

HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY

10400 Detrick Avenue
Kensington, Maryland 20895
(301) 929-2380

Minutes

November 7, 2007
07-11

The monthly meeting of the Housing Opportunities Commission of Montgomery County was conducted on Wednesday, November 7, 2007 at 10400 Detrick Avenue, Kensington, Maryland beginning at 7:20 p.m. Those in attendance were:

Present

Michael Kator, Chair
Roberto Piñero, Vice Chair
Norman Dreyfuss, Chair Pro Tem
Norman Cohen
Pamela Lindstrom
Sally Roman
Jean Banks

Also Present

D. Scott Minton, HOC Executive Director
Ken Tecler, HOC Counsel
Annie Alston
Kayrine Brown
Lillian Durham
Scott Ewart
Joy Flood
Les Kaplan
Tedi Osias
Jerry Robinson
Gail Willison
Jim Atwell

Vivian Benjamin
Tom DeBrine
Terri Fowler
Ken Goldstraw
Lembit Jogi
Lena Nazarian
Paul Rusnak
Doug Ryan
Karlos Taylor
Andrew Zaleski
Eileen Hartnett, Special Assistant to
the Commission

Also Attending

Joanne Frysiak, Manor Towne
Sandra DeMoraes, Alexander House Resident
Y. Monroe Galloway

Chair Kator convened the meeting at 7:20 p.m. He began the meeting with a welcome to HOC's newest Commissioner, Jean Banks. Chair Kator then called for consideration of the Consent Calendar. Item C was moved to Items Requiring Deliberation and/or Action. The Consent Calendar, with the omission of Item C, was approved upon a motion by Commissioner Cohen and seconded by Commissioner Roman. Affirmative votes were cast by Commissioners Kator, Piñero, Dreyfuss, Cohen, Lindstrom, Roman and Banks.

I. CONSENT ITEMS

A. Approval of Minutes of October 3, 2007 – The minutes were approved as written.

B. Ratification of Resolution to the Memory of Richard J. Ferrara – The following Resolution was approved:

RESOLUTION: 07-80

**RE: Resolution to the Memory of
Richard J. Ferrara**

WHEREAS, the Housing Opportunities Commission is indebted to Richard J. Ferrara for his invaluable contributions to the Agency and the citizenry of Montgomery County for five years of service as Executive Director from 1995 to 2000; and

WHEREAS, under Rick's guidance, the Agency made substantial gains in developing, financing and managing affordable housing in Montgomery County; and

WHEREAS, at a time when Montgomery County was experiencing the loss of many units of affordable housing due to expiring federal subsidies, Rick Ferrara made the preservation of these units a priority. Under Rick's leadership, the Agency was able to preserve the affordability of hundreds of units which would likely have been sold and converted to market rate units; and

WHEREAS, Rick's strong relationship with the County and the State was relied upon in seeking additional funding for the Commission; and

WHEREAS, Rick was instrumental in expanding the Agency's purchase of Moderately Priced Dwelling Units by requesting more state funds for the Agency's program – an action which increased the number of units available to low-income families in the Agency's scattered site public housing program; and

WHEREAS, Rick initiated major reforms at the Agency during his tenure, including modernizing the Agency's computer and telecommunication systems; and

WHEREAS, Rick's emphasis on customer service led the Agency to serve its clients and other stakeholders in a more efficient manner; and

WHEREAS, Rick initiated major reforms to the Agency's Section 8 program; and

WHEREAS, Rick was an advocate for Smart Growth. As Silver Spring and other areas of the county revitalized around Metro stations, Rick Ferrara led the Agency's efforts to pursue new construction and redevelopment in these areas; and

WHEREAS, these and other positive changes continue to serve the Agency and the people of Montgomery County well.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that we are saddened by the loss of our former Executive

Director who was a great housing leader and public servant and extend our condolences to his wife, Susan, his daughters, granddaughter and his family.

II. INFORMATION EXCHANGE

A. Report of the Executive Director – Mr. Minton added the following items to his written report:

- HOC received an Award of Excellence during the NAHRO conference in San Diego. This award was for the historic preservation and renovation of Montgomery Arms.
- Rick Ferrara's Memorial Service took place. It was well attended by elected officials, colleagues and friends.
- DHCA announced that HOC has been selected as the developer of the Edson Lane property.
- The lease for the HOC Customer Service Center in Gaithersburg has been signed.
- Tom DeBrine, Single Family Loan Manager and Paulette Kee-Dudley, Program Specialist, participated in the Mid-Atlantic Lender Broker Conference sponsored by the Mortgage Bankers Association.

B. Commissioner Exchange

- Commissioner Cohen remarked that he has worked with Commissioner Banks in the past and looks forward to her contribution on the Commission.
- Commissioner Banks thanked the Commissioners for their warm welcome and looks forward to serving on the Commission.
- Commissioner Cohen provided opening remarks at the recent FSS Graduation. He appreciates HOC's efforts in the FSS program and the difference it makes in so many lives. He acknowledged Lillian Durham, Director of Resident Services, and Nancy Scull and the FSS staff for such an inspirational event. Commissioners Piñero and Dreyfuss also attended and were impressed with the graduates.

C. Community Forum

Sandra DeMoraes, Alexander House resident, addressed the Commission regarding her concern about drugs and illegal activity in her building. Ms. DeMoraes shared what she has observed among the residents, their visitors and unauthorized persons. Chair Pro Tem Dreyfuss implored Ms. DeMoraes to allow management and police to intervene when there is disconcerting activity in and around Alexander House.

Chair Pro Tem Dreyfuss directed staff to report to the Commission during the next scheduled meeting on results of their investigation with the management company and suspicious activity calls to the police.

III. COMMITTEE REPORTS and RECOMMENDATIONS FOR ACTION

A. Legislative and Regulatory Committee – Commissioner Roman

1. Adoption of the FY'08 Legislative Priorities

Tedi Osias, Director of Legislative and Regulatory Affairs, highlighted key areas of the FY'08 Legislative Priorities.

County: The Priorities include a review of the recommendations of the Affordable Housing Task Force. The task force will hold five community meetings prior to making their final recommendations to the County Executive early next year. The Director of DHCA has offered to provide a briefing on the task force recommendations to HOC. Chair Pro Tem Dreyfuss suggested deferring the briefing until a draft report by the task force has been submitted. Commissioner Roman added she would like to see any written materials provided by the task force as it becomes available.

State: A hearing before the delegation on the Contract Services Legislation will take place on December 13th. It is likely the legislation will pass. Chair Pro Tem Dreyfuss noted the moratorium on changes is included in the Parking and Planning agreement and it is not included in the current legislation. He would like the delegation to be aware of this disparity.

State: During the State's Special Session, the Governor recommended that sales tax be expanded to include property management services. The Senate Budget and Tax Committee removed that provision.

Federal: Affordable Housing Trust Fund has passed in the House. It has been assigned to the Banking and Finance Committee.

Federal: Section 8 Voucher Reform Act has passed the House; however, due to HUD's budget constraints it is unlikely funding will be provided.

Note: If the County Executive formally adopts a goal of increasing the HIF to \$75 million per year, HOC would support that recommendation.

It was the consensus of the Commission to adopt the recommendations of the FY'08 Legislative Priorities.

Tedi Osias provided an update on the County's Annual Growth Policy which will be adopted by the County Council within a week. She reviewed the two anticipated changes:

Impact Tax: New developments are subject to several impact taxes including a transportation impact tax and two different school taxes. Affordable units in those developments are exempt from these taxes. In developments which have mixed income properties, there may be an exemption to the transportation impact tax and half of the school impact taxes on the market rate units. This should be a tax savings for a single family home of about \$10,000.

Recordation Tax: The new recordation tax will have a different structure. Homes which have a value of \$500,000 or less will see no change in the tax rate of \$6.90 per thousand. However, on homes which have a value over \$500,000, there will be a recordation tax increase to \$10.00 per thousand. The tax on the first \$500,000 will remain at \$6.90 per thousand. This new tax is estimated to provide an additional \$10,000,000 to be set aside for the county infrastructure and a rental assistance program.

2. Approval of Regulatory Changes to Federal Programs

Joy Flood, Director of Federal Programs, and Doug Ryan, FHEO Officer, reported some of the changes to the Federal programs are mandated and others are at the discretion of the Commission. Ms. Flood and Mr. Ryan highlighted the changes which the Commission has discretion.

Housing Choice Voucher Program

Residency Preference: This preference would be awarded to persons who have lived in Montgomery County for six months or more.

Credit Checks: Families who are entering into the program will have a credit check review.

Liens on Property Owners: HOC will work with debt collectors to collect overpayments made to property owners.

Public Housing

Waiting List: Persons can select a preference as to which area of the county they would like to reside. The waiting list regions would match the HUD asset management project groupings and would improve the management of the waiting list.

Unit Offerings: Applicants would be removed from the waiting list if two units were turned down without good cause.

Tenant Selection: Persons who have an offer to work in Montgomery County would receive a preference.

Enterprise Income Verification (EIV): Cross reference will be made to the EIV Policy.

Transfers: Families/individuals who are living in units that are too large for their family size would be given priority on the transfer list.

Visiting Pet Policy Elimination: Visiting pets would no longer be permitted. In response to Commissioner Banks' question, Mr. Ryan explained the only pets permitted in Public Housing are those that are approved under the current Pet Policy or service animals.

Mr. Ryan stated the changes will take effect immediately. He does not foresee a substantial increase in staff workload.

The following resolution was adopted upon a motion by Commissioner Roman and seconded by Vice Chair Piñero. Affirmative votes were cast by Commissioners Kator, Dreyfuss, Piñero, Cohen, Lindstrom, Roman and Banks.

RESOLUTION: 07-81

RE: Approval of Regulatory Changes to Federal Programs

WHEREAS, federal statutes and regulations require housing providers to adopt certain policies and permit flexibility in others; and

WHEREAS, the Housing Opportunities Commission aims to ensure fair and equitable treatment of the applicants and residents in its housing programs; and

WHEREAS, the Housing Opportunities Commission aims to ensure the efficient use of its housing program resources.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that the agency adopt the attached Enterprise Income Verification/Upfront Income Verification policy and the revisions to the Housing Choice Voucher Administrative Plan and the Public Housing Admissions and Continued Occupancy Policy.

3. Approval of Changes to the Pet Policy

Jerry Robinson, Director of Housing Management, gave an overview of the practicality of allowing pets in certain non-Public Housing properties. A number of properties would be more competitive in the rental housing market if pets were accepted. Commissioner Banks inquired about restrictions to the residents who choose to own pets. There would be restrictions in place regarding the size of pets, fees, and security deposit. Commissioner Cohen expressed concern for the families who may be fearful of pets.

There was discussion regarding the broad use of the Pet Policy, so the resolution was amended to give authority to the Executive Director to waive the Pet Policy at his discretion.

The following resolution was adopted as modified upon a motion by Commissioner Roman and seconded by Commissioner Cohen. Affirmative votes were cast by Commissioners Kator, Dreyfuss, Piñero, Cohen, Lindstrom, Roman and Banks.

RESOLUTION: 07-82

**RE: Adoption of Pet Policy for
Non-Public Housing Units**

WHEREAS, HOC's current pet policy is to prohibit pets in HOC owned/managed properties except where mandated by Federal, State and Local law; and

WHEREAS, HOC adopted its current pet policy on November 13, 1987; and

WHEREAS, in the competitive rental market, the decision to allow pets is based on market conditions and competition. Our current policy does not allow for that flexibility and this inflexibility is a competitive disadvantage for some properties.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that at the discretion of the Executive Director, the Pet Policy may be waived in Commission owned and/or managed buildings on a case by case basis.

B. Development and Finance Committee – Vice Chair Piñero

1. Authorization to Match Contract for King Farm Village Center Apartments in City of Rockville

Vice Chair Piñero explained that this Resolution will allow HOC to be the developer for the 49 units at King Farm Village Center. Lembit Jogi, Project Manager, and Andrew Zaleski, Financial Analyst, made a brief presentation. Mr. Jogi explained that DHCA recently held a HIF

Funding Committee meeting and it appears favorable that funding will be forthcoming for the development.

The City of Rockville must approve the offer prior to the 60-day window to match the right of first approval offer. Other meetings and presentations are scheduled with the King Farm Association and the Rockville City Council. The seller has extended the time period to match the offer so approvals may be granted.

Mr. Jogi explained the financing options that have been explored both privately and through HOC financing. Chair Kator encouraged HOC financing if possible.

In response to Commissioner Cohen's question, Mr. Minton noted the City of Rockville does not have a right of first refusal law, so the City would not have an opportunity to exercise a right of first refusal.

The following resolution was adopted upon a motion by Chair Pro Tem Dreyfuss and seconded by Commissioner Roman. Affirmative votes were cast by Commissioners Kator, Dreyfuss, Piñero, Cohen, Lindstrom, Roman and Banks.

RESOLUTION: 07-83

**RE: Authorization to Match Contract
for King Farm Village Center
Apartments in City of Rockville**

WHEREAS, the Housing Opportunities Commission received a contract (the "Contract") under Article 53A and 11A of the Montgomery County Code for the sale of the residential portion of the King Farm Village Center, consisting of 49 apartment units located in the City of Rockville (the Property); and

WHEREAS, HOC was contacted by the County's Department of Housing and Community Affairs (DHCA) requesting HOC evaluate the feasibility of acquiring the Property and completing a condominium conversion of the rental apartments in order to sell the individual units as for-sale workforce housing; and

WHEREAS, HOC has until November 19, 2007 to match the Contract price of \$9.5 million; and

WHEREAS, DHCA is working with the seller's attorney in an effort to get additional time to match the current purchase Contract; and

WHEREAS, as required Under Article 53A of The Montgomery County Code, in order to exercise its right of first refusal, the City Council of Rockville must pass a resolution approving the sale of the Property to HOC within the time frame provided to match the Contract price, which the County and HOC are diligently pursuing; and

WHEREAS, if the resolution approving the sale by the City of Rockville is not received within the required time period to match the contract, HOC will exercise its right under Article Chapter 11A of the County Code and seek Rockville City Council approval during the financing period of the contract; and

WHEREAS, staff is recommending the Commission match the contract price by exercising the right of first refusal, providing HOC with 120 days to obtain financing under the framework provided in the related memorandum, obtain City of Rockville approval and close on the Property.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that the Executive Director is hereby authorized to execute any and all documents required in connection with the acquisition, underwriting, and closing of this Property including, but not limited to, providing the seller appropriate notice of HOC's intent to exercise its right of first refusal under either Article 53A or 11A of the Montgomery County Code, execution of the Contract and all related documents to acquire the Property on the terms and conditions stated in the Contract.

C. Budget, Finance and Audit Committee – Commissioner Cohen

1. Ratification of Calendar Year (CY) '08 Tax Credit Partnership Budgets

Gail Willison, Chief Financial Officer, and Terri Fowler, Budget Officer, made a brief presentation. They explained these budgets produce a net cash flow to the agency of \$120,562, but there are deficits at some properties. Ms. Fowler explained the growing capital needs on the properties are a major contributor to some of the deficits and reduced ground rents. There are not sufficient reserves for the capital needs and HOC has adopted a Pay-Go system which increases the reserve contributions to meet the immediate capital needs.

Many of the MPDUs are located in communities with high HOA fees which have affected the budgets. Additionally, Commissioner Cohen noted the aging properties require more money to be allocated for repairs and the market rents which have a bearing on the cash flow.

The following resolution was adopted upon a motion by Commissioner Cohen and seconded by Vice Chair Piñero. Affirmative votes were cast by Commissioners Kator, Dreyfuss, Piñero, Cohen, Lindstrom, Roman and Banks.

RESOLUTION: 07-84

**RE: Ratification of Calendar Year (CY)
'08 Tax Credit Partnership Budgets**

WHEREAS, the Housing Opportunities Commission of Montgomery County is the General Partner who manages the business and is liable for the debts of 15 Tax Credit Partnerships; and

WHEREAS, the limited partners in these 15 Tax Credit Partnerships have contributed money and share in profits, but who take no part in running the business and incur no liability with respect to the partnership beyond their contributions; and

WHEREAS, the Tax Credit Partnerships are unique within the Housing Opportunities Commission's property portfolio since they are not HOC entities but managed properties and have no separate Boards; and

WHEREAS, since the Housing Opportunities Commission has a financial obligation to cover all debts, it has an interest in the successful performance of these partnerships and as such should review their performances and approve their budgets; and

WHEREAS, the Budget, Finance and Audit Committee reviewed and approved the CY'08 Budgets at the October 17, 2007 meeting.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that it hereby ratifies the CY'08 Operating Budgets for the 15 Tax Credit Partnerships shown on Attachment 1 of this resolution.

IV. ITEMS REQUIRING DELIBERATION and/or ACTION

A. Authorization to Amend the Contract for Professional Services with Reznick Group for Spring Garden and Barclay

Chair Kator noted this item was moved from the Consent Calendar. Lembit Jogi, Project Manager, provided information on the request of a \$35,000 increase for Reznick Group services. The tax credits for Spring Garden and Barclay have been very beneficial but issues arose that required the tax credit accountants to perform additional technical functions and a response to the Limited Partner was necessary.

There was discussion regarding the fees and the specialized nature of these professional services, and the Commission would examine various budget options to reduce fees on future projects.

The following resolution was adopted upon a motion by Chair Pro Tem Dreyfuss and seconded by Commissioner Roman. Affirmative votes were cast by Commissioners Kator, Dreyfuss, Piñero, Cohen, Lindstrom, Roman and Banks.

RESOLUTION: 07-85

RE: Authorization to Amend the Contract for Professional Services with Reznick Group for Spring Garden and Barclay

WHEREAS, the Housing Opportunities Commission is the General Partner for Barclay One Associates, LP and Spring Garden One Associates, LP; and

WHEREAS, HOC contracted with the Reznick Group to be the third-party tax credit accountant for Spring Garden and Barclay Apartments and complete the financial projections for said developments, in an initial contract amount of \$25,000; and

WHEREAS, at its October 5, 2006 meeting, the Commission approved an amendment increasing the amount of the Reznick Group contract to \$75,000 to cover additional work to be performed; and

WHEREAS, staff estimates that an additional \$35,000 is necessary to complete the analysis for Spring Garden and Barclay.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that it authorizes the Executive Director to amend the contract with the Reznick Group increasing the contract value not to exceed an additional \$35,000 and extending the duration of the contract to January 31, 2008.

B. Authorization to Extend Current Bond Counsel Contract with Kutak Rock, LLP for Two (2) Years

Kayrine Brown, Director of Mortgage Finance, and Vivian Benjamin, Assistant Director of Mortgage Finance, made a brief presentation. Ms. Benjamin explained staff is very satisfied with the performance of Kutak Rock and recommends their contract be extended.

The following resolution was adopted upon a motion by Chair Pro Tem Dreyfuss and seconded by Commissioner Roman. Affirmative votes were cast by Commissioners Kator, Dreyfuss, Piñero, Cohen, Lindstrom, Roman and Banks.

RESOLUTION: 07-86

RE: Authorization to Extend the Current Bond Counsel Contract with Kutak Rock, LLP for Two (2) Years

WHEREAS, Kutak Rock, LLP, as Bond Counsel to the Commission, provides services that enable the Commission to optimize the activities of its bond financing and lending programs in concert with the applicable laws; and

WHEREAS, the Commission awarded the current contract to Kutak Rock on January 9, 2002, for four years under the procurement policy that existed at the time; and

WHEREAS, a subsequently revised procurement policy allows extension of the contract for two two-year terms; and

WHEREAS, on September 7, 2005, the Commission adopted a resolution which authorized a two year extension of its contract with Kutak Rock, April 10, 2006 through April 9, 2008; and

WHEREAS, Kutak Rock continues to provide a high level of professionalism, wisdom, and industry expertise to the Commission; and

WHEREAS, staff is satisfied with the bond counsel services that Kutak Rock continues to provide and recommends extending the contract for a two-year term.

NOW, THEREFORE, BE IT RESOLVED, by the Housing Opportunities Commission of Montgomery County that it approves a two-year extension of the current contract with Kutak Rock, LLP as bond counsel to the Commission, with an expiration date of April 9, 2010.

C. Authorization to Close Limited Partnership Transaction with PNC for Forest Oak Towers

Lena Nazarian, Housing Acquisition Manager, provided background information on the financing and limited partnership interest for Forest Oak Towers.

Ms. Nazarian responded to Commissioner Lindstrom's questions regarding the status of the property after the 15-year tax credit compliance period ends.

Chair Kator asked for clarification regarding the approval of the LPA and ancillary documents in the resolution. The resolution was amended for clarity.

The following resolution was adopted upon a motion by Chair Pro Tem Dreyfuss and seconded by Commissioner Cohen. Affirmative votes were cast by Commissioners Kator, Dreyfuss, Piñero, Cohen, Lindstrom, Roman and Banks.

RESOLUTION: 07-87

RE: Authorization to Close Limited Partnership Transaction with PNC for Forest Oak Towers

WHEREAS, the Housing Opportunities Commission of Montgomery County (the "Commission") created Forest Oak Towers Limited Partnership to acquire, own and operate Forest Oak Towers (the "Project"), a high rise apartment community for seniors located in Gaithersburg, Maryland; and

WHEREAS, The Commission is the general partner of the Partnership; and

WHEREAS, the acquisition and rehabilitation of the Project is being funded, in part, with low income housing tax credits; and

WHEREAS, the Commission approved the selection of PNC as the tax credit investment limited partner for Forest Oak Towers by resolution dated March 27, 2007; and

WHEREAS, the Commission staff has negotiated extensively with PNC over the form and content of an amended and restated agreement of limited partnership (LPA) and ancillary agreements that document the transaction; and

WHEREAS, the Commission will also enter into a Development Agreement providing for its obligations with respect to the development of the Project, and a Reimbursement Agreement providing for the Partnership's assumption of certain obligations and payments that were initially entered into by the Commission on its behalf; and

WHEREAS, the LPA and ancillary documents are expected to be in final form within the next few weeks; and

WHEREAS, the LPA provides for equity payments by PNC to the Partnership; and

WHEREAS, the Commission is obligated to fund operating deficits for thirty-six (36) months after the Project achieves stabilization; and

WHEREAS, during the first twenty-four (24) months, the Commission will be obligated to fund operating deficits in an unlimited amount and, during the 25th month through the 36th month, the obligation shall be reduced to \$800,000; and

WHEREAS, if at any time during the 15-year tax credit compliance period, the existing Housing Assistance Payment (HAP) contract is not renewed for a period at least equal to the remainder of the compliance period then the term of the operating deficit guaranty shall extend until the end of the compliance period and the obligation shall be \$2,100,000; and

WHEREAS, the LPA, at the end of the 15-year tax credit compliance period, under the Option and Right of First Refusal Agreement, grants the Commission the option and right of first refusal to purchase the Project and the option to buy back PNC's limited partnership interest.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that:

1. The Commission, as general partner of the Partnership, is authorized to admit PNC or its affiliates as the limited partner in the Partnership; and
2. The Executive Director is hereby authorized to execute the LPA and any and all documents in connection with the admission of the tax credit investment limited partner for Forest Oak Towers, provided that the terms and conditions are consistent with the provisions of this Resolution.

V. NEW BUSINESS

None

VI. FUTURE ACTION ITEMS

Mr. Minton informed the Commission of upcoming committee meetings. There were no other items added to the future action calendar.

VII. EXECUTIVE SESSION FINDINGS

The Chair reported that the item before the Commission for consideration in Executive Session involves a legal matter. According to Section 10-508(a)(3) of the State Government Articles of the Annotated Code of the State of Maryland, such items can be discussed in closed session.

Based upon this report and there being no further business to come before this session of the Commission, a motion was made, seconded and unanimously adopted to adjourn.

The meeting adjourned at 9:05 p.m.

Respectfully submitted,

D. Scott Minton
Secretary-Treasurer

/meh