

MEMORANDUM

TO: Roger L. Stancil, Town Manager

FROM: J.B. Culpepper, Planning Director
Loryn Clark, Housing and Neighborhood Services Manager

SUBJECT: Use of the Fannie Mae Uniform Community Land Trust Ground Lease Rider

DATE: June 22, 2009

PURPOSE

The purpose of this memorandum is to respond to a request from Orange Community Housing and Land Trust (Land Trust) to use a Fannie Mae Uniform Ground Lease Rider when Land Trust homes are sold to qualified buyers (see Attachment 1).

Adoption of the attached resolution would endorse the use of the Fannie Mae Uniform Community Land Trust Ground Lease Rider.

BACKGROUND

The goal of a Community Land Trust is to create permanently affordable homeownership opportunities by using a ground lease that restricts the resale price of properties. Homes are sold as “leasehold estates” to qualified buyers and the Land Trust maintains the fee simple title to properties.

The Town provides funds from a variety of sources to the Land Trust to purchase or assist with the affordability of some Land Trust homes. When Town funds are provided, a Performance Agreement and restrictive covenants are executed requiring that the property be used for affordable housing purposes.

The Land Trust has identified three local lenders that are willing to provide financing for Land Trust buyers: Harrington Bank, BB&T and RBC. Other lenders have not been willing to provide financing for Land Trust buyers because of the resale restrictions included in the ground lease and the Town’s required restrictive covenants. As a result of the ground lease terms, the lenders that provide financing are not able to sell the mortgages on the secondary market, often Fannie Mae, creating a disadvantage for Land Trust home buyers.

DISCUSSION

The Land Trust has determined that other lenders would be willing to provide financing to Land Trust buyers if they used Fannie Mae’s “Uniform Community Land Trust Ground Lease Rider” (the Rider) along with the ground lease. The Rider is a document that was created by Fannie Mae that is attached to the ground lease signed by the home buyer. When the Rider is attached a ground lease, the Rider would adjust the terms of the ground lease so that they would be

acceptable to Fannie Mae. Therefore Fannie Mae would be able to purchase loans that include the Rider. The Land Trust further believes that use of the Rider would increase the financing products that would be available to its buyers and also make Land Trust homes more attractive to buyers and competitive with private market homeownership opportunities.

The attached memorandum from the Land Trust outlines risks involved with using the Rider. In the case of a foreclosure, the terms of the ground lease would be removed. Therefore, while the Land Trust would retain the fee simple title to the property, the home could be lost from the affordable housing stock. The home could be sold or occupied by a non low-income household, resold for an unaffordable price or used as rental property. In addition, if the Rider was used, it is likely that the Land Trust would have only twenty days notice of a foreclosure sale. Currently, the Land Trust is notified of slow payments or non-payment of Land Trust mortgages much earlier and has been able to avoid foreclosure sales by working with owners and the lenders.

Though it is possible that a home could be lost in the case of a foreclosure, we believe that it could be prevented as long as funds are available through the Town or other resources to purchase properties or to work out an agreement with lenders before a foreclosure sale occurs. Currently funds from the Affordable Housing Fund, the Housing Loan Trust Fund or Community Development Fund could be used to purchase properties. In addition, the Land Trust could use its reserves to purchase properties if necessary.

The Town Attorney met with the Land Trust staff and its Attorney to discuss the details of the Rider and supports the staff recommendation.

RECOMMENDATION

We recommend that the Council endorse the Land Trust's use of the Fannie Mae Uniform Community Land Trust Ground Lease Rider. We also recommend that the Council authorize the Manager to execute necessary documents that would implement this endorsement.

ATTACHMENT

1. June 11, 2009 Memorandum from Roger Dowling, Executive Director of Orange Community Housing and Land Trust (p. 4).