

Meeting Date: September 27, 2011

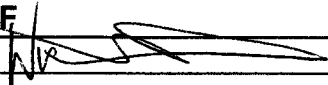
Agenda Item 33

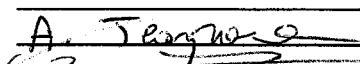
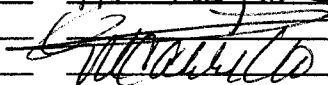

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration/Discussion Presentation

SHORT TITLE REIMBURSEMENT OF \$76,856 TO THE U.S. DEPARTMENT OF HOUSING AND URBAN IMPROVEMENT FOR A CANCELED HOME INVESTMENT PARTNERSHIP PROGRAM FUNDED PROJECT.

Summary of Purpose and Why

- (1) Origin of request for this action: STAFF
- (2) Primary staff contact: Willie A. Hopkins Jr.  Ext. 4606
- (3) Expiration of contract, if applicable: _____
- (4) Fiscal impact and source of funding: See attached Budget Adjustment

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Legal			
Finance	<u>9/21/11</u>	<u>Approve</u>	
Budget	<u>9/21/11</u>	<u>Appr.</u>	
OHUI	<u>9/21/11</u>	<u>Approve</u>	

City Manager Dennis W. Beach 

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1 st Reading	1 st Reading	Results:	Results:
_____	_____	_____	_____
2 nd Reading			
_____	_____	_____	_____



City Attorney's Communication #2011-1745

September 21, 2011

TO: Willie Hopkins, Assistant City Manager

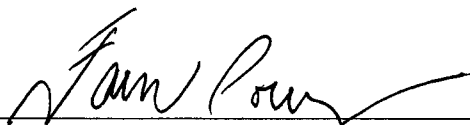
FROM: Fawn Powers, Assistant City Attorney

RE: Resolution Authorizing Reimbursement of Funds to U.S. Department of Housing and Urban Improvement

Attached please find the following captioned Resolution addressing the above-referenced matter, along with a letter dated June 23, 2011 to Miriam Carrillo from the U.S. Department of Housing and Urban Development:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AUTHORIZING REIMBURSEMENT OF \$76,856 TO THE U.S. DEPARTMENT OF HOUSING AND URBAN IMPROVEMENT FOR HOME FUNDS PREVIOUSLY PROVIDED TO THE CITY; PROVIDING AN EFFECTIVE DATE.

Should you have any questions regarding this matter, please feel free to contact me.



FAWN POWERS

l:cor/manager/asst-mgr/2011-1745f
Attachments

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AUTHORIZING REIMBURSEMENT OF \$76,856 TO THE U.S. DEPARTMENT OF HOUSING AND URBAN IMPROVEMENT FOR HOME FUNDS PREVIOUSLY PROVIDED TO THE CITY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That as set forth in the letter attached hereto as Exhibit A, the U.S. Department of Housing and Urban Improvement (“HUD”) has requested repayment of \$76,856 in HOME funds it previously provided the City of Pompano Beach (“City”) to meet the national objectives of the CDBG Program.

SECTION 2. That City staff is authorized to pay the U.S. Department of Housing and Urban Improvement \$76,856 from the General Fund undesignated fund balance as reimbursement for the HOME funds it previously provided the City.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____,
2011.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK



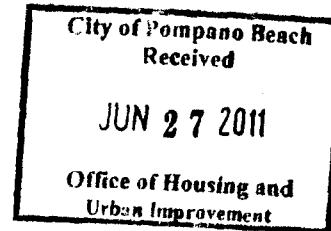
U.S. Department of Housing and Urban Development
Community Planning and Development Division
Atlanta Region, Miami Field Office
Brickell Plaza Federal Building
909 SE First Avenue, Room 500
Miami, FL 33131-3042

EXHIBIT

A

June 23, 2011

Ms. Miriam Carrillo, Director
City of Pompano Beach
Housing and Community Development
100 West Atlantic Boulevard, Room 220
Pompano Beach, Florida 33061



Dear Ms. Carrillo:

**SUBJECT: HOME Program
Canceled Projects**

The purpose of this communication is to follow up on the HOME Investment Partnerships Program funded projects that been determined to be canceled.


The project includes the following:

- IDIS # 272 - Funded amount \$76,856.00 – Tenure type: Acquisition

Since this is a project to be canceled, please advice when HUD can expect repayment from Non-Federal Funds in the amount of \$76,856.00.

Please submit your plans to Maria R. Ortiz no later than 90 days from the date of this letter. Thank you very much for your attention to this matter.

Sincerely,


Maria R. Ortiz
Director
Community Planning and
Development Division

Enclosures

cc: Ann D. Chavis, Program Manager, US H.U.D.



U.S. Department of Housing and Urban Development

Community Planning and Development Division

Atlanta Region, Miami Field Office

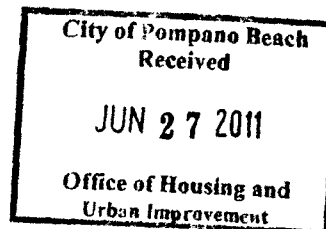
Brickell Plaza Federal Building

909 SE First Avenue, Room 500

Miami, FL 33131-3042

June 23, 2011

Ms. Miriam Carrillo, Director
City of Pompano Beach
Housing and Community Development
100 West Atlantic Boulevard, Room 220
Pompano Beach, Florida 33061



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Please submit your plans to Maria R. Ortiz no later than 90 days from the date of this letter. Thank you very much for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Maria R. Ortiz".

Maria R. Ortiz
Director
Community Planning and
Development Division

Enclosures

cc: Ann D. Chavis, Program Manager, US H.U.D.



GORDON B. LINN

City Attorney

Board Certified - City, County and Local Government

MARK E. BERMAN
Assistant City Attorney

FAWN POWERS
Assistant City Attorney

ERIN GILL ROBLES
Assistant City Attorney

Pompano Beach



Phone: 954-786-4614

City of Pompano Beach, Florida

Fax: 954-786-4617

City Attorney's Communication #2011-1415
July 18, 2011

Via regular and certified U.S. mail

Dorothy Jones
3001 NW 8th Street
Pompano Beach, FL 33069

Re: Repayment of HOME CHDO Funds awarded to Najada Senior Housing Project.

Dear Ms. Jones:

The U.S. Department of Housing & Urban Development ("HUD") has notified the City that Najada Senior Housing Project is a canceled project and requested repayment of the \$76,856 received by Collier City/Pompano Beach Community Development, Inc.. A copy of the Agreement between your Agency and the City as well as HUD's recent cancellation notice/request for repayment is enclosed for your further reference.

As noted in the enclosure, the City must provide HUD a repayment action plan by September 27, 2011. Toward this end, please contact Tomas Calderon in the City's Department of Housing and Urban Improvement at (954) 786-4658 as soon as possible, but not later than August 12, 2011.

Thank you for your attention and anticipated timely cooperation in this matter of mutual concern.

Very truly yours,

GORDON B. LINN
City Attorney

L:\cor\comdev2011-1415f

Enclosures: as stated

cc: Dennis Beach, City Manager (w/o encl)
Miriam Carrillo, Director, OHUI (w/o encl) ✓
Tomas Calderon, Administrative Coordinator, OHUI (w/o encl)
James R. Eddy, Esq., R.A., Collier City/Pompano Beach Community Development Corporation, Inc.

JAMES R. EDDY
ATTORNEY & COUNSELOR AT LAW
4800 BAYVIEW DRIVE
PENTHOUSE 5
FORT LAUDERDALE, FLORIDA 33308
TEL.: 954.667.0969

SUPREME COURT CERTIFIED:
CIVIL COURT MEDIATOR
FAMILY COURT MEDIATOR

SUPREME COURT QUALIFIED:
ARBITRATOR

RESIDENTIAL FORECLOSURE
MODIFICATION MEDIATOR

July 23, 2011

Gordon B. Linn, Esq.
City Attorney, City of Pompano Beach
100 West Atlantic Blvd.
Pompano Beach, Florida 33060

2011 JUL 27 AM 9:02
OFFICE OF CITY ATTY
CITY OF POMPANO BEACH

RE: Collier City/ Pompano Beach CDC
Your Communication #2011-1415 dated July 18, 2011

Dear Mr. Linn:

Your letter to Dorothy Jones was referred to me for response.

In examining the HUD letter to Miriam Carrillo, I find that it states that the tenure type is for Acquisition, however, the contract clearly states the funds were awarded in support of: A. Senior Housing Development, and B. Administrative costs associated with the project.

The funds were expended for the purpose stated in the contract and not for acquisition.

All payments were documented to the City pursuant to the agreement and approved prior to being distributed.

The agreement contains no recapture clause which would allow the City to receive repayment of the funds.

If you have some other grounds for the City's demand for repayment, please contact this office with an explanation justifying your request, otherwise I shall advise my client no refund is due to the City.

Sincerely,


James R. Eddy

CC: U.S. HUD
Client

JAMES R. EDDY, P.A.
ATTORNEY AT LAW

REGARDING THE CONTRACT WITH POMPANO BEACH

Paragraph 20 of the contract between the CDC and the City reads in part;
Upon expiration of Agreement (October 2006) CDC shall transfer any CDBG funds on hand.

Any property "acquired" or "improved": with CDBG funds in excess of \$25,000 must be used to meet the objective of the CDBG grant program until 5 years after expiration of the Agreement (March 2011) or when not used for this purpose (purpose is low income elderly housing) must return value of property.

Admin. Costs \$11, 528

Housing Development Costs \$65,328

Oct 1 2005 – Sept 30, 2006 (Mar 28 2006 – 27 March 2011)

Retain records for 3 years from Oct 1, 2005 must seek additional funding from 2 other agencies (State, county, bank)

Answer

1. There were no CDBG funds remaining October 31, 2006.
2. There were no improvements to the real estate owned by the CDC, only plans for the senior low income housing. Five years after expiration of the Agreement occurred on October 30, 2011 and the property has not been used for any other purpose. Nowhere in the Agreement does it require repayment of all funds received.
3. Notwithstanding that we do not believe the CDC is required to return the funds under the contract, I would like to present some mitigating factors to the CDC returning CDBG funds.
4. When this project was conceived and designed, real estate developments were being funded by the Federal, State, and local governments, especially for low income housing, and banks were freely lending. The CDC petitioned the city as a CHODO for CDBG funds in the sum of \$ 200,000, the city examined the project and granted \$76,856 for the project.
5. That money was allocated for architectural and engineering drawings and administrative costs. All expenditures were approved by the city prior to reimbursement and paid out to the appropriate company by the city. The county was approached for funds and approved an amount of \$500,000 conditioned on the CDC obtaining sufficient funds to complete the project.
6. Banks were approached and expressed an interest in making a construction loan. The state was approached to provide soft cost funds and approved the application subject to the CDC having commitments for sufficient funds to complete the project, At this point the commitments were short of the amount needed to move

forward and the CDC appealed to the CRA for the remainder of the funds necessary .

7. The CRA stated that it has a policy of not giving money to non-profit corporations as the CRA is funded by an increment of ad valorem taxation and non-profits pay no tax.
8. The CRA did offer to consider a \$200,000 grant with several restrictions attached; however, the sum was not adequate to meet the County or State requirements.
9. At or about that time, the real estate market collapsed and banks stopped funding.
10. All monies expended were used for the purpose which HUD set for CDBG funds and paid out with the City's approval. Proper records were kept for 3 years after the expiration of the contract and the grant was fulfilled.
11. Though no fault of the City or the CDC, the project could not go forward, and the time period of the grant expired.
12. Under those circumstances the City should not seek recovery of the funds from the CDC which met all the terms of their contract with the City and were capable of completing the project had they received adequate funds.
13. This was a grant and not a loan to be repaid.

<u>DATE</u>	<u>ACTIVITY</u>
12/5/05	Request For Project Proposal on "10 unit" Najada Senior Project ("Project")
3/28/06	Pursuant to Reso 2006-145, City Commission approves Subgrantee Agreement for housing development services and administrative costs for an 18 unit Project
11/15/06	Eric Johnson approves funding request for administrative costs for 23 unit Project
9/17/07	Ernesto Reyes prepares a Monitoring Report on the 20 unit Project
8/09	\$2,100,00 Project funding request presented to CRA Board
12/3/09	Langston Associates, Inc. prepares Program Summary on the Project for CRA Board review
12/8/09	Chris Brown (CRA) writes CDC to relate its support for the Project
3/17/10	Floyd Johnson (CRA) responds to CDC's request for \$2 million to fund 20 unit Project advising that if concerns outlined therein are addressed, he would be willing to submit \$200K funding request to CRA Board
3/24/10	CDC responds to CRA's 3/17/10 stating it is not seeking any funding for predevelopment costs as it has a commitment from State of Florida to pay for same (confirm if \$404,350 commitment still in place) <ul style="list-style-type: none"> - states CRA's square foot cost analysis provides an inflated construction cost for the project - states CDC has \$500K commitment from Broward County (confirm if \$500K commitment still in place) - seek staff input on CDC's 3/24/10 letter to Floyd
5/10/10	CDC writes Chairman Fisher thanking him for allowing opportunity to present Project/\$1million funding and enclosing proposed Project Proposal
6/23/11	HUD requests repayment of the \$76,856 City provided to CDC
7/18/11	City notifies CHDO re: HUD's request for repayment of the \$76,856
7/23/11	CDC's attorney responds to City's 7/18/11 letter requesting repayment action plan

To Do

Review 2005-2006 Funding Agreement with staff to clarify what \$ were to be used for

OHUI staff to clarify effective date of the Agreement (date of execution or HUD's release of funds, whichever is later)

OHUI staff to provide breakdown of what City paid out \$ for

Review Ernesto's report with staff (rezoning necessary and in progress)

