

City of Scottsbluff, Nebraska

Monday, May 7, 2018

Regular Meeting

Item Reports6

Council to consider a request from Walther Investments, LLC, to substitute or release Deed of Trust as collateral in exchange for Guaranty of Walther Farms, LLC.

Staff Contact: Starr Lehl, Economic Development Director

City of Scottsbluff
Economic Development Application Review Committee
April 6, 2018

A meeting of the Economic Development Application Review Committee was held on April 6, 2018, at 8:00 a.m. at City Hall, 2525 Circle Drive, Scottsbluff, NE.

The meeting was convened at 8:01 a.m. Present were Committee Members, Jim Trumbull, Marla Marx, Hod Kosman, Lee Glenn and alternates Dave Schaff and Jeanne McKerrigan. In attendance on behalf of the City were Program Administrator, Nathan Johnson, Deputy City Attorney, Adam Hoelsing, City Economic Development Director, Starr Lehl, and City Finance Director, Liz Hilyard.

Chairman Trumbull called the meeting to order and stated that a copy of the Nebraska Open Meetings Act is located on the South wall of the Council Chamber. There were no changes in the Agenda, nor were there any citizens with business not scheduled on the Agenda.

It was moved by Glenn and seconded by Hadden that the minutes of March 9, 2018 Committee Meeting be approved. Voting yes: Trumbull, Marx, Kosman, Glenn, Schaff and McKerrigan. Voting no: None.

An Application for Assistance from Jodene Burkhart d/b/a Complete Care Family Practice was presented. The Applicant was requesting funds to be used in connection with the startup and operation of a primary health care clinic in Scottsbluff. The request is for \$80,000 for startup expenses. The Applicant indicated that there was the potential of four full-time positions to be created. The Applicant had secured a facility from which to operate, and was looking to start providing service as soon as possible. The Applicant would base her practice on walk-ins for the family/primary care clinic, and would collaborate with physicians on an as needed basis. The Applicant, at the time of the Application, had invested \$12,000 in her own funds, had gained approval for Medicaid and Medicare reimbursements, and stated that she had patients from outside the state of Nebraska and would expect patients outside the state of Nebraska going forward. The Applicant had not yet submitted applications to local lenders for start up expenses or business loans, but had secured a \$70,000 home equity line of credit from Meridian Trust Federal Credit Union. Following the presentation, Jodene Burkhart left the meeting.

An Application for assistance from JADS Trucking, Inc. was presented. Present on behalf of the Applicant was John Schlothauer. The Applicant was requesting funds to be used in connection with the expansion of services and routes for FedEx Ground. The costs and expenses of expansion included \$500,000 for the purchase of five additional FedEx Ground routes, and \$75,000 for the purchase of vehicles for such new routes. The request by the Applicant was for \$275,000, but Mr. Schlothauer informed that he previously received \$100,000 in economic development funds from the City of Gering, Nebraska, structured as \$25,000 in an employment based grant and \$75,000 in a loan. The Applicant's Application was, therefore, amended to

request only \$175,000. Mr. Schlothauer informed that five full-time positions would be created, potentially leading into six. Three of the full-time positions would be new positions, and two of the full-time positions would be transfers or acquisitions from the current FedEx Ground provider. Mr. Schlothauer indicated that most of the routes being purchased were in southeast Wyoming, and that currently the Applicant's routes are located mainly in northwest Nebraska. Mr. Schlothauer indicated that the corporate headquarters of the Applicant are located in Gering, Nebraska, but that all activity, packages, and routes originate and end in the FedEx facility in Scottsbluff, Nebraska. The full-time positions being created receive pay between \$38,000 and \$45,000 annually, receive the ability to participate in a retirement IRA, receive health benefits for which the Applicant pays 50% of the premium, and receive all other normal and customary benefits of the Applicant. The Applicant did indicate that the newly purchased FedEx routes as well as the vehicles for such routes could be offered by the Applicant as collateral to any funding by the City. Following Mr. Schlothauer's presentation, he left the meeting.

Next on the agenda was an Application for assistance from Bluffs Physical Therapy, LLC. Present on behalf of the Applicant was Michael Moravec and Lisa Moravec. The Applicant is requesting funds to be used in connection with the start up and capitalization of a physical therapy clinic in Scottsbluff, Nebraska. The request is for \$50,000: a \$20,000 employment based grant and a \$30,000 loan. Mr. Moravec had worked for Monument Physical Therapy for eight years previous to the creation of Bluffs Physical Therapy, LLC. He had worked as a physical therapist for that time and was seeking to start his own clinic after negotiations for the purchase of Monument Physical Therapy were not successful. Mr. Moravec ended his relationship with Monument Physical Therapy on March 6, 2018, and was seeking to start his own physical therapy clinic as soon as possible. The Applicant would create two full-time positions, with the potential of five full-time positions after the 2018 calendar year. The two positions to be created before the end of the 2018 calendar year would be an office manager position and a physical therapy position to be filled by Mr. Moravec. Benefits will be shared with all employees when the Applicant's business is established. The Applicant had secured a lease for the clinic, and also had secured a \$50,000 loan from Platte Valley Bank. The Applicant had invested approximately \$5,000 of personal funds, and also had secured a line of credit from Platte Valley Bank for \$40,000 for use if necessary. Mr. Moravec stated that he regularly provides services to patients located outside the state of Nebraska, and anticipates that services to out-of-state patients will continue. Mr. Moravec also stated that he regularly receives referrals from physicians outside the state of Nebraska and has established a referral base for out-of-state residents in that manner. Following his presentation, Mr. and Mrs. Moravec left the meeting.

The Committee then discussed the Application of Complete Care Family Practice. Before that discussion, Committee Member Glenn left the meeting at approximately 8:30 a.m. Program Administrator, Nathan Johnson suggested that no action be taken on the Application unless the Applicant had shown efforts to obtain private funding from local banking institutions. The Committee accepted the recommendation of Program Administrator Johnson and no action was taken on the Application. Economic Development Director Lehl was directed to communicate with the Applicant and request that she have her business plan reviewed by a service providing

start up consultation, and that the Applicant submit applications to local lending institutions for possible private lending before the City would commit to funding the Application.

Next was a discussion by the Committee for the Application of JADS Trucking, Inc. Committee Member Kosman declared a conflict, and since Committee Member Glenn had previously left the meeting, both alternates, McKerrigan and Schaff, were designated to consider the Application. The Application would support a grant of \$50,000 from the City, as five full-time jobs would be created and each would be awarded \$2,000 annually for a period of five years. The Applicant would also support a loan of \$125,000 amortized over 60 equal monthly payments with an interest at the Mid Term Applicable rate in effect at the time the loan closed. Security for both the grant and the loan would be requested in the form of assignment of newly acquired FedEx Ground routes as well as liens on titles to the vehicles purchased to serve as the newly acquired FedEx routes. Moved by Committee Member Schaff and seconded by Committee Member Hadden that the Committee recommend a \$50,000 grant for the creation of five full-time positions, repayable annually at \$2,000 per full time position over five years, and a \$125,000 loan amortized over 60 equal monthly payments with interest at the Mid Term Applicable federal rate at the time the loan closed. Voting yes: Trumbull, Hadden, Marx, McKerrigan and Schaff. Voting no: None. Abstaining: Kosman.

The Committee then discussed the Application of Bluffs Physical Therapy, LLC. As was the case for the previous action, Committee Member Kosman declared a conflict, and both alternates, McKerrigan and Schaff, were designated to consider the Application. The Committee believed that the Applicant was able to support a \$20,000 grant for the creation of two full-time positions, awarded annually at \$2,000 per full-time position over the course of five years. The Committee also discussed that the Applicant was able to support the \$30,000 loan as requested, amortized over five equal annual payments with interest at the Mid Term Applicable rate in effect at the time the loan closed. Generally, collateral was not available, but the Applicant was expecting an approximate \$183,000 payout from a real estate LLC in which he was a member. Moved by Committee Member Hadden and seconded by Committee Member Marx to provide a \$20,000 employment-based grant for the creation of two full-time positions, awardable at \$2,000 annually for a position over the course of five years and a \$30,000 loan payable in five equal annual installments with interest at the Mid Term Applicable federal rate at the time the loan closed. Voting yes: Trumbull, Hadden, Marx, McKerrigan and Schaff. Voting no: none. Abstaining: Kosman.

Discussion was then had regarding the commitments and current earmarks of the Economic Development fund of the City, as well as the expected monthly income of the fund going forward. City Finance Director Hilyard presented both the current earmarks of the fund as well as the expected monthly income of the fund. Discussion was also had regarding the general approach of the Committee towards primary lending as opposed to “gap” financing, as has been traditionally the practice for the Committee. Committee Members felt that the Economic Development fund was more appropriate for a gap financing, but recognized that more and more applications were being reviewed for the City to act as the primary and first lender.

The meeting was then adjourned at 9:18 a.m.

Nathan Johnson, Program Administrator

City of Scottsbluff
Economic Development Application Review Committee
April 26, 2018

A meeting of the Economic Development Application Review Committee was held on April 26, 2018, at 8:00 a.m. at City Hall, 2525 Circle Drive, Scottsbluff, NE.

The meeting was convened at 8:00 a.m. Present were Committee Members, Jim Trumbull, Marla Marx, and Lee Glenn and alternates Dave Schaff and Jeanne McKerrigan. Since there were three Committee Members present, both alternates participated in all matters. In attendance on behalf of the City were Program Administrator, Nathan Johnson, Deputy City Attorney, Rick Ediger, City Economic Development Director, Starr Lehl, and City Finance Director, Liz Hilyard.

Chairman Trumbull called the meeting to order and stated that a copy of the Nebraska Open Meetings Act is located on the South wall of the Council Chamber. There were no changes in the Agenda, nor were there any citizens with business not scheduled on the Agenda.

It was moved by Glenn and seconded by Schaff that the minutes of April 6, 2018 Committee Meeting be approved. Voting yes: Trumbull, Marx, Glenn, Schaff and McKerrigan. Voting no: None.

The previous Application for Assistance from Jodene Burkhardt d/b/a Complete Care Family Practice, LLC was once again on the Agenda. Jodene Burkhardt appeared on behalf of the Applicant. She indicated that she had now formed a limited liability company in order to operate the practice. Since the Application was originally presented on April 6, the Applicant had obtained assistance from the Nebraska Business Development Corporation in putting together a business plan, had obtained a bank loan in the amount of \$20,000 and had reduced her request for assistance to \$50,000. This amount is to be used in connection with the start-up and operation of the Applicant's primary healthcare clinic in Scottsbluff. After further discussion with the Applicant, it was moved by Glenn and seconded by Marx that the Committee recommend that a low-interest loan be made to the Applicant in the amount of \$50,000. The loan shall be amortized over 5 equal annual payments with interest at the applicable Midterm Federal Rate in effect at the time the loan is closed. Annual Job Credits may be earned at the rate of \$2,000 per FTE. No more than an amount equal to the annual payment may be earned. The security shall be the personal Guaranty of Jodene Burkhardt and a Security Agreement in the equipment used in the business. Voting yes: Trumbull, Marx, Glenn, Schaff and McKerrigan. Voting no: None.

The next item of business was a request of Webb Orthodontics, LLP to release Bronson Schliep from his Personal Guaranty for the loan owed by Webb Orthodontics to the City. Bronson Schliep is leaving the practice on or before June 30. The remaining partner, Sami Webb, presented a financial statement that was satisfactory to the Committee to reflect the fact that Dr. Webb, as sole guarantor would be sufficient. It was moved by Glenn and seconded by McKerrigan to recommend the release of Dr. Schliep from the Guaranty, effective with his withdrawal from the practice

(anticipated to be approximately June 30). Voting yes: Trumbull, Marx, Glenn, Schaff and McKerrigan. Voting no: None.

The next item of business was a request from Flyover Brewery to postpone the Job Credit Effective Date and the first Note payment date due to the problems at its construction site (to include the roof collapse). As a result, the business will not likely open as soon as expected. It was moved by Schaff and seconded by Marx that the Committee recommend that the Job Credit Effective Date and the first loan payment date be delayed until January 1, 2019. Voting yes: Trumbull, Marx, Glenn, Schaff and McKerrigan. Voting no: None.

The final order of business was a request of Walther Investments, LLC to subordinate or release the Deed of Trust held by the City on Walther's property in Morrill County. The Applicant is in the process of refinancing a significant part of its operations, which will include the real estate against which the City has a Deed of Trust. In the Economic Development Assistance Agreement, the City had agreed to consider subordinating the Deed of Trust as long as the City received adequate financial protection or other collateral. The expected loan will combine this property as collateral, along with several other pieces of property, which would make a subordinated Deed of Trust have little value to the City. The Applicant has offered the guaranty of Walther Farms, LLC, an affiliate of the Applicant. The financial statement presented by Walther Farms, LLC to the City demonstrates a net worth which is significantly greater than the amount owed to the City and substantially exceeds the value of the Morrill County real estate. It was moved by Marx and seconded by McKerrigan that the Committee recommend reconveying the Deed of Trust and accepting the Guaranty from Walther Farms, LLC as collateral for the loan. Voting yes: Trumbull, Marx, Glenn, Schaff and McKerrigan. Voting no: None.

The meeting was then adjourned at 8:36 a.m.

Nathan Johnson, Program Administrator

GUARANTY

This Guaranty is given by Walther Farms LLC (“the “Guarantor”) to guarantee certain obligations of Walther Investment, LLC (the “Applicant”) to the City of Scottsbluff, Nebraska (the “City”).

Recitals:

a. The Applicant has entered into an Economic Development Assistance Agreement with the City dated June 9, 2017 (the “EDA Agreement”). Capitalized terms not otherwise defined in this Guaranty shall have the same meaning as provided for in the EDA Agreement.

b. The Applicant has requested that the City subordinate or reconvey its Deed of Trust against certain real estate owned by the Applicant and one of the conditions to the City’s action is that the Guarantor enter into this Guaranty. Walther Three Rivers, LLC is an affiliate of the Applicant.

Guaranty:

1. Obligations Guaranteed:

The obligations of the Applicant being guaranteed (the “Obligations”) are:

- a. The “Note” as defined in the EDA Agreement;
- b. Any and all other obligations of the Applicant under the EDA Agreement and any other documents entered into pursuant to the EDA Agreement;
- c. All costs, expenses and attorney fees paid or incurred by the City in collecting the Repayment, and in enforcing this Guaranty.

2. Guarantee of Payment:

This Guaranty is a guarantee of payment and the City shall not be required to resort first for payment from the Applicant or from any other person liable in any way for the Obligations.

3. Exercise of Rights/Waiver:

The City may at any time without consent of or notice to the Guarantor, and without incurring responsibility to or impairing or releasing the Obligations, in whole or in part:

- a. With the agreement of the Applicant, change the manner, place or terms of payment and/or change or extend the time or payment of, renew or alter, any of the Obligations, any security, or any debt, liability or obligation incurred directly or indirectly with respect to the

Obligations and this Guaranty shall continue to apply to the Obligations as changed, extended, renewed or altered;

b. Exercise or refrain from exercising any rights against the Applicant or others (including the Guarantor);

c. Settle or compromise any of the Obligations or any security for the Obligations, and may subordinate the payment of all or any part of the Obligations to the payment of any debt, liability or obligation (whether due or not) of the Applicant to creditors of the Applicant other than the City and the Guarantor; and

d. Apply any sums paid or realized from any source to the Obligations and regardless of the application or use of the consideration, if any, received in connection with the Obligations.

4. Primary Obligation:

a. This Guaranty is a primary obligation of the Guarantor. The Guarantor's obligations under this Guaranty shall be joint and several. The Guarantor's obligation shall not be affected by the illegality, invalidity, irregularity or unenforceability of all or any part of the Obligations or of any security for the Obligations, or by the violation of any applicable usury laws, forgery, or any other circumstances which make the Obligations unenforceable against the Applicant which actions are the responsibility of the Applicant.

b. The fact that the financial condition of the Applicant or any other obligor or guarantor may not have been correctly estimated or may change at any time shall have no effect on the rights of the City under this Guaranty. The City shall have no duty to disclose to the Guarantor any facts it may now or in the future have concerning the Applicant's financial condition.

c. The Guarantor shall remain obligated under this Guaranty even if the Applicant, or any other person who is obligated to pay the Obligations, has the Obligations discharged in bankruptcy or in any other manner. In the event of a discharge, the Guarantor's obligation shall include attorney's fees and any other amounts which the Applicant is discharged from paying.

d. If claim is ever made against the City for repayment or recovery of any amount or amounts received by the City in payment or on account of any of the Obligations and the City repays all or part of the amount claimed by reason of (1) any judgment, decree or order of any court (including a bankruptcy court) or administrative body having jurisdiction over the City or (2) any settlement or compromise of any claim effected by the City with any claimant (including the Applicant), then the Guarantor agrees that the judgment, decree, order, settlement or compromise shall be binding upon the Guarantors even though this Guaranty may have been revoked or released or the Obligations were canceled or released. In that event, the Guarantor shall remain liable to the City for the amount repaid by the City as if that amount had never been

received by the City, along with any costs, interest, attorneys' fees and all other expenses incurred by the City in connection with the repayment.

5. Miscellaneous:

a. This Guaranty shall continue until the Obligations are paid in full or unless released by the City. All Obligations shall be conclusively presumed to have been made all or in part in reliance on this Guaranty.

b. The Guarantor waives notice of acceptance of this Guaranty and notice of the Obligations, and waives presentment, demand of payment, protest, notice of dishonor or nonpayment, notice of default, or notice of right to cure any default with respect to any of the Obligations, or notice of any suit or other action by the City against any party liable for the Obligations.

c. Unless and until the Obligations are satisfied in full, the Guarantor waives all present and future claims, rights, and remedies against the Applicant or any other party obligated for the Obligations. This waiver includes, but is not limited to, the rights of contribution, reimbursement, indemnification, subrogation, exoneration, and any right to participate in any claim or remedy that the City may have.

d. No delay or failure on the part of the City to exercise its rights under this Guaranty shall be considered as a waiver of the City's rights under this Guaranty. No waiver, modification or amendment of this Guaranty by the City shall be effective unless in writing, and then shall only apply to the specific instance involved.

e. Any acknowledgment or new promise, whether or not a payment of any Obligation has occurred, by the Applicant or anyone else (including the Guarantor) shall toll any statute of limitations that may otherwise be running with respect to the Guarantor.

f. This Guaranty shall be construed according to the laws of Nebraska.

g. This Guaranty shall be binding upon the successors and assigns of the Guarantor.

Dated: April 19, 2018.

Walther Farms LLC

By: 
Title: President

Return to:
Rick L. Ediger
Simmons Olsen Law Firm, P.C.
1502 Second Avenue
Scottsbluff, NE 69361

DEED OF RECONVEYANCE

On June 30, 2017, Walther Investment, LLC, as Trustor, gave a “Deed of Trust” to Rick L. Ediger, Attorney at Law, as Trustee, for the benefit of the City of Scottsbluff, Nebraska, as Beneficiary. The Deed of Trust was recorded in the office of the County Clerk of Morrill County, Nebraska, as Instrument No. 2017-00457. The Beneficiary has requested that the Deed of Trust be reconveyed. As per this request, the Trustee reconveys to the Trustor all of the Trustee’s right, title, interest in the real estate described on the attached Exhibit A (the “Real Estate”).

Dated: May __, 2018

Rick L. Ediger, Trustee

State of Nebraska, County of Scotts Bluff: ss.

This Deed of Reconveyance was acknowledged before me on May ____, 2018, by Rick L. Ediger, Attorney at Law, as Trustee.

Notary Public

REQUEST FOR RECONVEYANCE

The Beneficiary requests the Trustee to reconvey the Real Estate as provided for above.

City of Scottsbluff, Beneficiary

By: _____
Randy Meininger, Mayor

Attest:

City Clerk

State of Nebraska, County of Scotts Bluff: ss.

This Request for Reconveyance was acknowledged before me on May ____, 2018, by Randy Meininger, Mayor of the City of Scottsbluff, Nebraska, as Beneficiary.

Notary Public

EXHIBIT A

A PARCEL OF LAND KNOWN AS THE WALTHER FARMS PARCEL CONTAINING 1,824,313 SQ. FT. (41.880 ACRES), MORE OR LESS, IN THE SOUTH EAST QUARTER OF SECTION 11 AND THE NORTH EAST QUARTER OF SECTION 14, ALL IN TOWNSHIP 18 NORTH, RANGE 47 WEST, OF THE 6TH PRINCIPAL MERIDIAN, IN MORRILL COUNTY, NEBRASKA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER OF SECTION 11, TOWNSHIP 18 NORTH, RANGE 47 WEST, OF THE 6TH PRINCIPAL MERIDIAN, WHENCE SOUTHEAST CORNER OF SAID SECTION 11 BEARS SOUTH 87°58'37" EAST, A DISTANCE OF 2640.82 FEET, THENCE SOUTH 87°58'37" EAST, A DISTANCE OF 419.38 FEET, TO A POINT ON THE EXISTING EAST RIGHT OF WAY LINE OF STATE HIGHWAY 26 AND STATE HIGHWAY 92, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE DEPARTING SAID EXISTING EAST RIGHT OF WAY LINE ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 11, SOUTH 87°58'37" EAST, A DISTANCE OF 509.94 FEET;

THENCE NORTH 38°27'47" EAST, A DISTANCE OF 1,017.02 FEET;

THENCE SOUTH 50°54'17" EAST, A DISTANCE OF 1,320.00 FEET TO A POINT THAT BEARS NORTH 65°29'03" WEST, A DISTANCE OF 58.67 FEET, FROM THE SOUTHEAST CORNER OF SAID SECTION 11;

THENCE SOUTH 36°33'10" WEST, A DISTANCE OF 1,292.58 FEET TO A POINT ON THE EXISTING EAST RIGHT OF WAY LINE OF STATE HIGHWAY 26 AND STATE HIGHWAY 92;

THENCE ALONG SAID EXISTING EAST RIGHT OF WAY LINE OF STATE HIGHWAY 26 AND STATE HIGHWAY 92, NORTH 53°26'50" WEST, A DISTANCE OF 646.83 FEET;

THENCE CONTINUING ALONG SAID EXISTING EAST RIGHT OF WAY LINE, NORTH 50°54'17" WEST, A DISTANCE OF 731.15 FEET;

THENCE CONTINUING ALONG SAID EXISTING EAST RIGHT OF WAY LINE, NORTH 51°32'13" WEST, A DISTANCE OF 395.67 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 11 AND MORE OR LESS, TO THE POINT OF BEGINNING.