

COUNCIL ACTION FORM

SUBJECT: UPDATE ON OUTSTANDING ECONOMIC DEVELOPMENT LOANS

BACKGROUND:

The City of Ames currently has five outstanding economic development loans. The status of these loans as of the end of March 2009 is provided below.

Company	Loan Principal	First Payment Date	Principal Outstanding	Payments Current	AEDC
Home Style Furniture	\$ 75,000.00	9/1/2000	\$ 5,000.18	No	Yes
BioForce Nanoscience	75,000.00	3/1/2005	33,447.00	No	Yes
Quality Attributes Software	20,000.00	6/1/2007	12,815.75	Yes	Yes
Sauer Danfoss	50,000.00	7/1/2007	33,658.04	Yes	Yes
Phasient Learning Technology	20,000.00	3/1/2008	15,000.05	Yes	No
Total	\$ 240,000.00		\$ 99,921.02		

The loans are current with the exception of Home Style Furniture and BioForce Nanoscience.

Home Style Furniture

The Home Style Furniture loan has been outstanding for some time now and the City has not been successful in reaching a settlement on the outstanding loan. An attached memo from the City Attorney provides background on the loan and provides options for proceeding. City staff is requesting direction from Council on how to proceed to settle this loan.

BioForce Nanoscience

The BioForce Nanoscience loan has become several months delinquent over the current fiscal year. The company is also delinquent on a loan from the Iowa Department of Economic Development. BioForce is a small, publicly traded company based in Ames that has developed diagnostic and research testing equipment for the biomedical field. The company does not yet produce profits and has been dependent on continued equity contributions and loans to fund current operations. With the current financial situation, both equity and debt funding have been difficult to obtain. We have been in contact with the company CFO over the last several months and the plans to pay back outstanding loans with additional equity investor contributions have not been successful since they have been unable to obtain additional equity contributions. The company does not appear to be generating cash flow adequate to pay outstanding loans and continue operations. BioForce has taken action to reduce cash outflow, including laying off several employees. The company has indicated that they are hoping for increased sales to help cash flow and expect that upcoming economic stimulus

funding and additional stem cell research will improve their sales outlook. They have asked to be given until early July 2009 to follow-up on working out options for making the loan current. The options for the City Council to consider include declaring the loan in default and attempting to collect on the outstanding balance and penalties, or providing some additional time for the company to improve cash flow and work out terms to get the loan current. City staff would like direction from the Council on how to proceed.

Quality Attributes Software, Inc.

Quality Attributes Software, Inc. (QAS) is an Ames based software development company engaged in the integration, monitoring, collection and display of building control systems and the energy used by buildings from any number of data points. QAS was recently sold to Visenergy, Inc. Visenergy is a New Jersey based solar electric engineering firm that offers turnkey solar electric systems for residential, commercial, and government clients. Visenergy was looking for a building control software system that would complement their current solar electric business. Visenergy has asked that the City assign the current outstanding loan to QAS to Visenergy. The QAS loan terms included a provision for a personal guarantee for the loan. The CEO of Visenergy has agreed to provide a replacement personal guarantee. Since the loan terms require approval of the City for sale or transfer of the company, Council has the option to declare the loan in default or agree to the sale. Visenergy plans to keep the operations of QAS located in Ames, and if they did choose to move the company, would still be subject to default and penalties related to moving the company out of Ames. The Iowa Department of Economic Development has also provided assistance to QAS and has agreed to the sale.

ALTERNATIVES:

1. For Home Style Furniture, the Council can take one of the alternatives shown in the attached memo:
 - A. Declare the loans in default and if necessary proceed with litigation against Nadler Brothers Company for the outstanding principal plus interest and job penalties totaling \$99,997.90,
 - B. Waive the penalty provisions but proceed to collect, with litigation if necessary, outstanding principal and interest (approximately \$5000) on the Revolving Loan, or
 - C. Waive the penalty provisions and write off any remaining debt on the Revolving Loan.
2. For BioForce Nanoscience, City Council can direct staff to work with the company to attempt to get the loan current within a timeframe directed by Council, or can declare the loan in default.
3. For Quality Attributes Software, Inc., the Council can agree to the sale of the company to Visenergy, or can declare the loan in default.

MANAGER’S RECOMMENDED ACTION:

One of purposes of the economic development program is to expand employment opportunities in the City of Ames. In many cases this includes working with startup or new companies that may take additional time to become profitable. In the case of Home Style Furniture, the company is now out of business and is providing no employment in Ames. BioForce and QAS are both continuing operations and declaring default may not provide additional benefit to the City of Ames.

Therefore, it is the recommendation of the City Manager that the City Council provide direction on any one of the three options provided by the City Attorney to close out the economic development loan with Home Style Furniture. It is also recommended that Council approve the sale of Quality Attributes Software to Visenergy, and that staff be directed to work with BioForce Nanoscience to work out terms to get their outstanding loan current and to report back to Council by August 2009 on the status of this effort.



Memo

Legal Department

TO: Duane Pitcher and Steve Schainker

FROM: Doug Marek, City Attorney

DATE: February 6, 2008

SUBJECT: Home Styling Furniture – Loan Status Report

In 2000, Home Styling Furniture entered into a Revolving Loan Program Loan Agreement with the City and a Community Investment Fund Loan Agreement with the City and the Ames Economic Development Commission, both in the amount of \$50,000. Four principals of Home Styling Furniture -- Doug Perentis, Barry Nadler, Jamie Nadler, and Mike Nadler -- provided personal guaranties of up to \$100,000 plus interest, fees, costs, and expenses for liabilities arising from the Community Investment Fund loan. In return for the financial incentives, Home Styling Furniture agreed to create thirty-five jobs within five years. Both loan agreements imposed penalties of \$1428.57 for each job not created and retained in Ames by the company.

In May of 2002 Barry Nadler notified the City's economic development coordinator that Home Styling Furniture had merged with Nadler Brothers. Nadler Brothers Company assumed all obligations of Home Styling Furniture. Home Styling Furniture, Inc., then filed Notice of Dissolution with the Secretary of State in August of 2002. Nadler Brothers Company continued to make payments on the loans according to schedule through the spring of 2005. Interest and principal on the Revolving Loan were paid in full, and one monthly payment remained on the Community Investment Loan. The City requested verification that the jobs required by the Agreements had been created and retained. The City learned that although 13.5 jobs had been created, the operations in Ames had ceased and furniture manufacturing had been moved to Council Bluffs.

During the summer of 2005 Barry Nadler of Nadler Brothers Company was contacted about the penalty provisions of the two loan agreements. Mr. Nadler provided three explanations: 1) when Nadler Brothers Company assumed the obligations of Home Styling Furniture in 2002 it was intended to apply only to repayment of the loans; 2) the assumption of obligations of Home Styling Furniture by Nadler Brothers was given gratuitously without any consideration and was therefore not an enforceable contract; and 3) the City did not rely on the letter and it was therefore not an equitable contract. The City did not declare the Nadler Brothers Company in default on the loans. Nadler Brothers Company did not request a waiver of the penalty provisions of the loan agreements.

In December, 2005, the matter was brought to Council for direction on how to proceed. Home Styling Furniture owed outstanding principal plus interest and job penalties totaling \$99,997.90. Because Nadler Brothers Company assumed all obligations of Home Styling Furniture, the City could consider Nadler Brothers Company responsible for payment.

The Council directed staff to negotiate an agreement prorating penalties on both of the loans on the basis of 13.5 of 35 required jobs having been created. The result would have been a penalty of approximately \$50,000 plus any outstanding debt of principal and interest. Nadler Brothers Company has not agreed to prorated penalties. Barry Nadler indicated by telephone that Nadler Brothers Company never intended to assume the obligations of Home Styling Furniture for job creation, but even if they had the obligations would have been satisfied by jobs created by other Nadler Company business ventures in Ames. Nadler Brothers has not proposed an alternative resolution to the outstanding loan agreements.

The City has several options available to close out the loan agreements:

1. Declare the loans in default and if necessary proceed with litigation against Nadler Brothers Company for the outstanding principal plus interest and job penalties totaling \$99,997.90.
2. Waive the penalty provisions but proceed to collect, with litigation if necessary, outstanding principal and interest (approximately \$5000) on the Revolving Loan.
3. Waive the penalty provisions and write off any remaining debt on the Revolving Loan.