



**GARDINER CITY COUNCIL
AGENDA ITEM INFORMATION SHEET**



Meeting Date	03/20/2024	Department	Planning/Economic Dev
Agenda Item	4n. MOU with Mastway Development Regarding Affordable Housing Development		
Est. Cost			

Background Information

Mastway Development LLC would like to enter into a memorandum of agreement with the City of Gardiner regarding the potential development of the planning board approved 32-unit Iron Heights Apartments affordable housing project.

See the included memo from economic development director Lindley for further details.

Critical Deadline: This meeting

Requested Action	"I move to direct the City Manager to sign MOA with Mastway Holdings regarding a future CEA on the property at 1 Summer Street."
City Manager and/or Finance Review	
Council Vote/ Action Taken	
Departmental Follow-Up	

City Clerk Use Only	1 st Reading _____	Advertised _____	<div style="border: 1px dashed black; padding: 5px; display: inline-block;"> EFFECTIVE DATE _____ </div>
	2 nd Reading _____	Advertised _____ w/in 15 Days	
	Final to Dept _____	Updated Book _____	Online _____

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) dated _____, 2024 is executed by MASTWAY DEVELOPMENT, LLC a Maine limited liability company (the “Developer”) and the CITY OF GARDINER, MAINE (the “City”) (each a “Party” and, collectively, the “Parties”).

RECITALS

WHEREAS, the City and the Developer have entered into a Purchase Option of Real Estate for the sale of City owned property located on 1 Summer Street and 2 Highland Avenue, more specifically described as Tax Map 37, Lots 19 & 19A, and the Developer has also separately entered into a purchase option agreement with a third party for property located at 12 Highland Avenue, more specifically described as Tax Map _37_, Lot _20_ (collectively “the Property”); and

WHEREAS, the Purchase Option contains a condition of purchase noting that the City agrees to work with the Developer to structure and grant a Credit Enhancement Agreement to support the development of a 32-unit multifamily affordable housing apartment building (the “Project”) on the Property; and

WHEREAS, the Developer has received Planning Board approval on _2/13/24_ to develop the Project on the Property; and

WHEREAS, the Developer intends to complete the Project _before 1/1/27_; and

WHEREAS, the Developer submitted a Tax Increment Financing Application to the City requesting a credit enhancement agreement “CEA” to support the Project; and

WHEREAS, the Developer and the City desire to enter into certain agreements for development of the Property and in connection with the City’s anticipated approval of a CEA as part of an anticipated Affordable Housing and Tax Increment Financing District and Development Program; and

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein and other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I
COMMITMENTS

1. **Mastway Development LLC's Project Commitments:**

The Developer, its successor and assigns, hereby agree to provide the following in connection with development of the Project in consideration for the anticipated approval of an Affordable Housing Tax Increment Financing District and Development Program and an associated Credit Enhancement Agreement by the Gardiner City Council:

- a) The Developer, its successors and assigns, shall submit an application for the Low Income Housing Tax Credit (LIHTC) to MaineHousing no later than August 30, 2024; and
- b) Assuming that the Developer receives approvals and funding commitments for this project from MaineHousing and their associated tax credit investors prior to 12/31/24, the Developer, its successors and assigns, commits to commence in the calendar year 2025 and complete by 1/1/27 barring any unforeseen delays, strikes, product or contractor availability issues, pandemics or Acts of God beyond the Developer's control, the Project as provided by Exhibit (A).

2. **City Commitments:**

Upon establishing that the property to be developed is within a TIF District properly approved by the Gardiner City Council and MaineHousing, the City hereby agrees to the following commitments to or for the benefit of the Developer, its successors or assigns:

- a) The establishment of a 30-year Credit Enhancement Agreement with 50% reimbursement to the Developer throughout the term of the CEA.
- b) Failure to Complete Development: In the event that the Developer shall fail to meet any of the obligations as part of this MOU, it is agreed that the terms of the Credit Enhancement Agreement shall terminate as of the date of a missed obligation by the Developer.

ARTICLE II
LIMIT OF LIABILITY

Notwithstanding any other provision of this MOU, in no event shall the Parties or any of their affiliates, by reason of any of their respective acts or omissions relating to this MOU be liable whether in contract, tort, misrepresentation, warranty, negligence, strict liability, or otherwise for any special, indirect, or consequential damages arising out of or in connection with this MOU, or the performance, non-performance or breach thereof.

ARTICLE III
MISCELLANEOUS

1. Representations and Warranties:

Each Party represents and warrants to the other that:

- (a) It is duly qualified to do business and is in good standing in the State of Maine; and
- (b) It has full power and authority to execute, deliver and perform its obligations under this MOU; and
- (c) The execution, delivery and performance of this MOU has been duly and validly authorized by all necessary action by such Party; and
- (d) The execution and delivery of this MOU by such Party and the performance of the terms, covenants and conditions contained herein will not violate the organizational documents of such Party, or any order of a court or arbitrator, and will not conflict with and will not constitute a material breach of, or default under, the provisions of any material contract by which either Party is bound.
- (e) The City is a municipal entity duly organized under the laws of the State of Maine, and all fiscal provincial and municipal affairs are within the sole discretion of the Mayor and City Council, notwithstanding any other provision in this agreement.

2. Relationship of Parties:

- (a) This MOU is not intended to supersede the authority granted by law to any regulatory board or agency of the City. Therefore, nothing in this MOU shall be construed or implied to require the City's planning, zoning or other regulatory boards or agencies (however designated) to approve the plans for any aspect of the actions required under this Agreement.
- (b) The Parties acknowledge that the obligations set further herein may be further described in other agreements and or deeds as agreed to by the Parties. The City and Mastway Development, LLC, its successors and assigns, agree to cooperate in good faith with regard to each and every aspect required for the completion of all obligations contemplated by this Agreement.
- (c) This MOU shall not be interpreted or construed to independently create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other Party.

3. No Contract.

Notwithstanding the above provisions, the failure to approve and designate an Affordable Housing TIF District by the City Council and any failure to obtain MaineHousing approval of the AHTIF District shall not constitute a breach of this Agreement. This document constitutes only a non-binding MOU setting out the terms for a potential CEA, but neither party is obligated to enter any further agreement whatsoever by virtue of the preparation, execution, or delivery of this MOU. In the event an AHTIF District is not approved, this MOU shall be terminated.

4. Integration:

This MOU, along with any exhibits, appendices, addenda, schedules, and amendments hereto, encompasses the entire agreement of the Parties, and supersedes all previous understandings and agreements between the Parties, whether oral or written regarding the matters addressed in this MOU. The Parties hereby acknowledge and represent, by affixing their hands and seals hereto, that the Parties have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this MOU, made by or on behalf of any other Party or any other person or entity whatsoever, prior to the execution of this MOU. The Parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a Party's reliance on such representation, assertion, guarantee, warranty, collateral contract or other assurance, provided that nothing herein contained shall be construed as a restriction or limitation of the Party's right to remedies associated with the gross negligence, willful misconduct or fraud of any person or party taking place prior to, or contemporaneously with, the execution of this MOU.

5. No Oral Modifications:

This MOU may not be changed or terminated orally. This MOU and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

6. Notice:

All notices required to be given to City or Mastway Development, LLC under this MOU shall be in writing and deemed given upon the earlier of actual receipt by personal delivery or two (2) days after being mailed by U.S. Express, registered or certified mail, return receipt requested, or a reputable overnight courier as follows:

City: City of Gardiner
c/o Andrew Carlton, (or the then current) City Manager
6 Church Street
Gardiner, ME 04345

With a copy to: Philip Saucier, Esq.
Bernstein Shur
100 Middle Street
PO Box 9729

Portland, ME 04104-5029

MBD: Mastway Development, LLC
c/o Matt Morrill
2 Beech Street
Hallowell, ME 04347

With a copy to: TBD

7. **Severability:**

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid.

[Signature Page Follows; Remainder Intentionally Left Blank]

IN WITNESS WHEREOF, Mastway Development, LLC and the City of Gardiner have set their hands and seals as of the day, month and year first above written.

MASTWAY DEVELOPMENT, LLC

Witness

By: _____
Matt Morrill
Its_President_____

CITY OF GARDINER

Witness

By: _____
Andrew Carlton, City Manager
Duly Authorized by the City Council

Attachment: Exhibit A: Site Plan

March 5, 2024

City Council Members:

In February 2024 Matt Morrill of Mastway Development LLC has received planning board approval to develop a 32-unit, multifamily affordable housing project. The development would occupy three lots at 1 Summer Street, 2 Highland Avenue (both owned by the city), and 12 Highland Avenue (private ownership). All properties are located within the Downtown TIF district. Mastway is currently under purchase option for both the city properties through January 14, 2025, and also has a purchase option agreement for 12 Highland Avenue.

Mastway Development will be submitting an application to Maine Housing for their Low Income Housing Tax Credit (LIHTC) program for this project. This program is highly competitive and will be judged on various scoring criteria. Two of the main point scoring criteria are: Readiness, where the Developer has received Local and State approvals prior to submitting the Maine Housing application and also Municipality participation in funding, such as a Credit Enhancement Agreement.

Mastway Development has submitted a Tax Increment Financing Application for this development to the City of Gardiner requesting a 60% credit enhancement agreement (CEA) for 30 years.

If the developer receives approvals and funding commitment for this project from Maine Housing, this affordable housing project will necessitate removing the three properties from the Downtown TIF and placing them into a new Affordable Housing TIF. City staff have begun drafting this potential TIF districting change. Credit enhancement agreements can only extend for as long as the life of the TIF, and this would allow for the 30-year agreement they are requesting. The Downtown TIF will expire in 2033.

The CEA, the TIF establishment, and downtown TIF amendments would require public notice and public comment to be voted on at a council meeting, likely all at the same time.

In advance of the TIF procedures, Mastway Development is requesting a documentation of assurance of city's acceptable terms of a potential CEA, if the project were to be approved by Maine Housing. This documentation would need to accompany their LIHTC application, due on March 28th to provide proof of municipal participation in funding to Maine Housing and to aid the developer in planning for the financial viability of the project.

The City has worked with the legal team at Bernstein Shur to develop a memorandum of understanding for the City to enter into with Mastway Development for city council consideration at this point and time.

Mastway has shared their development budget proforma to express how receiving a CEA is critical as to whether the project moves forward or not. Municipal funding participation is a critical point scoring criteria in which the project may or may not get selected to proceed by Maine Housing. Secondly, since this would be an Affordable Rental Housing project, the rent limits are set by Maine

Housing at a level much lower than Market Rents and are mandated to stay affordable for 45 years. The affordable rents will be targeted to a person or family earning up to or below 60% of the Area Mean Income. Construction costs would be the same as a market rate development, thus the financing costs and debt service are still the same whether the project is for Market Rents or Affordable Rentals. The developer has indicated that rental income pays for debt service and operating expenses of the project and these affordable rental rates alone will not support those costs. Therefore, the offset in property taxes through a Credit Enhancement Agreement will lower the operating expenses to allow the property to support the annual operating costs, and operate with the affordable rental rates.

Establishing a CEA to ensure the viability and success of this project will have lasting economic development impacts on the City of Gardiner. The two city-owned properties do not currently generate property taxes. This housing development would have many benefits to the City of Gardiner, beyond just the increased tax revenue. The 32 units will bring additional residents to Gardiner in a location close to the commercial center of the downtown. With housing costs at a premium, these units will be at a controlled and affordable rate for qualified tenants. These new residents will patronize Gardiner's businesses and register their vehicles at city hall. The project will support construction workforces as well as create three part time employees for the facility and support grounds and building maintenance staff.

Establishing a CEA with Mastway Development is recommended by the Economic Development department.

Melissa Lindley,
City of Gardiner Economic Development Director