

## **MONTANA BOARD OF HOUSING**

Comfort Inn – 1918 North Merrill Avenue, Glendive MT

May 3, 2012

### **ROLL CALL OF BOARD**

**MEMBERS:** J.P. Crowley, Chairman (Present)  
Betsy Scanlin, Vice Chairman (Present)  
Jeff Rupp, Secretary ((Present)  
Audrey Black Eagle (Excused)  
Bob Gauthier (Present)  
Jeanette McKee (Present via Conference Call)  
Sheila Rice (Excused)

**STAFF:** Bruce Brensdal, Executive Director  
Chuck Nemecek, Accounting  
Mary Bair, Multifamily Program  
Penny Cope, Marketing & Web Specialist  
Paula Loving, Administrative Assistant  
Charlie Brown, Homeownership Program  
Kellie Gauriligia, Multifamily Program  
Angela Heffern, Accounting Program

**COUNSEL:** Greg Gould, Luxan and Murfitt (Present via Webinar)  
John Wagner, Kutak Rock

**UNDERWRITERS:** Gordon Hoven, Piper Jaffray  
Mina Choo, RBC

**OTHERS:** Greg Dunfield, GMD Development  
Gene Leuwer, Rocky Mountain Development Council  
Kellie Gill, BlueLind Development  
Mat Raplinger, Travois  
Mike Green, Crowley Fleck  
Craig Taylor, Communities for Veterans  
Nate Richmond, BlueLine Development  
Amber Nentwig, Action for Eastern MT  
Brenda Sadorf, Action for Eastern MT  
Heather McMilin, Homeword, Inc.

Alex Burkhalter, Sparrow Group  
Larry Larsen, Prudential Floberg Billings  
Don Sterhan, Mountain Plains Equity Group, Inc.  
Connie Smith, Action for Eastern MT  
Paul Groshart, Richland County Housing Authority  
Amy Deines, Dawson County Economic Development  
Emilie Boyles, KXGN  
Eric Killelea, Glendive Ranger Review  
Jerry Jimison, Mayor - City of Glendive

### **CALL MEETING TO ORDER**

Chairman JP Crowley called to Order at 8:34 a.m. Introductions were made. Bruce Brensdaal reviewed the process for the Conference call participation. The Chairman asked for any items not listed on the agenda. Bruce thanked Connie Smith with Action for Eastern Montana for the tour of the Tax Credit property Makoshika Estates. Bruce provided a review of the Mountain Plains Regional Housing Summit in Mandan ND. Staff and Board just returned from the conference and received great information on the oil industry in North Dakota. Bob Gauthier stated that between the information from the conference and shared by Action and Dawson Community Economical Development Corporation, the eastern part of Montana is planning for the potential population increase appropriately. Bob stated his concern is how the North Central part of the State is planning for the increase.

Bruce invited the local representatives to speak to the Board on the area's history, current issues and future challenges. Amy Deines, Dawson Community Economical Development Corporation, spoke about the housing needs in the area. With the oil expansion in North Dakota and Eastern Montana, the need for supportive services such as police, fire personnel and teachers will grow drastically. The need for affordable housing is essential. Glendive's infrastructure is ready for the population growth; however, the housing in Glendive cannot support the everyday people who will be affected by the influx of the oil industry.

The City of Glendive Mayor, Jerry Jimison, thanked Betsy for the personal invitation to the meeting. The Mayor provided an oil history of Glendive. In the 1970's, an oil boom came through Glendive. The biggest fear for Glendive is the repeat of the 1970's where the oil industry ceased in 1985 and the population dropped dramatically. The City of Glendive created the infrastructure for this influx of population.

Connie Smith, Action for Eastern MT, informed the Board the biggest issue with the Housing Authority is the rental values are too high for the allowable rents for subsidized housing.

## **APPROVAL OF MINUTES**

Bob Gauthier moved to approve the April 9, 2012 minutes and Betsy Scanlin seconded the motion. Chairman Crowley asked for comments. Betsy noted on page 3, second paragraph of the Finance Program, the word "report" is omitted from the last sentence. Jeff Rupp clarified on page 9, second paragraph that the two projects in Kalispell were completed with tax exempt bond financing "outside of the competitive LIHTC process" and should be noted. The amended April 9, 2012 minutes were approved unanimously.

Greg Gould updated the Board of the recent Freedom's Path. Freedom's Path is requesting a reconsideration of the allocation of Low Income Housing Tax Credits awarded at the April 9, 2012 Board meeting. Greg's discussion with legal counsel for Freedom's Path reflects their intent to file a lawsuit should the Board not reconsider their decision. Greg Gould reviewed the Statue allowing the Board to call for an executive session to discuss strategy in respect to possible litigation where a public session could have a detrimental effect of the litigation. The Board meeting was suspended for thirty minutes for executive session.

## **MULTIFAMILY PROGRAM**

Mary Bair provided the Board with the Multifamily Program update. The Bond inducement is moving along with completion date approximately five to six weeks.

Chairman Crowley introduced Mike Green, Crowley Fleck on behalf of Freedom's Path, who reviewed the rationale for the request of the reconsideration of the Board's LIHTC 2012 awards at the April 9, 2012. It is Freedom's Path's position that the Board's discretion within the LIHTC awards is limited to determining the criteria and how the criteria are to be scored under the Qualified Allocation Plan (QAP). Once the criteria are fixed and scoring is established, the Board does not have discretion to circumvent the highest scoring or move down the list of projects. Due to the time sensitivity of the project and potential programs which may not be available in 2013 for the LIHTC allocation, it is essential for Freedom's Path to request the review of scoring and reconsideration of the 2012 LIHTC awards.

Greg Gould reviewed the two issues brought to the Board from Freedom's Path.

- 1) Greg referenced federal court decisions holding that the federal tax credit statute and regulations do not require a state housing credit agency to award tax credits to the highest scoring or highest ranking applications, and that the highest score or ranking does not entitle an applicant to a tax credit award.
- 2) Greg pointed out that the Qualified Allocation Plan and the Board's Administrative Rules specifically provide that the purpose of scoring the LIHTC applications based on the QAP is to determine whether each application meets the minimum threshold for consideration. The QAP

and rules provide that the Board will select the projects to receive an award of tax credits that it determines best meets the needs of low income people within the state of Montana regardless of the points scored by each of the several projects or staff recommendations.

Greg Gould also noted Freedoms Path's request that the Board forward allocate to Freedoms Path a portion of the 2013 LIHTC allocation. Greg stated the Section 6 of the 2012 Qualified Allocation Plan provides that the Board does not commit tax credits from future years.

Mary Bair reviewed the scoring of Freedoms Path's application under the areas it questions.

- Project Location – development is located in an area where amenities and/or services will be available to tenants (schools, shopping, medical services, transportation).
  - Freedoms Path is not located near shopping, schools or transportation services. Application was given 2 out of 3 possible points.
- Montana Presence – In order to assist in providing a better quality product consistent with the purposes of the MBOH and federal law, a development will qualify for points if a member of its development team is Montana based. Points will be awarded for the categories of Developer or Project Manager (developer must have existing affordable housing projects in Montana with a demonstrated quality product); Contractor or Construction Manager; and either the Consultant, Syndicator, Attorney, Accountant, Architect or Engineers.
  - According to the Freedoms Path application, neither the Developer nor the Contract Manager are Montana-based. Two points were given for Other Entities. The application was given 2 out of 4 points.
- Special Needs Targeting – A project will receive one point for each 10% of the units targeting the identified needs, which include units targeted specifically for: individuals with children (family units 2 bedrooms); large family units (3 and 4 bedroom); handicapped units; elderly; persons with disability (must include written agreement with service provider or advocate for target group).
  - Freedoms Path's application did not specifically identify the units targeted for disabled. Applications must specifically identify the units targeted for each category of special need, because units cannot "double-count" toward any category. MBOH has consistently scored applications based on the designation of specific units identified for disabled. Freedoms Path's application was mainly designated for homelessness housing. Freedoms Path's application received 7 points out of 10.

Upon Bob Gauthier's request, Mary reviewed the Qualified Allocation Plan development process. Each May, MBOH holds a Qualified Allocation Plan Workshop. Developers, Contractors, and staff review the current Plan and addresses current housing needs and requirements. Staff will incorporate necessary changes into the Qualified Allocation Plan and place the Plan for public comment, prior to the Board's review and adoption for the upcoming year.

Mike Green, Crowley Fleck, stated that the Qualified Allocation Plan does not specifically state point will be awarded for "each" of the Montana Presence categories. Because Freedoms Path had 4 in the last bullet point with Montana presence (i.e., 2 consultant, architect, engineer), it should have received 4 points in this section. In addition, while the Freedoms Path application is designed to help homeless veterans, it will also serve disabled veterans. The Qualified Allocation Plan does not specifically state it must be either homeless housing or disabled housing.

Craig Taylor, Communities for Veterans, addressed the Montana Presence within the Qualified Allocation Plan. Freedoms Path included four Montana-based entities and indicated that the Qualified Allocation Plan does not specifically require Montana presence in each of the bulleted categories to get the full 4 possible points.

Craig Taylor asserted that the Qualified Allocation Plan does not specifically require the application to note exactly which units will be designated for disabled housing. Freedoms Path's application would serve 40% disabled units and 100% of the units are designated for homeless veterans.

Craig Taylor questioned the Qualified Allocation Plan's definition of project location. The Freedoms Path's targeted services are medical services, which is within wheelchair distance. The Qualified Allocation Plan does not specifically define how close services must be to receive credit for project location.

Finally, Craig Taylor pointed out that the 9% fixed tax credits will most likely be terminated at the end of 2013. It is essential for the projects applying to take advantage of this fixed rate to help the successful completion of projects. Craig stated several states have been allocating 2013 tax credits in 2012 to ensure the completion of projects prior to the 2013 deadline.

Nate Richmond, BlueLine Development, voiced his concern for the Sweetgrass Apartments award which was funded under the 2012 Tax Credit Allocations. Any delays in the start of construction of Sweetgrass Apartments may hinder the construction season and possibly the 9% in service tax credit rate. Short term, delays may not allow Sweetgrass Apartment to be feasible. Nate expressed the view that the Board should not change the allocation process based upon a threat of litigation.

Heather McMilin, Homeword, had 2 project applications in the 2012 allocation round, one of which was awarded tax credits and one of which was not awarded tax credits. Having been on both sides of the awards, Heather stressed the

importance of following the Qualified Allocation Plan and its process. While the Plan is a working document approved each year, workshops are held to address any issues, grey areas, and/or new requirements. It is through these workshops where the Qualified Allocation Plan is updated to clarify any issues and/or incorporate new requirements. Heather further stated that the scoring has been designed to meet threshold and once threshold has been met, scoring does not determine the award of tax credits. The Board has discretion to award the projects it determines best meets the needs of Montana. Heather addressed the allocation of future credits to the 2012 year. Heather stated some states have implemented this process, however, it is not appropriate to implement in a reactionary fashion. Heather also addressed the negative effects of potential delays in pursuing awarded projects.

Betsy Scanlin moved and Jeff Rupp seconded the motion to reconsider Freedoms Path application for an award of 2012 tax credits. Chairman Crowley asked for comments. Betsy stated the Applicant has the right to have its request of reconsideration be considered by the Board. Betsy complimented the Freedoms Path application on the scope of addressing veteran's homelessness. Betsy stated she was in favor of the project at the Allocation meeting and still supports this project. However, with the limited Tax Credit funds and the number of meritorious projects applying and meeting threshold requirements, the Board has a very difficult task to determine the allocation of these Tax Credits. The Board reviewed all of the applicants and allocated based on the housing needs of Montana.

Jeanette McKee addressed the scoring of the applications. While 2012's allocations were coincidentally awarded to the three highest scoring applications, this is not how she determines which projects to allocate funds. Jeanette appreciated Nate Richmond and Heather McMilin's words of "sometimes you win and sometimes you lose". This is the spirit of the process. Finally, Jeanette expressed her support for the MBOH staff and in particular, Mary Bair. The Staff reviews these applications in great detail and scores each application consistently with the Qualified Allocation Plan.

Jeff Rupp stated that he supported Freedoms Path's application at the Allocation meeting, as he does at this meeting. Jeff further stated that should this project meet threshold, he will support this project in the future. However, Jeff does not support this action or these behaviors, challenging the discretion of the Board in doing what it sees best for the greater good of Montana. Jeff reminded the Applicant that despite being a lower scoring project, it had a good debate and consideration, and a vote outside of the scoring system.

Roll Call

Bob Gauthier- No

Betsy Scanlin- No

Jeff Rupp- No

Jeanette McKee- No

JP Crowley - No

The motion fails unanimously. Chairman Crowley stated he appreciates all of the non-funded applications of the 2012 Tax Credit Allocations and encourages them to reapply in 2013. Betsy suggested that if tax credits were returned, a second allocation round would be announced.

### **FINANCE PROGRAM**

Chuck Nemecek provided the Finance program update. The 10-year Treasury dropped to 1.92% as of meeting time due to Europe and the US economy.

MBOH will have a Bond call in the amount of \$44 million in addition to scheduled six month debt service occurring on June 1, 2012. The call amount is less than the amount for December 2011 showing a slowdown in loan payoffs.

### **HOMEOWNERSHIP PROGRAM**

Vicki Bauer provided the Homeownership Program update. Currently, for the Bond issuance scheduled for July 2012, MBOH has approximately \$17 million reserved. The Servicing software has been installed and is now being tested. The audit for the MFEC rounds 4 and 5 has been completed.

The MCC program has approximately 4 million remaining for this program. Staff projects a request to convert funds at the next Board meeting.

During the Mountain Plains Regional Housing Summit, discussions centered on down payment assistance programs. Some of the states do provide a down payment assistance program. Vicki stated she will be requesting information from these states and will be formulating a program for the Board's review.

### **EXECUTIVE DIRECTOR**

Bruce Brensdaal reminded the Board of the Housing Conference in Billings on June 26 – 28, 2012. Penny Cope reviewed the Federal Housing Properties Book she compiled for Bruce and JP to take to the 2012 Legislative Conference. JP stated the US Congressmen really appreciated the book as a reference for Montana Housing.

Meeting adjourned at 10:50 p.m.

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Jeffrey Rupp, Secretary

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Date