RAD
Conversion
Specialists, LLC

October 5, 2017

Honorable Mayor Lioneld Jordan
Honorable City Council Members
City of Fayetteville
113 West Mountain Street
Fayetteville, Arkansas 72701

Re: Morgan Manor - Phase II
LSD #17-5775

Dear Mayor Jordan and City Council Members:

I am writing to follow up regarding the City Council meeting the other night. As I stated during the meeting, I watched the video of your September 19th meeting and was very surprised by the number of allegations made against us and the Housing Authority and the amount of misinformation that was provided. An elected official should not be allowed to make disparaging comments and serious accusations during a televised public meeting without the accused having an opportunity to respond in a similar setting.

Councilman La Tour correctly stated that you were only hearing one side of the story and that the applicant should be given an opportunity to respond to what he referred to as "egregious allegations". We thought that the October 3rd meeting was our opportunity to do just that and are disappointed that we were not given the chance to do so.

We strongly believe that minds have been poisoned against this project by misinformation that has circulated and are frustrated by the fact that no one seems interested in hearing the other side of the story.

As Mike Emery stated, the Housing Authority's "primary goal is to provide safe, affordable housing to low-income families. We set forth on the Morgan Manor expansion with that at the forefront of our minds."

If I had been allowed to complete my presentation the other night, I would have refuted every one of the allegations made, and answered all of the questions raised, during the September 19th City Council meeting, as follows:

1. ***The project was originally presented as a non-profit low-income housing development, but is really a private for-profit project and the applicant misrepresented the project against the advice of their attorney for their own financial gain. There was a lot of***

32500 Telegraph Rd., Suite 222, Bingham Farms, MI 48025
Phone: (248) 203-0011
www.RADConversions.com
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misrepresentation of who this development group was and what their intentions were and who was going to profit and overall, it's just a bad deal for our City.

Tax credit investors contribute cash to a project in exchange for federal tax credits and an allocation of depreciation losses. In this particular case, the tax credit investor would be contributing about $5.3 million – representing over 60% of the total development costs. In order to maximize their contribution and benefits, the tax credit investor – which is usually a bank, a group of banks or an insurance company - becomes a 99.99% owner of a project and thereby receives 99.99% of the allocated tax credits and losses. The remaining .01% is owned by the managing member - which maintains control of the day to day operations and most major decisions. In this case, the Housing Authority formed a new entity called FHA Development, Inc. which was granted 501(c)3 status by the IRS on February 24, 2017. FHA Development, Inc. will effectively be the managing member for the project - and its Board has the same Directors as the Housing Authority. We presented this ownership structure to the Arkansas Development Finance Authority (ADFA) prior to submitting the tax credit application and they confirmed that this structure does indeed meet their requirements for a non-profit owner.

As for the financial gain to be recognized on this project, let me first say that at no time will RAD Conversion Specialists have an ownership interest in the project or receive any profits from the operation of the apartments.

Second, under the tax credit rules, the developer is entitled to earn a fee up to 15% of the net development costs. In order to maximize the scoring on the tax credit application, however, the fee for this project has been limited to 10% or $750,000. RAD Conversion Specialists will receive 80% of the fee in exchange for taking on 100% of the risk by way of guaranteeing (i) construction completion; (ii) tax credit recapture; and (iii) operating deficits during the 15-year tax credit compliance period. The Housing Authority will not be required to sign any such guaranties and will receive 20% of the developer fee. In addition to these risks, our portion of the fee includes our expertise and oversight of the development process – including preparing the applications for the low-income housing tax credits and other funding sources, as well as finalizing the RAD conversion process through HUD - among other things. This process for Willow Heights started in 2016 and is expected to continue through <u>at least</u> the Summer of 2020.

Third, although the Housing Authority's non-profit will have only a .01% ownership interest, it will receive 90% of the cash flow from operations during the 15-year compliance period, and 100% of the cash flow thereafter. Further, the Housing Authority will always own the land, but will have a 99-year ground lease with the Owner Entity controlled by the Housing Authority's non-profit corporation.

Lastly, much has been made of a March 22nd email from Jim Crouch, the Housing Authority's attorney. In his email, Mr. Crouch doubted that the project owner qualified as a non-profit entity and questioned whether the funding sources qualified for exemption from the City's Impact Fees.

In his March 24th Memo, Mr. Williams recited the requirements for exemption, in part, as follows: "non-profit multi-family supportive housing funded wholly or primarily by Housing and Urban Development housing loans <u>and similar programs</u> designed to provide affordable multi-family supportive housing shall be exempted from payment of building permit fees". He further stated that the Water, Sewer, Police and Fire Impact Fees all include the same language.

I explained to Mr. Crouch that the ownership structure <u>meets ADFA's and HUD's</u> requirements for non-profit ownership and that the requested $1.5 million of HOME Funds from ADFA qualified as Housing and Development housing loans. Further, the low-income housing tax credit program is clearly "a similar program designed to provide affordable multi-family supportive housing".

In this new memo, Mr. William's stated that "I believe that a for-profit entity will receive all of the rents from this project for the next 15 years". As I've already said, this is simply not true and we presented additional information that supports our position to Mr. Williams during a meeting on June 29th.

There was no misrepresentation on the part of the Housing Authority or any member of the applicant team, but rather a lack of understanding about the tax credit program requirements and the specific terms of the Housing Authority's agreement with their tax credit investor.

2. ***The Housing Authority had not complied with HUD Guidelines and the letter Mr. Williams received from HUD states that they did not violate HUD guidelines, but does not specifically state that they are in compliance with those guidelines, as well as the implication that the Housing Authority was required to inform HUD of its intention to sell the Willow Heights property, should have obtained an independent appraisal and should have offered the property for public bid.***

   First, because the Housing Authority is converting its operating assistance under RAD, it is not required to follow HUD's Section 18 demolition/disposition rules. RAD has its own rules regarding Transfer of Assistance from one site to another and the Housing Authority submitted all of the required information and received HUD approval on May 17, 2017 to transfer the Section 8 assistance from the Willow Heights site to the Morgan Manor site. Therefore, the Housing Authority <u>did notify</u> HUD of its intention to relocate the residents from Willow Heights to Morgan Manor and has received its approval to do so.

   Second, the Housing Authority recently received an independent appraisal dated September 6th indicating a value of $1,220,000 for the Willow Heights property, confirming that the $1,250,000 Purchase Price negotiated for the property exceeds its Fair Market Value.

Third, HUD and its Office of General Counsel confirmed in an email dated July 19, 2017 that the Housing Authority "does not need to make public the availability of the property - as long as the proposed sale is an arms-length transaction and as long as the sales price is supported by a third-party appraisal."

3. ***The Housing Authority should have completed a feasibility study to rehabilitate the Willow Heights Apartments instead of building new. The Housing Authority should rehab the existing units for $2.1 million instead of spending $8.6 million to build new units. The Housing Authority should build new units at the Willow Heights site instead of relocating the residents to Morgan Manor.***

First, the Housing Authority did obtain an independent Property Capital Needs Assessment from AEI Consultants in 2015 which identified an immediate need of almost $2.2 million – but this does not include costs to bring the apartments up to current standards. Rather, it almost exclusively identified required major repairs - including $285,000 for storm drainage; $150,641 for additional retaining walls; $400,000 for building envelope structural issues; $74,778 for roof repairs or replacements; and $102,000 for water supply piping. This cost estimate does not address the lack of air conditioning, energy efficient appliances and mechanical systems or the current lack of ADA accessibility. It also does not include a community building or a new playground and equipment – as proposed in the Housing Authority's plan.

Second, the City's Building and Safety Director, Mark Whitaker, directed his staff to make an independent investigation of the Willow Heights apartments and present their findings. In his July 17th letter, Mr. Whitaker stated that:

a. the evaluation of Willow Heights mirrors the format of the AEI Report for immediate, short term and long term anticipated expenses. Its development included multiple field trips, inspecting the property and interviews with Housing Authority employees intimate with the property.

b. City Staff projected line items and funds needed to update this site and be competitive with other developments. Some of the line items staff included that are new and/or have different unit prices from the AEI report are based upon probable implications of known factors – including asbestos abatement and foundation repairs.

c. The letter states, "There is no question that there is a problem with building movement and that structural damage has occurred".

d. Mr. Whitaker further stated that "the total costs of the immediate and intermediate work needed are valued at $4,448,563" and concluded that "the costs needed to upgrade the Willow Heights Fair Housing Complex are very comparable with the costs for new construction that would offer additional amenities not included with this analysis".

As Deniece Smiley stated during the October 3rd meeting, the Housing Authority does not have sufficient capital funds to properly maintain Willow Heights and even if they did, investing $2.2 million - or more - into the existing units is not in the long-term best interest of the Housing Authority or its residents.

Other important factors to consider if the Housing Authority were to rebuild on the Willow Heights site are demolition costs and the need for temporary relocation. Under the Uniform Relocation Act, the Housing Authority would be responsible for finding and paying for temporary housing, as well as all costs to move the residents twice. In addition to the significant additional expense, this would disrupt the lives of those residents unnecessarily.

Further – and this is very important - the proceeds from the sale of the Willow Heights property is an integral source of funds needed to construct the new apartment units at Morgan Manor. Rebuilding at the same location would eliminate this necessary funding source.

Lastly – and <u>most</u> importantly - ADFA has a very strict cap on Total Development Costs (TDC's) of $151,000 per unit. If a project's TDC's exceed this amount, ADFA will not even consider the tax credit application. Adding the demolition, asbestos abatement and relocation costs to our current budget of $149,138 per unit would put the project over this limit and make it ineligible for the tax credits.

For all these reasons and more, rebuilding at Willow Heights is simply not practical.

4. ***Concern about connectivity to downtown, essential services and to Washington Elementary School.***

There was some discussion about this during Tuesday's meeting, but the following bears repeating.

First, I personally called the school bus depot and spoke to Dr. Rick McWhorter, Routing Coordinator, and, while he did confirm that the busses do not travel on Washington Avenue, he said there's currently a stop at 12th Street and S. College Avenue – one block west of Washington - which is serviced by continuous sidewalks. He also said that a new stop could be added at S. Wood Avenue and McClinton after the new apartments are completed – which would be even closer. Further, despite comments to the contrary, the Morgan Manor site is connected by continuous sidewalks on Washington and Wood Avenues up to 7th Street, and then to College Avenue and into downtown.

Second, the increased distance from Morgan Manor to most of the essential services is ½ mile or less and many amenities are closer to Morgan Manor than to Willow Heights. My understanding is that the Morgan Manor site has closer access to the Ozark Regional Transit system – with the closest stop just one block from the site.

For example, according to Google Maps:

- The Walmart neighborhood market is 1.1 miles from both sites.
- The public library is .4 miles further from Morgan Manor.
- The farmer's market is ½ mile further from Morgan Manor.
- The Jefferson Center is ½ mile from both sites.
- Walker Park is .7 miles closer from Morgan Manor.
- The Senior Center is .4 miles closer from Morgan Manor.
- Frisco Trail is .6 miles closer from Morgan Manor.
- Walgreens is .8 miles from both sites.
- The high school is 1.4 miles from both sites.
- Washington Elementary is ½ mile further from Morgan Manor.

The claim that the Willow Heights' residents would somehow be put in imminent danger by moving to Morgan Manor is a stretch, at best. And it's not as if the Willow Heights site is without its own pedestrian challenges.

5. ***There was a lack of appropriate public process that was followed and the Housing Authority should have solicited input from residents prior to the property being under contract for sale. There were also specific statements that "the process was absolutely flawed" and that "a very at-risk population was not included in the decision about what was going to happen to their dwelling units."***

First, HUD requires that the Housing Authority hold at least two resident meetings to explain their plan and the potential impact on the residents prior to submitting a RAD application. These meetings were held as required – in addition to regular monthly meetings that the residents are encouraged to attend.

Second, the Housing Authority holds televised public meetings every month and the project was discussed at several of those meetings over the past two years or longer. The sale of the Willow Heights property was discussed at 2 or 3 of the meetings prior to submitting the tax credit application in April. The process is very transparent.

Further, the residents were included in the decision. In fact, the Housing Authority has received petitions from 90% of the households that were able to be contacted that support their plan to relocate them to new units at Morgan Manor.

Finally, Councilwoman Marsh's inflammatory statement that she reviewed the documentation obtained through a FOIA request and was "shocked at the negligence that was witnessed there" cannot go unchecked. I assure you that there was no negligence on the part of the Housing Authority or any team member and I challenge Ms. Marsh to provide evidence supporting her baseless claim.

The Housing Authority's decision to sell the Willow Heights property and to relocate the residents to newly constructed apartments on vacant land they already own at Morgan Manor is a sound, thoughtful and responsible plan and is in the best long-term interests of the Housing

Authority and the Willow Heights' residents. Without an award of the low-income housing tax credits and cooperation from the City, the residents of Willow Heights will be forced to remain in substandard housing, or worse – will lose their homes when they become uninhabitable. According to Mike Emery, the facilities at Willow Heights are on life-support right now and it's not a question of "if" but "when" they will become uninhabitable. Without the planned construction at Morgan Manor, the Housing Authority will have no suitable location for these residents.

The question was raised during the September 19th meeting about whether the project is still on the table since the tax credits were not approved. The answer is – Absolutely! We plan to submit a new tax credit application early next year, but expected changes to ADFA's Qualified Allocation Plan may require changes to our unit count and mix.

If I had been allowed to complete my presentation, I would have also said that either way the vote goes, we look forward to working alongside the Housing Commission and the City to employ all available resources to prepare a plan that is financially feasible and that the City can support.

A successful tax credit application and development proposal will require assistance and cooperation from the City, including exemption from the City's Impact Fees and a cost sharing arrangement for required improvements to S. Wood Avenue. We look forward to further discussions regarding this, including solutions to the frequent flooding in the area and the potential extension of S. Wood Avenue to 15th Street.

We all have the same goal of providing quality, affordable and safe housing for the Housing Authority's residents and we look forward to achieving this goal together.

Please contact me at 248.221.2911 or egold@slavikenterprises.com if you have any questions or would like additional information.

Sincerely,
RAD CONVERSION SPECIALISTS, LLC

Eric A. Gold, Principal

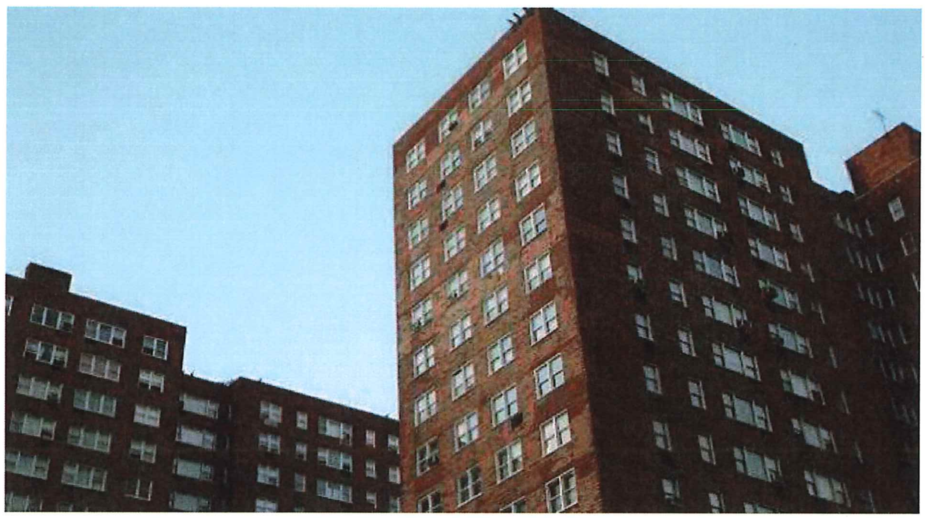
P.S. I provided a brief overview of the Rental Assistance Demonstration (RAD) Pilot Program Tuesday night. I've attached a very well written article that describes the current state of public housing and the importance of RAD as a solution to the challenges facing Housing Authority's throughout the country. I sincerely hope that you will take the time to read it.

cc: Kit Williams
Fayetteville Housing Authority
Fayetteville Planning Commission

THE HILL

Trump's plan to cut public hou a mistake for America

BY ORLANDO CABRERA, OPINION CONTRIBUTOR - 06/20/17 11:20 AM EDT



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The 2018 budget that President Trump proposed serves as the starting point for negotiations about programs central to our nation's success.

While funding increases for security and defense are understandable given our nation's security needs, the budget unnecessarily burdens low-income families by ignoring our nation's severe affordable housing shortage and offering no valid policy reasons for its lack of financial support for housing.

As Assistant Secretary for Public and Indian Housing under President George W. Bush's administration, I oversaw the nation's more than 4,000 public housing authorities.

Public housing is an invaluable and long-ignored national asset that desperately needs Congress's support in order to continue to change and better serve our nation's communities.

Yet the Trump administration's budget proposes cuts of $1.9 billion to the operating and capital funds of public housing agencies nationwide, which will effectively cripple these agencies and shutter thousands of units that currently serve the poor.

More than 2.6 million Americans call public housing home. Most of its residents have an average annual household income of $14,600, far too little to afford an apartment nearly anywhere in the country. Public housing mostly houses the elderly, disabled, and families with children.

Only one in four households eligible for housing assistance actually receives it. Eleven million American households spend more than half of their income on rent and that number continues to grow with each passing year.

They are all Americans.

Our nation's public housing has long been desperately underfunded and we continue to fall far short of providing enough affordable housing for those who need it most. This limited housing funding actually places a greater long-term financial burden on the taxpayer because it causes inefficiencies in the delivery of other services like healthcare and food.

In other words, the proposed $6 billion budget cut to all programs at the Department of Housing and Urban Development is not just disheartening — it will make it more expensive for the taxpayer to serve our nation's communities.

Despite our nation's obvious housing needs, our public housing throughout our country is crumbling. Essentially, with each passing year, Congress is letting hundreds of billions of dollars of property slowly decay instead of using public housing as a foundation stone for the effective delivery and monitoring of federal services to the elderly, disabled, and poor.

If the President's budget were to be adopted, we would experience the single biggest budget-driven deliberate loss of an essential federally created public asset in our nation's history.

The greatest shame is not only the loss of financial support but also the lost opportunity to conscript the private sector in an effort to improve how we serve Americans who most need supportive services, healthcare, and food.

Most of our nation's public housing was built between the late 1930s and the 1960s and is desperately in need of capital repair — at least $26 billion worth, according to HUD's now nearly decade-old estimates. Tens of thousands of public housing apartments are lost each year simply because there is insufficient money appropriated to maintain those units and no money to refurbish them.

The Trump administration's cuts make that burden remarkably worse. Each lost unit means one more family or person struggling to pay rent and closer to homelessness.

For the sake of some kind of progress, let's assume that Congress unwisely cuts public housing operating and capital funds as the Trump administration proposes.

If that were to occur, then Congress should, at the very least, help public housing agencies convert their public housing stock to the public private model as soon as possible and it already has created the vehicle to do just that. Congress created HUD's Rental Assistance Demonstration program in 2012 and it has been a remarkable success.

RAD provides a powerful solution that helps address public housing's capital needs at minimal taxpayer expense. RAD allows public housing agencies to convert their public housing units from public housing to one of two forms of Section 8 housing assistance while receiving much needed capital investment from the private sector in order to address those significant capital needs. Public housing agencies and their private sector partners leverage other sources of funding after such conversion to rehabilitate their properties so they are again livable, affordable homes serving Americans who desperately need housing.

Close to 60,000 public housing apartments have received capital investment from the private sector through public-private partnerships made possible by RAD, simultaneously preserving those units and also creating more than 70,000 jobs. RAD is a proven positive investment in helping transform our low-income communities.

An $8 million dollar annual appropriation to RAD has resulted in over $2 billion in capital investment for public housing since 2012. By any measure, RAD is an impressive success. A better investment for our nation would be to appropriate sufficient funds to finance the gap in funding that would spur the continued conversion of public housing to affordable housing capitalized by the private sector.

Congress should appropriate those resources that help public housing agencies partner with the private sector. Once those conversions occur, public housing agencies would rely less on public housing funding from Congress and assure affordability for public housing residents for decades to come.

Congress took an important step earlier this month by expanding RAD. Up to 225,000 public housing apartments will now be able to participate in the RAD demonstration effort, which will cover all of those for which the need for RAD has already been identified.

Absent adequate public housing funding, lifting the RAD cap altogether and incentivizing the conversion of public housing to the public-private model is the most sensible policy from both the residents' and the public housing agencies' perspective.

Whether one is a Republican or Democrat, no one should stand in the way of common sense or progress. We should support and expand RAD because it costs the government nearly nothing and leverages billions in capital that allow dilapidated public housing to once again provide Americans with quality, affordable homes — all the while converting those units out of the long-troubled model of Congressional funding for public housing.

Public-private partnerships like RAD only work when the government fulfills its end of the deal. If there are significant cuts to public housing then Congress must maintain Section 8 funding, both in the Housing Choice Voucher and project-based Section 8 programs.

Otherwise, the financing solution we've already invested in might collapse, thrusting the elderly, veterans, and families into homelessness. Congress must support RAD by supporting RAD public housing conversions and the Section 8 program in order to assure the preservation of affordable homes for Americans who need them.

Orlando Cabrera served as assistant secretary for Public and Indian Housing under President George W. Bush.