

BERKSHIRE REGIONAL PLANNING COMMISSION

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Community Housing Trust Steering Committee
November 22, 2005
Meeting #5

Present: Tom Unsworth, Lee Bank; Roger Bolton, Williams Rural Land Foundation; Gail Charpentier, Town of Tyringham; Lisa Wright, Berkshire Housing Development Corporation; Tim Geller, Tri-Corner, CDC; Tad Ames, Berkshire Natural Resources Council; Brad Gordon, Berkshire Regional Housing Authority; Susan Witt, E.F. Schumacher Society; Kathy Orlando, Community Land Trust of Southern Berkshires/Sheffield Land Trust; Fred Chapman and Michael Storch, Town of Monterey; Berkshire Regional Planning Commission: Duane Nealon and Jennifer Kenny. **Also attending:** R. Carey McIntosh, Tyringham Planning Board.

Absent: Cara Davis, Construct, Inc.; Sara Hathaway, Habitat for Humanity-Central Berkshire County; Billie Best, Town of Alford; Nat Karns, BRPC.

I. Meeting was called to order 9:40 a.m.

II. R. Carey McIntosh, Tyringham Planning Board was a new participant.

III. Mr. Nealon asked if there were any changes to minutes from the October meeting. Mr. Bolton indicated that on page three, paragraph five the statement should read Williamstown "Rural Lands Foundation." Tad Ames indicated that his single edit had escaped him, but if found, he would inform. Mr. Nealon noted the recommended edits. Ms. Charpentier moved to approve the minutes with edits. Mr. Bolton seconded. Approval was unanimous.

IV. Mr. Nealon began the meeting by indicating that the funding for this project has been almost expended. That the original budget allocated \$1,000.00 to defray legal costs and filing fees associated with creating a housing trust organization. And although the Steering Committee has covered a lot of ground in pursuit of our grant objectives, there remains more work than funding will permit.

The funding available does not permit an open-ended process and budget constraints will require that the Steering Committee make some hard choices. One option is to end our work under the CHAPA funded project after this meeting and set aside \$1,000 to defray legal costs and filing fees associated with creating a housing trust organization. Another option is to schedule one more Steering Committee meeting and continue toward our goal of establishing a housing trust organization in Berkshire County.

V. Mr. Nealon then gave a status report of the Fund for Affordable Housing (FAH). He indicated that through discussions with officials with the Massachusetts Office of the Secretary of the Commonwealth and Attorney General Office, Division of Public Charities, and the Internal Revenue Service it was determined that the FAH has not maintained, even minimum required filings with their offices for several years; and, as a result the corporate status of the FAH with the Commonwealth of Massachusetts is that

the corporation is “**Deactivated**” and, the 501(c) (3) status of the FAH with the Internal Revenue Service is that the corporation federal income tax exemption has been “**Suspended.**” (The FAH did not obtain a Tax Exempt Certificate from the Massachusetts Department of Public Revenue.) First, issues with the state filings must be resolved and associated fees paid in order to obtain a “Certificate of Good Standing;” once obtained, it would then allow the reinstatement process to begin to attempt to reestablish 501(c) (3) status with the Internal Revenue Service.

Mr. Nealon’s overall assessment is that the time and expense involved in reviving the FAH versus creating a new not-for-profit organization are about the same. Also, due diligence would require that a thorough audit be conducted accounting and reconciling the FAH corporate assets, prior to transfer to a new board of directors.

Gail Charpentier indicated she would like to weigh the pros and cons of both alternatives—using the FAH or creating a new not-for-profit corporation.

Susan Witt mentioned the FAH has not been managed for approximately ten years and stated that she prefers creating a new not-for-profit for housing trust purposes. She also mentioned that there may still be some utility in Community Land Trust of Southern Berkshires retaining the FAH.

Roger Bolton stated that in considering accepting the FAH that, as a group, we should do our own due diligence and not depend on the Fund for Affordable Housing assurances. Also, he was somewhat concerned about the geographic association of the FAH with the Southern Berkshires.

Fred Chapman stated that the time required to obtain IRS 501 (c) (3) status would be lengthy and one advantage of using the FAH was that the name was neutral and could be applied to our purpose.

Duane Nealon indicated that based upon his recent experience with the IRS (submitting the IRS Form 1023 “Application for Recognition of Exemption, Under Section 501 (c)(3) of the Internal Revenue Code and Form 8718 User Fee for Exempt Organization Determination Letter Request) that it took 60 days to obtain an IRS 501(c)(3) Determination Letter.

Roger Bolton emphasized that it was important that the corporation should be perceived as a county-wide organization.

Duane Nealon indicated that consideration should be given to renaming the organization to include labels such as Berkshire or Housing Trust in the new name.

Tad Ames thought that the previous history of the FAH could be glossed over.

Gail Charpentier wanted to know what the advantage would be in pursuing the FAH option.

Susan Witt stated that the FAH would be delivered in “good standing,” but that she would need formal approval by the FAH Board of Directors before confirming this offer.

Duane Nealon inquired whether changing the name of an existing corporation would require a new corporate filing with the State.

Brad Gordon responded that all that was required was a change of name form to be submitted to the State.

Kathy Orlando recalled that the FAH was only in active existence for a short period of time and that it had very little history or public exposure.

Susan Witt indicated that if the FAH was presented to this group, that although the corporation would be in good standing with the State and IRS, no substantive changes to the Articles of Incorporation or By-Laws would be made.

Kathy Orlando questioned whether the needed changes to the FAH Articles of Incorporation and By-Laws for the Housing Trust purposes could be made concurrently with the efforts to obtain good standing status. If done this way, less time would be involved in transition.

Brad Gordon stated that there was no great advantage to boot strap to the existing organization (FAH). Creating a new organization offered a cleaner approach.

Tom Unsworth thought that if in fact Susan could still use the FAH, then it makes creating a new corporation a better option.

Gail Charpentier felt that given the current status of the FAH that this option is greatly diminished. Also, not allowing the needed changes to the Articles of Organization and By-Laws to be made during the same period as establishing good standing would unduly prolong the amount of time required to have the FAH ready for use.

Tad Ames believed that even with good standing, the FAH would not be "turn-key" and would require additional work.

Kathy Orlando questioned whether there may be competition with the FAH and a new Housing Trust organization.

General discussion ensued of the benefit of having a sales tax exemption for a not-for-profit organization.

Michael Storch indicated that he favored pursuing the option of creating a new organization.

Mr. Ames made a motion that this Steering Committee recommend that if the mission statement approved at the October 25, 2005 meeting (or subsequent amended versions) is pursued, it should be done under a new, not-for-profit, IRS tax exempt, corporation.

An open discussion ensued regarding the wording and intent of the mission statement of October 25, 2005. Tom Unsworth indicated that the mission statement of October 25th was content neutral with regard to either option (new corporation or FAH).

Ms. Charpentier seconded this motion. Motion approval was unanimous.

Ms. Witt made a motion that the Steering Committee should thank the FAH for their offer to consider making the FAH corporation available to the Steering Committee for purposes of establishing a Berkshire Housing Trust. Tom Unsworth seconded this motion. Motion approval was unanimous.

VI. Mr. Nealon suggested that attention now be directed to the next agenda item: Board of Directors Composition.

Kathy Orlando noted that the Steering Committee has a mission statement that preceded a decision of organization composition.

Tim Geller suggested that other use of funds be allowed, besides housing, such as planning.

Tad Ames stated that if there were sufficient housing trust funds for land conversation uses that would be fine.

Gail Charpentier believed that initially there would be an enormous task merely establishing sufficient funds to support actual housing trust projects.

Fred Chapman suggested that fund disbursements be based upon some formula.

Tim Geller stated funds should be for multiple uses, if successful; housing first, then other secondary uses—housing first, then other secondary uses, such as open space preservation

Kathy Orlando felt that housing trusts and land trusts efforts had common goals.

The topic of Community Preservation Act funding was raised and a general discussion ensued.

Kathy Orlando recommended that projects considered for funding through this organization should be required to adopt best practice land use design (conservation subdivision, open space residential design, etc.)

Tim Geller suggested close partnerships with land conservation organizations.

Tad Ames thought that CPA was a viable funding option and a good starting point for fund raising around this issue.

Carey McIntosh mentioned that the Highland Communities initiative was targeting CPA adoption for 9 towns in their area.

Gail Charpentier stated that details concerning funding and operating policies are excellent topics, but suggested that they these discussions may be more appropriate at a future time in the organization's development.

Susan Witt wanted to promote voluntary donations at real estate closings as a fund raising measure.

Brad Gordon thought the all funding raising effort would not be mutually exclusive and that all potential funding raising efforts should be at least considered.

Duane Nealon wanted to remind the committee members that board composition considerations can be a determinant with regard to qualifying for funding sources. For example, HUD/State CHDO designation requires certain threshold board representation. Some of the advantages of a CHDO designation are: access to forgivable seed loan/grants for predevelopment, a 15% HOME program fund set-aside, ability to retain and manage recaptured subsidies.

Tad Ames indicated that CHDO designation is worth considering, especially if this is an organization feature that does not existing within the Berkshires.

Susan Witt noted that the idea of collaboration, especially with land conservation groups, should be included in the mission. Also, that funding should be disbursed in a fair and credible fashion.

Tad Ames mentioned that having a particular project identified could aid fund raising effort.

Duane Nealon inquired about the board composition of community land trust.

Roger Bolton described a process that began with a nominating committee preparing a slate of candidates for the general membership to elect. He also mentioned that WRLF requires board members to retire after a long period of service has expired.

Tim Geller wanted to know if we were considering a membership organization.

Susan Witt stated that the community land trust membership model may not be a correct structure for a housing trust fund organization. She also recommended that all towns in Berkshire County be represented on the Housing Trust organization through an Executive Board.

Fred Chapman suggested we should not provide funds to localities whose residents were not interested in supporting the efforts of the housing trust.

Kathy Orlando stated we should remain open to non-governmental representatives because there may be problems with disqualifying a local municipality from participating in the Housing Trust where those communities may actually have some of the highest needs for affordable housing.

Roger Bolton recommended that the next meeting agenda include a sample corporate By-Laws and naming the new organization.

Kathy Orlando requested that the definition of "affordable housing" be included on the next meeting agenda.

The next meeting was set for Tuesday, December 13, 9:30a.m.-11:30a.m.at Berkshire Regional Planning Commission.

IV. The meeting adjourned 11:35 a.m.

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