

SUPPLEMENTAL

BOARD MEETING OF NOVEMBER 10, 2011

J. Paul Oxer, Chair



**TEXAS DEPARTMENT OF
HOUSING & COMMUNITY AFFAIRS**
Building Homes. Strengthening Communities.

Tom Gann, Vice-Chair

Leslie Bingham Escareño, Member

Juan Muñoz, Member

Lowell Keig, Member

C. Kent Conine, Member

The only materials being posted under
Agenda Item 7 are those relating to
SilverLeaf at Gun Barrel City, #11138

**MULTIFAMILY FINANCE DIVISION
BOARD ACTION REQUEST
November 10, 2011**

Presentation, Discussion, and Possible Action Regarding Waivers of Ineligibility for Applicants Awarded during the 2011 Competitive Housing Tax Credit Application Cycle.

WHEREAS, this Board has previously awarded tax credits to Silver Leaf at Gun Barrel City; and

WHEREAS, Silver Leaf at Gun Barrel City had not, as required by Section 49.8(8)(B)(ii)(II) of the QAP, obtained the necessary zoning approval prior to the execution of the Commitment Notice; and

WHEREAS, failure to obtain zoning timely would result in the termination of the application for Silver Leaf at Gun Barrel City; and

WHEREAS, Silver Leaf at Gun Barrel City has now obtained its zoning approval and requested a waiver of the requirement of the QAP to obtain zoning prior to execution of the Commitment Notice.

It is hereby,

RESOLVED, that this Board finds that Silver Leaf at Gun Barrel City has/has not established good cause to support the granting of the waiver and the waiver is hereby granted/denied.

HOUSE OF REPRESENTATIVES



LANCE GOODEN
DISTRICT 4

October 25, 2011

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
221 East 11th St., PO Box 13941
Austin, TX 78711-3941

Re: 2011 HTC Commitment Notice #11138, SilverLeaf at Gun Barrel City

Dear Mr. Irvine:

I have received a package of material from Mike Sugrue concerning the above referenced property and the issue with zoning. He has also sent me the evidence of proper zoning, which I understand he has forwarded to you for the upcoming TDHCA Board meeting

Based on the information provided, including a letter from Mr. Gerry Boren, the City Manager of Gun Barrel City, and a conversation with Mr. Sugrue; it is apparent to me that there were extenuating circumstances beyond Mr. Sugrue's control concerning the zoning, which have since been rectified.

As you are aware, I wrote a letter of support for this property and am still adamantly in favor of seeing this property built for the senior citizens of Henderson County. In my past interactions with Mr. Sugrue and visiting his other property in Henderson County, he has shown himself to be a man of integrity who builds a quality product and cares about the well being of the tenants who reside in the properties.

I am asking you and/or the TDHCA Board to take whatever steps necessary to reinstate this property so that Mr. Sugrue can continue construction. I understand he has the other items needed to proceed, such as a construction loan, permanent loan and equity in place, and will work diligently toward a closing as soon as possible.

Thank you in advance for your consideration and favorable ruling in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Lance Gooden".

Lance Gooden
State Representative, District 4

Cc: Mike Sugrue

ORDINANCE #2011-017

AN ORDINANCE OF THE CITY OF GUN BARREL CITY, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND MAP, AS HERETOFORE AMENDED, TO GRANT A CHANGE IN ZONING TO MULTI-FAMILY RESIDENTIAL DISTRICT (MF-1) FOR A 10 ACRE TRACT OF LAND IN THE G. T. WALTERS SURVEY, ABSTRACT #794, HENDERSON COUNTY, TEXAS, AND BEING A PART OF THE 5.00 ACRE TRACT AS DESCRIBED IN THE DEED FROM THE CITY OF GUN BARREL CITY, TEXAS TO THE GUN BARREL CITY ECONOMIC DEVELOPMENT CORPORATION AND RECORDED IN VOLUME 2691, PAGE 97, OFFICIAL PUBLIC RECORDS OF HENDERSON COUNTY, TEXAS, AND BEING A PART OF THE 91.387 ACRE TRACT FROM EUGENE J. DOZIER, ET AL TO GUN BARREL CITY ECONOMIC DEVELOPMENT CORPORATION IN DOCUMENT NUMBER 2010-00005679 AND RECORDED IN THE OFFICIAL RECORDS OF HENDERSON COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT 'A'; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

Whereas, the Planning and Zoning Commission and City Council of the City of Gun Barrel City, in compliance with state laws with reference to amending the Comprehensive Zoning Ordinance, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally, the City Council is of the opinion and finds that said zoning ordinance and map should be amended as provided herein; Now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GUN BARREL CITY, TEXAS:

Section 1. That the Comprehensive Zoning Ordinance and map of the City of Gun Barrel City, Texas, as heretofore amended, be, and the same are hereby, amended to grant a change in zoning to

Multi-Family Residential District (Mf-1) For A 10 Acre tract of land in the G. T. Walters Survey, Abstract #794, Henderson County, Texas, and being a part of the 5.00 acre tract as described in the deed from the City of Gun Barrel City, Texas to the Gun Barrel City Economic Development Corporation and recorded in Volume 2691, Page 97, Official Public Records of Henderson County, Texas, and being a part of the 91.387 acre tract from Eugene J. Dozier, et al to Gun Barrel City Economic Development Corporation in Document Number 2010-00005679 and recorded in the Official Records of Henderson County, Texas.

EXHIBIT 'A'

SITUATED in the City of Gun Barrel City, in the G.T. Walters Survey, Abstract No. 794 of Henderson County, Texas and being a part of that certain called 5.00 acre tract of land described in a deed from the City of Gun Barrel City, Texas to GUN BARREL CITY ECONOMIC DEVELOPMENT CORPORATION, dated September 8, 2006 and recorded in Volume 2691, Page 97 of the Deed Records of Henderson County, Texas (DRHCT) and also being a part of that certain called 91.387 acre tract of land described in a deed from Eugene J. Dozier, et al to GUN BARREL CITY ECONOMIC DEVELOPMENT CORPORATION, dated April 22, 2010 and recorded in County Clerk's Document No. 2010-00005679, DRHCT and being more particularly described by metes & bounds as follows:

BEGINNING at a 5/8 inch iron rod found for the Northwest corner of said 5.00 acre tract, on the East line of said 91.387 acre tract and same being on the West line of the remainder of a called 40.0 acre tract of land described in a deed to City of Gun Barrel City, Texas, recorded in Volume 1116, Page 681, DRHCT;

THENCE: North 88 deg. 37 min. 38 sec. East, along the common line of said 5.00 acre tract and that remainder of said 40.0 acre tract, a distance of 223.37 feet to a 1/2 inch iron rod found for corner, topped with a plastic cap stamped "Chambers", set by Marlin E. Chambers, R.P.L.S. No. 1581 as shown on his Survey dated September-October, 2010;

THENCE: South 00 deg. 28 min. 15 sec. East, departing from the North line of said 5.00 acre tract, a distance of 402.48 feet to a 1/2 inch iron rod found for corner, with a Chambers plastic cap;

THENCE: South 88 deg. 31 min. 30 sec. West, a distance of 220.61 feet to a 1/2 inch iron rod, topped with a red plastic cap, stamped "RPLS 4701", set for corner on the West line of said 5.00 acre tract and the East line of said 91.387 acre tract;

THENCE: South 85 deg. 47 min. 35 sec. West, departing from the West line of said 5.00 acre tract and across said 91.387 acre tract, a distance of 516.00 feet to a 1/2 inch iron rod found for corner, topped with a Chambers cap;

THENCE: North 00 deg. 21 min. 40 sec. West, a distance of 948.18 feet to a 1/2 inch iron rod found for corner, topped with a Chambers cap;

THENCE: South 45 deg. 23 min. 34 sec. East, a distance of 722.70 feet to the POINT OF BEGINNING and containing 435,540 square feet or 10.00 acres of land.

Section 2. That the above-described property shall be used only in the manner and for the purposes provided for by the Comprehensive Zoning Ordinance of the City of Gun Barrel City, as heretofore amended.

Section 3. That all provisions of the ordinances of the City of Gun Barrel City in conflict with the provisions of this ordinance be, and the same are hereby repealed.

Section 4. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part of provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

Section 5. That any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of Gun Barrel City, Texas, shall be punished by a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

Section 6. This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and City Charter in such cases provide.

Duly Passed by the City Council of the City of Gun Barrel City, Texas, on the 25th day of **October 2011.**

Approved:



Dennis Wood, Mayor

Attest:



Christy Eckerman, City Secretary



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Rick Perry
GOVERNOR

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Leslie Bingham-Escareño
Lowell A. Keig
Juan S. Muñoz, PhD

October 17, 2011

(512) 475-3296

Email: tim.irvine@tdhca.state.tx.us

Claire G. Palmer
Attorney and Counselor at Law
2224 Clearspring Drive South
Irving, Texas 75063

RE: 2011 HTC Commitment Notice for #11138, SilverLeaf at Gun Barrel City

Dear Ms. Palmer:

The Department is in receipt of your letter dated October 3, 2011 wherein you appeal the rescission of the 2011 HTC Commitment Notice for #11138, SilverLeaf at Gun Barrel City. The tax credits were rescinded because evidence of final approval of zoning in accordance with §49.8(8)(B)(ii)(II) of the 2011 QAP was not provided by the stated deadline in the HTC Commitment Notice for SilverLeaf at Gun Barrel City.

While you appeal that the delay in obtaining the required final zoning was a result of a formality between branches of the City and not due to opposition or controversy, the rezoning has not yet occurred, and therefore, I do not have any cause to rescind the termination. Moreover, I have been advised that I do not have the authority to grant this appeal. Therefore, I must deny your request. This matter will be presented to the Governing Board for review and disposition at its November 10, 2011 Board meeting.

If you have any questions, please do not hesitate to contact Raquel Morales at 512-475-1676 or raquel.morales@tdhca.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy K. Irvine", written over a horizontal line.

Timothy K. Irvine
Executive Director

CFD:rbm

Claire G. Palmer
Attorney and Counselor at Law

2224 Clearspring Drive South
Irving, Texas 75063
972-948-3166
Fax: 972-432-8825
clairepalmer@sbcglobal.net

October 3, 2011

By Email to tim.irvine@tdhca.state.tx.us
Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
221 east 11th Street
Austin, TX 78701-2410

RE: 2011 Housing Tax Credit (“HTC”) Commitment Notice; TDHCA #11138
SilverLeaf at Gun Barrel City, TX

Dear Mr. Irvine:

I am writing this letter on behalf of J. Michael Sugrue and SilverLeaf at Gun Barrel City, LP (the “Owner”) of that certain project known as SilverLeaf at Gun Barrel City, an 80 unit senior project (the Project”) to **appeal** a Notice of Termination of Commitment for 2011 tax credits based on failure to provide evidence of approval of zoning and documentation of acceptable zoning for the development.

According to the Commitment Notice dated August 9, 2011, failure to provide the listed items required by the Commitment Notice **may** (emphasis added) result in the termination of the commitment. As the record at TDHCA will show, the Owner has met all of the other requirements A-G of the Commitment, including receipt of a Commitment for HOME funds. The only missing piece is A., IV(d), the actual zoning documentation. Had there been a mechanism for requesting an extension of time to receive the zoning change, the Owner would have requested an extension prior to the Commitment deadline. However, Section 49.8(B)(ii)(II) specifically states that no extension can be requested on this item. This leaves the Owner with no alternative but to request that you use your discretion to rescind the termination. This appears to be a discretionary item since the Commitment clearly states that failure to meet this deadline **may, rather than shall**, result in termination. We believe there is good cause for this application to be reinstated.

Reason for Delay of the Zoning Approval

In February, 2011, the application was made for rezoning of this land. As originally delineated, all of the land which would have been used for this Project was zoned Agricultural (“AG”). AG land does not have to be rezoned for multi-family use. During the site planning process, it was decided that the Project would be better if it was slightly reconfigured to take in approximately 2 acres. This addition was of land then zoned B-2. This small change is what necessitated rezoning.

The Owner is purchasing the land from the City of Gun Barrel EDC (the “EDC”), an entity actually related to the City of Gun Barrel (the “City”), which grants the zoning change. The City and the EDC have known for many months and have been urged by the Owner to get the zoning change on place. Since this was the City’s first tax credit transaction, they did not understand the urgency or that failure to have it done timely might result in a termination of the tax credit allocation.

Once the allocation was made and the Commitment Notice received on August 9, 2011, the Owner again urged the City to move forward quickly with the zoning. However, at that time, The City Manager went out with knee surgery and there was no one else in the City who could respond to the issue.

Based on the required notices to the public and City scheduling, the first available time for the Owner to meet with the City’s Planning and Zoning is October 10, 2011. The zoning will be approved no later than October 25, 2011. It should be noted that senior housing has always been shown on the Master Plan of the City at this location. The City has provided support letters and other support for the Project. They are even selling the land to the Owner for the Project.

Reasons to Reinstate the Application

1. Termination based on this technical failure is discretionary with TDHCA.
2. The Owner has met all other requirements of the Commitment Notice and has made substantial expenditures to get the Project ready for construction.
3. The Owner will meet all the requirements of Carryover on or before November 1, 2011.
4. The Owner has commitments for construction and permanent financing as well as a letter of intent with the equity provider. This Project is ready to proceed.
5. The rezoning will be granted. This is only a formality as between branches within the City of Gun Barrel. This is not a situation where there is opposition or any controversy at the City. The rezoning is unopposed and is supported by the City. The senior housing is shown on the Master Plan and the majority of the land on which the Project will be located does not need to be rezoned.
6. The failure to have the zoning in place was beyond the control of the Owner and without his fault or negligence.
7. This Owner received a very early Commitment Notice after allocations were made by TDHCA. This gave substantially less time for the City to get the zoning done than would have been the case if there had been more time between allocation and Commitment Notice. Many Commitments have not expired as of today, while this one expired September 9.

Attachments

For your review, I have attached the following:

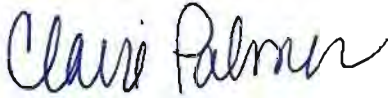
1. A copy of the Gun Barrel City Master Plan (Attachment One).
2. A letter from the City Manager explaining the reasons the zoning application was delayed and reiterating their support for the Project (Attachment Two).

Summary

For the reasons stated in this letter and based on the fact that termination is discretionary for this item, I believe that there is good cause for this Commitment to be reinstated and this Project to be allowed to proceed. I respectfully request that you use your discretion as Executive Director to reinstate this Project.

If you have any questions or need further information, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Claire Palmer". The signature is written in a cursive, flowing style.

Claire G. Palmer



www.gunbarrelcity.net
1810 W. Main St.
Gun Barrel City, Texas 75156
Office – 903-887-1087
Fax – 903-887-6666

"WE SHOOT STRAIGHT WITH YOU"

October 3rd, 2011

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Tx 78701-2410

RE: 2011 Housing Tax Credit ("HTC") Commitment Notice; TDHCA #11138
SilverLeaf at Gun Barrel City, Tx

Dear Mr. Irvine:

Please accept this letter as an apology and an explanation of the incomplete zoning for the site for SilverLeaf at Gun Barrel City. I am embarrassed that we have dropped the ball on this and have caused a problem for SilverLeaf at Gun Barrel City, LP and the Texas Department of Housing and Community Affairs (TDHCA).

As far as we were concerned here at the City, zoning was never an issue. The original site was zoned AG, which allows for the development of attached residential. As you can see from the attached Conceptual Plan, we had always planned on having senior housing on that site, subject, of course, to the development receiving a tax credit reservation. The Economic Development Corporation of Gun Barrel City, (EDC) applied for zoning on February 17th, 2011 and it was our intention to zone the site multifamily (MF) as was requested by the developer, Mr. Sugrue.

There are a multitude of reasons (excuses) for why we did not move forward, such as I have had three surgeries on my knees to include a total knee replacement. To get to the point, Gun Barrel City has been in support of this development from the time that the discussions started over two years ago. This is evidenced by the monetary commitments made to the development, both by the City and the EDC. We have a corrective action in place by hiring a land planner to avoid any other issues like this in the future.

The required notifications have been sent out and notice published in the local papers as well as other steps to expedite the requested zoning. We anticipate having the zoning completed by October 25, 2011.

I respectfully request your forgiveness and understanding that Mr. Sugrue did his part and was pushing for the zoning. I guess we didn't understand the importance, since the site could have been developed under the AG zoning. Please reinstate this much needed housing for the senior citizens of Gun Barrel City.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerry Boren". The signature is fluid and cursive, with a large initial "G" and a long, sweeping tail.

Gerry Boren
City Manager
Gun Barrel City, Tx
903-887-1087 Office
903-887-6666 Fax
972-345-2846 Mobile



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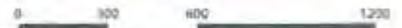
PARK CO
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GUN BARREL



NCEPT D
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 CITY, TEXAS



North



Scale: 1" = 600'

Date: May 21, 2010

SHEET FILE: Y:\2008\0505019\0109\Cardinal\PL\01090401\Plan_Concept_01.mxd

Base mapping compiled from best available information. All map data should be considered as preliminary, in need of verification, and subject to change. This land plan is conceptual in nature and does not represent any regulatory approval. Plan is subject to change.



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PARK CONCEPT D
GUN BARREL CITY
 GUN BARREL CITY, TEXAS

 
 North
 Scale: 1" = 600'
 Date: May 21, 2010

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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Lowell A. Keig
Juan S. Muñoz, PhD

October 3, 2011

Writer's direct phone # (512)475-2213
Email: cameron.dorsey@tdhca.state.tx.us

J. Michael Sugrue
SilverLeaf at Gun Barrel City, LP
1302 S. 3rd St, Suite 103
Mabank, TX 75147

RE: 2011 HTC Commitment Notice for #11138, SilverLeaf at Gun Barrel City

Dear Mr. Sugrue:

A 2011 Housing Tax Credit Commitment Notice was issued on August 9, 2011 to the above referenced Application in the annual amount of \$941,119. Pursuant to the Conditions of Commitment, "failure to submit the documentation in sections A-J, by the specified submission dates may result in the termination of the commitment made by this Commitment notice." Conditions A and G of the commitment required the following to be submitted to the Department **no later than September 8, 2011**:

Evidence of final approval of zoning and documentation of acceptable zoning for the Development in accordance with §49.8(8)(B)(ii)(II) of the 2011 QAP.

As of the deadline noted above, the documentation required for the zoning was not received by the Department. Therefore, please be informed that the Department is rescinding the Commitment Notice for the above referenced application pursuant to §49.12(d) of the 2011 QAP.

An Appeals Policy exists for the Housing Tax Credit Program. The restrictions and requirements relating to the filing of an appeal can be found in §49.10(d) of the 2011 QAP. If you choose to appeal this determination, you must first submit an appeal to the Executive Director no later than 5:00 pm on **October 10, 2011**. In the event an appeal is denied by the Executive Director, you may appeal directly in writing to the Board.

If you have any questions, please do not hesitate to contact Raquel Morales at 512-475-1676 or raquel.morales@tdhca.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Dorsey".

Cameron Dorsey
Director of Housing Tax Credits

CFD:rbm