

**YAMPA VALLEY HOUSING AUTHORITY BOARD MEETING**  
**June 13, 2013**

Rich Lowe, Yampa Valley Housing Authority Board Acting-President, called the regular monthly meeting of the Yampa Valley Housing Authority to order at 12:00 p.m.

Board members present: County Commissioner Doug Monger, Johnny Sawyer, City Councilman Scott Myller, Kristi Brown and John Spezia. Kathi Meyer and Catherine Carson participated via conference call. Trish Sullivan was absent.

Others present: Jason Peasley, Yampa Valley Housing Authority Executive Director; Bob Weiss, attorney for the Housing Authority and citizen Scott Wedel. Sarah Katherman recorded the meeting and prepared the minutes.

**EN RE: PUBLIC COMMENT**

Mr. Scott Wedel stated that the website for the YVHA is out of date and included no agenda, no information regarding the meeting, and no minutes for the past year's meetings. He said that when he contacted the YVHA and County Manager Tom Sullivan for information, he was given the letter from the Denver attorney and was told that he could submit a CORA request for further information. Mr. Wedel stated that his understanding of the CORA was that YVHA was required to respond within 3 days, adding that the YVHA had not responded to his request after 5 days. He offered that the organization was a mess.

Referring to the attorney's letter regarding the First National Bank of the Rockies (FNBR) loan and the payment of debt by YVHA, Mr. Wedel stated that he did not understand how the YVHA had continued to make payments on the Sierra View lots, the Fish Creek mobile homes and the Hillside Village property for seven months under a legal opinion that the organization is not legally allowed to make such payments.

**EN RE: ELK RIVER VILLAGE**

Mr. Bob Weiss reviewed the history of the Elk River Village property. He stated that the land was originally purchased in August 2006 with seller financing and was refinanced through FNBR in 2007. Kathi clarified that when YVHA had successfully completed the Fox Creek development and was looking for a new project, a private developer was in the process of sheparding the parcel in question through the planning process for a multi-family project. The YVHA Board decided that this would be a reasonable project and purchased the property. She stated that FNBR had responded to a request for proposals that had been posted by YVHA. Kathi stated that other lenders had expressed interest in the project, but that she could not recall if other formal proposals had been submitted.

Mr. Weiss reviewed that in 2007 and for many years prior, the need for affordable housing had been identified as a pressing issue in the community. He stated that there were many opinions on how the issue should be addressed, but City Council and others agreed that the problem needed to be addressed immediately before certain segments of the community would be priced out the housing market. Several strategies for encouraging affordable housing were pursued. Mr. Weiss stated that many leaders in the community as well as the *Steamboat Pilot and Today* were calling for the immediate acquisition of land that could be used for affordable housing. In response, YVHA purchased the Fox Creek property and successfully developed it. Mr. Weiss stated that the Elk River Village parcel was purchased following the completion of the Fox Creek project. When the recession hit and land values plummeted, many people criticized the purchase of the Elk River Village property, although many people in both the private and public sectors had been caught in similar situations.

Mr. Weiss stated that at the time the FNBR loan was made, there was an agreement in effect between the YVHA and Routt County and the City of Steamboat Springs stating that the City and County were not liable for the debts of YVHA. At the time the loan was made the financial statements of the YVHA were made available to the bank, so it was abundantly clear that the YVHA had the ability to repay the loan if the property were developed or sold, but that there was no other source of funds to repay the loan. Mr. Weiss noted that the refinancing was a non-recourse loan, meaning that the loan was based on the purchased asset alone, not on the credit-worthiness of the borrower. The only collateral to secure the loan was the land.

Catherine stated that her understanding of the loan was that if the land was returned to the bank, any incremental difference between the loan amount and what the land was sold for would remain as a liability on the books of YVHA. Mr. Weiss offered that this is the question. He clarified that a normal borrower can be liable for any deficiency at the sale of the land, but there is no ability on the part of the lender to collect a deficiency from a government entity; the collateral is the land itself. It would have been obvious to any lender that the YVHA had no means to repay the loan other than the sale or development of the property.

Mr. Weiss stated that in 2008 an approval was obtained for a 54-unit Planned Unit Development, but that it became obvious that under the market conditions at that time it was not feasible to develop the property. He stated that the loan was renewed in 2008, 2009 and 2010 with an adjusted interest rate. In 2011 the property was reappraised for \$1.5 million. Kathi added that under the advice of its accountant the YVHA took a write down from \$2 million to \$1.5 million. She stated that YVHA subsequently received several offers for the property or portions thereof: \$500,000 for 4 acres and then \$800,000 cash for the entire property (by the same developer).

Mr. Weiss stated that in August of 2012 it became apparent that continuing to make payments on the loan was not sustainable. Rich, Catherine and Kathi met with the bank to discuss restructuring the loan. It was clear that YVHA could not develop, sell or repay the bank. Mr. Weiss stated that he was contacted in the fall of 2012 for a legal opinion on the matter. He said that after reviewing the loan documents he recommended hiring Dee Wisor, a well-respected municipal bond lawyer based in Denver. An opinion letter from Mr. Wisor was received in November. Kristi added that during the fall discussions, FNBR informed the YVHA that while the bank was not in a position at that time to negotiate a short sale, debt forgiveness, write down of some of the principle or other resolution, but would be in a position to do so in January of 2013. In the interim YVHA continued to make payments on the loan, although all communication on the bank's part ceased in January.

Mr. Weiss emphasized that this situation is fundamentally different from the other loans held by YVHA. The revenues from the Fish Creek Mobile Home Park and the Hillside Village Apartments are more than sufficient to cover their loan payments. The excess revenues from these two projects are sufficient to pay the management fees on the Sierra View lots. The Elk River Village property produces no revenue. No City or County funds contribute to the payment of the other loans; but such funds are being used to pay Elk River Village loan payments.

Mr. Weiss stated that YVHA, like many other developers that got underwater at the time, has approached the bank in an effort to find a resolution to the problem. He noted that there are legal issues in this case due to the involvement of government entities. He stated that the issue of YVHA not having the funds to pay the loan or the ability to sell or develop the property would still exist, even without TABOR considerations. Mr. Weiss stated that the bank has expressed interest in negotiation, and offered that the question is what sort of resolution would be acceptable to the YVHA Board of Directors. Jason reported that a tentative meeting with Mr. Peter Waller of FNBR has been scheduled for Wednesday, June 19<sup>th</sup> at 2:00 p.m.

## EN RE: EXECUTIVE SESSION

Rich stated that the Board would enter executive session for the purpose of a conference with the attorney, Bob Weiss, pursuant to C. R. S. §24-6-402 (4)(b) to receive legal advice concerning specific questions pertaining to the Elk River Village property located on Elk River Road.

### MOTION

Kristi moved to enter executive session pursuant to C. R. S. §24-6-402 (4)(b) to discuss specific questions pertaining to the Elk River Village property. Included in the executive session would be the Housing Authority Board members, the Housing Authority Director, and the Housing Authority's attorney. John seconded; the motion carried unanimously.

### MOTION

John moved to exit the executive session. Kristi seconded; the motion carried unanimously.

The executive session adjourned at 1:30 p.m. Rich stated that no minutes or formal actions were taken during the executive session, and only the Elk River property was discussed during the executive session.

## EN RE: ELK RIVER VILLAGE LOAN WITH FIRST NATIONAL BANK OF THE ROCKIES

Jason reviewed that a meeting with FNBR had been tentatively scheduled for Wednesday, June 19<sup>th</sup> to include Kathi, Catherine, Jason, Bob Weiss, Peter Waller of FNBR and the bank's attorneys.

### MOTION

Catherine stated that the goal of YVHA has always been to find a mutually successful resolution and that the bank has agreed to meet. She moved that the YHVA President, Treasurer, Executive Director and attorney should meet with the bank representatives on Wed. June 19, 2013 and that YVHA should make the June payment today, as the bank has responded to the letter submitted by YVHA. John Spezia seconded the motion.

Under discussion, Scott asked whether to the YVHA representatives would prefer to go into the negotiations from the position of having made the payment, or from the position of having defaulted. Kathi said that her preference was to restructure the loan. She suggested that YVHA withhold the payment, but bring it with them to the meeting. Catherine offered that the stronger position would be to make the payment to show that YVHA is going into the negotiation in good faith. Jason stated that if YVHA defaults today, \$6800 in interest would have accrued by Wednesday. Catherine stated that withholding the payment would result in the discussion focusing on the default rather than the resolution. Doug stated that he was opposed to making the payment, citing the lack of cooperation by the bank and that simply offering to meet is not sufficient due diligence. Kristi suggested the possibility of walking in with the deed as well as the payment. John expressed his agreement with Catherine, adding that if the negotiations do not work, future payments would be withheld. Johnny said that he was torn regarding which was the best strategy, but stated his support for withholding the payment per the decision agreed upon last month. He offered that YVHA needs to show it was serious when it made that decision. John said that the letter from the bank included hints that the bank was willing to share the loss or gain on the property. He said they should be given one more chance. Rich said that he agreed with Johnny in being torn but feeling that it would be difficult to reverse the decision made last month. He supported the idea of arming the representatives with both the payment and the deed at the meeting, and leaving the decision at the discretion of the negotiating committee.

**The motion failed 2 – 6.**

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John stated that goal of the negotiations should be reduced principle and interest with shared appreciation. Doug said that the only outstanding issue is to determine on what basis Kathi, Catherine and Jason should decide whether to give them the June payment. Johnny suggested that the Board discuss acceptable negotiation principles. Bob stated that it would be appropriate to go into executive session for that discussion. Catherine suggested scheduling a special meeting of the full YVHA Board for next week after the meeting with the bank. Kathi agreed. Kristi offered that the meeting with the bank was likely to be only a preliminary discussion and that decisions would not be made. Rich confirmed that the special meeting would be held on Friday, June 21 at noon. Doug summarized that the decision from last month's Board meeting still stands, and that action on the FNBR loan could potentially be taken by the Board on Friday. Bob suggested that it would be very helpful if Catherine and Jason could look at possible payment restructuring options prior to the meeting. Catherine stated that the meeting should include all four negotiation participants.

#### **EN RE: CONSENT AGENDA**

The following items were presented on the consent agenda:

1. Review and approval of minutes of the regular Housing Authority Board meetings of April 30, 2013 and May 13, 2013
2. Review and approval of the April 2013 financial statements.

Rich asked whether any Board member wished to remove an item from the consent agenda for further discussion. Catherine requested the removal of the review of the minutes from the consent agenda.

Catherine stated that her comment on the top of page 2 should be amended to state that providing notice to the bank was the correct and professional procedure and that the ultimate goal was to find a solution. She added that the minutes should also include a sentence stating that she and Rich had asked Jason to calculate the interest penalties that would result from the suspension of payments on the loan for the Board's review at the June meeting. Rich agreed and suggested this statement be inserted between the first and second paragraphs of page 2.

#### **MOTION**

John moved to approve the consent agenda with the amendments to the minutes of the May 13, 2013 YVHA meeting. Doug seconded; the motion carried unanimously.

#### **EN RE: CITY OF STEAMBOAT SPRINGS COMMUNITY HOUSING PROGRAM**

Rich stated that developers have been requesting modifications to the fee in lieu of affordable housing policy of the City. Scott stated that Inclusionary Zoning policy remains in effect, but over the years the City has made it easier for developers to submit a fee in lieu of building affordable units. Jason reviewed the history of the Inclusionary Zoning Ordinance and the changes that had been made over the years, noting that the linkage provision was suspended indefinitely and various compliance methods were added in 2009. The amount of the fee in lieu was also cut by approximately 2/3. Jason reviewed how the amount is calculated and the assumptions used to develop the formula.

Rich suggested that rather than debate the merits of the various tools used to support affordable housing, the YVHA Board should decide if it wants to make a recommendation to City Council regarding its policy. He offered that since the YVHA does not benefit from the money collected, it should decline from registering an opinion on the policy, particularly in the current environment. Jason clarified that the funds are used by YVHA for

its down payment assistance program. Rich added that YVHA had requested the ability to use the funds for the Fish Creek infrastructure repairs project and the Elk River Village property, but the request was declined. John stated that if the City Council is going to eliminate the fee in lieu, this program should be replaced with something as good or better. Doug suggested that the best approach would be to encourage City Council not to act without careful deliberation and community involvement.

Jason reported that he is working with Planning Director Tyler Gibbs on establishing the cost, scope and time frame for a review of the current community housing ordinance, the needs of the community and how to change the ordinance to broaden its funding source so that it does not appear to be borne exclusively by the developers. He stated that he would be the representative of YVHA on the steering committee that would guide a consultant-driven review, evaluation and update of the community housing ordinance. Catherine stated her support for this idea and for giving Jason the authority to work with Tyler and the steering committee as the representative of YVHA. Jason said that he had presented a broad overview of the research he had done on the community's current housing needs at the last Council meeting and Tyler had provided information on how the City's funding had been used to date. Jason asked for direction from the Board on what his role in the process should be.

Rich suggested that YVHA should not be driving the discussion or forcing the agenda. John stated that the YVHA needs to be firm regarding the situation the community is in and the problems it faces regarding housing. Kristi offered that the YVHA exists because its members feel there is an ongoing need. She offered that if YVHA is not going to advocate for affordable housing, who is? Jason said that he was okay with urging the City Council not to make a hasty decision, and stating that YVHA is willing to devote staff time to the public process. The Board agreed with this position. Catherine offered that Jason's expertise on the issue would be important to the process. The Board discussed how to direct Jason regarding his level of involvement.

#### **MOTION**

Kristi moved to authorize Jason to represent the YVHA in a collaborative effort with the City representatives as an advocate for the affordable housing needs of the community. John seconded the motion. **The motion carried unanimously.**

#### **EN RE: STAFF REPORTS**

Jason reported that things are running well. Regarding the engineering work on the Fish Creek infrastructure project, Jason stated that he had met with Mt. Werner Water Director Jay Gallagher, who had informed him that there is no chance that Mt. Werner will accept the infrastructure into its system. The project does not provide any overall benefit to the Mt. Werner system and so accepting it would not be a good investment for them. Jason suggested that there was little point in going to the Mt. Werner Board with the request. Doug suggested that it would be appropriate to send a letter to the Board anyway, if only to receive a response in writing clarifying why they will not accept the infrastructure. He offered that the request requires Board of Directors action. He added that as a courtesy, Mr. Gallagher should be informed that YVHA is sending such a letter.

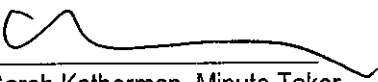
In response to a question from Kristi, Jason explained that because Mr. Werner Water will not accept the infrastructure, the infrastructure will continue to be owned by YVHA, who will then be responsible for it. He stated that YVHA would need to build into its fees a charge that would go into a dedicated fund for replacement of the system in the future. He added that Mt. Werner does not accept new infrastructure unless it provides some benefit to the system such as allowing for future expansion or providing redundancy.

Rich agreed that a letter from the Mt. Werner Water Board of Directors was needed to document that an effort was made. Doug added that YVHA should ensure that it receives the wholesale price on water.

**EN RE: ADJOURNMENT**

Scott moved to adjourn the regular meeting of the Housing Authority. Kristi seconded; the motion carried unanimously. The meeting was adjourned at 2:15 p.m.

No further business coming before the Board, same adjourned sine die.

  
Sarah Katherman, Minute Taker

  
Kathi Meyer, President

**STATEMENT FROM ATTORNEY REGARDING ATTORNEY-CLIENT PRIVILEGE**

The undersigned Robert G. Weiss hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that the portion of the executive session held on June 13, 2013 that was not recorded and which related to receiving legal advice concerning specific questions pertaining to the Elk River Village property located on Elk River Road constituted a privileged attorney-client communication in the opinion of the undersigned attorney.



Robert G. Weiss, Counsel

Date: 8-14-2013