



# City of Madison

## Meeting Minutes - Final

### HOUSING COMMITTEE

City of Madison  
Madison, WI 53703  
www.cityofmadison.com

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Wednesday, September 12, 2007

5:00 PM

215 Martin Luther King, Jr. Blvd.  
Room 260 (Madison Municipal Building)

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#### 1. CALL TO ORDER

*The meeting was called to order at 5:05 PM by Chair Hirsch.*

#### 2. ROLL CALL

**Present:** Brenda K. Konkol, Susan K. Day, Howard Mandeville, Philip P. Ejercito, Thomas E. Hirsch, Victor E. Villacrez, Curtis V. Brink, Detria D. Hassel and David R. Sparer

**Excused:** John L. Merrill, Tobi L. Rutten, Judith M. Wilcox, Rose M. LeTourneau and Eli Judge

*Also Present: George Hank, Staff to the Committee  
Doran Viste, Asst. City Attorney  
Pat Kreitzman, Recording Secretary*

#### 3. APPROVAL OF MINUTES

*Ejercito moved approval of the minutes, second by Sparer with unanimous approval.*

#### 4. PUBLIC COMMENT

*No appearances.*

#### 5. COMMON COUNCIL UPDATE - Konkol/Judge

*Konkol noted that the Mayor is taking \$3,000,000 out of the Affordable Housing Trust Fund to build a road in the Allied Drive project. This is in the Capital Budget. The Board of Estimates passed the motion to do the Bassett TIF Fund program for affordable housing but the Mayor is considering closing this in his operating budget. The TIF 10% set-aside was not funded in the Capital Budget. The operating budget will be coming out the beginning of October.*

#### 6. REPORT OF SUBCOMMITTEES

*Affordable Housing Subcommittee - Brink stated they met and talked over the issues that we just passed.*

*Landlord & Tenant Issues Subcommittee - Ejercito stated they met in July and talked about mailboxes, retaliation and items related to the nuisance ordinance and problem properties. This will continue at their next meeting.*

#### 7. NEW BUSINESS ITEMS

[06496](#)

Amending Sections 32.12(4) and 32.15(2) and creating Section 32.15(4) of the Madison General Ordinances to provide expanded tenant protection against landlord retaliation to include specifically refusals to renew leases and threats

to undertake retaliatory behavior, as well as providing for the recovery of double damages by tenants that arise due to violations of these sections.

*Sparer moved adoption, second by Konkel. Sparer noted that the Landlord & Tenant Issues Subcommittee went through this in a detailed fashion and did approve it. This is trying to make the City ordinance comparable to State Statutes. Currently there are items that the State Statutes protects but the City ordinance covers more landlords than the State Statutes, the protections are not as broad. This matches it up and makes it the same. In the ordinance besides actually retaliating against a tenant by trying to evict them, it also includes refusal to renew a tenant's lease is based on retaliation, it is prohibited. Threatening to do these things are prohibited by State Statute but not City ordinance. The ordinance specifically protects certain activities against eviction such as calling Building Inspection and attempts to organize a tenant union or association. If the tenant is involved in a neighborhood watch group or neighborhood association, the City has had the impression that it was covered by this but he had a court case that this is what was going on and the tenants were told they were protected but when the landlord did refuse to renew their lease, they went to court and the City Attorney filed a amicus brief noting this was covered but the judge said it wasn't covered as it doesn't say it's covered. The amendment to subsection (2) adds the same conditions. Section 32.15(4) is language from the State Fair Housing Code and it clarifies protection for tenants, i.e. threats. Viste noted there was a substitute ordinance and the ordinance before the committee is not the correct one.*

*Nancy Jensen of the Apartment Association of South Central Wisconsin appeared questioning the legality the language of this ordinance. The language stretches beyond the existing State Statute. The State Statutes regulate evictions. The lease is a contract and when the contract ends, you would chose to write a new one or negotiate a contract. If someone wants to be casual and they have this non-renewal process what you will encourage is what has already happened which is they will no longer consider "renewal". They will stick to the language of the contract, start and stop date. Every resident will need to reapply and sign a new lease. This language would create a policy where the unintended consequences are, if a tenant has been retaliatory evicted it falls under the language of the existing ordinance and existing statute for retaliatory eviction, the trigger is you are being evicted and you think it is retaliatory. The landlord files for eviction and it is argued in court. In this instance with the non-renewal, a landlord doesn't do anything. The contract simply says that it is done on a certain date. They don't have to renew, they don't have to stay there, the tenant has the right to move and the landlord has equal right not to enter into a contract. Both parties have the right to re-negotiate or say that is the end of the contract and everybody chooses to stay or go and work together or don't work together. When it ends, there is no trigger. The landlord doesn't file anything when the contract ends. If the tenant wants to renew they are going to stay and then they become a hold-over. Under State Statutes, a hold-over is subject to double damages and the landlord will file for eviction. We have spent the last 2 years trying to create options to avoid evictions and keep people out of eviction court, and reduce the blemishes on housing histories. The policy is to encourage landlords to file for eviction because of the hold-over status.*

*Brink questioned why joining a neighborhood watch group has to be added? What are the damages based on in Section 32.15(4)? In starting the eviction process, what about the stress on the landlord and that there are no double damages back to the landlord on anything? This is setting up an unintended consequence here that you are avoiding the stress on the landlord too. The statement "losses of health, peace, dignity and human rights of the tenant including the rights to be free from the types of retaliation" is too broad.*

*Villacrez asked to go over the mechanics of renewal and why a landlord would have to renew. Sparer noted if the lease does not renew automatically by itself, then the*

landlord has the right to not renew. If the tenant would come into court and prove that if it wasn't for retaliatory action, the landlord would have renewed their lease. If evidence showed this retaliation was the only reason the landlord was not going to renew, then the tenant would be entitled to damages.

Sparer noted the language in Section 32.15(4) is Fair Housing Code language. Should we remove Fair Housing Code protection? Is this also a proposal for Chapter 3 that removes those protections from the City's Fair Housing Code? Currently there is no clarification and this makes it clear what happens when the judge finds that retaliation has happened and this provides language.

Brink asked if there were double damages in the Fair Housing Code? Sparer noted no. Section 32.15(4) is adding a new section into retaliation that is so broad that if it is related to fair housing, lets make it a fair housing issue and sue on the fair housing. Let's not go into retaliation based on some unbelievably grey area here, enforcement by tenant. Brink moved to remove Section 32.15(4) Enforcement by Tenant, second by Villacrez. Konkol noted the reason this language was inserted was this language was defined through case law and they knew what it meant instead of making up their own words. Brink noted this does not say fair housing in the ordinance. Sparer feels this is important to have in the ordinance because when you go to court, appear in front of a judge and go through the whole case, the judge is looking at the exact wording of the ordinance and trying to figure out for example what "health, peace, dignity and human rights" means and there are a number of cases in fair housing that tells what this means.

The vote to remove Section 32.15(4) was 3 (Brink, Villacrez, Day) aye, 4 (Ejercito, Sparer, Konkol, Mandeville) no, 1 abstain (Hassel). The motion failed.

**A motion was made by Konkol, seconded by Ejercito, to RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER Recommended to add language regarding non payment of rent from State Statutes 704.45(2). The motion passed by the following vote:**

**Excused:** Merrill, Rutten, Wilcox, LeTourneau and Judge  
**Aye:** Konkol, Mandeville, Ejercito, Hassel and Sparer  
**No:** Day, Villacrez and Brink  
**Non Voting:** Hirsch

**06811**

Amending Section 4.22 of the Madison General Ordinances to update language and terms in the Affordable Housing Trust Fund ordinance.

Konkol moved referral to wait for the recommendation from the CDBG Commission. Second by Villacrez with unanimous approval.

**Refer to the HOUSING COMMITTEE**

**06834**

Amending Sec. 27.03(2) to define mail receptacles and creating Sec. 27.05(2) (aa) of the Madison General Ordinances to create a requirement that all owners of rental dwelling units provide and maintain mail receptacles for the rental dwelling units.

Konkol stated there was concern about not having mailboxes and not knowing how to solve this problem. Nancy Jensen of the Apartment Association of South Central Wisconsin appeared in support and noted this complies with Federal law. Asst. City Attorney Doran Viste stated it was questioned at the Landlord & Tenant Issues

*Subcommittee about the damaging of mailboxes and if this should be included in the ordinance. He reviewed the ordinance on criminal statutes and our ordinances found it was already covered by other sections.*

**A motion was made by Sparer, seconded by Ejercito, to RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER. The motion passed by the following vote:**

**Excused:** Merrill, Rutten, Wilcox, LeTourneau and Judge

**Aye:** Konkel, Day, Mandeville, Ejercito, Villacrez, Brink, Hassel and Sparer

**Non Voting:** Hirsch

**06939**

That the City of Madison should establish a capital borrowing program for affordable rental housing.

*Hirsch noted the CDBG Commission on September 10 sent a note to the Board of Estimates recommending adoption of the resolution. Two commissioners Art Robinson and Ald. Marsha Rummel volunteered to work with members of the Housing Committee to help draft guidelines for this program.*

*Konkel gave some background information. To get money for the Affordable Housing Trust Fund, they can get money at 5.5% and costs would be added in at 1/2 to 1%. They would be using the City's full faith in credit to borrow money at this lower interest rate, have the developer use that money and pay back over the next 10 years the amount of the principle and interest plus the cost to the City. Unless the developer defaults, the City gets repaid in full. This program indicates that it has to be affordable for 30 years, the AMI level is in there, the CDBG office would administer it, they would annually send out an RFP but they could make decisions throughout the year so we are not tying their hands so if a development project comes up they can deal with it as it comes along. They need to work out how the underwriting would happen. Konkel's intention is that this could be done for new construction or rental rehab. This is for non-profits and for-profits both.*

*Nancy Jensen of the Apartment Association of South Central Wisconsin supports the resolution but did not speak.*

*Sparer moved to approve the resolution, second by Brink.*

*Hirsch asked if the City is borrowing at not tax exempt rates, why would somebody come to the City for this money? Konkel noted it is still lower interest rate than you could get on the current market. Hirsch noted the last item of the fiscal note talks about cash balances of the Affordable Housing Trust Fund and the IZ fund that could be made available for such loan programs. He feels this is a very broad statement. Konkel stated the fiscal note is made by the Comptroller and it can't be changed. Konkel would like to pass along to the Common Council that we are concerned about some of the overly broad statements in the fiscal note that aren't accurate. Ejercito moved to make an amendment that expresses the Housing Committee's discontent with the Comptroller's fiscal note to be forwarded along with our recommendation. Konkel seconded.*

*Day expressed her concern with the affordability at 30 years with the term on the loan is only 10 years. Does this limit the appeal of this offer? Konkel noted this is similar to WHEDA. Day stated that with rental projects with Federal Home Loan Bank they look at 15 years also. Konkel stated that this is a 10 year loan with 15 years of affordability. Brink moved to change 30 years to 15 years, second by Day. Day noted she was*

looking for a 15 year term on the loan. Konkel stated they can't do that due to City policy. It has to be worked out for by the Affordable Housing Subcommittee and the 2 volunteer members of the CDBG Commission. The vote was 6-2 (Konkel, Sparer). Motion passed.

**A motion was made by Brink, seconded by Day, to Return to Lead with the Recommendation to Approve as Substituted to the COMMUNITY DEVELOPMENT BLOCK GRANT COMMISSION The Housing Committee expressed their discontent with the Comptroller's fiscal note with overly broad statements that are inaccurate. Recommend changing from 30 years to 15 years. The motion passed by the following vote:**

**Excused:** Merrill, Rutten, Wilcox, LeTourneau and Judge

**Aye:** Konkel, Day, Mandeville, Ejercito, Villacrez, Brink, Hassel and Sparer

**Non Voting:** Hirsch

#### Affordable Housing Trust Fund Status Report - Hickory Hurie

*Hurie distributed a report on the status of the Housing Trust Fund. The Fund has been built up to \$3.8 million, 38% toward the goal of \$10 million. The intent of the Trust Fund is to build a pool that will generate funds for investment in long-term affordable housing projects, and leverage additional funding for affordable housing projects. Hence the CDBG Commission that oversees the Trust Fund has approved funding recommendations in the form of loans so that the essential principle of the fund is kept intact.*

*Except for the first year, each of the approved applications has been able to move forward and produce the desired results. Overall, the four completed investments have generated over 35 units of housing.*

*One of the initial projects, a construction loan to the Land Trust, enabled the Madison Area CLT to build and sell the Troy Gardens housing units more quickly, and they were able to repay the Trust fund at the end of the sales period.*

*Status Report #7 was distributed to the committee.*

#### Maintaining Property Tax Exemption for Low-Income Rental Housing - Discussion

*Hirsch noted this will be considered as part of the State budget. A memo was included in the packet from the Third Sector Housing Group asking the Mayor to weigh-in on that subject. Mandeville referred this to the Affordable Housing Subcommittee, second by Hassel with unanimous approval.*

## 8. OLD BUSINESS

#### *CDA Development Proposals (Allied Drive/Truax Park)*

*Mark Olinger appeared to give an update. Last Tuesday the Common Council adopted an amended second substitute that authorized the City and CDA to negotiate for the CDA to develop the approximate 9 acres that the City owns of the Hawk properties on Allied Drive. This would allow the CDA to begin preparation and application for Section 42 tax credit project and would permit the CDA to issue a series of RFP's for the balance of the site and balance of housing options. The goal is to come back to the City with a request for how we would like to see the deal structured. The CDA has not made the decision yet on this. A market analysis will need to be done by an independent entity. This will be a two part analysis, one for the Section 42 credits*

and one for the balance of the neighborhood. The project will be broken down into three things: (1) larger general development plan phase, (2) second phase will be more specific related to the northern third of the site which will look at the rental piece for low income tax credit; (3) what happens on the balance of the site. The idea was to try to put into one place somebody who would marshal the process along and move it along. The resolution also authorized the CDA to begin the process of preparing and releasing a variety of RFP's and RFQ's so when it comes back to the Common Council and gets approved this will be ready in order to make the February 1 deadline. If we reach agreement, if we make application and if we get approval the goal is to try to start some level of clearance on the site next summer. There has never been the belief by the CDA that they can do this alone. They need to bring as many partners to the table as possible to make this happen. On the housing tax credit piece, through rough estimations, this would be a 8 or 9 million dollar project. Their goal would be, as this is to be a qualified census tract, is to get the vast majority through tax credits so they would be carrying the smallest amount of mortgage possible. The CDA is also seriously exploring bringing project based vouchers into the site to help bring additional affordability to the project. The Mayor has in his capital budget \$3.5 million dollars, \$500,000 from funding authorized this year but not spent and \$3 million from the Affordable Housing Trust Fund that would help prepare the site and make infrastructure improvements necessary to meet the entire development needs. Day asked if that money would come back into the trust fund. Olinger stated that is the question for the Comptroller and others. They are going to try to make this project as affordable as possible, they can't keep loading all the costs back on the project. This is in a TIF district that has no cash and we'll probably never see positive cash until the day it closes. The goal is within the next month to come back to the Common Council with something for introduction for the deal and negotiations with the City.

Hickory Hurie gave to the committee the Report Card: 2006 Housing Programs in the City of Madison. He briefly went over the chart. Hirsch noted the Affordable Housing Subcommittee is to meet next week and they will continue this discussion at that time. This will be brought back to the October Housing Committee meeting.

Hirsch asked Olinger with the \$3 million that was taken out of the Affordable Housing Trust Fund, what are the proposed uses of it? He understood that road construction would be part of it. Olinger stated this will be used for infrastructure cost associated with the redevelopment of the site. Hirsch stated this suggests to him that somebody has some notion of what the infrastructure costs are going to be and also some notion of what the infrastructure layout is going to be. Why can't the physical plan be revealed for what they have in mind? Olinger stated this hasn't been shared with the Task Force and a decision was made to let the Task Force see it first. He can bring this back after September 27. Some of the things they are looking at are: Lovell Lane is extended; there is a north/south street; there are some alley-loaded houses; their operating assumption is everybody gets a place to park and none of the parking is underground, so there are driveways, alleys, streets; there is some green space; there is street lighting. There are 110 units on the site plan that they are working on and they will share this with the Task Force and the Common Council.

## 9. DISCUSSION ON FUTURE AGENDA ITEMS - SCHEDULE NEXT MEETING

Hirsch noted that he had talked to John Merrill. He had a stroke earlier in the year. He is home recovering but is not ready to come back. His intentions are to come back to the Housing Committee.

Hirsch stated there is a vacancy on the Housing Committee. If any suggestions, give them to him to forward on to the Mayor's Office. Anyone interested can also go on line and fill out the appropriate forms.

*Next Agenda: Maintaining Property Tax Exemption for Low-Income Rental Housing*

**10. ADJOURNMENT**

*The Housing Committee adjourned at 7:00 p.m.*