



Inclusion Through
Diversity

Tompkins County Administration

125 East Court Street
Ithaca, NY 14850
Phone: (607) 274-5551
Fax: (607) 274-5558
www.tompkinscountyny.gov

COUNTY ADMINISTRATOR

Jason Molino

DEPUTY COUNTY ADMINISTRATORS

Lisa Holmes and Amie Hendrix

"Promoting excellence in County operations while respecting the needs of the people we serve."

To: Housing and Economic Development Committee

From: Jason Molino, County Administrator *JM*

Date: September 23, 2019

Subject: Analysis and Recommendations for the Community Housing Development Fund (CHDF)

Over the past year, the County has wrestled with concerns regarding future funding for the CHDF, which is a local partnership with the City of Ithaca and Cornell University to support the development of affordable housing in Tompkins County. As stated in its Comprehensive Plan and Housing Strategy, Tompkins County is committed to addressing our community's shortage of housing residents can afford. To that end, the County is analyzing how best to increase its investment in affordable housing in order to most effectively fund improvements to the supply of housing affordable to low- and middle-income residents.

Please note that this analysis would not have been possible without the significant contributions from Megan McDonald, Deputy Commissioner of Planning and Sustainability and David West, Senior Planner. Their expertise and knowledge on this topic is invaluable and a major contributor to the program's success.

Background on Tompkins County investments to expand the affordable housing supply

Source of Funds: Prior to last month, New York State counties lacked clear authority to use local funds under New York Consolidated Laws - County Law - CNT § 224. Tompkins County's funding to increase the supply of affordable housing units has to date relied on HUD Program Income. These funds come from the gradual repayment of loans the County made, using grant funds it received from the U.S. Department of Housing and Urban Development (HUD), to help lower income households buy their first homes. The last of these HUD-funded loans were made c.2000, so as homeowners pay off these loans, income from monthly repayments is decreasing.

Funding Mechanism: Tompkins County's primary means of investing in the expansion of affordable housing has come through the Community Housing Development Fund (CHDF). This partnership was established in 2009 by Cornell University, the City of Ithaca, and Tompkins County, which annually contribute \$200,000, \$100,000, and \$100,000 respectively. These allocations have been static since 2009 and the program is currently set to expire by November 2021. The CHDF Program is the most direct vehicle at the County's disposal to increase its funding for the expansion of affordable housing within Tompkins County and has benefits including:

- *Proven concept* that has participated in 67% of the permanently affordable housing units built in Tompkins County since its inception.
- *Established program* with both review and oversight committees, and a known reputation among both affordable housing developers and funders.
- *Effective leveraging tool* that historically has averaged 3% of the funding needed for project construction.
- *Flexible and community-driven solution* that enables local funding partners to work together to adapt funding rounds and parameters to changes in housing needs or to changes in major sources of leveraged housing construction funds.

In discussion of the possibility of increasing Tompkins County's contribution to the CHDF Program, several key questions should be considered:

If additional funds were made available are projects ready to take advantage of the funding?

Yes, projects are ready to take advantage of this funding.

- Based on known projects in the pipeline and interviews with affordable housing developers regarding their development plans, staff conservatively estimate that the CHDF Program is \$1.4 to 1.7 million short of the

funds needed in the next two years so awardees can leverage the additional funding necessary to move to construction.

- The CHDF has been singled out as a great investment and show of local support for affordable housing at the state level by Homes and Community Renewal staff – it is the most effective way for the County to invest more in affordable housing in a manner that maximizes the number of people housed and other funding leveraged.

Which projects would be most likely to increase affordable housing production in the near term?

9% Low Income Housing Tax Credit (LIHTC) projects represent the best dollar for dollar investments of the CHDF, but additional investment is unlikely to yield more than two 9% projects per year.

- The largest affordable housing developments in Tompkins County are 9% projects that are usually 50+ units in size.
- Investing \$100-150k per 9% project maximizes competitiveness for tax credit awards, which provide ~70% of a project's construction costs.
- NYS makes tax credit decisions and is unlikely to award tax credits to more than one to two projects per year in the county.

Are there opportunities to expand affordable units that do not rely on 9% LIHTC awards?

Yes, there are non-9% projects that could yield both affordable rental and ownership opportunities, but these will require a higher ratio of local subsidy relative to state/federal subsidy per unit produced. Also, depending on the developer, these projects may have higher risk associated with the grants – especially around the issue of enforcement of long-term affordability of units.

- Non-tax credit apartments provide opportunities to build smaller buildings more suitable to infill sites within existing Development Focus Areas that are not subject to the lengthy timeline imposed by the NYS tax credit cycle. However, they typically serve somewhat higher income levels, and seek tax abatements whenever eligible. Although overall development costs tend to be smaller than tax credit projects, they require greater local subsidy per unit if serving households below median income levels since they lack tax credits to reduce their financing needs to levels acceptable to conventional lenders.
- For-sale housing units are not eligible for tax credits or tax abatements, and therefore typically require the highest local subsidy levels per unit to produce. Permanent affordability is difficult to maintain over the long term unless the homes are part of a community land trust, and currently INHS' Community Housing Trust and Habitat for Humanity of Tompkins and Cortland Counties are the only two in the county devoted to housing (rather than natural resource conservation). INHS typically does not take on the liability of accepting homes into its trust unless it has built or rehabbed them itself.
- 4% tax credit rental projects are not tied to an annual award cycle. However, these projects typically must be large and serve higher ends of the low- to moderate-income spectrum in a market with high median rents in order to financially pencil. Their affordability time limits are shorter than the CHDF Program's, which to date has meant no developer interest in CHDF awards. Few developers take on these projects locally, and developers without 4% expertise would need a partner to navigate this funding process.

Attached please find a memo from David West, Senior Planner outlining 9% tax credit projects, 4% tax credits, non-tax credit rental projects and for-sale projects in greater detail.

Recommendations for immediate action

- ✓ **Increase funding for the CHDF for the next two years.** *Increase the County's contribution to the CHDF using existing HUD Program Income by \$100,000 per year for the next two years.*
 - As referenced above, based on known projects in the pipeline and interviews with affordable housing developers regarding their development plans, it is estimated that the CHDF Program may be \$1.4 to 1.7 million short of the funds needed in the next two years so awardees can leverage the additional funding necessary to move to construction.
 - Tompkins County has approximately \$580,000 in uncommitted HUD Program Income currently available.
 - HUD has now authorized the use of both the County's existing, and remaining future, HUD Program Income towards the CHDF Program.

- There is some concern that HUD may recall all Program Income at any time, as NYS did in 2018, which would remove this source of funding entirely unless the County could show that whatever funds remain unspent are committed to specific projects.
 - On September 20th Cornell University announced they would increase their contribution to the CHDF by \$100,000 per year for the next two years in recognition of the increased demand for affordable housing funds.
 - A request for the City of Ithaca to increase its contribution went out on July 30, 2019 (See attached letter). Additional requests for new Associate Members of the CHDF have been sought from the Town of Dryden and Ithaca College. If attained, the CHDF may have up to double the amount funding (\$800,000) per year to further affordable housing developments.
- ✓ **Tompkins County should seek to secure the greatest number of 9% LIHTC projects, given that these projects yield the largest number of units and can serve more financially vulnerable populations than most other projects.** *Specifically, this recommendation is to utilize \$300,000 of additional existing HUD Program Income to create a “9% LIHTC Contingent Fund” so viable local projects are not denied CHDF awards that make them more competitive for tax credit awards.*
- NYS often ranks 9% projects very differently than the local community does, so if CHDF awards are not available for all viable project submissions, the lack of a CHDF award can be a fatal blow for a project and result in Tompkins County seeing only one or no 9% project awards in a year.
 - Although it is unlikely that more than two projects would receive 9% LIHTC awards in a single year in Tompkins County, it is common for four local projects to apply.
 - 9% projects frequently tie up funds through several years of funding attempts as the application is an annual process with a 6-7 month wait to hear about funding awards.
 - Even a \$100,000 CHDF award to four projects would tie up all of the CHDF Program’s current annual funding allocation, meaning no other types of projects could move forward in the interim.
 - A “Contingent Fund” of adequate funds available for 9% projects would allow CHDF award commitments to all viable 9% projects when other CHDF resources are inadequate for such commitments, contingent on success of their 9% LIHTC application to NYS. Unsuccessful projects would have their commitments released back to the “Contingent Fund” so they could roll forward to the next round of 9% applications.
 - Should other communities have weak 9% applications in a given year or other unusual circumstances arise, the ability to make more than two CHDF awards to projects applying for 9% tax credits may enable NYS to exceed our expectation that no more than two such projects would be funded in Tompkins County in a given year.

Other issues to address in the near future

Along with increased interest in the development of affordable housing in Tompkins County are new concerns regarding the focus of future funding, project monitoring and enforcement of affordability and program sustainability.

County focus of future CHDF funds: Based on the targets outlined in the Tompkins County’s 2017 Housing Strategy the number of housing units needed for 2015-2025 would require more than \$1.5 billion¹ of public and private investment over that 10-year period of time. Suffice to say the vast majority of this investment would require substantial subsidy from the State and the federal government to achieve the number of units suggested in the Housing Strategy. It is also safe to suggest that although the demand for affordable housing is unlikely to subside, these targets are unlikely to be achieved without significant changes in construction costs, financing mechanisms, and multiple levels of government programs and regulation. As a result, there is an inherent challenge in determining the amount of investment in the CHDF.

While the CHDF does not have a formalized mission statement, the Memorandum of Understanding between partners outlines that CHDF resources are to be committed to “...the development, rehabilitation, and retention of affordable housing units, provided that the housing units assisted with those funds remain permanently affordable for those earning up to 80% of Area Median Income (AMI) or up to 120% of AMI provided a project also contains a significant proportion of housing units for households earning 80% or less of AMP” and the level of investment each

¹ Based on typical costs per unit per approved CHDF applications from 2015-2018.

partner makes is based on the mutual commitment of increasing access to more affordable housing options for Tompkins County residents.

With increased demand on the CHDF's limited resources, there is a question about what, if any, focus should County funds be directed towards? Currently the HUD Program Income that the County allocates to the CHDF is restricted by HUD to only be used to benefit tenants/owners that meet the less than 80% AMI threshold. As a result, to date no County funds have supported development projects in which the majority of benefactors exceed 80% AMI, even though the CHDF does support projects that range between 81%-120% AMI.

When the County's HUD Program Income is depleted, should the use of local funding be considered, these local funds will not have the income restrictions of HUD Program Income. Considering the County is the only entity (and partner in the CHDF) that may, at times, be mandated to support vulnerable populations with incomes less than 80% AMI or that have a strong interest for supportive housing or special needs housing, the County may need to consider what, if any, parameters to place on the use of its funds in the CHDF Program.

Issues to consider in the future:

- How much funding should the partners commit in future MOUs for the CHDF?
- Should the County use local funds to support the development of affordable housing? If so, what if any, income restrictions should be applied when funding projects?
- Should the CHDF fund single unit rentals?
- Should the CHDF be awarding funds to developers without a track-record?
- Should the CHDF provide the same amount funding for rehab as new construction? Should geography and land costs be considered when providing funding for projects?
- Should the CHDF require a match in funding by developers?

Project monitoring and enforcement. Under the terms of the Notice of Funding Availability (NOFA) applicants interested in applying for funding from the CHDF must demonstrate that the project will remain "permanently affordable" which is defined as affordable for at least 49 years following execution of an agreement with the County to accept funding through a CHDF award. Applicants must further demonstrate how they will verify incomes of potential tenants or homebuyers and monitor the rental or sales price of the affordable unit(s) to ensure that rent and utilities in an apartment, or the monthly mortgage payment and housing expenses for a homeowner, would not exceed 35% of a household's monthly for a household earning 80% or less (and should middle-income units be included, 81-120%) of area median income for Tompkins County.

Until recently, most projects that have received funding from CHDF have also leveraged the majority of their project funding from sources such as State or federal assistance which come with regulatory requirements to maintain affordability. These leveraged funding sources come in several forms of project support, such as, but not limited to: Low Income Housing Tax Credits (LIHTC), Empire State Supportive Housing Initiative (ESSHI) funding, Ithaca Urban Renewal Agency (IURA) funding, and HOME Program awards. In addition, properties for several projects are held in a land/housing trust model (INHS and Habitat for Humanity) that provides for a home buyer the ability to own a home, while land ownership is retained in the trust to keep land costs low and to maintain permanent affordability.

All of these funding options come with a minimum regulatory agreement to ensure that the units stay affordable for a minimum of 30-99 years depending on the program. This regulatory term provides an excellent opportunity for CHDF projects to meet the program goal of "permanently affordable," as defined in the NOFA, with little additional County effort. It also puts the burden of monitoring and enforcement on State and federal agencies as they ensure that funding recipients comply with their program requirements due to the large amount of their funding committed to each project. To date, the County has not had great concern over monitoring and enforcement of the "permanently affordable" requirement for the CHDF as projects have either been subject to State or federal agency oversight or have been maintained in housing trusts.

However, recently there have been a handful of small projects that have been approved for funding that do not have outside public funding with regulatory requirements beyond CHDF and have left a void in the regulatory oversight for affordability compliance. As a result, there has been an inconsistent approach to monitoring affordability which has included deed restrictions, property liens, contracting with a non-profit or housing association for monitoring, or no monitoring at all. In addition, and more importantly, enforcement of affordability may be difficult, expensive,

and of limited value in the long term without additional protections. This has been discussed recently by the Application Review Committee and Project Oversight Committee.

Furthermore, currently the County executes contracts related to disbursements to developers for funds from the CHDF. In addition, the County has entered into agreements for notification by monitoring agencies reviewing the affordability of units for developers, and the County has taken the responsibility of filing the necessary documents for deed restrictions and property liens. While the County has taken on the responsibility of managing the logistics of implementing the CHDF, should a major developer no longer comply with the affordability requirements for a CHDF, the County has no legally defined responsibility for enforcing the affordability requirements on behalf of the partners (Cornell and City). This could prove challenging for the future of the CHDF should a CHDF awardee ever violate the permanent affordability provisions.

Issues to consider in the future:

- Should projects that are not subject to affordability requirements from a non-County funding source be eligible for CHDF awards (this issue should be settled prior to issuing the CHDF's 2020 NOFA), and if so, should a consistent approach be developed and implemented for monitoring affordability compliance?
- Should an affordability enforcement approach be identified and accepted by the CHDF partners projects?
 - This should include identifying the County's role, if any, in enforcing CHDF partner projects.

Long-term sustainability of managing the CHDF. Lastly, genuine consideration and thought should be given to the County's Department Planning and Sustainability's (DPS) ability to continue to manage the program beyond its current capacity. Should the program continue to succeed and grow, there will be new opportunities for current and new developers to submit applications to the CHDF and receive funding. This will increase the demands of managing the program and potentially add new monitoring and enforcement responsibilities for the growing list of completed projects, which will exceed current resources. As the program continues to excel as a leader in fostering the development of affordable housing as a public-private partnership in New York State, an eye should be kept on how the partners can collectively contribute to sustaining the staff support needed for continued program success.

Issues to consider in the future:

- A review of program outcomes and expectations should be measured along with the DPS ability to support the future of the program with existing or additional resources.