

# MIAMI BEACH

## COMMITTEE MEMORANDUM

TO: Neighborhood and Quality of Life Committee Members

FROM: Raul J. Aguila, Interim City Manager

DATE: March 22, 2021

SUBJECT: **Discussion Regarding Miami Beach Community Development Corporation.**

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### **HISTORY:**

The Mayor and Commission referred this item to the Neighborhood and Quality of Life Committee (NQLC) at its December 9, 2020 meeting. Commissioner Michael Gongora is the item sponsor.

There is currently a recurring item at the Finance and Citywide Projects Committee (FCWPC) regarding MBCDC's fiscal position.

### **BACKGROUND**

#### **The City's Support of MBCDC**

The City has offered various levels of support to MBCDC for many years including the award of state and federal formula funds (See attached chart with history of funding from Community Development Block Grant, HOME Investment Partnership, Neighborhood Stabilization, and State Housing Initiatives Program, among other funding sources). The City's support was jeopardized in June 2013 when a series of irregularities involving MBCDC's management of federal funds came to light. At that time, the City had invested significant federal funds in the London House Apartments, a project acquired with City Redevelopment Agency (RDA) funds. The project was subsequently funded for a gut rehabilitation using a variety of City funds including federal funds that were subject to expiration. MBCDC acknowledged it was unable to complete the project in compliance with federal funds and the City took action to assume control of the project and safeguard the federal funds (including those that had already been spent by MBCDC).

The City was compelled to appeal to the U.S. Department of Housing and Urban Development (HUD) in Washington to obtain an extension on awarded funds to the London House and address the non-compliant expenditure of federal funds throughout various properties in the MBCDC portfolio. These properties include the Neptune Apartments, Lottie Apartments, Madeleine Village Apartments and Barclay Apartments.

Non-compliance included, but was not limited to:

- Double billing of expenditures to more than one funding agency
- Ineligible tenants residing in assisted properties
- Expending federal funds without documentation
- Davis-Bacon Act non-compliance

The City faced the repayment of federal funds provided to MBCDC from 2008 – 2013 totaling more than \$9,000,000. As part of its effort to safeguard the affordable units and minimize its financial exposure to HUD, the City assumed the ownership and management of five MBCDC properties and was required to reimburse its federal credit line more than \$1 million using non-federal funds.

In 2016, MBCDC, now under the management of Beatriz Cuenca-Barberio, approached the City seeking funding assistance for the Jefferson Apartments, an elder-serving affordable housing property. The building needed immediate roof repair and air conditioning unit replacement or would be compelled to relocate tenants. MBCDC acknowledged that it did not have the financial capacity to undertake the needed repairs and was also unable to undertake the repairs under a traditional 30-day reimbursement model. The City, wanting to ensure stable housing for elder clients that were at risk of displacement and recognizing that MBCDC did not have the financial wherewithal to relocate tenants as required by City ordinance, negotiated revised reimbursement terms with MBCDC to enable the City to process reimbursements on a 10-day basis instead of its standard 30-day reimbursement process. This enabled the agency to improve its short-term cash flow to enable the repairs at the Jefferson Apartments.

Unfortunately, MBCDC's financial position worsened and it was unable to accept additional funds from the City to rehabilitate the Jefferson Apartments property because the agency could no longer comply with reimbursement guidelines due to its lack of financial resources (cash flow). The agency's failure to complete the rehabilitation of the property led to its current condition which has required the relocation of its elder residents living on the first floor and the need to replace the flooring to address issues that were initially identified in 2016 but were not acted upon. It should be noted that, also in 2016, the City consented to the sale of affordable housing units at the Knightsbridge Apartments as MBCDC's management asserted that the proceeds of the sale of these assets would position the agency to undertake much-needed capital work on its portfolio and assist the agency in repositioning its debt position. Unfortunately, MBCDC did not provide the City any evidence of how the proceeds from the sale of the Knightsbridge units were used despite requests to do so.

On October 17, 2018 the Mayor and Commission passed Resolution No. 2018-30581 urging Miami-Dade County to provide MBCDC a 90-day stay from foreclosure for the Crespi Park Apartments. Please note that MBCDC's representatives reported that the then imminent sale of the Seymour Building would provide the agency sufficient cash flow to reposition its debt portfolio and stabilize its holdings. Furthermore, at the May 29, 2019 Finance and Citywide Projects meeting, a member of MBCDC's board of directors had asserted that the agency had realized a profit of \$217,000 in April 2019. He went on to say at the same meeting that he expected the agency to finish the year with a \$400-\$600 thousand-dollar annual profit. These projections have subsequently been refuted by the agency as it seeks operational subsidies from the City and/or County. More so, at the May 2019 meeting counsel for the agency asserted that the agency's financial health was good. This assertion was subsequently refuted by MBCDC's legal counsel in meeting's with City staff in February 2021.

### **Request for City Funding**

On February 27, 2020, MBCDC submitted three applications for capital repairs to the CDBG and HOME FY 20/21 RFP process for the following projects:

CDBG Capital repairs for 1551 Pennsylvania Avenue, CDBG Capital repairs and re-financing for the Allen Apartments, and HOME Capital repairs for 1551 Pennsylvania Avenue.

The applications did not meet the requirements of the CDBG and HOME programs for the following reasons:

- The organization shows a financial deficit based on the statements provided.
- Financial statements do not demonstrate sufficient cashflow to cover expenses that would be reimbursed by the CDBG/ HOME program.
- The timeline provided does not take into account a design phase or bidding time.
- The financial statements include findings related to compliance with federal requirements; and
- The submitted budget failed to clearly explain expenses related to construction and professional services.

City staff continues to receive calls from tenants about property management issues, and those are fielded with MBCDC and RAM staff to seek prompt resolution.

## **ANALYSIS:**

### **Issues of Compliance**

The City continues to monitor the agency's financial standing. On April 29, 2020, MBCDC provided the FY 20 cash flow projections for its umbrella organization. City staff discussed the projections with MBCDC, to clarify reasons costs were not delineated for repairs and maintenance, elevator maintenance, building permits and utility costs. MBCDC staff explained that these costs are accounted for in each property's corresponding budget.

On September 10, 2020, MBCDC provided Consolidated Financial Statements for 2019. The statements delineated a continued deficit and highlighted the subsequent events that have impacted the organization's financial capacity and compliance with federal programs. The report also listed a variety of current material weaknesses and significant deficiencies in connection to the agency's internal controls, accounting processes and tenant management that have persisted for five (5) years. MBCDC provided a response that included corrective actions as part of a corrective action plan within the report.

### *Jefferson Apartments*

The Building Department inspected the Jefferson Apartments and issued a violation on August 15, 2019 due to observation of structure deterioration on the first floor. The relocation process for all tenants on the first floor began in March 2020. Tenants have been temporarily relocated to hotels or other units within the portfolio. MBCDC retained an engineering firm for the scope of work and subsequently bid out the project and selected a contractor. The building permit was issued on May 26, 2020. The repairs are estimated to be complete by March 12<sup>th</sup>. The vacant units on the first floor will be ready to be rented on April 1<sup>st</sup>.

### *Shelbourne Apartments*

Units at the Shelbourne Apartments require extensive rehabilitation. Since March 2020, 19 residents have been permanently relocated to other units within the portfolio. MBCDC has advised that they currently do not have a concrete plan of action in regard to the rehabilitation and reopening of the Shelbourne Apartments. They have advised the City that they are seeking co-development partners to recapitalize their entire portfolio inclusive of the Shelbourne Apartments. Please note that the business plan that had been promised to the City in May of 2019 was never submitted. MBCDC has advised that the business plan would be contingent on the possible partnership with a co-development partner. In a February 2021 meeting, MBCDC informed that the Office of General Counsel at HUD advised MBCDC, that due to the type of funding received at this property (HUD Section 811) they cannot simply refinance. MBCDC continues to meet with HUD officials and counsel to discuss options to refinance despite the HUD Section 811 encumbrances.

The resulting vacancies at both the Shelbourne and the Jefferson Apartments result in an adverse financial impact for the agency.

### *1551 Pennsylvania Ave*

A Notice of Violation was issued to 1551 Pennsylvania Ave. on September 15, 2020. The findings included evidence of water intrusion observed in the living room and bedroom ceilings in units 202, 203, 205, and 207. The permit to repair the roof was issued on January 12, 2021, and the roof replacement was completed on February 22<sup>nd</sup>.

### **Florida Housing Finance Corporation**

MBCDC has asserted to the Mayor and Commission that it is currently in compliance with all grant agreements. According to the Florida Housing Finance Corporation, MBCDC has not been in compliance since 2013 and owes \$10,584 plus a 5% late charge of \$529.20 for the annual EHCL sinking fund due August 31, 2013 and a late fee for late payment of 2019 servicing fee. MBCDC has a Demonstration Loan through FHFC for Meridian Place Apartments. The loan matured April 4, 2020. The Board approved a one-year extension on December 17, 2020. The last demand letter by Florida Housing Finance was sent on December 30, 2020.

### **Miami-Dade County**

Miami-Dade County Public Housing and Community Development (PHCD) continues to express concern with MBCDC's financial and operational capacity. On February 5, 2021, Mr. Michael Liu, director for Miami-Dade County Public Housing and Community Development, provided the following timeline of events between the County and MBCDC:

2012 - MBCDC requests assistance from the County to address inability to pay its obligations on outstanding loans. The County permits a "one-time" agreement where past due interest and late charges were added to the principal of the loans all due as a balloon payment at the various maturity dates for the loans.

2015 - MBCDC requests ability to sell off 10 units at the Knightsbridge building as condominium units in order to pay off the County loan and extinguish affordability requirements; agreed to accept reinstatement of the County loan on the Jefferson which was in default; and agreed to provide the County with 10% of the sales proceeds of the sale of each unit. MBCDC represented that the revenues generated would stabilize its financial situation.

2017 - MBCDC requests a deferment of loan payments for all of its County Surtax loans due to "continuing operating deficit" and asserted its "...inability to continue operations past 2018."

2017 - MBCDC in violation of its Rental Regulatory Agreement (RRA) evicts all the tenants from the Crespi Park Apartments, so as to reset rents at a higher level. This violation triggered MBCDC becoming in default of its loan agreement.

2018 - (February): The County offers to assume the entire loan portfolio and associated assets of MBCDC with the goal of preserving the affordable units. The County also offered to provide operating expenses covering staff salaries and benefits for 90 days after execution of an agreement to allow for a fair transition. This offer was refused by MBCDC.

2018 - (March): MBCDC defaults on its loan with the Madison Apartments.

2018 - (October): PHCD takes over daily operations of the Madison Apartments.

(2018-early 2019): MBCDC and PHCD reach agreement whereby MBCDC will retain the Crespi Park Apartments with the promise to make the needed repairs and hire qualified property management firm. PHCD County will retain ownership of the Madison Apartments.

2020 - PHCD engages with the County's Department of Audit Management Services to conduct a full operations review of MBCDC. The work continues but expected to be completed soon.

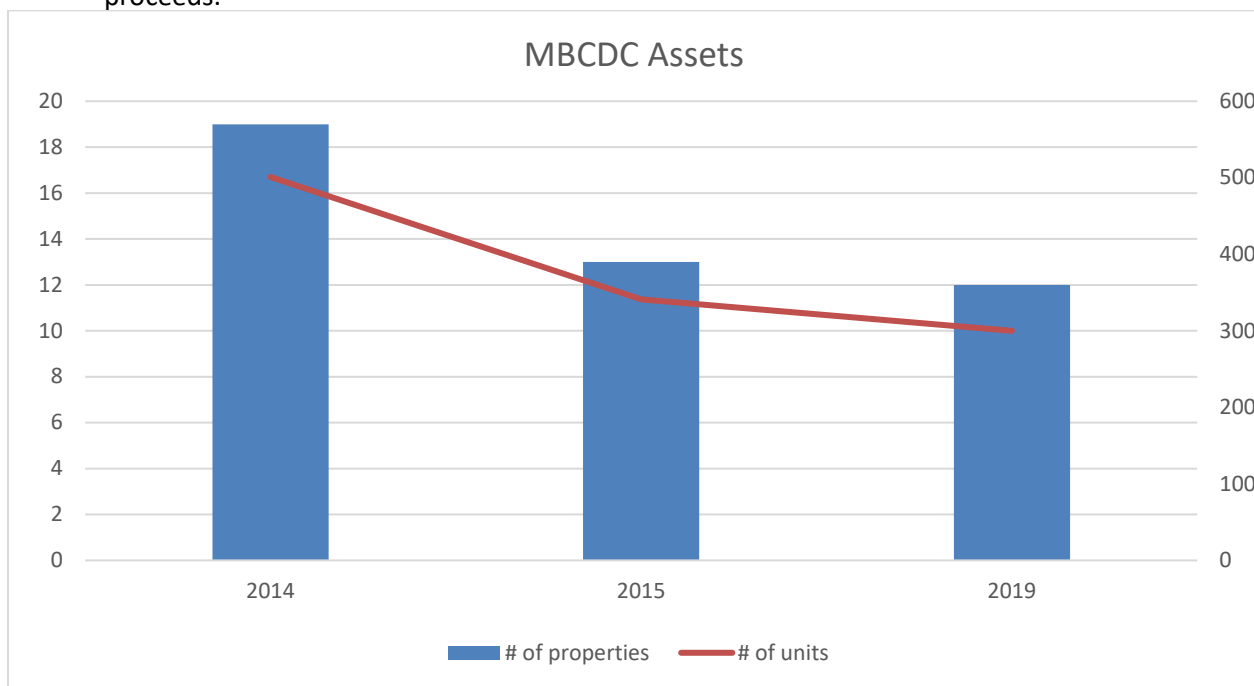
2020 - (December): PHCD sends correspondence to the City of Miami Beach expressing continued concerns about MBCDC's viability, although it is still current on its loans. A 100% inspection of units ordered. Contracting processes puts start of inspection by April 2021.

2021 - PHCD is willing to discuss with MBCDC and the City of Miami Beach the same offer that was made in early 2018 regarding assuming MBCDC's loan obligations and transferring ownership of the properties to the County. PHCD would collaborate with the City in the transfer and operations of the properties.

### Agency Portfolio

The attached graph demonstrates the reduction of MBCDC's portfolio and affordable units since 2014 and includes the sale of multiple assets by the agency to raise operating capital.

- In 2015, the agency sold 10 units at The Knightsbridge to stabilize its financial situation. The agency never provided the City or the County an accounting for the use of these proceeds as promised.
- As a result of non-compliance with Federal rules and regulations, MBCDC returned five (5) properties acquired with City funds in 2014-2015 to help mitigate the City's financial exposure to HUD and the agency's inability to properly manage the properties in compliance with HUD rules. Furthermore, during the City's due diligence in acquiring these properties it was discovered that MBCDC had listed the Barclay Apartments on multiple hotel registration sites in violation of its funding agreements with the City.
- In 2019, MBCDC turned over the Madison Apartment to the County and sold the Seymour building (a non-housing asset previously assisted by the City). MBCDC has not provided an accounting for the use of these proceeds.



### CONCLUSION:

Supporting affordable, compatible workforce housing is a key management objective in the *2019 Strategic Plan: Through the Lens of Resilience*. MBCDC is a significant provider of affordable housing in the City. However, the capacity of the organization continues to be a concern as demonstrated by the

agency's acknowledgement that it does not have a business plan despite repeated assurances otherwise, has allowed two additional properties to deteriorate during the current management administration, and a significant number of affordable housing units are currently vacant and not serving eligible elder and low-income households.