

City of Alexandria, Virginia

MEMORANDUM

DATE: SEPTEMBER 14, 2009

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

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

SUBJECT: RECEIPT OF STATUS UPDATE ON STAFF ASSESSMENT OF THE OPERATION OF THE ALEXANDRIA CHIRILAGUA HOUSING CORPORATION AND CONSIDERATION OF NEXT STEPS

ISSUE: Receipt of update on staff's actions to assess the operation of the Alexandria Chirilagua Housing Corporation (ACHC) and consideration of next steps.

RECOMMENDATION: That City Council:

- (1) Receive a status update; and
- (2) Request staff to report back to Council not later than Council's December legislative meeting with the results of its assessment.

BACKGROUND: From 1994 through 1996, the City made a series of three loans, totaling \$537,000, in connection with the purchase and rehabilitation of the then-Potomac Village Apartments for the purpose of establishing a limited-equity cooperative. The first two loans (totaling \$425,000) were made to the Center for Cooperative Housing and were subsequently transferred to ACHC after the cooperative was established, and the final loan of \$150,000 (subsequently reduced to \$112,000) was made directly to ACHC. The initial loan, in the amount of \$232,000, was subject to forgiveness as of July 15, 2009, if the property was being successfully operated as a cooperative; otherwise, the loan would be due and payable at that time.

On June 23, 2009, Council reviewed staff's proposed seven criteria to determine whether ACHC is successfully operating as a cooperative (developed in conjunction with the law firm Mercer Trigiani, a firm with considerable expertise in the field of community association law, including cooperative housing), and directed that staff report back to Council with regard to this matter no later than Council's second legislative meeting in September (see Attachment II).

The seven criteria are:

1. The governance and management of Chirilagua should be in compliance with the provision 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 ACHS 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.

DISCUSSION: After working with Mercer Trigiani to refine a specific list of documents to be requested from ACHC, in order to assess ACHC's performance in relation to the seven criteria, staff conveyed a letter (Attachment I) to ACHC on July 17 requesting the desired documents. All parties agreed that it would be desirable to meet and discuss the document request prior to ACHC's response. Due to vacation schedules, that meeting could not be held until August 19. Following that meeting, which also included representation from the City Attorney's Office, both ACHC and its counsel informed staff that the requested documents would be provided.

Staff received two three-ring binders of documents from ACHC on September 9. Given that ACHC's material has just been received, staff and Mercer Trigiani have not yet had sufficient time to review and assess the information provided, nor to verify its completeness. However, based on the cover letter accompanying the material, it appears that ACHC and its counsel have submitted documents so the City can assess ACHC performance in relation to the seven established criteria.

As noted in the June 23 docket item (Attachment II), staff's intent is to provide specific guidance to ACHC as to what actions are necessary to bring any identified areas of deficiency into compliance. Therefore, staff requests that Council give staff sufficient time to review the information, make its determination, and, if necessary, outline to ACHC a course of action for addressing any identified deficiencies. Staff recommends that Council request staff to report back to Council on the progress and/or conclusions of this review no later than its December legislative meeting.

ATTACHMENTS:

Attachment I. Letter to ACHC Board of Directors, July 17, 2009

Attachment II. June 23, 2009, Docket Item

STAFF: Mildrilyn Davis, Director, Office of Housing



OFFICE OF HOUSING
Program Administration Division
421 King Street, Suite 200
Alexandria, Virginia 22314

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Phone (703) 746-4990
Fax (703) 706-3904
Hearing Impaired (703) 838-5056

July 17, 2009

Board of Directors
Arlandria Chirilagua Housing Corporation
3910 Bruce Street, Unit 106
Alexandria, Virginia 22305

Mr. Santos Vega, President
Arlandria Chirilagua Housing Corporation
3910 Bruce Street, Unit 106
Alexandria, Virginia 22305

Re: Arlandria Chirilagua Housing Corporation (ACHC)

Dear Sir/Madam:

In order to make a determination as to whether a portion of ACHC's City loan can be forgiven in accordance with the terms of the loan documents, the City is now working with the firm of Mercer Trigiani to determine whether ACHC is being successfully operated as a cooperative. 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. In connection with our planned analysis, and in consultation with Mercer Trigiani, we have established the following as the standards upon which the City will base its assessment:

1. The governance and management of ACHC shall 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 shall comply with Section 55-484 of the Virginia Real Estate Cooperative Act.
3. The governance and management of ACHC shall be in compliance with the provisions of the Declaration (the instrument(s) that created the cooperative) and all other governing documents of the Association.
4. The ratio of delinquent assessments is within the accepted industry range.

5. The governance and management of the Association is open and transparent to the members of the Association 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 the Association in all actions that affect their interests.
7. The Property is in a clean and sanitary condition, landscaping is in good order and a qualified engineer has conducted a reserve study on which the Association has based its budget and reserve contributions.

In order to assist the City in our assessment of whether ACHC is in compliance with the above criteria, we request that you please provide us with the documentation set forth in the attached list.

Following our review of your information, we would like to schedule a meeting to discuss our evaluation. Should there be any area(s) found not to be in compliance, we will then discuss what is necessary for any such area(s) to be brought into compliance, and establish time frames for this to occur. As you may know, the Office of Housing must provide a progress/status report to the Alexandria City Council with regard to this matter for the September 22 Council meeting. Therefore, please provide the requested documentation as soon as possible to allow us sufficient time to conduct our review and meet with you to discuss the results prior to reporting back to City Council.

If you have any questions, please let me know. Should you and your attorney desire to meet with our team to discuss the information request and our planned process, we are available in the late afternoon/early evening of July 21, but not again until the week of August 10. Between July 24 and August 10, the primary City contact on this matter will be Melodie Seau, Division Chief for Landlord-Tenant Relations (703-746-4990).

Sincerely,



Mildrilyn Stephens Davis, Director
Office of Housing

Enclosure

cc: Edward J. O'Connell, Esquire
Helen S. McIlvaine, Deputy Director, Office of Housing
Christina Zechman Brown, Assistant City Attorney
Melodie A. Seau, Division Chief, Landlord-Tenant Relations
David S. Mercer, Esquire
Lucia Anna Trigiani, Attorney at Law
Jeremy R. Moss, Esquire

ARLANDRIA CHIRILAGUA HOUSING CORPORATION
Documentation Requested to Evaluate Whether Cooperative is Operating Successfully.

1. Copy of the Declaration;
2. Any amendments or revisions to First Amended and Restated Bylaws;
3. Any amendments or modifications of the Occupancy Agreement or Rules and Regulations since May 28, 2008;
4. A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from each proprietary lessee;
5. A statement of any other fees payable by proprietary lessees;
6. A statement of any capital expenditures anticipated by the association for the current and next two succeeding fiscal years;
7. The current reserve study report or a summary thereof and a statement of the status and amount of any reserve or replacement fund and of any portions of those reserves designated by the association for any specified projects;
8. The most recent regularly prepared balance sheet and income and expense statement, if any, of the association, including the amount of any debt owed by the association or to be assumed by the association, inclusive of principal and any accrued interest, loan fees and other similar charges;
9. The current operating budget of the association;
10. A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;
11. A statement describing any insurance coverage provided for the benefit of the executive board, including, but not limited to, Directors and officers liability coverage;
12. A statement as to whether the executive board has knowledge of any violations of the health or building codes for any other portion of the cooperative;
13. A statement of the remaining term of any leasehold estate affecting the cooperative and the provisions governing any extension or renewal thereof;
14. The current public offering statement, if available, and any amendments thereto;

15. A statement of any restrictions in the declaration affecting the amount that may be received by a proprietary lessee upon sale, condemnation or loss to the unit or the cooperative on termination of the cooperative; and

16. Minutes from meeting of executive organ and cooperative, including special meetings, from past six months along with copy of notices from all meetings.

17. Copy of current management agreement, including statement of qualification of managing agent.

18. Memoranda of insurance showing compliance with Section 55-470 of Code, or written certification from insurance provider that insurance coverage meets Section 55-470 of the Code of Virginia, including any additional recommended coverage.

19. Status report of all assessment collection matters and eviction proceedings.

#23881

EXHIBIT NO. 136
6-23-09**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 *J*

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

14 & 15
9-22-09



Jeff Price
<jeff@alexandriainternet.com>

09/21/2009 01:24 PM

Please respond to
Jeff Price
<jeff@alexandriainternet.com>

To william.euille@alexandriava.gov, frank.fannon@alexandriava.gov,
kerry.donley@alexandriava.gov, alicia.hughes@alexandriava.gov,
council@krupicka.com, delpepper@aol.com,

cc

bcc

Subject COA Contact Us: Fiscal Management

Time: [Mon Sep 21, 2009 13:24:26] Message ID: [15452]

Issue Type: Mayor, Vice Mayor, and Council Members

First Name: Jeff

Last Name: Price

Street Address: 2402 King ST

City:

State:

Zip:

Phone: 703-836-6325

Email Address: jeff@alexandriainternet.com

Subject: Fiscal Management

I noticed two items on the docket which taken together tell a disturbing

tale of fiscal mismanagement.

In one case the Council appears set to

increase a loan to construct 8 units of affordable housing, because the

developer apparently can't manage to a budget. And following right on that

is a proposal to forgive a prior loan given to build affordable

housing.

When I see that, I realize that developing

"affordable" housing is the best scam in the world. You propose

something, get the city to give you the money to build it. Run out of

money, get the city to give you more money. It's no big deal that you

Comments: increased the loan amount, because in a few years you go back and get the

loan forgiven.

Given the current economic environment this seems to be

poor stewardship of the peoples money, and demonstrates how poorly it is

managed in better times, when the good times roll.

How will this be

better managed in the future. Please feel free to contact me during normal
business hours using the contact info provided.

thanks for your

time

Jeff Price



Michele Evans/Alex
09/22/2009 07:59 PM

To Gloria.Sitton@alexandriava.gov
cc
bcc
Subject Fw: Additional background information re Arlandria Chirilagua Cooperative (Docket item #15)

here you go

----- Forwarded by Michele Evans/Alex on 09/22/2009 08:02 PM -----



Mildrilyn Davis/Alex
09/22/2009 09:22 AM

To William.Euille@alexandriava.gov,
kerry.donley@alexandriava.gov,
frank.fannon@alexandriava.gov,
alicia.hughes@alexandriava.gov, council@krupicka.com,
del.pepper@alexandriava.gov, paulcsmedberg@aol.com
cc Mark Jinks/Alex@Alex, Michele Evans/Alex@Alex
Subject Additional background information re Arlandria Chirilagua Cooperative (Docket item #15)

Several of you have asked various questions about the Arlandria Chirilagua Housing Corporation in relation to docket item #15. This e-mail consolidates the answers to a number of those questions.

1. The City's \$537,000 loan is in second trust position behind a loan of \$8.8 million from Reilly Mortgage Capital Corporation.
2. According to the Department of Real Estate Assessments, the property's 2009 assessed value is \$21,150,000.
3. There are 22 separate street addresses associated with the property: 3200 Commonwealth Ave.; 3910 - 3918 (9 addresses, both odd and even nos.) Bruce Street; 400, 402, 502, 506, 510, 517, 518, 519 and 526 Four Mile Road; and 3917, 3918 and 3921 Elbert Avenue. The City's loans are secured against the entire property.
4. One new member requested and received copies of prior docket items concerning this project. I am attaching them below for all members.
5. In response to a request for a copy of the relevant loan documents, I am also attaching the loan agreement, deed of trust, and two notes for the initial \$425,000, which includes the \$232,000 that is subject to forgiveness.

Mildrilyn Davis, Director
Alexandria Office of Housing
703-746-4990

Below is the text of an e-mail sent to an ACHC Board member who requested this history prior to the June 2009 Council docket items:

This docket item from 12-16-95 has older docket items attached that will give you the history of this loan. The attachments have attachments (some of which are other docket

15
9-22-09

items), so the attachment numbering is hard to follow. But included in the package are docket items from 6-13-95, 3-16-94, and 2/19/93. The Tenants Support Committee application is also included in the package.



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This next item is from 1/28/97, and includes attached docket items from 12/10/96 and 6/25/96. This, together with the above, should provide a complete history of the Council actions for all of the City loans for the co-op property.



- dit24[1].tif

Loan Documents



CCH Loan Agreement, 1994.pdf



CCH Deed of Trust, 1994.pdf



CCH Promissory Notes 1 and 2, 1994.pdf