

MINUTES

Grand Junction Housing Authority
Board of Commissioners' Meeting
March Meeting

Tuesday, March 15, 2016
Linden Pointe Clubhouse
4:00 p.m.

1. Call to Order

At 5:12 p.m., Board Chair Chris Launer called to order the regular March meeting of the Grand Junction Housing Authority (GJHA). Those in attendance included the following: Board Members Scott Aker, Tami Beard, Tim Hudner, Chris Mueller, and Jerry Schafer; GJHA Attorneys Rich Krohn and Jill Norris with Dufford Waldeck Milburn and Krohn; and GJHA staff members CEO Jody Kole, COO Lori Rosendahl, Controller Amy Case, Executive Assistant Kristine Franz, Special Projects Coordinator Danette Buck, and Development Director Tim Spach. Board Member Barbara Traylor-Smith did not attend. Attending Board Members constituted a quorum.

2. Consent Calendar

A motion by Scott Aker, a second by Chris Mueller, and a unanimous vote approved the Consent Calendar. The Consent Calendar consisted of two items: 1) *Ratification of Prior Staff Action of Necessary Financial Contribution to Leverage Energy Outreach Grant Funding for Ratekin Tower and Lincoln Apartments*, and 2) *Request Authorization of Additional Expenditure for Ratekin Tower in the Amount of \$17,170 for Design Changes for Energy Outreach Scope of Work*.

3. Finance and Audit Committee Report

At the request of Chris Launer, Finance and Audit Committee Chairman Tim Hudner gave a general update on the first meeting of the Committee this year. The Committee consists of Chris Launer, Tami Beard, Tim Hudner, Jody Kole, Lori Rosendahl, and Amy Case. Additional Board participation is invited at Board Members' discretion. The regular established committee meeting date is the Monday before the regular monthly Tuesday Board Meeting, beginning at 7:30 a.m. at the Voucher Services Center, 1011 N. 10th Street. The goal of the Committee is to review the financial data, discuss any potential or existing issues, and then provide verbal summary updates at Board Meetings. Additional topics discussed during the Committee Meeting included:

- Acquiring a better understanding of the Tax Credit Properties.
- Reviewing the same computer-generated reports as executive staff, thereby eliminating the time-consuming manual input of data by staff to generate summary Board reports.
- Providing to the Board on a monthly basis an overview of the monthly financial data. Review of a full set of Quarterly Financial Reports will be a quarterly Board Agenda item for in-depth discussion.

Tim Hudner and Lori Rosendahl noted that the financial reporting format will change somewhat. Samples will be presented at a future Board meeting for the Board's input. Format modifications will occur over the next few months.

4. The Highlands

Chris Launer stated that he hastened this review process, thus putting additional burden on the attorneys and Jody Kole to meet today's meeting date. Chris Launer acknowledged that this change from a workshop to a meeting did not allow sufficient time to complete all the due diligence efforts. The logic behind changing the proposed workshop to a Board Meeting included the lack of Board Member availability for a formal meeting the last week of March and the assumption that additional time for further document review would most likely gain nothing.

Jody Kole's update on The Highlands – Phase I began by mentioning the prior consternation, resolutions of concerns, and final selection of Wells Fargo as the Equity Investor Partner. Jody Kole said the most challenging negotiations to work through is with the Limited Partnership Agreement, as the Agreement is in affect the longest period of time - a total of 18 years. Presently, the core of this document is relatively manageable. The 24-month Construction Period Loan and terms are more problematic.

Jody Kole and Rich Krohn discussed and thoroughly explained several documents. Documents distributed at the meeting included the following:

- Financial Sheet
- List of Closing Documents
- Summary of Selected "Gotchas"
- Commitment for Permanent Loan Financing from the Bank of Colorado
- Sources of Financing for The Highlands
- A List of Development Increases/Decreases
- Budget
- Resolution No. 2016-03-01 and the red-line version
- Resolution No. 2016-03-02 and the red-line version

Jody Kole explained the *Financial Document* stating that \$915,934 in pre-development costs previously advanced and the first installment of \$500,000 of the Developer Fee will be received into the General Fund upon closing of the Limited Partnership Agreement. This closing is anticipated for the end of March 2016. Jody Kole stated that receipt of remaining installments of the Developer Fee is based on various milestone completion dates through December 1, 2017.

Jody Kole addressed the *List of Closing Documents* next. She said that this List represents all the documents that requires signatures, and that several of these documents will be discussed in detail. The List does not include the enormous amount of Due Diligence documents required by Wells Fargo.

By document name, the *Summary of Selected "Gotchas"* identifies items of concern and exposure to GJHA and indemnification to Wells Fargo. Jody Kole and Rich Krohn stressed that if GJHA does not "live up" to the terms in the Limited Partnership Agreement, then GJHA becomes responsible to make Wells Fargo "whole". Scott Aker asked if the Board will be informed of a "gotcha item" that is unusual in a transaction of this type. Rich Krohn said explanation will follow in the best manner for the Board's complete understanding, and to the extent possible, "gotcha items" will be identified. Rich Krohn stated all "gotcha items" cannot possibly be recognized nor the exposure GJHA may encounter with the shortened amount of review time. Rich Krohn also noted that some documents are still being negotiated so terms are subject to change.

Rich Krohn stated that in generalities, the Limited Partnership Agreement is largely comparable to Agreements in past developments. Deadlines in the Limited Partnership Agreement are realistic and not out of line. In answer to Chris Launer's tracking question, Jody Kole stated that she uses a calendar tracking method for deadlines and milestones. Jody Kole agreed that suggested project tracking software would be explored.

Rich Krohn stated that the Draft Limited Partnership Agreement includes a Hazardous Material Indemnification. GJHA absolutely indemnifies Wells Fargo from any environmental problem, known or unknown. No environmental issues are disclosed in the Phase I Environmental Audit, and the Audit reports the property to be clean. The Phase I Audit is a historical summary. The property is undeveloped with no prior industrial / commercial uses, which indicates the unlikelihood of a problem.

The Construction Loan is only for 24 months, but Rich Krohn cautioned that during this time GJHA relinquishes all its defenses, and agrees to an unconditional guarantee of protection to Wells Fargo. These Construction Loan documents are unreasonable, more severe than ever experienced with past transactions, and are unlikely to change. However, Rich Krohn said that attempts will continue to be made to negotiate out the unacceptable terms.

Rich Krohn discussed three documents that are part of the Construction Loan: the Repayment Guaranty, the Hazardous Materials Indemnity, and the Completion Guaranty. Basically, GJHA is responsible for everything, waives all defenses, and agrees to make Wells Fargo “whole” if anything goes awry.

Rich Krohn explained the terms identified in the *Commitment for Permanent Loan Financing letter from the Bank of Colorado* dated March 15, 2016. The final loan amount shown is within a range of \$1,215,000 – \$1,485,000. The Bank of Colorado requested a 5.5% fixed interest rate. The interest rate is 20-year fixed. Once the Bank of Colorado is directed by GHJA to “lock in” the interest rate with the Federal Home Loan Bank of Topeka, GJHA becomes responsible for a Breakage Fee if the loan does not close. A Prepayment Penalty is applicable to this loan if the loan is prepaid. Rich Krohn discussed the complex calculations of the Breakage Fee and Prepayment Penalty. It is to GJHA’s advantage to lock in the interest rate now should interest rates increase prior to signing the permanent loan documents in approximately 24 months.

As part of the title work, Wells Fargo is requiring a Mechanic’s Agreement. As a government entity, property of GJHA cannot be liened. The Highlands Limited Liability Limited Partnership (LLLP) is a private entity and its property can be liened. Wells Fargo wants the title company to ensure that the Construction Loan will be a first filing lien ahead of any claim for a Mechanic’s Lien. The risk is defined by two parts – work done before loan closing and work done after loan closing. Wells Fargo wants GJHA to indemnify the title company for any Mechanic’s Liens or claims that might occur anytime. As a side note, the title work, totaling approximately \$56K, is more expensive than experienced with past tax credit developments.

Rich Krohn stated that the irrigation lines that run down the middle of the property are being relocated to the east and south boundaries. As soon as the relocation of the irrigation lines is complete, vendor invoices, signed lien waivers, etc. will be gathered. A list of these names / information will be compiled for Wells Fargo and the title company, thereby giving them a high degree of comfort of no lingering exposure during the preconstruction phase. In answer to Chris Launer’s question, Rich Krohn stated that Wells Fargo manages the construction draw process.

Jody Kole said that as per the request from GJHA to accelerate the Equity Pay-in Schedule by Wells Fargo, the price of the Equity Pay-in changed from \$1.15 / \$1 to \$1.135 / \$1. The accelerated Equity Pay-in Schedule reduces the Construction Period Interest by \$190K and reduces the Equity Payment by \$187K. With the higher than anticipated equity offer from Wells Fargo, GJHA is able to increase the Developer Fee by \$250K. In response to the question posed by Chris Launer, Jody Kole stated that the Total Earned Developer Fee is \$1.6M.

Jody Kole stressed that GJHA must remain diligent through 2017, as it is critical that every milestone / milestone date is met.

When Board Members discussed considering changing the Equity Investment Partner to another firm, Jody Kole cautioned that if Wells Fargo would release GJHA from the transaction, the time-consuming negotiations and document completion with another Partner would still need to be completed by the August 20, 2016 deadline to submit to the Colorado Housing and Finance Authority (CHFA) Tax Credit Carry-Over Application. Missing this deadline would mean that the Tax Credits evaporate and GJHA's reputation with CHFA would be tarnished. Rich Krohn assured the Board that he and Jody Kole will continue to negotiate and obtain the best Agreement possible. Rich Krohn said it is likely some document improvements will be made. Rich Krohn also stated that with Board concurrence, once the final Limited Partnership Agreement is reached, Chris Launer and Jody Kole, as Board Chair and CEO respectively, will make the final decision whether to accept or reject the transaction.

Rich Krohn summarized *Resolution No. 2016-03-01*. This Resolution states that the Authority is the General Partner of The Highlands LLLP. The Partnership authorizes the sale of the property by the Authority to the Partnership and the purchase of the property by the Partnership from the Authority for a total purchase price of \$136K. A Soft Loan from the Authority pays 100% of the purchase price of the land and is last in priority behind the Construction Loan, the GJHA / Colorado Department of Local Affairs (DOLA), and the GJHA / City of Grand Junction Soft Loans for repayment to GJHA. The Resolution authorizes the execution of the performance of the Contract, delivery of money and funds as per the Promissory Note and Deed of Trust, and anything else that needs to be done in conveyance of all documents by Jody Kole and Chris Launer.

The Board approved *Resolution No. 2016-03-01 Approving Conveyance of 805 Bookcliff Property to The Highlands LLLP and Related Actions* with a motion by Tami Beard, a second by Scott Aker, and a unanimous vote.

Rich Krohn summarized Resolution No. 2016-03-02. This Resolution encompasses all parts and authorization of the construction and finance of the Development as identified in several parts. It approves the GJHA and The Highlands LLLP to take action regarding the transaction. Rich Krohn discussed the following portions of the Resolution:

- Paragraph 1 deals with the Equity documents required for the transaction
- Paragraph 2 deals with the documents required for the Construction Loan
- Paragraph 3 deals with the documents necessary for the Soft Loans. Jody Kole and Chris Launer are also authorized to sign the documents considered Soft Loans, in particular the Colorado Department of Housing (CDOH) Funding Loan and the GAP Loan.

- Paragraph 4 deals with the Permanent Loan Documents. The only Permanent Loan Document to sign at this time is the Commitment for Permanent Loan Financing letter from the Bank of Colorado. Minor modification to this letter will likely occur as part of the document approval process from Wells Fargo. This letter will not be signed until the Limited Partnership Agreement is signed with Wells Fargo.
- Paragraph 5 deals with the existing Construction Contract with Shaw Construction, and reflects part C of the Construction Contract. Rich Krohn reminded the group that Part A of the existing Construction Contract represents the cost to get the Development to the Tax Credit Application status. Part B of this Construction Contract represents the cost from the completion of Part A to the start of construction, and Part C of this Construction Contract represents the actual construction documents. The Construction Contract states that Shaw will not begin with Part C without a Notice to Proceed, a negotiated fixed price, and an established construction schedule. Jody Kole stated that Shaw Construction estimates the construction cost to be between \$12,295M - \$12,395M. In paragraph 5 of this document, Rich Krohn stated that the fixed price reads “is not to exceed \$12,500M”.
- Paragraph 6 says that signatures of both the CEO and Board Chair are necessary to execute and deliver any and all documents described in the document, and to take further actions to execute / deliver as deemed necessary.
- Paragraph 7 says that both Chris Launer and Jody Kole are authorized to sign documents at their sole discretion.
- Lastly, confirmation is given that Chris Launer is Board Chair and that Jody Kole is CEO of GJHA. Both Statements of Authority for the Partnership and the Authority say that the Board Chair and the CEO are authorized on behalf of that entity to sign documents for such. At the request of the title company, confirmation is given that Jody Kole is the CEO and Chris Launer is Board Chair.

Approval of *Resolution No. 2016-03-02 Concerning Development of The Highlands* occurred with a motion by Chris Mueller, a second by Tami Beard, and a unanimous vote.

5. Other Business

Special April Board Meeting

Jody Kole requested a special Board Meeting the early part of April. Several items need Board approval prior to the regularly scheduled April 19, 2016 Meeting. A special Board Meeting is scheduled for April 4, 2016 beginning at 4:00 p.m. at the Linden Pointe Clubhouse. Kristine Franz has the action to confirm with Board Members.

New Board Member

It is anticipated that on March 16, 2016 the Grand Junction City Council will approve the appointment of the newest GJHA Board Member, John Howe. John Howe will replace Chris Mueller, whose term expired in October 2015. The group recognized Chris Mueller and extended their appreciation to him for his commitment to GJHA and for continuing to fulfill Board responsibilities until now. As requested by the Board and Executive Staff, Chris Mueller will continue as the facilitator during the Strategic Planning process.

The Highlands – Phase 2

Jody Kole gave the update on The Highlands – Phase 2. Staff applied for the 4% Federal Low Income Housing Tax Credits, the State Housing Tax Credits, and the Housing and Urban Development (HUD) Section 8bb Housing Assistance Payment (HAP) Contract.

The HUD Section 8bb HAP allocation for The Highlands – Phase 2 is currently at a standstill. New HUD personnel at the federal level recently interpreted the guidelines differently on how the Section 8bb funds may be reallocated. The transaction is not financially viable without the Section 8bb HAP funding. A \$1.6M funding gap is created if this funding is lost.

The Nellie Bechtel and Walnut Park properties previously received Section 8bb funding commitments and are likely to move forward. However, The Highlands – Phase 1 and Phase 2 both received only a soft commitment, not a firm commitment, which makes that funding questionable.

While in Denver, CO, this week, Lori Rosendahl will meet with HUD personnel to seek answers. The group discussed alternate scenarios, including could the funding commitment for the Nellie Bechtel property be reassigned to Phase 2 of The Highlands? Additional Project-Based Vouchers would then be used at the Nellie Bechtel property.

Jody Kole stated that she just became aware that CHFA will not invite developer presentations to be made for the 4% State Tax Credits. The State Committee will review the submittals the week of April 22-29 and make its allocations the following week.

If the Section 8bb subsidized funding is lost, and the \$1.6M funding gap is not secured by other funding sources, Jody recommended that GJHA withdraw its Application, and wait to apply for the 9% Low Income Housing Tax Credits as soon as GJHA is eligible to apply.

New CHFA Board Chair

The Board extended congratulations to Jody Kole, who will assume the Board Chair responsibilities in April for the CHFA Board.

6. Adjourn

With the completion of discussion, the Board Meeting adjourned at 6:43 p.m.

All Board Packet documents and documents distributed during the Board Meeting are retained in the permanent file.