



DELRAY BEACH HOUSING AUTHORITY

REGULAR BOARD MEETING **FEBRUARY 20, 2009** **MINUTES**

I. CALL TO ORDER

Meeting called to order at 8:50 a.m.

II. ROLL CALL

Angela Randolph - Present
Morris Weinman - Present
Joseph Hepp - Present
Sylvia Morris - Present
Thuy Shutt - Present
Christel Silver - Present

III. APPROVAL OF AGENDA

Motion to approve the Agenda made by Vice Chairman Weinman. Motion seconded by Commissioner Hepp. All in favor. Motion passed.

IV. APPROVAL OF MINUTES OF JANUARY 15, 2009

Motion to approve minutes of December 18, 2008 made by Vice Chairman Weinman. Motion seconded by Commissioner Hepp. All in favor. Motion passed.

V. RECOGNITION OF VISITORS

Kevin Kenny – The NCT Group, CPA's
Connie Staudinger – The Auburn Group
Joseph Grey – JEG Planning Associates
Maria Herrera – Sun Sentinel
Sandra Rocha – R2T
Dan Jordan – Palm Beach Post
Gary Eliopoulos – Commissioner, City of Delray Beach
Chuck Ridley – Concerned Citizen

VI. PUBLIC COMMENTARY

Joseph Grey of JEG Planning Associates expressed his concerns regarding the redevelopment of the Carver Estates site and the relationship between the Delray Beach Housing Authority and the Auburn Group. Mr. Grey noted that although Auburn was a client of his, he was here today as a concerned citizen, with a long history in Delray Beach. He described how he and Chuck Ridley, also a long standing citizen of Delray Beach had tried to find a solution to the on-going problems between Auburn and the DBHA. Mr. Grey also noted that his recommendation to Tom Hinners, of the Auburn Group, was that the DBHA's land be returned to the Housing Authority to avoid further delays to the project. Mr. Hinners had agreed, in principle, to try to do this. This issue was discussed with the DBHA's President/CEO. Mr. Grey conveyed his commitment to assist in anyway he could to have the project move forward.

Chuck Ridley, a long time concerned citizen of Delray Beach noted his concerns and asked that all options, other than litigation, be explored. He mentioned that only the community will suffer from a prolonged situation where progress to the project is delayed. He expressed the importance that the community knew the magnitude that the project will not be another Carver Estates, but rather a quality place for individuals with lower incomes to live.

VII. CONSENT

- a. Section 8 Coordinator's Report – Bridgette Huff
 - b. Chief Financial Officer's Report – Naomi Durham
 - c. Administrative/Grant Report – Nina Levine
 - d. Quality Control Report – Jakeleen Fernandez
- Motion to approve Consent Agenda made by Vice Chairman Weinman. Motion seconded by Commissioner Hepp. All in favor. Motion passed.

VIII. CORRESPONDENCE

Letter to Mr. & Mrs. Art Macnow – Donation of Kings Point Condo Unit

IX. OLD BUSINESS

- a. Report from Kevin Kenny – The NCT Group – Annual Audit – Fiscal Year ending 3/31/09 – Mr. Kenny presented the results of the Annual Audit. The unqualified opinion (which is the best) is that the financial statements are presented as required by the Generally Accepted Accounting Principles. Both Compliance and Internal Control are in conformity with Government Auditing Standards and also received an unqualified opinion.
- b. President/CEO's Report –
 1. 82 Northwest 5th Avenue – The site Plan was submitted to the City for review and approval as scheduled on January 31. Some verbal comments were received during the past week. Written comments are expected next week. Some issues, already known, relating to parking and density were noted. These issues will be worked through. It was noted that it was the CRA's responsibility, per the agreement, to fulfill the parking issues. This will not be a problem.
 2. Update on Redevelopment Partnership Activity – A meeting took place with the President/CEO, Consultant/Project Manager and Housing Authority legal council and HUD to apprise them of the status of the redevelopment project. A meeting with the President/CEO and the Housing Authority's attorney is scheduled for Tuesday, February 24, to prepare a response to HUD's concerns.

Another meeting took place with the CRA, which was attended by several of the DBHA Board Members and staff. The commitment from the CRA of \$3.5 million for the development project was rescinded. Note was made that a discussion of the partners' relationship and new project design had been included on two (2) previous City Commission meetings and had been pulled each time at the request of the Auburn Group.

- c. Request from the Auburn Group to Change the Income Mix – A request from Auburn to eliminate extremely low income units from the County SHIP application had been received. It was recommended by staff that this request be denied, based on the fact that this is no longer relevant.
- d. Settlement Proposal from the Auburn Group – Referring to the letter from Michael Reardon, of Nixon Peabody, attorneys for the Auburn Group, it was noted that in this letter that Auburn proposed to give the 15 of the 18 acres of land back to the DBHA. (Special note was made by the President/CEO that Auburn did not own this property, that in fact, it was owned by the LLC, of which the Housing Authority is a 50% partner). It was Auburn's desire to have the Delray Beach Housing Authority continue to participate with them, even though they want to terminate the Master Development Agreement and that the Housing Authority carry on to support them in the development of their 11 acres which, per the MDA, is the rental portion of the project. It was noted by the President/CEO that it was not the intention of the DBHA to support this Developer, who has not treated the Housing Authority as a partner and had not been honest with the Agency from the

beginning. Gilberto Pastoriza, DBHA legal counsel, now related that as instructed by the Board at last months meeting, a complaint has been prepared and is ready to be filed. Mr. Pastoriza noted that he had prepared a counter offer to Auburn in an attempt to settle the dispute and put an end to the relationship. He recommended that whatever action is taken should result in the severing of all ties between the Delray Beach Housing Authority and Auburn. Accordingly, Mr. Pastoriza further recommended that the DBHA not enter into any settlement agreement that is conditional upon events that the DBHA has no control over. With reference to the transfer of the property, he reminded that the paramount object of this settlement is for the Housing Authority to get its land back, so that it can be redeveloped as was originally envisioned. He further noted that the land must come back from the LLC and as such, must be a part of the settlement agreement. The conveyance document should be for the 18 acres and should occur immediately upon signing of the settlement agreement.

At this point in the discussion, Chairman Randolph noted that Auburn's attorney had made several presumptions in his letter and these presumptions needed to be addressed in the DBHA's response. Mr. Pastoriza recommended that as part of a settlement the Delray Beach Housing Authority should resign its membership in the LLC. Auburn should indemnify and hold the Delray Beach Housing Authority harmless for anything that the LLC might have done while the DBHA was a member of the LLC.

The next item discussed, of significance, was that at the time of the signing of the settlement agreement, the Delray Beach Housing Authority should ask and get an assignment of all approvals, permits, everything in conjunction with the for sale property. This would be the basis for going forward with the development of the 18 acres and will also save the DBHA a huge amount of dollars as well as time. Mutual releases would also be required, going all the way back to the Request for Proposals.

Moving forward with the settlement agreement discussion, next was that Auburn wanted to be compensated by having the DBHA convey to them the 3 acres (next to King Marble). Since the 3 acres was purchased through an eminent domain action, Mr. Pastoriza consulted with an eminent domain attorney and noted that although he has not seen the documentation regarding the authority's acquisition of the site, there may not be a problem honoring this particular demand. However, he recommended that both parties, at a 50/50 cost, hire an independent certified public accountant/auditor to audit the books of both the Housing Authority and Auburn. At the completion of this task, whichever party owes to the other, a decision will be made as to how the money will be paid. Mr. Pastoriza suggested that, due to differences with this partner in the past, this would only work if language is in the settlement agreement noting "failure to cooperate with requests from the auditor within a given time will forfeit the rights of the party to claim any rights to a claim of reimbursement." It was noted that today's presentation by Kevin Kenny, DBHA's auditor indicated audited expenses by the Authority of \$1.3 million at 3/31/2008.

The remaining items consisted of; until executed by both parties, this settlement agreement and resulting negotiations shall not toll, abate and/or waive any of the parties' rights and obligations under the Master Development Agreement. Chairman Randolph expressed concern relating to item 3 in Mr. Pastoriza's drafted settlement proposal with regard to bringing in a certified public accountant. She noted that the DBHA had been attempting to determine what Auburn's predevelopment expenses were for the past 2-3 years. Her concern was that how could someone come in and make a determination of what the predevelopment expenses were. Also, what if their predevelopment expenses were over inflated? Commissioner Hepp mentioned that the lack of communication during the project period had contributed largely to the current situation. After further discussion, a motion was made by Vice Chairman Weinman to delete item 3 from the drafted settlement proposal letter and the settlement process be turned over to the President/CEO and legal council to make the Delray Beach Housing Authority's position known to the Auburn Group. The settlement proposal will go out to Auburn on Tuesday, February 24, 2009. Motion seconded by Commissioner Shutt. All in favor. Motion passed.

X. NEW BUSINESS
None

XI. COMMENTS

- a. President/CEO
- b. Attorney
- c. Commissioners

XII. ADJOURNMENT

10:20 a.m.