



**DEVELOPMENT AND FINANCE COMMITTEE**

**January 27, 2023  
10:00 a.m.**

**YouTube Link: <https://youtu.be/PEx8FVOftJI>**

**Approval of Minutes:**

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1. <b>Minutes:</b> Approval of Development and Finance Committee Minutes of December 16, 2022	<b>3</b>

**Discussion/Action Items:**

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1. <b>Wheaton Gateway:</b> Approval to Select Lerch Early & Brewer, Chtd. as Land Use Counsel for the Wheaton Gateway Development	<b>7</b>

**Closing Statement:**

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Vote to Close Meeting	<b>11</b>

**Closed Session:**

Title	
<i>The closed committee meeting will be called to order pursuant to Section 3-305(b)(3) and 3-305(b)(13) of the General Provisions Article of the Annotated Code of Maryland.</i>	

# Minutes

**HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY**

10400 Detrick Avenue  
Kensington, Maryland 20895  
(240) 627-9425

**Development and Finance Committee Minutes**

**December 16, 2022**

For the official record of the Housing Opportunities Commission of Montgomery County, an open meeting of the Development and Finance Committee was conducted via a hybrid model on December 16, 2022, with some participating by online platform/teleconference, and others participating in-person at 10400 Detrick Avenue, Kensington, Maryland beginning at 10:11 a.m., available for viewing [here](#). Those in attendance were:

**Present**

Jackie Simon, Chair – Development and Finance Committee  
Richard Y. Nelson, Jr. – Commissioner

**Attending via Zoom**

Jeffrey Merkowitz – Commissioner

**Also Attending**

Chelsea Andrews, Executive Director  
Aisha Memon, General Counsel  
Zachary Marks  
Jay Shepherd  
Jennifer Washington

Kayrine Brown, Deputy Executive Director  
Paige Gentry, Deputy General Counsel  
Marcus Ervin  
Kathryn Hollister

**Attending via Zoom**

John Wilhoit  
Ellen Goff  
Jay Shepherd  
John Broullires

Alex Torton  
Hyunsuk Choi  
Leidi Reyes  
Timothy Goetzinger

**IT Support**

Irma Rodriques  
Aries Cruz  
Genio Etienne

**Commission Support**

Patrice Birdsong, Spec. Asst. to Commission

Commissioner Simon opened the meeting with a welcome and introduction of the Commissioners participating on the Committee and Executive Director Chelsea Andrews.

## **APPROVAL OF MINUTES**

The minutes of the November 18, 2022, Development and Finance Committee open session meeting was approved upon a motion by Commissioner Nelson and seconded by Commissioner Merkowitz. Affirmative votes were cast by Commissioners Simon, Nelson, and Merkowitz.

## **DISCUSSION ITEMS**

### **1. Mortgage Finance: Approval to Extend the Existing Contracts of the Bond Underwriting Team Consisting of a Senior Manager and Co-Managers in Accordance with the Procurement Policy**

Chelsea Andrews, Executive Director, provided an overview and introduction of Jennifer Washington, Acting Director of Mortgage Finance, who provided the presentation requesting recommendation to the full Commission approval of an extension for up to four (4) months of the existing contracts with Bank of America Merrill Lynch, PNC Capital Markets, LLC, Morgan Stanley, RBC Capital Markets, Jefferies, LLC, and Wells Fargo Bank, N.A. to continue to serve as Underwriters pursuant to the terms of the original contract and in accordance with the Procurement Policy.

Staff addressed the various questions of the Commissioners. A motion was made by Commissioner Nelson, and seconded by Commissioner Merkowitz, to recommend to the full Commission for approval. Affirmative votes were cast by Commissioners Simon, Nelson and Merkowitz.

### **2. HOC Headquarters: Approval of a General Contractor**

Chelsea Andrews, Executive Director, provided an overview and introduction of Marcus Ervin, Director of Real Estate, and Jay Shepherd, Housing Acquisitions Manager, who provided the presentation requesting recommendation to the full Commission to approve the selection of Paradigm Contractors, LLC as the general contractor for the redevelopment of the Fenwick and Second parcel known as the HOC Headquarters Site, and to authorize the Executive Director to negotiate a contract with Paradigm Contractors, LLC.

Staff addressed questions of the Commissioners. A motion was made by Commissioner Nelson, and seconded by Commissioner Merkowitz, to recommend to the full Commission for approval with the understanding that updates of recommended changes will be provided to the

Committee by staff. Affirmative votes were cast by Commissioners Simon, Nelson, and Merkowicz.

### **3. Hillandale Gateway: Approval of an Early Start**

Chelsea Andrews, Executive Director, provided an overview and introduction of Marcus Ervin, Director of Real Estate, and Kathryn Hollister, Senior Financial Analyst, who provided the presentation requesting recommendation to the full Commission to (1) authorize the Executive Director to execute a contract with CBG for an amount not to exceed \$11.5MM, and to provide a Limited Notice to Proceed (“NTP”) for the Early Start work; (2) approve an Early Start budget in an amount not to exceed (\$14.5M; and (3) authorize the Housing Production Fund (“HPF”) as a source for the Early Start work in an amount not to exceed \$14.5M.

Staff addressed questions of the Commissioner Simon. A motion was made by Commissioner Nelson, and seconded by Commissioner Merkowicz, to recommend to the full Commission for approval. Affirmative votes were cast by Commissioners Simon, Nelson and Merkowicz..

Based upon this report and there being no further business to come before this session of the Development and Finance Committee, the meeting adjourned at 11:18 a.m.

Respectfully submitted,

Chelsea Andrews  
Secretary-Treasurer

/pmb

# Discussion/Action Items

**MEMORANDUM**

**TO:** Housing Opportunities Commission of Montgomery County  
Development and Finance Committee

**VIA:** Chelsea J. Andrews, Executive Director

**FROM:** Division: Real Estate  
Staff: Zachary Marks, Chief Real Estate Officer Ext. 9613  
Marcus Ervin, Director of Development Ext. 9752  
Paige Gentry, Deputy General Counsel Ext. 9751

**RE:** **Wheaton Gateway:** Approval to Select Lerch Early & Brewer, Chtd. as Land Use Counsel for the Wheaton Gateway Development

**DATE:** January 27, 2023

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**STATUS:** Consent \_\_\_\_\_ Deliberation  Status \_\_\_\_\_ Report \_\_\_\_\_ Future Action \_\_\_\_\_

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**OVERALL GOAL & OBJECTIVE:**

To approve the selection of Lerch Early & Brewer, Chtd. as Land Use Counsel for the Wheaton Gateway Development.

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**BACKGROUND:**

Since 2019, HOC has been working with its partners, Duffie, Inc. (“Duffie”) and Wheaton Motel Associates Limited Partnership, a Maryland limited partnership (“Willco”), to aggregate properties at the corner of University Boulevard and Veirs Mill West in Wheaton. HOC and its partners are designing an impactful redevelopment program incorporating a mix of uses, including approximately 770 high-quality mixed-income multifamily housing, a community-use urban park to provide needed passive open space, and a curated selection of retail/commercial uses.

HOC and Duffie initially selected Lerch, Early & Brewer (“Lerch”) to provide legal services related to the preparation and submission of the Sketch Plan for Wheaton Gateway with a total contract value of \$70,157 (the “Sketch Plan Work”). The Sketch Plan Work was awarded under Section 16.1 of the Procurement Policy, pursuant to which the Commission delegated procurement awarding authority to the Executive Director for professional contracts with a value of less than \$250,000.

HOC received Sketch Plan approval via unanimous decision in May 2022. With the Sketch Plan approval, the Wheaton Gateway team now needs additional legal support to proceed through the Site Plan and Subdivision Plan phases of the entitlement process.

In anticipation of the Sketch Plan Approval, HOC staff solicited proposals on April 29, 2022, from its Real Estate Legal Pool seeking legal assistance related to the entitlement of the Project (the “Entitlement Work”). As a reminder, pursuant to Resolution No. 19-39 adopted on April 3, 2019, the Commission approved the creation of a Qualified Pool of legal firms and the selection of the Qualified Firms (such pool of legal firms, the “Legal Pool”) that permits HOC staff to engage with Qualified Firms on an as-needed basis throughout all phases of a project’s development and operations.

Two (2) firms responded to the solicitation on or before the submission deadline of May 6, 2022, one firm did not submit a response due to its capacity to take on the work, and another did not respond. Out of the submissions, HOC staff selected Lerch, Early & Brewer (“Lerch”) for Land Use Counsel at the cost of \$215,000.

As outlined in the proposal's cost and based on experience, Lerch is well-equipped and experienced with Montgomery County land use matters and has been instrumental in assisting the Hillandale Gateway and Wheaton Gateway team with navigating this constantly evolving landscape. Lerch’s proposed fee is conservative, and their response to the solicitation identifies that HOC will only be charged for actual work completed while acknowledging potential unknowns that may arrive from additional community/planning input. Their prior experience on the Elizabeth Square development and work on Hillandale Gateway related to joint venturing and land use matters will additionally prove beneficial to the Wheaton Gateway team, which also contains a multiparty development effort across several parcels. Lastly, their proposal addressed diversity and inclusion as requested in the solicitation to provide for a culture of inclusion at the firm & leadership level, which aligns with the development’s goals and objectives.

After further review of the work necessary for Wheaton Gateway, the HOC team has added one additional deliverable to Lerch’s scope of work on Wheaton, which work is valued at \$15,000 (the “Additional Work”).

The HOC Procurement Team has informed real estate staff that because Lerch was selected through the Legal Pool, the Sketch Plan Work, the Entitlement Work, and the Additional Work must be treated as one contract for the purposes of procurement. Pursuant to HOC’s Procurement Policy, Commission approval is required to award any professional contracts with a value greater than \$250,000. In the aggregate, the value of the Sketch Plan Work, the Entitlement Work, and the Additional Work is \$300,157. Thus, Commission approval is required to engage Lerch for the Entitlement Work and the Additional Work. Thus, HOC staff requests Commission approval to select Lerch as Land Use Counsel for the Entitlement Work and Additional Work.

At a meeting of the Commission on July 13, 2022, the Commission approved several actions, including, but not, limited to the Approval of the CY22-25 Pre-development Budget for \$19,898,188.60, which the PNC Bank, N.A. Real Estate Line of Credit (“RELOC”) will fund. This Pre-development Budget does include the \$300,157 for the legal work discussed herein.

**ISSUES FOR CONSIDERATION:**

Will the Development and Finance Committee join in the staff’s recommendation to the Commission to approve the selection of Lerch Early & Brewer, Chtd. in the aggregate amount of up to \$230,000 to provide legal assistance in the entitlement of the Wheaton Gateway Project, thereby increasing the aggregate value of services provided by Lerch Early & Brewer, Chtd to \$300,157?

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**BUDGET/FISCAL IMPACT:**

There is no impact on the Commission’s FY 2023 operating budget. The contract will be funded by the previously approved Predevelopment budget and from the PNC Bank, N.A. Real Estate Line of Credit (“RELOC”).

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**PRINCIPALS:**

Wheaton Venture, LLC  
Housing Opportunities Commission of Montgomery County

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**TIME FRAME:**

For consideration by the Development and Finance Committee on January 27, 2023, and formal Commission action on February 1, 2023.

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**STAFF RECOMMENDATION & COMMISSION ACTION NEEDED:**

Staff recommends that Development and Finance Committee join staff's recommendation to the Commission to approve the selection of Lerch Early & Brewer, Chtd. as Land Use Counsel in an amount up to \$230,000 to be funded by the previously approved Predevelopment budget and from the PNC Bank, N.A. Real Estate Line of Credit ("RELOC") and thus increase the value of the contract with Lerch Early & Brewer, Chtd. to \$300,157.

# Closed Session

Written Statement for Closing a Meeting (“Closing Statement”)

**Date: January 27, 2023**

A. Pursuant to Section 3-305(b) and (d) of the General Provisions Article of the Annotated Code of Maryland, I move to adjourn this open session to a closed session only:

- 3.  “To consider the acquisition of real property for a public purpose and matters directly related thereto;” and
- 13.  “To comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter.”

B. For each provision checked above, the topic to be discussed and the reason for discussing that topic in closed session is provided below.

Statutory Citation	Topic	Reason for closed-session discussion
§3-305(b)(3)	The potential acquisition/purchase of multifamily property located in Silver Spring, Maryland.	This must be a closed meeting in order to protect HOC’s ability to purchase the property. Public discussion of this item could adversely affect HOC’s ability to negotiate with various third parties, which could result in HOC being unable to purchase property.
§3-305(b)(13)	The confidential commercial and financial terms of a potential commercial lease at an HOC-controlled property.	Section 4-335 of the Maryland Public Information Act prevents disclosure of confidential commercial or financial information obtained from a third party. This must be a closed meeting in order to protect confidential commercial and financial information provided to HOC from private parties regarding their offered lease terms. All such information is customarily and actually treated as private by the third parties, and has been provided to HOC under an assurance of privacy.

C. This statement is made by Jackie Simon, Chair of the Development & Finance Committee.

D. Recorded vote to close the meeting:

- Date: January 27, 2023 Time: \_\_\_\_\_
- Location: HOC’s Kensington Office (10400 Detrick Avenue, Kensington, MD 20895) & Livestream (YouTube).
- Motion to close meeting made by: \_\_\_\_\_
- Motion seconded by: \_\_\_\_\_
- Commissioners in favor: \_\_\_\_\_
- Commissioners opposed: \_\_\_\_\_
- Commissioners abstaining: \_\_\_\_\_
- Commissioners absent: \_\_\_\_\_

Officer’s Signature: \_\_\_\_\_