

# **DO'S AND DON'TS FOR FAITH BASED-ORGANIZATION BOS PLANNING FOR AFFORDABLE HOUSING**

## **FAITH BASED PARTNERSHIP FOR AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT**

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### **1. Before Assembling a Pre-Development Team, do try to ask the following questions about your mission and property:**

Before having a formal engagement with a pre-development team, find an attorney and an architect who can meet you where you are to help you ascertain how best to use your leadership and resources to go where you want to go. These professionals can quickly identify your readiness or describe steps you may need to take before deciding if you are a good candidate for contracting with a pre-development team and securing funds to pay for the services of that team.

Here are eight questions congregations should answer in a conversation with the help of an architect and attorney, before assembling and paying for a pre-development team:

- a. What is your congregation's mission and how does the mission comport with the realistic options for the property?
- b. Has your congregation signed any agreement with any developer which explicitly or implicitly commits the congregation to work with that developer?
- c. In consulting with an attorney and architect, does it look like the building or property has the capacity to develop affordable housing? Are there other non-affordable housing options that would be better suited for the congregation?
- d. If affordable housing seems viable on the property, is there a realistic chance that it could be financed by some sort of affordable housing financing scheme?
- e. Have the potential options been shared with the governing board and pastor (and judicatory if needed). Are the pastor and governing body in agreement about the information furnished to them before making an application for pre-development funds/pro-bono assistance, and are they open to considering financially viable options?
- f. Does your congregation understand the six-phase pre-development process (see this example <https://www.iahcnny.org/resources/guide-to-iahcs-process>) and the necessity of having a pre-development team (pre-development manager, attorney, architect) who represents you and only you through the process?
- g. Is there leadership of your congregation and judicatory (if required for property decisions) which can sustain a long-term project and who can work collaboratively and transparently with a pre-development team and your congregation's decision-making bodies?
- h. Does the congregation have the capacity to sustain itself for the next five years until the development is completed or are the financial pressures great enough that they must turn to options like selling the property or expanding their use of rentals?

**Only after you have answered these questions, should you assemble a pre-development team.**

### **2. Do start the process as early as possible**

The process of building affordable housing on faith-based property can take three to five years. How long it takes is based on getting off to a right start by answering the above basic questions

with an attorney and an architect, and evaluating all your options, and discerning whether or not your property is suitable for a viable project. Some congregations waste a lot of time and money on a project which could have been determined as unsuitable if they had slowed down to answer basic questions about their mission and property. **Do not** hastily move forward or contract with a developer until you are ready.

### **3. Do assemble a pre-development team but only when you are ready and have successfully answered the questions above.**

A pre-development team is a group of professionals who represent you and only you. A pre-development team includes a pre-development coordinator, an attorney, and an architect **who have no financial ties or obligations to a developer or have any other conflict of interest which would get in the way of them fully exploring your options which make sense exclusively for your congregation.** The team should also include at least two representatives from the congregation who can stick with the process and actively and transparently engage congregational and denominational boards in decision making. A pre-development team will execute a clear agreement with your congregation which specifies what information will be gathered on your property (ie, zoning analysis, appraisal, massing study, etc) and the parameters for writing a Request for Qualifications (RFQ) or Request for Proposals (RFP.) The team should also be responsible for marketing the RFQ or RFP and negotiating a development agreement with a developer. A pre-development agreement will clearly specify all costs for services performed and at what point those services will be performed. If some of the cost is covered pro-bono those services should be specified and include naming of any expectation about compensation or reimbursement for pro-bono services at a later point should a development come to fruition.

Only **after** your pre-development team has negotiated a development agreement with a developer will you form a development team which would include the developer. Even the development team should include an attorney, who will represent you and only you, should there be disagreements about funding, deadlines and a myriad of other issues which could come up as financing is secured and construction gets underway after a development agreement is executed.

### **4. What about loans?**

In general, don't take a loan until you have signed a development agreement. You can take a pre-development loan which only needs to be repaid if the development comes to fruition but is forgiven if no development happens or is repaid if you choose not to build affordable housing. The amount of the pre-development loan should be modest and only cover services which absolutely need to be performed to assemble and market an RFP or RFQ and to have an attorney negotiate a development agreement. Do not use money or take out loans for services and costs best covered after a development agreement is executed. If you use you take a modest pre-development loan or used own funds or grant money for pre-development costs, be sure you have a clear pre-development agreement with your professionals about how much their services will cost and when payment is due after achieving certain milestones in the pre-development process.

### **5. Don't sign any docs without counsel review, examine terms, details (ie, rate, term, conditions for default, etc.)**

Do not sign any documents until you have assembled a pre-development team (which includes an attorney representing you and only you) who can explain everything to you clearly and advise you what needs to be signed and when. No financing documents, with the possible exception of a

modest pre-development loan, are signed until a development agreement is executed with the guidance of legal counsel.

When executing a development agreement, your attorney will help you answer a myriad of questions.

## **6. DO work with mission-driven organizations.**

Mission driven organizations serve low income and underserved communities and people. There are three types of mission driven organizations which perform distinct roles in the pre-development and development process. They are Pre-Development Organizations, Community Development Finance Institutions (CDFIs), and Developers.

All three entities have different functions but all should help your congregation arrive at a solution which makes the most sense for the mission of your organization and not pressure you to do something contrary to that mission.

**A Pre-Development Organization** offers clear pre-development steps and helps you assemble a pre-development team of professionals which specialize in affordable housing who can help you negotiate the best arrangement for your congregation while offering an ethical assessment of the risks and promises of development.

**A CDFI** offers development financing once a development agreement is executed. CDFI capital often helps to finance the creation and preservation of affordable housing and community facilities. CDFIs advance economic, social and racial justice, and are likely to offer creative capital solutions, with terms that may be more flexible than conventional banks, and often work with borrowers when loans need to be modified and extended during circumstances when the repayment plan hasn't been achieved on the time horizon expected.

A CDFI can offer pre-development advice as long as that pre-development advice **is not** compromised by the financing it offers. Sometimes a pre-development organization, which is not a CDFI, can help you talk to a CDFI. CDFI's should not commit you to any financial obligations until you are ready and you have a viable project suitable to the needs and mission of your congregation.

**A developer** oversees the development. They help secure the financing from a CDFI but also from other government and financing entities. **Please remember a developer is not the same thing as a Pre-Development Organization and a CDFI.** A developer should also be mission driven but can be either non-profit or profit.

### **Pre-Development Organizations:**

LISC

Enterprise

Faith Based Partnership for Affordable Housing and Community Development

Housing Action Council

### **Community Development Financial Institutions (CDFIS)**

LISC

Enterprise

Leviticus Fund

Community Preservation Corporation

Other.....

## **Mission Based Developers**

Bronx Pro etc.....

### **7. What questions should the pre-development team ask when executing a development agreement with a developer?**

- a. It may make sense for your congregation to form a separate not-for profit entity which will partner with a developer.
- b. Who will be on the development team to finance, build the project, and lease it up?  
Typically, a development team may include an architect and engineering firm, a real estate attorney, development and financing consultant/owner's rep, general contractor, marketing and lease up agent, property management firm. What are the competencies of the development team to execute the agreement and find the financing and professionals necessary to bring a project to fruition.
- c. Consider if the developer firms have experience in affordable housing and community development and, have they worked in your community. What is the developer's staffing capacity/ability to take on more business relative to their current workload, expertise in the type and size of development you are seeking to build, reputational strength, and for GCs track record completing jobs on time and within budget.
- d. Do not consider or accept any proposals until you have completed an RFQ or RFP. Seek more than one proposal. It is helpful to review more than one proposal, and to systematically evaluate the proposals relative to criteria you've established, before making final selections.

When assembling a development team, as specified in the agreement, the roles, responsibilities and authority to make decisions should be made clear. Moreover, it is important to note that for developments involving partnerships, decisions around selection of development team such as architect, GC and perhaps property manager, are decision points that may be the responsibility of the lead developer, and/or jointly made with a developer as part of a joint venture partnership.

Partnerships should complement one another's strengths, and areas of expertise are ideal. In thinking of the roles and responsibilities:

- a. Consider who (responsible party) is making key decisions leading up to construction closing and during construction.
- b. Who is responsible for sourcing pre=development funds?
- c. Who is securing the construction and permanent capital, and negotiating the business terms?
- d. Relatedly, who is providing lender and financing guarantees - such as loan repayments, construction completion, and operating deficit guarantees, and does that party offer the financial strengths needed to stand behind the required guarantees?

- e. Who will prepare the project budget and ongoing tracking/reconciliation of?
- f. Who will make major decisions during construction? Who is responsible for sourcing social services funding (if applicable)?
- g. Property tax exemptions?
- h. Who will lead the community engagement and support efforts?

**8. At what point and how should your congregation relate to (Housing Preservation Department) HPD and (Housing and Community Renewal) HCR and your community's decision-making bodies?**

Please remember that, aside from becoming familiar with these government agency's programs, do not solicit advice from these groups or enter into any agreements without direction from a pre-development team who will lead the conversation and advise you. Government entities **are not** developers but they are entities approached by developers for financing. A pre-development team can help you evaluate the various financing options offered by HPD and HCR which are suitable to the type of housing project you want to create in a partnership with a developer.

With regard to the decision-making bodies in your community (community boards, zoning and planning boards, etc.) do not share your plans with them without the guidance of your pre-development team.