

To: The Buncombe County Board of Commissioners

From: J. Brandon Freeman, Buncombe County Staff Attorney *BF*

Date: May 28, 2020

Re: *Adding the "Resolution Authorizing the Execution of Subordination Agreements and other Acts Related to the East Haven Project" to the June 2, 2020, Meeting as an Item that Requires Immediate Action and is not on the Agenda*

MEMORANDUM

In short, there is an upcoming real estate transaction involving the East Haven affordable housing project for which the County contractually obligated to execute a Subordination Agreement. This item was not properly placed on the June 2, 2020, agenda as intended. If the matter is not taken up at this meeting, it could further delay the upcoming real estate transaction. This will not require any expenditure of County Funds. County Legal respectfully recommends and requests that this Board add the matter as an item that requires immediate action and is not on the agenda pursuant to Sec. IV(C) of its Policies and Procedures, which requires a unanimous vote (that is, a vote by all members present at the meeting that the item be added to the agenda). A longer explanation follows:

On February 5, 2019, this Board, via a motion and vote, accepted a proposal by Mountain Housing Opportunities, Inc. ("MHO"), for a project that would support the development of affordable housing within the County known as the "East Haven Project" and executed a contract regarding the same on May 29, 2019 (the "Agreement").

Under the Agreement, MHO agreed that the County lien priority on the Property shall never be lower than fourth position. The County has been requested to consent to its priority being lowered to third position, which is consistent with the terms of the agreement and the Board is likely contractually obligated to honor the request. Such consent requires the Board or its designee to execute a “Subordination Agreement.” No specific designation was given to County staff regarding the execution of such documents concerning the East Haven Project in the Boards’ February 5, 2019, vote.

County Legal proposes that the Board consider adopting a resolution that would authorize County staff to execute this subordination agreement, as requested, and that would further authorize County staff to take all actions necessary to carry out the mandates of the Boards February 5, 2019, vote and the terms of the May 29, 2019, Agreement. A draft resolution is attached to this Memorandum.

RESOLUTION # _____

RESOLUTION AUTHORIZING THE EXECUTION OF SUBORDINATION
AGREEMENTS AND OTHER ACTS RELATED TO THE COMMUNITY
DEVELOPMENT LOAN FOR THE EAST HAVEN PROJECT

WHEREAS, on February 5, 2019, the Buncombe County Board of Commissioners accepted a proposal by Mountain Housing Opportunities, Inc., a North Carolina non-profit corporation organized under the laws of the State of North Carolina (hereinafter referred to as "MHO"), for an interest free loan totaling \$2,200,000 for a project that would support the development of affordable housing within the County known as the "East Haven Project" (hereinafter referred to as the "Project"); and

WHEREAS, on May 29, 2019, Buncombe County and MHO entered into a community development loan agreement secured by a deed of trust recorded on May 31, 2019 in Book 5775, Page 1038, in the Office of the Register of Deeds of Buncombe County, North Carolina (hereinafter referred to as the "Agreement") with East Haven Apartments, LLC, a North Carolina limited liability corporation organized under the laws of the State of North Carolina (hereinafter referred to as "East Haven") for the construction of 95 rental housing units affordable to low and moderate income persons at the East Haven Project site located at located at 2244 US 70, Swannanoa, NC called "East Haven Apartments" (hereinafter referred to as the Property); and

WHEREAS, According the Agreement, the County lien priority on the Property shall never be lower than fourth position; and

WHEREAS, East Haven and MHO have requested that the County consent to the filing of a deed of trust that would move the County to third position lien priority by executing the subordination agreement attached hereto as Exhibit A (hereinafter the "Subordination Agreement"); and

WHEREAS, this request is consistent with the terms of the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. That it hereby authorizes the execution of the Subordination Agreement and any future subordination agreements that are consistent with the terms of the Agreement.
2. That the Chair, the Vice-Chair, the County Manager, or the County Manager's Designee, or any one of them, are hereby authorized to execute such documents

as may be required to effect the purposes and intents of this Resolution, the Subordination Agreement, the Agreement, and/or this Boards February 5, 2019, approval of the East Haven Project.

- 3. That, by and with the consent of the County Legal Department, County staff is hereby authorized to proceed with this undertaking and all acts and doings of officers, employees and agents of the County, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in the furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.
- 4. That this resolution shall become effective upon its adoption.

This the 2nd day of June, 2020.

ATTEST

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE

Lamar Joyner, Clerk

By: _____
Brownie Newman, Chair

APPROVED AS TO FORM

County Attorney