



DATE: 9/23/2022
TO: Maria Gladyszewski, Deputy Mayor; Committee of the Whole
FROM: Robert Palmer, Municipal Attorney; Robert Barr, Deputy Manager
SUBJECT: Ordinance 2022-06(b)(P): \$700k to Gastineau Lodge Apartments

This ordinance concerns a potential \$700,000 loan for development of a 70+ unit multi-family residential building along Gastineau Avenue. The ordinance was introduced on September 12, 2022.

Unfortunately, we just realized the abbreviation “LLC” was inadvertently added to the title and throughout the text of the ordinance when referring to Gastineau Lodge Apartments. The “LLC” abbreviation changes the substance of the ordinance and conflicts with provisions of the ordinance. If the Assembly wants to consider the \$700,000 loan, then the ordinance likely needs to be reintroduced, and the Committee of the Whole needs to decide whether the developers need to bear risk for the loan beyond the value of the property.

First, unlike a partnership in which the partners are personally liable, members of a limited liability corporation (LLC) are generally not personally liable. In other words, the inadvertent addition of LLC to the title of this ordinance and to the substance of this ordinance shifts nearly all of the risk away from the two developers and onto the CBJ. Given the circumstances of this loan arrangement, we recommend the Assembly be aware of the increased risk of lending to an LLC versus a partnership, and, if the Assembly determines that risk acceptable, direct staff to reintroduce.

Second, the inadvertent addition of “LLC” into the title and substance conflicts with various provisions of the ordinance that were drafted for a partnership form of development entity. The following provisions are now inconsistent due to the addition of “LLC”: page 1 lines 15-17 and page 2 lines 23-24. Once the Committee of the Whole decides the first issue, the Municipal Attorney will correct the ordinance, which will likely require reintroduction.

In addition to the LLC issue, there is a question from the developer about potential changes to post-permitting loan, or 2nd tranche of loan funding, which would allow this tranche to be spent on engineering and design services in addition to site improvements. We do not recommend changes and believe the 2nd tranche should be expended solely on site improvements, at a 50% rate, that increase the value of the site due to financial exposure risk.

Recommendation:

Decide if the increased risk of lending to an LLC versus a partnership is desired.

Discuss and determine whether any changes to the substance of the loan terms are desired.

