



U.S. Department of Housing & Urban Development
Office of the Regional Counsel - Region V
77 West Jackson Boulevard, Room 2617
Chicago, IL 60604-3507

PRIVILEGED AND CONFIDENTIAL

MEMORANDUM FOR: Mary Anderson, Production Division Director (5AHM)
ATTN: Lesley Johnson, Senior Underwriter (5AHM)
FROM: Courtney Minor, Regional Counsel (5AC) *Courtney Minor*
DATE: February 7, 2017
SUBJECT: **Waiver Request (HUD-2) for Site Unit Number Minimum**
West Town Housing Preservation/West Town Phase I and
Phase II (the "Project")
711-717 North Ada, Chicago, Illinois
FHA No. 071-35892

Your office has requested our review of a request for waiver of (1) the Multifamily Accelerated Processing (MAP) Guide, Guidebook 4430.G., Section 3.1.CC. and (2) federal regulation 24 C.F.R. § 200.73(c) on behalf of Bickerdike Redevelopment Corporation (Mortgagor). The Mortgagor and Draper & Kramer Commercial Mortgage Corporation (Lender) are applying for Section 221(d)(4) mortgage insurance. A copy of the waiver request (form HUD-2) with the Regional Counsel's determination is attached.

Requirements of the MAP Guide that are not statutory or regulatory may be waived by the Regional Center Director.¹ Regulatory requirements may only be waived by an appropriate Assistant Secretary. Statutory requirements may not be waived.

Factual Background

West Town Housing Partners Phase I was developed in 1983. Phase I consists of 140 townhouses in 30 buildings receiving Project-based Section 8 housing assistance.

West Town Housing Partners Phase II was developed in 1988. Phase II consists of 113 townhouses in 30 buildings and 65 units in 8 buildings receiving Project-based Section 8 housing assistance.

¹ Certain MAP Guide waiver requests must be approved in HUD Headquarters; this proposal does not fall under the types of waiver requests listed in Section 11.F.2 of the MAP Guide.

Relief Sought

MAP Guide Section 3.1.CC. allows for FHA-insured multifamily property sites to consist of two or more noncontiguous parcels of land when the parcels comprise one marketable, manageable real estate entity and each parcel (or combination of contiguous parcels) has at least 5 units. The MAP Guide provides factors that should be considered in underwriting and determining whether a scattered site property is one marketable, manageable real estate entity.

Federal regulation 24 C.F.R. § 200.73(c) states the following:

“The improvements shall constitute a single project. Not less than five rental dwelling units or personal care units, 20 medical care beds, or 50 manufactured home pads, shall be on one site, except that such limitations do not apply to group practice facilities.”

Lender acknowledges that a number of the 68 parcels in Phase I and II contain fewer than five units. Therefore, Lender and Mortgagor recognize that the waiver proposal conflicts with the regulatory provision cited above.

The five-unit minimum requirement was not found in Section 221(d)(4) of the National Housing Act, 12 U.S.C. §1715l; therefore, the proposal does not conflict with a statutory provision.

Lender attached to its waiver request two examples of projects in other HUD Multifamily regions in which waivers of 24 C.F.R. § 200.73(c) were granted by the Assistant Secretary for Housing – Federal Housing Commissioner based on the factors in the MAP Guide for determining whether a scattered site property is one marketable, manageable real estate entity. But neither Lender nor your office were able to locate copies of the cited waivers themselves or the names of the HUD counsel that determined the statutory or regulatory conflict(s) in those prior approvals.

Your office did provide a separate July 5, 2016 letter from the Principal Deputy Assistant Secretary for Housing approving another request to waive 24 C.F.R. § 200.73(c) for 233 units on 23 land parcels, 6 of which have less than the five units required by regulation.

Conclusion

Our Counsel Determination is that the waiver proposal **does conflict** with regulatory provision 24 C.F.R. § 200.73(c). Multifamily Midwest has determined that Project effectively operates as one rental property and will request a regulatory waiver from the Assistant Secretary for Housing – Federal Housing Commissioner. We agree the Assistant Secretary must approve this waiver request and that no other regulatory or statutory provision impedes your official election.

Please contact C.C. Huang, 312-913-8514 or Cissy.C.Huang@hud.gov for any further assistance.

Attachment(s):

1. Request for Waiver of Housing Directive by Draper & Kramer Commercial Mortgage Corporation on behalf of Bickerdike Redevelopment Corporation (form HUD-2)

**Request for
Waiver of Housing Directive**

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0029
(Expires 09/30/2016)

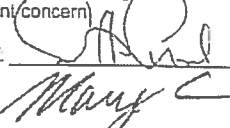
1. Field Office Chicago	2. Program and DAS (e.g., multifamily development) 221(d)(4)	West-Town Housing Preservation 071-35892
3. Waiver Requested by (person, entity, HUD employee) Draper and Kramer Commercial Mortgage Corp on behalf of Mortgagor		
4. Waiver Item (directive number, date, page, paragraph, etc.) Waiver of Chapter 3.1, Paragraph CC and 24 CFR 200.73(c)		
Relief Sought Per HUD requirements, non-contiguous parcels can be underwritten as a single loan, provided that certain conditions are met, including that none of the individual parcels contain fewer than five units. The Project consists of 318 apartment units on 68 separate sites, all of which are located on the near Northwest Side of Chicago. A number of the individual parcels contain fewer than five units. The unit count on each parcel ranges from two to twelve. The Lender notes that all of these properties have had, or currently have, HUD-insured mortgages. The Lender requests that this five-unit minimum be waived and that all 318 units be included in this loan request, regardless of the unit-count on an individual parcel.		

5. Did a check of SharePoint indicate Prior Approval of a factually similar waiver? Yes (skip No. 6) No (go to No. 6) If previously approved, give Counsel's name and date of approval.
See attached

6. Counsel Determination. The Waiver Proposal ~~does not conflict~~ conflicts with statutory or regulatory provisions (cite rule or provision)
CSU.
24 CFR PART 200.73(c)

Counsel (signature)  Date

7. Employee Justification (attach additional pages if necessary)
As outlined above, the project effectively operates as one, 318-unit rental property. The entire portfolio was developed by Bickardike Redevelopment Corporation which has maintained an ownership position since that time, and which is currently in the process of buying out the remaining equity partners. HUD has financed all or parts of the Project since it was built in the early 1930s. All units in the portfolio are subject to long-term HAP contract rents. In consideration of HUD's long affiliation with the Project, and given the dire need to preserve quality, affordable housing on the near Northwest Side of Chicago, the Lender requests that the MAP Guide requirement that each individual parcel contain five or more units be waived, and that all 68 parcels be included as part of the collateral for this loan. Please see attached page with recent approvals of this waiver request in similar circumstances. Finally, these properties are located in an area of Chicago that has seen rapid gentrification over the past several decades, making the preservation of these 318 units as affordable housing an urgent concern.

Scott Greuel, Branch Chief.  Date: 1/31/17
Mary Anderson
Division Director, Production
Multifamily Midwest Region

Field Office Concurrence

Name	Title	Date
<input type="checkbox"/> Granted <input type="checkbox"/> Not Granted	Housing Director (signature)	Date

Comments

Public reporting burden for this collection of information is estimated to average xx minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Distribution: (includes waivers granted and denied)
Original to Field Office;
One copy to each of the following: Director, Organizational Policy, Planning and Analysis Division, Room 9116, HUD Headquarters, HRD
Assistant General Counsel, Multifamily Mortgage Division, HUD Headquarters, Room 9230, CAHAA
Office of the Deputy Assistant Secretary for Single Family Housing, Room 9292, HUD Headquarters, HU
Office of the Deputy Assistant Secretary for Multifamily Housing, Room 6106, HUD Headquarters, HT