

HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY

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

Development and Finance Committee Minutes

October 22, 2021

For the official record of the Housing Opportunities Commission of Montgomery County, an open meeting of the Development and Finance Committee was conducted via an online platform and teleconference on Friday, October 22, 2021, with moderator functions occurring at 10400 Detrick Avenue, Kensington, Maryland beginning at 10:03 a.m., available for viewing [here](#). Those in attendance were:

Present

Jackie Simon, Chair – Development and Finance Committee
Richard Y. Nelson, Jr. – Commissioner

Absent

Jeffrey Merkowitz – Commissioner

Also Present

Frances Kelleher, Commissioner

Also Attending via Online

Kayrine Brown, Acting Executive Director
Zachary Marks
Timothy Goetzinger
Cornelia Kent
Kathryn Hollister
Daejuana Donahoe
Marcus Ervin
Leidi Reyes
Fred Swan
Eugenia Pascual
Hyunsuk Choi

Aisha Memon, General Counsel
Victoria Dixon
Jennifer Arrington
Nathan Bovellev
Christina Autin
Claire Kim
Darcel Cox
Terri Fowler
Gail Willison

IT Support

Aries Cruz

Commission Support

Patrice Birdsong, Spec. Asst. to Commission

Commissioner Simon opened the meeting with a welcome and introduction of the Commissioners participating on the Committee.

APPROVAL OF MINUTES

The minutes of the September 24, 2021 Development and Finance Committee were approved upon a motion by Commissioner Nelson and seconded by Commissioner Simon. Affirmative votes were cast by Commissioners Simon and Nelson. Commissioner Merkowitz was necessarily absent and did not participate in the vote.

DISCUSSION ITEMS

1. Garnkirk Apartments: Approval of a Predevelopment Budget and Funding of Predevelopment Expenditures for Garnkirk Apartments

Marcus Ervin, Director of Real Estate, provided a presentation on recommending to the full Commission approval of a predevelopment budget for Garnkirk Apartments to account for the costs necessary to complete the predevelopment and permitting phases. There was a recommendation to draw from the PNC Bank, N.A. Real Estate Line of Credit (RELOC) to fund the predevelopment budget, which would be repaid from the proceeds of the construction financing, and payments from the General Fund for outstanding interest incurred from the RELOC during the predevelopment period through the closing of the construction or permanent loan.

There was discussion among the Commissioners and Staff. Commissioner Nelson suggested that staff provide a budget comparison to help understand the process. A motion was made by Commissioner Nelson to move the item forward to the full Commission for approval at the November 3, 2021 monthly meeting. Commissioner Simon seconded the motion. Affirmative votes were cast by Commissioners Simon and Nelson. Commissioner Merkowitz was necessarily absent and did not participate in the vote.

2. Westside Shady Grove: Approval of a Subordinate Loan from the Housing Production Fund to HOC at Westside Shady Grove LLC

Timothy Goetzinger, Chief Development and Funds Officer, provided a presentation to recommend to the full Commission approval of a loan from the Housing Production Fund for the Westside Shady Grove project.

Staff addressed questions of the Commissioners. A motion was made by Commissioner Nelson and seconded by Commissioner Simon to recommend to the full Commission at the November 3, 2021 monthly meeting. Affirmative votes were cast by Commissioners Simon and Nelson. Commissioner Merkowitz was necessarily absent and did not participate in the vote.

3. **Westwood Tower: Approval of an Emergency Procurement Pursuant to Section 5.6(ii) of HOC's Procurement Policy for the Continuation of Litigation Services**

Kathryn Hollister, Senior Financial Analyst, provided the presentation requesting action of the Development and Finance Committee to recommend to the full Board the approval of an emergency procurement for the continuation of litigation services provided by Douglas & Boykin PLLC pursuant to Section 5.6(ii) of HOC's Procurement Policy, and approval to use the property's existing funds for litigation services. Ms. Hollister explained that the briefing materials for this item indicated another source of funding, but revised materials would be provided to the Commission at its monthly meeting.

Commissioner Nelson motioned to recommend the item move forward to the full Commission at the November 3, 2021 monthly meeting. Commissioner Simon seconded the motion and requested that the revised memo be included in the Committee's recommendation to the full Commission at the November meeting. Commissioner Nelson also suggested that a copy of the revised memo be included in the minutes of this Development and Finance Committee¹. Affirmative votes were cast by Commissioners Simon and Nelson. Commissioner Merkowitz was necessarily absent and did not participate in the vote.

4. **4527 Avondale Street: Authorization of the Acting Executive Director to Negotiate and Execute a Purchase and Sale Agreement for the Disposition of 4527 Avondale to the Center for Children and Families, and Authorization to Complete the Sale**

Kathryn Hollister, Senior Financial Analyst, provided the presentation requesting action of the Development and Finance Committee to recommend to the full Board authorization of the Acting Executive Director to negotiate and execute a Purchase and Sale Agreement for the disposition of 4527 Avondale, pursuant to HOC's non-binding letter of intent with National Center for Children and Families (NCCF), the completion of the sale, and that proceeds of the sale of 4527 Avondale be used to pay down the PNC RELOC draw that was used to acquire the Property.

Commissioner Simon expressed concern that there had not been a third appraisal done. Acting Executive Director Brown provided an explanation. Commissioner Nelson suggested that there be language in the resolution acknowledging that appraisal was not received so that it

¹ The revised memo is attached to these minutes as Attachment 1.

would not be cited as precedent for future dispositions. A motion was made by Commissioner Nelson to move the item forward to the full Commission and seconded by Commissioner Simon. Affirmative votes were cast by Commissioners Simon and Nelson. Commissioner Merkowitz was necessarily absent and did not participate in the vote.

5. **HOC Headquarters: Design Update**

Daejauna Donahue, Project Manager, provided a presentation to the Development and Finance Committee on the suggested design and budget of the new headquarters building.

There was discussion among Commissioners and staff. No recommendation for action was requested.

There being no further discussion to come before this open session of the Development and Finance Committee, the meeting adjourned at 12:01 p.m.

Respectfully submitted,

Kayrine Brown
Acting Secretary-Treasurer

/pmb

Attachment

Approved: November 19, 2021

Attachment 1

Revised Memo – Westwood Tower: Approval of an Emergency Procurement Pursuant to Section 5.6(ii) of HOC's Procurement Policy for the Continuation of Litigation Services

MEMORANDUM

TO: Housing Opportunities Commission of Montgomery County
Development and Finance Committee

VIA: Kayrine V. Brown, Acting Executive Director

FROM: Staff: Aisha Memon, General Counsel Ext. 9740
Zachary Marks, Chief Real Estate Officer Ext. 9613
Marcus Ervin, Acting Director of Development Ext. 9752
Kathryn Hollister, Senior Financial Analyst Ext. 9551

RE: **Westwood Tower:** Approval of an Emergency Procurement Pursuant To Section 5.6(ii) of HOC's Procurement Policy for the Continuation of Litigation Services

DATE: October 22, 2021

STATUS: Consent Deliberation Status Report Future Action

OVERALL GOAL & OBJECTIVE:

To authorize an emergency procurement, pursuant to Section 5.6(ii) of HOC's Procurement Policy, for the continuation of litigation services.

BACKGROUND:

In December 2019, staff solicited quotes pursuant to Section 5.2(a) of HOC's Procurement Policy ("Small Purchase Procedures") for legal consultation services for potential litigation regarding Westwood Tower Apartments ("Westwood Tower" or the "Property"). Staff received three written quotes and awarded the work to Douglas & Boykin PLLC ("Douglas"), the vendor that submitted the lowest price. On January 8, 2020, HOC entered into an agreement for services ("Agreement") with Douglas. The Agreement included HOC's ability to request that Douglas represent HOC in the event any litigation was filed.

On July 2, 2021, the Commission authorized the sale of Westwood Tower to a private purchaser. On August 10, 2021, HOC was named as a defendant in a Complaint for Writ of Mandamus filed in the Circuit Court for Montgomery County, Maryland (Case No. 486734-V) by the Bethesda African Cemetery Coalition, Reverend Olusegun Adebayo, Darold Cuba, Geneva Nanette Hunter, and Montani Wallace (the "Plaintiffs"). Shortly thereafter, staff engaged Douglas to represent HOC in the litigation.

Plaintiffs allege that HOC violated Md. Code, Bus. Reg. § 5-505 and Md. R Prop. Sales Rule 14-401 by not petitioning the court before attempting to sell Westwood Tower. As of October 18, 2021, HOC is awaiting the court's ruling on its motion to dismiss. With the litigation still ongoing, staff anticipates needing additional litigation services beyond the Small Purchase Procedure limit of \$150,000. Section 5.6(ii) of HOC's Procurement Policy ("Section 5.6(ii)") provides for procurement by noncompetitive proposals when the award of contract is not feasible using competitive proposals and an emergency exists that threatens to cause serious injury to HOC. Given the ongoing developments in the litigation, the potentially serious legal and financial ramifications of the lawsuit, and in order to maintain continuity in HOC's legal strategy, staff requests Commission approval of an emergency procurement pursuant to Section 5.6(ii) for the continuation of litigation services provided by Douglas. A pause or break in the litigation strategy for a competitive proposal procurement is not feasible and poses an emergency to HOC as it endangers HOC's ability to defend itself in the case.

Funding

Douglas estimates that their legal fees and cost to see the current litigation through its conclusion is \$225,000. To date, legal fees and cost which have been incurred for HOC's defense have been paid by the Property.

Staff proposes that the projected future legal fees and cost of \$225,000, plus a \$45,000 (20%) contingency, for a total of \$270,000, be paid from existing Property cash.

ISSUES FOR CONSIDERATION:

Does the Development and Finance Committee wish to join staff's recommendation that the Commission:

1. Approve an emergency procurement for the continuation of litigation services provided by Douglas & Boykin PLLC pursuant to Section 5.6(ii) of HOC's Procurement Policy?
2. Approve the use of Westwood Tower's existing property cash to fund the continuation of litigation services in an amount not to exceed \$270,000?

BUDGET IMPACT:

There is no adverse impact on the agency's FY2022 operating budget. As of September 30, 2021, Westwood Towers had \$2.6M in existing property cash.

TIME FRAME:

For review by the Development and Finance Committee during the October 22, 2021 committee meeting and for action by the Commission at the November 3, 2021 open meeting of the Commission.

STAFF RECOMMENDATION:

Staff recommends that the Development and Finance Committee join staff's recommendation to the Commission to:

1. Approve an emergency procurement for the continuation of litigation services provided by Douglas & Boykin PLLC pursuant to Section 5.6(ii) of HOC's Procurement Policy.
2. Approve the use of Westwood Tower's existing property cash to fund the continuation of litigation services in an amount not to exceed \$270,000.