HOUSING ADVISORY COMMITTEE
Affordable Housing Policy Review, Formulation & Best Practices Subcommittee Minutes
Neighborhood Development Services
November 20, 2013 at Noon

Attendance Record	Present	Absent
SUBCOMMITTEE ATTENDEES		
Chris Murray	X	
Dan Rosensweig		X
Frank Stoner	X	
Jennifer McKeever		X
Joy Johnson		X
Kristin Szakos	X	
Nancy Kidd		X
STAFF		
Kathy McHugh	X	
Melissa Thackston	X	
Margot Elton	X	
Paige Foster	X	
OTHERS/VISTORS		
Lena Seville	X	

Kathy McHugh began the meeting by asking the group if there were any comments on the previous minutes.

Chris Murray said that he had an amendment to the section on tiered affordability, stating that his comments presented a more nuanced idea than had been conveyed in the minutes. He asked that the minutes be amended to show that his proposal was that CHF funds be allocated, whenever possible, to projects serving a population at 60% AMI. If, however, there were no submitted projects at this income level, he suggested that it be allowed for CHF funds to be used for projects serving a higher AMI limit (80% perhaps, although the upper limit ought to be discussed further). This would allow the funding to be used to support the construction of lower-income housing, even if no projects qualifying under the 60% AMI limit are proposed in a given year.

There were no further comments on the minutes.

Kathy McHugh then introduced Paige Foster from the City Attorney's office to the group, and explained that she was there because Kathy McHugh had some questions she felt had legal implications.

Affordability Clause

The first of these issues, said Kathy McHugh, was that Policy #1 includes a 30-year affordability clause. This is not, however, reflected in the standard CHF agreement. In the last subcommittee meeting, the group decided to consider the possibility of including some sort of policy that might require CHF money to be paid back (as one option) if affordability does not continue for 30 years. Kathy McHugh said that she worried, however, that because CHF is not a permanently funded account, but rather one funded annually through CIP by Council, that it could, theoretically, disappear if it were not funded. This would make paying CHF back complicated. Kathy McHugh also said that she had been told that any changes to the CHF agreement would have to go through the attorney's office, so she felt like this was a good phase to bring Paige Foster in and ask her about the possible legal implications of requiring payback to an account that is not permanently funded.

Kristin Szakos mentioned that while CHF could cease to exist, the City would not, so the regulation could require payback to the City – either through CHF or to the general fund.

Paige Foster said that she believed that our enabling legislation would allow for a payback mechanism to be written into the ordinance, and indicated that she would look into it in greater depth. She asked whether the HAC would be open to the idea of the City appropriating these monies to other budget areas. Kristin Szakos said that she thought the money should be given back to CHF.

Chris Murray suggested creating a publicly visible tracking device that would show where we are towards the 2025 goal. He suggested something like a thermometer that would be colored in to equal to the percentage value of supported affordable housing in the City.

Kristin Szakos said that this would help in assuring that there was always a CHF, if the progress towards the goal is tracked visibly.

Kathy McHugh responded that this would not lead to a guarantee that the CHF would still be in existence, for City Council priorities can change.

Kristin Szakos responded that those changing priorities were the reasons that the HAC was so important.

Frank Stoner asked whether the charge of the HAC was to focus specifically on affordable housing, or on the whole spectrum of housing.

Melissa Thackston responded that the charge from City Council had been to focus on affordable housing.

Frank Stoner responded that he sees a lack of housing in the middle-income range, and wondered what the HAC could do to support that.

Kathy McHugh responded that the City's ability to impact what happens is limited, since development decisions for private land aren't made by the City. The City makes a comprehensive plan, which outlines a vision statement, but cannot develop land itself. She also included that, if our goal is to get to 15% supported affordable, that the rest of the 85% of housing must be for other classes.

Frank Stoner suggested infrastructure concessions to support housing built for the 80% - 120% AMI range.

The group calculated what 120% AMI was for the city (just over $93,000 for a family of 4), and Kristin Szakos pointed out that Charlottesville has a lot of housing stock that's available for this income range.

Frank Stoner agreed, but said that this housing stock wasn't desirable.

Kathy McHugh said that this conversation could tie into a continuation of the conversation from the previous meeting, where Frank Stoner asked about the possibility of allowing for CHF funds to be used for capital improvements.

Frank Stoner said that, in his mind, there were two separate, but related issues. First, there is the idea of looking into using CHF funds for infrastructure improvements in disadvantaged neighborhoods. Secondly, there is the larger goal of achieving affordability at a broader range. In this second category, infrastructure concessions could be a tool to help achieve this larger goal.

Kristin Szakos mentioned that she felt that since there's so much existing housing in Charlottesville, that she wasn't sure how much new infrastructure would be involved with housing projects – instead, she suggested focusing money on rehab.

Chris Murray pointed out that the City also has CDBG money for infrastructure improvements. Kathy McHugh clarified that we currently have only $134,000, which is designated to the 10th and Page neighborhood. She also added that, when a project is bidded out, that this amount ends up being a fairly small sum.

Kristin Szakos said that she was not against thinking about infrastructure improvements as a use of CHF funds, but believed that there should be a set priority for use for persons with incomes under 80% AMI. If, however, the City tracks progress, and realizes that it is ahead of the 15% goal, then other expenditures could be used. Until we meet our 2025 goal, however, all money should go towards housing. She believes that getting to this 15% goal will be difficult enough without siphoning some of the money off for other purposes.

The group agreed that Frank Stoner's point was one that could be revisited at a later time, but that it would be moved to the "parking lot" for the time being.

Kathy McHugh summarized that Paige Foster would give the group further information on:

1. The legal capacity to incorporate a deed of trust or other repayment mechanism into CHF agreements.
2. Options for wording that would allow for repayment of CHF funds if projects lost affordability, discussing how repayment would work, particularly in the case that CHF no longer exists.

Chris Murray clarified that the issue with the 30-year lien is whether banks will be willing to lend to affordable housing projects with these clauses. He cited HUD and LIHTC specifically.

Melissa Thackston said that while the City policy requires 30 years for affordable homeownership projects, that the rental policy only requires affordability for the "life of the City investment" which makes it not a hard and fast 30 years.

Kathy McHugh included that this could be triggered at sale or foreclosure.

Frank Stoner added that foreclosure would not always trigger, because the bank would take over ownership. He believes that there is an enforcement issue related to this.

Paige Foster asked which funding sources affordable housing projects use. Chris Murray responded that they use a wide variety of sources, including CHF, CDBG, FHLB AHP, HOME, FHA, LIHTC, and private funds.

Frank Stoner said that it would be nice to have a chart that outlined the underlying guidelines for each of these funding sources. Chris Murray said that it would be virtually impossible to make such a chart.

Melissa Thackson said that the fundamental point is that we need to find a balance between City and developer interests. With no affordability clause, developers would be happy, but there is no guarantee that projects are not developed using City money and then immediately flipped to market-rate.

Kristin Szakos asked whether the group might be okay with the CHF policies including an affordability clause, as long as other funding rules did not exclude these provisions. She asked which ones were the most rigid.

Chris Murray said that Federal Home Loan Bank requirements were the most rigid.

Kathy McHugh explained that money from FHLBs is Community Reinvestment Act money from private banks, which makes it highly competitive. Because it's private bank money, dispersed by the federal home loan banks, there are both private and federal bank regulations tied to its use.

Kathy McHugh then went on to say that CHF had been created to have a funding source with maximum flexibility, due to the fact that the City knew that most other funding sources had such rigorous requirements. She said she wants to find a balance between this flexibility and some degree of accountability, but that she tends to side with Chris Murray in thinking that CHF money ought to be as flexible as possible.

Frank Stoner mentioned that with LIHTC projects that the affordability requirement is already layered in.

Melissa Thackston agreed, and suggested that perhaps CHF could include a requirement that a developer either make a 30-year affordability commitment to CHF or show that they have an affordability commitment elsewhere in their funding package. The City could agree to honor commitments from other funding sources in these cases.

Frank Stoner supported this idea, for it would require a guarantee *somewhere*, but would allow for developers to put together their funding packages as flexibly as possible.

Chris Murray suggested adding in a clause for projects with no layered in requirements that would be akin to a reverse mortgage. This would require a decreasing amount of payback required, depending upon how long the project remained affordable. For example, if it turned around and sold at market-rate one year after, they would have to pay back 99% of CHF funding, but if it were 15 years later, they only have to pay back 50%.

Paige Foster said that she could look into the legality of this type of prorated repayment scale.

Kristin Szakos suggested that the first 2 years be a full 100% repayment requirement, if affordability is lost.

Chris Murray suggested that this be increased to the first 5 years. He said it had to be set up to be a large disincentive to lose affordability.

Frank Stoner said that this could function something like the deeds of trust that the City signs with AHIP rehab clients.

Paige Foster mentioned that HOME allows the City to create our own terms, and that she thought that legally, we could probably use this deed of trust model.

Kathy McHugh said that she likes Melissa Thackston's idea that the City could accept other sources affordability requirements as sufficient, for it would give a greater degree of discretion to City staff.

<u>Residency Requirement</u>

The group then moved on to discuss the fair housing issue previously raised by Dan Rosensweig. He believed that there was a problem with the residency requirement that requires either 5 years of residency or employment in the City to be eligible to live in CHF-funded projects.

Kathy McHugh wanted to clarify that there is a difference between recipient and beneficiary of the housing. She said that since residency isn't part of a protected class, that she wasn't sure if this was a fair housing issue. Because of this confusion, she wanted a legal perspective on this question.

Frank Stoner asked whether, for example, a Louisa county resident got a job in Charlottesville, and wanted to move into the City, would they qualify? The group agreed that technically this person would not.

Melissa Thackston said that Karen Rifenberger from PHA has told her that this is not a fair housing issue, but that it could be a problem because there are some funding sources that do not allow for residency requirements, such as LIHTC. She explained that the motivation behind this requirement was that they had wanted to ensure that County residents didn't get to come in and take all of the units away, leaving no affordable homeownership opportunities for City residents who had been paying taxes in the City and waiting for an opportunity themselves.

Kristin Szakos said that she'd like to see it kept if possible, even if it was downgraded to a preference rather than a requirement. She thinks that people paying taxes in the City should get a priority in affordable housing in the City.

The general consensus was that this could be left in as a preference, rather than a requirement.

Definition of Affordable Housing

The group then moved on to the possibility of redefining affordable housing.

Kathy McHugh read from the state zoning code. The definition included 30% maximum for gross housing costs – including utilities – and said that for the purposes of ADU ordinances, that local governments can set their own definitions. The City of Charlottesville did this with the ADU ordinance – 60% AMI, with a 30-year requirement. Our definition includes no allocation towards utilities or a percentage amount of gross income. Her question, then, is: because we have defined "affordable housing" as such in our ADU ordinance, is this the City's adopted definition that ought to be used for all projects?

Chris Murray said that he thinks it would be a good idea to include a tiered system of funding if we are able to.

Melissa Thackston clarified Kathy McHugh's question, wondering if we need to change our ADU ordinance in order to change our overall definition of affordable housing.

Kathy McHugh said that our Policy Letter #1 says money can be used for 80% AMI, which is inconsistent with our ordinance. She wondered what our legal constraints were for creating a definition, and said that she thinks that it would be a good idea for the definitions to be consistent across programs.

Chris Murray suggested we leave our official definition at 80% AMI, but give preference to 60% AMI projects.

Paige Foster pointed out that our enabling legislation states that the cutoff is 60% AMI.

Kristin Szakos suggested that the committee allow Paige Foster to do some research into this, and come back with more information.

The meeting then concluded, with a decision that more conversation was needed. The next meeting will be on Wednesday, December 18th at 12 pm.

Kathy McHugh asked the group to pick one or two topics for discussion at the next meeting. The group chose (1) Paige Foster's responses to the legal questions raised in this meeting; and (2) a discussion of the appropriate usage of CHF funds – i.e. whether they can be used for programmatic purposes or if they should be solely designated for housing.