

Bear Creek Township

ORDINANCE NO. 20-05

TAX EXEMPTION ORDINANCE

ADOPTED: February 16, 2005

EFFECTIVE: March 2, 2005

An Ordinance to provide for a service charge in lieu-of taxes for a proposed multiple family dwelling project for persons of low income to be financed or assisted pursuant to the provisions of the State Housing Development Authority Act of 1966, as amended.

THE TOWNSHIP OF BEAR CREEK ORDAINS:

SECTION 1. This Ordinance shall be known and cited as the "Bear Creek Township Tax Exemption Ordinance for Maple Village II"

SECTION 2. Preamble.

It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its citizens of low income and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the State Housing Development Authority Act of 1966 (1966 PA 346, as amended, MCL 125.1401, *et seq*, MSA 116.114(1), *et seq*). The Township is authorized by this Act to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for persons of low income is a public necessity, and as the Township will be benefitted and improved by such housing, the encouragement of the same by providing certain real estate tax exemption for such housing is a valid public purpose; further, that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance on such tax exemption.

The Township acknowledges that MV II Limited Dividend Housing Association Limited Partnership (the "Sponsor") has offered, subject to receipt of a Mortgage Loan from the Michigan State Housing Development Authority, to erect, own and operate a housing development identified as Maple Village II on certain property legally described on Exhibit A in the Township to serve persons of low income, and that the Sponsor has offered to pay the Township on account of this housing development an annual service charge for public services in lieu of all taxes.

SECTION 3. Definitions.

- A. Authority means the Michigan State Housing Development Authority.
- B. Act means the State Housing Development Authority Act, being Public Act 346 of 1966 of the State of Michigan, as amended.
- C. Annual Shelter Rent means the total collections during an agreed annual period from all occupants of a housing development representing rent or occupancy charges, exclusive of charges for gas, electricity, water and sanitary sewer service, or other utilities furnished to the occupants.
- D. Contract Rents are as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to the U.S. Housing Act of 1937, as amended.
- E. Housing Development means a development which contains a significant element of housing for persons of low income and such elements of other housing, commercial, recreational, industrial, communal, and educational facilities as the Authority determines improve the quality of the development as it relates to housing for persons of low income.
- F. LIHTC Program means the Low Income Housing Tax Credit Program administered by the Authority under Section 42 of the Internal Revenue Code of 1986, as amended.
- G. Mortgage Loan means a loan to be made by the Authority to the Sponsor for the construction and/or permanent financing of the Housing Development.
- H. Utilities mean fuel, water, sanitary sewer service and/or electrical service which are paid by the Housing Development.
 - 1. Sponsor means person(s) or entities which have applied to the Authority for a Mortgage Loan to finance a Housing Development.

SECTION 4. Class of Housing Developments.

It is determined that the class of Housing Developments to which the tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be low and moderate income housing developments which are financed or assisted pursuant to the Act. It is further determined that Maple Village II is of this class.

SECTION 5. Establishment of Annual Service Charge.

The Housing Development identified as Maple Village II and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction. The Township, acknowledging that the Sponsor and the Authority have established the economic feasibility of the Housing Development in reliance upon the enactment and continuing effect of this Ordinance and the qualification of the Housing Development for exemption from all

property taxes and a payment in lieu of taxes as established in this Ordinance, and in consideration of the Sponsor's offer, subject to receipt of a Mortgage Loan from the Authority, to construct, own and operate the Housing Development, agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to 5 % of the Annual Shelter Rents actually collected less Utilities paid by the Sponsor for the first calendar year following issuance of the final Certificate of Occupancy for the Housing Development through the 15th year. In the 16th year through year 35, the annual service charge shall be equal to 10% of the Annual Shelter Rents actually collected less utilities paid by the Sponsor.

Notwithstanding the foregoing, the following additional amounts shall be paid to the Township on an annual basis and not cumulatively, and only from and to the extent of available funds that are approved by the Authority for distribution for the prior year to the Sponsor, without a future claim for any amount not available for distribution in such year. The funds available for distribution will be determined annually by audit conducted according to the Authority's Certified Audit Guidelines. Each year following the 18th year after issuance of the final Certificate of Occupancy for the Housing Development an amount in addition to the annual service charge shall also be paid. That amount shall be a sum equal to the difference between the annual service charge to be paid in lieu of taxes in accordance with this Ordinance and the amount that would otherwise be due as ad valorem taxes on Maple Village II. If the full amount of the difference is not available, any lesser amount available for distribution shall be paid to the Township.

SECTION 6. Limitation on the Payment of Annual Service Charge.

Notwithstanding Section 5, the service charge to be paid each year in lieu of taxes for the part of the Housing Development which is tax exempt and which is occupied by other than low income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the Housing Development if the Housing Development were not tax exempt.

The term "low income persons or families" as used herein shall be the same meaning as found in Section 15 (a)(7) of the Act.

SECTION 7. Contractual Effect of Ordinance.

Notwithstanding the provision of section 15 (l)(5) of the Act to the contrary, a contract between the Township and the Sponsor with the Authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance.

SECTION 8. Payment of Service Charge.

The annual service charge in lieu of taxes as determined under the Ordinance shall be payable in the same manner as general property taxes are payable to the Township except that the annual payment shall be paid on or before the first day of May on each year, in the year following the year for which payment is due. A copy of the annual audit shall be submitted with the annual payment. Payment of the annual service charge after first day of May shall result in a penalty of 4% added to the amount owed plus 1 % per month after the first day of June.

SECTION 9. Duration.

This Ordinance shall remain in effect for 35 years following issuance of final Certificate of Occupancy. Provided, however, that if construction does not commence within two years from the effective date of this Ordinance, or if the Mortgage Loan is at any time satisfied and the Authority does not have any interest in the property, this Ordinance shall be void and of no further force and effect.

SECTION 10. Severability.

The various sections and provisions of this Ordinance shall be deemed to be severable, and should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of the Ordinance as a whole or any section or provision of this Ordinance other than the section or provision so declared to be unconstitutional or invalid.

SECTION 11. Effective Date.

This Ordinance shall become effective on the first day after its publication. All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

TOWNSHIP CLERK