declarant assigned the Covenant to WB4, LLC, located at 1B Commons Drive, Unit 12B Londonderry, New Hampshire 03053.

To date, no redevelopment of the Property has occurred. In addition, no tax relief has been applied to the Property.

The City has recently learned that a purchase and sales agreement has been executed for the sale of the Property. As set forth above, the current owner and the prospective buyer have requested that the City terminate the Covenant for the sale to proceed.

Section 6 of the Covenant, includes a termination provision by the City Council. Under this Section, the Council may terminate the Covenant if the Declarant fails to “abide by the terms of this Covenant or otherwise fails to preserve, maintain, or utilize the ... [Property] in accordance with the terms of the Covenant.”

Section 3 of the Covenant requires that the Declarant complete the renovation of the Property “no later than March 31, 2022,” and that the Property be maintained and used in a manner that furthers the public benefits for which the tax relief was granted.

The Declarant has failed to abide by Section 3, and, therefore, after a duly noticed public hearing, in accordance with RSA 79-E:9, the Council may terminate the Covenant. Termination of the Covenant removes the requirement that the Property be redeveloped in accordance with the terms therein, and also removes the right to tax relief on the Property.

Discussion

Accordingly, it is recommended that the City Council accept this report and approve the attached Resolution at it May 8, 2023 City Council meeting, to authorize the City Manager to terminate the Covenant.