

HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY

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

Minutes

September 4, 2019

19-09

The monthly meeting of the Housing Opportunities Commission of Montgomery County was conducted on Wednesday, September 4, 2019 at 10400 Detrick Avenue, Kensington, Maryland beginning at 4:18 p.m. Those in attendance were:

Present

Jackie Simon, Chair
Richard Y. Nelson, Vice Chair
Roy Priest, Chair Pro Tem
Pamela Byrd
Frances Kelleher
Linda Croom

Also Attending

Stacy L. Spann, Executive Director
Bonnie Hodge
Charnita Jackson
Cornelia Kent
Debra Newkirk
Derrick McLaughlin
Eamon Lornicz
Ellen Goff
Ian-Terrell Hawkins
Eugenia Pascual
Fred Swan
Gail Gunod-Green
Hyunsuk Choi
Ian Williams
Jennifer Arrington

Aisha Memon, Acting General Council
Lynn Hayes
Marcus Ervin
Matt Husman
Natalia Thorne
Renee Harris
Rita Harris
Ethan Cohen
Sewavi Agbodjan
Shauna Sorrells
Sherraine Rawlins
Victoria Dixon
Zachary Marks
Jay Berkowitz
Kayrine Brown

Resident Advisory

Yvonne Caughman, Vice Chair

IT Support

Irma Rodriguez
Gabriel Taube
Michael Tadesse

Commission Support

Patrice Birdsong, Spec. Asst. to the Commission

I. **Information Exchange**

Resident Advisory Board

- Yvonne Caughman, Vice Chair, updated on activities of Resident Advisory Board.

Community Forum

- Amporn Outhwaite addressed the Board regarding her housing application status on the Wait List. Lorie Seals, Compliance Specialist, and Lynn Hayes, Director of Housing Resources, were directed by the Executive Director to assist.

- II. **Approval of Minutes** - The minutes were approved as submitted with a motion by Chair Pro Tem Priest and seconded by Commissioner Kelleher. Affirmative votes were cast by Commissioners Simon, Nelson, Priest, Croom, Byrd, and Kelleher.

A. **Approval of Minutes of July 10, 2019**

B. **Approval of Minutes of July 10, 2019 Administrative Session**

C. **Approval of Minutes of August 23, 2019 Special Session**

D. **Approval of Minutes of August 23, 2019 Administrative Session**

III. **Consent Items**

A. **None**

IV. **Information Exchange Continued**

Report of the Executive Director

- In addition to the written report, Mr. Spann reported that there was a visit from OMB. They were referred by HUD. Purpose of visit is to use HOC as a training ground on how a housing authority should manage business. He also reported that The Lindley has received the Jack Kemp Award.

Commissioner Exchange

- Chair Pro Tem Priest and Commissioner Kelleher shared an updated on a report from the *Washington Post* by the Urban Institute regarding affordable housing in the metropolitan area.

V. **ADMINISTRATIVE AND SPECIAL SESSION RATIFICATION**

A. **None**

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

A. **Budget, Finance and Audit Committee – *Com. Nelson, Chair***

- **Approval to Repay the PNC Bank, N.A. Line of Credit Draw in the Amount of \$392,778 for Fairfax Court Apartments from the Opportunity Housing Bond Fund**

Cornelia Kent, Chief Financial Officer, and Eugenia Pascual, Controller, were the presenters.

The following resolution was adopted upon a motion by Vice Chair Nelson and seconded by Commissioner Kelleher. Affirmative votes were cast by Commissioners Simon, Nelson, Priest, Croom, Byrd, and Kelleher.

RESOLUTION NO.: 19-90

**RE: Approval to Repay the PNC Bank N.A.
Line of Credit Draw in the amount of
\$392,778 for Fairfax Court Apartments from the
Opportunity Housing Bond Fund**

WHEREAS, on November 7, 2012 the Housing Opportunities Commission of Montgomery County (the "Commission") approved a draw for Fairfax Court Apartments (the "Property") from the PNC Bank N.A. Line of Credit (the "LOC") in the amount of \$746,000 (the "PNC LOC Draw") to repay the Property's first mortgage; and

WHEREAS, the Property has been required to pay the principal and interest of 6.5% on the PNC LOC Draw, a portion of such payment serviced the PNC LOC Draw at the contractual rate of the one month LIBOR plus 90 basis points, with the remainder of the payment being deposited into the Opportunity Housing ("OH Bond Fund"); and

WHEREAS, as of June 30, 2019, the amount deposited into the OH Bond Fund was \$392,778;
and

WHEREAS, staff recommends withdrawing \$392,778 from the OH Bond Fund to repay the PNC LOC Draw.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that it hereby approves withdrawing \$392,778 from the OH Bond Fund to repay the PNC Bank, N.A. Line of Credit draw for Fairfax Court Apartments.

B. Development and Finance Committee – Com. Simon, Chair

- **Approval of the General Development Agreement and Related Development Documents with Montgomery County, MD for Elizabeth Square and the South County Regional Recreational Aquatic Center; Approval to Create Consolidated Plats to Combine Record Plats; Approval to Create Land Condominium Plat and Declaration, and Authorization for the Executive Director to Execute all Related Documents**

Hyunsuk Choi, Senior Financial Analyst, and Eamon Lorincz, Deputy General Counsel, were the presenters.

The following resolutions were adopted upon a motion by Chair Pro Tem Priest and seconded by Vice Chair Nelson. Affirmative votes were cast by Commissioners Simon, Nelson, Priest, Croom, Byrd, and Kelleher.

RESOLUTION NO.: 19-91A

**RE: Approval of the General Development Agreement
and Related Development Documents with Montgomery
County, MD for Elizabeth Square and the South County
Regional Recreational Aquatic Center; Approval to Create
Consolidated Plats to Combine Record Plats; Approval to
Create Land Condominium Plat and Declaration, and
Authorization for the Executive Director to Execute all Related
Documents**

WHEREAS, Elizabeth House III is a planned mixed-use residential building with mixed-income housing and public amenities ("EH III") that is one part of a larger planned mixed-use development known as Elizabeth Square; and

WHEREAS, the fee interest in EH III is owned by Acorn Storage No. 1, LLC, a subsidiary of Lee Development Group ("Acorn") and subject to a condominium regime (the "Condominium") that established three separate condominium units: (1) a unit comprised of the market rate apartments (the "Market Rate Condo"), (2) a unit comprised of the affordable apartments (the "LIHTC Condo"), and (3) a unit comprised of the South County Regional Recreation and Aquatic Center, a public recreational facility totaling 120,000 square feet (the "SCRRAC"), which will be operated by Montgomery County Department of Recreation, and approximately 7,411 square feet of ground floor retail intended to be leased to Holy Cross Hospital for a senior resource center and primary care facility and parking (these together the "Aquatic Center Condo"); and

WHEREAS, Acorn has leased (1) the Market Rate Condo to Elizabeth House III LLC, which is wholly owned by the Housing Opportunities Commission of Montgomery County ("HOC" or "Commission"), (2) the LIHTC Condo to Elizabeth House III Limited Partnership, which is currently wholly owned by HOC (with the intent that a tax credit investor will ultimately be admitted as a limited partner), and (3) the Aquatic Center Condo to EH III Recreational Center LLC, which is wholly owned by HOC; and

WHEREAS, on November 7, 2018, the Commission authorized the Executive Director to sign (i) the general contractor contract with Costello Construction ("Costello") for an amount not to exceed \$125 million for the construction of the EH III and the SCRRAC (ii) amendments to the Condominium regime to provide that the LIHTC Condo will be comprised of all 267 apartment units and parking and will be owned by the LIHTC Owner, that the Market Rate Condo will be eliminated and that the Aquatic Center Condo will remain unchanged; and

WHEREAS, based on the final plans and specifications, the total contract value is \$124,605,473; EH III - \$71,012,193 and SCRRAC - \$53,593,280, which staff anticipates execution of the construction contract by middle of September 2019; and

WHEREAS, staff anticipates issuance of a building permit by end of September 2019 and received a Support of Excavation ("SOE") permit on August 22, 2019, mobilization to begin support of excavation work will commence; and

WHEREAS, as part of the redesign to incorporate the SCRRAC into the Elizabeth Square Development, a portion of the land currently owned by Alexander House Development Corporation ("AHDC") and Alexander House Apartments Limited Partnership ("AHALP" and together with AHDC, the "AH Owners") as tenants in common will be used to construct the 11-lane competition pool and gymnasium with high-school sized basketball court (the "AH Aquatic Center Land"); and

WHEREAS, the condominium document and plat for the land parcel currently owned by AH Owners will need to be modified from the existing plat to reflect the addition of the SCRRAC facility; and

WHEREAS, in order for the Elizabeth Square Development to move forward as approved in the Certified Site Plan and to convey the AH Aquatic Center Land, the following steps will have to occur: 1) create Consolidated Plat to combine two (2) record lots – EHIII/SCRRAC and Alexander House apartment lots; 2) create Land Condominium Plat and Declaration – two (2) land condominium units will be created, one each for EH III/SCRRAC and Alexander House Apartment; and 3) execute various easement agreements and related land covenants, including in particular a Project Wide Covenants, Conditions, and Restrictions ("CC&R") will be executed, which CC&R will grant cross easements and describing cost sharing arrangements for the harmonious operation for the Elizabeth Square; and

WHEREAS, as part of incorporating the SCRRAC into the Elizabeth Square Development, HOC and Montgomery County, MD ("County") will enter into a General Development Agreement ("GDA"). Key exhibits to

the GDA will include a Guaranteed Maximum Price Design Build (“GMP”) Contract and a General Conditions to Design Build Contract; and

WHEREAS, under the GDA agreement, HOC will act as the “Turnkey” developer to construct the SCRRAC in accordance with the approved final plans and specifications; and

WHEREAS, the GMP contract outlines the agreement between HOC and the County and determines the contract value, basis of payment, approval rights, construction management process, liquidated damages, insurance and bonding requirements, and dispute resolutions; and

WHEREAS, General Conditions to Design Build Contract provides the terms and conditions under which the HOC, County, Contractor, and Architect will work together during the building construction process; and

WHEREAS, there will be risk factors in GMP and General Conditions to Design Build Contracts, however, staff has addressed them in the Commission packet to mitigate the risks.

NOW, THEREFORE, BE IT RESOLVED that the Housing Opportunities Commission of Montgomery County, acting for itself and for and on behalf of Elizabeth House III LLC, Elizabeth House III Limited Partnership, and EH III Recreational Center LLC, approves:

1. Authorization for the Executive Director to execute General Development Agreement, Guaranteed Maximum Price Design Build Contract, and General Conditions to Design Build Contract with Montgomery County for the development of the South County Regional Recreational and Aquatic Center;
2. Authorization to create a Consolidated Plat to combine two (2) record lots;
3. Authorization to create Land Condominium Plat and Declaration; and
4. Authorization to create and execute the Project Wide Covenants, Conditions, and Restriction and other ancillary easements and covenants relating to the development and operation of the development.

BE IT FURTHER RESOLVED by the Housing Opportunities Commission of Montgomery County, acting for itself and for and on behalf of Elizabeth House III LLC, Elizabeth House III Limited Partnership, and EH III Recreational Center LLC, that the Executive Director of HOC 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.

RESOLUTION NO.: 19-91_B

RE: **Approval to Create a Plat and Land Condominium, Amendment to Vertical Condominium and Conveyance of Portion of Current Alexander House Apartments Limited Partnership Property to EH III Recreational Center, LLC**

WHEREAS, the Alexander House Apartments (the “Development”) was originally constructed in 1992 at 8560 Second Avenue, near the Silver Spring Metro Station as a single sixteen-story building with 311 residential units (now 305), 203 parking spaces in a tri-level underground parking garage, management offices, maintenance and engineering rooms, as well as a common outdoor pool shared with Elizabeth House Apartments, the property adjacent to the north; and

WHEREAS, a comprehensive renovation plan was approved by the Commission on October 5, 2016, including the retention 183 market rate units owned by the Alexander House Development Corporation (“AHDC”), and the sale of 122 units restricted to a Low Income Housing Tax Credit entity, Alexander House

Limited Partnership (“AHALP”), a Maryland limited partnership indirectly controlled and managed by the Commission; and

WHEREAS, the Commission is the sole member of Alexander House GP LLC, a Maryland limited liability company (the “General Partner”), which will serve as the general partner of AHALP; and

WHEREAS, the Development is part of the Elizabeth Square Development and on April 5, 2017 the Commission approved the inclusion of the South County Regional Recreation and Aquatic Center in the development of Elizabeth Square; and

WHEREAS, as part of the redesign to incorporate the South County Regional Recreation and Aquatic Center, a public recreational facility totaling 120,000 square feet (the “SCRRAC”), into the Elizabeth Square Development, a portion of the land currently owned by (“AHDC”) and AHALP (together, the “AH Owners”) as tenants in common will be used to construct the 11-lane competition pool and gymnasium with high school sized basketball court (the “AH Aquatic Center Land”); and

WHEREAS, the condominium document and plat for the land parcel currently owned by AH Owners will need to be modified from the existing plat to reflect the addition of the SCRRAC facility; and

WHEREAS, in order for the Elizabeth Square Development to move forward as approved in the Certified Site Plan and to convey the AH Aquatic Center Land, the following steps will have to occur: 1) create Consolidated Plat to combine two (2) record lots – EHIII/SCRRAC and Alexander House Apartment lots; 2) create Land Condominium Plat and Declaration – two (2) land condominium units will be created, one each for EH III/SCRRAC and Alexander House Apartments; and 3) execute various easement agreements and related land covenants, including in particular a Project Wide Covenants, Conditions, and Restrictions (“CC&R”) will be executed, in which the CC&R will grant cross easements and describe cost sharing arrangements for the harmonious operation for the Elizabeth Square.

WHEREAS, on November 7, 2018, the Commission approved the amendments to Building Condominium and Master Lease and Easement Documents, which allowed EH III/SCRRAC development to incorporate the AH Aquatic Center Land to construct a portion of the SCRRAC upon AH Owners approval; and

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission acting in its own capacity and for and on behalf of Alexander House GP LLC, acting in its capacity as the general partner of Alexander House Limited Partnership, that it hereby:

1. Authorizes the conveyance of AH Aquatic Center Land to EH III/SCRRAC development upon approval of the AHDC Board and the partners of AHALP;
2. Authorizes to create a Consolidated Plat to combine two (2) record lots;
3. Authorizes to create Land Condominium Plat and Declaration; and
4. Authorizes to create and execute the Project Wide Covenants, Conditions, and Restriction and other ancillary easements and covenants relating to the development and operation of the development.

BE IT FURTHER RESOLVED by the Housing Opportunities Commission acting in its own capacity and for and on behalf of Alexander House GP LLC, acting in its capacity as the general partner of Alexander House Limited Partnership, is hereby authorized, without any further action on its part, 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.

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

None

VIII. **FUTURE ACTION ITEMS**

None

Based upon this report and there being no further business to come before this session of the Commission, the open session adjourned at 4:50 p.m. and reconvened in closed session at approximately 4:58 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 September 4, 2019 at approximately 4:58 p.m. at 10400 Detrick Avenue, Kensington, MD 20895. The meeting was closed under the authority of Section 3-305(b)(3) to discuss a potential real property acquisition.

The meeting was closed on a motion by Vice Chair Nelson, seconded by Chair Pro Tem Priest, with Commissioners Simon, Nelson, Priest, Croom, Byrd, and Kelleher unanimously voting in approval. The following persons were present during the closed session: Jackie Simon, Richard Y. Nelson, Jr., Roy Priest, Linda Croom, Pamela Byrd, Frances Kelleher, Stacy Spann, Kayrine Brown, Shauna Sorrells, Cornelia Kent, Aisha Memon, Eamon Lorincz, Zachary Marks, Marcus Ervin, Charnita Jackson, and Patrice Birdsong.

In closed session, the Commission discussed a potential real property acquisition. The following action was taken:

1. With a quorum present, the Commission duly adopted Resolution 19-92AS, as amended, with Commissioners Jackie Simon, Richard Y. Nelson, Jr., Roy Priest, Linda Croom, Pamela Byrd, and Frances Kelleher voting in approval, which approved the (1) creation of a single-purpose entity to own the property, (2) assumption of a Purchase and Sale Agreement for real property located in Shady Grove, and (3) funding for the acquisition and predevelopment costs.

The closed session was adjourned at 5:40 p.m.

Respectfully submitted,

Stacy L. Spann
Secretary-Treasurer

/pmb

Approved: October 15, 2019