

**FRUITA HOUSING AUTHORITY MEETING
JUNE 20, 2023
6:00 P.M.**

Present:

Chairman Joel Kincaid
Vice-Chairman Matthew Brehm
Commissioner Jeannine Purser
Commissioner James Williams
Commissioner Ken Kreie
Commissioner Amy Miller
Commissioner Aaron Hancey

Excused Absent:

(None)

**Housing Authority
and City staff present:**

Executive Director Mike Bennett
Executive Director Designee Shannon Vassen
Treasurer Director Margaret Sell
Secretary Deb Woods
Communications and Engagement Specialist Ciara DePinto
Housing Authority Attorney Mary Elizabeth Geiger

Also present:

Special Counsel to the Fruita Housing Authority Dee Wisor
with Butler Snow

1. CALL TO ORDER AND ROLL CALL

The fourth meeting of the Fruita Housing Authority was called to order by Chairman Joel Kincaid at 6:00 p.m. The meeting was held in person only.

2. AGENDA – ADOPT/AMEND

- **COMMISSIONER MILLER MOVED TO APPROVE THE AGENDA AS PRESENTED. COMMISSIONER HANCEY SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

3. CONSENT AGENDA

- A. MINUTES – A REQUEST TO APPROVE THE MINUTES OF THE APRIL 4, 2023 JOINT FRUITA HOUSING AUTHORITY AND FRUITA CITY COUNCIL MEETING**
- B. RESOLUTION 2023-03 – A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE FRUITA HOUSING AUTHORITY ALLOWING FOR VIRTUAL MEETINGS**

Chairman Kincaid asked if there were any requests from the public to remove any item(s) from the Consent agenda for further discussion. There were no such requests. He referred the matter to the Fruita Housing Authority.

- **COMMISSIONER PURSER MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. COMMISSIONER KREIE SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

4. OTHER AGENDA ITEMS

- A. **EXECUTIVE SESSION – A REQUEST TO CONVENE IN EXECUTIVE SESSION FOR A CONFERENCE WITH THE HOUSING AUTHORITY ATTORNEY AND HOUSING AUTHORITY SPECIAL COUNSEL TO RECEIVE LEGAL ADVICE PURSUANT TO C.R.S. SECTION 24-6-402(4)(B) REGARDING THE SPECIAL LIMITED PARTNERSHIP ADDENDUM FOR THE INDIBUILD FRUITA LLLP**
- **COMMISSIONER PURSER MOVED TO CONVENE IN EXECUTIVE SESSION FOR A CONFERENCE WITH THE HOUSING AUTHORITY ATTORNEY AND HOUSING AUTHORITY SPECIAL COUNSEL TO RECEIVE LEGAL ADVICE PURSUANT TO C.R.S. SECTION 24-6-402(4)(B) REGARDING THE SPECIAL LIMITED PARTNERSHIP ADDENDUM FOR THE INDIBUILD FRUITA LLLP. COMMISSIONER MILLER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

The Fruita Housing Authority convened in Executive Session at 6:17 p.m.

The Fruita Housing Authority reconvened the regular meeting at 6:25 p.m.

5. PUBLIC HEARINGS

- A. **RESOLUTION FHA 2023-04 – A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE FRUITA HOUSING AUTHORITY AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN AN ADDENDUM TO THE AMENDED AND RESTATED AGREEMENT OF LIMITED LIABILITY PARTNERSHIP – DEE WISOR, SPECIAL COUNSEL TO FHA**

Special Counsel to the Fruita Housing Authority Dee Wisor with the law firm of Butler Snow provided staff's presentation to the Fruita Housing Authority Board of Commissioners. Mr. Wisor explained that Resolution FHA 2023-04 was regarding the Fruita Mews project, which is proposed as 50 units, 44 of which will be at Low Income Housing Tax Credit (LIHTC) rates and six of which will be at higher income restrictions, but less than 100% of Average Median Income (AMI).

The goal of the Resolution is to have the Fruita Housing Authority become a Special Limited Partner in the partnership that will develop and own the Fruita Mews project. The purpose of that is because there is a state statute that says, "When a Housing Authority has an ownership interest in the development, it carries with it exemption from taxation for two types of taxes: 1) property

tax (as long as the Housing Authority is a part of the project) consisting of not only the City's property taxes, but also the property tax of the other overlapping taxing entities, and 2) the sales and use tax exemption for the construction of the project and not just the City's taxes, but other taxing entities who would normally collect sales and use tax on the project.

Mr. Wisor continued that the Fruita Housing Authority was to become a Special Limited Partner at a .01% interest, which he agreed sounded pretty low, but is actually quite common in these transactions and is sufficient to provide for the tax exemption.

Mr. Wisor explained that the Addendum provides the following:

- That the partnership will reimburse the Housing Authority and the City of Fruita for any out-of-pocket costs or administrative expenses associated with the project. Mr. Wisor said mainly, those would be his and Mary Elizabeth Geiger's fees for legal work.
- The partnership is also agreeing to pay an annual fee to the Housing Authority of \$5,000 as was discussed with the Housing Authority Commissioners at a previous meeting.
- IndiBuild has offered (and Mr. Wisor thinks the Housing Authority should accept) the right of the Housing Authority to have a right of first refusal should they get an offer from a third party to buy the project.
- The terms under which the sale price would be determined.
- An offer to the Housing Authority a purchase option that could be exercised at any time, although that's likely a more expensive purchase option, at least early on, because it would most likely get to be a fair market value of the project.
- That the Housing Authority, its Commissioners, staff and other consultants to the Authority would not have any liability for acting under the Addendum except in the case of fraud, intentional misconduct or gross negligence.
- That the partnership will make certain financial reports to the Housing Authority on a quarterly basis and these would include the unaudited Financial Statements as well as a Rent Roll and on an annual basis, would include things like audited Financials, tax returns, Operating Budget and tax documents like a K-1.
- In the final year of the compliance period (15 years under LIHTC rules), an evaluation of whether the property tax exemption remains necessary for the project to be financially viable and if it's needed for an additional period of time, there's a three-year annual evaluation to make that determination.

Mr. Wisor suggested that the Resolution be modified to allow insubstantial changes to the document with the consent of the Executive Director and Attorney Mary Elizabeth Geiger or himself. He clarified that the essential terms above shouldn't change, but since IndiBuild hasn't closed yet, it was very possible that there will be some minor changes.

Commissioner Miller asked who will be holding IndiBuild in compliance during the 15-year compliance period. Mr. Wisor responded that there are several entities that are going to be concerned about compliance: the tax credit investor really wants to make sure that they are getting the tax credits, the IRS might say they can't get the tax credits if the project is not in compliance, and CHFA and the Division of Housing will also care about it a lot. There will be a land use restriction agreement between CHFA and the Partnership that will get recorded against the project that will set forth the (unintelligible) limitations.

Chairman Joel Kincaid opened the public hearing for public comment. Hearing none, he closed the public hearing and brought the matter back before the Fruita Housing Authority Commissioners.

- **COMMISSIONER KREIE MOVED TO ADOPT RESOLUTION FHA 2023-04 – AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN AN ADDENDUM TO THE AMENDED AND RESTATED AGREEMENT OF LIMITED LIABILITY PARTNERSHIP WITH AN AMENDMENT TO SECTION 1 OF THE ADDENDUM TO STATE AS FOLLOWS: THAT THE FRUITA HOUSING AUTHORITY HEREBY AUTHORIZES THE EXECUTIVE DIRECTOR TO EXECUTE THE SLP ADDENDUM INSUBSTANTIALLY THE FORM WHICH IS ATTACHED HERETO WITH ONLY SUCH CHANGES AS ARE NOT INCONSISTENT WITH THE ESSENTIAL TERMS OF THE FORM AS SUCH CHANGES MAY BE APPROVED BY THE EXECUTIVE DIRECTOR SPECIAL COUNSEL TO THE AUTHORITY AND AUTHORITY ATTORNEY. COMMISSIONER MILLER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

6. ADJOURN

With no further business to come before the Fruita Housing Authority, the meeting was adjourned at 6:34 p.m.

Respectfully submitted,

Debra Woods
Secretary
Fruita Housing Authority