

**Missoula Housing Authority Board**

Regular Board Meeting

Wednesday, Mar 19<sup>th</sup>, 2014

1235 34<sup>TH</sup> St. Missoula MT 59801

-MINUTES-

Members Present: Fred Simpson, Collin Bangs, Sheila Lund, David Warren,  
Monique Casbeer, Betty Zander, Jamie Hoffmann, Sheila Lund [Arrived  
at 5:50pm]

Members Absent:

Staff Present: Adam Ragsdale, Suzy Yancey, Lori Davidson, James Weir, Harlan Wells,  
Kevin Schouweiler

Guests Present: Keithi Worthington

I. Call to Order: The meeting was called to order at 5:35 pm.

II. Attendance: See Above.

III. Intro:

None

IV. Minutes:

-Feb 19<sup>th</sup>, 2014

Hoffmann calls for additions or corrections. Zander states that she needs to be added to the Members Absent section on the minutes. Board agrees

Hoffmann calls for a motion to the corrected minutes of Feb 19<sup>th</sup> 2014.

Casbeer motions to approve. Warren seconds. None opposed. Motion passed with all in favor.

V. Conflict of Interest Disclosure:

Bangs notes that as MHA moved forward with a potential offer and counter offer on the Pro-Build site that he may have an interest in the property if private developers are needed for the site in the future. Bangs looks to Worthington for direction.

Worthington states that MHA may develop or sell it and at which time Bangs would need to recuse himself, but if the property is for sale by MHA on the open market there would be no conflict if he wished to respond and purchase.

Hoffmann discloses that his firm, Hoffmann Associates, has been sold 100% to Mike Morgan who may later be looking toward this as an architect if private developers are invited to bid on a portion of this property later. Hoffmann discloses that he would have no financial gain if his firm decides to move on this opportunity.

VI. Commissioner Comments:

VII. Public Comments on Items not on Agenda:

VIII. Action Items

None

\*Strategic planning session not performed at this evening's meeting

IX. Staff Reports

a) MHA office space

Davidson was on vacation the past couple weeks. Davidson thanks staff for stepping up. Copies of offer made on ProBuild site have been handed out. Rough draft of Keithi's response also handed out for discussion.

Hoffmann asks commissioner if they've looked at the counter offer. Bangs has read through a majority of the counter offer.

Worthington states the counteroffer includes a purchase price of \$1.6M. Property is close to the Hart refinery which may result in environmental issues.

Davidson states that in the counter offer does not provide any due diligence materials.

Worthington states that Wells and Worthington, at the board's direction, worked on providing a broad buy-sell that would provide 6 months and a potential to extend for 6 months. They are only going to give MHA 120 days to get this handled. The offer is refundable at any time during the 120 days. If MHA wishes to extend it, it would be an additional \$35K dollar that would go toward the purchase price but is non-refundable. Worthington has a concern with this extension provision.

Worthington states, for the inspection, they have an indemnification provision for during our due-diligence and title review. If MHA does any destructive testing on the site, it must not be conducted without prior written consent. They may withhold consent at any time.

All investigation reports must be done at MHA's expense. Worthington states this may be a typo, but without communication directly, we cannot ask. If the agreement is terminated by either party, the seller is entitled to keep all of the documents. This is unacceptable to MHA.

Worthington states the time frame for the title review is limited, but acceptable. The seller will do a preliminary review, MHA may respond within 10 days. The seller has an additional 10 days to respond to it. Once they return it, MHA would have 3 days to accept or terminate. If MHA wants any additional coverage on the title it will be at our own expense.

Hoffmann asks if the counter expires. Worthington states it does not.

They've proposed this as an As-Is purchase. If they know of any hazardous materials onsite, the seller would have to disclose this information.

The sellers have taken out MHA's language of the use of eminent domain and surveys.

Davidson asks Worthington if the sellers had stated that they were negotiating the release of the property from the renters, but if not successful, that they would not go through with the sale of the property with no reimbursement of expense to the buyer. Worthington agrees.

Worthington states she has, with the help of Wells, drafted up a response. Worthington does not believe the \$30K earnest money is acceptable. This is mostly because so little is known about this property. The seller has not even provided a survey. The section in their counter offer regarding inspection is too vague. MHA will have to do a Phase 1 and likely a Phase 2. The due diligence period is too short and we also find the extension payment unreasonable. While MHA will likely have to do an extension and putting money down for that extension is reasonable, Worthington would like to see all of this money go toward the purchase price.

Lund asks what part of the building is currently being leased. Worthington responds that all of the property is being leased. Davidson states Pro-build leases it currently. Oliver adds that the building is completely gutted right now.

Worthington states a master lease exists, but MHA has only seen an extension to this lease. Worthington believes the lease was to extend to January 2015. Hoffmann asks if the tenant has the right to renew the lease in January of 2015. Worthington does not have a definite answer without seeing the master lease.

Worthington states as written the seller will make a good-faith effort to successfully negotiate the transfer of the property.

Worthington states the As-Is provision, its contrary to CERCLA, you cannot transfer away liability you have for hazardous substances. Buts that's only in regards to the EPA. Worthington states that though this is true, MHA doesn't know what the true

history of the property has been. Wells has talked with the company that performed an environmental study on the Hart Refinery. The results did not indicate there is much to be concerned as the water flows away from this neighboring property.

Hoffmann adds that he has been following the DEQ white pine cleanup case. Industrial cleanup is estimated at \$8 million, residential is \$21 million. Such large numbers make him weary should environmental issues be found on the ProBuild site.

Worthington has added into her draft that MHA has asked the sellers to pay for a survey. While the sellers have insisted that MHA must pay for all the costs, it would seem unreasonable that a property of this size would come without a survey and contrary to industry standards. This should provide a point of discussion. Worthington adds that MHA will have to put language back in that we are not to use eminent domain.

Simpson states that on paragraph 5 on page # 2 suggests that the seller provide MHA with an estoppels certificate from the current lessee that they agree to terminate their lease agreement by a certain date upon signing the buy/sell.

Simpson points to paragraph 8 which states "This disclaimer using eminent domain from section 4.2 from MHA's proposed agreement." Simpson does not find anything about this section 4.2. Worthington states this is language from a previous iteration. Simpson asks if MHA can just back out of the deal if it wants to do so. Worthington states that MHA must declare that it will not use eminent domain even though it has the right to do so.

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Davidson asks if there is an amount of earnest money that the board would be comfortable putting down as a response to their counter offer, perhaps \$30K.

Hoffmann asks if we're going to direct Worthington in the response for this going forward.

Davidson agrees. Worthington clarifies that she is looking to nail down specifics for the response, such as, the amount of earnest money being placed down as a deposit. Does the board want a length of 6 months, instead of 4 months, for due diligence. If the sellers want payment for an extension is the board comfortable with this and, if so, how much is MHA willing to put down, does this go toward the purchase price.

Simpson asks if we know how long it will take to perform a phase 2. Worthington states that Wells informed her it would take at least 6 months. A Phase 1 can be done fairly quickly but a phase 2 would take at least 6 months. We could do a phase 2 within 6 months and see how long it could go.

Hoffmann would like to see that it get decided on one at a time. Hoffmann throws out \$15K for down-payment. Bangs agrees.

Hoffmann asks when MHA would lose its down payment. Bangs responds that MHA would lose its down-payment if it did not meet its deadlines or decides to cancel the buy/sell.

Worthington states that MHA has to provide written notice that it intends to proceed with the buy/sell after the initial 4 month due diligence period and MHA would get its earnest money and deposit back. Worthington would like to see that MHA gets all its investment back after the due diligence period if it decides not to proceed, whether that is 4 or 6 months. Worthington would like to see this extended to 6 months. If we give them a notice to proceed but later terminate, MHA would not get its money back.

Hoffmann is concerned about the parking lease. Worthington agrees and is not sure what easements exist.

Bangs asks about the terms of the extension. Bangs suggests that if MHA requests an extension if \$15K deposit becoming non-refundable per month. Similar to the deal for the buyer of the IDC site.

Lund adds that MHA will still need an appraisal. An appraisal could take another 30 to sixty days to conduct. Bangs agrees.

Worthington recaps asking the board how much of the \$15K it would like to see become non-refundable if an extension beyond the 6 months is needed. Bangs suggests \$1500 per month with a maximum of 6 months more. Board agrees.

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Worthington asks Bangs about his feelings on an As-Is Purchase for this property. Bangs states he does not like the As-Is clause. Bangs feels MHA should be entitled to the full disclosures known about the property.

Worthington asks if MHA should be asking the seller to pay and provide a survey. Hoffmann agrees and feels the sellers should represent with they have to offer. Simpsons doesn't feel MHA cannot rely on a survey that the sellers provide or that MHA didn't purchase. Worthington asks if the board would like a survey that the seller provides. Bangs responds that MHA should consult to see who the insured can be on the survey. Davidson states that it would at least give MHA some knowledge on the property without added expense if paid by the seller.

Worthington calls for a recap on the board's wishes for a motion.

Hoffmann would like to see a survey from the sellers. Hoffmann wants to have ample due diligence period over down payment or other money. Davidson would like to see at least a one year due diligence period. Worthington asks that if the sellers agree to a longer, one year, due diligence would the board be comfortable with an earnest money deposit as high as \$30K. Board agrees that time is more important and that the \$30K would be refundable as long as conditions for the buy/sell are met.

Worthington asks how high of a monthly payment the board would be comfortable with for money earned deposit becoming non-refundable in the event of an extension in due-diligence period. Bangs states no higher than \$2K or the board would have to discuss.

Hoffmann calls for a motion on the above mentioned parameters. Bangs motions. Lund seconds. None opposed. Motion passed with all in favor.

b) Rural Development Self-Help Program

Davidson states the home owners in the year 1 build on the self-help program have been facing serious water issues. NeighborWorks Great Falls (NWGF) has been in on-going discussions on how to resolve the situation. It appears there will need to be an engineered system to mitigate the water pooling around the 10 homes from Build 1. Build 2 is completely dried in. Hoffmann asks if there is clay around the homes. Oliver agrees. Davidson states that drainage systems may run as high as \$5K per home on each solution. After several discussions with NWGF, Davidson states that NWGF has asked MHA to kick in funds to help mitigate this issue. Davidson states that MHA is having an issue with providing funds to help as the homes were originally staked out and excavated by NWGF. Hoffmann asks if there is a theory that NWGF has on why MHA would need to be financially involved in the solution. Davidson states NWGF feels we are "in it together." Davidson has advised that NWGF go back to their Phase 1 geotech report. Jeff Jordan has stated that no-one had ever told NWGF that there would need to be drainage and other homes in the area do not have sump-pumps. Davidson states the Build 2 geotech report states there must be drainage tiles, sump pumps and other measures to mitigate runoff.

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Davidson states this is why, on Build 2, MHA has insisted that the sites be professionally engineered.

Davidson has suggested that NWGF pay for the water mitigation out of their unrestricted pool of SHOP funds.

Simpson asks if these are crawl spaces or basements. Davidson states these are crawl spaces. Hoffmann asks if these were approved by county or city. Davidson states the county.

Worthington adds that it was a clear understanding that MHA was merely there to observe in Build 1 and not to have any decision making capabilities but solely to watch and learn.

Bangs feels that MHA response should be that on Build 2, MHA received a geotech report and followed it. NWGF should refer back to the geotech report they received from build 1 and see if it was properly followed and get back with MHA.

Davidson states MHA now has errors and omission insurance for future builds going forward. Hoffmann asks if NWGF has such a policy. Davidson says they were told NWGF was operating on the premise that this falls under their general liability policy.

Hoffmann asks why NWGF doesn't go to their insurer and ask for assistance. Davidson states she doesn't know if they have reported a potential claim. Simpson states a carrier will deny claims such as this 9 times out of 10 stating that it was just the policy holder's poor judgment to act as a decision maker on where the lots should be staked.

Worthington adds the contingency for the homeowners is used up.

c) Vantage Villa Update/EPC Update

Waiting for insurance settlement.

d) City Surplus Lots & Homeless Housing Update

Davidson states the final documentation needed for the HOME grant application has been received and will be ready to submit soon.

Oliver states COT build is going well and will have the structure dried in soon for the California duplex.

e) Palace Project

Davidson states the 8609's have been issued by the state. Court Allen is current reviewing final documents and MHA awaiting word back.

f) Stevensville Property

No update

g) Silvertip Sound Mitigation

Oliver states mitigation is going and an estimate of 4 party walls per week.

Hoffmann asks what the performance-factor of the walls turned out to be. Oliver states that they have tested out above standards with the change in plans for material and procedure.

Hoffman asks what the overall price tag of the mitigation came out to be. Oliver states that MHA has contract around \$123K with Bristlecone receiving some of that for general contractor fees. It was much lower than anticipated due to work being performed on shared walls only.

h) IDC update

Davidson states MHA is still awaiting final items to be signed that have been on Kevin Slovarp's desk for some time.

X. New Business

A133 Audit-

Davidson states the MHA A133 Audit has been issued and that end of year financials have been approved.

Board notes that dates on the paid claims issued in the board packets have an error on the heading for dates. Schouweiler notes that the headers were added manually and that the information is true and correct for items paid for current month.

Staff Benefits-

Davidson states that MHA has had a change in benefits structure due to budget constraints and the Affordable Medical Care Act. Though it was a hard decision on what to select, MHA has come to a new split on benefits for employee and employer along with a new policy.

Missoula Housing Report-

Bangs states that on March 27 at the Double Tree there will be a presentation on the Missoula Housing Report. This is a report on the state of housing in Missoula with regard to home sales, vacancy rates and rental prices.

XI. Old Business

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Strategic planning-

\*Deferred to next board meeting due to time constraints.

Changes in Procurement and Personnel Policies

Davidson states personnel policy is in draft form

Board Training opportunities

Davidson states that the NAHRO summer conference will be in Florida July 17<sup>th</sup>.

XII. Adjournment: The regular meeting was adjourned at 7:32 pm

  
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Jamie Hoffmann, Board Chair

  
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Lori Davidson, Executive Director