City of Milwaukee

Department of City Development

City Plan Commission
Historic Preservation Commission
Neighborhood Improvement
Development Corporation
Redevelopment Authority

Rocky Marcoux
Commissioner

Martha L. Brown
Deputy Commissioner

November 2, 2009

Honorable Members of the Zoning, Neighborhoods
& Development Committee
City Hall, Room 205
Milwaukee, WI 53202

Dear Committee Members:

RE: File 090687, Amending TID #48 (Moderne project)

At your Committee meeting on October 27, 2009, you raised three concerns regarding the proposed loan for the Moderne project. These matters have been addressed as follows:

Default provisions: The City Attorney and City Comptroller have addressed this in their letters of October 29 and November 2, respectively; copies are attached.

Emerging Business Enterprise and Resident Preference hiring requirements: The EBE requirement has been increased to 25% for construction contracts and the RPP requirement for on-site worker hours has been increased to 30%. The developer will be required to hire an outside consultant to assist with, and monitor compliance with, these requirements, and present quarterly reports to your Committee. These requirements are memorialized in the Human Resources Agreement in the file (Exhibit A to the Term Sheet).

Additional collateral for personal guarantees: The attached Term Sheet for the project has been modified to include this language: "Personal guarantees shall be secured by a letter-of-credit, issued by a commercial bank reasonably satisfactory to the City, and first liens on assets with a fair market value, as determined by independent appraisal, in the combined amount of not less than $4,350,000."

We believe these changes address your Committee's concerns. In addition, City loans for this project are further collateralized by condominium sales revenue pledged to loan amortization, and anticipated tax incremental revenue with a discounted present value of $9,200,000 – even if condo sales prices are reduced to 50% of the proposed selling price. Please see attached memo from S.B. Friedman & Co dated October 29, 2009.

With these changes, we strongly recommend approval of this file.

Sincerely,

Rocky Marcoux
Commissioner

Attachments

809 North Broadway, Milwaukee, WI 53202-3617 (414) 286-5800
www.mkedcd.org (Department of City Development)
www.choosemilwaukee.com (Milwaukee Business Information)

City of Milwaukee

Office of the Comptroller

W. Martin Morics, C.P.A.
Comptroller

Michael J. Daun
Deputy Comptroller

John M. Egan, C.P.A.
Special Deputy Comptroller

Craig D. Kammholz
Special Deputy Comptroller

November 2, 2009

Members of the Zoning, Neighborhoods
& Development Committee
Common Council, City of Milwaukee
City Hall, Room 205
Milwaukee, WI 53202

RE: File 090687 The Moderne Project

Committee Members:

At your meeting of October 27th, you requested that our Office review and comment on two issues related to this apartments/retail/parking and condominium Project:

1. Your Committee's intent to secure the equity partners' personal guarantees of the City loan(s).
2. Default provisions in the affected Project loans as raised in our October 23rd letter

Regarding point #1), we have received a copy of an email to Alderman Bauman dated October 30th, indicating that it is the intent of DCD to include language in the City Loan term sheet that "Personal guarantees shall be secured by a first lien on assets with a combined fair market value, as determined by independent appraisal, of not less than $3,350,000.". As of mid morning today, we have not received any new documentation for the File related to this statement.

Regarding #2), the default provisions, our concern lies in the business impact of various default outcomes on the City's interests, namely, success of the overall Project, repayment of City loans for the project and the achievement of the targeted tax increments. Because the default provisions are mainly a matter of legal terms as negotiated between the Developer, Developer's lender and City legal counsel, we requested that the City Attorney describe the City's right to foreclosure of the condominium component – its primary financial interest under a series of five different default "scenarios". See Attachment #1. The City Attorney has provided a response to this request, clearly describing the City's foreclosure rights under each default scenario[1]. See Attachment #2.

After a careful review of the City Attorney's response and a follow-up discussion with that Office, we conclude that:

1) The City Attorney will negotiate the City loan agreements based on terms that will clearly preserve the City's unilateral right to foreclose on the condominium component to the extent provided by law.[2] **This directly addresses the concern noted in our October 23rd letter regarding the conditions under which the City would likely be able to foreclose.**

2) Should the Developer default on the City loan(s) while the Senior (HUD guaranteed) loan continues to perform, the City might not foreclose on the condo units because that could mean that the apartment/parking/retail component would also be in default. This dilemma results from the intended matching cross default provisions of the City loans and the Senior (HUD

[1] The City Attorney points out that since these loan agreements have yet to be negotiated, its observations are necessarily based on the Loan Term Sheet as currently drafted and its expectation of the result of these negotiations based on various prior City loan transactions.

[2] The only noted exceptions to execution of this unilateral right occur as the result of Developer bankruptcy and undefined third party suits that might have to be resolved by the courts.

guaranteed) loan. Should the City choose not to foreclose on the condo units in spite of loan default, this in turn would probably lead to a change in City loan repayment terms and an extension of loan term. **Thus we confirm our concern in our October 23rd letter that "...should condo sales not proceed as planned and default on a City loan occurs, the City's financial exposure could extend...far beyond the projected 2013-2014 final loan repayment date.".**

In its response to default scenarios #1, #2 and #3, the City Attorney indicates that the City as first mortgage holder will retain its unilateral right to foreclose on the condominium component upon default on either the City loans or the Senior (HUD guaranteed) loan. The Default scenario #4 relates to a Developer bankruptcy. The City Attorney states that while Developer bankruptcy would constitute a default, "...the bankruptcy court will have the power to enjoin the Redevelopment Authority's ability to proceed with a foreclosure action.". This is unavoidable once a bankruptcy action has commenced. Default scenario #5 involves the impact on the City of Milwaukee resulting from legal action taken against the Developer by the general contractor, prospective condo purchasers or others. In this situation, the City Attorney holds that "... we would not expect such legal disputes to limit the ability of the Redevelopment Authority to initiate a foreclosure action on the condominium units...". The result of such a foreclosure action by the City would no doubt depend upon the specific facts and competing interests involved. Thus in both Scenarios #4 and #5, if the City initiated a foreclosure action, delays could be encountered.

In the event of a default on the City loan(s) while the Senior (HUD guaranteed) loan is still performing, the City of Milwaukee would face a dilemma. While the City would have a unilateral right to initiate foreclosure on the condominium component, the cross default provisions would also give the Senior lender/HUD as guarantor the ability to foreclose on its loan and therefore place the entire Project including the apartments/parking/retail component in foreclosure. This would not likely be in the interest of the Project or the City of Milwaukee since the economic value of the Project and the property tax increments produced are mainly dependent on the apartment/parking retail component. As a result, a default on the City loan(s) would likely lead to a "workout" agreement with the Developer where City loan terms would be renegotiated to allow the Developer to retain title to the condominium units and continue to repay the City, albeit on terms more generous to the Developer. Such a workout agreement would likely include extending the term of the City loan(s).

Should you have questions about this letter, please contact my Office immediately.

Sincerely,

Michael J. Daun

W. Martin Morics
Comptroller

Mayor Barrett, Commissioner Marcoux, Allison Rozek, Lori Lutzka
Mjd/11-02-09

ATTACHMENT 1

Moderne Default Scenarios

As a follow up to our conversation yesterday, we are providing the following scenarios for your legal analysis. For each of the following scenarios, please describe the City of Milwaukee's right to foreclose related to its primary security interest - the condominium units - assuming that the City has disbursed the full amount of both the Completion and Mezzanine loans to the Developer. As applicable, please indicate where the City's foreclosure rights depend upon or are potentially restricted by actions or lack of action of other parties such as the Developer, Senior Lender, HUD or the courts. Also, please indicate for each scenario below how and when the City of Milwaukee would be noticed or become aware of the existence of the default event.

Scenario #1:
There is a Developer default on the Senior Loan.

1A consecutive Loan non-payments
1B technical Loan default (required debt coverage ratio, etc.).

Scenario #2:
Project completion and a Certificate of Occupancy is not secured by June 1, 2012.

Scenario #3:
There is a Developer default on either the Completion or Mezzanine Loan

3A the City of Milwaukee has not received full loan repayment on Completion and Mezzanine Loans after 48 months following the initial disbursement of City Loan funds.
3B consecutive Completion or Mezzanine Loan non-payments assuming available funds
3C technical Completion or Mezzanine Loan default (required debt coverage ratio, etc.).

NOTE: Under these Scenarios, please indicate if HUD, the Senior Lender or the courts can in any way impair the City's ability to unilaterally foreclose on the condominium component.

Scenario #4
The Developer files for or is party to a Chapter 7 or Chapter 11 bankruptcy during or following Project completion.

Scenario #5
Legal action is taken by third parties (examples: general contractor, prospective owners with deposits in Developer's possession) against the Developer

4A Prior to Project completion and issuance of a Certificate of Occupancy
4B Following Project completion and issuance of a Certificate of Occupancy.

Mjd/10-29-09

ATTACHMENT 2

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
LINDA ULISS BURKE
VINCENT D. MOSCHELLA
Deputy City Attorneys

CITY OF MILWAUKEE
Office of the City Attorney

COMPTROLLER
2009 OCT 30 AM 10:38

October 29, 2009

Mr. Michael Daun
Office of the Comptroller
200 East Wells St, Room 404
Milwaukee, WI 53202

Re: Moderne Default Scenarios

Dear Mr. Daun:

We are writing in response to your October 29, 2009 email message forwarding Moderne Default Scenarios in the form attached to this letter for our review and analysis. These Default Scenarios relate to the proposed Mezzanine and Completion loans to the Moderne Project ("Project") currently pending before the Common Council under Common Council Resolution File No. 090687.

As a preface to our comments and analysis, we should note that we have not had an opportunity to meet with counsel for Milwaukee Moderne, LLC ("Developer") to prepare actual documentation for the proposed Mezzanine and Completion loans for the Project. This is customarily the case prior to Common Council approval of a term sheet. Accordingly, the comments and analysis which we will be able to provide will address the manner in which such issues are customarily resolved in documentation which this office has prepared for various prior loan transactions. In addition, we should note that the Milwaukee Economic Development Corporation ("MEDC") will be servicing these loans on behalf of the Redevelopment Authority and that we anticipate working together with counsel retained by MEDC in the negotiation and finalization of transaction documents for the Project.

Our commentary and analysis with respect to your scenarios will be in reference to our expectations for the Project as summarized in the term sheet currently contained in the Common Council file, which is also attached to this letter. It is also our understanding that the principals of Developer have agreed to provide pledges of additional real property with a current assessed value of approximately $3,350,000 as security for the personal guarantees referenced in the term sheet and that the Department of City Development will be submitting an amended term sheet to reflect that change.

That commentary and analysis is as follows:

Scenario #1:
There is a Developer default on the Senior Loan.

1A consecutive Loan non-payments
1B technical Loan default (required debt coverage ratio, etc.)

The analysis for your Scenarios 1A and 1B is the same inasmuch as we do not anticipate that there will be a distinction in the Senior Loan documentation between a payment and a technical default. We will include language in the loan agreements for the Mezzanine and Completion loans making an event of default on the Senior Loan an event of default on those loans as well.

Initially, with respect to notice, we anticipate that our documentation will require Developer to provide formal notice to the Redevelopment Authority of events of default under the Senior Loan. While we may request that the lender under the Senior Loan also provide notice to the Redevelopment Authority of such events, we cannot assure that it will agree to such a request.

The Senior Loan is to be secured by the apartment portion of the Project and the Mezzanine and Completion loans proposed to be originated by the Redevelopment Authority will be separately secured by 14 condominium units. Those condominium units will not be pledged as security for the Senior Loan and will be subject to a first mortgage in favor of the Redevelopment Authority. We anticipate no restrictions on the ability of the Redevelopment Authority to foreclose in the event of a default under its documentation caused by an event of default on the Senior Loan and would not concede a request for such a restriction on the part of the lender. Accordingly, there will not be a limitation on the Redevelopment Authority's right to foreclose under Scenario No. 1.

Scenario #2:
Project completion and a Certificate of Occupancy is not secured by June 1, 2012.

The term sheet anticipates a customary development agreement between the Developer, the City and the Redevelopment Authority. It also requires commencement of the Project by June 1, 2010 and completion within 24 months of commencement. The development agreement will reference this schedule and will make failure to complete the Project as required an event of default. Just as a default under the Senior Loan documentation will be referenced as a default in the loan agreements for the Mezzanine and Completion loans, a default under the development agreement will likewise constitute an event of default. Failure to secure a Certificate of Occupancy as required will thus constitute an event of default and will entitle the Redevelopment Authority to proceed with a foreclosure action.

We note that we anticipate the inclusion of customary language in the development agreement which will allow later completion of certain Project elements, such as landscaping, and also that we anticipate that the interiors of individual condominium units will not be completed prior to issuance of a Certificate of Occupancy for the Project but rather upon initial sale of those units.

Scenario #3:
There is a Developer default on either the Completion or Mezzanine Loan

> 3A the City of Milwaukee has not received full loan repayment on Completion and Mezzanine Loans after 48 months following the initial disbursement of City Loan funds.
> 3B consecutive Completion or Mezzanine Loan non-payments assuming available funds
> 3C technical Completion or Mezzanine Loan default (required debt coverage ratio, etc.).

Scenario #3 also addresses both payment and technical defaults and again the analysis under all three scenarios is the same. A default under the Completion or Mezzanine loan agreement will allow the Redevelopment Authority to proceed with a foreclosure action. Neither the senior lender nor HUD will have the ability to impair the Redevelopment's ability to unilaterally initiate such a foreclosure action. As set forth in the analysis for your Scenario #4 and as a general matter, federal and state courts do have the power to limit the Redevelopment Authority's ability to proceed with foreclosure through issuance of injunctive relief or otherwise.

Scenario #4
The Developer files for or is party to a Chapter 7 or Chapter 11 bankruptcy during or following Project completion.

In the event that the Developer were to file for bankruptcy, while such a filing would certainly constitute a default under the Mezzanine and Completion loan agreements, the bankruptcy court will have the power to enjoin the Redevelopment Authority's ability to proceed with a foreclosure action.

Scenario #5
Legal action is taken by third parties (examples: general contractor, prospective owners with deposits in Developer's possession) against the Developer

> 4A Prior to Project completion and issuance of a Certificate of Occupancy
> 4B Following Project completion and issuance of a Certificate of Occupancy.

We anticipate that the Redevelopment Authority loan documentation will include collateral assignments of construction and other contracts as well as various rights and obligations of the Developer to the Redevelopment Authority. While the potential for legal action by third parties against the Developer is virtually limitless, we would not expect such legal disputes to limit the ability of the Redevelopment Authority to initiate a foreclosure action on the condominium units located within the Project. It may be that in some instances an action involving something such as a contractor's lien may require payments to be made to third parties but the Redevelopment Authority would continue to have a first mortgage applicable to the condominium units which provide the security for the Mezzanine and Completion loans.

Based upon discussions which we have had in meetings since the Zoning Neighborhoods & Development Committee meeting we trust that your concerns with respect to default issues have been addressed by those meetings and this letter. We will be present at the special meeting of the Zoning Neighborhoods & Development Committee on November 3, 2009 to address any additional questions which your office or members of the Committee may raise.

Very truly yours,

Vincent D. Moschella

for GRANT F. LANGLEY
City Attorney

THOMAS O. GARTNER
Assistant City Attorney

DANIELLE M. BERGNER
Assistant City Attorney

TOG/mll:151437
Enclosure

c: Members of the Zoning Neighborhoods & Development Committee
Ronald D. Leonhardt, City Clerk
W. Martin Morics, Comptroller
Craig Kammholz, Deputy Comptroller

1050-2009-401

S. B. Friedman & Company
Real Estate Advisors and Development Consultants
221 N. LaSalle St., Suite 820 • Chicago, Illinois 60601-1302 • 312/424-4250 • Fax: 312/424-4262 • www.FriedmanCo.com

Date: October 29, 2009

To: City of Milwaukee Dept. of City Development

From: *S. B. Friedman & Company*

RE: Sensitivity Analysis on Moderne Project

Per your request, this memo provides analysis of the City of Milwaukee's potential to be repaid on its $9.3 million proposed TID loans under a scenario under which the Moderne project underperforms pro forma expectations.

For this scenario, we assume the following:

- Project is completed, and apartment component is occupied
- The condominium component must be sold at $200 per square foot (about 50% of pro forma value)

Under these conditions, we would expect the City's primary repayment sources to be the following:

- $6.4 million in condominium revenues
- $7.6 million in present value of TID revenue from the apartment component
- $1.6 million in present value of TID revenue from the condo component at the reduced sale prices
- $0.2 million in present value from the retail component

Overall, this would total about $9.4 million in TID funding capacity, plus $6.4 million in direct repayment from condo sales. As the senior/sole lender on the condo component, the City would have the ability to force price reductions and/or seize the units and cause their liquidation.

These primary repayment sources would be supplemented by:

- Cash flow from the apartment/retail component to the extent it is available over and above the amount needed to pay HUD 221d4 debt service

- The assets of the personal guarantors that are being pledged to the City (and not HUD) to support the City's loans.

The City's proposed loans are not without risk. The proposed loan package is driven by the goals of stimulating economic activity and fostering revitalization in the Park East Corridor, rather than a pure bank-style analysis of credit and collateral. However, the City is in a unique position with respect to other lenders in that the TID revenues provide a repayment source. Property taxes have a superior lien position to even the HUD Senior Lender's interest. This unique collateral is supplemented by the City's senior lien on the condo component, which provides it with substantial flexibility to recover costs regardless of the status of the apartments. Finally, HUD's guarantee on the 221d4 loan provides additional reassurance of project completion. A well-capitalized entity (the US Government) will have a significant interest in ensuring that the project is occupied and cash flowing. This, in turn, will cause property taxes to flow even if the Milwaukee Moderne, LLC developer is no longer able to hold ownership of the Project.

MODERNE SENSITIVITY AT $200/SF CONDO SALES PRICES

Inputs and Assumptions:

Base Value of Project Taxkey	$ 323,000
2009 Assessed Value of Project Taxkey	$ 787,800
2008 Net Tax Rate	2.40%
2009 Projected Net Tax Rate	2.51%
First Assessment Year	2012
10 yr compound rate of decline	1.62%
Annual Inflation Rate	2.00%
Tax Collection Rate	100%

The Moderne Building

TID Year	Assmt Year	Inflation Factor	Frozen Base AV	Actual/Inflated Value	Moderne Project New Development: Annual Apartment Additions	Annual Condo Additions	Annual Retail Additions	Cumulative Additions	Deductions	Incremental AV due to Project	Property Tax Rate	Annual Incremental Tax Revenue Due to Project	Cumulative Incremental Tax Revenue due to Project
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[9]	[10]	[11]	[12]	[13]	[14]	[15]
8	2009	1.00	$ 323,000	$ 787,800	$ -	$ -	$ -	$ -	$ -	$ 464,800	2.51%		
9	2010	1.02	$ 323,000	$ 803,556	$ -	$ -	$ -	$ -	$ -	$ 480,556	2.46%	$ -	$ -
10	2011	1.04	$ 323,000	$ 819,627	$ -	$ -	$ -	$ -	$ -	$ 496,627	2.42%	$ -	$ -
11	2012	1.06	$ 323,000	$ 836,020	$ 17,492,738	$ 3,671,600	$ 903,750	$ 22,068,088	$ 836,020	$ 21,745,088	2.39%	$ -	$ -
12	2013	1.08	$ 323,000	$ 852,740	$ 10,349,870	$ 369,600	$ -	$ 33,228,919	$ -	$ 33,758,659	2.35%	$ 518,668	$ 518,668
13	2014	1.10	$ 323,000	$ 869,795	$ 1,749,274	$ 1,681,000	$ -	$ 37,323,771	$ -	$ 37,870,566	2.31%	$ 792,173	$ 1,310,841
14	2015	1.13	$ 323,000	$ 887,191	$ -	$ 697,000	$ -	$ 38,767,247	$ -	$ 39,331,438	2.27%	$ 874,266	$ 2,185,107
15	2016	1.15	$ 323,000	$ 904,935	$ -	$ -	$ -	$ 39,542,592	$ -	$ 40,124,526	2.23%	$ 893,282	$ 3,078,389
16	2017	1.17	$ 323,000	$ 923,033	$ -	$ -	$ -	$ 40,333,444	$ -	$ 40,933,477	2.20%	$ 896,531	$ 3,974,920
17	2018	1.20	$ 323,000	$ 941,494	$ -	$ -	$ -	$ 41,140,113	$ -	$ 41,758,606	2.16%	$ 899,789	$ 4,874,710
18	2019	1.22	$ 323,000	$ 960,324	$ -	$ -	$ -	$ 41,962,915	$ -	$ 42,600,239	2.13%	$ 903,057	$ 5,777,766
19	2020	1.24	$ 323,000	$ 979,530	$ -	$ -	$ -	$ 42,802,173	$ -	$ 43,458,703	2.09%	$ 906,333	$ 6,684,100
20	2021	1.27	$ 323,000	$ 999,121	$ -	$ -	$ -	$ 43,658,217	$ -	$ 44,334,337	2.06%	$ 909,619	$ 7,593,719
21	2022	1.29	$ 323,000	$ 1,019,103	$ -	$ -	$ -	$ 44,531,381	$ -	$ 45,227,484	2.03%	$ 912,914	$ 8,506,632
22	2023	1.32	$ 323,000	$ 1,039,485	$ -	$ -	$ -	$ 45,422,008	$ -	$ 46,138,494	2.00%	$ 916,218	$ 9,422,850
23	2024	1.35	$ 323,000	$ 1,060,275	$ -	$ -	$ -	$ 46,330,449	$ -	$ 47,067,724	2.00%	$ 922,770	$ 10,345,620
24	2025	1.37	$ 323,000	$ 1,081,481	$ -	$ -	$ -	$ 47,257,058	$ -	$ 48,015,538	2.00%	$ 941,354	$ 11,286,975
25	2026	1.40	$ 323,000	$ 1,103,110	$ -	$ -	$ -	$ 48,202,199	$ -	$ 48,982,309	2.00%	$ 960,311	$ 12,247,286
26	2027	1.43	$ 323,000	$ 1,125,172	$ -	$ -	$ -	$ 49,166,243	$ -	$ 49,968,415	2.00%	$ 979,646	$ 13,226,932
27	2028	1.46	$ 323,000	$ 1,147,676	$ -	$ -	$ -	$ 50,149,568	$ -	$ 50,974,243	2.00%	$ 999,368	$ 14,226,300
	2029	Collections for TID Year 27										$ 1,019,485	$ 15,245,785
Total Proceeds, 2009-2029 (Not Discounted)												**$ 15,245,785**	**$ 15,245,785**
2010 Present Value at 4.5%												**$ 9,422,246**	

[1] The Park East TID was formed in 2002 and is scheduled to terminate in 2029.
[2] The first year of assessment for this analysis is 2009.
[3] Annual inflation rate is assumed to be 2%
[4] Frozen Base Value is equal to the amended 2005 district-wide base value less the frozen 2001 assessed value of project parcels.
[6] Annual Apartment Additions is equal to the value produced by the 203 apartment units in the project, phased in over two years.
[7] Annual Condo Additions is equal to the value produced by 14 condo units in the project, phased in over two years
[8] Annual Parking Additions is equal to the value produced by 181 parking spaces in the project, phasing in over two years.
[9] Annual Retail Additions is equal to the value produced by a restaurant and spa.
[10] Cumulative Additions is equal to the sum of apartment, condo, parking, and retail additions.
[11] Deductions is equal to the 2009 base value of the project parcel, inflated to a 2012 value.
[12] Incremental AV Due to Project is equal to cumulative additions less deductions.
[13] The 2009 property tax rate is 2.51%, per City of Milwaukee Assessor's Office. It is assumed to decline at an annual rate of 1.62%, with a 2.00% floor.
[14] Annual Incremental Tax Revenue Due to Project is equal to Incremental AV multiplied by the Tax Rate. Revenue is collected the following year
[15] Cumulative Incremental Tax Revenue due to Project is equal to the annual incremental revenue plus the prior year's cumulative sum.

REPAYMENT SOURCE SUMMARY

Present Value of TID Revenue	$	9,422,246
Condo Sales Proceeds	$	6,419,200
Total	**$**	**15,841,446**

Plus Apartment Cash Flow: $600,000 or more per year