

AGENDA

WESTMINSTER HOUSING AUTHORITY SPECIAL MEETING

MONDAY, August 13, 2012

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (May 14, 2012)
- 3. Purpose of Special WHA Meeting is to consider**
 - A. Resolution No. 47 re Revised By-Laws
 - B. Resolution No. 48 regarding the issuance and sale of Private Activity Bonds relative the sale of the Westminster Commons Senior Apartments
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY
MONDAY, MAY 14, 2012 AT 7:54 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Winter and Board Members Atchison, Briggs, Kaiser and Lindsey. Board Member Major was absent and excused. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Linda Yeager, Secretary.

MINUTES OF PRECEDING MEETING

Board Member Briggs moved, seconded by Lindsey, to accept the minutes of the meeting of December 19, 2011 as written and distributed. The motion carried unanimously.

DEVELOPMENT AGREEMENT WITH RENAISSANCE I, LLLP RE LOWELL PLAZA PROJECT

Board Member Lindsey moved, seconded by Board Member Kaiser, to authorize the Executive Director to enter into a development agreement with Renaissance I, LLLP, in substantially the same form as presented. The motion passed unanimously.

RESOLUTION NO. 46 RE ASSIGNMENT OF A PRIVATE ACTIVITY FROM THE CITY

Board Member Atchison moved, seconded by Board Member Kaiser, to adopt Resolution No. 46 accepting the assignment from the City of Westminster of \$5,056,803 of private activity bond allocation for 2012 for the qualified purposes set forth in the assignment and authorizing the Chair to execute the necessary documents. On roll call vote the motion passed unanimously.

ADJOURNMENT

There being no further business to conduct, it was moved by Atchison, seconded by Kaiser, to adjourn. The motion carried and the meeting adjourned at 7:56 p.m.

Chairperson

ATTEST:

Secretary

WHA Agenda Item 3 A

Agenda Memorandum

Westminster Housing Authority Meeting
August 13, 2012



SUBJECT: Resolution No. 47 re Revised By-Laws

Prepared By: Hilary Graham, Assistant City Attorney

Recommended Board Action

Adopt Resolution No. 47 adopting revised by-laws to ensure compliance with applicable state laws and to reflect the current and proper allocation of responsibilities between the Westminster Housing Authority and staff.

Summary Statement

- Current by-laws date back to 1979 and no longer strictly comply with applicable statutory requirements.
- The current by-laws also do not reflect the current and long-standing practice of having the City Manager serve as Executive Director of Westminster Housing Authority (the “Authority”) with the City Clerk performing administrative record-keeping functions.
- An Authority resolution from 2002 created some ambiguity as to the Authority’s administrative structure.
- Revising the by-laws as proposed will create compliance with state statutes and will eliminate the ambiguity that exists between the current by-laws and the 2002 resolution.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the Authority by-laws be amended to accurately reflect statutory requirements and current City practices?

Alternative

The Authority could decide to take no action at this time, but that alternative is not recommended as it would allow the current state of non-compliance and ambiguity to continue.

Background Information

The Westminster Housing Authority first adopted by-laws in 1979, and they have not been revised since. A recent review showed some inconsistencies between the adopted by-laws, applicable state law, a 2002 Authority resolution, and the Authority's current practices.

More specifically, the adopted by-laws properly designated the Authority's Secretary as its Executive Director, but the 2002 resolution separated the duties of those two positions between the City Manager and the City Clerk. In practice, the Authority's record-keeping needs to be carried out by the City Clerk. By creating a new Authority office of Administrative Secretary, these revised by-laws will recognize the City Clerk's responsibilities while still complying with the state law requirement that the Authority Secretary be its Executive Director. These revised by-laws also memorialize the City's practice of having the City Manager serve as Executive Director and Secretary of the Authority.

The other change being recommended pertains to selection of the Chairperson and Vice Chairperson. The original by-laws called for the election of a Chair and a Vice Chair from among the Authority members. The 2002 resolution appointed the City Mayor and Mayor Pro Tempore, respectively, to serve in both positions. Yet, the applicable statute requires the City's Mayor to serve as Chair and the Vice Chair to be elected by the Authority. The revised by-laws accurately reflect this requirement. As a result, the original Sections 6 and 7 within Article II of the by-laws, which addressed election, appointment and vacancies, can be eliminated with the relevant portions of those provisions being incorporated into Article II, Section 3, regarding the Vice Chair.

Last, the original by-laws were adopted prior to the current iteration of the state's Open Meetings Law, C.R.S. § 24-6-401, *et seq.*, which appeared in the early 1990s. Thus, other proposed revisions to Article III of the by-laws address current Open Meetings Law requirements.

Adopting the revised by-laws as proposed ensures compliance with applicable state law, reflects the current and proper allocation of responsibilities between the Authority and Staff, and will further the Authority's important work. All of this supports the Strategic Plan goal of vibrant neighborhoods and commercial areas by helping to improve and maintain neighborhood infrastructure and housing.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments

- WHA Resolution No. 2, Series 1979
- WHA Resolution No. 1, Series 2002
- Proposed WHA Resolution Revising By-Laws

RESOLUTION

RESOLUTION NO. 2

INTRODUCED BY MEMBERS

SERIES OF 1979

Kenneth E. Harris &
Chester McPherson

RESOLUTION ADOPTING BYLAWS OF THE WESTMINSTER HOUSING AUTHORITY,
WESTMINSTER, COLORADO

Be it resolved by the Housing Authority of the City of Westminster, Colorado:

That the following By-Laws shall be and they are hereby approved and adopted as and for the By-Laws of the Westminster Housing Authority, Westminster, Colorado:

BYLAWS OF THE WESTMINSTER HOUSING AUTHORITY, WESTMINSTER, COLORADO

ARTICLE I - THE AUTHORITY:

Section 1. Name of Authority: The name of the Authority shall be "Westminster Housing Authority".

Section 2. Seal of Authority: The seal of the Authority shall be in the form of a circle and shall bear the name of the Authority.

Section 3. Office of Authority: The office of the Authority shall be at such place in the City of Westminster, State of Colorado, as the Authority may from time to time designate by resolution.

ARTICLE II - OFFICERS:

Section 1. Officers: The officers of the Authority shall be a Chairperson, a Vice Chairperson and a Secretary who shall be Executive Director.

Section 2. Chairperson: The Chairperson shall preside at all meetings of the Authority. Except as otherwise authorized by resolution of the Authority, the Chairperson shall sign all contracts, deeds and other instruments made by the Authority. At each meeting, the Chairperson shall submit such recommendations and information as he/she may consider proper concerning the business, affairs and policies of the Authority.

Section 3. Vice Chairperson: The Vice Chairperson shall perform the duties of the Chairperson in the absence or incapacity of the Chairperson; and in case of the resignation or death of the Chairperson, the Vice Chairperson shall perform such duties as are imposed on the Chairperson until such time as the Authority shall select a new Chairperson.

Section 4. Secretary: The Secretary shall be the Executive Director of the Authority and, as such, shall have general supervision over the administration of its business and affairs, subject to the direction of the Authority. He/She shall be charged with the management of the housing projects of the Authority, shall act as secretary of the meetings of the Authority and record all votes, and shall keep a record of the proceedings of the Authority in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to his/her office. He/she shall keep in safe custody the seal of the Authority and shall have power to affix such seal to all contracts and instruments authorized to be executed by the Authority.

He/She shall have the care and custody of all funds of the Authority and shall deposit the same in the name of the Authority in such bank or banks as the Authority may select. The Secretary shall sign all orders and checks for the payment of money and shall pay out and disburse such moneys under the direction of the Authority. Except as otherwise authorized by resolution of the Authority, all such orders and checks shall be countersigned by the Chairperson. He/she shall keep regular books or accounts showing receipts and expenditures and shall render to the Authority, at each regular meeting (or more often when requested), an account of his transactions and also of the financial condition of the Authority. He/she shall give such bond for the faithful performance of his/her duties as the Authority may designate.

The compensation of the Secretary shall be determined by the Authority, provided that a temporary appointee selected from among the Commissioners of the Authority shall serve without compensation (other than the payment of necessary expenses).

Section 5. Additional Duties: The officers of the Authority shall perform such other duties and functions as may from time to time be required by the Authority or the By-Laws or rules and regulations of the Authority.

Section 6. Election or Appointment: The Chairperson and Vice Chairperson shall be elected at the annual meeting of the Authority from among the Commissioners of the Authority, and shall hold office for one year or until their successors are elected and qualified.

The Secretary shall be appointed by the Authority. Any person appointed to fill the office of Secretary or any vacancy therein, shall have such term as the Authority fixes, but no Commissioner of the Authority shall be eligible to this office except as a temporary appointee.

Section 7. Vacancies: Should the office of Chairperson or Vice Chairperson become vacant, the Authority shall elect a successor from its membership at the next regular meeting, and such election shall be for the unexpired term of said office. When the office of Secretary becomes vacant, the Authority shall appoint a successor, as aforesaid.

Section 8. Additional Personnel: The Authority may from time to time employ such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by "The Housing Authorities Law" of Colorado and all other laws of the State of Colorado applicable thereto. The selection and compensation of such personnel (including the Secretary) shall be determined by the Authority subject to the laws of the State of Colorado.

ARTICLE III: MEETINGS:

Section 1. Annual Meeting: The annual meeting of the Authority shall be held each year on the Second Monday in January, at 8:00 P.M., at the regular meeting place of the Authority. In the event such date shall fall on a Sunday or a legal holiday, the annual meeting shall be held on the next succeeding secular day.

Section 2. Regular Meetings: Regular meetings may be held without notice at such times and places as may from time to time be determined by resolution of the Authority.

Section 3. Special Meetings: The Chairperson of the Authority may, when he/she deems it expedient, and shall, upon the written request of two members of the Authority, call a special meeting of the Authority for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered to each member of the Authority or may be mailed to the business or home address of each member of the Authority at least two days prior to the date of such special meeting. At such special meeting no business shall be considered other than as designated in the call but if all of the members of the Authority are present at a special meeting, and and all business may be transacted at such special meeting.

Section 4. Quorum: The powers of the Authority shall be vested in the Commissioners thereof in office from time to time. Four Commissioners shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, but a smaller number may adjourn from time to time and reconvene upon such notice as would be required for a special meeting of the Authority until a quorum is obtained. When a quorum is in attendance, action may be taken by the Authority upon a vote of a majority of the Commissioners present.

Section 5. Order of Business: At the regular meetings of the Authority the following shall be the order of business:

1. Roll Call
2. Approval of minutes of previous meeting
3. Consideration of New Business
4. Old Business
5. Miscellaneous Business
6. Adjournment

All resolutions shall be in writing and shall be copied in the official minute book or journal of the proceedings of the Authority.


Section 6. Manner of Voting: The voting on all questions coming before the Authority shall be by roll call, and the ayes and nays shall be entered upon the minutes of such meeting, except on the election of officers, which may be by ballot.

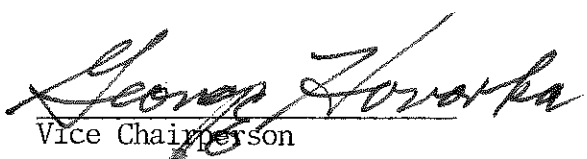
ARTICLE IV - AMENDMENTS:

Section 1. Amendments to By-Laws: The by-laws of the Authority shall be amended only with the approval of at least three of the members of the Authority at a regular or a special meeting, but no such amendment shall be adopted unless at least seven days written notice thereof has been previously given to all of the members of the Authority.

Passed and adopted this 8th day of January, 1979.

ATTEST:


Chairperson


Vice Chairperson

**WESTMINSTER HOUSING AUTHORITY
RESOLUTION**

RESOLUTION NO. **1**
SERIES OF 2002

INTRODUCED BY COMMISSIONERS

Dittman - Johnson

WHEREAS, the Board of Commissioners wishes to refinance the loan encumbering the Westminster Commons apartment complex,

WHEREAS, a proposal has been received from Vectra Bank, which proposal is described in the loan commitment dated June 17, 2002, and which was approved by the Board in its meeting on July 8, 2002,

WHEREAS, the U.S. Department of Housing and Urban Development ("HUD") has approved the refinancing of Westminster Commons contingent upon entering into an appropriate Use Agreement (the "HUD Use Agreement") that restricts the use of the Westminster Commons apartment complex to rental housing for lower or moderate income families,

WHEREAS, the City provides services to the Westminster Housing Authority ("WHA") in order to accomplish WHA goals and activities; and


WHEREAS, HUD and Vectra Bank have requested documentation of various officials' authority to act on behalf of the WHA,

NOW, THEREFORE, the Board of Commissioners of the Westminster Housing Authority resolves that:

1. The responsibilities of chairperson of the Board of Commissioners shall be carried out by the mayor of the City of Westminster, and the responsibilities of vice-chairperson shall be carried out by the mayor pro tempore.
2. The Westminster City Manager shall perform the responsibilities of the Executive Director of the WHA pursuant to C.R.S. section 29-4-202(5).
3. The Westminster City Clerk shall serve as Secretary to the Board of Commissioners.
4. The Executive Director is authorized to designate the Executive Director's secretary, assistant secretaries, and other officials, staff and agents as the Executive Director deems appropriate to accomplish the goals and activities authorized by the Board of Commissioners.
5. The scope of the Executive Director's authority to enter into contracts and make purchases on behalf of the WHA shall be consistent with the limits set forth in Title XV of the Westminster Municipal Code, as it may be amended from time to time, and the Executive Director is further authorized, but not required, to delegate such contract and purchasing authority to staff of the WHA who may be appointed by the Executive Director from time to time.
6. The Executive Director is hereby directed and authorized to execute the HUD Use Agreement in a form approved by the Westminster City Attorney.
7. The Executive Director is hereby directed and authorized to execute the Vectra Bank loan documents in a form consistent with the loan commitment approved by the Board on July 8, 2002, and in a form approved by the Westminster City Attorney.

8. The Board hereby approves and incorporates by reference the attached Governmental Certificate requested by Vectra Bank.

PASSED AND ADOPTED this 26th day of August 2002.



A handwritten signature in blue ink, appearing to be "S. J. Kelly", is written over a horizontal line.

Chair

ATTEST:



A handwritten signature in black ink, "Michele Kelley", is written over a horizontal line.

Secretary

**WESTMINSTER HOUSING AUTHORITY
RESOLUTION**

RESOLUTION NO. **47**

INTRODUCED BY COMMISSIONERS

SERIES OF 2012

**A RESOLUTION ADOPTING REVISED BY-LAWS TO ENSURE COMPLIANCE WITH
APPLICABLE STATE LAWS AND TO REFLECT THE CURRENT AND PROPER
ALLOCATION OF RESPONSIBILITIES BETWEEN THE WESTMINSTER HOUSING
AUTHORITY AND STAFF**

WHEREAS, the Board of Commissioners of the Westminster Housing Authority (the "Authority") wishes to revise its by-laws, which were adopted in 1979 and have not been revised since; and

WHEREAS, Resolution No. 1, Series 2002, adopted by the Authority on August 26, 2002, memorialized certain duties but also introduced some inconsistencies between that resolution and the by-laws; and

WHEREAS, the Board of Commissioners wishes to amend the by-laws to clarify the duties of the various Authority officials, to reflect current practices, and to ensure consistency with applicable Colorado statutes, including Section 29-4-201, C.R.S. *et seq.*, and Section 24-6-401, C.R.S. *et seq.*

NOW, THEREFORE, the Board of Commissioners of the Westminster Housing Authority resolves that:

1. The by-laws originally adopted and approved as Westminster Housing Authority Resolution No. 2, Series 1979, on January 8, 1979, shall be amended as shown below:

ARTICLE I - THE AUTHORITY:

Section 1. Name of Authority: The name of the Authority shall be "Westminster Housing Authority."

Section 2. Seal of Authority: The seal of the Authority shall be in the form of a circle and shall bear the name of the Authority.

Section 3. Office of Authority: The office of the Authority shall be at such place in the City of Westminster, State of Colorado, as the Authority may from time to time designate by resolution.

ARTICLE II - OFFICERS:

Section 1. Officers: The officers of the Authority shall be a Chairperson, a Vice Chairperson, ~~and~~ a Secretary who shall be Executive Director, and an Administrative Secretary.

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Section 2. Chairperson: The office of Chairperson shall be filled by the Westminster Mayor. The Chairperson shall preside at all meetings of the Authority. Except as otherwise authorized by resolution of the Authority, the Chairperson shall sign all contracts, deeds and other instruments made by the Authority. At each meeting, the Chairperson shall submit such recommendations and information as ~~he~~ the Chairperson may consider proper concerning the business, affairs and policies of the Authority.

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Section 3. Vice Chairperson: The Vice Chairperson shall be elected at the annual meeting of the Authority from among the Commissioners of the Authority, and shall hold office for one year or until a successor is elected and qualified. The Vice Chairperson shall perform the duties of the Chairperson in the absence or incapacity of the Chairperson; and in case of the resignation or death of the Chairperson,

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the Vice Chairperson shall perform such duties as are imposed on the Chairperson until such time as ~~the Authority shall select~~ a new Chairperson takes office. ~~Should the office of Vice Chairperson become vacant, the Authority shall elect a successor from its membership at the next regular meeting, and such election shall be for the unexpired term of said office.~~

Section 4. Secretary: The office of Secretary shall be filled by the Westminster City Manager.

The Secretary shall be the Executive Director of the Authority and, as such, shall have general supervision over the administration of its business and affairs, subject to the direction of the Authority. ~~He /She~~The Secretary shall be charged with the management of the housing projects of the Authority. ~~The Secretary shall have the authority to enter into contracts and make purchases on behalf of the Authority, which authority shall be consistent with the limits set forth in Title XV of the Westminster Municipal Code, as it may be amended from time to time.~~

~~shall act as secretary of the meetings of the Authority and record all votes, and shall keep a record of the proceedings of the Authority in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to his /her office. He /she shall keep in safe custody the seal of the Authority and shall have power to affix such seal to all contracts and instruments authorized to be executed by the Authority.~~

~~He /She~~The Secretary shall have the care and custody of all funds of the Authority and shall deposit the same in the name of the Authority in such bank or banks as the Authority may select. The Secretary shall sign all orders and checks for the payment of money and shall pay out and disburse such moneys under the direction of the Authority. Except as otherwise authorized by resolution of the Authority, all such orders and checks shall be counter- signed by the Chairperson. ~~He /she~~The Secretary shall keep regular books or accounts showing receipts and expenditures and shall render to the Authority, at each regular meeting (or more often when requested), an account of his transactions and also of the financial condition of the Authority. ~~He /she~~The Secretary shall give such bond for the faithful performance of his /her duties as the Authority may designate. ~~The Secretary is authorized to delegate responsibilities to Authority personnel and agents as appropriate to accomplish the goals and activities authorized by the Board of Commissioners.~~ The compensation of the Secretary shall be determined by the Authority, ~~provided that a temporary appointee selected from among the Commissioners of the Authority shall serve without compensation (other than the payment of necessary expenses).~~

Section 5. Administrative Secretary: The office of Administrative Secretary shall be filled by the Westminster City Clerk. The Administrative Secretary shall act as secretary of the meetings of the Authority and record all votes; shall keep a record of the proceedings of the Authority in a journal of proceedings to be kept for such purpose; shall be custodian of all papers, documents and records pertaining to the Authority; shall certify by signature all resolutions passed by the Authority; shall keep in safe custody the seal of the Authority and shall have power to affix such seal to all contracts and instruments authorized to be executed by the Authority; and shall perform such other duties as may be incident to his/her office or as may be prescribed by law, by the Board of Commissioners or by the Executive Director.

Section 56. Additional Duties: The officers of the Authority shall perform such other duties and functions as may from time to time be required by the Authority or the ~~By-Laws~~by-laws or rules and regulations of the Authority.

~~Section 6. Election or Appointment: The Chairperson and Vice Chairperson shall be elected at the annual meeting of the Authority from among the Commissioners of the Authority, and shall hold office for one year or until their successors are elected and qualified.~~

~~The Secretary shall be appointed by the Authority. Any person appointed to fill the office of Secretary or any vacancy therein, shall have such term as the Authority fixes, but no Commissioner of the Authority shall be eligible to this office except as a temporary appointee.~~

~~Section 7. Vacancies: Should the office of Chairperson or Vice Chair person become vacant, the Authority shall elect a successor from its membership at the next regular meeting, and such election shall~~

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~~be for the unexpired term of said office. When the office of Secretary becomes vacant, the Authority shall appoint a successor, as aforesaid.~~

~~Section 87. Additional Personnel: The Authority may from time to time employ such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by "The Housing Authorities Law" of Colorado and all other laws of the State of Colorado applicable thereto. The selection and compensation of such personnel (including the Secretary) shall be determined by the Authority subject to the laws of the State of Colorado.~~

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ARTICLE III: MEETINGS:

~~Section 1. Meetings of the Authority shall be conducted in accordance with the provisions of the Colorado Open Meetings Law, as may be amended from time to time.~~

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~~Section 2. Annual Meeting: The annual meeting of the Authority shall be held each year on the ~~Second~~ ~~second~~ Monday in January, at 8:00 P.M., at the regular meeting place of the Authority. In the event such date shall fall on a ~~Sunday or a~~ legal holiday, the annual meeting shall be held on the ~~next fourth Monday in January~~ ~~succeeding secular day~~.~~

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~~Section 23. Regular Meetings: Regular meetings may be held with~~out~~ at least twenty-four hours' notice ~~posted in a designated public place~~ at such times and places as may from time to time be determined by resolution of the Authority.~~

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~~Section 34. Special Meetings: The Chairperson of the Authority may, when ~~the Chairperson~~ ~~he~~ ~~she~~ deems it expedient, and shall, upon the written request of two members of the Authority, call a special meeting of the Authority for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered to each member of the Authority or may be mailed to the business or home address of each member of the Authority at least two days prior to the date of such special meeting. ~~At such special meeting no business shall be considered other than as designated in the call but if all of the members of the Authority are present at a special meeting, and all business may be transacted at such special meeting.~~~~

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~~Section 45. Quorum: The powers of the Authority shall be vested in the ~~Board of~~ Commissioners ~~thereof~~ in office from time to time. Four Commissioners shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, but a smaller number may adjourn from time to time and reconvene upon such notice as would be required for a special meeting of the Authority until a quorum is obtained. When a quorum is in attendance, action may be taken by the Authority upon a vote of a majority of the Commissioners present.~~

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~~Section 56. Order of Business: At the regular meetings of the Authority the following shall be the order of business:~~

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1. Roll Call
2. Approval of minutes of previous meeting
3. Consideration of New Business
4. Old Business
5. Miscellaneous Business
6. Adjournment

All resolutions shall be in writing and shall be copied in the official minute book or journal of the proceedings of the Authority.

~~Section 67. Manner of Voting: The voting on all questions coming before the Authority shall be by roll call, and the ayes and nays shall be entered upon the minutes of such meeting, except on the election of officers, which may be by ballot.~~

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ARTICLE IV - AMENDMENTS:

Section 1. Amendments to By-Laws: The by-laws of the Authority shall be amended only with the approval of at least three of the members of the Authority at a regular or a special meeting, but no such amendment shall be adopted unless at least seven days written notice thereof has been previously given to all of the members of the Authority.

2. Except as inconsistent herewith, Resolution 1, Series 2002, of the Authority shall remain in full force and effect.

PASSED AND ADOPTED this 13th day of August 2012.

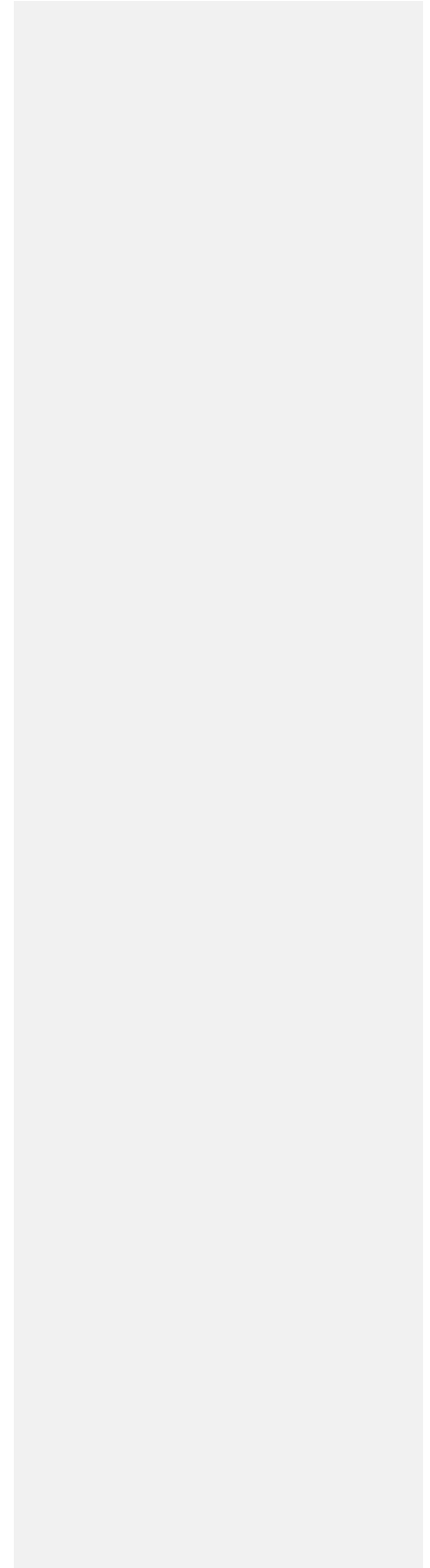
Chairperson

ATTEST:

Administrative Secretary

APPROVED AS TO LEGAL FORM:

City Attorney



WHA Agenda Item 3 B

Agenda Memorandum

Westminster Housing Authority Meeting
August 13, 2012



SUBJECT: Resolution 48 re Issuance and Sale of Private Activity Bonds Relative to the Sale of the Westminster Commons Senior Apartments

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended Board Action

Adopt Resolution No. 48 pursuant to the issuance and sale of the Westminster Housing Authority's multi-family housing revenue bonds and authorizing the Executive Director to execute the necessary documents relative to closing on the sale of the Westminster Commons project.

Summary Statement

- Over the last several years, the City of Westminster has assigned a total of \$18,069,533 in private activity bond (PAB) capacity to the Westminster Housing Authority (WHA) for the purpose of facilitating a sale of the Westminster Commons senior apartments and the development of affordable housing. None of these proceeds has been expended to date.
- The Westminster Housing Authority entered into a purchase and sale agreement to sell the Westminster Commons property to Volunteers of America (VOA) for a sale price of \$7.0 million. In addition, VOA is required to invest about \$6.2 million in a thorough rehabilitation of the Westminster Commons' apartment units and buildings. VOA expects to spend \$2.8 million in other development related costs for a total project cost of about \$16 million.
- Per the purchase and sale agreement between the WHA and VOA, the WHA is required to allocate sufficient PAB to provide financing for the project from a private lender.
- VOA is requesting the WHA issue up to \$11.0 million in PAB that will be assigned to JP Morgan Chase Bank, N.A., which is providing the private financing for the acquisition and rehabilitation.
- The \$5.0 million balance of the project cost will be covered through a provision of Low Income Housing Tax Credits (LIHTC), a HOME fund grant, and several smaller grant sources.
- Per the Purchase and Sale agreement, the WHA will also carry-back a loan of about \$2.2 million from the sale proceeds that will be repaid from the project's cash flow proceeds.
- The City retained the expert services Stan Raine of Sherman & Howard, L.L.C. as outside counsel to prepare and review all documents pertaining to the issuance of the Private Activity Bonds. All legal documents have received his approval.

Expenditure Required: up to \$11,000,000

Source of Funds: Private Activity Bonds

Policy Issue

Should the Authority issue the Private Activity Bonds to assist VOA in purchasing the Westminster Commons senior apartments?

Alternative

Take no action and refuse to issue the bonds. This option is not recommended as the private funding to be provided by JP Morgan Chase Bank, N.A. is premised on the issuance of no less than \$11.0 million in PAB. Without the bank financing, VOA will not be able to close on the purchase of the property.

Background Information

The Authority owns Westminster Commons, a 130-unit senior housing complex. The Commons is thirty years old and is in need of substantial reinvestment. In early 2011, the City issued a request-for-proposals from qualified affordable housing providers relative to the sale of the apartment complex. From this process, the Westminster Housing Authority (WHA) selected Volunteers of America (VOA) to proceed with negotiations on a purchase and sale agreement. On July 25, 2011, City Council authorized the execution of a purchase and sale agreement with VOA relative to the sale of Westminster Commons. The agreement calls for VOA to acquire the property for a purchase price of \$7.0 million and invest an estimated \$6.2 million in rehabilitation. VOA also estimated it would incur another \$2.8 million in other development related costs, for an estimated total project cost of about \$16 million.

The primary funding source for the purchase is the issuance of Private Activity Bonds (PAB) by the Westminster Housing Authority. Over the last several years, the City of Westminster has assigned \$18,069,533 in bonding authority to the WHA with which to issue bonds relative to the sale of the Westminster Commons senior apartments. VOA is requesting a bond issuance of up to \$11.0 million from the WHA to provide a portion of the acquisition financing. VOA has secured JP Morgan Chase Bank, N.A. as a private lender that will provide the financing to cover the bond issuance. By issuing the bonds, the WHA will incur a debt; however, such debt will be assigned immediately to JP Morgan Chase Bank, N.A. at closing. Under agreement, the bank will assume the bond debt from the WHA, and such debt will be repaid solely from the project's rent and cash flow proceeds. VOA will be responsible for repayment of the loan. The WHA has no responsibility to repay the debt under agreement. The issuance of the bonds is necessary for the sale to proceed.

Mr. Stan Raine of Sherman & Howard LLC, an expert affordable housing attorney, was retained to represent the WHA interests in the Westminster Commons sale transaction. Mr. Raine was involved in the preparation and review of all relevant legal documents pertaining to the sales transaction and bond issuance. All legal documents have received his approval. Agreements pertaining to the financing, loan, regulation and assignments can be made available viewing upon request. Mr. Raine will also be in attendance to answer any questions of the Board.

The balance of the funding will come from several other sources, including 4% Low Income Housing Tax Credits (LIHTC), an allocation of \$500,000 in U.S. Department of Housing and Urban Development (HUD) HOME funds from the City of Westminster, and a carry-back loan from the WHA in the amount of about \$2.2 million. The WHA, per the purchase and Sale Agreement, agreed to provide VOA with a carry-back loan from the proceeds of the sale. The loan would be for a 40 year period and would be gradually repaid from 10% of the net cash flow proceeds generated from project rents. The WHA loan would be secured by a promissory note and subordinated deed of trust.

VOA is working towards a sale closing by the end of August, 2012, pending the receipt of HOME funds from Adams County. Although the HOME funds to be applied to the project are dedicated to the City, Adams County has the responsibility, under agreement with HUD, to administer the funds. Therefore, Adams County is responsible for processing the payment of such funds.

The sale of the Westminster Commons meets the City of Westminster's goal of Safe and Secure Community with the objective of maintaining safe buildings and homes. The proposed sale and improvements will extend the life and enhance the livability of the Westminster Commons as affordable senior housing for many years into the future.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment - Resolution

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **48**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2012

RESOLUTION

AUTHORIZING THE ISSUANCE AND SALE OF THE WESTMINSTER HOUSING AUTHORITY'S MULTIFAMILY HOUSING REVENUE BONDS (WESTMINSTER COMMONS PROJECT) SERIES 2012 TO JPMORGAN CHASE BANK, N.A.; AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT, LOAN AGREEMENT, REGULATORY AGREEMENT, ASSIGNMENT OF LOAN DOCUMENTS AND OTHER NECESSARY AGREEMENTS AND DOCUMENTS IN CONNECTION THEREWITH; AND RELATED MATTERS

WHEREAS, the Westminster Housing Authority, a public body corporate and politic of the State of Colorado (the "Authority") is authorized and empowered by the provisions of Part 2, Article 4, Title 29 of Colorado Revised Statutes (the "Act"), and the Supplemental Public Securities Act, Part 2, Article 57, Title 11, Colorado Revised Statutes (the "Supplemental Act"), as from time to time supplemented and amended, to provide multifamily residential housing that substantially benefits persons of low income and to issue its obligations in connection with the financing thereof; and

WHEREAS, Section 29-4-209(1)(o) of the Act provides as follows:

An authority shall constitute a body both corporate and politic, exercising public powers and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part 2, including the following powers in addition to others granted in this section: ... (o) To borrow money upon its bonds, notes, debentures, or other evidences of indebtedness, and to secure the same by pledges of its revenues and, subject to the limitations imposed by this part 2, by mortgages upon property held or to be held by it, or in any other manner; and

WHEREAS, Section 29-4-209(1)(d.3) of the Act provides as follows:

An authority shall constitute a body both corporate and politic, exercising public powers and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part 2, including the following powers in addition to others granted in this section: ... (d.3) To grant or lend moneys or otherwise provide financing to any person, firm, corporation, the city, or a government for any project or any part thereof; and,

WHEREAS, the Authority is the owner of a 130-unit multifamily rental housing apartment project providing independent living for seniors, known as Westminster Commons Apartments (the "Project"), and has entered into a Purchase Agreement and Escrow Instructions dated July 25, 2011 (the "Purchase Agreement") between the Authority, as Seller, and Volunteers of America National Services, as Buyer, which Purchase Agreement has been or will be assigned by the Buyer to the below-defined Borrower; and

WHEREAS, the Authority has determined that in furtherance of public purposes as set forth in the Act, it desires to authorize the issuance of not to exceed \$11,000,000 principal amount of its Multifamily Housing Revenue Bonds (Westminster Commons Project) Series 2012 (the "Bonds"), upon the terms and conditions stated herein, and to use the proceeds thereof to provide a mortgage loan to Westminster Commons VOA LP, a Colorado limited partnership (the "Borrower"), to finance a portion of the purchase price of the Project, to finance the rehabilitation and equipping by the Borrower of the Project, and to pay for certain costs of issuance associated with the issuance of the Bonds; and

WHEREAS, the remainder of the purchase price of the Project pursuant to the Purchase Agreement that is not paid from a portion of the proceeds of the Bonds shall be evidenced by a Promissory Note from the Borrower in favor of the Authority as provided in Section 5.2 of the Purchase Agreement, secured by a Deed of Trust and Security Agreement by Borrower on behalf of the Authority; and

WHEREAS, there have been submitted to this meeting the proposed forms of the following documents (collectively, together with related documents, the "Financing Documents"):

- (a) the Financing Agreement (the "Financing Agreement") among the Authority, the Borrower and JPMorgan Chase Bank, N.A. ("JPMorgan Chase"), as the purchaser of the Bonds,
- (b) the Loan Agreement among the Authority, the Borrower and JPMorgan Chase,
- (c) the Regulatory Agreement and Declaration of Restrictive Covenants between the Authority and the Borrower, and
- (d) the Assignment of Loan Documents from the Authority to and for the benefit of JPMorgan Chase; and

WHEREAS, the Bonds and the obligation to pay interest thereon shall be special, limited obligations of the Authority, payable solely out of the revenues and income derived from the Financing Agreement and as otherwise provided in the Financing Documents; the Bonds and the obligation to pay interest thereon shall not be deemed to constitute a debt or indebtedness of the City of Westminster, Colorado (the "City"), or the State of Colorado (the "State") or any political subdivision thereof (including the Authority), and neither the City, the State nor any political subdivision thereof shall be liable thereon, nor in any event shall the Bonds be payable out of any funds or properties other than those of the Authority pledged under the Financing Documents; and the Bonds shall not constitute an indebtedness or a multiple fiscal-year financial obligation within the meaning of any constitutional or statutory debt limitation or restriction.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF THE WESTMINSTER HOUSING AUTHORITY, AS FOLLOWS:

Section 1. Pursuant to the Act, the financing of all or a portion of the costs of the Project through the execution of the Financing Documents in accordance with the terms of such documents is hereby authorized and approved. All action (not inconsistent with the provisions of this

Resolution) heretofore taken by the Commissioners or officers of the Authority in connection with the Project and the financing of the costs thereof by the execution of the Financing Documents hereby is ratified, approved and affirmed. The Authority hereby finds and determines that the execution of the Financing Documents to finance the cost of the Project is in furtherance of the public purposes set forth in the Act.

Section 2. The terms and provisions of the Financing Documents hereby are in all respects approved, and the Executive Director is hereby authorized, empowered and directed to execute and deliver the Financing Documents in the name and on behalf of the Authority, in such respective forms as shall be approved by the officials of the Authority executing the same, their execution thereof to constitute conclusive evidence of their approval thereof; and from and after the execution and delivery of the Financing Documents, the officials, agents and employees of the Authority are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of such instruments as executed.

Section 3. The Commissioners hereby elect to apply Sections 11-57-205, 11-57-207, 11-57-208, 11-57-209, 11-57-210 and 11-57-212 of the Supplemental Act to the Bonds. Pursuant to Section 11-57-205 of the Supplemental Act, each Bond shall recite that it is issued under the authority of this resolution and the Supplemental Act and that it is the intention of the Authority that such recital shall be conclusive evidence of the validity and the regularity of the issuance of each of the Bonds after its delivery for value. Pursuant to such election to apply Section 11-57-205 of the Supplemental Act to the Bonds, the Commissioners hereby delegate to the Executive Director of the Authority the power to make the following determinations with respect to the Bonds without any requirement that the Commissioners approve such determinations:

(a) The rate or rates of interest to be borne by the Bonds, which shall not exceed (i) during the construction period, a variable rate equal to 71% of 30-day LIBOR plus 3.00% or, at the election of the Borrower, JPMorgan Chase's Prime Rate (with a floor equal to 30-day LIBOR on any day) plus 3.00%, and (ii) thereafter, a fixed rate equal to 5.25% per annum, except as may otherwise be provided in the Financing Documents.

(b) The aggregate principal amount of the Bonds, which shall not exceed \$11,000,000.

(c) The final maturity date of the Bonds, which shall be no later than April 1, 2034.

Section 4. The Bonds shall be sold and delivered to JPMorgan Chase at a private sale at a purchase price equal to 100% of the principal amount thereof.

Section 5. For the purposes of Section 142(d)(1) of the Internal Revenue Code of 1986, as amended, the Authority hereby elects that the Project shall be subject to the requirements of subparagraph (B) of Section 142(d)(1).

Section 6. The proper officials, agents and employees of the Authority are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Financing Documents and to further the purposes and intent of this Resolution, including the preamble hereto. The Chair, Vice

Chair and the Executive Director are hereby further authorized and directed for and on behalf of the Authority, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of the authority conferred by this Resolution or to evidence said authority, and to exercise and otherwise take all necessary action to the full realization of the rights, accomplishments and purposes of the Authority under the Bonds and the Financing Documents and to discharge all of the obligations of the Authority thereunder.

Section 7. All acts and doings of the officials of the Authority which are in conformity with the purposes and intent of this Resolution and in furtherance of the sale and financing of the Project, the issuance of the Bonds and the execution and delivery of the Purchase Agreement, including the acceptance of the delivery of the Promissory Note and Deed of Trust described in the sixth preamble to this resolution, hereby are in all respects, approved and confirmed.

Section 8. All covenants, stipulations, promises, agreements and obligations of the Authority contained in this resolution shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and not of any director, member, officer or employee of the Authority or the City in his or her individual capacity, and no recourse shall be had for the payment of the principal or redemption price of or interest on any of the Bonds or for any claim based thereon or on this resolution, either jointly or severally, against any director, member, officer or employee of the Authority or the City or any person executing Bonds.

Section 9. This Resolution shall constitute an irrevocable contract between the Authority and the owner or owners of the Bonds; and this Resolution shall be and shall remain irrevocable until such the Bonds shall be fully paid, canceled and discharged.

Section 10. The provisions of this Resolution are hereby declared to be separable, and if any section, phrase or provision shall, for any reason, be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions.

Section 11. All resolutions, orders or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby superseded.

Section 12. This Resolution shall be in full force and effect from and after its passage and approval, in accordance with law.

PASSED, ADOPTED AND APPROVED this August 13, 2012.

[SEAL]

Chair

Attest:

Administrative Secretary

STATE OF COLORADO)
)
COUNTY OF ADAMS) SS.
)
CITY OF WESTMINSTER)

I, the undersigned Linda Yeager, the duly appointed Administrative Secretary of the Westminster Housing Authority (the "Authority"), do hereby certify that the foregoing pages 1 through 5, inclusive, are a true, correct and complete copy of the record of proceedings of the Commissioners of the Authority, insofar as such proceedings relate to the resolution contained therein, had and taken at a lawful, public meeting of the Commissioners held at the Authority's offices, 4800 W. 92nd Avenue, in Westminster, Colorado, on August 13, 2012, commencing at the hour of __:__ __.m., as recorded in the regular official book of the proceedings of the Authority kept in my office; that said proceedings were duly had and taken as therein shown; that the meeting therein shown was duly held and was open to the public at all times; and that the persons therein were present at said meeting in person or by telephone as therein shown.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Westminster Housing Authority this August 13, 2012.

Administrative Secretary

(SEAL)