



City of Grand Island

Tuesday, September 12, 2006

Council Session

Item G22

#2006-260 - Approving Subordination Request for 1805 Freedom Drive (Dean A. and Patricia D. Bierhaus)

Staff Contact: Marsha Kaslon

Council Agenda Memo

From: Marsha Kaslon, Community Development

Council Meeting: September 12, 2006

Subject: Subordination Request for 1805 Freedom Drive
(Dean A. and Patricia D. Bierhaus)

Item #'s: G-22

Presenter(s): Marsha Kaslon, Community Development

Background

The City of Grand Island has a Deed of Trust filed on property owned by Dean A. and Patricia D. Bierhaus at 1805 Freedom Drive, in the amount of \$5,810.00. On February 23, 2006, Emergency Repair funds in the amount of \$5,810.00 were loaned to Dean A. and Patricia D. Bierhaus, husband and wife, to assist in the emergency repair of a home in the Grand Island area. The legal description is:

Lot 14, Freedom Acres Subdivision, Hall County, Nebraska ID # 400155478

The owner is requesting permission to assume a first mortgage, behind which the City would become the second mortgage.

Discussion

The City's current Deed of Trust is junior in priority to a Deed of Trust to Citicorp Trust Bank in the amount of \$5,810.00. A new lien in the amount of \$102,000.00 with New Century Mortgage would replace the senior Deed of Trust. By law, the new Deed of Trust would be junior in priority to the City's lien, however, the new lender, New Century Mortgage, has asked the City to subordinate its Deed of Trust to the new Deed of Trust.

The new appraised value of the property is \$120,000 and is sufficient to secure the first mortgage of \$102,000.00 and the City's mortgage of \$5,810.00. The City's loan of \$5,810.00 will be forgiven if the original owner's of the property (Dean A. and Patricia

D. Bierhaus) reside in the house for a period of 5 years from the date the lien was filed which was February 23, 2006. The lien amount decreases 20% per year.

ALTERNATIVES

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the Subordination Request.
2. Refer the issue to a Committee.
3. Postpone the issue to a later date.

RECOMMENDATION

City Administration recommends that the Council approves the Subordination Request.

Sample Motion

Motion to approve the Subordination Agreement with New Century Mortgage, placing the City in the junior position to the new Deed of Trust.

SUBORDINATION AGREEMENT

NOTICE; THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS AGREEMENT, made this 12th day of September, 2006, by Dean A. and Patricia D. Bierhaus, husband and wife, owners of the land hereinafter described and hereinafter referred to as "Owner", and CitiCorp Trust Bank, present owner and holder of the Deed of Trust and Note first and hereinafter described and hereinafter referred to as "Beneficiary".

WITNESSETH:

THAT, WHEREAS, Dean A. and Patricia D. Bierhaus, married persons, DID EXECUTE a Deed of Trust dated February 23, 2006 to the City of Grand Island, covering:

Lot 14, Freedom Acres Subdivision, Hall County, Nebraska
ID # 400155478

To secure a Note in the sum of \$5,810.00 February 23, 2006 in favor of the City of Grand Island, which Deed of Trust was recorded March 31, 2006 as Document No. 200602814 in the Official Register of Deeds Office of Hall County; and

WHEREAS, Owner has executed, or are about to execute, a Deed of Trust and Note in the sum of \$102,000.00 dated September 12, 2006 in favor of New Century Mortgage, hereinafter referred to as "Beneficiary" payable with interest and upon the terms and conditions described therein, which Deed of Trust is to be recorded concurrently herewith; and

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS SUBORDINATION AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT THERETO.

WHEREAS, it is a condition precedent to obtaining said loan that said Deed of Trust last above mentioned shall unconditionally be and remain at all times a lien or charge upon the land hereinbefore described, prior and superior to the lien or charge of the Deed of Trust first above mentioned; and

WHEREAS, Beneficiary is willing to make said loan, provided the Deed of Trust securing the same is a lien or charge upon the above-described property prior and superior to the lien or charge of the Deed of Trust first above mentioned and provided that Beneficiary will specifically and unconditionally subordinate the lien or charge of the Deed of Trust first above mentioned to the lien or charge of the Deed of Trust in favor of Beneficiary; and

WHEREAS, it is to the mutual benefit of the parties hereto that Beneficiary make such loan to Owners; and Beneficiary is willing that the Deed of Trust securing the same shall, when recorded constitute a lien or charge upon said land which is unconditionally prior and superior to the lien or charge of the Deed of Trust first above mentioned.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Beneficiary to make the loan above referred to, it is hereby declared, understood, and agreed as follows:

- 1) That said Deed of Trust securing said Note in favor of Beneficiary, and any renewals or extensions thereof shall unconditionally be and remain all times a lien or charge on the property therein described, prior and superior to the lien or charge of the Deed of Trust first above mentioned.
- 2) That Beneficiary would not make its loan above described without this Subordination Agreement.
- 3) That this Agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Deed of Trust first above to the lien or charge of the Deed of Trust in favor of Beneficiary above referred to and shall supersede and cancel, but only insofar as would affect the priority between the Deeds of Trust hereinbefore specifically described, any prior agreement as to such subordination including, but not limited to, those provisions, if any, contained in the Deed of Trust first above mentioned, which provide for the subordination of the lien or charge thereof to another Deed or Deeds of Trust or to another mortgage or mortgages.

Beneficiary declares, agrees and acknowledges that:

- 1) He consents to and approves (i) of all provisions of the Note and Deed of Trust in favor of Beneficiary above referred to, and (ii) all agreements, including but not limited to any loan or escrow agreements, between Owner and Beneficiary for the disbursement of the proceeds of Beneficiary's loan;
- 2) Beneficiary in making disbursements pursuant to any such agreement is under no obligation or duty to, nor has Beneficiary represented that it will, see to the application of such proceeds by the person or persons to whom Beneficiary disburses such proceeds and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;
- 3) He intentionally and unconditionally waives, relinquishes and subordinates the lien or charge of the Deed of Trust first above mentioned in favor of the lien or charge upon said land of the Deed of Trust in favor of Beneficiary above referred to and understands that in reliance upon, and in consideration of this waiver, relinquishment and subordination specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination; and
- 4) An endorsement has been placed upon the Note secured by the Deed of Trust first above mentioned that said Deed of Trust has by this instrument been subordinated to the lien or charge of the Deed of Trust in favor of Beneficiary above referred to.

RESOLUTION 2006-260

WHEREAS, the City of Grand Island, is the lender and secured party of a Deed of Trust dated February 23, 2006 in the amount of \$5,810.00, secured by property located at 1805 Freedom Drive and owned by Dean A. Bierhaus and Patricia D. Bierhaus, husband and wife, said property being described as follows:

Lot 14, Freedom Acres Subdivision, Hall County, Nebraska, ID #400155478

WHEREAS, Dean A. and Patricia D. Bierhaus wish to execute a Deed of Trust and Note in the amount of \$102,000.00 with New Century Mortgage to be secured by the above-described real estate conditioned upon the City subordinating its Deed of Trust to their lien priority; and

WHEREAS, the value of the above-described real estate is sufficient to adequately secure both loans.

WHEREAS, the requested subordination of the City's lien priority is in the best interests of all parties.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized and directed to execute an agreement subordinating the lien priority of the above described Deeds of Trust from Dean A. Bierhaus and Patricia D. Bierhaus, husband and wife, to the City of Grand Island, as beneficiary to that of the new loan and Deed of Trust of New Century Mortgage, Beneficiary, as more particularly set out in the subordination agreement.

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Adopted by the City Council of the City of Grand Island, Nebraska, September 12, 2006.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
July 25, 2006	☐ City Attorney