

**CITY OF ALAMOGORDO, NEW MEXICO
HOUSING AUTHORITY BOARD
SPECIAL MEETING MINUTES
6:45 P.M., COMMISSION CHAMBERS
TUESDAY, MAY 12, 2009**

**CHAIRMAN STEVE BROCKETT
VICE CHAIRMAN CHRIS LUJAN
MEMBER ED COLE
MEMBER RON GRIGGS
MEMBER MARION LEDFORD
MEMBER - VACANT**

**MEMBER JOE FERGUSON
MEMBER NINA WALKER SAENZ
INTERIM CITY MANAGER MATT McNEILE
CITY ATTORNEY STEPHEN THIES
SECRETARY RENEE CANTIN**

CALL MEETING TO ORDER AND ROLL CALL

Chairman Brockett called the meeting to order at 6:45 p.m. Roll call was taken, and Member Cole was absent.

1. Minutes of April 7, 2009 Special "Annual" Meeting.

Recommendation: Approve the minutes.

Member Ferguson made a motion to approve the minutes of April 7, 2009 Special "Annual" Meeting. Member Nina Walker Saenz seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

2. Consider HA Resolution No. 2009-06 adjusting the HA budget for FY 2008-2009.

Recommendation: Approve the resolution. [Roll call vote required]

Evelyn Huff, Housing Accountant said we're asking for a revision of the 2008-2009 budget. Our first revision deals with the low rent expenditures. As part of the Affordable Housing Plan, we sent out surveys in everybody's water bills and that is not something that was originally budgeted, so we are asking to budget that. We are also asking to increase our budget for our vacant units for our water bills. This usually consist of, not so much our vacant units, but our tenants that have vacated who have left a balance at the water department and that comes back to us as landlords. We have had a little bit more than we thought this year. We have been working with the water department to decrease that and they have been really good at letting us know so that we can take it out of their deposit. We are also asking for an increase in our contract services. This increase comes from having our Community Development Department do construction oversight for two of our larger electricity projects. One of those projects, the entire amount of the over-sighted budget here; for the other project only a portion of it is and the rest is in the FY10 budget. Our other revision on this revision is for the tenant utility payments. These are paid to our tenants who are on zero rent and need help with their utility bills. Before we always included this in the water line, our new software brings it out to another line so we wanted to make sure we had a budget in that.

Revision 2 is to adjust our homeownership revenues. On our last revision, budget for the sale of four houses and we have been really lucky to have six tenants who have found financing. We are increasing our revenue to reflect these extra two houses that are going to be selling within this fiscal year.

Revision 3 is to adjust the cost of the homes sold based on these two additional houses being added. We are also increasing the amount in our property purchases line; this is also the line that we paid for the capital improvements to the houses that we purchased, so this is where we will be taking the expense to repair 1907 Alaska as we previously discussed.

Vice-Chairman Lujan made a motion to approve Resolution No. 2009-06 adjusting the HA budget for FY 2008-2009. Member Ferguson seconded the motion. A roll call vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

3. Consider HA Resolution No. 2009-07 requesting approval of the HA budget for Fiscal Year 2009-2010.

Recommendation: Approve the resolution. [Roll call vote required]

Ms. Huff said this is our proposed budget for Fiscal Year 2010. We will start with the low rent budget. Our revenues, we are projecting to be \$294,367.38. This is a decrease from what we had projected for this current fiscal year. We are seeing a lot more people lose their jobs, so we are seeing a lot more people on zero rent or negative rent. We are asking for an increase in our non-dwelling income based on the fact that we do have a system now that actually charges for work orders and actually does all the charges and we have been able to collect on these charges and is something that we have not been able to do in the past. The staff has been doing a good job and we expect them to continue. Our interest income has taken a hit due to interest rates going down. The note on that is incorrect, the note goes further down. Other revenue is just other revenue that we get from our insurance company or any other minor things that we have. Our maintenance department is going to continue doing work orders for the home ownership program and continue to give a benefit to the home ownership residents. We will have a transfer in from the 2009 CFP grant. This is larger than last year. HUD has waived the rule that you can only take 20 percent of your grant and so we are asking to take more than the 20 percent that we took last year. The Section 8 transfer was a one time transfer. The new thing here is the new owner occupy rehab has always been run out of the home ownership program; we are going to start running it out of the low rent program, so the admin fees from that are going to be part of the low rent program now instead of the home ownership program. We will also still be receiving our operating subsidy grant from HUD.

Member Ledford said that we did a housing budget resolution last meeting and then 2009-05 adjusting the housing authority budget for Fiscal Year 08-09 and a month later we're doing another housing budget revision. Could you help me, I mean I understand what you said in the revision, why is that from one month to the next, I mean we are back to doing this again for the budget.

Ms. Huff replied the two additional houses selling in home ownership was unexpected at the time that we did the last revision and we thought it was really necessary to bring that as soon as we could so that we could start the work on the house at 1907 Alaska so that we could get that one leased; and we wanted to do that for the current year. As for the low rent revisions, two of the expenditures were small that we wanted to do the revision for and in between the last revision and this one, we made the decision to go with Community Development to do the construction oversight and we wanted that budget in place as soon as we could, not only to help us but to help their planning process as well.

Member Ledford said so from last month to this month we are saying that we didn't realize that we had the two homes and also that we didn't have the subcontract and we decided that it was something that we wanted to do within the last 30 days. Ms. Huff said it was something that we finalized in the last 30 days and finalized the amount of the cost for these items.

Member Ledford asked if it was two homes that were sold. Ms. Huff said actually six homes will sell this year. Initially we had four and we added two in this revision. Commissioner Ledford asked when the other two were sold. Evelyn Huff stated that one was sold last week and the other one is here and she is currently working on financing. Member Ledford said so we didn't have those two homes identified in May that we sold. Ms. Huff said that we had not identified that they were officially going to sell. We knew people were working on financing, but we've had people working on financing before and they have been unable to secure it.

Member Ledford asked to explain the contract consultant to him again and the adjustment. Ms. Huff: said we're using Community Development to do construction oversight for two of the large projects

that we are doing at the Housing Authority. We pay them consulting fees that are about 10 percent of the project cost. Member Ledford asked where we're paying for this and the transfers are where, our revenues are down. Ms. Huff: said that is on the revision, it was paid for by going into our reserves. On the proposed FY10 budget, it is paid for by taking a grater transfer from our capital fund grant for 2009.

Member Cole joined the meeting at 6:56 p.m.

Member Nina Walker Saenz made a motion to approve Resolution No. 2009-07 requesting approval of the HA budget for Fiscal Year 2009-2010. Vice Chairman Lujan seconded the motion. A roll call vote was taken, and all voted "aye." The motion carried with a vote of 7-0.

4. Request for Release of Incentive Reserves and Escrow account for Tara Hill

Recommendation: Approve the request.

Alicia Rios, Housing Manager addressed the board that the Home ownership program is running under three different contracts or policies. Right now we have the older policies that have the escrow account distributed amongst four line items; one being an incentive of the actual escrow to down payment and closing, the incentive reserve which Barbara used to call the "carpet allowance", the maintenance reserve and the administration fees. Under the old program, the maintenance reserves were not returned to the tenant, but there was some type of incentive to purchase the home before the tenant actually purchased the home and that is what the incentive reserve was used for. The escrow accounts were used for when the banks couldn't use it for down payment and closing, it would be refunded to the home tenant. Unfortunately when we rewrote our last policy, we didn't take that into account, so Mr. Thies asked us to present this to the board before we released any of the funds in the incentive reserves for the escrow accounts to any of the tenants that are in the older program. Now we have sold three of the 5(h) houses, which leave us with only one 5(h) house that we need to account for to HUD. That must have an incentive reserve because that is what the plan indicates that it will have. Also, we have only three houses that are in the old program all together. We have the 1(h) house and the three other houses that were under that old contract that you revised in July of 2007. All of this time we have accumulated this escrow account these tenants have been under the impression that they are going to get a carpet allowance and all of this goes to down payment and closing and we need your permission to release all of that money.

City Attorney Thies stated that the issue is that we have a contract with this particular individual that provides that the escrow pays a particular amount of money for a down payment if it doesn't provide, it will simply be refunded or repaid to this individual for any other purpose. Essentially what you would need to do is modify that contract and say this particular person is going through a program where she will not need the money for a down payment, you will modify the contract by which you would all agree to pay it to her, even though the contract says that she will use it as a down payment. As for the incentive program, there is nothing in the contract regarding that. Anyone would receive at least in this point in the contract, an additional payment as in incentive. The issue is then, if you are paying these individuals and you don't have documentation to back it up, why you are paying this individual when it is time for an audit, the auditor may pull these files and look at it and say why are you cutting a check for this person or anyone else who has a similar contract when you have no documentation to justify why you are paying the person the money.

Member Nina Walker Saenz said she doesn't understand what is going to happen to the money. Is it going to stay in escrow or are we going to give her the money? Mrs. Rios said the purpose of the program was to provide assistance for down payment and closing costs. In the three sales that we had in April plus the one that paid us a straight across cash payment and we charged it against her escrow. She paid us in full for the house, they have this incentive reserve just sitting there for now. Ms. Hill is working with a bank that will not allow for her to use that; however she is shopping for a loan for her home. What we're requesting that she be able, if she does get funding with this bank that will not use that escrow account, that she be able to take that escrow account and use it for the

needs of the house. And what we are asking is that the contract with her be modified for the escrow account. Now the incentive reserve has always been promised to them as a carpet allowance. I don't have time to run around and find carpet for everybody, so I thought we will hand them the money and let them go and buy their own carpet. Add or subtract or do something with that fund, but it has always been my intention of that incentive reserve. We still have four more cases, when they close, they will be in similar situations. Whether it is the incentive reserve and the escrow or just the incentive reserve, does that answer your question? We want to give them this money because that is the agreement we had with them. It may not have been as clearly as it should have been, but that is the agreement we had with them for as long as this program has been here.

Member Nina Walker Saenz said basically this is their own money that they put into escrow. Mrs. Rios explained that the way that this program works is that they pay us a lease payment every single month and then a percentage goes to the escrow, the incentive reserves, maintenance reserves and the administrative fee. In the old programs that we had, the maintenance reserve never went back to the tenants until July of 2007 or 08. At that time, you all decided that that maintenance reserve would in fact go back. We increased the admin fees and they would be encouraged to utilize that maintenance reserve, I mean they would be encouraged to use their own resources to provide maintenance, so that they could get the maintenance reserve back. And that would be used as an incentive more or less and that is the way the new policy is written. I guess what I am asking is can you just go ahead and fulfill our obligations to these other tenants, make that modification if necessary with Ms. Hill and have that approval by you be our documentation for releasing these funds.

Member Griggs said the way I look at it, or what I've seen, our obligation is to help with the down payment or certain things with the home. Cutting a check directly to the individual doesn't automatically imply that they are going to spend that money on the house. I don't know about this particular loan that she is talking about with Wells Fargo. The First Time Home Buyers are usually a certain amount down; I don't know if they can take more down. Most loans don't restrict the amount you can put down, but this one could. I would like to see, if we do this, give this or utilize it, to provide something in the house; if we provide a check to the title company or the carpet company after it is installed to be certain that what we are providing that money for and what they are using that money for what everybody thought the money is for is for the house and not for something else.

Mrs. Rios said different banks, different ranks, and different interpretation of FHA regulations. I know that one of our local banks works with us, they call it a contribution that we are contributing "x" number of dollars and they are including that in the final figures. It has worked out really well the three times that we have used it since this whole banking crisis happened. I am a little concerned with Wells Fargo, but there is just not a whole lot I can do with them as being such a major player. I agree that we need to discuss with the tenant what the options are with what she can do with the funding. Ms. Hill is here tonight if you would like to ask her any questions about this, but she has assured me that she needs those funds to enhance the property value on her home. Member Griggs said that we need to make sure that she does.

City Attorney Thies said that he has had conversations with Ms. Hill. How she explained this program that she is going to participate in, is that they will be taking a second mortgage for the amount of the down payment that she would normally have otherwise paid and closing costs. She could use some of this money to pay that second mortgage off; in addition, she would like to have the roof repaired. We could work on an arrangement with her where she contracted an individual and we paid her and the individual the sum of the money for the roof repair. She also indicated that she would like to do some improvements on the house. We could work out something with her where it least would appear that she is spending the money on these improvements.

Member Griggs said he wants you all to understand that he's not trying to have any reflection on Ms. Hill; it is just that it is policy. If we are just going to give the money to the buyer, that policy leaves itself open to all sorts of things that it is not intended for. I think if you and the City Attorney can work

something out to make sure the money is being used in the manner that we up here feels as though it should be, then I think that is fine. I am just not comfortable with giving her a check directly. Mrs. Rios also feels very strongly that we need to modify our own homeownership policy to incorporate whatever discussion we make this evening to be reflected in the policy. Should this circumstance occur again, then I won't have to bring an individual case before you, it will already be incorporated in the policy and this day and time it may not be a bad idea to already have it there so that we could just use the policy at that time.

Member Ledford said the way I understand the program, the purpose of setting aside some of the money was for the down payment. Attorney Thies confirmed this. Member Ledford went on to say that the reason for that is that it helps an individual get into a house and in a mortgage where it is easier to achieve and make the payments. That doesn't do this here. My concern is that what you are saying, she is going into a second mortgage so her debt service is going to be higher than it would have been with this assistance. I don't see how we are doing them a favor, as the intent of the plan is. I am not even getting into the ability of her being able to make the payments. The whole flow of the plan was to allow them to get into something with a reserved down payment and have a less mortgage to deal with. This is not the case based on what you just said. I understand improving the property, making it more direct. I thought the whole point of the program was to allow people with low income to be able to get into a home economically but that doesn't do that here. You are telling me that we can change our policy in a way that you describe here and be legal.

City Attorney Thies said that you are retroactively changing your policy, which is not always a good policy to do; In addition, we have a contract with this individual and you are amending your contract. The contract would supersede the policy, in that we have this contract but you so chose to amend it and allow her to use it for home improvements. It is not always a good practice, but you are allowing this person the benefit to use the money that has accrued over the three years or five years that she has been in the program.

Member Ledford stated that he understands how that works. What I am asking, am I in error that the purpose of the program is to allow people to get into a house they could not normally get into to. City Attorney Thies said that's the intention of the program, to allow them some money that they would have available to be able to pay a down payment and the closing costs. Member Ledford asked if that is the intent of the money, not to improve the home or make a second mortgage. Attorney Thies confirmed this.

Member Ledford said that he appreciates someone being able to do that, and you might think why not let them do that if they can. But I have a problem changing the policy especially when you asked to blanket the policy issue when that is not what the program was designed to do.

Mrs. Rios said that one of the thoughts that I had when I was speaking to Ms. Hill was, if there is a possibility that we could apply, and this was in terms of my thinking about what my policy should be, if we could have applied that escrow in these kinds of situations against the purchase price here and keep that escrow and make the selling price lower so that they would be able to finance a lower price, that would be achieving the goals of the program.

Tara Hill asked to explain that it's not a second mortgage it's a secondary loan which is called a MFA. I am familiar with the whole situation, I basically self taught myself the whole loan/mortgage situation. Basically they are going to do a First Time Home Buyers loan and then do a secondary loan called an MFA. It is not a secondary mortgage per say it is a loan, for the closing and down payment. Which personally I think is a bit, because I have the money to do it, but they won't accept the money because it is in an escrow account that does not have my name on it. They are having a problem proving that it is my money and that they wanted me to get a letter stating that they are gifting it to me and we cannot do that either, so I am kind of stuck between a rock and a hard place here. I would love to use the money for a down payment and closing. I was just speaking to Alicia before this meeting and she was telling me about Pioneer Bank helping out a few of the other people that were in this program and so I'm going to go tomorrow to try to go get with them to see if they can't do this

loan for me and use the money in escrow for what it is intended, because then it would make my payments less. But if I can't use the money for that then I don't want to lose the money that I have put in there and I have worked tirelessly to get this home and to do everything. There are things that need to be done to the house. The roof where the air conditioning, Barbara had sent some people out to fix it, and needless to say, it is still not fixed. After they turned my air conditioning on, it leaked down the vent and bubbled out and now all the paint has fallen off and the texturizing is coming off, that is on the inside. When my dad, because I am not able to get up on the roof, went up to turn the air conditioning on, he said that the air conditioner is basically falling into the roof, and he is afraid that it will fall through the roof. That is an issue and he said that I had to get that fixed. I could use the money for that; I could fix the fence in my back yard that is falling down because the wood is rotted. There are a few other things improvements to the home.

Member Ledford said it has nothing to do with the needs to do repairs. My issue is with the policy. The next guy may not have your issues and we just write him a check, which is the problem that I have. It is not the intent of the program. You said so yourself, I don't want that extra payment, it is not an extra mortgage but it is a higher mortgage payment.

Mrs. Hill said she didn't know until Tuesday when I went to see the lady at Wells Fargo, I had to drive all the way to Las Cruces, that it was actually a secondary loan, I thought it was all in one combined loan. Then she explained to me that it was a secondary loan and that they were giving me the First Time Buyers Loan and then a secondary loan, which is the MFA loan. Now I'm paying on two different loans, one to the title company and one to, I don't even know where.

Member Ledford said that I guess rules of the FHA, the First Time Buyers it is probably the rules that you have to follow. My question is what is the, if we release the funds can we release it subject to close and pay off the second mortgage. Attorney Thies said that yes, we could do that. Member Ledford then said that I don't want to get too beaten up on this, the issue, the policy change first off, I don't like to change the policy unless it really makes sense, and the intent of this policy to me makes sense. It is a little different for you because of the financing situation; otherwise we would not be having this discussion. That bothers me to change the policy for that reason. If we can apply it to the second mortgage, to help you with your total monthly payment, to me that serves the purpose of the escrow.

Mrs. Hill said technically the second loan is about \$5,000. I have \$16,700 in my escrow account. We can take that \$5,000 and completely pay it completely off. I will not get a penalty for paying off any portion early. We could take that money and completely pay it off and put the rest towards the purchase price of the home. Any way that we can do this and not loose that money, I am all for.

Member Ledford said typically if they would have accepted it, we wouldn't have paid the \$5,000 we would have paid the \$16,000 on the down payment. There is the problem that I have. What we may accomplish is we pay off the \$5,000 that leaves us with \$11,000 to do the improvements, if the attorney thinks we can do that, fine but I don't know about changing policy. I don't know if we can do it in this case because Member Griggs said that you apply it to the improvements, at lease we know you are getting some betterment and not doing something else with it might be the answer but it is a case by case basis. If we can do that, it makes sense and then the next one that comes around, I need to look at it because I don't want to write a blank check. I don't know if that is acceptable to you, it is probably cumbersome, but it achieves what you want and it gets it done, but I think the whole intent is to minimize your mortgage payment.

Ms, Hill said in other words, take the money and pay off the \$5,000 and use the rest for improvements and make sure that happens. Member Ledford said that it is the intent of the program. To better you, you are getting a quality home and achieving what you want. That is how I feel, it is nothing personal obviously; because I don't even know what house we are talking about. If it needs the improvements great, but at least that is what you are doing with it. You bettered yourself, you improved the value. If something did happen, you have value to get out of it. Otherwise, we

write you a check; you go on your merry way and doesn't achieve what I think the intent is. If we can do it that way then I have no problem with it. City Attorney Thies said he understands it.

Ms. Hill stated that if tomorrow Pioneer Bank will work with me, as far as taking the money in escrow as down payment and closing, then we can still do that.

Member Ledford said that he has no problem with using the \$16,000 as down payment, which is the intent of the program and I like that. That minimizes your exposure and that is the whole point. But if we can't and we go to Wells Fargo, on this case only, not as a matter of policy change, pay off the \$5,000 and use the money for the excessive improvements, I could accept that.

Member Cole had two questions, the first one is why are you going to Las Cruces to Wells Fargo and second, why haven't you already tried Pioneer Bank before you brought it to the Commission tonight? Ms. Hill said as far as going to Las Cruces, because here they do not have a mortgage holder in Alamogordo. I have been dealing with Wells Fargo for two and a half years, jumping through all their hoops and doing the things that they needed me to do. With the whole housing market going array last year, it caused a little bit of loop holes and rules and extra things that I had to do to be able to get this loan. I worked with Nancy Carroll and Tiffany Marquardt, she used to come here from Las Cruces every Tuesday and Thursday to work on it, but she quit. Then they got a young lady from Ruidoso, she would come on appointment only, but she would give me some issues and tell me to drop all my paperwork off, and \$475 and she would pick it up, and I had a problem with doing that. I was then put in contact with Las Cruces from that point on. As far as Pioneer Bank, I just found out about that at the beginning of this week

Mrs. Rios said it was because she cannot steer anyone to a particular bank but I did share the information about Pioneer Bank with her today. Ms. Hill said because I asked her how everybody else was getting this done and I have had such a problem with Wells Fargo. Apparently, Wells Fargo is the hardest bank to get this done through and I had no idea.

City Attorney Thies said you can make a motion to amend the contract along the lines that we discussed where she use a portion of the escrow amount to pay off this second loan and whatever the remaining balance for home improvements on the property.

Member Cole asked Member Ledford if that somewhat answers his concern. Member Ledford wanted to know if that was okay with Ms. Hill. That takes care of my concern if it is okay with you. Ms. Hill said yes, anyway that we take care of it without me losing that money, I am good.

Member Ledford asked if we do this is it only on this case. City Attorney Thies clarified that it is only on this case. Each individual is going to have to come back before you if there are similar contracts.

Member Cole made a motion to approve to release the funds for use in paying the second loan and home repairs or improvements. Member Nina Walker Saenz seconded the motion. A roll call vote was taken, and all voted "aye." The motion carried with a vote of 7-0-0.

ADJOURNMENT

Vice Chairman Lujan made a motion to adjourn at 7:25 p.m.

Member Ferguson seconded the motion. The motion carried with a vote of 7-0-0.

(SEAL)

ATTEST:

/s/Reneé L. Cantin

Reneé L. Cantin

/s/Ron Griggs

Chairman Ron Griggs

(Prepared by Marsha D. Brady)

Approved at the Special Housing Meeting held on August 25, 2009.