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COUNSELORS AT LAW

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Presentation to Participants in 2012 FHLBB Affordable Housing Competition

**1. Introduction**

- a. Who we are and what we do
- b. Talk to your lawyers early!
- c. Site issues and development of your program will drive your project structuring and will influence the kinds of resources that are available

**2. Site Issues**

- a. Site Control
  - i. public disposition?
    1. RFP process
    2. need to show a proven track record
    3. process will be more tolerant of slow development schedule
  - ii. private acquisition?
    1. Hard to tie up land long enough to assemble all financing for an affordable housing project
    2. Better if friendly or socially-motivated owner
  - iii. Site assembly
    1. Coordination among multiple sellers
    2. Subdivision/consolidation issues (Boston vs. elsewhere)
  - iv. Mention HOME "choice limiting activities" conundrum as example of "trap for the unwary" (basic rule is that a purchase option better than P&S)
- b. Title issues
  - i. need to do title research pretty early to uncover problems, especially with public disposition where title has not changed hands in many years or ever (example: *Jackson Square*, discontinued streets and reversion of title)
  - ii. need to engage surveyor and get ALTA survey early on to identify site issues
  - iii. restrictive covenants (example: *RCAB restriction on former church*, must be used for residential purpose)
  - iv. encroachments, easements (example: *building over Stony Brook conduit*, need BWSC approval of all construction)
  - v. registered land
  - vi. access issues
- c. Permitting, zoning strategy

- i. do zoning analysis early so you know what relief is needed (this is a required part of funding application), special focus on parking, often the hardest zoning issue
  - ii. 40B in municipalities with less than 10% affordable stock (not in Boston, Lowell, Salem, Holyoke)
  - iii. Boston – neighborhood process, abutter issues (example: *South End*, small group of abutters held up variances), Article 80 thresholds and process, map amendment, 121A, variance process
  - iv. Environmental issues – wetlands, contaminated land (121E), water & sewer or septic permits (need good consultant)
  - v. ADA (MAAB variance)
- d. Historic Property?
- i. Historic district or historic building (not necessarily beautiful old building)
  - ii. Additional permitting required, state and federal levels
  - iii. Additional development cost likely
  - iv. HTC potentially available

### **3. Develop your program**

- a. Target population
  - i. Income targeting
  - ii. homeless, veterans, elderly, disabled, etc
  - iii. Fair Housing issues & LIHTC rules
- b. Phased development?
- c. New construction or acq/rehab (historic?)
- d. Rental or homeownership
- e. Market-rate component?
- f. Commercial component?
- g. Programmatic space for sponsor?
- h. Green development
- i. Procurement issues
- j. These choices drive many of the structuring issues
  - i. fee ownership vs. ground lease
  - ii. condo / 2-level condo
  - iii. partnering with other developers
- k. These choices also influence availability of different funding sources

### **4. Predevelopment/acquisition funding**

- a. Need to pay consultants as you go along
- b. May need to take down title
- c. CEDAC, Life, PCI, BCC

### **5. Financing**

- a. One Stop application process
  - i. comprehensive application
    - 1. financial pro forma

2. environmental diligence
  3. zoning analysis
  4. site control
  5. letters of interest from funders
  6. letters of support from elected officials
  7. market analysis and marketing plan
  8. relocation plan
  9. schematic design plans
- ii. be careful what you promise – extra points available for deeper targeting, etc
- b. Bad economy – DHCD now looking at 3d and 4<sup>th</sup> submissions from experienced developers
  - c. Need to assemble capable development team, consultant, accountant, lawyer, property manager (example: *Charlestown developer*)
  - d. Construction financing
    - i. bond financing (MassHousing, MassDevelopment, 4% tax credits)
    - ii. FHLB direct subsidy/subsidized advance
    - iii. MassHousing, commercial banks
  - e. Permanent Financing
    - i. MHP, BCC (One Source program)
  - f. Operating Subsidy
    - i. Project-based Section 8, State MRVP
  - g. Tax Credits
    - i. LIHTC, State & Federal (included in One Stop application to DHCD)
      1. Need to find syndicator/investor
      2. MHIC role
      3. Certificated state credits – different actors and different market
    - ii. HTC, State & Federal (application to MHC and NPS)
    - iii. NMTC
      1. usually considered if significant commercial element
      2. need to be in right census tract
      3. application directly to allocatees
      4. MHIC, LISC, BCC
    - iv. Various energy tax credits
  - h. Guaranty issues:
    - i. If nonprofit developer, balance sheet strength and need to partner with deeper pockets for-profit guarantor?
    - ii. Choi issues

