TOWN OF GREENWICH
BOARD OF ESTIMATE AND TAXATION
PARSONAGE COTTAGE WORKING GROUP

Workshop Minutes - Mazza Conference Room, 1st Floor, Town Hall
Tuesday, December 1, 2015

Committee: Marc Johnson, Mary Lee Kiernan, Leslie Tarkington, Bill Finger,
Board: Michael Mason, BET Chairman, John Blankley, Sean Goldrick, Jeffrey Ramer,
Nancy Weissler
Others: Peter Mynarski, Comptroller, George Yankowich, Housing Authority Commissioner, Anthony Johnson, Housing Authority Executive Director, James Boutelle, Housing Authority Commissioner, Princess Erfe, Community Development Administrator, Aamina Ahmad, Assistant Town Attorney, Christopher Von Keyserling, Penny Lore, Director, Parsonage Cottage Senior Residence, Alma Rutgers, CDAC Chairperson, Beth Krumeich, 2016 BET Candidate. Jim Lash, 2016 BET Candidate, Nancy Brown, former Community Development Administrator

The meeting was called to order at 11:02 A.M.

Approval of May 13, 2014 Meeting Minutes

On a motion by Ms. Tarkington, seconded by Ms. Kiernan, the Working Group voted 4-0-0 to approve the May 13, 2014 meeting minutes.

Mr. Johnson welcomed the attendees and summarized the historical sequence of events leading to the establishment of the Working Group by the BET in September of 2013 in order to familiarize the audience with what had already taken place. He further summarized the efforts of the Working Group since inception, specifically reviewing the two refinancing offers made by the Working Group to the Housing Authority in November 2013 and May 2014 bringing debt service down to the level requested by the Housing Authority, which were rejected. Mr. Johnson added that the meeting would follow the BET meeting format of inviting speakers to make presentations to provide the Working Group with information for its recommendation to the Budget Committee, BET, Board of Selectmen and the RTM, but cautioned that the meeting was not a public hearing.

Review and Approval of RSM US LLP Operational Review

Mr. Johnson asked Ms. Kiernan to provide further background on the results and outstanding questions of the Operational Review undertaken by RSM US LLP (formerly known as McGladrey) dated November 1, 2015.

Ms. Kiernan reviewed the Law Department’s advice that a review of two entities, the Parsonage Senior Residence L.P. and its general partner, the Town Hall Annex Corporation, was authorized by the 1995 Operating Agreement. The Working Group asked the Housing Authority about several issues raised by the Operational Review, including the waiving of Parsonage Cottage Management Fees; a distribution to the Greenwich Housing Authority reported in the
2013 K-1 partnership distribution schedule; the Law Department’s conclusion that notice and consent was required for a change in the ownership of the partnership; and the cash flow issues relevant to capital project needs anticipated over several different time horizons.

On a motion by Mr. Finger, seconded by Ms. Tarkington, the Working Group voted 4-0-0 to accept and approve the RSM US LLP Report.

Review and Approval of Report of BET Parsonage Cottage Working Group

Mr. Johnson summarized the information in the Working Group report. Ms. Kiernan commented that there had been four public meetings with the Housing Authority and dialogue with the Law Department to facilitate resolving a variety of outstanding issues. Speaking for the Housing Authority Commission, Mr. Yankowich asked that a copy of his written rebuttal to the comments contained in the RSM US LLP Operational Review and further questions posed by the Working Group be attached to the Minutes of the meeting. Mr. Yankowich distributed his written comments to the Working Group and others.

On a motion by Ms. Tarkington, seconded by Mr. Finger, the Working Group voted 4-0-0 to approve the Report of the BET Parsonage Cottage Working Group.

Discussion of HATG Modification of Loans

Mr. Yankowich explained that the Housing Authority agreed with the financial terms proposed by the Working Group’s 2014 offer letter, but rejected the offer because of offer letter’s covenants and conditions. The Working Group commented that the covenants and conditions were contained in the 1995 Agreements and discussed with the Housing Authority at the Working Group’s meetings. The Working Group and the Housing Authority reviewed each of the covenants and conditions, making progress on reaching resolution of these issues. A definition of excess cash flow and the authorized uses of excess cash flow were reviewed in detail by the parties. Further discussion ensued regarding the capital plan and cash flow needs at Parsonage Cottage. The parties acknowledged that the capital plan for Parsonage Cottage presented by the Housing Authority was originally five years and now extended to 27 years. Responding to a comment made by Mr. Yankowich that there would likely be cash flow deficits in years 8-10, Mr. Finger pointed out that whether the two loans were modified or one was modified and the other forgiven, there were still cash flow issues currently projected in years 8-10. Ms. Tarkington reviewed the sewer tax issue with the Housing Authority. Ms. Kiernan reviewed the Working Group’s offer to renegotiate the loans if Medicaid rates moved unfavorably. The members of the Working Group also discussed the impact of the CDBG loan modification or forgiveness, which would reduce the amount of federal HUD funds allocated to organizations in the community. Ms. Tarkington spoke to the importance of the CDBG funding to the Housing Authority, and whether loan forgiveness or partial forgiveness for the Parsonage Cottage loans should be considered. Also, she commented on the importance of providing to Parsonage Cottage a financing package that the majority of the BET members would support.

Next Steps

Mr. Johnson polled the members of the Working Group for their thinking on the Housing Authority requests and suggested that the Working Group meet again for further discussion prior to the Budget Committee meeting of December 8th. It was also decided that Mr. Johnson
and Ms. Kiernan would meet to update the previous offer for loan modification, since that offer had now become stale with a start date of January 1, 2014.

Adjournment

On a motion by Ms. Kiernan, seconded by Mr. Finger, the Working Group voted 4 to 0 to adjourn the meeting at 1:20 P.M.

_Catherine Sidor_

Catherine Sidor, Recording Secretary

_Mary Lee Kiernan & Marc V. Johnson, Co-Chairs of the Working Group_
Report of BET Parsonage Cottage Working Group for December 1, 2015 Meeting

At the September 24, 2013 meeting of the BET, the Parsonage Cottage Working Group consisting of Marc Johnson and Mary Lee Kiernan as co-chairs, as well as Leslie Tarkington and Bill Finger, was created at the request of the BET Chairman. The purpose of this Working Group was to review the CD-3 application by the Housing Authority made to the BET in September of 2013 and make a recommendation to the full BET.

The Housing Authority’s application requested the complete forgiveness of a loan made by the Town to the Parsonage Cottage Senior Residence Limited Partnership (the “PC Partnership”) using CDBG funds. This loan was extended in connection with a complex (leveraged tax partnership) financing of the renovation of a Town property, Parsonage Cottage, undertaken by the Town and the Housing Authority in the mid 1990’s. The agreements entered into in 1995 to accomplish this tax benefit financing included a 99-year lease from the Town to the PC Partnership, loan agreements, an operating agreement, a partnership agreement and a management agreement (the “1995 Agreements”).

This financing also included three other elements: a second Town loan, made with general fund dollars, a loan from a generous group of private individuals, made through a 501(c)(3) fundraising board, and a large equity investment by two low-income housing tax credit (LIHTC) investors made through contributions to the PC Partnership in return for 99.9% limited partnership interests. The Town Hall Annex Corporation (“THAC”), a non-profit corporation that has the same board of directors as the Housing Authority, was the .1% general partner of the PC Partnership.

When the Housing Authority sought forgiveness of the CDBG loan from the Town in 2013, the Housing Authority stated that it intended to pay off the second Town loan by obtaining a commercial loan secured by the lease on Parsonage Cottage; that the Housing Authority was assured the forgiveness of its loan from the private fundraising board, which has since occurred; and that the Housing Authority was in the process of buying out the LIHTC investors. Documents indicate that the Housing Authority bought out the LIHTC credit investors for approximately $161,000 in December of 2012. This set of transactions originally proposed by the Housing Authority in connection with the CDBG loan forgiveness is illustrated in Exhibit A.

The Working Group began with a review of the 1995 Agreements with the assistance of the Comptroller, the CDBG Administrator and the Law Department. It became immediately clear that while the original funding of the renovation of Parsonage Cottage with a syndicate of funders such as this is unusual for Greenwich, this complex form of financing is not unusual for affordable or supportive housing projects around the state or nationally. In addition, these loans created an unusual measure of oversight by the Town over the operation and maintenance of Parsonage Cottage that is greater than the oversight typically exercised by the Town over any other local Housing Authority facility.
The Working Group kept several guiding principles and questions in the forefront of our work, including:

1. How does the Town continue to maintain an excellent facility providing appropriate care for the low to moderate-income residents of Parsonage Cottage?
2. What is the most prudent and responsible way to finance future capital improvements needed at Parsonage Cottage?
3. How do the Town honor the intention of the original transaction, governing documents and generous donors, which was to set up an operation that could fund any potential capital improvements at Parsonage Cottage out of its own cash flow, without extra infusions from either a) the declining federal grant of CDBG funds allocated to many local nonprofits or b) the Town’s general fund?

The Working Group conducted four public meetings in October and November 2013, and in February and May 2014. Representatives of the Housing Authority were invited and attended these meetings. Extensive minutes of these meetings are available on the Town’s website and have been provided to the full BET. These minutes are attached as Exhibit B.

At the first Working Group meeting in October 2013, we learned from the Housing Authority that a refinancing that would reduce the annual debt service on the Town and CDBG loans from approximately $130,000 to below $50,000 would enable the Housing Authority to improve cash flows and fund anticipated capital improvements and repairs to Parsonage Cottage. Financing capital items with a capital reserve funded by cash flow was required by the 1995 Agreements, but the Working Group learned that this capital reserve had not been established by the PC Partnership. The Working Group also proposed enforcement of the covenants in the original loan agreements, such as the capital reserve. The Working Group requested documents and financial information that any bank would require in connection with a refinancing. In a letter dated November 25, 2013 (“First Offer Letter”), the Working Group formally proposed a refinancing of both the Town and CDBG loans to achieve the level of cash flow requested by the Housing Authority. The First Offer Letter is attached as Exhibit C.

In addition, at the first Working Group meeting and in First Offer Letter sent to the Housing Authority, the Law Department pointed out that the purchase of the 99.9% limited partnership interests of the LIHTC investors by the Housing Authority was done without notice to the Town and constituted a technical event of default to both Town loans, triggering cross defaults in the associated lease and operating agreements. This represented a different approach to the unwinding of LIHTC financings. Usually creditors and other parties to the original LIHTC financing are alerted when the tax credits are about to expire. Typically, the general partner (operator) works with the creditors and the property owner to either 1) refinance if cash flow or renovations are needed, or 2) terminate the partnership vehicle, which is only needed to attract LIHTC investors, and enter into new operating and/or lease agreements.

Since the first meeting of the Working Group, the Housing Authority has not agreed to this generous refinancing proposal. The details of this proposal were further discussed
and refined at subsequent public meetings of the Working Group, which reflected substantial progress, in our view. The Working Group proposed to: refinance the Town Loan from 6% to 1% and the CDBG Loan from 4% to 0%, extend the maturity of both loans by 13 years, continue the same level amortization payments, and the Working Group added the ability to refinance should the daily reimbursement rate on Medicaid move unfavorably. The proposed deal, with these additional details, was again committed to writing in a letter to the Housing Authority dated May 22, 2014 ("Second Offer Letter") and discussed with the Housing Authority at public meetings held in February 2014 and May 2014. The Second Offer Letter is attached as Exhibit D.

The Second Offer Letter from the Working Group also listed outstanding documents and key unanswered questions. One important issue was whether the Housing Authority was owed or had waived a management fee of over $1 million that the Housing Authority indicated it was owed under the 1995 Agreements. However, the copy of the original Management Agreement from 1995 has not been provided. A new Management Agreement dated January 1, 2013 was provided to the Town with a letter from the Housing Authority dated December 13, 2013 and is attached as Exhibit E. The new Management Agreement is a contract between the PC Partnership, which is now 100% owned by the Housing Authority, as “Owner,” and the Housing Authority as “Agent.” Under the new Management Agreement, the Housing Authority is compensated with a management fee of 6% of gross rents. All Parsonage Cottage employees are Housing Authority employees. The Housing Authority also allocates a percentage of its management personnel costs across its portfolio of properties. Distributions of equity cash flow are not part of the fee or compensation of the Housing Authority.

In addition, the Second Offer Letter also made an alternative offer to the Housing Authority, which was to remove the for-profit limited partnership structure that was created solely for the purpose of housing the equity investment from the LIHTC investors, revise all the 1995 Agreements, and send out a request for proposals for the operation of Parsonage Cottage to the Housing Authority and any other interested operators. This could be achieved contractually with a master exit agreement. The Law Department has noted that the Housing Authority is legally required under the 1995 Agreements to assist with any transition in the operation of Parsonage Cottage.

The Housing Authority continued to refuse to accept the refinancing offer, and the Working Group asked the Law Department to both consider legal issues associated with the refinancing and assist with negotiations. Town Attorney Wayne Fox and Assistant Town Attorney Aamina Ahmad held discussions with the Housing Authority’s legal counsel with the hopes of reaching an agreement. However, no agreement was reached.

As a next step, the Law Department advised that under the 1995 Agreements, the Town had the right to inspect the financial books and records of the PC Partnership and the THAC upon proper notice. This had also been discussed with the Housing Authority at public meetings of the Working Group. The Law Department, members of the Working Group and the Comptroller developed a list of requested documents that had not been received from the Housing Authority, as well as questions that had not been adequately answered by the Housing Authority that were needed for the Town to make a
responsible refinancing offer. The BET decided to engage the Town’s auditor, McGladrey, to conduct this review, which began in the summer of 2015. The scope of the review was sent to the Housing Authority by the Law Department in advance of the visit by McGladrey.

The results of McGladrey’s review are being made available to the Housing Authority and this report is attached as Exhibit F. McGladrey was unable to obtain all the requested documents or answer all the questions raised by the Working Group. In particular, the status of the large “unpaid” management fee remains unclear. The McGladrey report also noted that the K-1 partnership distribution schedules that accompany the PC Partnership tax returns indicated a distribution of $216,876 to the Housing Authority in 2013. The McGladrey auditor asked for additional information about this distribution, but no details or explanations were provided to the auditor. The Comptroller has recently asked again for more information about this distribution. The Housing Authority responded that this was a taxable, non-cash event, but no further details have been provided.

In connection with the McGladrey review, the Working Group has also asked the Law Department whether the purchase by the Housing Authority of the 99.9% limited partnership interest in the PC Partnership, giving 100% ownership of the PC Partnership to the Housing Authority, when the PC Partnership still holds the 99 year lease on Parsonage Cottage, requires municipal improvement status approval.

In November 2015, the BET was asked to approve a CDBG grant for the purchase of a new boiler for Parsonage Cottage. The boiler is among the capital items that should be financed out of cash flow according to the 1995 agreements. The BET voted to approve funding for the boiler and condition the grant on the resolution of the issues raised by the Working Group. It should be noted that CDBG funding for the boiler will not be available for almost a year. If the refinancing offer had been accepted when made in November 2013, the Housing Authority would have the funds to purchase a boiler immediately.

Since the Budget Committee and the BET voted to approve funding for the boiler with the condition, the Housing Authority has provided the Town with the following previously requested information:

1) A detailed and long term plan for capital needs at Parsonage Cottage
2) The 2014 audit and tax return for the PC Partnership
3) The 2014 audit and tax return for THAC

At the December 1, 2015 meeting, the Working Group intends to make a final recommendation to the BET for the BET to vote on at the BET’s December 15, 2015 meeting. In terms of procedure following the BET’s vote, the Law Department has advised the Working Group that whatever the BET recommends for resolution of these issues, whether the resolution is the proposed refinancing or otherwise, the resolution will have to go back to the Board of Selectmen and then to the RTM for approval. Withdrawal of the original application does not represent a viable option for two
reasons: 1) the Law Department has advised that the Housing Authority’s buyout of the LIHTC investors represents a technical default of both the CDBG and Town loans, and this requires resolution; and 2) the question of how to prudently finance future capital improvements at Parsonage Cottage would remain unresolved. The Working Group has set forth these procedural steps in writing to the Housing Authority, and the Working Group stands ready to work with the Housing Authority in order to achieve a conclusion of this matter for the benefit of Parsonage Cottage.

Respectfully submitted,

Marc Johnson and Mary Lee Kiernan
Co-Chairs of BET Parsonage Cottage Working Group
DECEMBER 1 REPORT prepared by the BET Working Group
COMMENTS, ERRORS OR MISCHARACTERIZATIONS
November 30, 2015 prepared by George Yankowich, Commissioner, HATG

PAGE 1

The definition of "1995 Agreements" includes 'a management agreement'. While there is reference to a management agreement in the 1995 documents, none has been located and the only management agreement that is part of the record is dated 2013.

PAGE 2

This is the first reference since 2012 to the existence of guiding principles for the Working Group. The third guiding principle presents a new position by the Working Group and is a mischaracterization of the "1995 Agreements, as follows:

a) The Working Group states that the INTENTION of the original transaction was to fund capital improvements without extra infusions from block grants or the Town general fund. The Operating Agreement paragraph 11 states: It is anticipated that after an initial startup period the HFA will not operate at a deficit; any surplus shall be used to operate and maintain the HFA and to create a capital reserve for payment of operating and capital expenses of the HFA, including payment of deficits. The definition of INTENTION means a thing intended, an aim, or a plan (INTENTION used by the Committee). The Operating Agreement uses ANTICIPATED which means regarded as probable, or expected. The Agreement expected that the HFA would not operate at a deficit, but it also states that if it did, surplus cash would be used for repayment of deficits. Surplus cash was also to be used to operate the HFA and set up a capital reserve.

No reference can be found that the Agreements stated that there was an intended plan that precluded the use of outside sources of funds for operations or capital improvement. IN FACT The Working Group at its October 8, 2013 Meeting and at the suggestion of Ms. Kiernan listed Town funding as a consideration for Capital improvements for Parsonage Cottage, which is the opposite position from the "guiding principles" today. Further there have been many CDBG grants awarded to Parsonage Cottage for capital improvements all of which have been approved by the BET, including this BET, over the years (see list provided to the BET by Princess Erfe)

Page 2

The following statement is misleading: ..."the purchase of the limited partnership interests of the LIHTC investors by the Housing Authority was done without notice to the Town..."

A letter was sent to the First Selectmen in February 2013 and discussed at a meeting with the Selectmen, HATG, and the town attorney, all as part of the Loan Forgiveness request. The agreements state that Notices to the Town are addressed to the First Selectman. There is no notice requirement to the BET. HATG ACQUIRED the partnership interests. The effective date was December 2012, with the transaction finalized in the summer of 2013.

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There is no factual basis for stating that "Usually creditors and other parties to the original LIHTC financing are alerted..." The requirement for Notices is spelled out in the '1995 Agreements'. This is editorializing, not reporting.
The question of the unpaid Management fee for the work done over the past 17 years keeps coming up, even though it has been documented many times. The only fee that was waived were for a few years immediately before acquiring the partnership interests, and this was only to address certain tax obligation issues. The 1995 Partnership Agreement paragraph 6.12 outlines the Project Management duties and states that the property management fee will not exceed 6%. That 6% is in the 2013 Management Agreement.

The statements about the McGladrey report are out of date when referring to documents. Ask the Comptroller for the information which has been provided.

Referring to the request to determine the requirement of an MI is misleading. If the Law department issued a Legal Opinion which says an MI is or is not required, provide the written opinion.

Stating the "the boiler is among the capital items that should be financed out of cash flow according to the 1995 agreements" is a misstatement of the facts and is misleading. The 1995 Agreements, as noted above, do not state that capital expenditures should only be financed via cash flow. The Agreement states that a capital reserve is anticipated to be established with surplus cash flow.

Previously requested information, item 1) a long term capital plan: A five year plan was presented in writing many times to the working group and the BET in May, June and September of 2013. In July 2014 a 27 year plan was prepared that showed the financing proposed by the working group was not sound, which we believe was delivered. This same 27 year plan was again delivered in November 2015 in repose to the statement that there was "No capital plan" by the working group and the McGladrey report.

The statement that the Law Department has advised that the HAG "buyout" is a technical default is contrary to the HATG legal opinion. Attorney Pittocco on behalf of HATG had asking on 12/12/13 for a written Legal Opinion stating the basis of such advise, and none has been prepared.