MINUTES
BROWN COUNTY HOUSING AUTHORITY
Monday, August 23, 2010
City Hall
100 N. Jefferson Street, Room 604
Green Bay, WI 54301
3:00 p.m.

MEMBERS PRESENT: Michael Welch-Chair, Paul Kendle-Vice Chair, Tom Diedrick, Rich Aicher, Darlene Hallet

OTHERS PRESENT: Nikki Aderholdt, Robyn Hallet, Rob Strong, Chip Law, DonElla Payne, Matt Roberts, William VandeCastle, John Zakowski.

APPROVAL OF MINUTES:

1. Approval of the minutes from the June 21, 2010, meeting of the Brown County Housing Authority.

   A motion was made by D. Hallet, seconded by R. Aicher, to approve the minutes of the June 21, 2010, meeting of the Brown County Housing Authority. Motion carried.

R. Hallet requested that the Board approve taking item 4 out of order due to having individuals present for that particular item.

A motion was made by D. Hallet, seconded by P. Kendle, to take item 4 out of order. Motion carried.

4. Discussion and possible action regarding Housing Choice Voucher fraud cases to refer for criminal prosecution.

   R. Hallet stated that N. Aderholdt would be leading the discussion on this item. R. Hallet introduced W. VandeCastle, stating that he represents the Housing Authority in small claims actions and is here to discuss the efforts of criminal prosecution.

   N. Aderholdt stated that the idea of criminally prosecuting fraud cases was primarily politically driven. N. Aderholdt indicated that the BCHA has begun to refer some of the extreme fraud cases to the Brown County District Attorney's office to be charged criminally. These cases primarily range in a dollar amount greater than $30,000. N. Aderholdt stated that to date, she has referred approximately 12 to 15 cases to the District Attorney. N. Aderholdt stated that the question at hand is which cases to refer for criminal prosecution and which to keep in small claims only.

   A handout was provided detailing a more exact picture of the efforts to date from small claims action. N. Aderholdt stated that of these, some of the more extreme cases will be referred to the District Attorney's office.

N. Aderholdt stated that W. VandeCastle was asked to appear at the meeting to provide the Commissioners with a clear understanding of the small claims efforts, as well as the intent of the criminal prosecution efforts.

W. VandeCastle stated that he would address small claims actions and leave the criminal prosecution discussion to J. Zakowski. W. VandeCastle stated that first we need to address the objective of filing small claims action. The civil objective is to recover the overpayment; to get back what the investigation tells us is the appropriate amount to be recovered by the BCHA. That is the only agenda. W. VandeCastle stated that if the BCHA has an agenda beyond that in civil court, the BCHA could be accused of discrimination or harassment. Once you are in the civil court process, there are a couple other objectives in regards to collection. The main objective to determine is what action the BCHA can take. The decision to move forth with the actions in small claims is an administrative decision, which is primarily based on how collectible the individual is. W. VandeCastle stated that from his perspective, the BCHA staff has done a good job determining which individuals are collectible and which are not.

W. VandeCastle stated that if the amount being sought is under $5,000, then the matter is held in small claims court; if it is greater than $5,000, then the matter is brought into circuit court. There are many instances in which the total overpayment is greater than $5,000, but you only seek a maximum of $5,000 and take the action in small claims court. If the decision is made to seek a larger amount, then action is taken in circuit court.

W. VandeCastle stated that it has been his experience that there is a very short turn around in small claims court. One of the benefits the BCHA has had in small claims court is that all of the cases brought forward have been heard by the same commissioner, Commissioner Paquet. Commissioner Paquet used to prosecute these cases for the BCHA through the Corporation Counsel several years ago. He is very good at expediting these cases because he knows the rules and regulations that govern the program. W. VandeCastle stated that once the action has been filed, an appearance usually takes place within two to three weeks. If the individual doesn't appear, the BCHA receives a default judgment. If the individual does appear, Commissioner Paquet attempts to short circuit the likelihood of a trial by asking a number of questions at that appearance. If he is successful in determining whether or not a contract violation occurred, a default judgment is entered and the individual is then given the opportunity to enter into a repayment agreement. If Commissioner Paquet cannot at that time determine if a violation has occurred, then a trial is scheduled, which typically takes place two to four weeks after the appearance. After that trial is held, a judgment is typically entered, and the BCHA can then begin its collection attempts.

W. VandeCastle stated that circuit court works a little differently. The individual has 20 days to file an answer after the case has been filed. If an answer hasn't been filed, then a default judgment will be entered. This judgment, however, will not be entered for another two to four weeks after the initial 20 days. If the individual does file an answer, but it is not sufficient, a summary judgment will be entered. If the answer is sufficient, a trial will be set, which will occur in about four to eight weeks.

W. VandeCastle summarized that circuit court action typically takes about six to 12 weeks to find a conclusion. The process can take up to 18 months if the matter goes to a jury trial.

W. VandeCastle affirmed that the violation occurring is on a contract basis, which allows the BCHA to move forward in the small claims court and charge them with a money judgment.

N. Aderholdt stated that the reason all of this is being discussed is because questions have recently arose as to why the BCHA hasn't been seeking criminal action on some of these individuals. N. Aderholdt stated that the BCHA staff is seeking guidance from the Authority on how these cases should be addressed.

W. VandeCastle stated that the question has been raised, should the BCHA conduct both civil action and criminal action? W. VandeCastle indicated that from his perspective in regards to collecting the overpayment there is an advantage to doing both. In the criminal proceeding, restitution will be sought. In a restitution hearing, it is beneficial to have a civil judgment in place, which disallows the individual to dispute owing the money in the criminal court system.

P. Kendle questioned how it is determined which cases are being charged criminally. W. VandeCastle responded that there is a standard of proof that needs to be addressed. There is a higher burden of proof in the criminal court compared to the civil court. It is not just dollar amounts; it is addressing intent and background facts. W. VandeCastle stated that a lot of the cases are not criminal in nature; it is simply ignorance on their part or a matter of how it came to the BCHA's attention.

R. Aicher stated that the collectability issue comes into play in criminal court as well. The BCHA better be certain that if they are going to seek the greater dollar amount, they can collect it. N. Aderholdt stated that the objective of the criminal action is to ensure that the individual does not receive assistance anywhere else. It is not so much about the collectability, but about keeping individuals that don't need the program, or that are defrauding the program, off the program.

J. Zakowski stated that up until a few months ago, the District Attorney's office was not aware of the BCHA's small claims efforts. The District Attorney's office does file criminal action against public assistance fraud, primarily welfare fraud for other agencies, and because of recent County Board requests, the BCHA is now attempting to file similar action. J. Zakowski stated that if someone knowingly and intentionally accepted monies that they are not entitled to, that is a crime.

J. Zakowski stated that the District Attorney's office has agreed to work with cases referred by the BCHA and that the BCHA can refer any case that they would like, but they should be cases that not only owe a very large dollar amount, but are the most repugnant or intentional. J. Zakowski stated that the in regards to collecting restitution, the BCHA should be looking at criminal charges as well as civil because if charged, the offender will be put on probation and he will always ask for restitution as a condition of probation, which will have more pull than only a

judgment. However, the burden of proof is much greater in criminal court, in which the case must be proven beyond a reasonable doubt. The District Attorney's office must be able to prove if the individual intended to secured public assistance and made a false representation in doing so, in other words that they acted, or failed to act in a way that the individual knew was wrong. J. Zakowski stated that if the individual is attempting to pay the Housing Authority back prior to seeking criminal action, that goes toward intent and shows the individuals willingness to work with the BCHA. The District Attorney's office would be more apt to seek criminal action against an individual that has been evading the BCHA and has made no attempt to right the wrong.

J. Zakowski explained the steps and timeline: N Aderholdt puts together a synopsis for each case and provides the file to the District Attorney's office, who files the case with the Courts. There is an initial appearance and if the individual doesn't have an attorney, they will be given time to get one, which will cause a delay of about 2 weeks. Once an attorney is hired or appointed, there will be a preliminary hearing. J. Zakowski pointed out that almost all of the cases will be sought as felonies because the dollar amounts are over $2,500. The District Attorney will almost always make an offer before the preliminary hearing: for example if they don't have a criminal record, to waive the preliminary hearing, we will offer to amend it to two misdemeanors and the individual then won't be considered a convicted felon, which would be a great incentive for them to plead out. However we would still seek the same disposition: The District Attorney will always ask for probation, jail time, and restitution.

J. Zakowski stated that the BCHA is on the right track with the parallel court action in civil and criminal. Some cases are not criminal cases and should continue to be heard in small claims court; others are criminal in nature and will be good cases to charge in the criminal court. The greatest reason to charging individuals criminally is deterrence, which is a prime aspect of the criminal justice system.

P. Kendle stated that the Authority should provide the BCHA staff with some sort of framework so that there is a basis to determine which cases should go to criminal court and which should not. The Authority needs something to work with, however. R. Strong stated that in order to treat every case the same way and to avoid discrimination accusations, there needs to be some guidelines established illustrating what needs to be reviewed in order to determine which court to file action in.

The Authority directed the BCHA staff to establish a general framework for determining which court system to file action in for fraud cases and to bring it back to them at a later meeting.

A motion was made by D. Hallet, seconded by T. Diedrick to return back to the original order of the agenda. Motion carried.

COMMUNICATIONS:

2. Notice of Housing Authority Insurance Group Dividends for 2008.

R. Hallet stated that the BCHA received a notice of dividends received in the amount is $537.50. The letter states it's from the year 2008, which seems questionable, but that is what is indicated on the letter.

M. Welch stated that one other item that did surface is that Keith Pamperin is being honored and recognized at the University of Wisconsin-Green Bay's student housing facilities. The recognition will occur on September 8, 2010.

REPORTS:

3. Report on Housing Choice Voucher Rental Assistance Program

A. Preliminary Applications
D. Payne stated that there were 123 preliminary applications in the month of July.

B. Housing Assistance Payments
D. Payne stated that the HAP expenses for July were $990,627.

C. Housing Assistance Unit Count
D. Payne stated that the unit count was 2,686 for July.

D. Housing Quality Standard Inspection Compliance
M. Roberts stated that the highest amount of inspections was conducted in July, with 420. Of the 420, 40 percent passed the additional inspection, 26.65 percent passed the re-evaluation, and the fail rate dropped slightly to 33.33 percent.

E. Housing Choice Voucher Administrative Costs and HUD 52681B
C. Law stated that year-to-date, ICS is $53,374.68 under budget.

F. Portability Activity
D. Payne stated that in July, there were 40 port outs, totaling $26,608, and 22 port ins.

G. SEMAP Monitoring Report
D. Payne stated that the SEMAP score has dropped slightly due to under-leasing and under-funding. The score is at 92.95 percent, which requires 2.5 percent to get back up to 95 percent and high performer status. C. Law stated that unless we can get our dollar amounts up, we cannot be a high performer.

R. Hallet questioned why the numbers are dropping. C. Law stated that because we take a lot of people off of our program, our turnover is twice what the national percentage is. D. Payne stated that ICS is conducting a huge extravaganza with the HCV waiting list; Specialists are conducting twice the number of interviews they were previously. The high termination rate and port-out rates are largely affecting our utilization dollars.

C. Law stated that for 2010, it's going to be nearly impossible to reach the goal by looking solely at unit count. However, the dollar utilization is a more realistic goal to reach. In 2011, both categories could probably be reached.

H. Report of the Housing Choice Voucher Family Self-Sufficiency Program.
D. Payne stated that there were 102 clients in July, of which 37 have escrow accounts. There were two graduates in July as well.

I. Report on the Housing Choice Voucher Home Ownership Option.
D. Payne stated that there were five clients participating in the Home Ownership Option in July. There were two new contracts in July as well.

J. VASH Reports
D. Payne stated that there were three active clients on the VASH program in July, and one actively seeking a unit. There are five clients looking to come in with their VASH vouchers.

K. Report on Langan Investigations Criminal Background Screening and Fraud Investigations
D. Payne stated that because there was no meeting held in July, she included both the July and August report, but will only be going over August. There were eight new investigations, two of which were closed and five that are still active. D. Payne stated that 154 new applications were processed, 36 of which needed out of state record checks conducted.

D. Payne stated that Langan Investigations incorporated a new column in their report which indicates the municipality in which the applicants currently reside.

OLD BUSINESS:
None.

R. Aicher stated that a meeting or two back, the Authority discussed reissuing conflict of interest waivers for any board member or city official who owns rental property throughout the County. R. Aicher inquired about the outcome of that discussion. N. Aderholdt indicated that she had sent out the waivers to all County Board members, ICS employees and board members, and BCHA employees and board members. N. Aderholdt indicated because she did not put a deadline on the waiver, and they continue to trickle in.

NEW BUSINESS:
5. Discussion and possible action regarding repayment of court costs for fraud cases with Small Claims action.

N. Aderholdt distributed a handout which broke out the court fees from previously submitted small claims actions.

N. Aderholdt indicated that when this process was initiated, it was under the guidance of the Corporation Counsel, and thus the Brown County Clerk of Courts did not charge any court fees when the cases were filed. After contracting with William VandeCastle's law firm, that trend continued. Unfortunately, the assumption that the BCHA was a Brown County entity and had filing fees waived was incorrect, and the BCHA is now required to reimburse the Clerk of Courts for those fees.

The Clerk of Courts is not seeking reimbursement for fees in cases that dismissed or for cases in which the BCHA has not yet collected any monies from the individual. Therefore, the BCHA owes the Clerk of Courts $15,701.86 in filing fees, which covers all of the cases in which monies have been repaid. There remains $17,657.66 in filing fees due.

N. Aderholdt stated that the BCHA can address this issue one of two ways: the Authority can either approve paying back the $15,701.86 due to the Clerk of Courts now and gradually pay back the remaining $17,657.66 as those monies are recovered, or the Authority can approve repaying the total amount of $33,359.52 to the Clerk of Courts. R. Aicher questioned which way was easier to track. N. Aderholdt responded that both ways are equal in tracking terms.

A motion was made by P. Kendle, seconded by T. Diedrick, to approve the full payment of $33,359.52 to the Brown County Clerk of Courts to cover the small claims filing fees charged over the last several years. Motion carried.

N. Aderholdt questioned how the Authority would like the BCHA staff pay filing fees for future cases. N. Aderholdt stated that the Clerk of Courts requires payment at every filing. R. Strong stated that the staff needs the Authority's approval to cut a check at any amount, therefore there may be a timing issue based on when cases are filed and when the Authority can authorize the checks. R. Aicher stated that it could be noted that the Authority is aware of the filing fees charge, and that staff can cut the check as appropriate and just bring it to the Authority's attention at the meetings, at which point they will be acknowledged.

6. Approval of revisions to Chapter 3 (Eligibility), Chapter 10 (Moving with Continued Assistance and Portability), and Chapter 11 (Reexaminations) of the Housing Choice Voucher Administrative Plan.

D. Payne stated that under Chapter 3, Eligibility, the following should be removed: *if the family has been convicted of fraud against any governmental program, including welfare fraud, in the previous 5 years.* This is similar to what was in the administrative plan about owing other agencies money. Having such a policy is not permitted by HUD regulations.

D. Payne stated that under Chapter 10, Moving with Continued Assistance and Portability, the following should be removed: *The PHA will bill the initial PHA for incoming portability families for a minimum of 12 months. The PHA will notify the initial PHA of this within 10 business days of the portability interview.* This was

changed to read this way several years back when there was a concern with under-funding and over-leasing. This should be removed as the problem of under-funding and over-leasing is no longer an issue. Removing this would also contribute toward achieving the 95 percent needed for the SEMAP score.

R. Strong questioned whether this would become an issue again. D. Payne stated that she does not foresee this becoming an issue again. Many housing authorities throughout the nation absorb immediately; the BCHA is one of few that do not. P. Kendle questioned whether the BCHA would have the option to go back to the current policy if needed; might the Housing Authority want to word it to allow that option. P. Kendle recommended changing it to state that the PHA will absorb a family porting in, unless it would cause a strain on over-leasing. D. Payne requested that this change in language be approved with the other changes so that they are effective immediately.

D. Payne stated that under Chapter 10, part 9, Re-examination of Family Income and Composition, the following should be removed: *For a participant family approved to move out of its jurisdiction under portability, the PHA generally will conduct a re-examination of family income and composition only if the family's annual re-examination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information*, and replaced with: *The PHA will complete an EIV and background check but will not conduct a re-examination of family income and composition prior to port out.*

D. Payne stated that HUD regulations do not require a re-examination of income. HUD requires the BCHA to send the most current Form-50058 and documentation to support the income stated on the 50058. Changing this process will allow a port-out request to be processed more effectively.

D. Payne stated that under Chapter 11, Re-Examinations, the following should be added: *Should a youth turn 18 at the time an interim re-examination is processed (regardless if Tenant or PHA initiated), all income related factors to that individual must be verified and relationship code changed.* When a minor turns 18, all income is counted unless they are a full-time student. D. Payne stated that the standard of processing this needs to be included in the administrative plan; it has never been addressed.

A motion was made by D. Hallet, seconded by R. Aicher, to approve the changes proposed for the Administrative Plan, including the additional changes to Chapter 10 regarding absorbing port-ins. Motion carried.

7. Approval to submit to HUD a renewal application for 3 FSS Coordinator positions for 2011.

D. Payne stated that HUD is opening up a grant, which should have been opened up two weeks ago. It should be posted by August 30, 2010, but it is unsure whether or not it actually will be. D. Payne indicated that ICS is seeking the

Authority's approval because there is a paper application that must be completed and signed by Authority allowing the submission.

A motion was made by P. Kendle, seconded by D. Hallet, to approve the submission to HUD a renewal application for 3 FSS Coordinator positions for 2011. Motion carried.

8. Approval of ICS's request for BCHA funding for FSS merit awards and log books/supplies.

D. Payne stated that this has been approved in previous years. There are several workshops coming up in the next few months for which supplies are needed.

A motion was made by D. Hallet, seconded by T. Diedrick, to approve ICS's request for BCHA funding of $1,500 FSS merit awards and $500 for log books and supplies, totaling $2,000. Motion carried.

9. Discussion and possible action regarding County Board's request to analyze the amount of community services that HCV recipients use.

R. Hallet stated that this item goes back to the BCHA's presentation that was given to the County Board in October 2009. There are a few remaining items that the County Board had requested during that presentation, this being one of the items. R. Hallet stated that the BCHA staff is seeking guidance on this request. Unfortunately, beyond the police calls and fire calls, there is no real way to track other community services utilized. R. Hallet stated that the other question is what this information would provide the Housing Authority once obtained.

P. Kendle stated that the term community service needs to be defined more clearly. C. Law stated that release forms must be signed and submitted before you can seek confidential information such as community services utilized in a detailed extent.

R. Strong stated that we can provide the County Board with what we are easily able to obtain, but beyond that the BCHA does not have the authority or the mechanisms in place to provide further information. P. Kendle stated that the response to the County Board should be to indicate the things that the BCHA can provide and not to focus on the things that it cannot do.

T. Diedrick indicated that the response to the County Board should come from the Authority versus the BCHA staff. R. Strong indicated that the staff would draft a response to the County Board and bring it forth at the next meeting.

10. Discussion and possible action regarding staff's attendance at June and July's Administration Committee and County Board meetings.

R. Hallet stated that she wanted to inform the Authority of staff's attendance at previous Administration Committee meetings. It was hoped that the staff would not need to attend the August meeting; however, it appears as though the BCHA is on

the agenda. It is rather unclear as to why the BCHA is on the agenda, and clarification is currently being sought. R. Hallet stated that it appears to be an ongoing issue that the County Board requests the BCHA's attendance at these meetings.

T. Diedrick stated that this issue had been addressed in the past. At some point, it was indicated that the County Board would need to submit their requests for attendance to the Authority in writing, indicating what it is they are seeking attendance for. This must be done reasonably.

R. Strong stated that Corporation Counsel is supposed to be looking into the State statutes on who the BCHA receives direction from. R. Strong stated that it would make sense for the BCHA to report to the County Board if they received county funding. However, the BCHA does not; funding is received from HUD and bonds. R. Strong believes that the Corporation Counsel will indicate this to the Board. The County Board also inquired as to why the BCHA does not include a County Board member. R. Strong stated that this is possible, but a position must be available for that to happen and there is a limit to up to two elected officials appointed. There are four members of the BCHA that are up for re-appointment at this time.

R. Strong stated that Tom Hinz did suggest having a liaison member for the BCHA and County Board. M. Welch stated that in the end, it is the County Board's decision for this. R. Strong reiterated that any requests made by the County Board must be directed, in writing, to the BCHA, who will then respond accordingly.

M. Welch stated that there was one issue brought up at a previous Administration Committee meeting involving the waiting list. This issue had been addressed when they recommend that some Board members attend the BCHA meeting when closing of the waiting list was discussed. It was determined that closing the waiting list could have the opposite effect intended. M. Welch stated that it was determined that the waiting list would not be closed; this may be something that needs to be re-communicated to the County Board.

INFORMATIONAL:

11. 2010 Income limits published by HUD

    R. Hallet indicated that the 2010 income limits have been made available on HUD's website. There are very slight increases made to the different household sizes; typically around $50 increases.

12. Continuation of use of residency questionnaire for another 90 days (through October) due to revision of the questionnaire.

    R. Hallet stated that a few months ago, staff brought forward a questionnaire that would be utilized to gather information pertaining to where applicants to the HCV program are coming from. After some time utilizing it, some gaps were noticed in the questions. The questionnaire has been redesigned, and thought it would be best to utilize this new questionnaire for another 90 to further gather information.

BILLS:
A motion was made by P. Kendle, seconded D. Hallet, to approve the bills. Motion carried.

FINANCIAL REPORT:
T. Diedrick indicated that the Authority had requested to only see the details of the financial report quarterly.

STAFF REPORT:

13. Recent procedural changes as a result of letters from HUD questioning some of our procedures with specific clients.

    R. Hallet stated that recently there has been a lot of communication from HUD in regards to complaints from clients. Although somewhat burdensome, this communication has really allowed the BCHA to evaluate its procedures and make appropriate changes. R. Hallet stated that a very good case-in-point is the portability change previously proposed.

    R. Hallet stated that in the end, this is a very positive thing because it's allowing the BCHA to streamline their processes.

14. Reminder of NAHRO Conference in Reno, NV October 31-Nov 2, 2010

    R. Hallet stated that this is just a reminder to all members that there is a NAHRO conference coming up in Reno, NV in October. No one has indicated that they will be attending.

    M. Welch stated that if any members are interested, they should advise R. Hallet by Friday, August 27, 2010.

R. Strong stated that the revision of the Neighborhood Guide, which the BCHA has committed funding to, are completed and will be distributed on September 10, 2010.

The meeting was adjourned at 5:00 p.m.

:naa