

Memorandum



CITY OF DALLAS

DATE February 7, 2020

TO Honorable Members of the Housing and Homelessness Solutions Committee

SUBJECT **Response to Questions Regarding 9% and 4% Housing Tax Credit Applications for Resolutions of Support and No Objection**

Summary

On February 4, 2020, the Housing and Homelessness Solutions Committee (HHSC) was briefed during a special called meeting regarding the 4% and 9% housing tax credit (HTC) applications received by the City for Resolutions of Support and No Objection. During staff's briefing to the HHSC, several questions were raised regarding tax exemption, concerted revitalization plans, application scoring, and other pertinent issues. This memo expands on the discussion and provides answers to questions raised during the briefing.

Background

Dallas Central Appraisal District (DCAD)

An application by Dallas Stemmons, Ltd. (Applicant) was received for a Resolution of Support for 9% competitive HTCs to develop an 87-unit, mixed income multifamily project (Project). The Applicant proposes the Dallas Housing Finance Corporation (DHFC) purchase and own the development site and serve as 65% owner of the General Partner (GP) of Dallas Stemmons, Ltd. A to be determined historically underutilized business (HUB) will be 35% owner of the GP. Palladium USA International, Inc. will be the sole owner or the Special Limited Partner (SLP) of Dallas Stemmons, Ltd. By having the DHFC own the land and be a majority owner of the GP, it is the Applicant's contention that the property qualifies to receive a property tax exemption from DCAD.

DCAD has granted a property tax exemption on projects with other partnership structures wherein the DHFC owns the land and is sole owner of the GP; however, DCAD has indicated to DHFC counsel that it will not grant a property tax exemption in situations where the DHFC is simply a majority owner of the GP instead of a sole owner as described above.

Applicants receive additional points from the Texas Department of Housing and Community Affairs (TDHCA) for 9% competitive HTCs when the proposed GP is partially owned by a HUB. Because DCAD does not grant a property tax exemption when this structure is utilized, 9% HTC applicants in Dallas County are at a disadvantage. Other area counties, including Tarrant County, have granted tax exemption on a project using this structure in recent application cycles.

Counsel for DHFC and Applicant submitted a request to DCAD to receive a property tax exemption for this project on January 21, 2020. DCAD has not yet provided a response. The property tax exemption request is attached hereto as Exhibit A for your review. It provides additional support for property tax exemption under Tax Code Section 11.11.

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Concerted Revitalization Plans (CRP)

Per TDHCA's Qualified Action Plan (QAP), 9% competitive HTC applicants can receive up to seven additional points if their plan is located in a CRP. A CRP is a defined area that is targeted by a municipality for revitalization through investment and coordinated development efforts such as a Tax Increment Finance (TIF) District. To receive the full seven points, City Council must declare the applicant's development as "contributing more than any other to the concerted revitalization efforts of the municipality." Only one project can receive this designation per CRP area. If two applicants are given this designation for the same CRP area, then no applicant will receive the additional points per the QAP.

Two applicants are requesting to receive designation as the development that most contributes to the concerted revitalization efforts of the City within the Fort Worth Avenue Corridor. There are two Council authorized plans in this area that could be considered CRPs: The Fort Worth Avenue TIF District and the Fort Worth Avenue Corridor Land Use and Urban Design Plan. One applicant claims the CRPs are separate and additional points can be granted for both developments. The other applicant, who also spoke at the February 4, 2020 briefing, does not consider the CRPs as separate areas. The applicant stated that if the most contributing development designation was given to both applicants, then neither would receive the additional two points, per the QAP.

The HHSC directed staff to research the matter in further detail to determine if the CRPs described above would qualify as two separate areas per the QAP. The Office of Economic Development (OED) Staff and the City Attorney's Office (CAO) reviewed the two proposed CRPs and Section 11.9(7) of the QAP to determine if the plan would meet the requirements of TDHCA as separate CRPs. While the two plans were authorized by separate City Council resolutions, it was unclear if they would be treated as separate plans based on the language contained in the QAP.

Staff also contacted TDHCA to discuss the issue. TDHCA has previously allowed overlapping CRPs to qualify as separate CRPs; however, in this instance, one of the CRP areas was a specifically defined area within a much larger CRP area. The developments were located in different parts of the CRP area.

Conversely, the Fort Worth Avenue plans have almost the exact same geographic boundaries and the applicants' development sites are directly across the street from each other. TDHCA informed staff that even though two separate plans were authorized by Council, their similar geographic areas would not allow them to qualify as separate CRPs.

It is staff's recommendation that only one applicant receive the most contributing development designation. It is staff's opinion that if both applications receive the designation, then neither will receive the additional points. One application should be selected to receive the additional points to ensure the highest possible score resulting in the development of quality, affordable housing within the City.

TDHCA Requirements & Scoring

TDHCA requires an affordability period of 30 years. 9% competitive HTC applicants can receive additional points for extending the affordability period to 45 years.

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TDHCA does support income averaging. In non-rural areas of the City, TDHCA awards 11 points if the average income of the development is 56%, 13 points if the average income of the development is 55%, and 15 points if the average income of the development is 54%. This does not result

When underwriting applications, TDHCA uses a minimum replacement reserve of \$250 per unit annually when determining project feasibility. These funds held in a reserve account to pay for the future replacement or major repair of building systems and components.

TDHCA provides additional points when a Texas-certified historically underutilized business (HUB) is included on the development team. A HUB must be: 1) a U.S. citizen, 2) a for-profit entity that has not exceeded the size standard prescribed by [34 TAC §20.294](#) and has its principal place of business in Texas, and 3) at least 51 percent owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and /or a Service Disabled Veteran with a Service related disability of 20% or greater, who resides in Texas and actively participates in the control, operations and management of the entity's affairs. TDHCA receives public comment on the QAP throughout the year.

Should you have any questions or concerns please contact Kyle Hines, Economic Development Manager at kyle.hines@dallascityhall.com



Michael Mendoza
Chief of Economic Development and Neighborhood Services

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| T.C. Broadnax, City Manager | Joey Zapata, Assistant City Manager |
| Chris Caso, City Attorney (Interim) | Nadia Chandler Hardy, Assistant City Manager and Chief Resilience Officer |
| Mark Swann, City Auditor | M. Elizabeth Reich, Chief Financial Officer |
| Biliera Johnson, City Secretary | Laila Alequresh, Chief Innovation Officer |
| Preston Robinson, Administrative Judge | M. Elizabeth (Liz) Cedillo-Pereira, Chief of Equity and Inclusion |
| Kimberly Bizzor Tolbert, Chief of Staff to the City Manager | Directors and Assistant Directors |
| Majed A. Al-Ghafry, Assistant City Manager | |
| Jon Fortune, Assistant City Manager | |

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EXHIBIT A

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PROPERTY TAX EXEMPTION PREDETERMINATION REQUEST

January 21, 2020

Dallas Central Appraisal District
Exemption Division
Attn: Elizabeth Sarles
2949 N. Stemmons Freeway
Dallas, TX 75247

RE: Property Tax Exemption Predetermination Request for Affordable Housing Multifamily Housing Apartment Complex: Dallas Stemmons Apartments; Dallas, Dallas County, Texas; Apartment Complex Owner: Dallas Stemmons, Ltd.; Landowner: City of Dallas Housing Finance Corporation, a nonprofit tax-exempt Texas housing finance corporation

Dear Ms. Sarles:

We represent the City of Dallas Housing Financing Corporation, a nonprofit tax-exempt Texas housing finance corporation (“*DHFC*”) in connection with the above-referenced contemplated 87-unit affordable housing multifamily apartment development to be located at 11070 N. Stemmons Freeway in Northwest Dallas (the “*Affordable Housing Apartment Complex*” or “*Project*”). Pursuant to this letter, we respectfully request a predetermination that the below proposed ownership structure for the Affordable Housing Apartment Complex qualifies for a property tax exemption under Tax Code Section 11.11.

DHFC is a Tax-Exempt Texas Housing Finance Corporation

DHFC is a housing finance corporation organized under Texas law. DHFC is exempt from federal taxation and is exempt from taxes in the State of Texas. The following provisions of the

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Texas Housing Finance Corporations Act, Chapter 394 of the Texas Local Government Code, as amended (the “*Act*”) set forth the DHFC’s tax exempt status:

Section 394.002(c) of the Act provides the DHFC, as a housing finance corporation serves and benefits the public:

(c) The legislature finds that the accomplishment of the results described by Subsection (b) is a public purpose and function and lessens the burdens of government. The legislature further finds that:

(1) the creation of a housing finance corporation is for the benefit of the people of the state, improves the public health and welfare, and promotes the economy;

(2) those purposes are public purposes; and

(3) the corporation, as a public instrumentality and nonprofit corporation, performs an essential governmental function on behalf of and for the benefit of the general public, the local government, and this state.

Additionally, Section 394.905 of the Act provides, among other tax exemptions, that the property owned by a housing finance corporation and the income generated from that property are tax exempt:

The housing finance corporation, all property owned by it, the income from the property, all bonds issued by it, the income from the bonds, and the transfer of the bonds are exempt, as public property used for public purposes, from license fees, recording fees, and all other taxes imposed by this state or any political subdivision of this state. The corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

DHFC Will Acquire and Own the Land and Lease it to the Owner and Operator of the Affordable Housing Apartment Complex

DHFC or DHFC Dallas Stemmons Landowner LLC (“*DHFC Landowner*”), a Texas limited liability company and a wholly owned subsidiary of DHFC, will acquire and own the real property (the “*Land*”) located at 11070 N. Stemmons Freeway in Northwest Dallas County, Texas.

The Land will be leased by DHFC or DHFC Landowner to the owner and operator of the Affordable Housing Apartment Complex, Dallas Stemmons, Ltd. (the “*Partnership*”) pursuant to a 99- year term ground lease and the Partnership will continue to own the improvements located thereon which consist of 87 affordable residential units to be rented to low-income Dallas county residents.

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Further, we are aware of the opinion of the Texas Supreme Court pertaining to the issue of a governmental entity owning real property and improvements and availing itself of the tax exemption under Section 11.11 of the Tax Code that it is necessary for DHFC to maintain equitable title to the Project. Accordingly, and consistent with past practices in other transactions of this type, we will draft, in addition to the ground lease, a purchase option agreement which would give DHFC or DHFC Landowner, as applicable, the right to purchase the improvements at the Affordable Housing Apartment Complex at any time at its option and a right of first refusal agreement which would give DHFC and/or DHFC Landowner the right to acquire the Affordable Housing Apartment Complex if the Partnership elects to sell it in the future.

Because (i) DHFC or DHFC Landowner would own legal title to the Land and lease it to the Partnership; (ii) DHFC would wholly own DHFC Landowner and also own 65%¹ of Dallas Stemmons GP, LLC, a Texas limited liability company and the General Partner of the Partnership (the “**General Partner**”), that owns and operates the Affordable Housing Apartment Complex; (iii) DHFC and/or DHFC Landowner would have an option to purchase the Affordable Housing Apartment Complex at any time; and (iv) DHFC and/or DHFC Landowner would have a right of first refusal to acquire the Affordable Housing Apartment Complex, DHFC would thereby in all instances and at all times own equitable title to the Project.

Because all the Rental Units in the Apartment Complex will be “Affordable,” the Partnership is Requesting 9% Housing Tax Credits from the Texas Department of Housing and Community Affairs

All 87 rental units in the Affordable Housing Apartment Complex will be rented to low-income Dallas County residents. Further, the residential development will be located in a disaster area of Dallas Country that was ravaged by the recent tornado that caused severe damage in the county.

In light of the public benefit to area residents provided by the new Affordable Housing Apartment Complex, the Partnership is requesting 9% housing tax credits from the Texas Department of Housing and Community Affairs (“**TDHCA**”).

The Proposed Ownership Structure Qualifies for a Property Tax Exemption Under Texas Law

As discussed herein, DHFC will own the Land for which we are seeking a property tax exemption and will also own 65% of the owner of the Affordable Housing Apartment Complex upon which the Land sits. This ownership structure is consistent with ownership structures approved for tax-exemption by housing finance corporations in Texas. Taxing authorities grant property tax-exemptions where the general partner of the partnership is at least 51% owned by a Texas housing finance corporation. This ownership structure, which in many cases also includes

¹ The remaining 35% ownership interest in the Partnership will be held by a certified Texas Historically Underutilized Business (“**HUB**”).

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part ownership by a Texas HUB, allows applicants to receive additional points when scored by TDHCA. Allowing a general partner of a partnership to be partially held by a HUB or a non-profit in addition to being held by a Texas housing finance corporation, puts applicants who are building affordable housing developments at an advantage when seeking to secure competitive 9% housing tax credits to expand affordable housing opportunities in Texas.

Further, after our review and analysis of applicable Texas law, it is our reasonable good faith conclusion that all property owned by DHFC and the income generated from that property is tax exempt. Therefore, the Land upon which the Affordable Housing Apartment Complex will sit will be exempt from property taxes.

Before proceeding, however, we hereby respectfully request a predetermination by your office that the proposed ownership and use of the Land, as outlined in this letter, will qualify for the exemption under Tax Code § 11.11.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions or need further documentation or information to assist your predetermination decision.

Very truly yours,

Camisha L. Simmons
SIMMONS LEGAL PLLC,
Counsel for City of Dallas Housing Finance Corporation and its affiliates