

Minutes
RHA Repositioning Committee Meeting
April 20, 2021
11:00 a.m. – 12:00 p.m.

Committee Present: Eric Braun, Arne Morris, Bahati Mutisya, Gregg Warren, Wayne Felton

Committee Absent: None

RHA Board Present: Joe Whitehouse, Niya Fonville

RHA staff: Suzy Bryan, Liz Edgerton, Donna Perez, Gwen Wall

Visitors: Hilda Holdsclaw, CAD Board Director; Charles Francis, The Francis Law Firm.

Commissioner Warren welcomed Hilda Holdsclaw, former Finance Director and current CAD Board Director, to the meeting this morning.

Commissioner Warren said today's meeting is to discuss the options that are available to RHA regarding ownership structure for the RAD properties.

As discussed during the last Repositioning Committee Meeting on April 9th, Commissioner Warren wrote the first draft of ownership options and those were sent to the committee. The draft included the red-lines of Mr. Felton and RHA staff.

Commissioner Warren asked for an update on RAD and Heritage Park before the committee moves on to the ownership options discussion.

Update on RAD Status Including Heritage Park

- HUD concept call on April 7th went well.
- RHA received the invitation to submit the Finance Plan.
- Staff asked for an extension to submit the Finance Plan. It will be due on June 8th.
- Part of the Finance Plan is determining ownership structure. Staff must tell HUD who the owner will be as part of that Finance Plan. That decision will need to be confirmed before the Finance Plan is submitted.
- The Repositioning Committee can make a decision to determine that today. It can be taken to the RHA Board of Commissioners on May 6th for approval.
- The Finance Plan can be brought to the RHA Board for approval at the May 27th Board Meeting.
- Staff will submit the Finance Plan on June 8th.

The three different funding options for Heritage Park were sent to the committee. They were:

75/25 Blend

The PHA is converting at least 75 percent of the public housing units within a project under RAD and is replacing the units proposed for disposition (up to 25 percent of the public housing

units within a project) with Section 8 project based voucher (PBV) assistance in accordance with 24 CFR part 983. To qualify, the project based Section 8 units (RAD and PBV) must be newly constructed or substantially rehabilitated without using 9% Low Income Housing Tax Credits. (The numbers have changed and now PHAs can go up to a 30% blend.)

Pros

- 25% of the units available for regular PBVs at HUD Fair Market Rent (“FMR”). RAD rents are an average of \$806 per unit currently compared to the FMR of \$1,340 per unit.
- Tenant Protection Vouchers issued for 25% of the occupied units.
- Capital Fund and Operating Reserves can be used on the RAD units (75%).
- 4% tax credits can be used on the Section 18 units (25%).
- Demolition Disposition Transition Funding (DDTF) is received for the units removed under Section 18 (25%).

Cons

- Cannot use 9% tax credits.
- Would have to include the 4 and 5 bedroom units since all tenants have a right to return (can discuss with current tenants if they want a voucher then they can sign a waiver and those units do not have to be replaced).

Section 18 Demolition

Demolish all 122 units under Section 18 of the Housing Act of 1937 via the obsolescence option.

Pros

- Receive Tenant Protection Vouchers (“TPVs”) for units occupied in the past 24 months.
 - *Replacement TPVs* are provided in cases where the PHA is not replacing the Public Housing units removed through the Public Housing action with other Public Housing units. As such, replacement TPVs are provided as a permanent resource to the PHA and are intended to assist the individual families who are being displaced by the Public Housing action. After the initial family ends its participation in the voucher program, the associated voucher funding remains in the voucher agency’s baseline funding and the voucher is available to serve other low-income families in the community. Under current HUD policy, replacement TPVs are also provided for vacant units that were occupied by an assisted family in the previous 24 months.
- Eligible for Demolition or Disposition Transitional Funding (“DDTF”) and Asset Repositioning Funds (“ARF”) once units are demolished.
- Do not have to include the 4 and 5 bedroom units in the redevelopment.
- Turn the TPVs to Project Based Vouchers at the HUD Fair Market Rent to be used at the redeveloped property. The average RAD rent per unit is \$806 compared to the current average fair market rent of \$1,340 per unit.

Cons

- Must qualify for obsolescence. To evidence obsolescence for demolition of a project, PHAs must show that the necessary modification and/or rehabilitation to a project is not cost-effective. HUD generally considers modifications not to be cost-effective if costs exceed 62.5% of TDC for elevator structures and 57.14% for other types of structures. 57.14% of TDC is estimated to be \$16,473,053.

- Cannot use Operating Reserves or Capital Fund for the rebuilding of the units (estimate of \$8,000,000). May be able to use Operating Reserves or Capital Fund for the demolition of the property with HUD approval. Note: the \$8,000,000 is an estimate since it includes future Capital Funds which are dependent on Congress.

Rental Assistance Demonstration (“RAD”)

RAD is a HUD demonstration program through which public housing units can be converted to long-term project based assistance. RAD does not provide any new HUD funds; rather, it combines public housing operating and capital subsidy into payments under a long-term RAD Section 8 Project-Based Housing Assistance Payment (“HAP”) contract.

Pros

- Can use Capital Fund and Operating Reserves as part of redevelopment.
- Funding begins as soon as the RAD project closes so the funds towards construction or relocation.

Cons

- Not eligible for DDTF or ARF Funds.
- Would have to include the 4 and 5 bedroom units since all tenants have a right to return (can discuss with current tenants if they want a voucher then they can sign a waiver and we don’t have to build those units).
- RHA’s RAD rents are 70% of Fair Market Rents.

Note

- Heritage Park is in a minority census tract; the following will apply
 - Area of Minority Concentration: A project may be located in an area of minority concentration only if (i) sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or (ii) the project is necessary to meet overriding housing needs that cannot be met in that housing market area.
 - We will need to apply for a waiver with HUD but with the work going on around Heritage Park, we should be able to qualify.

Mr. Felton said the preferred method of funding would be the Section 18. Staff has already tackled one of the “cons” by qualifying for obsolescence.

Discussion on Ownership Options for RAD

Commissioner Warren said a few of the Board Commissioners have raised some questions about CAD, particularly its independence and self-perpetuating Board. Some of the committee feels that CAD’s asset base has largely been produced through RHA.

There are two entities in play for the four properties that are being converted to RAD and they will need an ownership entity. The question is whether that entity will be OCAC or CAD. EJP has advised RHA that CAD would not qualify for those RAD-a-matic conversions, given the current Board structure.

There are two options available:

No change to CAD with no role in Heritage Park. OCAC would continue in the ownership structure as planned for RAD conversions. This would carry over with all of the simple RAD conversions.

Commissioner Warren asked if there are many other mixed finance transactions like Heritage Park in the plans for RHA. Mr. Felton said there are some additional RHA properties that they may want to look at redeveloping in the future. Stonecrest is a property that will need to be redeveloped, given that it has asbestos and will be costly to abate.

Commissioner Warren asked if staff knows whether filing for OCAC's tax exempt status will slow down the process to convert the four properties to RAD. Mr. Felton said OCAC will need the 501(c)(3) designation. However, that should be completed by the end of the year, in time for the closing.

Mr. Francis said the longer they wait, the more precarious it is. However, if the paperwork gets filed in the next couple of weeks it should be completed by the time RHA wants to close at the end of the year.

Commissioner Warren said the other big option that they have is that CAD changes its By-Laws so that the majority of the Board Members are appointed by RHA. If that is done, OCAC would not be needed in the four RAD conversion properties.

RHA staff sees an advantage to having OCAC be the owner entity because it would separate the RAD properties from the properties that CAD owns.

Mr. Felton said one of the reasons staff proposed OCAC was because the RHA Board had voiced their concerns about control. The OCAC Board is the RHA Board so that gives the control they desired over those properties. It also makes it cleaner to have all of the RAD properties under OCAC, rather than mixing those with CAD. EJP looked at it and said that was a good way to handle it. RHA's auditor and attorney think this is a good way to handle it. During the Concept Call, HUD saw no problems with the way this is set up and it's not an uncommon option.

Commissioner Warren said they don't know whether CAD will agree to change its By-Laws. However, they could go ahead with OCAC to do the four RAD conversions. He suggested an amendment to the draft that was prepared. Rather than stating that the Board Members of OCAC would be the RHA Commissioners, it might be better to have the RHA Board appoint the Board Members of OCAC (they could be RHA Commissioners or other people in the community). Also, they wouldn't need nine Board Members (maybe a lesser number).

Mr. Francis suggested having a flexible number so it could be expanded to nine, if desired in the future.

Commissioner Warren said that makes sense.

Commissioner Whitehouse said he thinks the simplest way to go is Option 1A (No Change to CAD, No LIHTC Role at Heritage Park).

Mr. Felton said he views the RAD deals separate from the LIHTC deals. There is not enough information to determine who will be involved in the LIHTC deals. RHA still needs to select a developer, as well as other decisions that must be made before they determine what role CAD and/or OCAC will have in a LIHTC deal.

Commissioner Braun said he likes Option 1A as well. He is still uncomfortable with the structure of CAD and the overlapping relationship. It runs the risk of creating conflicts. In his view, if

CAD remains structure the way it is, let them be independent. RHA and OCAC can handle RAD and the redevelopment process. That's the only way he feels comfortable right now.

Mr. Felton asked what Commissioner Braun's big concerns are with CAD.

Commissioner Braun said his concerns are that CAD was restructured to act as an independent corporation and RHA has zero influence over the policies and what it does. RHA has no way of saying how their money is invested. CAD was essentially seeded with RHA property. There's too much risk for creating potential conflicts with deals. The RHA Executive Director is serving as a dual CEO for two agencies that are structured to be independent of each other. He doesn't like that arrangement because it creates potential problems. If that corporation is going to act independently then it needs to be independent. If RHA is going to move forward, it should be with entities that the Board has influence over. RHA has no legal way to influence CAD.

Commissioner Mutisya asked if there are other housing authorities that have this similar structure setup and if they had issues with it. Did they run into the same problems as this?

Commissioner Warren said the housing authorities that he's familiar with have had numerous affiliated corporations (501(c)(3), etc.). However, in all of those cases they were still controlled by the housing authority. There should be some amount of independence. However, they should also be controlled.

Commissioner Warren said another perspective about Heritage Park is that we know we need to bring in a development partner. There will be a negotiation with that development partner. They will say that they're all on the same team with the same interests. If CAD were there, they would say the same things, too. However, RHA will end up negotiating with CAD as well as the for-profit developer. It would be a much better arrangement to have OCAC in that position because we know that OCAC will reflect RHA Board position and negotiations. We can't be quite sure about CAD.

Commissioner Warren said he doesn't want to spend all of this energy on Heritage Park planning to see that the ownership structure eventually would not involve an entity that is controlled by RHA.

Commissioner Whitehouse said he's confused why CAD is even in the conversation. He's been on the website and it looks like a holding company. They have a number of communities in their portfolio but he doesn't see anything about a mission or a vision.

Commissioner Morris said they've been a friendly partner in the past and RHA has had no conflicts. If you look at all of their housing, their actions speak that they're in low-to-moderate income housing. They are a partner that RHA can invite to things when we want to – but they don't have to be part of this. They're also financially stable, they've been good stewards of their funds, and they've managed their properties well.

Commissioner Whitehouse asked what they would bring to the table if RHA partnered with them.

Commissioner Morris said a for-profit developer takes their fees for their own profit. CAD has taken some of their profits and put it back into the development.

Commissioner Whitehouse asked if they have reserved funds.

Commissioner Morris said CAD has not over-extended themselves and they have cash as well as debt (2/1 cash/debt).

Commissioner Whitehouse asked if CAD could be an investor in the redevelopment.

Mr. Felton said CAD is the non-profit arm of RHA and they were the developer for the two HOPE VI projects as well as Walnut Terrace. One of the reasons CAD was the developer for Capitol Park was so that CAD could earn the developer fees and donate money back into the property to make it more affordable. For example, the money donated back to Capitol Park allowed for all of the buildings to be brick. Of the \$5.3 million earned at Walnut Terrace, \$3.5 million was invested back into the property.

Commissioner Warren said this is operating as an entity directed by RHA staff. There's no question that RHA did a great job with the HOPE VI projects and Walnut Terrace. However, that's the holding company for RHA. It's not that CAD has done a bad job – it's just that CAD is independent of RHA now. He doesn't understand what would be the harm of having RHA appoint a majority of the CAD Board.

Commissioner Braun said the developer fee issue has no relationship to the structure of CAD. As a Board member of RHA, his obligation is to protect the public funds that RHA receives. He doesn't feel comfortable in a structure that RHA loses control over the public funds. If they go to CAD, RHA doesn't have control over those funds or influence over their actions.

Commissioner Morris what you're saying is that RHA won't be using an outside for-profit developer because RHA has no control over their developer fees.

Commissioner Braun said it's not the same. CAD doesn't have LIHTC experience so they're not able to do that deal. RHA will be required to bring someone in who has LIHTC experience.

Commissioner Morris suggested they take CAD off the table because they're not qualified to work with RHA.

Commissioner Braun said that's what has been suggested.

Commissioner Morris said it sounds like the RHA Board would be comfortable with CAD if they take over their Board.

Commissioner Warren said it's not necessarily taking over the Board. He said it would be control over the appointment of the majority of the Board Members.

Commissioner Morris said that's the same thing. He said some of the CAD Board Members are former RHA Executives so they are friendly with RHA. They have been placed on the Board to be friends. The CAD Board so far has had no problems with RHA. He said there are huge variables by bringing in outside people that you don't know.

Mr. Felton said the reason he brought up the developer fee reinvestment is because Commissioner Whitehouse asked why RHA was looking at CAD as a partner. As part of the two HOPE VI projects and Walnut Terrace, CAD owns the affordable market rate units. The best indication of future behavior is to look at the past. RHA is the management company for the CAD properties. There are also internal loans between CAD and RHA. It's through those loans and management agreements that RHA controls CAD.

Commissioner Braun said it doesn't state anywhere in CAD By-Laws that they will generate funds and those funds will be used in future development projects as a partner with RHA. He understands that may informally be what the role was. However, there's nowhere that it is stated. As an attorney, all he can do is go by what the documents say and what the formal structure allows CAD to do. CAD was controlled by RHA until November 2010. The fact that there's people on the Board now that have a connection with RHA doesn't mean it will always be that way.

Commissioner Morris asked how that would change if the RHA Board appointed the CAD Board Members.

Commissioner Warren said his view is that the RHA Board Members would appoint a majority of the CAD Board and they can be removed with or without cause at any point in time. That would be control. He said this is a governance issue.

Commissioner Morris said the key is that the RHA Board be allowed to add or remove people from the CAD Board.

Commissioner Warren said he wants it to be an entity that is controlled by RHA.

Commissioner Mutisya asked if that language is in the managing agreements. It sounds like RHA is a managing company of CAD through these management agreements. Should there be a sentence in there that says RHA specifically has control over CAD in order for this to resolve everyone's issue?

Commissioner Warren said those are property management agreements. It doesn't talk about any kind of governance matters.

Mr. Felton said if RHA were to cancel the management agreements, the loans would be due at that time. CAD's mission, per the articles of incorporation, are to provide affordable housing. If they violate that they can lose their properties.

Mr. Francis said those provisions are located in the loan documents.

Mr. Francis said the By-Laws were change in November 2010 and they made the CAD Board of Directors self-perpetuating. In the By-Laws, it states that Directors shall be those persons elected by the CAD Board of Directors.

Commissioner Whitehouse said there was discussion at the last meeting about the need to have a group join the project that RHA controls. He thought that was one of the reasons RHA said there would have to be an amendment to CAD By-Laws and/or a ground lease as another means for control over the owner entity.

Mr. Felton said that was another means that HUD will allow under the RAD program. There could be a ground lease if the RHA Board didn't have complete control.

Commissioner Warren said Commissioner Morris wanted the committee to make a recommendation today to take to the RHA Board at the next meeting.

Commissioner Morris said he thought he heard a recommendation to set up OCAC so that RHA can move forward.

Commissioner Warren moved that the committee move forward with what's outlined in Option 1A:

Option 1A—No Change to CAD, No LIHTC Role at Heritage Park

- Oak City will be in ownership structure for the 4 RAD Conversions and potentially others as continue to evaluate our RAD conversions.
- Oak City will be in the ownership structure for the LIHTC projects at Heritage Park.
- CAD may have a role in Heritage Park as developer/owner of smaller project that does not involve LIHTC.
- Minor adjustments to CAD by-laws to ensure CAD properties remain in alignment with RHA's goals. Potential adjustments could be right-of first refusal to purchase property by RHA, RHA approval to sell and/or reverter clause.
- CAD may also play a role as a lender in Heritage Park.

Commissioner Braun seconded the motion to use Option 1A.

Mr. Felton said he wanted to make it clear that there's not enough information for the LIHTC role at Heritage Park at this point. This vote is on both of those – not just the RAD conversion. RAD and LIHTC are not separated and once that's decided it won't be reconsidered in the future.

Commissioner Warren said you can always reconsider. This will set the direction that you think is best at this time.

Commissioner Braun said he's always open to facts, law, and regulatory considerations that may come up in the future.

Mr. Felton said he's fine with that with the understanding that it may be reconsidered in the future. He has additional recommendations for consideration with CAD:

- Proposing minor revisions to the CAD By-Laws to address concerns with the other properties. Not every property has a loan agreement. Propose a right of first refusal for RHA.
- RHA approval before selling a property.
- Ground Lease.
- Longer term management agreements.
- Invite the CAD Board to the Strategic Planning meetings so that they're part of it.

Commissioner Warren said those are good discussion items going forward.

Mr. Felton said he's afraid they're throwing the baby out with the bathwater with Option 1A and there should be more conversation about that going forward.

Commissioner Braun said they're making a decision to move forward with Option 1A – to recommend it to the Board. If it is determined that this isn't the right structure with the LIHTC deal, they can reconsider their decision – if circumstances or facts change. His position is, with the understanding of the facts that he's aware of today, he is recommending 1A (not subject to just reopening the discussion in the future). If there's a legitimate reason to reopen the discussion, then he will be open to it. For now, CAD's out until there's some reason to reconsider that decision.

Commissioner Morris asked if it's possible to bifurcate the two – RAD and LIHTC.

Commissioner Warren said he would prefer to tie the two together. It's important to move forward with this.

Mr. Felton asked why they need to be tied together when they're completely separate.

Commissioner Warren said they're talking about repositioning and this a Repositioning Committee Meeting that deals with both with the projects of the RAD-a-matics as well as Heritage Park. This committee has spent a lot of time on Heritage Park and there are some feelings among some of us that they are tied. It's a governance issue for subsidiaries of RHA.

Commissioner Warren moved and Commissioner Braun seconded the approval of taking Option 1A to the RHA Board of commissioners for approval.

Aye: Eric Braun, Bahati Mutisya, Gregg Warren

Nay: Wayne Felton, Arne Morris (both would like to bifurcate the two issues.)

Commissioner Braun made a motion for the RHA Board to appoint the OCAC Board Members. They can be RHA Board Members (but don't have to be). There will be 5-9 members with 3-year terms. Commissioner Morris seconded the motion.

Aye: Eric Braun, Wayne Felton, Arne Morris, Bahati Mutisya, Gregg Warren

Nay: None

These will be taken to the RHA Board for approval.

The meeting was adjourned.