

Hon. Timothy W Dore
Hearing: October 28, 2016, 9:30 am.
Response: October 21, 2016

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

In re:
NORTHERN MEADOWS
DEVELOPMENT CO., LLC

Debtor

Case No. 16-13393-TWD
Chapter 11

**MOTION FOR AUTHORITY TO USE
CASH COLLATERAL**

Comes now the debtor-in-possession, Northern Meadows Development Co., LLC (“Northern Meadows”) and moves the Court pursuant to Bankruptcy Code §363 for approval of the use of cash collateral. Accompanying this motion is the declaration of Stephen Brisbane.

THE DEBTOR’S PROPERTIES

On the petition date, Northern Meadows owned four parcels of partially improved real property, none of which has been built on, generally described as follows:

Parcel A, Chukanut View Lots: 4 parcels of view property on Chukanut Drive south of Bellingham, Washington.

Parcel B, Northern Meadows Single Family Residence Sites: 11 condominium lots (building lots held in condominium form) suitable for single family residences, at 3993 Gentlebrook Lane, Bellingham, WA. The cash collateral which is the subject of this motion is a portion of the

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1 proceeds of sale of this parcel. Northern Meadows has filed a separate
2 motion to approve the sale of this property free and clear of liens, for a
3 gross sales price of \$770,000.

4 **Parcel C, Northern Meadows Adult Family Home Sites:** 6 condominium
5 lots (building lots held in condominium form) suitable for construction of
6 3 adult family homes, at 3993 Gentlebrook Lane, Bellingham, WA.

7 **Parcel D, Assisted Living Site:** Land suitable for construction of a 68-unit
8 adult assisted living/independent living facility, at 3993 Gentlebrook
9 Lane, Bellingham, WA

10 All of these properties are encumbered by a first position deed of trust in favor of
11 R2R Capital Bellingham LLC ("R2R"), with approximate balance (according to the
12 creditor) of \$4.28 million, and a second position deed of trust in favor of Paramjit Singh
13 and Harmeet Kaur ("Singh") with an approximate balance of \$1.2 million.

14 On August 2, 2016, the Court entered an order authorizing the sale of Parcel B,
15 the 11 single-family condominium lots, to Jon Hansen for a gross sales price of \$770,000.
16 The sale has closed and the Debtor is holding net proceeds of \$709,180 (\$700,000 of
17 which is in an interest bearing account).

18 The Debtor has scheduled the remaining parcels at an aggregate value of
19 \$4,370,000. However, these values assume that the debtor will make ongoing progress
20 to prepare the properties for sale or vertical construction (i.e. building actual structures
21 as opposed to merely preparing the building site). The liquidation value of these
22 properties in their current state may be significantly less. For instance, as discussed
23 below, none of the four Chuckanut Drive lots currently have a legal water supply.
24 Therefore, they cannot be built on. Three of the four lots need to secure additional

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1 property to complete the buildable areas for their home sites and onsite sewer systems.
2 The scheduled value of these lots assumes the lots will have water rights before they are
3 sold. But getting the extra property and water rights requires a lot line adjustment,
4 which in turn requires an affiliated non-debtor entity to sell to Northern Meadows the
5 property involved in the lot line adjustment, and 3 of the 4 water shares, with the fourth
6 share to be acquired from the water association. Absent these steps, the Chuckanut lots
7 are useable only for very nice picnics in the warm weather.
8
9

10 As with all development property, Northern Meadows' remaining parcels have a
11 range of values, depending on future events. The following table compares the
12 scheduled value of the parcels to their liquidation value if no further work is done to
13 improve them, and their value once improved by the expenditure of cash collateral:
14

	Scheduled Value	As-Is Liquidation Value	Improved Value
15 Parcel A:	\$1,750,000	\$ 225,000	\$1,200,000
16 Parcel C:	\$ 420,000	\$ 320,000	\$ 450,000
17 Parcel D:	\$2,200,000	\$1,850,000	\$2,200,000
18 Total:	\$4,370,000	\$2,395,000	\$3,850,000

19 Thus, for a projected expenditure of \$403,722, the value of R2R and Singh's collateral is
20 projected to increase by over \$1,450,000.
21

22 THE CASH COLLATERAL PROPOSAL

23 The Debtor proposes to use \$403,722 of the proceeds of the Parcel B sale to
24 achieve the following objectives:
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- 1) Parcel A (Chuckanut Drive Single Family View Lots): To secure the additional property and entitlements that will create and secure the legal status and buildability of the lots within Parcel A, including critical water rights, thus insuring that they have at least a base market value.
- 2) Parcels A, C, & D: To significantly improve their market value by preparing and improving the lots for marketing and for sale, and/or preparing them for the start of vertical construction of their specific and respective "highest and best uses".
- 3) Create and secure the market value and viability of specific assets. The cash collateral expenditures, in the case of all the assets, make important and significant improvements which increase the current market value, and should also position the assets for a reduced marketing period, thus accomplishing a quicker liquidation.

The Cash Collateral Budget (CBB) is attached, and the expenditures for specific Parcels and administrative costs are detailed as follows:

Parcel A - Chuckanut Drive Single Family View Lots

Currently three of the four lots in this Parcel have not acquired, by the approval and recording of a Lot-Line Adjustment (LLA) with neighboring properties, the additional property critical to establishing their respective building envelopes, and their respective on-site sewer systems (OSS). Without the acquisition of this critical additional property by the finalizing and recording of the LLA the buildability, and thus the viability and marketability, of these three lots is severely compromised.

In addition, all four of the lots in this Parcel have not acquired the required alternative water source that would exempt them from the requirement to construct a bonded \$500,000-\$750,000 water system infrastructure to serve the lots. Without acquiring an approved alternative water source, or the construction of the required water system infrastructure, building permits will not be issued on these lots, thus

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1 rendering the lots unusable for their intended highest and best use (residential
2 construction), leaving the lots of dubiously low current market value, and practically
3 unmarketable at this point in time.
4

5 The developer, Stephen Brisbane, an affiliate of the Debtor, through his entity
6 Fairhaven Land and Livestock, LLC ("FL&L") had completed, just prior to the filing of
7 the petition, a final settlement as part of a long running multi-year legal battle and
8 negotiation with the Chuckanut Trails Water Association ("CWTA") for the provision of
9 four CTWA water association shares and the "will serve certificates" required by the
10 City of Bellingham. The City of Bellingham has approved the LLA, contingent on the
11 lots having an approved water source. The City's LLA approval expires at the end of
12 2016.
13
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15 The CTWA water shares and certificates obtained by FL&L in the final settlement
16 described above can meet the original plat and building permit issuing requirements for
17 the provision of an "approved alternate water source", and provide the least expensive
18 and quickest option for making the lots buildable and thus marketable for their
19 intended highest best use. To that end FL&L has arranged to have the fees paid for the
20 "will serve certificates" issued to facilitate the required final approval and preparation
21 for recording of the LLA. FL&L paid \$3600 for the water shares and certificates. The
22 land FL&L is providing is assessed at \$142,000. Northern Meadows proposes to pay
23 FL&L \$150,000 to acquire the land and the water rights.
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27 This recording of the LLA, and the provision by FL&L of real property, and
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1 water shares, thus will provide not only the acquisition of critical additional property
2 needed for the building envelopes and their OSS's, but also the approved alternate
3 water source, required for the issuing of building permits on the lots, making them
4 buildable, and thus securing them with true viable market value and marketability.
5

6 The first three of the four steps below are of critical priority for the LLA to be
7 completed:
8

- 9 1) Gain approval of the CCB, including acquisition of additional property and
10 alternative water source shares.
- 11 2) Complete and record the Lot Line Adjustments, which is the legal mechanism
12 for transferring property, including water shares, from the neighboring
13 properties.
- 14 3) Bring the real estate taxes current, which must be done before Whatcom
15 County will record the Lot Line Adjustments and allow the closing and transfer
16 of deeds and water shares.
- 17 4) Complete required design and engineering (layout, redesign septic, survey,
18 utilities, feasibility and appraisal reports) to improve market value and
19 marketability of the lots for sale; and/or preparation for the start of the vertical
20 construction of high-end residential view homes.

21 **Parcel C - Northern Meadows Adult Family Homes**

22 The budget amounts include design and engineering, operational and licensing
23 consulting, feasibility and appraisal reports, the condominium fees. All of these fees are
24 necessary to significantly improve the market value and marketability, before
25 marketing and sale, and/or preparation for the start of vertical construction of the
26 specific "highest best use", which has been previously determined by appraisal and
27 market studies to be licensed Adult Family Homes.
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1 **Parcel D - Northern Meadows Senior Living Site**

2 The budget amounts include design and engineering, operational and licensing
3 consulting, feasibility and appraisal reports, and the Master Homeowners Association
4 fees, necessary to significantly improve the market value and marketability, before
5 marketing and sale of this site for its specific "highest best use". It was previously
6 determined by appraisal and market studies that a licensed Assisted Living & Memory
7 Care facility, with associated Independent Living units, and an Adult Day Health
8 facility, was the "highest best use".
9

10 **Administrative Costs**

11
12
13 There are three types of administrative costs included in the CCB:

- 14 • Professional Fees (Legal and Financial Advisor) for the administration of the
15 case.
- 16 • Developer Fees include reimbursing an affiliate of the Debtor on a flat fee basis
17 to complete the tasks outlines above; the Debtor has no employees.
- 18 • United States Trustee Fees are estimated based upon forecast expenditures.

19 These costs are clearly necessary to the conduct of a Chapter 11 case. Stephen Brisbane,
20 the principal of Northern Meadows, is devoting a substantial amount of time and
21 energy to moving these properties forward. He is being assisted by Jeffrey Worley and
22 Columbia Consulting Group PLLC, who has been employed as financial advisor, and
23 Donald Bailey, counsel for the debtor. These professionals cannot be expected to work
24 for free.
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LEGAL AUTHORITY

Under Bankruptcy Code §363(c)(2), a debtor in possession may use cash collateral without a secured creditor’s consent if the court, after notice and hearing, authorizes such use. *In re Sunnymeade Shopping Center Co.*, 178 B.R. 809, 814 (9th Cir. BAP 1995). The court’s authorization for the use of cash collateral must adequately protect the creditor’s interest in that collateral. Bankruptcy Code §363(e), *U.S. v. Whiting Pools, Inc.*, 462 U.S. 198, 203-04 (1983). The interest entitled to adequate protection is the value of the collateral; a creditor is not entitled to protection for accruing post-petition interest, or for the delay in realizing on its collateral. *In re Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365 (1988); *In re Delta Resources, Inc.*, 54 F.3d 722, 729 (11th Cir. 1995).

Adequate protection may consist of a lump sum cash payment, periodic cash payments to compensate for decreasing value, an additional or replacement lien equivalent to any decrease in value, or other relief that provides the “indubitable equivalent” of the creditor’s interest in the cash collateral. Bankruptcy Code §361. This is a nonexclusive list.

In this case, R2R will retain its lien on the unspent cash collateral (approximately \$300,000) and on Parcels A, C and D. The value of these remaining parcels will increase by \$1,455,000 (measured by the difference between the as-is liquidation value and the projected improved value). This is a return of \$3.60 for each \$1 of cash collateral that is spent. With the improvements generated by the use of cash collateral, R2R’s collateral should have an aggregate value of \$4,150,000. Denying use of cash collateral will leave

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1 R2R with a collateral package worth approximately \$2,695,000. Thus, the expenditure
2 of cash collateral will create an equity cushion for R2R of which does not exist today.
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4 The use of cash collateral should be authorized.

5 Dated: October 5, 2016

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/s/ Donald A Bailey
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Attorney for Debtor

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Description	Sep-16	Oct-16	Nov-16	Total	Benefits of Expenditures
Property Improvements					
Tract A - Chuckanut SFH Lots					
Water Assoc. Cert. & Fee for Lot #4 - Chuckanut Trail Water Asso.	\$ 1,222				<p>Summary - Lots do not have water rights currently</p> <p>Water Will Serve Certificates & fees are essential to secure water service this making the lot buildable and marketable as a residential lot.</p> <p>Lot line adjustment can not be recorded by County w/o taxes current</p> <p>- Provides additional square footage essential to (3) building pads & drainfield sites - Provides (3) Water Will Serve Certificates purchased by FL&L needed to facilitate approval & recording of LLA.</p> <p>Updated and renewed OSS permits are essential for making the lot buildable and marketable as residential lot.</p> <p>- Survey & Engineering must be done for approval and recording of LLA, Site and Building Design - Arch. Design work must be done for Site and Building design for permits and marketing materials</p> <p>Will be needed to assist in Surveying, Design and Marketing efforts</p> <p>Essential to secure power and phone service to Lot #4 thus making the lot buildable and marketable as a residential lot.</p> <p>Summary - In order to market the property condo & permit fees must be paid</p> <p>Payment of fees necessary to obtain cooperation and discretionary approvals for marketing of properties</p> <p>AFH design & operational consulting necessary to obtain highest and best value in the marketing of the properties.</p> <p>Provides the AFH legal, organizational & permit consulting necessary to obtain highest and best value in the marketing of the properties</p> <p>AFH appraisal costs if necessary to obtain highest and best value in the marketing of the properties</p> <p>Summary - In order to market the property Master Assoc & permit fees must be paid</p> <p>AL/IL design & operational consulting necessary to obtain highest and best value in the marketing of the properties.</p> <p>Provides the AL/IL legal, organizational & permit consulting necessary to obtain highest and best value in the marketing of the properties</p> <p>AL/IL appraisal costs necessary to obtain highest and best value in the marketing of the properties</p> <p>Payment of fees necessary to obtain cooperation and discretionary approvals for marketing of properties</p> <p>Fees necessary for work involved in negotiating and securing approval of water rights, permits, and contracts & to begin marketing of properties</p>
Real Estate Taxes - 3 LLA Tracts - Whatcom County Treasurer	29,500				
Lotline Adjustment Plat & Water Costs (3 lots) - Fairhaven Land & Livestock, LLC	150,000				
Septic System Design Fees - Vendor - TBD		5,000	5,000		
Arch Design & Engineering Fees - Christensen Design Management - Pacific Survey & Engineering	-	8,000	8,000		
Lot Clean-up/Marketing prep - Vendor TBD	-	10,000	10,000		
Utility Extension of power & phone to Lot #4 - Puget Sound Energy		9,500		\$ 236,222	
Tract C - AFH Sites					
Condo Fees - Northern Meadows Condo Asso.			\$ 13,200		
Design & Operational Consulting Fees - Capital Impact Partners		10,000	5,000		
AFH Legal, Organizational, & Permit Consulting -Belcher-Swanson PLLC & Vendors TBD			5,000		
AFH Application Fees & Appraisals - Vendor TBD			5,000		
				\$ 38,200	
Tract D - Senior Living Site					
Design & Operational Consulting Fees - Capital Impact Partners		10,000			
AL/IL Legal, Organizational, & Permit Consulting -Belcher-Swanson PLLC & Vendors TBD			5,000		
AL/IL Application Fees & Appraisals - Vendor TBD			5,000		
Master Assoc. Fees - Northern Meadows Estates Assoc.			33,000		
				\$ 53,000	
Administration of Case					
Professional Fees - Shafer & Bailey, Columbia Consulting	\$ 15,000	\$ 15,000	\$ 15,000		
Development Fee -Northern Meadows Management Co.,LLC	10,000	10,000	10,000		
Trustee Fees (Quarterly) - US Trustee	325	975		\$ 76,300	
				\$ 403,722	