

PRIVATE ACTIVITY BOND AUTHORITY BOARD MEETING

Governor's Office of Economic Development
Salt Lake City, Utah

MINUTES

Wednesday, August 12, 2015

Members Present

John T. Crandall (Chairman)
Richard K. Ellis
Grant S. Whitaker
David A. Feitz
Benjamin Hart
Wayne Cushing
Bryan E. Thompson
Scott J. Bond
Ricky Hatch

Representing

Governor's Office of Economic Development
State Treasurer
Utah Housing Corporation
Utah State Board of Regents
Governor's Office of Economic Development
Salt Lake County
Utah County (via teleconference)
Sandy City
Weber County

Excused Members

Theresa A. Foxley
Jamie Davidson
Wayne Parker

Governor's Office of Economic Development
Orem City (via teleconference)
Provo City

Staff and Visitors

Roxanne Graham
Susan Eisenman

Governor's Office of Economic Development
Attorney General's Office

WELCOME AND INTRODUCTIONS

The Private Activity Bond Authority (PAB) Board Meeting was held in Salt Lake City, Utah, at the Governor's Office of Economic Development and called to order at 10:30 a.m., by John T. Crandall, Chairman.

APPROVAL OF MINUTES

Chairman Crandall requested a motion to approve the minutes from the July 8, 2015, Private Activity Bond Authority Board Meeting.

Grant Whitaker had the following corrections to the minutes on page 6, under his comments regarding the State Street Plaza project:

- 2nd Bullet Point should read: "UHC had no knowledge of the proposed \$600,000 of State Tax Credits until now. No application has been received."
- 5th Bullet Point: 1) 4th sentence, change the word "equity" to "revenue;" 2) 5th sentence, change the words "tax credits" to "rents;" and 3) 6th sentence, insert the word "subordinate" between "the" and "bonds." With these changes this bullet point reads as follows: "When UHC acts as an issuer of a bond deal, they make it very clear to the purchaser of the bonds that UHC is a conduit issuer,

and the purchaser will have to look at the revenues from the development for repaying the tax-exempt bonds. Looking at the debt analysis of this project, there is not enough revenue from the rents to pay for the annual mortgage payment from the \$13.9M of debt from the subordinate bonds, even if no interest was charged.”

Richard Ellis moved and Bryan Thompson seconded a motion to approve the minutes, as amended, of the July 8, 2015, Private Activity Bond Authority Board Meeting. The motion carried unanimously with Ben Hart being absent from the vote.

PROJECT UPDATE

State Street Plaza

Chairman Crandall asked Roxanne Graham and Grant Whitaker to give the latest update on the State Street Plaza.

Ben Logue contacted Roxanne on July 9, (the day after the Board Meeting) and gave the following information:

- He talked to the Salt Lake City Redevelopment Agency and they consented to be the issuer of the bonds for this project.
- He contacted Fred Olsen, from Ballard Spahr, and they worked out the legalities of the situation to what they thought would be a satisfactory solution to have UHC be the issuer.
- He still wanted to talk to Grant to see if UHC would be the issuer, since that was his first preference and was going to contact him the following week.

This was the last time any information was received from Ben, despite e-mail requests and phone calls for project updates and to see if the additional volume cap request was to be placed on the agenda for this meeting.

Grant gave the following update regarding this project:

- UHC held a Manager’s Meeting the week after the Board Meeting to ensure Staff heard the same information that was stated at the Meeting.
- Ben met with UHC Staff personnel.
- Two weeks after the Board Meeting, Ben called a meeting with all parties involved in the transaction to assure them that the logistics/problems of the project had been worked out.
- There is still no conclusion as to what will support the bonds, because there is no revenue or adequate assets.
- The RDA would consider being the issuer, since it was their project to begin with and they have a lot of interest in it. Ben won the right to be the developer through an RFP process. The project, however, has had a lot of problems in terms of mistakes and extra costs.

Ben Hart joined the meeting at this point.

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VOLUME CAP ALLOCATION EXTENSION REQUESTS

Single Family Account – Utah Housing Corporation

Utah Housing Corporation (UHC) requested a second extension on the \$126,636,300 total volume cap allocation from the Single Family Account.

Cleon Butterfield gave a handout to the Board that showed the various innovative financing structures UHC has put in place for affordable housing. The different capital sources included tax-exempt, refunding, taxable, recycled pre-payments, mortgage-backed securities and CRA Pool.

Mr. Butterfield also informed the Board that all the 2012 CarryForward volume cap has been used and they have issued almost \$5M from the 2013 CarryForward cap.

Richard Ellis moved and Ricky Hatch seconded a motion to approve the second extension on the \$126,636,300 total volume cap allocation from the Single Family Account to Utah Housing Corporation. The motion carried unanimously.

Be Wise, Energize

Summit County requested a first extension on the \$4,300,000 total volume cap allocated from the Qualified Energy Conservation Bond Account for their “Be Wise, Energize” Program.

Lisa Yoder gave an update to the Board on the progress of the project, which included:

- The County has developed a Community Development Area overlay in order to provide the program to all the residents of the County. The Community Redevelopment and Renewal Agency will be the issuer of the bonds in order to issue the bonds for the entire County, including the unincorporated areas that the County has jurisdiction over. The bonds will be backed by the County sales and use tax. The cities opting into the project are not pledging any collateral on the bonds.
- The County received the results from the Program Administrator and Loan Servicer RFP issued at the end of May; however, the costs were too high from the proposals received. The County has issued a RFQ to try and get the budget costs down for the program. Once this is accomplished the County Council will then formally adopt the program.
- Four of the six municipalities in the County have opted into the Community Development area. The city of Henefer will wait until the County Council formally approves the Program before they opt in. The other remaining city, Schofield is scheduled to make their decision to opt in on July 16.

Grant Whitaker moved and Wayne Cushing seconded a motion to approve the first extension on the \$4,300,000 total volume cap allocation from the Qualified Energy Conservation Bonds Account to Summit County or any of its subsidiaries for the Be Wise, Energize Program. The motion carried unanimously.

PAB Application Process Presentation

John Brereton gave a presentation to the Board on the complex process of PAB applications, in particular the multi-family application, which included the following information:

- Low-Income Housing Tax Credits.
- Application Steps and Requirements.
- Legal Structure for the project's partners and developer.
- Sources of Funding.
- Review Process.
- Scoring.
- Criteria and Goals.
- Bond Issuance Process.
- Issuance Costs.

VOLUME CAP ALLOCATION REQUESTS

La Porte Properties requested an additional \$13,900,000 volume cap allocation from the 2012 Multi-Family Account for the State Street Plaza project.

State Street Plaza is a: 1) redevelopment project with historic structures; 2) mixed-use project of residential and commercial (retail); and 3) mixed-income apartment project of affordable and market-rate units. The site measures just 1.1 acres requiring the development of a 10-story building and an adjacent 6-story building. Demolition of existing structures, high-rise building construction, historic preservation, commercial arcade atrium, retail space, two-story underground parking and street repaving makes this a complex and difficult project.

The size and unit mix has not changed. The project has 180 units: 136 affordable; and 44 market-rate. There are 15 set-aside apartments, unusual for a bond project, making the Area Median Income (AMI) 54.85%, lower than the standard 60% AMI for bond projects.

Since the original bond allocation of \$19,100,000 in 2010, the developer has experienced a number of unforeseen setbacks. Obvious observations are: 1) costs are 53% higher; 2) rents for 136 units have not changed; 3) market rents went up 20%; and 4) the project can manage only so much debt, which remains almost the same in the 2012 and 2015 applications. While the costs for building materials and labor have jumped, most of the increases reflect setbacks and the difficult development of the site.

The developer has gone to extraordinary lengths to save the project and is aware of the challenges. As an expression of confidence he will contribute substantial equity, beyond a deferred fee, to complete the project. The developer has a commitment for an \$11,200,000 bridge loan from a new investor, which will be used for construction. At the completion of construction, the new investor will receive the tax-exempt bonds. Because this investor is a related party, the interest will not be tax-exempt to them; however, the bonds themselves will still be tax-exempt bonds subject to volume cap. Unless the developer receives the additional tax-exempt volume cap funding, the project will not meet the 50% test to qualify to receive the 4% Low-Income Housing Tax

Credits (LIHTC) and will not be built by this developer. Due to this unorthodox structure it will require approvals from both Citibank and Freddie Mac.

The stakeholders in this project are committed and excited to see this project completed.

It is staff's recommendation to approve the applicant's request for an additional allocation of \$13,900,000 with the following conditions:

1. Due to the lapse of time from the first bond issuance, the developer's attorney needs to research the timing of the first bond and credit allocations to ensure neither is lost and to determine any issues relating to time. Information needs to be submitted to PAB Staff.
2. A legal opinion or an opinion by the underwriter needs to be submitted regarding the use of bonds by an investor as funding for the bridge loan. Approvals by both Citibank and Freddie Mac need to be obtained as soon as possible. All opinions and approvals need to be submitted to Staff.
3. All commitment letters for financing must be current and submitted to Staff including Citibank's Notice of Default, Olene Walker Housing Trust Fund, Michael Weinholtz Equity, RDA, and Salt Lake City Corporation.
4. The market study needs to be updated.
5. Current financials for La Porte Properties, LLC and Tannach Management Group, LLC, must be submitted to Staff.
6. A schedule of events for the design, financing, bidding and construction must be submitted to Staff as soon as possible.
7. The current construction schedule for Beacon Hill Apartments must be submitted to Staff as soon as possible.
8. The developer is to keep Staff informed on the project's progress, given the number of moving pieces.
9. The developer is to report to the Board at each meeting until further notified.

Ben Logue, developer of the project gave the following information to the Board:

- The project has come to a standstill because the engineer that was hired underestimated the size of the beams. A new engineering firm has been hired to redesign the project.
- Costs of the project have increased. Without the additional volume cap requested, the 4% tax credits received with the first bond sale will be lost.
- La Porte has secured an investment partner willing to purchase the \$13.9M tax-exempt bonds. He does not own any of the original bonds.
- The \$13.9 bonds will be in second position to the original \$19.1M allocation received in July 2010 and sold in February 2012.

The Board's discussion, comments, questions of the applicant were as follows:

- When does the applicant plan to close the bonds, since the allocation request is coming from the 2012 Multi-Family CarryForward Account? The applicant plans to close the bonds as quickly as possible so work can continue on the project.

- Who benefits from the tax-exempt status of the bonds? The investor will: 1) be lending the money for the bridge loan through the \$13.9M tax-exempt bonds; 2) charge interest on the loan; and 3) be the benefactor of the tax exemption.
- How does the new contribution of equity affect the project? The transaction will need to be approved by both Citibank and Freddie Mac. The bonds will be purchased by the new investor, Michael Weinholtz. The bonds will be held until conversion, which is typically at the completion of the project. La Porte Properties will take their equity from the project and buy out the investor, except for \$2.5M of the tax-exempt bonds. La Porte will take \$11.4M in tax-exempt bonds. The bonds are then converted to a mortgage, so they go away. This ruling is to protect the tax credit.
- Is there additional equity from Day 1? No – the equity comes into play at the end of the project, when La Porte buys out the investor.

The following comments were from Grant Whitaker.

- UHC has not received an application regarding this request on this project. The process is to submit an application to UHC at the same time an application is submitted to PAB.
- UHC had no knowledge of the proposed \$600,000 of State Tax Credits until now. No application has been received..
- For this allocation request, the value of the tax-exempt bonds allows this project to be funded with at least 50% tax-exempt bonds (TEB), thus enabling the Low Income Housing Tax Credits (LIHTC) to go forward. Without the 50% TEB transaction, there are no LIHTC. The tax credits is the piece of financing that is providing the equity in the project.
- Citibank is the lender from the proceeds of the first bond allocation of \$19.1M for the construction loan. Citibank has sent a letter of default to La Porte Properties; so essentially, the proceeds from the first bond sale or first mortgage are in default. Initially Citibank bought 85% of the first allocation bonds, but then bought the remaining 15% in order to keep the LIHTC, so the project could move forward. This brings up the question, if a borrower is in default, do you help them out by giving them more debt. The additional request of \$13.9M of tax-exempt bonds is debt, which has to be repaid.
- When UHC acts as an issuer of a bond deal, they make it very clear to the purchaser of the bonds that UHC is a conduit issuer, and the purchaser will have to look at the revenues from the development for repaying the tax-exempt bonds. Looking at the debt analysis of this project, there is not enough revenue from the rents to pay for the annual mortgage payment from the \$13.9M of debt from the subordinate bonds, even if no interest was charged.
- UHC would like to see the project move forward; however, they are not willing to issue another \$13.9M of debt, when there is no way to repay it. There is nothing standing behind the bonds besides the real estate. Due to past experience with issues like this, UHC cannot put themselves in that position, even as a conduit issuer, so they will not be issuing the bonds for this project.

The following questions were raised by John Crandall with responses by Grant Whitaker and Ben Logue:

- If UHC is not the issuer, what effect does this have on the tax credits? GW: There is no effect on the tax credits. If Ben can find another issuer for the bonds, then the project can move forward.

Ben Logue asked Grant if it would assure UHC if they could look at the investment partner's financials who will be buying the tax-exempt bonds. GW: Looking at the financials would not satisfy UHC requirements to be the issuer. The only way UHC would consent to be the issuer is if: 1) they had \$14M in their possession; 2) issued the bonds, then take that \$14M to lend out; and 3) had \$14M in cash that they could use as the security behind the bonds.

Cleon Butterfield from Utah Housing Corporation clarified this scenario with the following outline: 1) sale the bonds, with the proceeds going into an escrow account; 2) disburse the proceeds during construction; and 3) have the equity investor put money into another escrow account that would match any drawdown of the bond proceeds.

- If the bonds were closed into escrow, so the proceeds were not lent out until certain aspects of the project occurred, would that help the project? BL: They do plan to have the investor buy the bonds and put them into an escrow account. The funds will be disbursed through the usual process during construction, which is standard policy.
- Since UHC will not be the issuer of the bonds, what are La Porte's next steps? BL: He will go to the Salt Lake City Redevelopment Agency, since they have a substantial stake in the project, and ask if they will consent to be the issuer. He will also ask the Salt Lake City Housing Authority.

Chairman Crandall told Ben that once he has secured an issuer for the bonds, to alert Staff and the Board will convene a special Board Meeting, if needed before October, to allocate the additional \$13.9M of volume cap.

Richard Ellis asked what the timeframe is right now on the project, since the project needs cash in order to continue working on it. Ben Logue answered that until the volume cap allocation is received nothing can be done on the project.

Ricky Hatch asked what the Board's perspective was on the risk to allocate cap to this project, since nothing in the State Code indicates whether or not a project should be looked at as being economically viable or not. The Board looks at the likelihood of the bonds being sold, which also includes having an entity to issue the bonds.

If a new issuer is obtained, Staff needs to receive an Inducement Resolution, passed by that governing body, stating they are willing to be the issuer for this project.

Wayne Parker moved and Scott Bond seconded a motion not to approve the additional volume cap request of \$13,900,000 to La Porte Properties, until notice is received that a qualified issuer for the bonds has been obtained, at which time, if necessary, the Board will convene a special Board Meeting to approve the allocation. The motion carried unanimously with Grant Whitaker abstaining from the vote.

Additional Conditions Language – Multi-Family Certificates of Allocation

As a condition of allocation for multi-family residential units, there is a sheet of “Additional Conditions” attached to the Certificate of Allocation. The focus of previous discussions by the Board has been on Item C, which addresses the remaining residential units of a project that are not restricted by a percentage of units occupied by individuals with incomes over a certain percentage of the area median gross income (AMI) as mandated by Federal regulations.

Grant Whitaker was asked to address this item by Chairman Crandall and made the following comments:

- It used to be mandatory that the remaining residential units were to be rent-restricted and occupied by individuals whose incomes did not exceed 80% AMI. When Item C was initially put in, there was concern by the Board at that time, that they wanted the market-rate units of a project to be rent-restricted by some means due to the high demand of affordable units in a mixed-use project.
- This restriction was changed in February 2012, with the State Street Plaza project, when units could be rent-restricted, but not required to be; however, it was up to the issuer of the bonds.
- For multi-family projects that followed State Street Plaza, there was no problem with the rent restrictions, until Liberty Center, developed by Cowboy Partners. Provo City did not want any rent restrictions in the market-rate units of this project. Since the language had previously been changed, Cowboy was not obligated to restrict the rents on the market-rate units of this project.
- The issuer of the bonds, whether it is UHC, another housing authority or a municipality, has the authority to put restrictions on a project, above and beyond what is required by Items A and B of the “Additional Conditions.”
- The current Board, or even UHC, does not feel that this restriction is an essential requirement, because a mixed-use project can be supported quite well when it has a high number of market-rate units.

Grant Whitaker moved and Ricky Hatch seconded a motion that the “Additional Conditions” stay as written, but strike the following paragraphs: (C) “Remaining Residential Units” and “Average Remaining Unit Income.” The motion carried unanimously.

PAB Program Budget Review and Extension Fee Policy

The FY15 budget for the PAB Program was reviewed by the Board. There has been enough money brought in through fees to support the Program and personnel, including future attendance at national conferences and outreach efforts through other organizations, conference, etc.

Richard Ellis cautioned the Board that the fee revenue brought in varies from year to year based on the economy and the number of applications received. This raised the question as to whether the fees should be increased. There was not enough information for the Board to make this decision without seeing what has been collected in years past. The Board requested the following information be collected from years 2006-2015:

- Total amount of fees collected per year.
- Total amount of fees collected by category – application, confirmation and extension.
- Break out by anonymously by applicant those who have had three or more extensions.

Grant Whitaker also suggested the Board consider the following changes to the Extension Policy:

- If volume cap is needed for pending applications, no extension be given to applicants who have had their allocation for an extended period of time.
- After a certain number of extensions, if the bonds have not closed, the applicant will need to reapply for an allocation of volume cap.

Any changes to the policy need to be submitted to the Finance Director of the Department before September 1, in order for it to be acted on in the next Legislative Session. A special Board Meeting will be held in August to discuss the Extension Fee Policy. In addition to the above requested information, the Board also requested the discussion bullet points on this item from the Board Retreat be sent with the meeting materials.

Application Scoring Criteria

As assigned by the Board from the last meeting, John Brereton presented the scoring criteria developed for multi-family (MF) and manufacturing (MFG) applications. Scoring or numerically ranking of applications will only be used in the event that demand for volume cap exceeds the amount available.

Board Members made the following recommendations to be added to the scoring criteria:

- Add point value for “Project Readiness.”
- The “Mixed Income” criteria **must** include market-rate units.
- “Community Involvement” item must detail in dollars the amount of grants, loans or financial concessions given by a public entity for both MF and MFG applications.
- Item E under “Acquisition/Rehabilitation/Historic Projects” needs to be rewritten for clarification.
- “Special Needs and Transitional Housing” needs a point value assigned and “In all cases, a minimum of” needs to be added before the first bullet point.
- List point value for all criteria items.

A question was raised as to whether employment figures for manufacturing facilities were tracked or reported to Staff. One factor for approval of a project is based on the number of jobs listed on the application; however, once the bonds have been issued, the Board has no avenue of recourse if the facility does not achieve those specific numbers.

The Board asked Benjamin Hart how GOED certified company job numbers for the incentives they offer. He stated that GOED does a third party analysis by way of

second hand verification through the Department of Workforce Services (DWS). He offered to talk to the DWS Administration to see if the same arrangement could be done for PAB.

Staff was instructed to prepare a matrix showing all criteria categories and point values for the October Board Meeting.

INFORMATION FOR PAB BOARD MEMBERS

Cost Estimate & RFP Process for Administrative Law Judge

The following information was given to the Board in their packet by Susan Eisenman, from the Attorney General's Office, regarding the process and cost involved for an Administrative Law Judge (ALJ) to hear disputes filed by an applicant:

- RFP Required Information Template.
- Actual RFP developed for contracting with attorneys to serve as hearing officers with the specific requirements needed for the position, evaluation criteria and scoresheet.
- Career Services Review Office contracted amount of \$42.00/hr. for their ALJ.

Michael Green from the AG's Office gave the following options to the Board for processing to retain an ALJ:

- PAB can make their ALJ a part-time employee.
- A Memorandum of Understanding can be created between PAB and an ALJ already contracted with another State agency to have them serve as a Hearing Officer in the event of a dispute.
- PAB would need to create their own RFP to ensure the Hearing Officer retained would meet the needs of the Board.

The Board asked Mr. Green to explore these options and report his findings at the next Board Meeting.

PAB Program Statute Changes

Roxanne Graham explained from the last Legislative Session, Senate Bill 18, took the Governor's Office of Economic Development (GOED) out of Title 63M, Governor's Programs, and created Title 63N just for this Department, which renumbered and reorganized the GOED Code.

Besides the renumbering, there were two significant changes to the PAB Code under 63N-5-103.

The Board membership from the old statute was composed of 11 members, of which there were 5 ex officio members:

- The Director of the office or designee;
- The Director of the Division of Business and Economic Development or designee. This referred to a Division in the Department of Community and

Economic Development. When Jon Huntsman became Governor, he took the Economic Development portion out of this Department and created GOED, so this reference was no longer valid.

- The State Treasurer or designee.
- The Chair of the State Board of Regents or designee; and
- The Chair of Utah Housing Corporation or designee.

In the new statute the “ex officio” has been removed and the following changes made in the membership:

- Instead of the Director of the office, it is now the “Executive Director” of the office or designee.
- Instead of the Director of the Division of Business and Economic Development, it is now an “employee of the office designated by the Executive Director.”

The rest of the membership remains the same.

PAB Administrative Rule

Jeff Van Hulten updated the Board on the status of PAB’s Administrative Rule. No public comments were received in the 30-day period following the rule’s publication in the May Administrative Rule Bulletin, so the rule became effective on June 8, 2015. The code references in the Rule need to be updated due to the creation of GOED’s new statute, but they do not affect the content, so there is no need to resubmit it for another public comment period.

OTHER BUSINESS AND ADJOURNMENT

The next Board Meeting of the Private Activity Bond Authority Program is scheduled for Wednesday, October 14, 2015, at 9:00 a.m., at the Governor’s Office of Economic Development.

Mr. Crandall thanked the Board for their time and participation in the meeting.

The meeting adjourned at 11:25 a.m.

Submitted by:
Roxanne C. Graham