

YAMPA VALLEY HOUSING AUTHORITY BOARD MEETING
February 19, 2015

Kathi Meyer, Yampa Valley Housing Authority Board President, called the regular monthly meeting of the Yampa Valley Housing Authority to order at 12:00 p.m.

Board members present included: Kathi Meyer, Trish Sullivan, John Spezia, Kristi Brown and Catherine Carson.

Others present included: Jason Peasley, Yampa Valley Housing Authority Executive Director; Bob Weiss, attorney; prospective Board members: Dillon Fulcher, John St. Pierre, Roger Ashton and Cole Hewitt. Members of the public included: Jackie Saari, Jim Wallen, Michelle Matthews, Joan Connelly, Jaime Emmons, Michael Emmons, Ryan Seiler, CJ Berg, Michelle Kuntz and Jay Purcell. Sarah Katherman recorded the meeting and prepared the minutes.

EN RE: PUBLIC COMMENT

There was no general public comment.

EN RE: 1335 HILLTOP PARKWAY, UNIT D – DEED RESTRICTION WAIVER REQUEST

Jason reviewed that in April of 2014 the YVHA Board had granted a waiver to remove the deed restrictions on Unit D if the unit sold within six months of the decision. He explained that the unit had not sold and that the owner is now requesting an extension of deed restriction waiver. Ms. Joan Connelly, the realtor representing the owner, stated that she is now asking for a 12 month extension, noting that many of the potential buyers in the qualifying income category need more time to decide on the purchase and secure the necessary financing. She said that unit had been marketed at \$249,000 and that the last unit to sell in the Fox Creek Village sold for \$185,000. Ms. Connelly said that the assessor had told her that he expected the units would be worth approximately \$195/sq. ft. in 2015 with deed restrictions and \$285/sq. ft. without deed restrictions. The unit is just over 900 sq. ft. Catherine noted that over \$48,000 in community funds went into the construction of this unit.

Ms. Connelly stated that buyers do not want to purchase properties with deed restrictions. In response to a question from John Spezia, she said that she rarely has an opportunity to discuss the deed restrictions and their intended purpose with prospective buyers. She added that brokers are uninterested in these units unless they have verification that the deed restriction will be lifted. She said that the owners of Unit D are fixing up the unit in preparation for an appraisal, but expressed concern that the appraisal would not meet the asking price. Catherine noted that the owners purchased the property at the height of the market. She suggested that the owners could rent the property, which they would be allowed to do for 12 months out of every 5-year period. Joan noted that the deed restrictions would be removed if the property goes into foreclosure.

John asked for a breakdown of the Emmons' current salaries and expenses. There was a discussion of the rental market. Jim Wallen asked whether the YVHA Board actually has the authority to remove the deed restriction without the agreement of the Fox Creek Homeowners' Association (HOA). Bob Weiss reviewed Section 15.H of the deed restriction documents. He stated that it is his legal opinion that the Board has the right to waive the restrictions individually, as it sees fit. Kathi clarified that the Board has not waived the deed restrictions on any other units.

Kristi stated that she does not support waiving the deed restriction for one unit. She said that although the Emmons' personal circumstances are unfortunate, the policy should apply to all of the units or none of them. She noted that with the 3% appreciation cap, the 80% AMI units are still okay. The problem is with the 120% AMI units.

Kristi offered that the market is improving, and noted that there are many other homebuyers that purchased properties at the top of the market that are also having a difficult time. She stated that there are risks involved with purchasing property.

John Spezia expressed his agreement with Kristi's comments, but stated that the worst case scenario would be for the bank to foreclose and remove the deed restriction. He offered that if the owners could be allowed to rent the apartment, then the deed restriction could remain in place. In response to a question from Trish, Jim Wallen, representing the HOA, stated that the HOA wants YVHA to enforce the deed restrictions as they are. He said that the HOA understands that the deed restriction will go away if the unit goes into foreclosure, but that the HOA wants owners in the units, not renters. Trish stated that she agrees with Kristi that the deed restriction should not be waived.

Catherine offered that it would have been better if the appreciation had also been capped on the 120% AMI units. The equity challenge is with the second purchase. She said that the YVHA made a commitment to the buyers when the project was built that it would be occupied by owners and that she wants to maintain the integrity of the neighborhood. Catherine added, however, that she would not want to see the unit go into foreclosure. She stated that she does not support waiving the deed restriction on one unit, but suggested that the YVHA should review the deed restrictions and consider restructuring them on all 10 of the 120% AMI units. Kathi noted that the 80% AMI units are subject to a grant of \$250,000 that would have to be repaid if the deed restrictions are removed.

Kathi said that she would not support extending the waiver. She said that she did not think the appraisal of the unit would meet the asking price, and that continuing to market the unit at such a high price would not be successful.

Public Comment

John St. Pierre asked if there are covenants through which the HOA restricts rentals. Kathi stated that there are. The HOA has the authority to amend its covenants without the approval of the YVHA.

Joan stated that if the waiver is not extended the owners will have to take the unit off the market because it will not sell with a deed restriction. She said that if the unit goes into foreclosure, someone will buy it and subsequently rent it out. She added that if the unit is rented out for a year, the Emmons will be in the same situation or worse when that year is over. Joan said that she has two potential buyers interested in the unit, if the deed restriction is removed.

Catherine asked about the possibility of changing the deed restrictions on all the 120% AMI units such that the buyers would have to live in the units and work in Routt County, but not have to qualify within a particular income bracket, or perhaps change the maximum income to 160% AMI. Joan said that she did not know if this would make a difference.

Ryan Seiler stated that when he purchased his unit, it was sold as a two-stage project – with the 120% AMI units acting as a stepping stone which people could use to enter the housing market. He stated that instead the unit has become a burden that keeps him from moving on.

Jackie Saari said that there is a great deal of confusion regarding how the one year in five rental rule stated in the deed restriction is to be calculated. She said some people have purchased units and have rented them out immediately. Jackie said that once a buyer is qualified, no one ever comes around to ensure that they are living in the unit. She added that she does support lifting the deed restrictions on a single unit.

Dillon Fulcher offered that the deed restriction is intended to protect the market for those making 120% AMI or under. He stated that not only would this be eliminated under foreclosure, but so would the prohibition on renting. He suggested lifting the 120% AMI restriction in this one instance, while maintaining the rental restriction. Joan said that people know that they are not allowed to rent, but do it anyway. Jim stated that the rental restriction has never been enforced by the YVHA.

Jaime Emmons noted that the last unit to sell was an 80% AMI unit with an appreciation cap, so it is not comparable to their unit. She added that the HOA does not want to allow rentals (beyond the one in five year allowance) and noted that the deed restriction states that if the unit is rented, YVHA can force a sale. Jason clarified that while the deed restriction includes the last resort remedy of forced sale, this remedy has never been used; he added that there is a process associated with the remedy – it would not be immediate.

Catherine suggested that the YVHA Board direct Jason to gather information on all of the 120% AMI units. She stated that she would like to know how many of the 120% AMI units are owned by first owners and how many are on the second owner. She added that she would like to know if the problem in finding buyers is due to the 120% AMI income cap or whether the problem is with any deed restriction. Catherine also asked how much it would cost the community to make these units solvent in a deed restricted market.

John St. Pierre offered that the forced sale would depend on how much the bank was carrying on the loan. He asked what the YVHA's financial interest is in the units. Kathi clarified that the sole interest of YVHA is as the holder of the deed restriction. The HOA could reformulate the covenants at any time.

MOTION

John moved not to extend the deed restriction waiver on 1335 Hilltop Parkway, Unit D. Kristi seconded the motion. Catherine offered an amendment to consider extending the allowed rental period on this unit. The amendment was not accepted. The motion remained as stated.

The motion carried unanimously.

Bob Weiss offered that if the YVHA Board considers amending the deed restriction, it could consider suspending the deed restriction until the economy or housing market recovers. He asked if this sort of amendment would make the units easier to sell because the deed restriction would only be reinstated under better market conditions. He noted that the purpose of the deed restriction is to prevent obscene profits, which would only be possible in a tight housing market. Joan said she could not predict if this would impact the ability to sell the unit at this time or not.

EN RE: FOX CREEK VILLAGE CONDOMINIUM RENTAL POLICY

Jason reviewed that the only involvement that YVHA has at this point is as the holder of the deed restrictions. The YVHA Board is not party to the covenants and declarations, which are under control of the condominium owners through the HOA. The topic at hand is the rental provision in the deed restriction, which states that renters must work in Routt County. Owners living in their units are allowed to rent out rooms while they are in residence, without time restrictions. Entire units may be rented out for no more than twelve months out of every five year period. Jason acknowledged that units are being rented out at Fox Creek and that YVHA has not enforced this element of the deed restriction. He stated that the issue is what the YVHA policy regarding rentals will be moving forward, noting that while the YVHA qualifies tenants and verifies the term of the lease it does not otherwise screen tenants.

Bob suggested that whatever is done, should be done consistently across all the units. He added that the policy should be something the YVHA is willing and able to enforce. Regarding the interpretation of "one year out

of every five year period," Bob stated that it could be interpreted as either one year during the first five, then one year during the next five, etc., or it could be interpreted as one year in any rolling five year period. He suggested that the rolling five year period was preferable. Jackie stated that she is opposed to owners renting units without ever having lived there, which a rolling five year period would allow. Kathi stated that it was never the intent of the restriction to allow people to rent their units without ever living in them, but added that the important thing is to ensure that everyone understands how the policy is defined. Jason agreed that enforcement is the issue, and this cannot be done with a clear definition of what the policy is.

John St. Pierre offered that the HOA needs to rentals through the property covenants. It would then fall to the HOA and the property manager to enforce the policy. Bob said that the YVHA has the right to enforce the no rental deed restriction that runs with the property; the HOA has the right to manage the property independently.

Michelle Kuntz, of Central Park Management, stated that they had been managing Fox Creek since its creation. She said that the limitation on renting the units is specific to the deed restriction; it is not in the Fox Creek by-laws, rules or covenants. She said Central Park Management does not have the responsibility to manage renters; it deals directly with owners. Michelle stated that at its annual meeting the HOA made it clear that the rental guidelines should be enforced by the YVHA. Jackie stated that owners are supposed to notify YVHA when they rent their property, but YVHA is not enforcing this policy. Bob clarified that the YVHA has the right to enforce the deed restriction and that the HOA can do what it wants through its rules and covenants.

Kristi suggested that the HOA discuss the issue and return to the YVHA Board with its preferred interpretation of the one year in five policy. Language could then be added to the document for clarification. Jim stated that the HOA wants the YVHA to enforce the rental policy included in the deed restriction, as written.

Catherine offered that YVHA needs to be consistent. She said that when the properties were initially sold the YVHA made a commitment to the owners that it would enforce the rental policy stated in the deed restrictions. She suggested that a definition of the one in five year policy needs to be clarified and then the YVHA needs to figure out a mechanism through which it can be enforced. Catherine offered that the policy should include some sort of hardship clause to cover extraordinary circumstances.

Jay Purcell, a Fox Creek owner, said that the unit above her had been rented out continuously for the past three years, has now been sold and has been re-rented.

John Spezia asked how enforcement of the rental policy would work. Kathi asked if the Board supports YVHA enforcing the rental policy, and if so, how the process should work. She offered that it might involve a combination of compliance (through sending letters to all owners) and complaint (based on reports of other owners). She said that Jason would not be going door-to-door looking for renters.

MOTION

Catherine moved that the YVHA Board enforce the rental policy as written in the deed restrictions and develop a policy regarding how this should be accomplished. Trish seconded the motion. **The motion carried unanimously.**

The YVHA Board directed Jason to work with Bob to develop recommendations for the Board regarding a policy and process through which the rental restrictions could be enforced. Ryan asked what would occur in the event that multiple owners are forced to sell their units, resulting in the loss of deed restrictions altogether. Catherine said that the policy would include a hardship/appeal policy. She also asked Jason to estimate the staff hours needed to enforce the policy. Jay asked if the YVHA ever enacted the first bid buy-back (no-flip) policy. Kathi stated that YVHA does not have the financial capacity to do this.

Bob suggested consulting with other housing authorities regarding how they go about enforcing rental restrictions.

EN RE: NEGOTIATIONS WITH ELK RIVER VILLAGE DEVELOPER & LITHTC APPLICATION

Jason stated that a letter of intent had been received from Overland Property Group outlining the structure of the relationship between YVHA and the developer. He said that Bob will review the letter in the next week. Bob left the meeting.

Jason reviewed the history of Overland, the RFP process and the subsequent decision to partner with Overland on the development of rental units at Elk River Village. He said that he, Scott and Kathi had met with CHFA and with Overland representatives to discuss the relationship. He stated that CHFA had been very encouraged that YVHA intended to apply for a tax credit project. He said that if YVHA can secure the tax credits, a LLP will be created to own and develop the property. The partners in the LLP will include the Overland Group, the purchasers of the tax credits and YVHA as a special limited partner (which will mean that YVHA carries none of the risk).

John St. Pierre expressed concern regarding the deal and asked Jason to speak with the Town of Breckenridge about a tax credit project that they had had to rescue. Kathi stated that the YVHA Board had already made the decision to go with Overland. Jason reviewed the vetting process. He noted that holding the property under the existing lease-purchase agreement is very expensive for YVHA. Under the new agreement, the development group will purchase the property and will provide 50 rental units for the community. Jason said the structure of the agreement will provide \$150,000 to YVHA in addition to the management fees for the project once it is built. He stated that it is important to build community support for the tax credit application. He encouraged Board members to ask local businesses to endorse the project.

John St. Pierre expressed some concern regarding the project and suggested that a cap on the number of residents per unit should be set.

EN RE: FISH CREEK INFRASTRUCTURE PROJECT UPDATE

Jason reported that the loan documents have been reviewed by Bob and the bond counsel in preparation for closing on the Colorado Water Resources and Power Development Authority loans in the next few weeks. Jason said the project had been put out to bid. The mandatory pre-bid meeting is next week, with the bid process to close in mid-March. Jason said that because YVHA is partnering with the City on the project they will be required to accept the lowest qualified bid. He added that the Board will need to ratify that YVHA is entering into three contracts: one with the City, one with the contractor and one with both the City and the contractor.

EN RE: YVHA HOME STORE

Jason stated that store is open and is getting staffed up, albeit without a manager at this point. He said that volunteers would be needed for a major reorganization of the store to occur in the next couple of weeks.

EN RE: CITY HOUSING POLICY

See report included in the fact packet.

EN RE: CONSENT AGENDA

The following items were presented on the consent agenda:

- a. Review and approval of January 8, 2015 minutes
- b. Review and approval of December 2014 financial statements

Catherine pulled the financials from the consent agenda.

MOTION

Catherine moved to approve the minutes of January 8, 2015, as written. Kristi seconded the motion. **The motion carried unanimously.**

Regarding the financials, Catherine noted that these are the pre-audit adjustment financial statements. There will still be AJE's for the end of the year. Catherine reported that the audit is going very smoothly and should be approved at the March meeting.

MOTION

Catherine moved to approve the pre-audited December 2014 financial statements. Kristi seconded the motion. **The motion carried unanimously.**

EN RE: STAFF REPORTS


Jason said that everything had either been discussed or was included in the written staff report.

EN RE: ADJOURNMENT

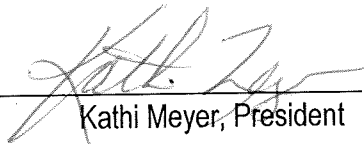
MOTION

Kristi moved to adjourn the regular meeting of the Housing Authority. John 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