

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 18, 2009

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER *J*

SUBJECT: FOLLOW UP TO JUNE 9 DOCKET ITEM CONCERNING ARLANDRIA CHIRILAGUA HOUSING CORPORATION (ACHC)

ISSUE: Response to questions from Council concerning the effect of taking no action at this time with regard to the City loan to the Arlandria Chirilagua Housing Corporation (ACHC)

RECOMMENDATION: That City Council based on the information in this memorandum:

- (1) Take no action at this time in regard to the City loan to ACHC; and
- (2) Request that City staff report back to Council by its second legislative meeting in September with the results of its review of ACHC's operations.

DISCUSSION: On June 9, Council considered a staff recommendation (Attachment) to extend by one year the date for determination of forgiveness or repayment of a portion of the City's loan to ACHC in order to allow time for ACHC to comply with forthcoming guidance to be provided by staff as to requirements that must be met in order to demonstrate the organization's successful operation as a limited equity cooperative. Councilman Krupicka suggested extending only until the second meeting in September, at which time staff would report back to Council on the progress made by that time. Other Council members questioned whether it was necessary to take any action at this time, as opposed to simply waiting for staff's report in September before taking any action. Mayor Euille also wanted additional information with regard to how staff intends to measure "successful operation as a limited equity cooperative."

Based on a review of the loan documents by the City Attorney, in the event Council elects to take no action at this time, there is no negative consequence. Repayment would not be triggered without an affirmative action by Council to declare the loan in default.

Since the June 9 Council meeting, staff has had further communication with David Mercer of the law firm Mercer Trigiani. Although ACHC is technically exempt from the requirements of the Virginia Real Estate Cooperative Act by virtue of HUD financing involved in the initial acquisition of the property, staff and Mercer Trigiani are in agreement that this Act provides the most appropriate standards for the evaluation of many aspects of a cooperative's successful

operation. While the details to be communicated to ACHC are still being formulated, the following reflects some of the general criteria by which ACHC's successful operation will be measured:

1. The governance and management of Chirilagua should be in compliance with the provisions of Article 3 (Management of Cooperatives) of the Virginia Real Estate Cooperative Act.
2. The documentation provided to a purchaser before execution of any contract for sale of a cooperative interest should comply with Section 55-484 of the Virginia Real Estate Cooperative Act.
3. The governance and management of Chirilagua should be in compliance with the provisions of the Declaration and all other governing documents of ACHC.
4. The ratio of delinquent assessments is within the accepted industry range.
5. The governance and management of ACHC is open and transparent to the members of ACHC and allows for the participation of all members in the conduct of the meetings of the Board of Directors and all committees.
6. Both procedural and substantive due process is afforded to all members of ACHC in all actions that affect their interests.
7. The buildings and grounds are in a clean and sanitary condition, landscaping is in good order, and a qualified engineer has conducted a reserve study on which ACHC has based its budget and reserve contributions.

Regardless of whether Council extends the date until September or elects to take no action at this time, staff plans to continue to work with Mercer Trigiani to finalize the list of standards and information requests, and then to meet with ACHC to discuss these items. At Council's second legislative meeting in September, staff will report to Council on whether the requested items have been received, and on any preliminary determinations that have been made by that point. Staff's intent is to provide specific guidance to ACHC as to what actions are necessary to bring any areas of deficiency into compliance. Therefore, provided ACHC is working cooperatively with staff to furnish the required information and is working toward addressing any identified deficiencies, staff would not recommend declaring the loan in default as part of its response to Council at its second legislative meeting in September.

FISCAL IMPACT: None at this time.

ATTACHMENT: Docket item from June 9 meeting


STAFF:

Mildrilyn Stephens Davis, Director, Office of Housing
James Banks, City Attorney
Christina Zechman Brown, Assistant City Attorney

EXHIBIT NO. 134
6-9-09**City of Alexandria, Virginia****MEMORANDUM**

DATE: JUNE 1, 2009

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: CONSIDERATION OF EXTENDING THE DETERMINATION DATE
REGARDING PARTIAL LOAN FORGIVENESS FOR THE ARLANDRIA
CHIRILAGUA HOUSING COOPERATIVE

ISSUE Consideration of extending the date for forgiveness or repayment of a portion of the City's loan to the Arlandria Chirilagua Housing Corporation

RECOMMENDATION: That City Council:

- (1) Extend the date for determination of forgiveness or repayment of \$232,000 of the City's \$537,000 loan to the Arlandria Chirilagua Housing Corporation (ACHC) from July 15, 2009 to July 15, 2010, to allow time for ACHC to comply with forthcoming guidance to be provided by staff as to requirements that must be met in order to demonstrate ACHC's successful operation as a limited equity cooperative; and
- (2) Require that the forgivable portion of the loan become due and payable on January 31, 2010, in the event ACHC has not, by that date, demonstrated to the City's sole satisfaction a willingness to cooperate with the City's requests.

DISCUSSION: The Arlandria Chirilagua Housing Cooperative, owned by the Arlandria Chirilagua Housing Corporation (ACHC) has benefited from \$537,000 in City acquisition and rehabilitation loans made from 1994 through 1996. The first two portions of the loan, totaling \$425,000, were made to the Center for Cooperative Housing, a subsidiary of the National Center for Cooperative Housing, and were later transferred to ACHC to accomplish the goal of creating a resident-owned cooperative. The three segments of the loan are as follows:

- \$232,000 approved in February 1993 (Promissory Note 1)
- \$193,000 approved in March 1994 as part of a larger amount (Promissory Note 2)
- \$112,000 approved January 1997 as a reduction of a prior approval for \$150,000 (Promissory Note 3)

Under the terms of the loan documents for the first \$232,000, this portion of the loan will be fully forgiven in 15 years if the City determines in its sole discretion that the cooperative is operating successfully, but otherwise must be repaid at that time. The Deed of Trust for this portion of the loan establishes the 15-year target date as July 15, 2009. The other portions of the loan are due upon the earlier of 99 years or when the property ceases to operate as a cooperative affordable to low- and moderate-income households.

Over the past year, in preparation for making the determination as to whether ACHC is operating successfully, staff has requested considerable information from ACHC, much, but not all, of which has been provided. After reviewing the material provided by ACHC, staff is not confident that it has either sufficient evidence to determine that the cooperative is operating successfully. The law firm of Mercer Trigiani, a firm with considerable expertise in the field of community association law, including cooperative housing, has offered its pro bono assistance to the City to assist City staff with making a determination. It is anticipated that the review by Mercer Trigiani will be completed expeditiously, and staff will then present ACHC with a list of criteria to be met as evidence of successful operation as a limited equity cooperative.

In order to allow ample time for the ACHC to receive, review, and address the City's requirements stemming from the forthcoming review by Mercer Trigiani, staff recommends a one-year extension, to July 31, 2010, of the date by which a decision must be made concerning the forgiveness of the \$232,000 note. Should ACHC demonstrate compliance with the City's recommendations prior to that date, staff will forward a recommendation to Council for forgiveness of the loan immediately following its determination that the City's conditions have been met. Should ACHC not be able to demonstrate such compliance during that period, the loan would become due and payable on January 31, 2010.

However, staff further recommends that if ACHC declines to cooperate with the City in this matter, the \$232,000 shall become due and payable on January 15, 2010, six months from the current trigger date.

ACHC has been notified of the proposed extension of the forgiveness date.

FISCAL IMPACT: None at this time.

STAFF:

Mark Jinks, Deputy City Manager
Mildrilyn Stephens Davis, Director, Office of Housing
Helen McIlvaine, Deputy Director, Office of Housing
Melodie Seau, Division Chief, Office of Housing