

MEMORANDUM

To: Mayor, City Council, City Administrator, Comptroller, and City Clerk
From: City Attorney Daniel S. Draper
Date: February 7, 2024
Subject: Letter of Intent to Purchase a Portion of Hillmoor

The City Administrator, Comptroller, and I had a conference call with Ehlers, our financial advisors, and Quarles & Brady, our bond counsel, regarding the potential sale of a portion of the Hillmoor. Because bonds were issued by the City to finance the purchase of the Hillmoor property and those bonds are tax-exempt, there are certain rules we must obey regarding the use of the sales proceeds for the property to preserve the tax-exempt status of the bonds. If we violate these rules, the bonds could lose their tax-exempt status and the City could be subject to significant damages and penalties. What follows is a very simplified version of what the City will be required to do with the sales proceeds if the City decides to move forward and sell a portion of the Hillmoor property to the YMCA. We will need to work closely with Ehlers and Quarles and Brady to ensure that the bonds used to finance the purchase of the Hillmoor property maintain their tax-exempt status.

One caveat to the foregoing is that 5% or less of the Hillmoor property can be sold by the City without affecting the tax-exempt status of the bonds. The proceeds from the sale of 5% or less of the property is referred to as "bad money." The City purchased approximately 190 acres from White River Holdings, LLC using tax-exempt bonds. This means that up to 9.5 acres of the Hillmoor property could be sold with no effect on the tax-exempt status of the bonds.

If the city were to sell more than 5% of the property to the YMCA, then there are three separate ways, the City can manage the proceeds from the sale to preserve the tax-exempt status of the bonds.

The first option is to deposit the proceeds of the sale into an escrow account with Ehlers within 90 days after the sale. The City can use the sales proceeds to pay down the outstanding balance of the debt. However, the reduction of the outstanding debt cannot be done until 2030 because of a prepayment restriction contained in the bonds. Until it is time to prepay the bonds, the proceeds in escrow could be used by the City to purchase other investments, provided the interest yields on those investments do not exceed the interest rate on the bonds used to purchase the property. This is to avoid the arbitrage rules of tax-exempt bonds. As in the second option below, the portion of property sold must be at fair market value.

The second option available to the City is to use the sales proceeds within 2 years of the sale for other governmental purposes such as capital improvements or equipment. Under this option, as in the first option, the property must be sold for a fair market value.

The third option is a little more involved and would require a portion of the bonds to be converted to 501(c)(3) bonds. This together with all the other options outlined above will require close coordination with Ehlers and Quarles and Brady.

Whatever choice the City Council decides to pursue, staff, together with Ehlers and Quarles and Brady, will ensure that the tax-exempt status of the bonds is maintained.

If you have any questions, please do not hesitate to contact me.