Memorandum

MIAMI-DADE COUNTY

Date: July 8, 2010

Agenda Item No. 8(K)(1)(C)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution Recommending Funding for the FY 2009 Documentary Surtax Mid-Year Request for Application (RFA) Update Cycle

---

Recommendation

It is recommended that the Board of County Commissioners (Board) approve "gap" funding recommendations for the FY 2009 Documentary Surtax (Surtax) Mid-Year Request for Applications (RFA) Cycle Update to the following projects:

1. Legacy Pointe Associates, Ltd. for Solabella in the amount of up to $2,275,000, subject to the award conditions included in the RFA guidelines; and
2. Villa Capri II Associates, Ltd. for Villa Capri II in the amount of up to $1,640,000, subject to the award conditions included in the RFA guidelines.

Scope

Solabella is a proposed 92-unit new construction rental housing development located in Commission District 1, at 17387 N.W. 7 Avenue in the City of Miami Gardens, with a proposed total development cost of $15,221,999.

Villa Capri II is a 116-unit new construction rental housing development located in Commission District 9, at 14500 SW 280 Street in the City of Homestead, with a proposed total development cost of $18,781,279.

Fiscal Impact

There is no fiscal impact to the County with the approval of this item. More specifically, this item allocates the remaining "gap" Surtax funding of $3.915 million that was deferred under Resolution R-1071-09.

Background

On April 3, 2009, the County issued the Surtax Mid-Year Request for Applications (RFA) for affordable housing. The scoring criteria, made part of the RFA, ranked each application based on a number of items, including financial feasibility, as submitted by each proposer. Staff prepared a recommendation for the Board's consideration that would allocate a total of $21,696,810 for Category 2 applicants under the RFA, which is set aside for gap funding.

However, prior to the Board taking final action, staff recommended that the funding allocation for the first two ranked projects under Category 2, totaling $3.915 million, be deferred to perform additional due diligence, as well as provide the developers/proposers time to meet several critical milestones. This request for deferral was due to the discovery, subsequent to the scoring of the RFA, of multiple foreclosure actions filed in South Florida concerning the first two ranked developments and the respective developers. These foreclosure actions on the subject properties called into question the developers' ability to maintain site control, which is a requirement under the RFA. As a result, on September 1, 2009, the Board adopted Resolution R-1071-09, which approved "gap" funding for developments ranked three through 10, out of the

total 13 that applied, for a total amount of $17,781,801, as detailed in Exhibit 1, and excluded the award for Solabella (ranked first) and Villa Capri II (ranked second).

Since that time, the proposers have provided additional documentation that demonstrates they currently maintain site control and meet the County's requirements as stipulated in the RFA. Both projects are described below.

Solabella
Legacy Pointe Associates, Ltd. submitted an application for $2,275,000 during the FY 2009 Documentary Surtax Mid-Year funding cycle for the construction of 100 rental new construction housing units for the development Solabella. The development was to be constructed on a parcel of land involved in a foreclosure action. On this parcel of land, the principals of Legacy Pointe Associates Ltd., had previously been awarded $2,507,261 ($1,250,000 from 2007 HOME 2007 and $1,257,261 in 2008 Surtax funding) for a homeownership development also called Solabella, which will be referred to as the "Solabella homeownership project" to avoid confusion with the Solabella rental project under this item. The developers of the Solabella homeownership project envisioned constructing and selling 210 units on the site in question. At the time of the foreclosure action by the first lender, Regions Bank, , the developers had completed 108 homeownership units of the 210 planned. The foreclosure action included the portion of the property where the developers intended to construct the new rental development that is the subject of this RFA.

Prior to the conclusion of the foreclosure action, the developer negotiated a settlement agreement with Regions Bank which allowed it to purchase the portion of the property that remained undeveloped. Subsequently, a sister entity of Legacy Pointe, LP Land Partners, LLC, purchased the undeveloped portion of the property and a new deed was recorded in its name. Legacy Pointe has a purchase and sale agreement to acquire the property from its sister entity. This portion of the land, which was purchased from the bank is where the developers have since proposed constructing 92 (a reduction from 100 as originally proposed) new construction rental housing units. The purchase and sale agreement satisfies the site control threshold item.

Villa Capri
An application for $1,640,000 was submitted during the FY 2009 Surtax Mid-Year funding cycle for Villa Capri II for the construction of 116 new construction rental housing units. Villa Capri II is located immediately adjacent to and on the same development site as a previously funded development, Villa Capri I, a 160 unit new construction rental project that has been allocated a total of $5,348,500 ($2,698,500 from Mid-Year 2008 Surtax and $2,650,000 from 2009 HODAG funding). The construction of Villa Capri I and Villa Capri II were proposed to be located on the same parcel. During the Mid Year 2009 funding cycle, Wachovia Bank filed a foreclosure action against the entire parcel.

A Motion for Summary Judgment was filed in the foreclosure action and as such, put the potential County investment for both Villa Capri developments at risk. At the time, the question of maintaining site control had to be answered. Accordingly, the developers forwarded an opinion letter from their attorneys stating that the developer has a commitment to purchase the portion of the land reserved for the Villa Capri II development. Staff was advised at that time by the Office of the County Attorney that the documentation adequately satisfied the issue of site control since a commitment to purchase is recognized as site control in the RFA.

As of June 2, 2010, it was learned that the foreclosure sale had been moved from June 2010 until January 2011, and as such, staff feels the recommendation to award should move forward. The developers have a commitment from Wachovia to accept payment of the debt for the land; therefore, the bank has postponed further foreclosure action. This award of $1,640,000 in Surtax is contingent on the developer retaining full site control. Should the developer not retain site control, the County will rescind the funding pursuant to the recapture processes in place. It should be noted that no loan documents will be executed until the project undergoes a full underwriting/subsidy layering review which will determine the financial viability of the project and, among other things, site control. No loans are closed until the developer has all other funding in place and finally, once a loan is executed, monies can only be expended on a reimbursement basis. However, County will not proceed with the disbursement of any funding until the foreclosure and/or site control issue is fully satisfied.

2009 Mid Year Cycle Update

Because the first and second ranked developments, Solabella and Villa Capri II were given the opportunity to present additional information, in consultation with the County Attorney's Office, the County announced an update to the 2009 Surtax Mid-Year process with a submission deadline of February 12, 2010 for the projects that were initially considered eligible but unfunded. The developments from whom a submission update was requested were projects ranked number one, number two, number 11, number 12, and number 13. This update process provided an opportunity to amend and enhance their RFA application for the FY 2009 Mid-Year Cycle. Amendments only were permitted in selected areas, such as general information, funding and financing, site control, organizational capacity/development team, project feasibility/readiness, scope of work, and schedule and price/timeline.

Updated application binders were submitted by four of the five eligible developers. One developer chose to allow his application to stand as originally submitted. Final scoring of the updated application binders resulted in a minor change. The projects originally ranked number one (Solabella) and number two (Villa Capri II) are now ranked number two and number one, respectively, while the other originally unfunded projects remained in the same positions. While Villa Capri II's score remained the same, Solabella came in slightly less as the number of units were reduced from 100 to 92. This reduction in units resulted in a lower score.

Irene Taylor-Wooten
Special Assistant to the County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: July 8, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(K)(1)(C)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(K)(1)(C)
7-8-10

RESOLUTION NO. _____

RESOLUTION APPROVING "GAP" FUNDING RECOMMENDATIONS FOR THE MIAMI-DADE COUNTY FY 2009 DOCUMENTARY SURTAX MID-YEAR REQUEST FOR APPLICATIONS (RFA) UPDATE PROCESS UPON COMPLETION OF A FULL CREDIT UNDERWRITING AND/OR SUBSIDY LAYERING REVIEW AND SUBJECT TO THE DEVELOPER'S FINANCIAL VIABILITY AS DETERMINED UPON COMPLETION OF THE FULL CREDIT UNDERWRITING AND/OR SUBSIDY LAYERING REVIEW; AND FURTHER AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE ANY NECESSARY AGREEMENTS; FOLLOWING CONSULTATION WITH THE OFFICE OF THE COUNTY ATTORNEY

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the funding recommendations for "gap" funds for leveraged financing for the Miami-Dade County FY 2009 Documentary Surtax Request for Applications (RFA) Update process upon completion of a Full Credit Underwriting and/or Subsidy Layering Review and subject to the developer's financial viability and project feasibility as determined upon completion of the Full Credit Underwriting and/or Subsidy Layering Review; the Board authorizes the County Mayor or the County Mayor's designee, following consultation with the County Attorney's Office, to execute agreements, contracts, and amendments on behalf of Miami-Dade County; to shift funding sources; to shift funding to different agencies without exceeding the total amount allocated to the project; and to exercise amendment, modification, renewal, cancellation and termination clauses on behalf of Miami-Dade County, Florida.

The foregoing resolution was offered by Commissioner ,

who moved its adoption. The motion was seconded by Commissioner

and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of July, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Brenda Kuhns Neuman