



City of Grand Island

Tuesday, August 14, 2007

Council Session

Item G9

#2007-195 - Approving Subordination Request for 310 East 6th Street (Deborrah Jeanne Scroggin Krugman)

Staff Contact: Marsha Kaslon

Council Agenda Memo

From: Marsha Kaslon, Community Development

Council Meeting: August 14, 2007

Subject: Subordination Request for 310 East Sixth Street
(Deborrah Jeanne Scroggin, (n/k/a Deborrah
Jeanne Krugman)

Item #'s: G-9

Presenter(s): Marsha Kaslon, Community Development

Background

The City of Grand Island has a Deed of Trust filed on property owned by Deborrah Jeanne Scroggin at 310 East Sixth Street, in the amount of \$20,000.00. On June 29, 1994, Community Development Block Grant funds in the amount of \$20,000.00 were loaned to Deborrah Jeanne Scroggin, a single person, to assist in the purchase of a home in the Community Development Block Grant program. The legal description is:

Lot 6, Block 4, Original Town, Grand Island, Hall County, Nebraska

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 Equitable Building and Loan Association, in the amount of \$20,000.00. A new lien in the amount of \$28,000.00 with Advance Financial Services 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, Advance Financial Services, has asked the City to subordinate its Deed of Trust to the new Deed of Trust.

The new appraised value of the property is \$67,000 and is sufficient to secure the first mortgage of \$28,000.00 and the City's original mortgage of \$20,000.00. The City's loan

of \$20,000.00 will be forgiven if the original owner of the property (Deborrah Jeanne Scroggin (n/k/a Deborrah Jeanne Krugman) resides in the house for a period of 15 years from the date the lien was filed which was June 30, 1994. The lien amount does not decrease and is only forgiven after the fifteen year affordability period is up.

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

Recommend approval to the Grand Island City Council of the Subordination Agreement with Advanced Financial Services, 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 14th day of August, 2007, by Deborrah Jeanne Scroggin (n/k/a Deborrah Jeanne Krugman), a single person, owners of the land hereinafter described and hereinafter referred to as "Owner", and Equitable Building and Loan Association, present owner and holder of the Deed of Trust and Note first and hereinafter described and hereinafter referred to as "Beneficiary".

WITNESSETH:

THAT, WHEREAS, Deborrah Jeanne Scroggin, a single person, DID EXECUTE a Deed of Trust dated June 29th, 1994 to the City of Grand Island, covering:

Lot 6, Block 4, Original Town, Grand Island, Hall County, Nebraska

To secure a Note in the sum of \$20,000.00 dated June 29, 1994 in favor of the City of Grand Island, which Deed of Trust was recorded June 30, 1994 as Document No. 94-105664 in the Official Register of Deeds Office of Hall County (remaining amount owed as of August 14, 2007 is \$20,000.00); and

WHEREAS, Owner has executed, or are about to execute, a Deed of Trust and Note in the sum of \$28,000.00 dated August 16, 2007 in favor of Advance Financial Services, 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 remaining 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.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

By: _____

STATE OF NEBRASKA)) SS
COUNTY OF HALL)

Sworn and Subscribed to before me this _____ day of _____, 2007.

Notary Public

SUBORDINATION AGREEMENT

COMES NOW the City of Grand Island, Nebraska, secured party and hereby partially subordinates its trust deed lien recorded on June 30, 1994, on the following described real estate:

All of Lots Six (6), Block Four (4), Original Town, now City of Grand Island, Hall County, Nebraska according to the recorded plat thereof.

It is the intent of this Agreement that the trust deed for amounts loaned by AFS Financial, Inc. (New Lender) to Deborah Jeanne Krugman FKA Deborah Jeanne Scroggin (Borrower) that has been or is about to be filed, shall be superior to the trust deed lien of the City of Grand Island, its successors and assigns recorded June 30, 1994, up to the amount of \$28,000.00 plus interest and amounts advanced to protect the collateral. Thereafter, the City of Grand Island's lien shall have priority. It is further understood that this subordination shall include all current obligations, extensions, renewals, advances or modifications made by the City of Grand Island, Nebraska to Borrowers which is secured by the trust deed recorded June 30, 1994 at Document Number 94-105664 in the records of the Register of Deeds of Hall County, Nebraska. Nothing in this Subordination Agreement is intended as a promise to provide financing or make advances to Borrowers by the City of Grand Island, Nebraska and it is not the intention of the City of Grand Island, Nebraska to warrant or guarantee the obligations of Borrowers but merely to partially subordinate its lien interests under the instrument recorded at Document Number 94-105664. It is understood that AFS Financial, Inc. (New Lender) intends to lend funds to Borrowers but that the subordinated amount is not to exceed \$28,000.00 plus interest and amounts advanced to protect the collateral.

Nothing in this instrument is intended to relieve Borrowers of their obligation to make payments to the City of Grand Island, Nebraska or to subordinate any other lien interests including, but not limited to, real estate taxes and special assessments.

Dated: _____ City of Grand Island, Nebraska

STATE OF NEBRASKA)	By _____
)ss.	Margaret Hornady, Mayor
COUNTY OF HALL)	

The foregoing instrument was acknowledged before me on _____, 20____, by Margaret Hornady, Mayor of the City of Grand Island, Nebraska.

Notary Public

RESOLUTION 2007-195

WHEREAS, the City of Grand Island, is the lender and secured party of a Deed of Trust dated June 29, 1994 and recorded on June 30, 1994, as Instrument No. 94-105664, in the amount of \$20,000.00, secured by property located at 310 East 6th Street and owned by Deborrah Jeanne Scroggin n/k/a Deborrah Jeanne Krugman, said property being described as follows:

Lot Six (6), Block Four (4), Original Town, Grand Island, Hall County, Nebraska.

WHEREAS, Deborrah Jeanne Scroggin n/k/a Deborrah Jeanne Krugman wishes to execute a Deed of Trust and Note in the amount of \$28,000.00 with Advance Financial Services 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 Deborrah Jeanne Scroggin n/k/a Deborrah Jeanne Krugman, to the City of Grand Island, as beneficiary to that of the new loan and Deed of Trust of Advance Financial Services, 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, August 14, 2007.

Margaret Hornady, Mayor

Attest:

Paul Briseno, Deputy City Clerk

Approved as to Form	☐ _____
August 10, 2007	☐ City Attorney