MINUTES

Grand Junction Housing Authority
Board of Commissioners' Meeting

Monday, February 25, 2008
Housing Authority Offices
1011 North Tenth Street
11:30 a.m.

While everyone was finishing lunch and prior to the start of the Meeting, Jody distributed pictures showing the demolition stages of the house on the Arbor Vista property. Due to mill tailings contamination in the mortar of the brick foundation of this house, the structure had to be remediated first and cleared by the Colorado Department of Health prior to demolition.

1. Call to Order

Board Chair Steve Heinemann called the regular Grand Junction Housing Authority (GJHA) Board Meeting to order at 11:40 a.m. with the following 14 individuals in attendance: Board Members Kathleen Belgard, Teresa Coons, Erin Ginter, Patti Hoff, Ora Lee, and Tisha Petelo; Staff Members Executive Director Jody Kole, Executive Assistant Kristine Franz, Development Director Don Hartman, Operations Director Lori Rosendahl, and Finance Director Andre' van Schaften; guests Board President Veronica Myers-Moore of the Grand Valley Housing Initiatives, and GJHA Attorney Rich Krohn with Dufford, Waldeck, Milburn & Krohn.

2. Consent Calendar

With no questions or comments regarding the Consent Calendar, consisting of *Approval of Resolution No. 2008-03 Authorizing the Grand Junction Housing Authority to Proceed with Filing the Necessary Paperwork to Form a New Non-Profit Entity*, the Consent Calendar was approved with a motion by Kathleen, a second by Erin, and a unanimous vote.

3. Discussion of the Arbor Vista Development – Costs, Sources of Funds, Deal-Points

Emphasizing that Arbor Vista is the primary point of today's conversation, Jody began discussion referencing her previously distributed February 22nd memo, which gave a development overview, identified the current status, and outlined potential risks and mitigation regarding the Arbor Vista Development and Partnership transaction.

With reference to past developments, she mentioned that when Crystal Brook Townhomes and Linden Pointe were being negotiated it was the same types of transactions with effectively the same types of risks. Ordinarily, there is a stock standard transaction document. (Prior transactions pertaining to Crystal Brook and Linden Pointe started out with a partnership transaction agreement that was modified to cover the costs and the circumstances of the specific transaction.) Normally, the general partner, like GJHA is, typically tries to "shoehorn" in some protection for the general partner because the transactions are generally slanted to the interest of the limited partners. Enterprise isn't the ultimate equity investor, but is the syndicator who gathers information for the investor pools and then represents the pools.

With the Board being kept fully apprised as changes have developed on this project, Jody further advised today that with the tightening of the tax credit equity market, investors are dictating stronger requirements than ever before. Enterprise Community Investment, Inc. (Enterprise) is receiving calls daily from investors dictating tighter constraints, and in some instances, other equity investors have chosen to just "walk away" from pending transactions.

Jody mentioned that the Colorado Housing and Finance Authority (CHFA) normally conducts three rounds of tax credit applications in a year. In the first round this year, enough applications were received to consume all the 2008 funds, and now with equity investors cancelling transactions, CHFA has been put in a position to "hold together" as many deals as can be viable in this market, with a limited amount of tax credits to support as many transactions as possible.

Distributing two documents, *Development Financing* and *Development Budget (for Residential Development Costs only)*, Jody addressed the new numbers as of this morning (February 25th at 11:00 a.m.) and continued to explain why the document figures change, identifying reasons such as double checking of the tax credit fees, dissecting cost estimates, and finding items that had been in construction costs that generate tax credits and should have been in a different category. In explaining the new numbers, she stated that the Developer's Fee, in the amount of $800,000, is what the GJHA expects to receive from this transaction but the total amount won't be received all at once nor up front. It is anticipated that about $112,000 will be received at closing, of which a significant portion will be reinvested back into the project. There are four separate installments of tax credit equity that are received over time:

- at the close of the partnership
- at the close of construction
- reaching stabilization
- converting to permanent financing (September 2009)

Jody noted that all of the Developer's Fee will be paid to the Housing Authority by 2009 with the exception of $348,275, which is a cash flow dependent loan and will be paid as the project generates enough operative income. Payment of the Developer's Fee is one of the things that CHFA and the tax regulations "bulldog". Citing, that if a significant portion of a Developer Fee didn't get paid within the first ten years, the Basis would be considered artificially inflated. Continued financial analysis ensures that the Developer's Fee, that generates the Basis, gets paid out within the first ten years. She noted that the Partnership Agreement says that if for any reasons there isn't sufficient cash flow in the project to pay the Developer's Fee in full, then the GJHA will advance the funds for payment.

The Sources of Financing listed on the *Development Financing* document were reviewed with Jody noting that the Housing Authority has agreed to loan to the development $173,285 to cover additional costs that can't be covered by other sources and will stay in the development. This loan will also help reduce the buy-out costs at the end of the transaction. Enterprise allows GJHA to buy out its interest at the end of 15 years based on the then appraised value less the debt outstanding against it and the fact that this debt against it, assumed by GJHA, will be in the purchase price of the property in year fifteen. If either unexpected costs or savings surface in the next few days, this loan figure will increase or decrease, respectively.

Jody identified the interest rates of various loans also listed under the Sources of Financing in the *Development Financing* document. The first mortgage (CHFA-1) and the second mortgage (CHFA-2) are at 6.85% and 3.00% interest respectively. The interest rate on the loans that the GJHA makes into the project, based on the grants which GJHA received from the City of Grand Junction, Federal Home Loan Bank, and Colorado Division of Housing, are fixed. She mentioned that at the completion of the project and if not all anticipated expenses are incurred, CHFA may adjust the tax credits downward. The equity would then go down, based on lower expenses. Consequently, one of the risks, would be if CHFA adjusts these tax credits downward, then, the Housing Authority would be "on the hook" for additional funding and would be, in the words of CHFA, "sharing the pain" due to the depleted CHFA funds.

Jody stated that Enterprise wants CHFA to commit to the level of tax credits being allocated to this project before it firmly commits to sign the Partnership Agreement, and CHFA wants Enterprise to sign a Partnership Agreement before it obligates tax credits. As a compromise, CHFA will be issuing a revised reservation letter based on these costs, which is only a soft commitment not the Carry-Over Commitment, but should be sufficient for Enterprise, so the transaction can close this Friday, February 29th. Jody again stressed that requirements by Enterprise continue to tighten, however, and it is possible that something else may surface that isn't anticipated. It is expected that this set, with any minor modifications, will be submitted to CHFA yet today and a updated reservation letter should be provided in a day or two.

In addressing Teresa's question concerning the financing loans' interest rate shown on the *Development Financing* document, Jody stated that for tax credit transactions, financing funds aren't considered a true loan unless the loan bears interest at the Applicable Federal Rate (currently at 5.1%). According to the tax credit rules, if the monies look like a grant, that subtracts from the Basis and subtracts from the tax credits that are given.

As part of the final documents, a massive spreadsheet has been developed that shows by the end of 15 years what the property is estimated to be worth, what the outstanding debt is including any accrued interest, and what the buyout estimate is. The goal is to aim for equity investors exit tax plus $1.00, trying to make their tax -0- with a low buyout cost. (As a side note, Crystal Brook is getting close to year 15 so working through the buyout exercise is near.)

Jody reminded the group that the **document figures are still estimates** and that a Carry-Over Allocation Application will be submitted to CHFA, hopefully by mid-March. Approval of this Carry-Over Allocation Application represents CHFA's firm/final commitment for tax credits to the development. Currently, the GJHA has a <u>reservation.</u> Consequently, there is a pressing need to get to "carry over" as quickly as possible and tie up CHFA's tax credit commitments. Jody continued to outline, for the Board, the next steps in the process which includes the finalization of a full development project and the Cost Certification procedure. The Cost Certification process is where a certified public accounting firm verifies all the numbers as legitimate costs and determines whether those costs should be in the project's basis. Upon completion of this Cost Certification, CHFA issues the Tax Credit Certificates, Form 8609.

Lengthy discussion was held regarding a couple of documents that the Agency is required to sign. The *Development Agreement* basically says GJHA handles the development and pays all financial penalties if the project isn't brought in on time and on budget. The *Unconditional Guarantee* essentially states that GJHA is responsible if anything goes wrong (previously discussed in the Linden Development by Jody as Adverse Consequences). In other words, if the equity investors don't get the return on investment that they are expecting to receive out of the transaction, GJHA is responsible to make up the difference. Therefore, for GJHA's benefit as well as Enterprise's, some "cushion" is included in Enterprise's figures. An example of that is demonstrated by Enterprise insisting on a full 5% contingency line-item based on the total cost of the construction.

Kathleen requested an explanation on the term, "guaranteed maximum price". With current code changes and subcontractors unable to hold prices or live up to current time constraints, she and Erin expressed their concerns.

Jody stated that the Housing Authority hasn't had a guaranteed maximum price or a contract with Shaw, the construction contractor, all this time. In good faith, Shaw has helped with estimating and design for no money. It is expected the construction contract with Shaw will be signed by this Friday for a certain amount unless changes, acts of God, etc. happen. Rich stated that this is a fixed price, as compared to a design/build or a time and materials so, this is a fixed-price contract but change orders could always be submitted for approval. Further clarification addressed reasons behind seeing a potential price move between the estimates used for the Tax Credit Application and today:

- estimates were derived last year and were based on the drawings from replicating Linden Pointe;
- a tight time frame constraint exists between Enterprise and the Housing Authority that didn't exist with Linden Pointe and, therefore, the same terms exists between Shaw and the Housing Authority, including a liquidated damages clause;
- with the original closing dated moved from March 31st to February 29th, time was reduced to harden costs with Shaw, and therefore estimates were used;
- original subcontractors' estimates were used and now a few subcontractors can't perform for various reasons (tight time frame, crew changes) so the number two subcontractors with higher cost estimates were used.

Rich noted there isn't a signed construction contract yet but that the current version provides a liquidated damages penalty of $8,600 per building, per month, for failure to deliver buildings on time and has been tentatively accepted by Shaw. This provision was inserted into the contract because the major penalty GJHA would suffer to Enterprise if buildings weren't delivered on time is due to the Enterprise tax credits being significantly reduced and the Housing Authority having to make up that cost. Rich also noted that this liquidated damages clause would not make the Housing Authority whole, however, because there would be other costs to not getting a building on line; for example, loss of rental revenue.

Brief discussion addressed a bonus associated with early completion as well as a wash of one early/one late building completion and no net penalties incurred. Jody noted that if one building was delivered early and one late, such that GJHA could lease up and still provide the same net benefit to the investor, no one would incur a penalty so long as at year-end the investors receive the tax credits they are counting on. Rich stated that with the time frame so tight, it is unlikely that early completion will happen. Construction contract language has not been finalized but sharing the benefit has been discussed with Shaw. Basically, if the Housing Authority doesn't suffer a penalty, then neither will Shaw. If GJHA receives a financial incentive, based on Shaw's early delivery of buildings, Shaw has asked to share in the bonus, too.

Jody stated that initially March 31st was the deadline to close this transaction. With the change in the market and Enterprise dropping the price by $.03 per tax credit dollar, everyone including CHFA became concerned that if this transaction didn't close much more quickly, Enterprise wouldn't be able to hold the price. She said that February 29th was targeted as the transaction close date and to give Shaw the authorization to proceed. That in itself gives Shaw nearly a full month early to start construction and to start doing the demo as you are seeing in the pictures. Again, Jody noted, we are trying to build in cushion for everyone's benefit so we can all feel more confident that we can perform our obligations.

Addressing Erin's question regarding the time frame the development will be leased, Jody stated that construction should be completed with the last building finished by May 2009 with units fully leased by the end of May 2009. Performance requirements include performing at break even for at least three months and having an auditor certify that to Enterprise, closing permanent financing, meeting the Cost Certification to CHFA and actually receiving the Form 8609, with the final wrap up of all requirements by the end of September 2009.

With Teresa's question regarding the City's awareness of the time schedule, Jody said they are aware that GJHA is trying to accelerate construction. The City, County, and everyone locally has been bending over backwards to help get this project going. A lot of folks know that this is a great deal and that the market has shifted so much that this kind of transaction won't be feasible again in the foreseeable future so they said, "we're not going to let you lose it."

4. Roll Call Vote to Move into Executive Session to Discuss Real Estate Transactions – Specifically Arbor Vista Development – C.R.S. 24-6-402(4)(a)

The Board went into Executive Session at 12:04 p.m. with a motion by Steve, a second by Erin and a unanimous voice vote. With the exception of guest Veronica Myers-Moore, who left the Meeting at this point, the other Meeting attendees also were present for this Executive Session.

5. Roll Call Vote to Move out of Executive Session and Return to the Open Meeting

At 12:50 p.m., the group moved out of Executive Session and returned to the open Meeting.

6. Schedule Special Meeting for Arbor Vista Development

Another special meeting to discuss the Arbor Vista Development was scheduled for Thursday, February 28th at 5:30 p.m., pending Board schedules. The time will be confirmed later.

Jody and Rich discussed briefly the draft forms of *Certificates* and a *Resolution* that were previously distributed, and requested Board review prior to the special February 28th Meeting.

Lori and Teresa left the Meeting at 12:55 p.m.

7. Adjourn

With a motion by Kathleen, a second by Patti, and a unanimous vote, the Meeting was adjourned at 12:56 p.m.