CA087147

SHELBY COUNTY BOARD OF COMMISSIONERS
AGENDA ROUTE SHEET

Referred to Commission Committee: Economic Development

For Commission Action on: September 8, 2008

DESCRIPTION OF ITEM:

RESOLUTION TO APPROVE AN AGREEMENT TO RECOUP THE COST OF PROVIDING IMPROVEMENTS, FACILITIES AND SERVICE TO BEARMAN GOLDEN GARDENS, INC, a Tennessee not-for-profit corporation, **AS REQUIRED BY APPLICABLE TAX EXEMPTION STATUTE, Tenn. Code Ann.** 67-5-207, et seq.
SPONSORED BY COMMISSIONER DEIDRE MALONE

CHECK ALL THAT APPLY BELOW:

___X___ This Action does NOT require expenditure of funds.

_____This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: $_____ ; County CIP Funds- $_____

State Grant Funds: $_____; State Gas Tax Funds: $_____

Federal Grant Funds: $_____

Other funds (Specify source and amount): $_____

Other pass-thru funds (Specify source and amount): $ _____

Originating Department: County Attorney

APPROVAL:

Dept. Head: _______________
(Type your name & phone #.) (Initials) (Date)

Elected Official: _______________
(Type your name & phone #.) (Initials) (Date)

Division Director: _______________
(Type your name & phone #.) (Initials) (Date)

CIP – A&F Director: _______________
(Type your name & phone #.) (Initials) (Date)

Finance Dept. Mike Swift 545-7249 \ MAL \ 8/28/08
(Type your name & phone #.) (Initials) (Date)

County Attorney: Thomas Williams 4749 \ JEW \ 8-27-08
(Type your name & phone #.) (Initials) (Date)

CAO/Mayor: **James F. Huntzicker 545-4514** \ JFH \ 8/28/08
(Type your name & phone #.) (Initials) (Date)

SUMMARY SHEET

I. Description of Item

RESOLUTION TO APPROVE AN AGREEMENT TO RECOUP THE COST OF PROVIDING IMPROVEMENTS, FACILITIES AND SERVICE TO BEARMAN GOLDEN GARDENS, INC, a Tennessee not-for-profit corporation, **AS REQUIRED BY APPLICABLE TAX EXEMPTION STATUTE, Tenn. Code Ann.** 67-5-207, et seq.

SPONSORED BY COMMISSIONER DEIDRE MALONE

II. Source and Amount of Funding

Recoupment of costs Agreement will reimburse Shelby County for cost of providing improvements, facilities and services to the Housing development concurrent with State Board of Equalization approval of tax exempt status in consideration of the not for profit applicant providing permanent housing to low income elderly and handicap residents.

III. Contract Items

A. This Recoupment of Costs Agreement is in lieu of Taxes pursuant to statutory authority to develop provide housing under federal HUD Programs and Federal Housing Grants. Statute requires that the exempt entity make agreements with both any city or county that project is situated in; here applies to City of Memphis, applicant and Shelby County.

B. The tax exemption must be approved by the State Board of Equalization, and the amount of the agreement to be recouped must be determined per statutory guidelines and authority. Costs can be more than actual cost of providing improvements, facilities, and services to the housing project.

IV. Additional Information Relevant to approval of this item

The City of Memphis delegated its authority to enter into these agreements to the City's HEHFB by Item 57, Resolution on December 4, 2007. The City further "authorized the methodology to be used by the Corporation to determine the amount for provision of essential public service, which pursuant to the Act is to be used to establish the valuation assessment," including 25% of the amount of the ad valorem taxes that would have been due.

Shelby County's has split $5 per unit between city/county since at least 1991 per the confirmation of policy sent to Marty Regan by County Atty's. Office on July 1991. The 25% calculation is used by Davidson County for these projects, and would be a new calculation for Shelby County. The difference increases the County share of costs from $3,000 to $20,300.

ITEM #_____ PREPARED BY: THOMAS WILLIAMS

COMMISSIONER_____ APPROVED BY: THOMAS WILLIAMS

RESOLUTION TO APPROVE AN AGREEMENT TO RECOUP THE COST OF PROVIDING IMPROVEMENTS, FACILITIES AND SERVICE TO BEARMAN GOLDEN GARDENS, INC, a Tennessee not-for-profit corporation, **AS REQUIRED BY APPLICABLE TAX EXEMPTION STATUTE, Tenn. Code Ann.** 67-5-207, et seq.

SPONSORED BY COMMISSIONER DEIDRE MALONE

WHEREAS, T.C.A. Section 67-5-207 states that property of Tennessee not-for-profit corporations built under Section 202 of the National Housing Act of 1959 and used for housing for low income elderly or handicapped persons may be exempted from real property taxes, as long as such property complies with the provisions of said Section; and

WHEREAS, T.C.A. Section 67-5-207 (a) (2) provides for recoupment of providing essential services agreement payments in lieu of real property taxes to be made by property granted an exemption under this Section by the State of Tennessee Board of Equalization, in amounts not to exceed the estimated costs incurred by municipalities or counties to provide improvements, facilities and/or services to the exempt property; and

WHEREAS, Bearman Golden Gardens, Inc., a qualifying Tennessee not-for-profit corporation ("BGG") owning real property located at 4755 Neely Road, Memphis, Shelby County, Tennessee (the "Property") has applied to the State Board of Equalization for an exemption from real property taxes for the Property and said exemption is conditionally granted providing certain conditions, including the filing of an agreement for payment in lieu of real property taxes to the City and the County, are met; and

WHEREAS, BGG desires to enter into this Agreement with the City and County for payments in lieu of real property taxes to be made by BGG to the County, in accordance with T.C.A. 67-5-207; and

WHEREAS, the City and County desire to enter this Agreement with BGG for payments in lieu of real property taxes to be made by BGG to the County, in accordance with T.C.A. 67-5-207; and

WHEREAS, resolution of the Council of the City of Memphis, Tennessee, its authority, pursuant to T.C.A. Section 67-5-207, et seq. has been delegated to The Health, Educational and Housing Facility Board of the City of Memphis (the "City") that will execute the Agreement for Payment in Lieu of Taxes for BGG on behalf of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF SHELBY, TENNESSEE, that:

1. The Agreement for Recoupment of Costs Agreement designated by the State Board as a "Payment in Lieu of Taxes" for Bearman Golden Gardens is hereby approved.

2. Beginning with the effective date of the real property exemption for the Property granted by the State Board of Equalization, BGG shall-pay to the City and County taxing authorities for each calendar year (and pro rata for any part of a calendar year for which the tax exemption is in effect) an amount equaling the estimated costs incurred by the City and County to provide improvements, facilities and/or services to the Property, equal to twenty-five (25%) percent of the assessed value on the property as of the effective date of this agreement) in payments in lieu of real property tax.

3. Within thirty (30) days of the granting of the tax exemption, BGG shall pay to the City and County all outstanding real property taxes on the Property for periods prior to the date of the exemption, if any.

4. Of the total annual payments in lieu of tax provided for in Paragraph 2, one-half shall be paid to the City, and one-half shall be paid to the County.

5. Subject to Paragraph 6 below, the payments in lieu of tax required by this agreement are to be made on or before August 31st of each year for the City of Memphis and February 28th[t] of each year for the County. Any payments in lieu of tax not made when due shall thereafter bear interest at the highest rate allowable under applicable law.

6. The payment in lieu of tax provided for herein shall continue to be due and payable in the amounts specified herein until the date on which the Property is no longer eligible for real property tax exemption under T.C.A. Section 67-5-207.

7. The parties to this Agreement acknowledge that the costs to the City and the County to provide improvements, facilities and/or services to the Property may become greater than the amount of the payments in lieu of tax to be made pursuant to this Agreement, and that such costs may increase substantially during the time the Property is entitled to exemption from real property taxes. In consideration of the agreement by the City and County to accept payments in lieu of real property tax in amounts less than such costs, and in order to lessen the burden on the City and the County of providing improvements, facilities and/or services to BGG, BGG agrees that every three (3) years from the date of this agreement it will cooperate fully with the City and/or County to re-negotiate the terms of this agreement.

8. The parties agree that the payments in lieu of real property tax provided for herein are entirely separate from, and in addition to, any payments that may be required for garbage fees, sewer fees or other similar fees that may be imposed on all residents of the City or County in the future.

9. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

_____
A C Wharton, Jr., Shelby County Mayor

Date:_____

ATTEST:

_____
Clerk of County Commission

ADOPTED:_____