


City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 2, 2011

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: 
BRUCE JOHNSON, ACTING CITY MANAGER

SUBJECT: CONSIDERATION OF RELEASE OF COVENANT, IN THE EVENT OF FORECLOSURE OR DEED IN LIEU OF FORECLOSURE, TO FACILITATE THE PERMANENT FINANCING OF THE ALEXANDRIA REDEVELOPMENT AND HOUSING AUTHORITY'S QUAKER HILL PROPERTY

ISSUE: Technical amendments to allow the planned Alexandria Redevelopment and Housing Authority's (ARHA) refinancing of its Quaker Hill property.

RECOMMENDATION: That City Council agree to a release of the Declaration of Restrictive Covenants and Deed of Easement, in the event of foreclosure, or deed in lieu of foreclosure, so that ARHA can close on its permanent financing for Quaker Hill with the Virginia Housing Development Authority (VHDA) as the new first trust lender, with the understanding that the City's interest in the property as affordable housing will remain protected through a right to assume, cure and/or purchase or pay-off VHDA's loan (including through a designated entity) in the unlikely event of a default.

BACKGROUND: In December 2006, Council approved a loan of \$4,704,600 (including the outstanding \$1,204,600 balance of a prior City loan) for the acquisition (from the previous tax credit ownership entity) and rehabilitation of ARHA's 60-unit Quaker Hill property. The City's loan was subordinate to ARHA's first trust loan with SunTrust Bank. With the rehabilitation of the property completed, ARHA is now able to close on its planned permanent financing with VHDA. At ARHA's request, on April 12, 2011, the City Council reviewed and approved a modification of the terms of the City's loan agreement with ARHA to expedite the planned schedule of repayments, including an initial repayment of \$500,000, and 100% of project cash flow thereafter being directed to accelerate the pay down of the loan balance owed to the City. As anticipated, the City will continue as the junior lender in priority and has been asked to execute a subordination agreement in VHDA's favor.

Over the past month, staff from the Office of Housing and the City Attorney's Office has participated in discussions with ARHA and VHDA and their respective counsel in preparation for the permanent loan closing, including the circulation, review and revision of legal documents among the parties. Just prior to the planned settlement date on May 25, 2011, VHDA's legal counsel requested that language be added to the documents signed by the City that would release the Declaration of Restrictive Covenants and Deed of Easement ("Declaration") in the case of a foreclosure by or deed in lieu of foreclosure, which was executed pursuant to the 2008 loan agreement and filed in the land records. The Declaration has been in place as a restrictive covenant on the land that ensures that the property will continue to be used as affordable housing. VHDA's counsel stated that a release was required by VHDA's bondholders so that, in the event of a foreclosure or deed in lieu of foreclosure, the Declaration would not operate as a restriction on the title of the property and VHDA might recover its investment by selling the property in the open market without this restriction on its future use.

DISCUSSION: The current Declaration requires that property be preserved for affordable housing purposes, "**until the first occurring of (i) 40 years or (ii) the period of time until the June 30, 2008, Note and Deed of Trust are paid in full or (iii) until otherwise approved by Alexandria City Council.**" As stated in bold, the explicit language of the Declaration requires approval of City Council for a release of the covenant absent the other conditions having been met. A release of the Declaration will remove the requirement that the property continue as affordable housing upon a foreclosure by or deed in lieu of foreclosure.

A foreclosure or deed in lieu of foreclosure is unlikely given that all of the parties (ARHA, the City and VHDA) involved in the financing transaction are in the business of preserving affordable housing, enjoy collaborative and cooperative working relationships and would be highly motivated to seek alternative resolutions to avoid foreclosure and preserve the property's long term affordability. However, to safeguard the City's interest, City staff has requested and VHDA and ARHA have agreed to provide the City a right to assume VHDA's loan and an option to purchase or pay-off VHDA's loan, so that the City's Declaration would not have to be released. If this proposal is acceptable to Council, documents will be prepared prior to closing acknowledging this agreement among the parties. Practically speaking, in the event of a default by ARHA, the City would be notified and would then have a period of time in which to act to either purchase the loan from VHDA or to pay off the balance of the loan to VHDA.

Releasing the Declaration upon foreclosure or deed in lieu of foreclosure is required to facilitate ARHA's new permanent loan with VHDA. The risk of the property going into foreclosure is bounded by the above cited factors; in addition, staff is seeking additional concessions from VHDA to safeguard the City's interest.

FISCAL IMPACT: To obtain an extension of the SunTrust loan in order to obtain Council's approval, ARHA has incurred additional expenses. The City did not incur any added costs for the time needed to resolve this covenant issue.

STAFF:

Mark Jinks, Deputy City Manager

Helen McIlvaine, Deputy Director, Office of Housing

Mildrilyn Davis, Director, Office of Housing

Christina Zechman Brown, Assistant City Attorney