



## Legislation Details (With Text)

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<b>File created:</b>	9/14/2022	<b>In control:</b>	City Council
<b>On agenda:</b>	9/20/2022	<b>Final action:</b>	9/20/2022
<b>Title:</b>	Adopt the resolution authorizing execution of the major business term agreement related to the lease of city land located southeast of IL Route 59 and 103rd on Tower Court for affordable senior and IDD housing between the City of Naperville and Gorman & Company, LLC; and direct staff to continue due diligence concerning the feasibility of obtaining property tax relief for the project and negotiate terms for the potential sale of the property if determined that the lease conditions cannot be met (requires seven positive votes)		

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. MBT Resolution Lease, 2. Resolution Exhibit A - Gorman Lease FINAL

Date	Ver.	Action By	Action	Result
9/20/2022	1	City Council	adopted	Pass

### CITY COUNCIL AGENDA ITEM

**ACTION REQUESTED:**

Adopt the resolution authorizing execution of the major business term agreement related to the lease of city land located southeast of IL Route 59 and 103rd on Tower Court for affordable senior and IDD housing between the City of Naperville and Gorman & Company, LLC; and direct staff to continue due diligence concerning the feasibility of obtaining property tax relief for the project and negotiate terms for the potential sale of the property if determined that the lease conditions cannot be met (requires seven positive votes)

**DEPARTMENT:** Transportation, Engineering and Development

**SUBMITTED BY:** Amy Emery, AICP, TED Operations Manager

**BOARD/COMMISSION REVIEW:**

N/A

**BACKGROUND:**

In September of 2021, the City Council issued an RFP to leverage city-owned property to address affordable housing needs in Naperville. Through the process, which included review of written proposals and meetings before the Human Rights and Fair Housing Advisory Commission, Accessible Community Task Force and the Senior Task Force, Gorman & Company, LLC emerged as the recommended developer.

On June 21, 2022, City Council approved the form and substance of the Major Business Terms (MBTs) negotiated by the City of Naperville with Gorman & Company, LLC for sale of the property.

The MBTs highlight key financial terms and conditions for an affordable senior and IDD housing development project. The purpose of the proposed MBTs is to define the scope of the project and to establish mutual understanding related to:

1. Minimum number of units (60)
2. Tenant age and income restrictions (e.g., seniors age 62 and over; individuals with Intellectual Disabilities and/or Development Disabilities age 18 and over)
3. Expectations for site amenities and service availability, including transportation
4. Timeframes for project financing, construction, and leasing
5. Financial, legal, and reporting obligations

On July 5, 2022, Gorman & Company, LLC submitted its bid for purchase of the subject property. In accordance with the requirements of RFP 21-315, the bid included two elements: purchase price and an affordability period. Gorman proposed a 99-year affordability period and established a minimum purchase price of \$100,000 (equal to approximately 5% of the market value). Gorman offered a higher bid amount subject to several contingencies tied to entitlement and funding approvals by other agencies.

### **DISCUSSION:**

Upon review of the bid to purchase the city-owned property from Gorman & Company, LLC, Council directed staff to continue to negotiate with Gorman to improve the offer to better recognize the value of the city property. Negotiations have been steady for the past two months and have included consideration of alternative funding sources, modified development requirements, and alternative MBT structures to provide a fair deal to all parties.

### **Land Lease Structure**

The structure of the MBTs has been modified from a land sale to a land lease arrangement. While this change is significant, it does not modify the proposed development amenities, unit count, tenant mix, and overall project timeline from what has been previously presented.

With the lease structure proposed in the MBTs, the City will retain ownership of its land asset and receive additional lease revenue over time. The proposed lease term is 99-years. There are very limited opportunities for either side to cancel the lease within this period. This duration assurance is required by debt providers to secure funding for a project of this scale and magnitude. The 99-year lease term affirms the City's long-term commitment to provide affordable housing on the site to meet the needs of the community.

As proposed, the lease arrangement will provide the City of Naperville with an initial lease payment of \$570,000. This amount includes \$170,000 gained by clarifying the MBT language so as not to be interpreted to require Gorman to provide a van at the property. The agreement stipulates that transportation service will be met by public transportation choices and through a Resident Transportation Plan, subject to City approval, to provide regular and convenient transportation services to meet resident needs.

In addition to the initial payment, the lease calls for the City to receive annual lease payments of \$30,000 for the duration of the 99-year lease.

### **Lease Contingencies**

Gorman has indicated that lease based MBTs are subject to three important contingencies that impact the financial feasibility of the project. The three contingencies are:

1. Award and receipt of DuPage County HOME funds in an amount not less than \$1,900,000 dollars;
2. City approval of a variance from 50% brick façade to 30% brick façade; and
3. Reduction of property tax obligations owed by the Lessee in a manner consistent with COVID-19 Affordable Housing Grant Program Act.

Concerning the third contingency, it is believed that Gorman's proposed use of the property will not be tax-exempt. In July of 2021, the Illinois General Assembly passed the COVID-19 Affordable Housing Grant Program Act ("Act"), which established a grant program designed by the legislature to provide funding for qualified housing developments awarded federal Low-Income Housing Tax Credits. On November 18, 2021, Will County elected to not implement the provisions of the Act regarding preferential assessment for low-income housing property in Will County. If Will County had not opt-ed out, Gorman believes its project would be eligible for reduced property tax obligations under the Act.

In order for the proposed project to be financially feasible under the lease structure, Gorman needs to obtain relief from applicable property taxes in a manner similar to the relief that could have been provided by the Act. Therefore, Gorman has made obtaining this property tax relief a mandatory condition of proceeding with the project as proposed.

If any of the above contingencies are not met, or if either party believes that they will not be met, either party may terminate the MBT Agreement at any time and neither party shall have any further liability hereunder.

Staff is uncertain whether the City and Gorman can obtain the tax relief Gorman requires. For that reason, in addition to adopt the resolution authorizing execution of the major business term agreement related to the lease staff recommends Council authorize staff to continue due diligence concerning the feasibility of obtaining property tax relief for the project and negotiate terms for the potential sale of the property if determined that the lease conditions cannot be met.

#### Next Steps:

Timely action by the City Council is important as it will allow Gorman to submit a Preliminary Project Assessment to the Illinois Housing Development Authority (IHDA) by the October 2022 application deadline. This step is required of all applicants seeking to submit a full application for Low Income Housing Tax Credits (LIHTC) to IHDA in February 2023. Without action at the September 20, 2022 City Council meeting, project financing will be delayed by a full year to coincide with the next IHDA tax credit application cycle.

It should be noted, in accordance with the MBTs, the lease will not be finalized and no funds will be exchanged until:

1. Zoning entitlements are approved by the City of Naperville;
2. A PILOT is authorized by Will County;
3. HOME funds awarded by DuPage County; and
4. Site development funding is secured by Gorman & Company, LLC (anticipated on or before June 2024).

#### RECOMMENDATION:

Adopt the resolution authorizing execution of the major business term agreement related to the lease of city land located southeast of IL Route 59 and 103rd on Tower Court for affordable senior and IDD housing between the City of Naperville and Gorman & Company, LLC; and direct staff to continue due diligence concerning the feasibility of obtaining property tax relief for the project and negotiate

terms for the potential sale of the property if determined that the lease conditions cannot be met (requires seven positive votes)

**FISCAL IMPACT:**

If the lease approach moves forward in accord with the proposed MBTs, the City will receive \$570,000 at the commencement of the lease and annual \$30,000 lease payments for the duration of the 99-year lease. Fiscal impact will also be affected by City expenditures for the IL Route 59 access improvement, estimated at \$850,000 (e.g., estimated \$850,000 investment for the IL Route 59 access improvement).