Board of Supervisors Memorandum

November 5, 2013

Agenda Item 21, Resolution No. 2013-99:
Sunnyside Pointe Affordable Housing,
Continued from the October 15, 2013 Consent Agenda

Background

The purpose of Resolution No. 2013-99 and associated documents is to authorize the execution of documents amending resale restrictions and liens that were placed on the Sunnyside Pointe affordable ownership subdivision by Pima County pursuant to the Pima County General Obligation (GO) Affordable Housing Bond Program and the US Department of Housing and Urban Development Neighborhood Stabilization Program (NSP2).

These changes will resolve a finding by the Department of Housing and Urban Development (HUD) against the Sunnyside Pointe developer and the Pima County NSP2 program and will meet guidelines established by HUD for placing liens and resale restrictions on properties. The HUD finding was that the developer had completed HUD closing documents on each of the houses showing a sales price, before the subsidies, that exceeded the appraised values of the houses. The appraised values were lower than originally anticipated because of the recession-depressed housing market.

As part of the corrective action to resolve the finding, Pima County was directed by HUD to reduce the affordability lien on the NSP2 homes to a non-monetary deed restriction and amend the GO lien to an amount that does not exceed the difference between the appraised value and the amount of the purchase price.

In addition, Old Pueblo Community Services (OPCS), the sub-recipient of the NSP2 grant, has agreed to insure long-term affordability by exercising its right of first refusal in the event an NSP2 owner chooses to sell the home prior to the expiration of the 30-year Affordability Period and receives a *bone fide* offer from a household with an income exceeding the low income (80 percent of median income) threshold. This arrangement will meet grant requirements and resolve the HUD finding.

These changes are necessary because OPCS erred in completing the HUD sales documents (HUD-1) by using the total development cost rather than the appraised value at the time of sale to determine the sales price. This error was discovered in March 2013 during an audit of files by the Federal Housing Administration (FHA) that resulted in a HUD finding and corrective action directive that requires OPCS to adjust the sales price to appraised value at the time of the sale; to reduce liens against the property as explained above; and insure over the Federal Home Loan Bank Affordable Housing Program liens so the homeowner will not be negatively affected and will not be, on paper, "underwater."

This resolution, if approved by the Board of Supervisors, acknowledges and authorizes the corrective action and authorizes the Board Chairman to sign all documents required for the correction on each of the houses sold.

History

Sunnyside Pointe is an affordable housing development located on South Park Avenue and Bantam Street in Tucson. It is being developed through a partnership of two nonprofit organizations, La Frontera, Arizona and Old Pueblo Community Foundation (d/b/a Old Pueblo Community Services; OPCS). OPCS contracted with Pepper Viner Builders to construct and sell the houses. Pima County Bond funds in the amount $1,464,218 were used to construct site improvements that will support the construction of 90 single-family homes that will be sold to low-income households earning not more than 80 percent of Area Median Income (AMI). Additional sources of subsidy for the project include $1.8 million in private affordable housing grants from the Federal Home Loan Bank of San Francisco and $600,000 in federal NSP2 funds from the grant allocated by HUD to Pima County as Grantee. At this time, 30 homes have been completed, with 19 of the 20 homes constructed with NSP2 funds sold to qualified low-income households.

The NSP2 funds were awarded by the HUD through a competitive process from the American Recovery and Reinvestment Act (ARRA). Pima County received $22.165 million for distribution to a consortium of eight nonprofit agencies and the City of Tucson. Prior to the application, the prospective members submitted project proposals that were reviewed and selected for inclusion in the application. In addition to Pima County and the City of Tucson, consortium members include Southern Arizona Land Trust, Community Investment Corporation, Habitat for Humanity/Tucson, Primavera Foundation, Family Housing Resources, Chicanos Por La Causa, and OPCS. Pursuant to HUD grant requirements, NSP2 funding was targeted to a geographically defined area of greatest need as defined by area foreclosure rates and other factors. The grant was for a three-year term, which ended in February 2013. A total of 17 projects and approximately 400 houses were either constructed or purchased out of foreclosure and renovated under this program.

NSP2 followed the basic guidelines of the Community Development Block Grant program. Eligible activities included acquisition and rehabilitation of foreclosed homes, demolition of blighted structures, financial assistance to purchase foreclosed properties, land banking and redevelopment of vacant land for housing.

A description of how the liens are being changed to meet HUD and County requirements is described below pursuant to each of the funding sources.

1. Federal Home Loan Bank (Affordable Housing Program (AFP) Loan. The Home Loan Bank required that there be a five-year $22,500 declining balance loan on each affordable home sold in the development. The lien decreases by $4,500 every year the home is owned by the low-income buyer. OPCS has obtained an agreement from the title company to avoid any impact to the homeowner if the house is sold to a non-qualified buyer or foreclosed. The

title company will "insure over" the lien. Therefore, if the lien must be paid, the title company, not the homeowner, will pay the remaining balance of the lien.

2. Pima County GO Bond Revenue. The sum of $1,464,218 was provided for the construction of the infrastructure necessary to build Phase I of the development. In exchange for this funding, Sunnyside Pointe development is required to build and 90 homes to qualified low-income borrowers (at or below 80 percent AMI. The contract called for the developer to place a 30-year affordability lien on each property with the County as the beneficiary in an amount "equal to the portion of the GO revenues allocated to the lot." (Roughly $16,200 per lot.) The lien is pursuant to A.R.S. § 11-251.10. Sunnyside never followed this requirement and placed liens on the lots in whatever amount they needed to "make their numbers work." Amounts ranged from $586 to $21,836. Because of the requirements of HUD and FHA, it was determined these liens had to be modified to the difference between the appraised value of the home and the first mortgage in order for FHA to agree to insure the property.

State statute does not set a specific dollar amount (or any dollar amount for that matter) for an affordability lien. It requires that continuous affordability be secured for not less than 30 years through a "regulatory agreement." A.R.S. § 11-251.10(B). The only specific requirement for the agreement is that it be "binding on a successor in interest" and "recorded." A.R.S. § 11-251.10(C). The County generally has chosen to attach a monetary value (usually equal to the GO bond contribution) to the affordability liens in order to make a transfer to a non-qualified buyer less attractive. Because of the economics of this particular development, liens for the full amount of the GO contribution put the household "underwater" on paper. Because of this, FHA refused to insure the properties when combined with the NSP2 lien as shown below. This resulted in conflict with the HUD 20-year requirement and the HUD directive for correction. The affordability investment of the bond funds is protected for 30 years.

3. NSP2 Federal Funds. The amount of $600,000 was to be used for 20 of the 90 houses in Phase I. The federal regulations regarding the use of these funds were very fluid. When the program was designed, it appeared that the HUD regulations sanctioned placing a monetary lien for the amount of the NSP2 funding on the home (between $18,800 and $40,000) to secure the federally required 20-year affordability period. Pima County was the beneficiary on these liens. If a home was sold during the 20-year period, the funding would have been returned to the County to be used for another NSP2 eligible project. During the process of resolving the HUD finding, HUD determined the regulations allowed only a non-monetary affordability restriction; subsequent buyers must meet the income requirements for a period of 20 years. The 20-year period runs concurrently with the 30-year GO bond lien. There is no cost to Pima County associated with reducing these liens and no options other than to follow HUD's directives.

Nineteen of the 20 NEP-2 required houses have already been sold. Pima County will not allow the sale of the 20th house until the finding is resolved to the satisfaction of HUD. Also, during the process of resolving the finding, one home was lost to foreclosure; and, consistent

with federal regulations, the NSP2 funds used for the construction of that home are not recoverable.

The documents described below represent the final steps in resolution of the finding:

- Exhibit A modifies the original agreement signed by the buyer to correct the sales price to be no more than the appraised value at the time of acquisition.
- Exhibit B releases the original liens attached to NSP2 and Housing Bond programs.
- Exhibit C modifies the amount of the bond penalty, which is paid to Pima County if the owner does not comply with the terms of the bond program by selling the home to a buyer whose income exceeds 80 percent of the AMI. This affordability requirement is for 30 years; the NSP lien is for 20 years; and these run concurrently.
- Exhibit D provides for a title policy to "insure over the AHP lien." The Federal Home Loan Bank provided a subsidy of $20,000, which is secured by a lien that is reduced by 20 percent each year until it reaches zero in the fifth year. In the event of a resale to an ineligible buyer, La Frontera, as the property's developer, will repay the amount remaining on the "loan."
- Exhibit E is a modification to the original HUD one statement adjusting the sales price of the home, as well as the modification made to the liens as stated above.

Finally, Exhibit A to the Special Warranty Deed provides a mechanism for La Frontera to match an offer to purchase the homes by an over-income buyer. La Frontera would purchase the property and, in turn, resell it to an eligible buyer. A set of documents have been submitted to HUD for review as a means of proving compliance with HUD's corrective actions. Assuming the lien documents associated with the resolution are executed by the Board Chairman, the Community Development Department anticipates the removal of the HUD finding with no negative impact on future associations with HUD.

Recommendation

I recommend the Board of Supervisors approve Resolution 2013-99, which acknowledges the corrective action required by the US Department of Housing and Urban Development and authorizes the Chairman of the Board of Supervisors to sign all documents required to correct the documents for each of the houses sold in Sunnyside Pointe.

Respectfully submitted,

C.H. Huckelberry
County Administrator

CHH/mjk – October 29, 2013

c: Hank Atha, Deputy County Administrator for Community and Economic Development