



**HEALTH, EDUCATIONAL, AND HOUSING FACILITY BOARD
City of Chattanooga, Tennessee
MONTHLY MEETING MINUTES**

**John P. Franklin City Council Building
Council Assembly Room
1000 Lindsay Street
Chattanooga, TN 37402
for
April 18, 2022
12:30 p.m.**

Present were Board Members: Hicks Armor (Chair), Gregg T. Gentry (Vice-Chair), Richard Johnson (Secretary), Charles D. Paty, Alexa LeBoeuf, and Andrea L. Smith. Absent was Johnika Everhart.

Also present were Phillip Noblett (Counsel to the Board); Mark Smith (Miller & Martin); Jermaine Freeman (Economic Development); and Sandra Gober and Tony Sammons (Community Development).

Mr. Armor called the meeting to order, confirmed the meeting advertisement, and established that a quorum was present to conduct business.



MINUTES APPROVAL FOR THE JANUARY 24, 2022, MEETING

On motion of Mr. Paty, seconded by Mr. Johnson, the minutes of the January 24, 2022, meeting, were unanimously approved as submitted.



**INTRODUCTION OF NEW BOARD MEMBER
ANDREA L. SMITH**

Mr. Armor introduced a new board member, Ms. Andrea L. Smith, and appreciates Ms. Smith being here.



PUBLIC COMMENTS

Ms. Helen Burns Sharp is the founder of a group called Accountability for Taxpayer Money (ATM) relative to tax incentives and government transparency. Ms. Sharp is speaking on the second item on the agenda as it relates to the 1400 Chestnut Apartment complex. Ms. Sharp wanted the Board to make sure that the project has met the income-based tenant commitment in the PILOT agreement before the Board approves the assignment of the PILOT tax break to another company.

The Board approved a housing PILOT in 2015 for a new 200-unit apartment complex at 1400 Chestnut Street. The tax abatement began in 2017 and is set to last until December 31, 2030. The owners pay no city and county general fund property taxes for the first ten years and a portion for the next four years.

Because of this PILOT, the city and county will not collect several million dollars in property taxes that, if collected, could help pay for services like fire protection, police, streets, workforce development, and affordable housing. The "public purpose" allowing this Board to grant special tax status for multi-family housing projects is found in state law.

Multi-family housing projects that you can grant a PILOT to are multi-family housing facilities occupied by persons of low and/or moderate income, and/or elderly, and/or handicapped persons. The owners' only obligation to get this tax break based on income was to rent at least 20% of the units - 40 in this case - to persons whose income does not exceed 80% of the Chattanooga Area Median Income as defined by HUD.

There are some statistics that basically explain what the cap is for one person and two-person household, and the maximum rents that could be charged for one person would be \$999 per month and for a two-person \$1,141 per month.

The Board just received a request asking the Board to assign the PILOT agreement and lease from the current LLC to another LLC. The original PILOT agreement addresses what happens when a company wants to assign an agreement. One condition is that all agreements of the company under the original agreement have been satisfied as of the date of the assignment. According to a recital in the resolution, the existing Lessee has certified that these obligations under the PILOT agreement will be satisfied as of the date of the assignment.

Ms. Sharp's question is, has the income rent obligations been satisfied as of today? Encouraging sign in the packet there is an Officer Certificate from 1400 Chestnut, LLC and Mr. Shen certifies that as of the effective date the company is current on all requirements. Ms. Sharp asked the Board to ask the representatives of the current LLC to confirm at the meeting that at least 40 units are currently rented to low and moderate-income persons and that their rent does not exceed 30% of their monthly income.

There are representatives from the Community Development staff and the City Attorney and is wondering if they have reviewed the company's January 2022 annual report required by the PILOT agreement. Does the required certified rent roll show that at least 40 units are currently rented to persons with incomes of this level?

Mayor Kelly recently announced a major initiative for new or affordable housing, and he said that this has become one of the top priorities for the City. If city and county tax dollars are to be used as a bargaining chip in this transaction between two private companies, the public is counting on this Board to make sure that all requirements of the current company under the PILOT agreement have been met before the Board approves the assignment. Please see attached **Exhibit 1** as Ms. Sharp's backup material for this meeting.

Mr. Jermaine Freeman spoke and wanted to acknowledge what Ms. Sharp mentioned regarding the Mayor's announcement around the Affordable Housing Fund. That has a tremendous impact on this Board and realizes that since that announcement was made at the end of March there have not been a meeting with the HEB since that announcement. It would also be appropriate to acknowledge the passing of the late Dr. John Schaerer who served on the HEB. Mr. Armor stated that Dr. Schaerer was a long-term friend and community volunteer. He has been trying to make these meetings. The Board appreciates all he did. Thank you for bringing that up.

Mr. Freeman stated towards the end of March, Mayor Kelly announced a major initiative on the part of the City to create a \$100 million Affordable Housing Fund. We are still in the process of finalizing all of the details. That fund will be seeded by an initial \$33 million of the City's surplus budget. The surplus is expected to go in to seed that fund in Fiscal Year 2023 which starts on July 1st. Because we have some surplus dollars in our General Fund, we are able to seed the \$100 million fund with \$33 million of cash from the City. We expect to be pretty aggressive and intentional about how we leverage, attack, and create more affordable housing in the aggregate but also affordable housing that provides housing for people that serve in specific income levels. It is becoming more and more of a challenge for regular everyday people in our workforce to find affordable housing across the AMI spectrum, but especially for people who are below 80% AMI, but also for people between 80-120. It is also becoming extremely challenging for senior citizens and the disabled community to also find housing. As we continue to prepare for the final touches on the fund and how the fund will be structured, Mr. Freeman wanted to let the HEB know that they will come back before the Board to do a presentation to explain how the fund will work and to make sure that the Board will have all of the details on that because this Board will be instrumental in helping the City to administer that.

We as a City and staff internally work with our housing ingenuity investment team. Sandra Gober and her staff look at all of our affordable housing policies, existing policies, existing Affordable Housing Fund. The HEB has helped to administer to make sure we are doing everything we can to be more aggressive and flexible, and how to keep those dollars out to provide housing for all of our citizens.

Questions from the Board:

Mr. Johnson asked if the \$133 million was all cash? Mr. Freeman stated the goal was to create a \$100 million fund total. The first \$33 million out of the \$100 million would come from the City's surplus. Are there any plans in terms -- does the City surplus properties -- would they be available for affordable housing or non-profit use? Mr. Freeman stated that is one of the things Mayor Kelly has been very clear about is a desire for us to reconstitute the City's Land Bank Authority and to use the Land Bank Authority as a means to dispose some of those back tax and surplus properties. We are in the process of reconstituting the Land Bank Authority as we speak.

Ms. LeBoeuf asked on the July date is the goal to have a plan for the use of the funds under certain targets or to start implementing. Mr. Freeman stated the July date is when we can take the \$33 million and put it into an account. It will have been budgeted by City Council for the upcoming fiscal year budget. We would like to start implementing as soon as possible but that has to be approved by City Council first through the normal budgetary process. We are working feverously to make sure that we can put the final details on how the entire fund will be structured. We are doing that now.

Mr. Armor thanked Mr. Freeman for his service to the City and updating the Board. The Board looks forward to Mr. Freeman's presentation.

Mr. Noblett asked Mr. Freeman if he was aware of any defaults in the authorization that we have here for 1400 Chestnut Project on the numbers of units that are available. Mr. Freeman is not aware of any, however, he will defer to Sandra Gober because her staff oversees those units directly. Ms. Gober stated there are no defaults. The staff does, on an annual basis, a compliance review on all of the PILOT projects. Mr. Noblett stated there is an Officer's Certificate on 1400 Chestnut today and wanted to confirm with the body.

Mr. Armor stated that even if they were not in compliance today, who would assume the responsibility if it is assigned or whatever, that same responsibility would be there? Mr. Noblett stated yes. If they do not meet that, then there are certain provisions about clawing back the amounts. Mr. Armor stated we had this with another property. This is a 2016 one.

Ms. LeBoeuf asked what does a compliance review entail? Ms. Gober stated it is actually going on-site, going through files and looking at each client's file, and verifying they are able to become qualified.

Mr. Johnson asked Ms. Sharp a question about the Officer's Certificate. Mr. Noblett stated that it is in the packet. Ms. Sharp stated that in the past as this program has gotten a little better and tighter, we have had instances where people have said we are almost there. This is the key time to make sure before the Board allows this to be transferred that the income levels are met.

After further discussion, Ms. Sharp stated the units need to be occupied because there is no problem in Chattanooga finding people at 80% median and below. Some of these apartment complexes and market rate complexes have not been too enthusiastic about marketing because they are getting \$1,400, \$1,600, \$1,800, \$2,100 in rent. Some have not marketed the availability of these units.

Mr. Noblett stated the units themselves have to be reported to the State on an annual basis. They have to say how many units are at the specific rates that meet those requirements. That is a requirement under state law each year. Mr. Gentry asked for clarification, are 40 units meeting the criteria today? Mr. Noblett stated yes.

Ms. LeBoeuf asked for clarification from Ms. Sharp about the 2021 income limits. Would that mean that the line for the AMI changes as our AMI changes? It was 80% affordable when this agreement was made and is different than 80% affordable today. Ms. Sharp stated it was probably \$850 at that time and has gone up almost \$1,000. HUD every year updates this.

Mr. Noblett stated the Officer's Certificate is on the third page of the 56 pages.



RESOLUTIONS

On motion of Mr. Johnson, seconded by Mr. Paty,

**A RESOLUTION RATIFYING ACTION TAKEN RELATED
TO THE EXECUTION BY THE CHAIR OF AN
AMENDMENT TO LAND USE RESTRICTION
AGREEMENT REGARDING THE BATTERY HEIGHTS
APARTMENTS PROJECT." (HEB-2022-02)**

Mr. Noblett has asked the Chair to sign this document regarding an amendment to the Land Use Restriction Agreement. The timing was fairly quickly. We did not think this would be an issue as far as these folks are asking for an amendment to the Land Use Restrictions to replace the term of 50% in the restrictive covenants to 60%. They added an additional 10% of low-income housing tenants to their property in connection. This was the request of the Battery Heights Partners Association. Mr. Gentry asked why. Mr. Noblett stated that it may be something on funding. Funding from the federal government based upon a larger number.



ADOPTED-April 18, 2022

On motion of Mr. Paty, seconded by Ms. LeBoeuf,

A RESOLUTION TO AUTHORIZE THE CHAIRMAN OR THE CHAIRMAN'S DESIGNEE TO ENTER INTO AN ASSIGNMENT AND ASSUMPTION AGREEMENT APPROVING THE ASSIGNMENT OF THE AGREEMENT FOR PAYMENT OF AD VALOREM TAXES ("PILOT AGREEMENT") AND THE LEASE FOR THE 1400 CHESTNUT PROJECT AND TO PROVIDE ADDITIONAL RELATED AUTHORIZATION. (HEB-2022-03)

Mr. Mark Smith worked with the original developers of this project. This is relative to the transfer of the PILOT and related lease to new owners of the 1400 Chestnut property. This property started out with a developer in Alabama and was transferred in 2019 to a group called Mount Auburn Multi-Family which is a national multi-family housing company. Mount Auburn is now transferring its ownership interest to Starwood Realty which is another national multi-family housing company with assets in excess of a billion dollars which is part of a large transfer of the properties in Tennessee and other states. We are asking permission from the Chair to Consent to the Assignment. There is a mechanism in the PILOT agreement that provides for the transfer of these PILOT arrangements. One of the key requirements is the current owner has to certify to this Board that it is in compliance with the requirements of the agreement.

Mr. Noblett asked Mr. Smith if he understands that it has to meet those requirements and has already certified for this year that it has met those for the last year's amounts. Mr. Smith stated yes, they have certified that they meet the requirements. The way the certificate was drawn because the closing date has not been determined the language it uses is that they will be in compliance as of the date of closing. We did not have a gap between the date of the certificate and the actual date of closing. The certificate covers and states that they are in compliance with the requirements.

Mr. Noblett stated that in connection with the assignment you have to send out notification to both the City Mayor, County Mayor, to make sure there is no sort of problem associated with the project. Mr. Smith has not received any notification of dispute. They have not had any indication of concerns from either office. As part of this process, in addition to Mr. Armor's signature we will need to get the signature of both Mayors confirming they are satisfied with the arrangement.

Mr. Smith stated the project was approved April 27, 2016. The initial PILOT period runs from 2017-2026, 20% phase-in for four years. They are in the first ten-year abatement process. Four more years, then 20/40/60/80.

Ms. LeBoeuf asked what the timing was for compliance. Is it based on the original April 27 date or based upon an annual reporting by the unit. Mr. Noblett stated the agreement provides for an annual report. The annual report by January 31st of every year.

ADOPTED-April 18, 2022

OTHER BUSINESS

Mr. Noblett stated there will be an ethics training after the two new members are appointed. Ms. LeBoeuf asked for a PILOT training, and Mr. Armor stated that there will be training for both when there are two more board members appointed.



There being no further business, the meeting at 1:00 p.m.

Respectfully submitted,

Richard A. Johnson, Secretary

APPROVED:

Hicks Armor, Chair

EXHIBIT 1



April 18, 2022

Helen Burns Sharp of Accountability for Taxpayer Money (ATM) asked members of the city's Health Education and Housing Board (HEB) to make sure that the 1400 Chestnut project has met the income-based tenant commitment in their PILOT agreement before approving the assignment of its PILOT tax break to another company. The board meets on Monday afternoon.

She said, "This board approved a Housing payment-in-lieu-of-tax (PILOT) agreement in 2015 for a new 200-unit apartment complex at 1400 Chestnut Street. The tax abatement began in 2017 and is set to last until December 31, 2030. The owners pay no city and county general property taxes for the first 10 years and a portion for the next four years.

"Because of this PILOT, the city and county will not collect several million dollars in property taxes that, if collected, could help pay for services like fire protection, police, streets, workforce development, and affordable housing. The 'public purpose' allowing this Board to grant special tax status for multi-family housing projects is found in state law.

"State law defines 'Housing' in this context as any multi-family housing facilities to be occupied by persons of low and/or moderate-income, and/or elderly, and/or handicapped persons. **The owners' only obligation to get this tax break** based on income was to rent at least 20 percent of the units—40 in this case—to persons whose income does not exceed 80 percent of the Chattanooga Area Median Income as defined by HUD.

"The current (2021) income limit for a one-person household is \$39,950 per year or \$3329 per month. The maximum rent that a low-mod person may be charged is \$999 per month, which is 30 percent of their monthly income. The income limit for a two-person household is \$45,650, with a maximum rent of \$1141 per month. (The website for the 1400 Chestnut complex shows "market" rents ranging from \$1487 to \$2100.)

"The HEB recently received a request for the board's consent to assign the PILOT agreement and lease for the 1400 Chestnut project from the current LLC to another LLC. That is what is on your agenda today.

"Section 15 of the original 2015 PILOT Agreement addresses what happens if the company wants to assign the agreement to another company. One condition is that all requirements of the company under the original agreement have been satisfied as of the date of the assignment.

According to a recital in your resolution, the existing lessee has certified that these obligations under the PILOT agreement will be satisfied as of the date of assignment.

"HAVE THE INCOME/RENT OBLIGATIONS BEEN SATISFIED AS OF TODAY?"

"Encouraging sign: You have been provided with an 'Officer Certificate of 1400 Chestnut LLC,' the existing lessee. Mr. Jarvan Shen ('Officer') certifies that, 'as of the Effective Date of Assignment, the company is current on all requirements and obligations of the Agreement.'

"Please ask the representative of MA Chestnut at Chattannoga, LLC, to confirm at the meeting that at least 40 units are currently rented to low and moderate-income persons as defined by HUD and that their rent does not exceed 30 percent of their monthly income.

"Please ask the city's Community Development staff and the City Attorney if they have reviewed the company's January 2022 annual report required by the PILOT agreement. Does the required certified rent roll show that at least 40 units are currently rented to persons with incomes of \$39,950 or less for one person or \$45,650 for two persons and that their rent does not exceed 30 percent of their monthly income? (\$999 for one person; \$1141 for two people).

"Mayor Kelly recently announced a major initiative for new or rehabbed affordable housing. He said when he took office a year ago that the need for affordable housing 'quickly rose to the top' of the city's needs.

"If city and county tax dollars are to be used as a bargaining chip in this transaction between two private companies, the public is counting on the board to make sure that all requirements of the current company under the PILOT agreement have been met before you approve the assignment.

Thank you.

Helen Burns Sharp for Accountability for Taxpayer Money.

ATM is a public interest advocacy group that focuses on tax incentives and government transparency.