



MIAMI BEACH

OFFICE OF THE CITY MANAGER
NO. LTC # *136-2014*

LETTER TO COMMISSION

TO: Mayor Phillip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: April 15, 2014

SUBJECT: Response to Robert Klein and Miami Beach Community Development Corporation

The purpose of this Letter To Commission is to provide you with the response given to Mr. Robert Klein, attorney for Miami Beach Community Development Corporation (MBCDC).

Mr. Klein had sent correspondence on April 9th seeking a deferral on the City's agenda item C7D to recapture Department of Housing and Urban Development funds previously awarded to the Barclay Apartments, an MBCDC property acquired through Redevelopment Agency funds.

If you have any questions, please feel free to see me.

JLM/KGB/MLR

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April 10, 2014

Mr. Robert M. Klein
Klein Glasser Park Lowe & Pelstring P.I.
Two Datran Center – Suite 2000
9130 South Dadeland Boulevard
Miami, Florida 33156

VIA ELECTRONIC MAIL

Re: Correspondence Re: Miami Beach Community Development Corporation (4/9/14)

Dear Mr. Klein:

I received your correspondence regarding agenda item C7D heard and passed at yesterday's City Commission meeting. I wanted to take a moment and provide clarification and/or corrections on several points.

On March 14, 2014, Mr. Denis Russ, Acting Executive Director of Miami Beach Community Development Corporation (MBCDC), was advised by City staff in a meeting in our offices that the City would move to recapture certain funds awarded to the Barclay Apartments project. At this meeting, Mr. Russ was advised of the City's concern regarding several troubling issues with this project:

- The building has amassed \$32,274.67 in fines for operating without the appropriate Certificate of Use since August 2, 2011.
- The building has failed to complete its required 40-year Recertification and has been in violation for the past four years. The fines currently stand at \$25,221.13.
- MBCDC has failed to adequately present the City with evidence of its fiscal and operational capacity to complete the project despite repeated requests dating to July 2013.

Your letter stated that the "*affirmative vote by the Commission may effectively negate our ability to complete the current phase of work that is being performed ... which we otherwise contemplate could be completed by August 31, 2014.*" MBCDC's history with the City has consistently demonstrated failure to meet City- and agency-imposed deadlines, including:

- The Barclay Apartments were cited for failing to have an operational elevator, a recurring problem dating back to 2010. The Building Department imposed a 30-day order to remedy. The original deadline was August 31, 2013. MBCDC missed the deadline and asked for an extension until September 15, 2013. MBCDC missed this deadline and assured the City the elevator would pass inspection by September 30, 2013. This deadline, too, was missed. In fact, MBCDC did not pass final inspection until March 2014.
- In response to our concern that it would not be able to draw the funds on time, MBCDC proposed a revised draw schedule for the Barclay Apartments in February 2014 which included a \$35,602.87 draw in March and a \$35,000 draw by April 7. The March draw was for only \$22,422.87 and we have yet to receive the promised April draw.

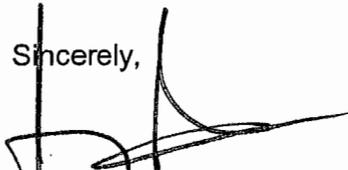
Your letter reinforces that MBCDC "*has limited funds*" and, therefore, limited capacity to undertake this project. As you may know, the City has lost \$576,805 in the past 18 months because of MBCDC's inability to make timely draws. The City cannot afford losing additional funds.

As a point of clarification, the County awarded MBCDC a Surtax Loan contingent on several factors including the completion of a Subsidy Layering Review. Your assumption that the loss of these funds would be triggered by the City's action is speculative and unrelated to the City's right to protect its interests.

Further, your assertion that "residents currently living in the project ... would obviously have to be placed in other housing if (the) resolution ... passed" is incongruent to the issue at hand. The City has an obligation to ensure the timely and compliant use of its funds. Repeatedly, MBCDC has failed to meet City- and self-impose deadlines, provide assurances that document the agency's capacity and has yet to complete a project for whose initial funding was provided in 2010.

If you have any further questions, please contact Maria Ruiz, Director, Office of Housing and Community Services.

Sincerely,



Jimmy L. Morales
City Manager

C: Mayor and City Commission
Kathie G. Brooks, Assistant City Manager
Maria L. Ruiz, Director/Housing & Community Development
Raul Aguila, Chief Deputy City Attorney



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April 9, 2014

Via Hand Delivery

Mayor Philip Levine
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

Members of the City Commission
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

Re: RESPONSE TO PROPOSED RESOLUTION AUTHORIZING RECAPTURING
REALLOCATION OF CDBG AND HOME FUNDS
APRIL 9, 2014 ITEM C7D

Dear Mayor Levine and City Commissioners:

We have been retained to represent Miami Beach Community Development Corporation. On April 7th, our clients received the proposed agenda item for today's Commission meeting, seeking to recapture and reallocate CDBG and HOME Funds that are currently committed to the Barclay Apartments. Unfortunately, while the notice was received on April 4th of the proposed agenda item, the actual Commission item summary and the City Manager's Commission Memorandum were not received until the evening of April 7th. Unfortunately, we are simply not able to be present at the meeting, given prior commitments.

Given the limited time that we have been provided to respond to the proposal and the fact that we have had barely forty-eight hours' notice of the agenda for this afternoon, we would like sufficient time to both consult with counsel and to present a full response to the proposal. In addition, while the commission item summary recommends notice of a thirty day comment period, 24CFR91.105(c)(3) and a public meeting on the proposed amendments to the action plan, other items on the agenda which would arguably be implemented immediately upon an affirmative vote by the Commission may effectively negate our ability to complete the current phase of work that is being performed on the Barclay Apartments, which we otherwise

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contemplate could be completed by August 31, 2014. We would therefore ask that this matter be tabled until *after* the thirty day comment period has been completed and a public meeting is conducted.

The current HOME contract is for five hundred thousand dollars. Of that amount, three hundred thousand dollars has already been expended and paid to MBCDC. An additional one hundred thousand dollars in contract expenses have been incurred.

When the contract agreement was first entered into, it provided for draw down payments. This ensured that MBCDC would not have to pull from its limited funds in order to advance the elevator and electrical repairs, while waiting reimbursement from the City. While the City later determined only to fund reimbursement requests, we have taken all necessary steps to comply with this change in procedure.

The CDBG contract is for seventy-five thousand and eighteen dollars. Of that amount, approximately fifty-two thousand dollars has already been expended and reimbursed to MBCDC. Project funding was interrupted due to the City's suspension of budget modification privileges.

Over the course of the past three months, MBCDC has provided the City with its action and expenditure plan. We have projected completion of this phase of the project by August 31st. As I noted above, we remain committed to that schedule, and are on target to meet that deadline, notwithstanding substantial increased restrictions which have been imposed upon our operations.

As far as the expenditure deadline is concerned, we note that the HOME Regulation Expenditure Requirements set forth at 24 CFR Part 92.500(d)(1)(c) allow five years after HUD's execution of the Home Investment Partnership Agreement with the City for completion of the expenditures. There is more than adequate time to meet that deadline. HOME funding for this project commenced FY2010-2011 and CDBG funding for this project commenced FY2011-2012.

MBCDC has been awarded Surtax funding from Miami-Dade County in the amount of one million three hundred thousand dollars, to address other physical needs of the property, and in

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order to comply with the change of use requirements, from hotel to residential use. It is my understanding that we would face the complete loss of those funds if this resolution goes forward. In addition, however, there are some forty-four residents currently living in the project, who would obviously have to be placed in other housing if this Resolution is passed.

Obviously, under the circumstances, we believe that the Resolution merits significant public debate and disclosure, and certainly more than forty-eight hours advance notice of this agenda item. The full human and financial impact of this determination should be considered. While we understand the criticism over delays in affecting the elevator repairs, a significant portion of the delay was simply beyond our control. The principal delay was occasioned by the age of the elevator itself, and the need to effectively manufacture custom made parts in order to complete the renovations. Those parts have now been provided, and the renovations are proceeding accordingly. In fact, the elevator has now received its final inspection.

We would urge the Commission to defer consideration of this item for at least thirty days, so that we can assure all concerned parties that the renovations will be completed in a manner which will comply with the HUD funding expenditure deadline, and otherwise allow this project to go forward to completion.

Very truly yours,

Robert M. Klein

ROBERT M. KLEIN

RMK:mm

cc: Jimmy Morales, City Manager
Kathie G. Brooks, Assistant City Manager
Maria L. Ruiz, Director/Housing & Community Development
Raul Aguila, Chief Deputy City Attorney
Jose Smith, City Attorney