

HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY

10400 Detrick Avenue
Kensington, Maryland 20895
(240) 627-9425

Special Session Minutes

May 20, 2020

A Special Session of the Housing Opportunities Commission of Montgomery County was conducted via an online platform and teleconference on Tuesday, May 20, 2020, with moderator functions occurring at 10400 Detrick Avenue, Kensington, Maryland beginning at 12:10 p.m. Those in attendance were:

Present

Roy Priest, Chair
Frances Kelleher, Vice Chair
Richard Y. Nelson, Chair Pro Tem
Jackie Simon

Absent

Linda Croom
Pamela Byrd

Also Attending/Teleconference

Stacy L. Spann, Executive Director
Christina Autin
Kayrine Brown
Charnita Jackson
Cornelia Kent
Jay Berkowitz
Nathan Bovelie
Eamon Lorinez

Aisha Memon, General Counsel
Nicolas Deandreis
Jay Shepherd
Zachary Marks
Gail Willison
Victoria Dixon
Ellen Goff

Commission Support

Patrice Birdsong, Spec. Asst. to the Commission

I. COMMITTEE REPORTS and RECOMMENDATION FOR ACTION

- A. **Bauer Park Apartments:** Approval to Increase the Predevelopment Budget and a Final Installment of Predevelopment Funding from the Opportunity Housing Reserve Fund ("OHRF") to Fund Closing and Development Related Expenses and Approval to Increase the Number of Vacant Units to Complete the Renovations

Kayrine Brown, Chief Investment and Real Estate Officer, and Jay Shepherd, Senior Financial Analyst, were the presenters.

The following resolution was adopted upon a motion by Chair Pro Tem Nelson and seconded by Commissioner Simon. Affirmative votes were cast by Commissioners Priest, Kelleher, Nelson, and Simon. Commissioners Byrd and Croom was necessarily absent and did not participate in the vote.

RESOLUTION NO.: 20-39

RE: Approval to Increase the Predevelopment Budget and a Final Installment of Predevelopment Funding from the Opportunity Housing Reserve Fund to Fund Closing and development Related Expenses; Approval to Complete Acquisition & LIHTC Closing and Approval to Increase the Number of Vacant Units to Complete the Renovations

WHEREAS, the Housing Opportunities Commission of Montgomery County (“HOC”) seeks to preserve Montgomery County’s existing affordable housing, including those subsidized by Rental Assistance Payment (“RAP”) contracts and Section 236 financing; and

WHEREAS, Bauer Park Apartments (the “Property”), located at 14635/39/43 Bauer Drive, consists of 142 units in three (3) buildings on 3.88 acres of land on the southeast corner of the intersection of Bauer Drive and Norbeck Road in Rockville, MD; and

WHEREAS, the Property was originally built in 1977 under the Section 236 Program and is owned by Banor Housing, Inc., a non-profit corporation (“Banor”) that is managed by a Policy Board (the “Policy Board”); and

WHEREAS, on April 5, 2017, HOC passed Resolution 17-23 approving the advance of \$850,000 in aggregate from the Opportunity Housing Reserve Fund (“OHRF”) to reimburse Victory Housing, Inc. for predevelopment costs as they are incurred to prepare and submit tax credit applications for the Property for up to \$350,000; and

WHEREAS, on July 11, 2018, HOC passed Resolution 18-54 approving the Preliminary Development Plan for the Property and authorized an additional \$100,000 for predevelopment funding for costs as they are incurred to prepare and submit tax credit applications for the Property; and

WHEREAS, on July 10, 2019, HOC passed Resolution 19-76 approving the Final Development Plan for the Property (the “Final Development Plan”) identifying additional predevelopment costs of \$250,000 to be funded from the OHRF and a total development cost of approximately \$40 million to be funded with HOC-issued FHA-insured tax-exempt bonds, County Capital Improvements Program funds, 4% Low Income Housing Tax Credit equity, a seller note (to be assigned from Banor to HOC), and acquired replacement reserves; and

WHEREAS, additional predevelopment funding in the amount of \$400,000 is needed to fund permits fees and final obligations related to closing, which shall be funded from the OHRF; and

WHEREAS, in order to renovate more efficiently, staff recommends increasing vacancy at the Property; and

WHEREAS, in order to consummate the closing approved in the Final Development Plan, HOC desires to confirm its approval of certain elements of the transaction, including (i) causing the planned purchaser of the property, Bauer Park Apartments, LP (“Bauer LP”) to (a) amend the Purchase and Sale Agreement for the Property dated August 8, 2019, (the “Purchase Agreement”) to increase the purchase price to the “as-is unrestricted value” set forth in the planned updated appraisal for the Property and to transfer all reserves for the Property to Bauer LP (the “Purchase Agreement Amendment”), (b) accept a deed to the Property from Banor pursuant to the Purchase Agreement (the “Deed”) and (c) accept an assignment of the construction contract with Hooten Construction, LLC and the architect agreement with Architecture by Design, Inc. (the “Contract Assignments”) from a subsidiary of HOC’s development partner, Victory Housing, Inc. (“VHI”) and (ii) executing a (a) Guaranty Agreement from HOC in favor of Bauer LP’s tax credit investor limited partner (the “Guaranty Agreement”) and (b) a Grant Agreement between HOC and the Maryland Energy Administration (the “MEA Grant Agreement”), the proceeds of which, if received, will be used to reimburse HOC for expenditures for certain energy efficiency improvements paid for with the proceeds of HOC’s subordinate loan to Bauer LP and will be deposited into the OHRF upon receipt; and

WHEREAS, in order to satisfy certain Low Income Housing Tax Credit requirements for acquisition and rehabilitation transactions, HOC desires for its development partner, VHI, to have up to a 45% non-managing member interest in Bauer Park Apartments, LLC (“Bauer LLC”), the managing member of Bauer LP.

NOW, THEREFORE, BE IT RESOLVED that the Housing Opportunities Commission of Montgomery County is authorized to incur up to Four Hundred Thousand Dollars (\$400,000) in additional predevelopment costs, which shall be funded from the OHRF and reimbursed at closing with any excess sales proceeds.

BE IT FURTHER RESOLVED that the Housing Opportunities Commission of Montgomery County approves increasing vacancy at the Property to 35 units to facilitate the rehabilitation of the Property.

BE IT FURTHER RESOLVED that the Housing Opportunities Commission of Montgomery County (i) approves the execution of the Guaranty Agreement and the MEA Grant Agreement, (ii) acting on behalf of itself and of Bauer LLC, as its managing member, approves the execution of an Operating Agreement with a subsidiary of VHI granting such subsidiary up to a 45% non-managing member interest in Bauer LLC and (iii) acting on behalf of itself and of Bauer LLC, as its managing member, and Bauer LP, as its ultimate managing general partner, approves the execution of the Purchase Agreement Amendment, the Deed, the Contract Assignments and all related documents necessary to consummate the closing of the acquisition of the Property from Banor and the admission of an affiliate of Enterprise Community Partners as a tax credit investor limited partner in Bauer LP in accordance with the Development Plan set forth in Resolution 19-76 and with this resolution.

BE IT FURTHER RESOLVED by the Housing Opportunities Commission of Montgomery County that the Executive Director, or his designee, is authorized, without any further action on their respective parts, to take any and all other actions necessary and proper to carry out the transactions and actions contemplated herein, including the execution of any documents related thereto.

- B. **Bauer Park Financing:** Approval of Financing Plan, Feasibility and Public Purpose for Bauer Park Apartments; Authorization to Issue Loans to Bauer Park Apartments LP for Acquisition and Construction Financing; Authorization to Issue a Commitment for Permanent Financing; and Authorization for the Borrower to Accept Loans in Accordance with the Finance Plan

Kayrine Brown, Chief Investment and Real Estate Officer, and Victoria Dixon, Senior Multifamily Underwriter, were the presenters.

The following resolution was adopted upon a motion by Commissioner Simon and seconded by Chair Pro Tem Nelson. Affirmative votes were cast by Commissioners Priest, Kelleher, Nelson, and Simon. Commissioners Byrd and Croom was necessarily absent and did not participate in the vote.

RESOLUTION NO.: 20-40

RE: Approval of the Financing Plan, Feasibility and Public Purpose for Bauer Park Apartments; Authorization to Issue Loans to Bauer Park Apartments LP for Acquisition and Construction Financing; Authorization to Issue a Commitment for up to \$25.8 Million in Permanent Financing; and, Authorization for the Borrower to Accept Loans in Accordance with the Finance Plan

WHEREAS, the Housing Opportunities Commission of Montgomery County (“HOC” or the “Commission”) is a public body corporate and politic duly organized under Division II of the Housing and Community Development Article of the Annotated Code of Maryland, as amended, known as the Housing Authorities Law, and authorized thereby to effectuate the purpose of providing affordable housing, including providing for the acquisition, construction, rehabilitation and/or permanent financing or refinancing (or a plan of financing) of multifamily rental housing properties which provide a public purpose; and

WHEREAS, Bauer Park Apartments (the “Property”) is an existing 142-unit age-restricted residential community located at 14635, 14639 and 14643 Bauer Drive, Rockville, Maryland owned by Banor Housing, Inc. (“Banor”); and

WHEREAS, the Property will be acquired by in a single purpose entity known as Bauer Park Apartments LP (“Borrower”), which will be controlled by Bauer Park Apartments LLC (“General Partner”) an entity controlled by HOC; and

WHEREAS, HOC will enter into a partnership with Victory Housing, Inc. which will provide Victory Housing, Inc. with up to a non-managing 45% ownership interest in the General Partner; and

WHEREAS, the Borrower proposes for the Property to serve seniors with household incomes at 60% of the Washington-Arlington-Alexandria, DC-VA-MD-WV Metro Area Median Income (“AMI”) or less, provided that the low income set-asides for the tax-exempt financing will be observed; and

WHEREAS, on July 10, 2019, the Commission approved the selection of Enterprise Community Investment, Inc. (“Enterprise”) as the Low Income Housing Tax Credit (“LIHTC”) syndicator and authorized the Executive Director to negotiate and execute a Limited Partnership Agreement to admit an affiliate of Enterprise as a non-managing member of the Borrower, with HOC remaining in control of the Borrower as the managing member of the General Partner entity; and

WHEREAS, on July 10, 2019, the Commission approved the final development plan totaling \$40 million for the Property as a 142-unit, income and age-restricted community, which included predevelopment and renovation funding in a cumulative amount up to \$3.4 million from various sources available to HOC including \$1,348,897 from the Operating Housing Reserve Fund, which will be subject to repayment upon closing of the transaction; and

WHEREAS, the Commission has provided a loan to Banor to support operations of the Property, totaling approximately \$812,000 from the Commission's General Fund as of March 31, 2020, which is to be repaid from sale proceeds of the Property; and

WHEREAS, as of March 31, 2020, the Property held approximately \$564,000 of unrestricted cash in residual receipts, replacement reserve, and mortgage escrow accounts ("Property Cash"); and

WHEREAS, staff explored a variety of options for the estimated \$42.9 million acquisition, rehabilitation and permanent financing for the Property, and determined to use a number of sources including (1) the issuance of private activity, long-term, tax-exempt bonds in an amount up to \$25.8 million to fund a loan for costs of acquisition, rehabilitation, and equipping the Property, enhanced by FHA Risk Sharing ("Mortgage Loan" or "Permanent Loan"); (2) LIHTC equity estimated at \$10.4 million; (3) a subordinate loan of approximately \$2.1 million from HOC, funded from previously contributed sources available to HOC ("HOC Loan"); (4) a subordinate loan of approximately \$6.2 million from Banor Housing Inc. representing contributed land equity which will be assigned to HOC ("Seller Loan"); and (5) available Property Cash (collectively, the "Financing Plan"); and

WHEREAS, Commission and the Borrower has applied for a Letter of Reservation/Determination for 4% LIHTC from the Maryland Department of Housing and Community Development, which will enable the Borrower to raise approximately \$10.4 million in equity to pay part of its acquisition and development costs; and

WHEREAS, the Property will require an allocation of a portion of the Commission's tax-exempt volume cap in an amount not to exceed \$25.8 million; and

WHEREAS, a review of the transaction has been completed and it has been determined that given the financial commitments to the Property and its operating projections, this transaction is believed to be feasible, and that by providing 142 units at or below 60% of the AMI to seniors aged 62 years old or higher, the Property will provide significant public purpose supporting an allocation of tax-exempt volume cap.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that the Financing Plan, Feasibility and Public Purpose, as recommended by the Development and Finance Committee and as described herein, is hereby approved and that the staff is hereby authorized to proceed with the review and processing of the necessary financing applications and other documentation.

BE IT FURTHER RESOLVED that the Housing Opportunities Commission of Montgomery County authorizes the following:

1. The allocation of tax-exempt volume cap in an amount not to exceed \$25,790,000 for the issuance of long-term bonds to finance the transaction and for the Commission, as conduit

lender, to use those bond proceeds to make a tax-exempt Mortgage Loan to Borrower with a maximum term of up to 516 months (43 years) to fund development of the Property, which will be subject to conversion to a Permanent Loan phase.

2. Issuance of a subordinate HOC Loan of approximately \$2.1 million to the Borrower for up to 43 years representing previously contributed funds by the Commission from available sources.
3. Approval to use existing Property Cash balances from residual receipts, replacement reserves, and mortgage escrow accounts for the subject transaction.
4. Authorization to pursue obtaining a waiver from FHA for issuance of 40-year tax-exempt bonds with a 25-year balloon payment, if necessary to adjust for interest rate conditions to maintain economics of the transaction at the time of closing.

BE IT FURTHER RESOLVED that the Housing Opportunities Commission of Montgomery County authorizes the issuance of a commitment for the Mortgage Loan in an amount up to \$25,790,000, which will be credit enhanced by FHA Risk Share Mortgage Insurance, pursuant to the Risk Sharing Agreement between the Commission and the U.S. Department of Housing and Urban Development (“HUD”), of which the Commission shall assume 25% of the risk while HUD shall assume 75% for the transaction.

BE IT FURTHER RESOLVED that the Housing Opportunities Commission of Montgomery County, acting on behalf of itself and on behalf of the General Partner of Borrower, acting for itself and on behalf of Borrower accepts the Mortgage Loan, Permanent Loan, HOC Loan, and Seller Loan for the financing closing, which may occur separate and apart from the LIHTC equity closing.

BE IT FURTHER RESOLVED by the Housing Opportunities Commission of Montgomery County, acting on behalf of itself and on behalf of the General Partner, the general partner of Borrower, acting for itself and on behalf of Borrower, that the Executive Director, or a duly appointed designee of the Executive Director, is hereby authorized, without any further action on their respective parts, to execute such other documents, including without limitation guarantees from HOC required by Borrower’s lenders, and to take any and all other actions, in each case as necessary and proper, in the Executive Director’s judgment, to carry out the Financing Plan and the transaction and actions contemplated herein.

Based upon this report and there being no further business to come before this session of the Commission, the open session adjourned at 12:30 p.m., on a motion by Vice Chair Kelleher, seconded by Commissioner Simon with Commissioners Priest, Kelleher, Nelson and Simon unanimously voting in approval. Commissioners Byrd and Croom were necessarily absent and did not participate in the vote.

Respectfully submitted,

Stacy L. Spann
Secretary-Treasurer

/pmb

Approved: June 3, 2020