

HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY

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

Minutes

February 6, 2019

19-02

The monthly meeting of the Housing Opportunities Commission of Montgomery County was conducted on Wednesday, February 6, 2019 at 10400 Detrick Avenue, Kensington, Maryland beginning at 4:14 p.m. Those in attendance were:

Present

Jackie Simon, Chair
Richard Y. Nelson, Jr., Vice Chair
Linda Croom
Roy Priest
Frances Kelleher

Absent

Edgar Rodriguez, Chair Pro Tem
Pamela Byrd

Also Attending

Stacy L. Spann, Executive Director
Ali Khademain
Kayrine Brown
Charlotte Mbouma
Christina Autin
Cornelia Kent
Darcel Cox
Derrick Thompson
Ellen Goff
Rita Harris
Sewavi Agbodjan
Ian-Terrell Hawkins
Hyunsuk Choi
Ian Williams
Terri Fowler

Aisha Memon, Acting General Council
Jennifer Arrington
Bonnie Hodge
Lorie Seals
Lynn Hayes
Marcus Ervin
Mary Phillips
Patrick Mattingly
Elliot Rule
Ethan Cohen
Fred Swan
Sherraine Rawlins
Shauna Sorrells
Susan Smith

Resident Advisory Board

Yvonne Caughman, Vice President

Guest

Macedonia Baptist Church Supporters

IT Support

Irma Rodriguez
Rony Joseph

Commission Support

Patrice Birdsong, Spec. Asst. to the Commission

I. **Approval of Minutes**

- A. **Approval of Minutes of January 9, 2019 regular meeting** - The minutes were approved as submitted with a motion by Vice Chair Nelson and seconded by Commissioner Kelleher. Affirmative votes were cast by Commissioners Simon, Nelson, Priest, Croom, and Kelleher. Commissioners Rodriguez and Byrd were necessarily absent and did not participate in the vote.
- B. **Approval of Minutes of January 9, 2019 Administrative Session** – The minutes were approved as submitted with a motion by Commissioner Priest and seconded by Commissioner Kelleher. Affirmative votes were cast by Commissioners Simon, Nelson, Croom, Priest, and Kelleher. Commissioners Rodriguez and Byrd were necessarily absent and did not participate in the vote..
- C. **Approval of Minutes of January 23, 2019 Special Session** – The minutes were approved as submitted with a motion by Vice Chair Nelson and seconded by Commissioner Priest. Affirmative votes were cast by Commissioners Simon, Nelson, Croom, Priest, and Kelleher. Commissioners Rodriguez and Byrd were necessarily absent and did not participate in the vote.

II. **CONSENT ITEMS**

- A. **Authorization to Amend Resolution 19-09 to Allow for the Execution of Two Interest Rate Hedge Via Swap Agreements for the Upton II**

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

RESOLUTION NO.: 19-15

**RE: Authorization to Amend Resolution
19-09 to Allow for the Execution of Two Interest
Rate Hedges Via Swap Agreements for the Upton
II**

WHEREAS, the Housing Opportunities Commission of Montgomery County (the “Commission” or “HOC”) 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, Upton II is a planned development in Rockville that is entitled under current zoning and planning requirements for retail, public parking, and up to 400 apartments, of which HOC and Victory Housing, Inc. will own and operate a condominium unit containing 150 apartments, which will be a mixed-income, age restricted community (the “Property”); and

WHEREAS, HOC is currently the sole member of HOC MM Upton II, LLC (the “Managing Member”), which in turn is the sole member of HOC at The Upton II, LLC (“Borrower”); and

WHEREAS, on January 9, 2019, the Commission approved Resolution 19-09, which included the approval of the Financing Plan for the Property,

WHEREAS, the Financing Plan totals \$49.5 million for the acquisition, construction and permanent financing for the Property, and includes a number of sources, including: a short-term, tax-exempt loan to fund construction by way of a Commission conduit loan from M&T Bank to be passed through to the Borrower ("Construction Loan"), which will be repaid by a FHA Risk Share Permanent Loan ("Permanent Loan"); bridge funding during acquisition/construction by way of draws on the Commission's PNC Bank, N.A. Real Estate Line of Credit; LIHTC equity; a subordinate loan from Montgomery County, Maryland; acquisition financing in the form of a seller take-back loan from the Commission; and, deferred developer fees; and

WHEREAS, to protect the transaction from potential interest rate increases, Resolution 19-09 approved purchasing an interest rate hedge in the form of a swap to mitigate the risk of a potential rise in interest rates; and

WHEREAS, in order to reduce costs, provide better credit protection for the swap counterparty and the Commission, and to ensure the swap is structurally consistent with the terms of the Construction Loan and Permanent Loan, staff recommends entering into two (2) swaps instead of one (1) swap, with the first swap beginning at the start of the first construction draw, and a second forward starting swap beginning at permanent loan conversion.

NOW, THEREFORE, BE IT RESOLVED that the Housing Opportunities Commission of Montgomery County amends Resolution 19-09 to allow for the execution of two interest rate hedges via swap agreements with a qualified counterparty (Royal Bank of Canada) to mitigate against a rise in interest rates, with any scheduled or termination payment owed by the Commission being paid as a Program Expense under its 1996 Indenture and/or from the Commission's legally available general funds, subject to agreements now or hereafter made with holders of its notes and bonds, pledging particular revenues, assets or moneys for the payment thereof, and subject to agreements with governmental agencies or other parties providing funds to the Commission and restricting the uses to which such funds may be applied.

BE IT FURTHER RESOLVED by the Housing Opportunities Commission of Montgomery County that the Executive Director is hereby authorized, without any further action on their respective parts, to negotiate the terms of the swaps to complete the transaction contemplated herein.

BE IT FURTHER RESOLVED by the Housing Opportunities Commission of Montgomery County, acting in its own capacity and for and on behalf of the Managing Member and the Borrower, that the Managing Member and Borrower approve the amendment to Resolution 19-09 and the corresponding change to the Financing Plan.

B. Approval of the Re-appointment of Kenneth B. Tecler to the Board Director of Housing Opportunities Community Partners, Inc.

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

RESOLUTION NO.: 19-22

**RE: Approval of the Re-appointment of
Kenneth B. Tecler to the Board Directors of
Housing Opportunities Community Partners, Inc.**

WHEREAS, the Housing Opportunities Commission of Montgomery County (“Commission”) approved the creation of the non-profit, Housing Opportunities Community Partners, Inc. (“Community Partners”), in 1999 to support the residents and programs of the Commission; and

WHEREAS, the Board of Community Partners has recommended the re-appointment of Kenneth B. Tecler to the Community Partners Board; and

WHEREAS, the Commission is required, by the Community Partners’ by-laws, to approve nominees to the Board of Directors of Community Partners.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that Kenneth B. Tecler is hereby approved and appointed to serve a three-year term on the Board of Directors of Housing Opportunities Community Partners, Inc.

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

III. ADMINISTRATIVE AND SPECIAL SESSION RATIFICATIONS

**A. Ratification of Action taken in Special Administrative Session on January 23, 2019:
Emergency Authorization to Advance Funds for Housing Choice Voucher Payments in the
Event of a Continued Government Shutdown**

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

RESOLUTION NO.: 19-14R

**RE: Emergency Authorization to Advance
Funds for Housing Choice Voucher Payments in
the Event of a Continued Government Shutdown**

WHEREAS, the Housing Opportunities Commission of Montgomery County (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 rental subsidy payments as a public purpose;

WHEREAS, for each fiscal year, the Commission executes an Annual Contributions Contract with the U.S. Department of Housing and Urban Development (“HUD”) pursuant to which HUD agrees to provide the Commission with the incremental funds necessary to make Housing Assistance Payments to landlords under the Housing Choice Voucher Program (the “HCV Program”);

WHEREAS, the Housing Assistance Payments under the Commission's HCV Program average approximately \$7.9 Million per month and are funded on a monthly basis from the Federal Government;

WHEREAS, in the event that the Federal Government shutdown continues past February 28, 2019, the Commission will not receive the funds necessary to pay the Housing Assistance Payments to landlords each month under the HCV Program; and

WHEREAS, the Commission wishes to make provisions for the continuity of Housing Assistance Payments to landlords participating in the HCV Program in the event of a continued Government shutdown in order to prevent potential hardships to HCV Program participants; and

WHEREAS, the Commission has a \$60 Million Line of Credit with PNC Bank, National Association (the "PNC \$60 Million LOC") that may be used to provide short-term financing and had an unobligated balance that is sufficient to make the March 2019, April 2019, and May 2019 Housing Assistance Payments to landlords participating in the HCV Program;

WHEREAS, at a Special Administrative Session duly called and held on January 23, 2019, with a quorum present, the Commission duly adopted Resolution 19-14AS, Commissioners Simon, Nelson, Rodriguez, Byrd, Priest, and Kelleher voting in approval, which approved drawing from the PNC \$60 Million LOC in order to make the March 2019, April 2019, and May 2019 Housing Assistance Payments to landlords participating in the HCV Program to the extent there is a continued government shutdown past February 28, 2019, Commissioner Croom was necessarily absent and did not participate in the vote; and

WHEREAS, consistent with the Commission's Amended and Restated Bylaws, the Commission wishes to ratify and affirm, in an open meeting with a quorum physically present, the action undertaken by the Commissioners in adopting Resolution 19-14AS and any action taken since January 23, 2019 to effectuate the transaction contemplated therein.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that Resolution 19-14AS and any subsequent actions taken in relation thereto, are hereby ratified and affirmed.

IV. **COMMITTEE REPORTS and RECOMMENDATIONS FOR ACTION**

A. Development and Finance Committee – *Com. Simon, Chair*

1. Approval of an Interest Rate Exchange Agreement Policy Governing the Use of Derivative Products in HOC's Financing Program

Kayrine Brown, Chief Investments and Real Estate Officer, was the presenter.

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

RESOLUTION NO.: 19-16

Re: Approval of an Interest Rate Exchange Agreement Policy Governing the Use of Derivative Products in HOC's Financing Programs

WHEREAS, the Housing Opportunities Commission of Montgomery County (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, in carrying out its public purpose the Commission may use instruments of the capital markets to achieve the lowest borrowing cost of funds and manage interest rate risk as works to secure funding for its single family and multifamily mortgages and has negotiated and executed Interest Rate Exchange Agreements, of which five long-term and two short-term swap transactions remain outstanding; and

WHEREAS, throughout its history involving the use of swaps, the Commission has completed swap transactions pursuant to guidelines governing the use of swaps an in accordance with the International Swaps and Derivatives Association, Inc., the governing body that regulates and the use of derivatives; and

WHEREAS, the Commission now wishes to codify its guidelines into a policy that is responsive to the needs of counterparties and is consistent with federal, state, and local laws, including the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

WHEREAS, the Chief Investment and Real Estate Officer and the Chief Financial Officer jointly will serve as Swap Administrator and will manage the Commission's swaps and report annually to the Budget Finance and Audit Committee and the Development and Finance Committee on the performance of its swaps; and

WHEREAS, the Commission may hire the services of more than one swap advisor but wishes to affirm its financial advisor, Caine Mitter and Associates Incorporated as its Swap Advisor.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that it approves the Interest Rate Exchange Agreement Policy ("Swap Policy"), attached hereto as Exhibit A, governing the use of derivatives products in the Commission's financing programs to, among other things, manage interest rate risk and lower overall borrowing costs.

BE IT FURTHER RESOLVED that the Housing Opportunities Commission of Montgomery County hereby affirms Caine Mitter and Associates as the Commission's Swap Advisor.

BE IT FURTHER RESOLVED that the Housing Opportunities Commission of Montgomery County authorizes the Executive Director, without any further action on its part, to execute such other documents 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 actions contemplated herein.

2. Approval of Task Orders with CDC Capital, LLC for Continuation of Work Related to Development Activity at Alexander House and Elizabeth House III

Kayrine Brown, Chief Investments and Real Estate Officer, and Ellen Goff, Real Estate Operations Manager, were the presenters.

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

RESOLUTION NO.: 19-17

**RE: Approval of Task Orders with CDC Capital, LLC
for Continuation of Services for Work
Related to Development Activity at
Alexander House and Elizabeth House III**

WHEREAS, the Housing Opportunities Commission of Montgomery County (the "Commission" or "HOC") 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, to effectively carry out its business of delivering affordable housing to persons of eligible income, the Commission from time to time augments its staff by contracting with third party consultants for its development and financing activities; and

WHEREAS, development consultants perform all the work necessary for acquisition, preservation, rehabilitation, or construction opportunities as well as provide accompanying financing consulting services and financing consultants to advise, source, and structure debt and equity to enhance the Commission's existing debt products, all under the direction of the Commission's real estate staff; and

WHEREAS, the Commission engaged CDC Capital, LLC ("CDC") as the lead project manager of the Elizabeth Square Development (which includes Alexander House, Elizabeth House III, and the South County Regional Recreation and Aquatic Center ("SCRRAC") on January 3, 2017 for an initial term of twenty-four months and that contract has now expired; and

WHEREAS, the Commission approved a new Development and Financing Consulting Pool (the "Pool" on November 7, 2018 and CDC was awarded a new contract within the Pool; and

WHEREAS, given the complexity of the Elizabeth Square Development transaction and the number of partners and county agencies involved, staff believes it is in the best interest of the Commission to take steps to ensure the timely completion of the planning, financing, and construction of the project; and

WHEREAS, the principal of CDC possesses the most institutional knowledge and has agreed to continue to support HOC and the project in a consulting capacity through its contract within the Pool, necessitating task orders with CDC for continuation of development and finance consulting services to close out the Alexander House project, and for the development of Elizabeth House III and the SCRRAC; and

WHEREAS, the combined task order amounts exceed the Executive Director's authorization, therefore Commission approval is required to approve the task orders for CDC's continuation of services of the Elizabeth Square Development (which includes Alexander House, Elizabeth House III, and the SCRRAC).

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that it hereby authorizes and directs the Executive Director, without further action on its part, to execute task orders with CDC for continuation of development and finance consulting services for the Elizabeth Square Development (which includes Alexander House, Elizabeth House III, and the SCRRAC) for a term of up to forty-eight months for a maximum price of \$783,500.

BE IT FURTHER RESOLVED that the funding for the contract is authorized to be included in the Development Budget for Alexander House and Elizabeth House III for the respective development phases, but that the ongoing cost of the engagement may be funded by HOC from the General Fund to be reimbursed at the financial closing of each phase of the development.

BE IT FURTHER RESOLVED that the Executive Director is hereby authorized and directed to take all actions necessary and proper to carry out the transactions and activities contemplated herein.

V. **ITEMS REQUIRING DELIBERATION and/or ACTION**

A. **Approval of the FY'20 County Operating Budget MARC Reduction**

Cornelia Kent, Chief Financial Officer, and Terri Fowler, Budget Officer, were the presenters.

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

RESOLUTION NO.: 19-19

**RE: Approval of the FY'20 County
Operating Budget MARC Reduction**

WHEREAS, on November 8, 2018, the Housing Opportunities Commission of Montgomery County ("HOC") submitted a baseline budget or Maximum Agency Request Ceiling ("MARC") to the County in the amount of \$6,680,270 for FY'20;

WHEREAS, on January 24, 2019, the County Office of Management and Budget ("OMB") requested that HOC submit a revised MARC for FY'20 that includes a reduction of two percent (2%) or \$133,605 from the original FY'20 submission;

WHEREAS, OMB added funding for HOC's requests of \$220,000 for increases to compensation and benefits and \$21,684 for anticipated increases in Rental License Fees that are reimbursed by the County that are not included in the two percent (2%) reduction; and

WHEREAS, the revised MARC for FY'20 including the two percent (2%) reduction and added funding is \$6,788,049.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that it hereby authorizes staff to submit a revised MARC for FY'20 in the amount of \$6,788,049.

ELECTION OF OFFICERS

Executive Director Spann opened the floor for nomination of the following Officers, Chair, Vice Chair, and Chair Pro Tem, to the Housing Opportunities Commission Board. Motion was made by Commissioner Nelson and seconded by Commissioner Priest to re-elect Jackie Simon to Chair. Affirmative votes were cast by Commissioners Nelson, Priest, Croom, Kelleher, and Simon. Commissioners Rodriguez and Byrd were necessarily absent and did not participate in the vote.

Executive Director Spann called for the nomination of Vice Chair. Motion was made by Commissioner Priest to re-elect Richard Y. Nelson, Jr., and seconded by Commissioner Kelleher. Affirmative votes were cast by Commissioners Simon, Priest, Croom, Kelleher, and Nelson. Commissioners Rodriguez and Byrd necessarily absent and did not participate in the vote.

Executive Spann called for the nomination of Chair Pro Tem. Motion was made by Commissioner Croom to nomination Roy Priest, and seconded by Commissioner Kelleher. Affirmative votes were cast by Commissioners Simon, Nelson, Croom, Kelleher, and Priest.

Executive Director Spann made a motion to close the nominations. Affirmative votes cast by Commissioners Simon, Nelson, Priest, Croom, and Kelleher. Commissioners Rodriguez and Byrd were necessarily absent and did not participate in the vote.

Based upon this report and there being no further business to come before this session of the Commission, the open session adjourned at 5:36 p.m. and reconvened in closed session at approximately 5:45 p.m.

In compliance with Section 3-306(c)(2), General Provisions Article, Maryland Code, the following is a report of the Housing Opportunities Commission of Montgomery County's closed session held on February 6, 2019 at approximately 5:45 p.m. at 10400 Detrick Avenue, Kensington, MD 20895. The meeting was closed under the authority of Section 3-305(b)(3) and Section 3-305(b)(13) to discuss a potential real property acquisition, the funding and structuring of a potential real estate transaction, and the restructuring and funding of an ongoing real estate transaction.

The meeting was closed on a motion by Vice Chair Nelson, seconded by Commissioner Croom, with Commissioners Simon, Nelson, Priest, Croom, and Kelleher unanimously voting in approval. Commissioners Rodriguez and Byrd were necessarily absent and did not participate in the vote. The following persons were present: Jackie Simon, Richard Y. Nelson, Jr., Linda Croom, Roy Priest, Fran Kelleher, Stacy Spann, Shauna Sorrells, Aisha Memon, Eamon Lorinez, Kayrine Brown, Christina Autin, Ellen Goff, Zachary Marks, Marcus Ervin, Cornelia Kent, Gio Kaviladze, and Patrice Birdsong.

In closed session, the Commission discussed the following topics: a potential real property acquisition, the funding and structuring of a potential real estate transaction, and the restructuring and funding of an ongoing real estate transaction. The following actions were taken:

1. With a quorum present, the Commission duly adopted Resolution 19-20AS, with Commissioners Jackie Simon, Richard Y. Nelson, Jr., Linda Croom, Roy Priest, and Frances Kelleher voting in approval, which approved the following: the funding of a predevelopment budget; additional funding to cover predevelopment costs already incurred to date; and a loan from HOC's Opportunity Housing Reserve Fund. Commissioners Pamela Byrd and Edgar Rodriguez were necessarily absent and did not participate in the vote.
2. With a quorum present, the Commission duly adopted Resolution 19-21AS, with Commissioners Jackie Simon, Richard Y. Nelson, Jr., Linda Croom, Roy Priest, and Frances Kelleher voting in approval, which approved the following: executing a purchase and sale agreement for the disposition of real property located at 10140 New Hampshire Avenue, Silver Spring, MD; completion of a disposition; and restricting proceeds from the disposition to future development activities. Commissioners Pamela Byrd and Edgar Rodriguez were necessarily absent and did not participate in the vote.
3. With a quorum present, the Commission convened a meeting of the Board of Directors of the Barclay Apartment Development Corporation, and the Board duly adopted Resolution 19-001BC, with Commissioners Jackie Simon, Richard Y. Nelson, Jr., Linda Croom, Roy Priest, and Frances Kelleher voting in approval, which approved the acceptance of a loan from HOC's Opportunity Housing Reserve Fund to fund the predevelopment budget and additional predevelopment costs. Commissioners Pamela Byrd and Edgar Rodriguez were necessarily absent and did not participate in the vote.

The closed session was adjourned at 6:33 p.m.

Respectfully submitted,

Stacy L. Spann
Secretary-Treasurer

/pmb

Approved: March 6, 2019