MINUTES

Grand Junction Housing Authority — **April 29, 2004**
Board of Commissioners' *Special* Meeting — **Conference Room**
1011 North Tenth: Noon

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1. Call to Order

A *special* Grand Junction Housing Authority (GJHA) Board luncheon meeting was called to order at 12:20 p.m. on April 29, 2004, by Steve Heinemann, Board Chair, to discuss Linden Pointe. Attending this *special* meeting included Board Members Harry Butler, Kathleen Belgard, Gabe DeGabriele, Erin Ginter, Cory Hunt, and Gi Moon. GJHA staff members included Jody Kole, Kristine Franz, Greg Hancock, and Becki Tonozzi. Rich Krohn, with Dufford, Waldeck, Milburn, & Krohn, joined the meeting later.

2. Linden Pointe Presentation

Jody Kole, Executive Director, announced that Rich Krohn, would be joining the meeting later when ongoing negotiations with Wells Fargo regarding changes to Wells Fargo's standard construction loan documents were concluded.

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Jody indicated that the main focus of today's meeting was to present pertinent detailed information regarding Linden Pointe to the Board. This information has been categorizing into the following three components:

- the business transaction (financials)
- the practical construction contract and timetable
- the legal issues (ramifications of the partnership documents)

She distributed the **Tax Credit Investment Model** from MMA Financial (MMA) and indicated that the spreadsheets are generated from a proprietary piece of software that MMA used in calculating their investment so not all spreadsheets are applicable for our review and discussion.

Business Transaction (Financials)

Page 2 of the **Tax Credit Investment Model**, *Exhibit 2 – Sources and Uses of Funds at Final Closing,* was reviewed and discussed thoroughly by Greg Hancock, Development Director, who identified the various funding sources for the project, discussed the development expenses, shared the dedicated project commitment of Shaw Construction by illustrating its voluntary reduction of construction costs and profit, and highlighted the deferred developer fee to GJHA of $450,000 and contingency amount of $431,400.

Greg mentioned that the City requires a guarantee that the public improvements will be completed. City staff is in the process of reviewing ways to assist GJHA in complying with this requirement, yet minimizing the retainage of $72,000 for 18 months to cover this guarantee.

On *Exhibit 3 – Gap Analysis* of the **Tax Credit Investment Model**, Jody mentioned a notable change in the initial equity investment bid from MMA of $7,166,000. That figure has changed to $7,088,000. This decrease is primarily due because of trading some budgeted depreciable costs (which now have been eliminated) for the price of the land that will be sold to the partnership, which isn't depreciable. (Note that even with this change, the budget still balances.)

Jody said Page 4 of the **Tax Credit Investment Model**, *Exhibit 4 – Property Financing (Hard Debt),* illustrates the two proposed permanent loans from the Colorado Housing and Finance Authority (CHFA) of $2,000,000 at 6.06% and $600,000 at 1.60% and that the table shows the amortization of that debt.

Jody explained that Page 5 of the **Tax Credit Investment Model**, *Exhibit 5 – Property Financing (Soft Debt),* shows the grants the GJHA received and will loan to the partnership. Jody clarified how the deferred developer fee and the land loan payment would work, identified the loans' interest rates, and explained how the interest accrual would work. The Board requested that the interest accrual on these loans be shown as a separate single line item on the financial statements so it is clearly understood what those figures represent.

Greg reminded everyone that CHFA awarded the development Low Income Housing Tax Credits July 31, 2003, and we have one year from that date in which to spend 10% of the development budget of $11.5 million. To date, approximately $400,000 has been spent. The Construction Schedule of Values and Timetable Spreadsheet, created by Shaw Construction and distributed by Greg, illustrated the forecasted expenditures for the next year, and demonstrated that roughly 12% of the budget will be spent by the end of June, thereby, assuring that the required 10% of total development costs will have been expended and can be documented to CHFA.

Jody reviewed *Exhibit 6 – Net Operating Income* of the **Tax Credit Investment Model** on Page 6 and reiterated the earlier assumptions that the project income will increase by 2.5% and the expenses will increase by 3% annually. The table illustrates, however, that over the 15-year term of the project, with the exception of the first year, a positive cash flow is seen. She further explained the Debt Service Coverage line item for the First Mortgage and the Hard Debt shows that even a 10% vacancy rate could be experienced and payment obligations can still be met.

Jody called the group's attention to *Exhibit 7 – Distribution of Cash Flow* on Page 7 of the **Tax Credit Investment Model** that shows cash flow figures in another manner, and also *Exhibit 11 – Reserves, Replacements, and Amortization* on Page 13 of the **Tax Credit Investment Model** that shows nothing on the Debt Service Reserve line item because the debt coverage ratio on the loans is considered adequate.

Practical Construction Contract and Timetable

Other topics covered during general discussion included identifying the steps in the construction draw disbursement process; documenting the construction progress on film; conducting an orientation walk-through with the maintenance staff upon the completion of the first building; and conducting construction site inspections two - three times a week. The Board requested photos of the construction progress be e-mailed to them as visual updates.

As a side note, there was limited discussion regarding Dalby, Wendland & Co., P.C. declining to do future GJHA audits for the fees that the Agency was willing to pay, even though an agreement was in place. A Request for Proposal (RFP) will be issued soliciting a new auditing firm. The audit for the year end September 30, 2003, wasn't redone as previously planned by Dalby, Wendland, & Co. so Becki Tonozzi, Finance Director, will redistribute everyone's collected copies of the Auditor's Report.

Legal Issues

Jody referred to the green "*Adverse Consequences*" sheet she distributed and explained the primary concept – anytime MMA feels pain, GJHA pays! Likewise, in certain circumstances, if MMA receives additional benefits (such as units lease up quicker than expected which expedites the tax credits flow), GJHA may receive more money.

Rich Krohn was commended by Commissioner Gi Moon on his role and good job in negotiating on behalf of the Agency and its rights/interests in the various partnership and loan documents.

Concerns were raised pertaining to what recourse actions could be taken if Shaw Construction defaults on its commitments and timelines.

Again, Jody stressed that the GJHA is guaranteeing that the development will be built substantially as the plans say it will be built, and - on time - on budget, and if it isn't – the GJHA pays!

Rich Krohn joined the meeting at 1:35 p.m.

Note: Prior to Harry Butler's departure, Gabe announced that he applied and was accepted to attend Senator Allard's Capital Conference in Washington, D.C. this summer where he would meet the Senator's staff and learn how to effectively work though the U.S. Senators. He requested that the Board consider funding half of the trip's expenses in conjunction with Habitat for Humanity of Mesa County and estimated the Agency's share would be $500 - $600. After brief discussion, Harry made a motion to fund half of the trip's expenses with a second from Cory. Gi asked to amend the motion to cover $500 of the trip's cost. The motion carried with one abstention, by Gabe.

Harry left the meeting at 1:39 p.m.

Jody explained the Development Guarantee by stating that if there are overruns that exceed the contingency, the Agency is responsible for the additional costs. The first $200,000 of which, would constitute a loan from GJHA to the Partnership, which would be repaid from operating cash flow. Any money beyond that would be unrecoverable.

The Operating Expense Guarantee is up to $225,000 total for the first three years after full lease-up and after that, the number decreases to a cumulative total of $25,000 and becomes a loan from the GJHA to the Partnership to be paid back over time.

One of the requirements of MMA was that GJHA hire a compliance consultant to review all tenant files the first year to ensure that no households get leased during the first year who aren't eligible, because the consequence includes a permanent loss of the tax credits on that unit. The cost is approximately $2,500 for the consultant who would be responsible to double check everything in the applicant file such as eligibility calculations, etc. After extensive dialogue, the general consensus was that, for the cost and the sense of security, the benefits far out weigh the costs.

A requirement in the Partnership documents states that if GJHA, as Property Manager, defaults on its obligations, MMA has the ability to replace GJHA as the General Partner. It also has the ability to replace GJHA as the Property Manager without replacing GJHA as a General Partner. In addition, during the construction period through reaching the point of receiving the tax credits, if GJHA does not adequately protect the tax credit status of the development, MMA can require GJHA to buy its interest in the development at a purchase price which is 105% of MMA's investment, plus the cost of any "Adverse Consequences".

Regarding the loan documents from Wells Fargo, Rich explained that all parties are in agreement, subject to Board approval, on everything but one point and he further explained in detail this area of disagreement. The GJHA is being asked to:

- indemnify the lender with regard to hazardous materials, and

- unconditionally guarantee repayment of $8 million on the construction loan if there is a default with a provision that the GJHA waives every defense of every nature to that repayment.

Rich requested from Wells Fargo that an exception be made to waive defenses as to gross negligence or willful misconduct of the lender. Wells Fargo's attorneys refused to do so. Rich notified MMA business personnel of this uncompromising situation, and also informed MMA that his counsel to the GJHA would be not to waive this defense. Jody followed with her current conversation with Ms. Renee Logan, Vice President of Wells Fargo, who indicated Wells Fargo was willing to concede the point in the Hazardous Materials Indemnification Agreement and in the Completion Guarantee but not in the Building Loan Agreement. Rich concluded this topic of discussion with his recommendations for Board consideration.

Jody summarized by stating that she felt the Board had been apprised of the high points – financials, major risks, major consequences, and Adverse Consequences. She felt the GJHA staff was comfortable with the money, the timetable and mostly comfortable with the documents. The remaining one issue to be worked is the permanent loan commitment from CHFA. Lengthy discussion ensued pertaining to terms, timelines, and options.

For general guidance, Gabe made a motion to authorize GJHA staff to negotiate with MMA for additional time to find a better permanent loan commitment than CHFA and if an affirmative answer is received, then proceed to find as good or better a deal as CHFA but also negotiate with CHFA to better its terms; if, however, that is not possible, the CHFA deal is accepted as submitted, or if MMA refuses to grant the additional time option, then the CHFA deal is accepted as submitted. The motion was seconded by Kathleen and carried unanimously.

3. Approval of Resolution No. 2004-03 Linden Pointe Partnerships

Rich reviewed and clarified Resolution No. 2004-03, which was previously distributed, and also identified two changes to the Resolution. The first change would be the deletion of item numbers (iv) and (v) in the last paragraph on Page 1 of the Resolution, as those two documents are no longer applicable. The second change would be to add the wording "or third named person" as an authorized document signer along with the Chairman or Vice Chairman of the Board of Commissioners or the Executive Director of the Authority. Gabe volunteered to be the "third document signer".

In answer to a Board question, clarification was made that Deeds would be used as part of the security documents for the soft loans. Consequently, concern was raised whether or not CHFA would allow another Deed of Trust to be filed in a junior position behind CHFA. It was agreed that this concern should be investigated.

With discussion finished, Gabe made a motion to accept Resolution No. 2004-03 with the referenced changes as submitted. A second was made by Gi, and the motion passed unanimously.

4. Adjourn

Upon the conclusion of the regular session and a short break, the meeting moved into Executive Session at 2:30 p.m. to discuss personnel issues with a motion from Gi, a second from Gabe, and a unanimous voice vote. The meeting moved out of Executive Session at 3:08 p.m. and adjourned.