

BARNSTABLE COUNTY HOME CONSORTIUM ADVISORY COUNCIL  
THURSDAY, MAY 17, 2012  
CAPE COD COMMISSION OFFICE  
MEETING MINUTES

Members Present: Lee Berger, Richard Carroll, Jillian Douglass, Lorri Finton, Jon Holt, Bernie Kaplan, Gerry Loftus, Elaine McIlroy, Marlene McCollem, Sandee Perry

Members Not Present: Vicki Goldsmith, Art Hultin, Michelle Jarusiewicz, Mary McDermott, Judith Riordan

Public Present: Cindi Maule- Chatham Housing Committee

Staff Present: Paul Ruchinkas, Michelle Springer

#### MINUTES-

Richard made a motion to approve the minutes of April 19, 2012. Bernie seconded the motion, 6 members in favor, 0 opposed, 1 abstained.

Correction: On page 3, the vote on Stage Coach Road funding should have been 9 in favor, not 10.

#### HOME Program-

##### DHCD Funding Round-

DHCD awarded funding to 36 projects in this round with five of them being projects on Cape Cod. They were Sally's Way in Truro, Simpkins in Yarmouth, Stage Coach Road in Barnstable, Rock Harbor in Orleans, and Kings Landing in Brewster. Out of the 36 projects awarded, seven were for projects with less than 20 units. This is excellent news for affordable housing on the Cape and the HOME Consortium. This will help us with the two year commitment requirement.

##### Project Update-

HAC has discovered that they have a \$360,000 gap on Breezy Acres. HAC is trying to work out how they are going to close the gap. Part of it was due to an increase in construction cost. HAC has asked about the option of coming back to the Consortium for additional funding as part of the solution to close the gap.

Paul has heard from the staff person at The Resource Inc. about the three- family home in Falmouth that is under agreement. They are hoping to find out if the CPA funding has

been approved by the Selectman next week. He will be submitting an application to the Consortium after that.

Paul and Michelle went to New Bedford to see a completed project that The Resource Inc. had done. They had done a good job on the project.

The Stratford Capital Group who is doing the re-development of the Simpkins School project in Yarmouth was awarded the designated developer status in Bourne to re-develop the Coady School. They are planning to convert it into senior housing. They will be coming to the Consortium for funding in the next State funding round.

#### 2012 Annual Plan and Con Plan Amendments-

The documents were sent over to the County Commissioners for signatures yesterday. However, Paul discovered the HOME allocation had changed from the original amount. HUD changed the allocation from the amount that was told to us in January. Usually HUD notifies us of any changes but Paul never received a notification of the change. It is not a major change, but the allocation was increased by \$565 to \$379,285. Paul increased allocations by the following amounts: Admin-\$56; CHDO \$85; and Housing Production \$424.

Sandee made the motion to approve the revised allocation to the Annual Plan, Lori seconded the motion, 8 in favor, 0 opposed, 1 abstained.

HUD is going to a web based reporting system for the consolidated plan, the annual plan, and our annual performance report that we have to submit to HUD. Part of the process includes a mapping system that has a lot of affordable housing information on it. You will be able to look up a town by zip code to get the latest and most up to date data on income, housing units, percent of population that are below 30%, etc. Whatever federal census data HUD has will populate this mapping system. Paul and Michelle have looked at the map and some of the information listed is HOME projects, Federal public housing, tax credit projects, and multi-family housing. We did notice that there were a couple of our projects not coming up on the map. HUD is using the USPS system to locate properties on the map, which could be an issue for some of our addresses that do not receive mail. HUD has said that we will need to use this system starting with your next consolidated plan which for us that would be in 2015. There is an option to submit our annual action plan and performance report on this web based system. The big advantage to this is the data is all there for putting together the plan and we do not have to spend time researching. It also makes the information accessible to the public.

As part of the Appropriation Act of 2012 Congress included four requirements that were in the draft regulation that we need to incorporate when we spend our 2012 funding. Any community housing development organization has to have a staff member with development capacity. This means that HECH will need to work on getting someone on staff with this capacity as they currently do not have anyone. Pam Parmakian, the director of HECH, has a lot of housing experience, but it is primarily in property

management. Pam has asked Paul if she would qualify but he doesn't think so. HECH is partnering with Falmouth Housing Corp. on a project in West Harwich and Pam was concerned if whether the new rule would apply. Paul explained that if they came to the Consortium, they could still apply; it would just mean that they couldn't apply for CHDO funds and they would need to apply for Housing Production funds.

Any project in 2012 that we fund needs to get completed within four years rather than five years.

Another new requirement would be for anyone doing home ownership projects. The new requirement says if the unit is not sold within 6 months then it will have to be converted into a rental unit. This is one of the requirements we commented on for more flexibility. As Congress included these requirements in the Appropriations Act of 2012, they will probably show up in the regulation.

Richard Carroll asked if it gets converted into a rental unit can it be converted back to home ownership at some point?

Paul responded that possibly you could do a lease to purchase option. Paul said he would have to look into it more, but he didn't think there was a prohibition to it. It would need to be a different restriction. (NOTE: Paul reviewed the draft regulations after the meeting and proposed limit is 18 months, not 12)

Jon Holt asked if the conversion of home ownership to rental housing only applies to the HOME program.

Paul responded that yes anything with HOME funds. The Gomes Way project, which was a home ownership project done by Habitat for Humanity in Harwich, got close to that 6 month threshold.

Marlene asked if there was a time limit for how long a rental unit can stay vacant.

Paul responded yes there is a time limit of twelve months. Under the proposed regulations if after twelve months you don't have the required number of HOME units rented you would have to pay HUD back that portion.

Fair Housing Issues-

Westchester County has been involved in dispute with HUD over the County's failure to promote fair housing. The County was sued under the False Claims Act. One of the things the Commissioners had to sign yesterday was a certification that we are affirmatively furthering fair housing in the region. The courts upheld the suit, and they are now under this long consent agreement with HUD with a monitor looking over them. One of the requirements from HUD was that the County passes legislation that bars discrimination based on source of income. The County legislature passed it, but the County executive vetoed it. HUD brought them back to court and they are in violation of

the court order. This means that Westchester County has not been receiving any CDBG or HOME funds since 2011.

The National Fair Housing Alliance looked at 2011 housing discrimination cases and 44% of them were related to people with disabilities, which is consistent with what we saw in our fair housing report. Racial discrimination was 20% and family status was 13% of the cases.

### Policy Issues-

#### 40B Changes-

We had about 25 people that came to the 40B workshop that we hosted here at the Cape Cod Commission. People who attended the workshop were given DHCD's "Summary of Recent Amendments to the Chapter 40B Regulations" dated April 30<sup>th</sup> 2012 by the DHCD staff who attended. Paul explained that the primary change was to the "Reasonable Return". The regulations now say that for "Ownership and Continuing Care" the profit for the developer and the return cannot go above 20% or below 15%. There is also a rental formula included on the developer side for a maximum of 10% profit and a "Return on Investment" calculation that DHCD and the Housing Appeals Committee have used. Another change dealt with if the ZBA reduces the amount of units by more than 5%, it is a rebuttal presumption that that would in turn make the project uneconomic. DHCD has done away with that language and it now states that if the ZBA requests and/or conditions the project for fewer units than applied for, the standard of what is a reasonable return is whatever it was in the initial. For example if there was an 18% return in the initial and the reduction in units will generate less than 18% return, it could be deemed uneconomic if the developer challenged it.

The other handout that was given to the workshop attendees was the "Zoning Board of Appeals of Amesbury vs. the Housing Appeals Committee Massachusetts Supreme Judicial Court" case. It clarifies what issues the zoning board of appeals can deal with and which are the purview of the subsidizing agency. It upheld DHCD policy that it was not up to the zoning boards to condition the projects for lottery, income eligibility, level of affordability, etc. The zoning board should be dealing with health, safety, and environmental issues, which are the things that the zoning board has under their purview. The other thing that this decision did was to state that attorney's fees for the zoning board are not something that is required to be paid by the developer. Attorney's fees for the town should be the town's responsibility, not the developer. If the developer agrees to pay the fees then that is fine, but they can't legally make the applicant pay those fees.

#### Public Housing Reform-

Included in the meeting packet was the information on Public Housing Reform Commission that the Governor established after the information came out about the Chelsea Housing Authority and the salary of the executive director and staff living in HA units. Regionalization, is one of the focuses of the committee along with what kind of

regulatory streamlining can be done in regards to the reporting that the local housing authorities have to do. Paul also included the maps showing the numbers of authorities that we have in the Commonwealth along with the number of units. Also included in the packet were the public hearing notes that DHCD put out from the public hearing that a number of housing authorities attended including Sandee Perry, Executive Director of the Barnstable Housing Authority.

Sandee that there are twelve housing authorities on the Cape that meet regularly to go over certain things that impact them as a group and as individuals. They felt it was important to go up and testify at the public hearing. They collaborated on the testimony and then one housing authority director gave the testimony. The smaller agencies are very concerned that they are going to lose their autonomy and be pulled into partnership and agreements that they are not happy with. All the housing authorities on the Cape have issues they deal with and just because they are all housing authorities on the Cape doesn't mean they have the same issues. They testified that they felt that reform was good as long as it is not punitive and as long as it allows for collaborations that are voluntary and that it allows agencies to work together to save money, whether regional, or in a partnership. They felt it should be something voluntary not something forced on agencies as a knee jerk punitive measure because of what happened in Chelsea. The other issue they have seen is the connection between executive directors and political people in the legislature which sort of gives the executive directors the thought that they are immune to the laws and rules. They felt it was important for the Governor to not only start thinking about reforming public housing authorities, but to look at what's going on with the political relationships between agencies and the legislature. There were about 150 people there from housing agencies, public non-profits, and tenants. Sandee feels like it is going to take time even though the Governor wants it to happen quickly but Sandee doesn't know if the legislature is on board for some of the things the Governor would like to see happen.

Paul responded that he would be surprised if they did a mandatory regionalization.

Sandee went on to say that when the housing authorities get together for their meeting they are able to informally discuss issues that impact each agency.

Bernie commented that there isn't an easy answer to this, but there needs to be more awareness of public reaction to newspaper coverage of the isolated cases of inappropriate political connections. There should be more publicizing of public housing professional standards, competence, and effectiveness so that the public is aware.

Sandee commented that unfortunately it is the sensational stories that get into the newspapers.

## Overcoming Restrictive Zoning-

Paul presented an overview of a CHAPA funded nationwide study done by Rachel Bratt of Tufts on how states and regions have tried to overcome local zoning that restricts the ability to create affordable housing. She reviewed four approaches in five states: 1) State Zoning Override (Mass- Chap 40B; R.I.- Low and Moderate Housing Act of 1991); 2) Mandatory Inclusionary Zoning (Montgomery County, MD.- 1974); 3) Mandatory Fair Share (N.J.- Fair Housing Act- 1985); and 4) Mandated Housing Element in Local Plans (CA.- 1969).

She was able to get information on affordable units produced under all of these approaches with the exception of California. All of the other three approaches demonstrated some success: affordable housing developments accounted for from 6-10% of the new housing created; some affordable housing was created in places that had little or no affordable housing originally; however, more affordable housing was created in communities that had higher densities, slower growth, and lower incomes.

Some of the policy findings from the study were that 1) Universal goal for all, e.g. 10% or mandated inclusionary is somewhat simpler to administer and perceived as fairer than a state or regional agency determining the fair share allocation for each locality; 2) Administrative process (e.g. MA Housing Appeals Committee) to resolve disputes is more effective and efficient than reliance on court process; 3) Long term use/affordability restrictions are critical; 4) Reliance on private sector is economy dependent and tends to limit locational choices; public development subsidies still very important; 5) Avoid cash in lieu of units options; and 6) Require municipal planning to have an AH element along with having zoning consistent with an AH plan.

## Town Reports-

The Town of Harwich CPC has awarded the Harwich Housing Authority \$300,000 for a rental voucher program. The Harwich Housing Committee has been working to get some town owned land for an affordable housing development. Conservation through the town of Harwich and the Harwich Conservation Trust have about 1,800 acres of the town. Housing has less than 100 acres and 85 of those acres were donated by the town. There are 28 acres off of Depot Road and Gerry explained they have asked for 8 of the acres, 6 on the north end, and 2 on the south end of the parcel.

Jon reported that Habitat for Humanity has received funding for the project in Orleans from the CPC, and it was approved by town meeting to build 5-6 units in the coming year.

The Hinckley project, which was seven years in the making, is being marketed and they hope to have shovels in the ground by November.

Cindi reported that the Town of Chatham approved (through town meeting) CPC funding for a housing production plan and to hire a housing consultant, who will help to finish the production plan.

There has been interest in the two affordable units for the condos located off of Route 28 (the former South Cape Seafood location) but none of the market units have been purchased.

The Chatham Affordable Housing Committee did not add (other than the production plan and consultant) any articles for the town meeting. The Committee is looking at a property on Middle Road for a future development, but decided to hold off on proposing any ideas at his time.

Elaine reported that Wellfleet town meeting voted to \$125,000 from the CPA to do their third buy down project. With the funding they received last year, they were able to do two buy downs.

Elaine asked if anyone does CORI checks for their affordable/subsidized housing units.

Sandee explained that for rental units, they do CORI checks, because they are a housing authority and have regulations that state they have to.

Paul responded that he had never heard of it for ownership projects, just rental.

Bernie reported that for a long time in Eastham there has been resistance towards any change in zoning, especially to accommodate affordable housing, and that the zoning regulations should apply for all zoning. The water needs of Eastham are reflected in the last well publicized town meeting and continue to be a problem. Many of the residents hope that one of the byproducts of a water distribution system could be the reduction of full acreage zoning, which has been an inhibiting factor in developing affordable housing. So at the very least the hope is somewhat deferred now as the town has to grope at the inconsistent response to the town water issue. On the one hand the majority says that the town doesn't have a water problem, despite the studies that show otherwise, yet at the same time saying we have to have full acre zoning to protect the water. That needs to be worked out, but in the meanwhile they are continuing negotiations for acquisition of some existing units using CPA funding. They are on the brink of purchasing a number of such units. There is currently a dispute going on between the owners, but once that is resolved they hope to purchase the units. The town's rejection of a water system at this time has an impact on the development of more affordable housing.

Meeting enclosures-

1. Commission on Public Housing and Reform

Meeting handouts-

1. 2012 Annual Plan and Con Plan Amendments/Future Changes
2. Power Point Slides- Overcoming Restrictive Zoning for Affordable Housing in Five States
3. DHCD Summary of Recent Amendments to the Ch.40B Regulation
4. Summary-Zoning Board of Appeals -Amesbury vs. Housing Appeals Committee

Meeting adjourned at 9:45