Neighborhood Stabilization Program

Innovative Development Strategies for Very Low-Income Housing


NATIONAL HOUSING LAW PROJECT

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Table of Contents

Grantee, Ordered by Size of Grant	Total NSP Award	25% VLI Set-Aside	Total VLI Spending	VLI Spending, % of Award
Phoenix, AZ	$39,478,096	$9,869,524	$9,944,254	25%
Cleveland, OH	$16,143,120	$4,035,780	$4,035,780	25%
Hamilton County, OH	$7,970,490	$1,992,623	$1,993,000	25%
Knoxville, TN	$2,735,980	$689,995	$2,465,000	90%
Greenville County, SC	$2,262,856	$565,714	$1,656,571	73%

Introduction*

In 2008, Congress responded to the nation's foreclosure crisis with funding for neighborhood stabilization. The Housing and Economic Recovery Act (HERA) was signed into law on July 30, 2008.[1] Title III of the act created the Neighborhood Stabilization Program (NSP) and granted $3.92 billion for emergency assistance to states and localities to redevelop abandoned and foreclosed homes and residential properties.[2] Following HERA, the American Recovery and Reinvestment Act of 2009 (ARRA) included an additional $2 billion for neighborhood stabilization in a program that has become known as NSP2.[3] Unlike the original NSP program, NSP2 funds were allocated by competition to states, local governments, and nonprofits, which were permitted to submit proposals in partnership with for-profit entities. Most recently, the Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010, provides an additional $1 billion in NSP funding which will be allocated by formula.[4] In addition, funds from the original NSP program that have not been obligated or expended before the applicable deadlines will be recaptured and reallocated to other grantees.[5]

While NSP funds generally must benefit households whose income does not exceed 120% of the area median income (AMI), at least 25% of the funds must be set aside to build housing that would be occupied by very low-income households, households earning no more than 50% of AMI.[6] This report examines the progress of five NSP grantees that pursued innovative strategies toward meeting their obligations to provide housing for very low-income individuals. Before delving into the details of the grantees' development portfolios, it is helpful to have an overview of the size of their awards. The chart above sets forth the NSP award and the 25% set-aside amount for each of the five grantees surveyed in this report, as well amounts obligated to serve very low-income households.[7] As the average NSP grant size was $3.9 million,[8] these jurisdictions are representative of larger, mid-size, and smaller grants provided to counties and municipalities.

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1 Housing and Economic Recovery Act, Pub. L. No. 110-289, § 2301, 122 Stat. 2654, 2850-54 (2008).

2 *Id*. For a detailed examination of regulations generally relating to the Neighborhood Stabilization Program, see *HUD Issues Regulations Implementing the Neighborhood Stabilization Program*, 38 HOUS. L. BULL. 215 (Aug. 2008).

3 American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-005, 123 Stat. 15, 217 (2009).

4 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 1497(a)(2010).

5 Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008, 73 Fed. Reg. 58,330 (Oct. 6, 2008) [hereinafter HUD NSP1 Notice].

6 § 2301(f)(3)(A)(ii). This article will use "very low-income" interchangeably with "at or below 50% AMI."

7 Amounts obligated to the 25% set-aside may increase because of the removal of certain restrictions on the types of properties that can be used to meet the set-aside. See text accompanying note 20, *infra*.

8 HUD NSP-1 Reporting: Program-Wide Detail Report, NSP Resource Exchange, at *2, July 2010, http://hudnsphelp.info/media/snapshots/07-31-2010/1PW-DETAIL-07312010.pdf.

Grantee Awards, 25% Set-Aside, and Total Very Low-Income (VLI) Spending[9]

Knoxville, Tennessee has directed the majority of its award toward very low-income housing, with a focus on supportive housing for formerly homeless individuals. In Phoenix, Arizona, the city is securing hundreds of apartments as affordable housing through a "soft" NSP loan that requires the units to remain affordable for 30 years. Similarly, Cleveland, Ohio has focused on rehabilitating deteriorating multifamily apartment complexes, but is also rehabilitating about a dozen scattered-site single-family homes for a lease-to-own program. Greenville County, South Carolina is exceeding its 25% set-aside through a diverse array of rental, lease-to-purchase, and resale rehabilitation projects, and is also contributing NSP funds for 10 affordable senior apartments in a large redevelopment project. Hamilton County, Ohio has committed its entire 25% set-aside to serve as gap funding in the redevelopment of a resident-owned housing development. The successes and setbacks of the grantees highlighted below can serve both as an example of what may be possible in further efforts with successive rounds of NSP funding, and as a guide to avoiding common difficulties when attempting to build housing for very low-income populations.

NSP Background

Under HERA, all 50 states as well as selected counties and municipalities received allocations of NSP funds on a formulary basis.[10] In 2008, NSP grantees drafted and submitted plans for using their NSP funds, and most grantees signed HUD contracts in February or March 2009. Grantees must submit to HUD quarterly progress reports, which are available to the public on HUD's website.[11]

The act restricted NSP funds to five uses:

i. establishing financing mechanisms for purchase and redevelopment of foreclosed-upon homes and residential properties;
ii. purchasing and rehabilitating homes and residential properties that have been abandoned or foreclosed-upon, in order to sell, rent, or redevelop such homes and properties;
iii. establishing land banks for homes that have been foreclosed upon;
iv. demolishing blighted structures; and
v. redeveloping demolished or vacant properties.[12]

To meet their set-aside obligations, grantees must put 25% of their funds into uses that actually result in housing units to be occupied by very low-income households.[13]

NSP funds are subject to the guidelines of the Community Development Block Grant (CDBG) program, but they also come with certain other requirements that have affected grantees' abilities to meet their set-aside requirements.[14] Among these are limitations on the geographic areas where properties may be acquired and purchase price limitations.

The geographic targeting requirement, known as Area of Greatest Need ("AGN") targeting, requires grantees to target census blocks or zip codes within their jurisdiction that were most affected by foreclosures.[15] Grantees had to identify these areas at the application stage. The law requires grantees to give "priority emphasis and consideration" to AGN regions.[16]

Grantees are also required to purchase foreclosed properties at a discount. Originally, HUD guidance required that every property be purchased at a minimum discount of 5% below the current market appraised value, with an average discount across all program purchases of at least 10% or 15%,

[9] Figures are as reported in grantees' 2010 second quarter performance reports. *See* NSP Resource Exchange, http://hudnsphelp.info/index.cfm?do=viewGranteeAreaResults (last visited Aug. 28, 2010).
[10] HUD NSP1 Notice, *supra* note 5, at 58,331.
[11] *Id.* at 58,341.
[12] Housing and Economic Recovery Act, § 2301(c)(3); HUD NSP1 Notice, *supra* note 5, at 58,337-38.
[13] § 2301(f)(3)(A)(ii); Email from HUD Neighborhood Stabilization Ask A Question Response to Nikolena Moysich, Public Interest Fellow, National Housing Law Project (Aug. 27, 2010) (on file with NHLP).
[14] § 2301(e)(1), (f)(1).
[15] § 2301(c)(2).
[16] *Id.*; HUD NSP1 Notice, *supra* note 5, at 58,333.

depending on market factors relevant to the discount.[17] In June 2009, this guidance was revised to permit a minimum discount of 1%.[18]

Redevelopment of vacant or demolished property can be a permissible use of NSP funds in general, but under HUD's original NSP regulations, such redevelopment could not qualify to meet the 25% set-aside if the property was not abandoned or foreclosed within the definition of the regulations.[19] The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010, removed the restriction requiring that only abandoned or foreclosed-upon properties be used to meet the set-aside.[20] Grantees may now include expenditures on redevelopment of vacant or demolished property as part of their set-aside regardless of whether the property was abandoned or foreclosed.[21] Although the change will not apply retroactively to funds already expended on previously nonqualifying renovations, the change will apply to any funds not yet expended, even if already obligated toward such a redevelopment.[22]

Grantees who choose to meet their 25% set-aside by building rental housing must set rents that are affordable to very low-income households.[23] HUD considers a grantee to be in minimal compliance with this requirement if it adopts certain HOME program rent standards.[24] The maximum rents a grantee may adopt are equivalent to high HOME rents, which are the lesser of 30% of 65% AMI or HUD Fair Market Rents.[25] Some NSP grantees, such as Cleveland, chose to set their rent ceiling at low HOME rents, which are the lesser of 30% of 50% AMI or HUD Fair Market Rents.[26] Appendix B lists 2010 HOME rents for each of the jurisdictions surveyed.

Grantees must also set an affordability duration no shorter than that required for HOME projects.[27] For rehabilitation or acquisition of existing housing, a per unit expenditure of under $15,000 requires a five-year affordability period; $15,000 - $40,000 requires 10 years of affordability; over $40,000 requires 15 years.[28] For new construction or acquisition of newly constructed housing, the HOME affordability period is 20 years.[29]

Finally, all funds came with a time limit, requiring grantees to commit to projects and activities quickly. HERA requires that NSP funds be obligated within 18 months of the date HUD awarded the funds, and funds must be expended within four years of that date.[30] HUD may recapture and reallocate unexpended funds,[31] but the agency will first provide municipal and county grantees who miss the 18-month obligation deadline with an opportunity to submit additional information for review and possible corrective action or sanction. HUD anticipates that these grantees will have a choice of entering into a memorandum of agreement or facing recapture of unobligated funds, which will then be reallocated.[32] For grantees who fail to use 25% of their grants on very low-income housing, HUD plans to require either a reallocation of remaining unspent NSP funds to meet the 25% set-aside or a firm commitment to meet the set-aside using other non-federal funds

[17] *Id.* at 58,342.
[18] Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008; Revisions to Neighborhood Stabilization Program (NSP) and Technical Corrections, 74 Fed. Reg. 29,223, 29,225 (Dep't of Hous. And Urban Dev. June 19, 2009) [hereinafter HUD Bridge Notice].
[19] Neighborhood Stabilization Program: Explanation of Property Types Under Each Eligible Use, HUD, Dec. 3, 2009, http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/pdf/nsp_terminology.pdf.
[20] Dodd-Frank Wall Street Reform and Consumer Protection Act, § 1497(b)(1).
[21] § 1497(b)(1)(A).
[22] § 1497(b)(1)(B).
[23] HUD NSP1 Notice, *supra* note 5, at 58,334.
[24] *Id.*at 58,334, 58,336. The HOME Investment Partnerships program is a federal program providing funds to state and local governments for rental housing or homeownership funds. *See* 42 U.S.C.A. § 12741 *et. seq*. (Westlaw June 13, 2010).
[25] 24 C.F.R. § 92.252(a) (1997). To view the HUD Fair Market Rents for your jurisdiction, see Final Fair Market Rents for Fiscal Year 2010, 74 Fed. Reg. 50,552 (Sept. 30, 2009).
[26] § 92.252(b).
[27] HUD NSP1 Notice, *supra* note 5, at 58,334, 58,336.
[28] 24 C.F.R. § 92.252(e).
[29] *Id.*
[30] HUD NSP1 Notice, *supra* note 5, at 58,340.
[31] *Id.*
[32] Notice of Neighborhood Stabilization Program Reallocation Process Changes, Dept. of HUD, Aug. 23, 2010, http://hudnsphelp.info/media/resources/5435-N-01_NSP1_18MonthNotice_08-23-2010.pdf; NSP Policy Alert: Guidance on the NSP1 Recapture and Reallocation Notice, Dept. of HUD, Aug. 26, 2010, http://hudnsphelp.info/media/resources/NSP%20Policy%20Alert_NSP1RecaptureNotice_8-26-10.pdf.

before the expenditure deadline.[33] September 2010 marked the obligation deadline for many grantees, and as the deadline approached, a flurry of activity made it possible to see the shape that NSP projects have taken.

The novelty of the NSP grants, in combination with grantees' slowly evolving understanding of NSP regulations, has caused more than one grantee to budget activities it only later learned would not be considered part of its set-aside.[34] Because of the restrictions, some activities highlighted below are not specifically within the set-aside, but remain innovative ways to provide affordable housing to very low-income households. Other activities now may be eligible for inclusion in the set-aside, thanks to the Dodd-Frank Act's removal of the requirement that property be abandoned or foreclosed.

[33] *Id.*
[34] For example, Knoxville directed $975,000 toward the Minvilla housing project, then learned the property, though NSP-eligible, would not qualify for the set-aside, and Greenville County budgeted $581,000 to redevelop Creekside before realizing the property would not qualify.

Knoxville, Tennessee

- 105 units of permanent supportive housing will be developed to serve formerly homeless individuals
- Set-aside regulations are satisfied by smaller multifamily rental renovations and home purchase for very low-income households
- City and nonprofit leaders address public resistance to locations of supportive housing

Introduction

The City of Knoxville received an NSP grant of about $2.74 million, of which $689,995 was required for the 25% low-income set-aside.[35] The city has gone beyond its set-aside, budgeting $2.47 million, 90% of its award, to affordable rentals that will serve as permanent supportive housing for the chronically homeless.[36] The city came up with small projects to meet NSP regulations for the formal 25% set-aside while flexibly pursuing more complex large-scale projects that will also serve very low-income individuals. The city is pursuing four NSP activities with its grant. The Minvilla Manor activity will use NSP funds to restore and redevelop a former hotel into 57 units of permanent supportive housing for formerly homeless persons.[37] The Flenniken activity will create 48 more units of supportive housing at another site.[38] Meanwhile, the city will satisfy the letter of the regulations on the 25% set-aside by renovating rental housing in a six-unit multifamily dwelling and funding five more home rehabilitations, to be purchased by very low-income households.[39]

Minvilla Project

Even before the NSP funds became available, Knoxville was firmly committed to its Ten-Year Plan to End Chronic Homelessness (TYP), a collaborative effort between Knoxville, Knox County, and regional nonprofit developers and homeless service providers that is currently in its fourth year.[40] Minvilla Manor is the first major step toward accomplishing the plan.[41]

The building, which is situated on a bus line just north of downtown, consists of thirteen two-story rowhouses and is considered a rare example of the city's rowhouse architecture.[42] It sat vacant and deteriorating for about 10 years, suffering squatters, vandalism, and a fire in one of the units.[43] The city condemned the building in 2005, but the historic overlay prevented demolition of the structure.[44] Several developers expressed interest but were unable to secure the financing needed for long-term success of the project. In addition, the building's proximity to several homeless services facilities made market-rate development difficult.[45]

Minvilla is being developed by Southeastern Housing Foundation, a nonprofit developer of affordable housing and the official strategic partner for the TYP.[46] The project budget is approximately $7.3 million, and, in addition to $975,000 of Knoxville's NSP funds, includes grants from Knoxville and Knox County CDBG funds, historic tax credits, low-income housing tax credits (LIHTC), a small mortgage, and various state funds.[47] The NSP grant was some of the final money that allowed the project to go forward.[48]

When finished, Minvilla Manor will provide 57 efficiency and one-bedroom units.[49] Rents will be set

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[35] City of Knoxville, January 1, 2010 thru March 31, 2010 Performance Report, Grant B-08-MN-47-0002, NSP Resource Exchange, http://hudnsphelp.info [hereinafter 2010 Q1 Report].
[36] *Id.* Appendices A and D of this report contain AMI figures and 30% rent figures for Knoxville, and Appendix E categorizes Knoxville's NSP set-aside development by housing type.
[37] *Id.*
[38] City of Knoxville, Action Plan, Grant B-08-MN-47-0002, NSP Resource Exchange, http://hudnsphelp.info.
[39] Knoxville 2010 Q1 Report, *supra* note 35.
[40] Telephone Interview with Becky Wade, Community Development Administrator, City of Knoxville Community Development Department (June 9, 2010).
[41] *Id.*
[42] Telephone Interview with David Arning, Executive Director, Southeastern Housing Foundation (June 17, 2010).
[43] *Id.*
[44] Telephone Interview with Ginny Weatherstone, Chief Executive Officer, Volunteer Ministry Center (June 14, 2010).
[45] Email from Becky Wade, Community Development Administrator, City of Knoxville Community Development Department, to Nikolena Moysich, Public Interest Fellow, National Housing Law Project (Aug. 4, 2010) (on file with NHLP).
[46] Telephone Interview with David Arning, *supra* note 42.
[47] Minvilla Manor – Funding, http://minvilla.knoxtenyearplan.org/costs/ (last visited Sept. 1, 2010).
[48] Telephone Interview with Ginny Weatherstone, *supra* note 44.
[49] Knoxville 2010 Q1 Report, *supra* note 35.

at HUD fair market rent levels. Tenants will contribute 30% of their income for rent, and a Section 8 Housing Choice Voucher will cover the remaining rent.[50] The local housing authority provides a priority for homeless individuals, placing them at the top of the voucher waiting list.[51]

The affordability period will persist for 20 years, due to a stipulation in the LIHTC project bid, but the building's owner expects to keep the housing affordable in perpetuity.[52]

On-site case management will be provided by the building's owner, Volunteer Ministry Center (VMC), a nonprofit whose mission is to prevent homelessness and arrange permanent supportive housing for people who are homeless.[53] VMC provides meals, medical and dental care, and case management services.[54] VMC's homeless clients currently receiving case management will be among the first to take up residence at Minvilla, but all individuals who move into Minvilla must first agree to work with a case manager.[55] The case manager's sole goal will be to do whatever ensures the resident's success in maintaining housing. Services will include assistance with securing an income through employment or disability benefits, microwave cooking classes, and social opportunities to replace the community of street life.[56] Addiction and mental health services will not be required as a condition of tenancy, but a case manager will help individuals who choose to seek such services, and VMC will hold open the apartment of a tenant who seeks inpatient services so that he or she may return after treatment.[57]

Groundbreaking occurred in September 2009, and the renovations are on track for completion in October 2010.[58]

Flenniken Project

The city's second large site for housing the formerly homeless supports Knoxville's goal to provide living opportunities in a variety of locations.[59] The Flenniken site, a former school, is located close to the bus line in a South Knoxville residential neighborhood.[60] The building has been vacant since 1994 and suffered some vandalism and water damage, though it did not deteriorate as badly as the Minvilla site.[61] Southeastern Housing Foundation will perform the rehabilitation work and own the finished building.[62] The project budget estimate is $7.2 million, and funding sources include LIHTC equity, HOME and CDBG funds from Knoxville, several state assistance programs, and a $1 million affordable housing program grant from the Federal Home Loan Bank of Atlanta.[63] Knoxville will also contribute $800,000 in NSP funds.[64]

Flenniken will be redeveloped into 48 affordable apartments for individuals who are chronically homeless.[65] The building will include common space, laundry facilities, and a management office, and the residents will receive supportive services provided by the Volunteer Ministry Center.[66] VMC case managers will also monitor relations between third-party property management and tenants at Flenniken. This will be similar to an existing process the city has with the Knoxville/Knox County Community Action Committee (CAC), a quasi-governmental service agency that provides case managers to mediate between tenants in disabled housing and their

[50] Email from Becky Wade, *supra* note 45.
[51] *Id.* Knoxville's Public Housing Authority administers 3,569 housing choice vouchers. PHA 5-Year and Annual Plan, Knoxville's Community Development Corporation, Mar. 25, 2010, http://www.hud.gov/offices/pih/pha/approved/pdf/10/tn003v01.pdf. Historically, Knoxville's waiting list has been held open to allow for the addition of prioritized individuals, including people who are homeless. PHA Plan: Annual Plan for Fiscal Year Beginning July 1, 2007, Knoxville's Community Development Corporation, May 3, 2007, http://www.hud.gov/offices/pih/pha/approved/pdf/07/tn003v02.pdf.
[52] Telephone Interview with Ginny Weatherstone, *supra* note 44.
[53] Telephone Interview with Becky Wade, *supra* note 40.
[54] *Id.*
[55] Telephone Interview with Ginny Weatherstone, *supra* note 44.
[56] *Id.*
[57] *Id.*
[58] Knoxville 2010 Q1 Report, *supra* note 35; Ann Keil, Homes for Knoxville's Formerly Homeless to be Completed in October, Wate.com, July 15, 2010, http://www.wate.com/global/story.asp?s=12815330.
[59] Telephone Interview with Becky Wade, *supra* note 40.
[60] *Id.*
[61] Telephone Interview with David Arning, *supra* note 42.
[62] Email from Becky Wade, *supra* note 45.
[63] Telephone Interview with David Arning, *supra* note 42.
[64] Knoxville 2010 Q1 Report, *supra* note 35.
[65] *Id.*
[66] *Id.*

landlords.[67] Affordable rents and the affordability duration will match those applying to Minvilla, and the city expects tenants will receive Section 8 Housing Choice Vouchers.[68] At the close of the second quarter in 2010, the site's environmental assessment was complete and architectural preparations were underway.[69] Demolition, environmental abatement, and rehabilitation are slated for fall 2010.[70]

Small-Scale Development for Rent and Ownership

The city initially wrote its NSP Action Plan under the assumption that the rehabilitation of Minvilla would qualify for its 25% low-income set-aside, but later realized that the property would not qualify as foreclosed under NSP program regulations applicable to the set-aside.[71] Instead, the city chose to pursue additional smaller-scale projects in acquisition and rehabilitation of foreclosed single- and multifamily homes.[72] For the rental portion of this program, the city chose Knox Housing Partnership (KHP), a nonprofit developer with whom it had an existing relationship. KHP is a Community Housing Development Organization (CHDO) and provides rental management and homeownership counseling.[73] The city approved a contract in June 2009, but the developer had difficulty finding and acquiring foreclosed homes that were cost-effective to renovate.[74] Recently, KHP purchased a four-unit multiplex using Knoxville's grant of NSP funds, and is now preparing to rehabilitate the building into six rental units.[75] When complete, the building will be LEED-certified.[76] In addition to the $390,000 NSP grant, city HOME funds will help pay for the rehabilitation.[77] The units will be required to remain affordable for 20 years.[78] Rents will be set at high HOME rents, except 20% of the units in developments consisting of five or more units must have rents not exceeding 30% of 50% AMI.[79]

The city is also working with Habitat for Humanity, which acquired five properties for resale to very low-income households, using a $300,000 NSP grant to cover acquisition costs.[80] The parties signed a contract in June 2009, but Habitat experienced difficulties similar to those of KHP in acquiring foreclosed homes whose renovations were cost-effective.[81] By the end of March 2010, Habitat had sold one rehabilitated home and was constructing another to replace a home it had demolished.[82] At the close of the second quarter of 2010, Habitat had completed its property purchases and was planning rehabilitation of two homes, and new construction on two other properties.[83] Home purchasers will receive a zero-interest loan from Habitat.[84]

Difficulties with NSP Program Requirements

The city had not previously been involved in efforts to permanently house individuals suffering chronic homelessness. Several nonprofit providers had developed smaller projects but had not attempted anything similar in scope to the Minvilla and Flenniken projects.[85] The city receives CDBG, HOME, and Emergency Shelter Grant funds, but typical affordable housing developments are single-family, duplexes, and small rental rehabilitations not on the scale of current NSP activities.[86]

Knoxville experienced some surprises and setbacks that arose from early misunderstandings of NSP program requirements.[87] The city set up its

[67] Telephone Interview with Becky Wade, *supra* note 40.
[68] *Id.*
[69] City of Knoxville, April 1, 2010 thru June 30, 2010 Performance Report, Grant B-08-MN-47-0002, NSP Resource Exchange, http://hudnsphelp.info [hereinafter Knoxville 2010 Q2 Report].
[70] Telephone Interview with David Arning, *supra* note 42.
[71] Telephone Interview with Becky Wade, *supra* note 40.
[72] *Id.*
[73] *Id.*
[74] City of Knoxville, October 1, 2009 thru December 31, 2009 Performance Report, Grant B-08-MN-47-0002, NSP Resource Exchange, http://hudnsphelp.info [hereinafter Knoxville 2009 Q4 Report].
[75] Email from Becky Wade, *supra* note 45.
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] Knoxville 2010 Q2 Report, *supra* note 69. See Appendix B for HOME rent figures.
[80] Knoxville 2010 Q1 Report, *supra* note 35.
[81] Knoxville 2009 Q4 Report, *supra* note 74.
[82] *Id.*
[83] Knoxville 2010 Q2 Report, *supra* note 69.
[84] Homeownership, Knoxville Habitat for Humanity, http://www.knoxvillehabitatforhumanity.com/homeownership (last visited Sept. 1, 2010).
[85] Telephone Interview with Becky Wade, *supra* note 40.
[86] *Id.*
[87] *Id.*

distribution of NSP funds through subrecipient contracts, but under HUD rules this is not considered an obligation of funds. Instead, the subrecipient must procure a contractor (for rehabilitation projects) or have a sales contract in place before funds will be considered obligated.[88] In hindsight, the city would have preferred to structure the commitment of NSP funds as a contract with a developer, which would have allowed the funds to be obligated sooner.[89] The city's Community Development Administrator believes they were fortunate to have chosen NSP projects that required limited property buying, because in Knoxville's market, it would have been difficult to quickly locate more foreclosed properties available at discounted prices.[90]

City staff members have found the twice-weekly technical support webinars through HUD's NSP Resource Exchange to be very helpful in clarifying program regulations, but they wish this level of training could have been offered a year earlier.[91] Overall, the city's outlook on the NSP funding is positive, because it provided new funds for their supportive housing projects.[92] The city had CDBG and HOME money, but not in the quantity needed. The NSP money has allowed the city to convert vacant properties to a viable and needed use.[93]

NIMBY Opposition

Another setback for the city was public resistance to the specific locations of supportive housing for formerly homeless individuals. There was no general opposition to the idea of using NSP funds to serve homeless individuals,[94] but neighbors of the selected sites expressed concerns about having housing for the homeless near them. At the Minvilla site, neighbors raised apprehensions about overconcentration of services for the homeless in the area where Minvilla is located.[95] However, others point out the Knoxville "Mission District" contains only three agencies providing homeless services.[96] Individuals also attended city and county commission meetings in opposition to the Flenniken site in West Knoxville, claiming the site is not accessible enough to transportation, and that the development costs too much.[97] Others were concerned that the site lacked drug rehabilitation services in the immediate vicinity.[98]

VMC defused some opposition to the Minvilla site by reaching out to its neighbors and showing responsiveness to community concerns during the renovation of its own new offices, which are situated opposite the prospective Minvilla location. VMC created a seat on its board for a representative from the neighborhood voicing the most opposition.[99] Some of the concern about Minvilla and VMC's nearby offices had stemmed from a 300-bed nighttime shelter located on the same block, not operated by VMC, that had clients who clustered outside during the day and caused congestion on the road.[100] In response, VMC designed its offices so that clients would flow through entryways off the street.[101] This ensured that clients would have a comfortable, sheltered lawn and gazebo area in which to congregate, while the considerable street traffic would not be interrupted by pedestrians gathered around the front of the building.[102] To build trust in their organization, VMC hosted tours of the new offices for concerned community members, allowing them to see how the structure was laid out.[103]

Public resistance was particularly problematic at the Flenniken site because of the number of public meetings needed to obtain various land-use approvals.[104] Public opposition resulted in postponements and a planning commission denial of a normally routine review request, which created further delay when the developer had to pursue an appeal before the city council.[105] At every possible stage of the land-use review, Knoxville residents

[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] Telephone Interview with Ginny Weatherstone, *supra* note 44.
[96] Telephone Interview with David Arning, *supra* note 42.
[97] Telephone Interview with Becky Wade, *supra* note 40.
[98] Telephone Interview with Ginny Weatherstone, *supra* note 44.
[99] *Id.*
[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] Telephone Interview with David Arning, *supra* note 42.
[105] *Id.*

lined up to oppose the site, primarily citing a fear of having homeless people permanently housed in residential neighborhoods.[106] In response, Southeastern Housing Foundation reached out to the public.[107] A series of public meetings were held involving the developer, a representative from VMC, and the director of the 10 Year Plan.[108] The city spoke broadly about its plan and policy, the developer talked about the property, and VMC talked about social services and the homeless population.[109] When the floor was opened for questions, attendees remained very emotional. The statistics provided by presenters did not appear to address their fears, and in the words of developer David Arning, "there was lots of shouting."[110] More recently, representatives from the mayor's office moderated the meetings.[111] The moderators emphasized concern with protecting the neighborhood safety, and in response, some neighborhood residents came forward to express support.[112]

As an additional way of reaching out, the city has created a website to supply detailed information on the ongoing projects that make up the TYP.[113] The website includes funding details and information addressing neighborhood concerns. It describes the vision of supportive housing not as another homeless service, but as permanent supportive housing for people who are disabled and who, once housed, will hold a lease, pay rent, and work with a case manager.[114]

Representatives from the city's TYP office continue to hold public meetings, and neighborhood residents remain concerned about safety, voicing fears that supportive housing residents will attack neighbors or prey on elderly residents of a nearby senior housing complex.[115] Other community members voice distrust of the developments based on the participation of the "homeless industry," organizations whose mission is to provide services to people who are homeless.[116] Perceived delays in notifying the public about supportive housing plans have also given rise to complaint, but the TYP office's efforts to notify the public early and in detail about TYP implementation have led to criticisms of inconsistency when details change.[117] Organized opposition has arisen from a group opposing the city's plan to end homelessness, Ten Year Plan Choice (TYP Choice). The group sought to put forth a ballot initiative to repeal the TYP and end the Flenniken construction, but was unable to gather sufficient signatures.[118] Another new community group, Citizens for the Ten Year Plan, has organized support for the city's plan to end homelessness, including the Minvilla and Flenniken developments.[119]

Summary

Knoxville is using its funding not only to meet the NSP objectives, but also to support its ambitious plan to eliminate homelessness. Along the way, it pursued a comprehensive public outreach process in order to build support. Despite early confusion about NSP regulations, the city has found solutions to meet its NSP obligations for housing very low-income households that also allow it to pursue its goal of ending homelessness.

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[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] The Ten-Year Plan to End Chronic Homelessness, http://knoxtenyearplan.org/ (last visited June 15, 2010).
[114] Minvilla Manor – Ending Chronic Homelessness With Permanent Supportive Housing, http://minvilla.knoxtenyearplan.org/who/ (last visited Sept. 1, 2010).
[115] Rebecca Ferrar, *Residents Question Volunteer Ministry Official On S. Knox Homeless Housing Plan*, KNOXVILLE NEWS SENTINEL, July 29, 2010, http://www.knoxnews.com/news/2010/jul/29/homeless-housing-discussed/.
[116] Frank N. Carlson, *The Struggle Over Knoxville's Ten-Year Plan*, METRO PULSE, Aug. 11, 2010, http://m.metropulse.com/news/2010/aug/11/struggle-over-knoxville-ten-year-plan/.
[117] *Id.*
[118] Rebecca Ferrar, *TYP Choice Halts Effort; Unable to Get Enough Names to Put Homeless Issue on Ballot*, KNOXVILLE NEWS SENTINEL, Aug. 4, 2010, http://www.knoxnews.com/news/2010/aug/04/typ-choice-halts-effort-unable-get-enough-names-pu/.
[119] Rebecca Ferrar, *Citizens Backing Ten Year Plan to End Chronic Homelessness Form Group to Fight Opposition*, KNOXVILLE NEWS SENTINEL, July 28, 2010, http://www.knoxnews.com/news/2010/jul/28/citizens-backing-ten-year-plan-group-to-fight/.

Phoenix, Arizona

- A 523-unit apartment complex will be rehabilitated to provide mixed-income rental opportunities, with 311 apartments set aside for low-income residents
- 80 one-bedroom apartments will be rehabilitated and made available to formerly homeless and other special needs households, with at least eight units available to individuals with physical disabilities
- Properties will remain affordable for 30 years as part of the terms of an NSP loan

Introduction

The City of Phoenix received an NSP grant of about $39.48 million, of which $9,869,524 was required for the 25% low-income set-aside.[120] Phoenix is dedicating its 25% set-aside to multifamily housing for very low-income households, and will use other portions of its grant to develop multifamily housing for higher-income households as well.[121] Phoenix's goal is to use NSP funds in a responsible way so as to create mixed-income multifamily housing that renders the properties more financially stable and increases social opportunity networks for very low-income residents.[122]

Park Lee Apartment Complex

The Park Lee apartment complex occupies 31 acres in northwest Phoenix and is near a light-rail station.[123] The 1950s-era housing was once the city's largest apartment complex.[124] It boasts several pools, a park and tennis courts.[125] The complex comprises 100 brick buildings with 523 one- and two-bedroom units.[126]

When the city acquired it through foreclosure, the building was "a neighborhood nightmare."[127] The property owners had defaulted on loans owed to the city, and the complex had declined to 20% occupancy, with squatters passing through the unoccupied units.[128] Since acquisition, the city has cared for the grounds, addressed tenant maintenance needs, and worked closely with police to increase safety and prevent trespassing.[129]

Park Lee will be developed by a limited liability corporation controlled by the city.[130] The project was conceived and designed with the expectation of tax credit funding, which did not materialize.[131] In addition to about $6 million in NSP funds, the project will be funded by general obligation bonds.[132] The total project budget for acquisition and rehab will be about $10 million.[133] The city acquired the note on the property from HUD, at a cost of about $5.2 million, and sold it to its developer for 1% below appraised value.[134] The city provided NSP funds as a "soft" loan to be serviced from any surplus generated from operations of the apartments and forgiven after 30 years.[135]

The city plans to rehabilitate the interior of all apartments as well as painting the exterior, landscaping and installing new irrigation on the grounds.[136] When the rehabilitation is finished, Park Lee Apartments will provide 311 units for very low-income households, and the remainder of the complex will be tiered up to households earning 80% AMI.[137] Rents will be set at HOME rents adopted by the city, which are lower than HUD's HOME rents

[120] City of Phoenix, April 1, 2010 thru June 30, 2010 Performance Report, Grant B-08-MN-04-0505, NSP Resource Exchange, http://hudnsphelp.info [hereinafter Phoenix 2010 Q2 Report].
[121] Telephone Interview with Kim Dorney, Housing Department Director, and Angela Duncan, Housing Manager, City of Phoenix Housing Department (June 18, 2010). Appendices A and D contain AMI figures and 30% rent figures for Phoenix, and Appendix E categorizes Phoenix's NSP set-aside development by housing type.
[122] Telephone Interview with Kim Dorney, *supra* note 121.
[123] *Id.*
[124] Sadie Jo Smokey, *Phoenix Buys Park Lee Apartments As Low Income Rentals*, ARIZ. REPUBLIC, Dec. 26, 2009, http://www.azcentral.com/news/articles/2009/12/24/20091224Phx-ncparklee1226.html
[125] Smokey, *supra* note 124.
[126] *Id.*
[127] Telephone Interview with Kim Dorney, *supra* note 121.
[128] *Id.*
[129] *Id.*
[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] Phoenix 2010 Q2 Report, *supra* note 120.
[137] Telephone Interview with Kim Dorney, *supra* note 121.

for the area.[138] Long-term rent limitations are ensured by the terms of the city's loan, which spans 30 years.[139] The deed to the property further provides that the owner, and any subsequent owner, shall not discriminate against voucher holders in rental decisions.[140]

The developer has completed inspections and a rehabilitation scope-of-work determination.[141] Meetings have been held for residents and neighbors to discuss plans for the property.[142] The main rehabilitation contract was recently put out to bid, and the city expects its selected contractor to begin work in September 2010.[143]

The city found it helpful to work with HUD as the property seller, because HUD understands the overall goal of affordable housing. However, both city employees and local HUD staff were unfamiliar with some of the details of how their transaction should work, so all parties experienced a learning curve.[144] Initially there was also public concern about Park Lee that stemmed from misconceptions regarding subsidized housing.[145] Fortunately, the public has responded positively to the property repairs made since the city gained control of the complex.[146]

Royal Suites

The Royal Suites apartment complex is located north of downtown Phoenix close to a bus transit center and schools.[147]Arizona Housing Inc. (AHI), the organization developing the complex, signed a purchase agreement for the REO property in June 2010.[148] AHI is the affordable housing development arm of the nonprofit Central Arizona Shelter Services, which shelters about 1,000 homeless individuals each night in its facilities, including about 150 individuals who sleep in the organization's parking lot due to lack of beds.[149] AHI plans to redevelop Royal Suites as permanent supportive housing for formerly homeless men and women.[150]

This is not the first time AHI has developed permanent supportive housing. In 1997, the organization developed the 84-unit Steele Commons, where it now provides round-the-clock staffing as well as on-site case management for formerly homeless tenants.[151] The organization plans to reproduce this development at Royal Suites.[152]

AHI has taken care to develop relationships that support the success of its development plans. Well in advance of the site selection, the city council member in whose district Royal Suites is situated toured the successful Steele Commons site and committed to back supportive housing in her district.[153] AHI also partnered with the Foundation for Senior Living, an experienced developer of tax credit housing that is providing AHI with project management expertise.[154]

The total acquisition and rehabilitation budget for Royal Suites is about \$4.5 million, and will include \$3.9 million in city NSP funds as well as Continuum of Care funds that were awarded to AHI.[155] The renovation plans include green development strategies in wall and window insulation, Energy Star appliances, and water-conserving landscaping.[156] When rehabilitation is complete, Royal Suites will consist of 13 one-bedroom units of about 543 square feet and 67 efficiency apartments ranging from 410-452 square feet.[157] The complex will be owned by

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[138] *Id.* Email from Angela Duncan, Housing Manager, City of Phoenix Housing Department, to Nikolena Moysich, Public Interest Fellow, National Housing Law Project (Aug. 25, 2010) (on file with NHLP). A table listing Phoenix HOME rents is included as Appendix C.

[139] Telephone Interview with Kim Dorney, *supra* note 121.

[140] Quit Claim Deed by Phoenix Central City Revitalization Corporation to PCCR Park Lee LLC, Maricopa County Assessor (Dec. 17, 2009), http://156.42.40.50/UnOfficialDocs/pdf/20091186474.pdf.

[141] Telephone Interview with Kim Dorney, *supra* note 121.

[142] Phoenix 2010 Q2 Report, *supra* note 120.

[143] *Id.*

[144] Telephone Interview with Kim Dorney, *supra* note 121.

[145] *Id.*

[146] *Id.*

[147] Michael Clancy, *Phoenix Will Buy 206-Unit Complex for Low-Income Housing Property*, ARIZ. REPUBLIC, June 26, 2010, http://www.azcentral.com/community/scottsdale/articles/2010/06/25/20100625phoenix-buys-summit-apartments.html.

[148] Phoenix 2010 Q2 Report, *supra* note 120.

[149] Telephone Interview with Mark Holleran, CEO, Arizona Housing Inc. and Central Arizona Shelter Services (Aug. 25, 2010).

[150] *Id.*

[151] *Id.*

[152] *Id.*

[153] *Id.*

[154] *Id.*

[155] *Id.*

[156] City of Phoenix, January 1, 2010 thru March 31, 2010 Performance Report, Grant B-08-MN-04-0505, NSP Resource Exchange, http://hudnsphelp.info [hereinafter Phoenix 2010 Q1 Report].

[157] Telephone Interview with Mark Holleran, *supra* note 149.

AHI[158] and is expected to serve 53 special-needs households.[159] At least eight units will be accessible to individuals with physical disabilities.[160]

Although working with a case manager will not be a requirement of residency, AHI will provide tenants with on-site case management services and 24/7 staffing.[161] Case managers will facilitate social and recreational events, organize food bank deliveries, help start weekly Alcoholics Anonymous and other supportive meetings, and assist residents in obtaining other needed services.[162] As it has with Steele Commons, AHI will coordinate with local organizations that provide behavioral health, substance abuse, and medical and dental services to tenants.[163]

Maximum rents on the finished units will be Phoenix HOME rents.[164] However, AHI plans to keep rents no higher than 30% of a tenant's adjusted gross income, and is seeking subsidies and funding for this purpose from the local housing authority's Section 8 voucher pool, the United Way and HUD's Continuum of Care program.[165] Rent limitations will remain in place for 30 years, based on obligations in the note held by the city.[166]

Lack of Developer Response

Surprisingly, the city received only one response to its initial request for development proposals.[167] One reason for this may be the city's requirement that developers supply 10% of their own equity to the project.[168] In general, it was difficult for developers to leverage funding up front.[169] There were few lenders on the market, and not many wished to loan on properties that needed as much rehabilitation as the city's NSP project properties.[170]Another reason for the slow response might have been developers' unfamiliarity of NSP. With NSP2, the city has seen much more ready interest from developers.[171]

Difficulties Purchasing

The city has been surprised by the amount of time required to negotiate a purchase agreement with private sector sellers.[172] Originally the city was seeking to purchase properties at 15% below appraised value, which was quite difficult.[173] The city shifted its objective to a discount of 1% below appraised value, but private market sellers, accustomed to negotiating a price, still often found the discount requirement objectionable.[174] The environmental review requirements also made the timing of property sales challenging.[175] As the market became more active, banks holding title to properties were less eager for NSP-funded purchases.[176] Banks sought instead to sell their properties on the market, where they might find someone ready to close in 15 days, rather than the 90 to 120 days the city might require before it could complete an environmental review, scope-of-work determination, and other necessary prerequisites.[177]

Summary

Phoenix's NSP activities had the advantage of efficiency. By targeting large, multifamily properties, Phoenix returned many units to productive use in exchange for the delays involved in property acquisition. The city has pursued an innovative strategy in requiring developers to bring their own funding and agree to a 30-year affordability period. In addition, the mixed-income aspect of the housing may provide greater long-term stability to multifamily operations.

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158 Telephone Interview with Kim Dorney, *supra* note 121.
159 Phoenix 2010 Q1 Report, *supra* note 156.
160 *Id.*
161 Telephone Interview with Mark Holleran, *supra* note 149.
162 *Id.*
163 *Id.*
164 Telephone Interview with Kim Dorney, *supra* note 121. *See* Appendix C.
165 Telephone Interview with Mark Holleran, *supra* note 149.
166 Telephone Interview with Kim Dorney, *supra* note 121.
167 *Id.*
168 *Id.*
169 *Id.*
170 *Id.*
171 *Id.*
172 *Id.*
173 *Id.*
174 *Id.*
175 *Id.*
176 *Id.*
177 *Id.*

Cleveland, Ohio

- 13 single-family rental homes are being developed in scattered locations for lease-to-purchase
- 195 apartments in a complex located in an excellent school district will be redeveloped and updated as very low-income housing
- 45 apartments will be rehabilitated in a historic public school building

Introduction

Cleveland received an NSP grant of about $16.14 million, of which $4,035,780 is required for the 25% low-income set-aside.[178] Cleveland has chosen to focus its NSP-funded redevelopment efforts on strategic investments in "areas of opportunity." In traditionally distressed and fragile neighborhoods, the city plans to develop affordable housing while encouraging private investment in housing for a mix of incomes. In neighborhoods with strong, stable housing markets and desirable amenities, the city seeks to increase affordable housing options.[179] The city hopes this investment strategy will ensure that low-income households have long-term access to stable neighborhoods.[180]

Cleveland has planned three activities to meet its very low-income set-aside. The Cleveland Green Housing activity will build 13 scattered-site rental homes on vacant property. A foreclosed-upon rental complex known as Livingston Park will be redeveloped to provide 195 apartments in a desirable neighborhood. Finally, a historic public school will be redeveloped to provide 45 apartments.[181]

Public Process / Method for Selecting NSP Activities

The city has not found that any of its planned NSP projects generated a significant amount of community concern. It should be noted that the city did not seriously consider exceeding the required low-income set-aside, because Cleveland's foreclosure crisis has generated intense focus on demolition of vacant buildings.[182] During 2007 and 2008, the city spent $9 million per year in locally funded demolitions, and its count of vacant and abandoned structures within the city was 8,009.[183] Based on this situation, public comments, and staff perspectives, the city found it appropriate to direct a large portion of its NSP grant toward demolition to clear nuisances and blighted dwellings.[184]

Cleveland found developers for its NSP set-aside projects by publishing a request for proposals on its website and soliciting proposals from developers with whom the city had previously worked or who had expressed interest in working with the city.[185] The city specifically sought developers who could bring other sources of money to their proposal, which is part of Cleveland's standard selection criteria for affordable housing development.[186]

Cleveland Green Housing

Through the Cleveland Green Housing Activity, the city is building 24 rental homes.[187] NSP funds will go toward redevelopment of 11 of these as single-family homes and construction of two new homes, for a total of 13 homes restricted to very low-income families.[188] The city will build an additional 11 homes without NSP funds.[189] Because of prior NSP requirements that buildings be abandoned or foreclosed, the city could not build all 24 homes

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178 City of Cleveland, January 1, 2010 thru March 31, 2010 Performance Report, Grant B-08-MN-39-0004, NSP Resource Exchange, http://hudnsphelp.info [hereinafter Cleveland 2010 Q1 Report].
179 City of Cleveland, Action Plan, Grant B-08-MN-39-0004, NSP Resource Exchange, http://hudnsphelp.info.
180 Telephone Interview with John Wilbur, Assistant Director, City of Cleveland Department of Community Development (June 14, 2010).
181 See appendices A and D for Cleveland AMI figures and 30% rent figures. Appendix E categorizes Cleveland's NSP set-aside development by housing type.
182 Telephone Interview with John Wilbur, *supra* note 180.
183 *Id.*
184 *Id.*
185 *Id.*; Neighborhood Stabilization Program Very Low Income Rental Housing Request for Proposals, City of Cleveland, Apr. 14, 2009, http://cdrealestate.city.cleveland.oh.us/nsp/forms/2009_nsp_low_income_rental_housing_rfp.pdf.
186 *Id.*
187 Cleveland 2010 Q1 Report, *supra* note 178.
188 Telephone Interview with John Wilbur, *supra* note 180.
189 *Id.*

using NSP funds, although that would have been its preference.[190]

The developer, Cleveland Housing Network (CHN) has already begun construction and expects to complete development in December 2010.[191] CHN is a partnership of community development corporations and has significant experience in guiding low-income families through the lease-to-purchase process.[192] In accordance with city requirements, all homes will be built using green housing standards; typically developers build to meet the Enterprise Green Communities criteria applicable to moderate rehabilitation projects.[193]

The project has a budget of approximately $4.2 million.[194] The city contributed $636,000 in NSP funds.[195] Other funding sources include an equity investment using LIHTC and funds from the state housing finance agency.[196] The NSP funds were provided as a loan, creating an obligation that requires a 15-year affordability period.[197] After that period, CHN will purchase the outstanding indebtedness on the property outright. CHN will then allow purchase of the units by tenants.[198] At that point, a family's purchase price will be about $25,000.[199] Although low HOME rents provide a rent ceiling, rents on the units will follow lower neighborhood market rents, ranging from $344-$540 for a three-bedroom home to $358-$505 for a four-bedroom home, with higher rents for newly constructed homes.[200]

Livingston Park

Cleveland is also rehabilitating Livingston Park, a 195-unit complex located on the edge of Cleveland in a desirable neighborhood and well-reputed school district.[201] Livingston Park consists of 11 buildings.[202] A 2002 attempt to update the 10 original buildings of the 1940s era complex resulted in renovated kitchens, new electrical systems, and an 11th building with 15 apartments.[203] Unfortunately, the apartment complex's revenue stream was insufficient to pay for the improvements, and HUD ultimately foreclosed on the property.[204]

After foreclosure, the city acquired the complex from HUD for $10, then resold it to developer Finch Group for the same amount.[205] Finch Group, a for-profit developer with experience managing low-income properties, was recruited to participate in the redevelopment by local community groups.[206] The city had also previously worked with Finch on a major redevelopment of another affordable housing complex.[207]

The total budget for the rebirth of Livingston Park is approximately $12 million.[208] The city awarded $2 million in NSP funds to the developer for rehabilitation, and Cuyahoga County contributed $1 million of its own NSP funds.[209] Other funding sources include the City Housing Trust Fund and tax

[190] *Id.* As described above, the recent changes made by the Dodd-Frank Act mean that NSP spending on properties not abandoned or foreclosed may still be eligible for inclusion in the set-aside.
[191] City of Cleveland, April 1, 2010 thru June 30, 2010 Performance Report, Grant B-08-MN-39-0004, NSP Resource Exchange, http://hudnsphelp.info [hereinafter Cleveland 2010 Q2 Report].
[192] Lease Purchase, Cleveland Housing Network, http://www.chnnet.com/b_lease.asp (last visited Sept. 1, 2010).
[193] Email from John Wilbur, Assistant Director, City of Cleveland Department of Community Development, to Nikolena Moysich, Public Interest Fellow, National Housing Law Project (Aug. 11, 2010) (on file with NHLP); *see also* Enterprise Green Communities, The Green Communities Criteria, http://www.greencommunitiesonline.org/tools/criteria/.
[194] Telephone Interview with John Wilbur, *supra* note 180.
[195] Cleveland 2010 Q1 Report, *supra* note 178.
[196] Telephone Interview with John Wilbur, *supra* note 180.
[197] *Id.*
[198] *Id.*
[199] *Id.*
[200] Email from Bill Resseger, Executive Assistant, City of Cleveland Department of Community Development, to Nikolena Moysich, Public Interest Fellow, National Housing Law Project (Aug. 11, 2010) (on file with NHLP). See Appendix B for figures on Cleveland low HOME rent limits.
[201] Michelle Jarboe, *Florida Developer Plans $12 Million Renovation of Apartment Complex Near Shaker Square*, PLAIN DEALER, Mar. 12, 2010, http://www.cleveland.com/business/index.ssf/2010/03/florida_developer_plans_12_mil.html.
[202] *Id.*
[203] *Id.*
[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] Telephone Interview with John Wilbur, *supra* note 180.
[208] *Id.*
[209] Cuyahoga County, October 1, 2009 thru December 31, 2009 Performance Report, Grant B-08-UN-39-0002, NSP Resource Exchange, http://hudnsphelp.info [hereinafter Cuyahoga County 2009 Q4 Report].

exempt bonds from the state housing finance agency.[210]

At the close of the second quarter in 2010, all financing was in place and construction was underway, with completion expected in September 2011.[211] When redevelopment is complete, the complex will boast new roofs, windows, bathrooms, air conditioning and heating systems in the 10 older buildings.[212] The finished units will be one- and two-bedroom apartments, each with interior upgrades.[213] While renovations take place, the remaining residents will stay in apartments not being worked on.[214] Rents following rehabilitation will rise from $460-$650 per month to $473-$668 per month.[215]

The apartments will remain affordable for 30 years, in accordance with requirements attached to state funding.[216] Furthermore, the city expects that the apartments will remain affordable for the long-term, because the Cleveland housing market is such that most affordable housing does not convert to market rate even at the end of the required affordability period.[217]

Doan School

The city also plans to redevelop Doan School. Doan School is a historic landmark, originally built in 1904 from the designs of a well-known Cleveland architect who planned many early 20th-century public schools.[218] The property is in a strategic investment initiative area, a neighborhood targeted by collaborating community development organizations for investments aimed at improving quality of life and reversing the negative effects of vacancy and foreclosure.[219] The three-story building was converted to low-income senior housing in 1985, but has been vacant and boarded for years.[220]

The city accepted the redevelopment proposal of Famicos, a nonprofit that provides supportive services and has a substantial track record developing and owning low-income housing.[221] After it forecloses on the property, HUD will sell it to the city for $10.[222] The developer will receive $1.4 million in NSP funds from Cleveland,[223] $1 million in NSP funds from Cuyahoga County,[224] and $5.1 million in state NSP funds.[225] The affordability period on the finished 45 units of rental housing will last 30 years.[226]

In June 2010, the city was still working toward HUD approval to secure the project's Section 8 rental assistance contract.[227] HUD had concerns about the location as a site for affordable housing, requiring the city to elaborate on its plans for the area, and the agency closely investigated the developer's expected operating expenses.[228] With those concerns settled, the city expected HUD approval as soon as the rental assistance ceased to be in use at another development.[229]

Challenges Navigating NSP Requirements

If the NSP program foreclosure requirements had not been so exacting, the city would have chosen

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[210] Jarboe, *supra* note 201.
[211] Cleveland 2010 Q2 Report, supra note 191.
[212] Jarboe, *supra* note 201.
[213] OHFA Closes Second Bond Deal, HousingFinance.com, Sept. 1, 2010, http://www.housingfinance.com/news/ahf/071410-ahf-OHFA-Closes-Second-Bond-Deal.htm.
[214] Jarboe, *supra* note 201.
[215] *Id.*
[216] Telephone Interview with John Wilbur, *supra* note 180.
[217] *Id.*
[218] Future Housing Projects, Famicos Foundation, http://www.famicos.org/index.php?option=com_content&task=view&id=8&Itemid=46 (last visited July 26, 2010).
[219] Donna Kimura, *Ohio Developments Receive Exchange Funds*, HousingFinance.com, May 24, 2010, http://www.housingfinance.com/news/ahf/052410-ahf-Ohio-Developments-Receive-Exchange-Funds.htm; Reinvigorating the Urban Marketplace: Cleveland's Strategic Investment Initiative, Neighborhood Progress, Inc., http://www.neighborhoodprogress.org/uploaded_pics/Cleveland%5C%27s%20Strategic%20Investment%20Initiative_file_1194017511.pdf (last visited Aug. 16, 2010); Strategic Investment Initiative Glenville, Famicos.org, http://www.famicos.org/index.php?option=com_content&task=view&id=13&Itemid=51#sii (last visited Aug. 16, 2010).
[220] Future Housing Projects, *supra* note 218.
[221] Telephone Interview with John Wilbur, *supra* note 180.
[222] Cleveland 2010 Q1 Report, *supra* note 178.
[223] Cleveland 2010 Q2 Report, *supra* note 191.
[224] Cuyahoga County 2009 Q4 Report, *supra* note 209.
[225] OHFA Board Approves $17.2M for Development of More than 140 Units of Affordable Housing, Ohio Housing Finance Agency, May 19, 2010, http://www.ohiohome.org/newsreleases/rlsboard_may10.aspx.
[226] Telephone Interview with John Wilbur, *supra* note 180.
[227] *Id.*
[228] *Id.*
[229] *Id.*

different set-aside activities.[230] When the funds were first awarded, the city had a dozen project ideas, but once they better understood the regulatory environment, planning staff realized they had to focus differently in order to meet low-income set-aside requirements.[231] The city relied on Enterprise Community Partners, which has a Cleveland office, for technical support on NSP program requirements.[232] One factor that helped the city succeed in putting together qualifying projects was its existing work on affordable multifamily projects.[233]

Summary

The city has developed some promising projects to meet its low-income set-aside. In every project, the city's NSP funds make up less than a quarter of the total project cost, due to the city's successful efforts to leverage multiple sources of funding. However, more complicated deals often bring greater delays in obligating funds. Cleveland's efforts illustrate the careful balance that many NSP grantees set between maximizing the use of the NSP set-aside and ensuring that the funds are obligated within a relatively short period of time.

[230] *Id.*
[231] *Id.*
[232] *Id.*
[233] *Id.*

Greenville County, South Carolina

- 10 rental units will be built as Charleston-style stacked duplexes
- Nine scattered single-family homes will be redeveloped for rental
- Two single-family homes will be redeveloped for lease-to-purchase
- One or two homes will be redeveloped for immediate purchase
- 10 apartments for seniors will be included in redevelopment of a former mobile home park

Greenville County received an NSP grant of about $2.26 million, of which $565,714 is required for the 25% low-income set-aside.[234] The county was originally very interested in pursuing homeownership exclusively for its set-aside activities, but leadership at the agency responsible for implementing NSP activities supported affordable rental housing.[235] Staff at the Greenville County Redevelopment Authority (GCRA) made a compelling case for rental housing and persuaded the county to adopt a more mixed strategy with its set-aside funds.[236]

Although it is pursuing its own repair-and-resale plan for a couple of homes, Greenville County is now working with experienced nonprofit developers on several projects that will provide rental housing. The county chose its development partners by advertising for proposals.[237] It received five responses and chose from among them.[238] All projects will be affordable for at least 15 years.[239] Affordable rents on all NSP-assisted units will be calculated at 30% of the family's adjusted income.[240]

West Park Development

The county granted $450,000 in NSP funds to the nonprofit developer, Homes of Hope, to fund construction of 10 very low-income Charleston-style stacked duplex rentals.[241] In addition to the NSP funds, bank financing and other public funds brought the total rehabilitation budget to $848,050.[242] Construction in the West Park development began in the fourth quarter of 2009.[243]

Scattered-Site Single-Family Rentals

The county has allocated $395,700 to fund the redevelopment of nine scattered-site properties into low-income rental housing.[244] The properties were CDBG and HOME mortgage foreclosures, held by the county and sold to Upstate Homeless Coalition (UHC) for redevelopment.[245]

UHC is the umbrella organization coordinating the state's Continuum of Care for homeless services and builds low-income housing in the upstate region of South Carolina.[246] UHC also provides housing counseling, case management to people with disabilities, and advocacy on behalf of the homeless.[247] UHC's executive director describes the organization as approaching a specialty in locally managed affordable rental housing, which he believes is a better solution than homeownership, both for homelessness and for swift neighborhood improvement.[248]

When finished, the properties will be owned and managed by UHC.[249] Although these homes are intended as affordable rentals, if a household wishes to purchase, UHC would work with the tenants on buying their home.[250] As of the second quarter of 2010, all purchases were complete, repairs were

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234 Greenville County, January 1, 2010 thru March 31, 2010 Performance Report, Grant B-08-UN-45-0001, NSP Resource Exchange, http://hudnsphelp.info [hereinafter Greenville County 2010 Q1 Report].
235 Telephone Interview with Michael Chesser, Executive Director, Upstate Homeless Coalition (June 16, 2010).
236 *Id.*
237 Telephone Interview with Imma Nwobodu, Program Manager, Greenville County Redevelopment Authority (June 2, 2010).
238 *Id.*
239 *Id.*
240 *Id.* Appendices A and D contain AMI figures and 30% rent figures for Greenville County, and Appendix E categorizes Greenville County's NSP set-aside development by housing type.
241 Greenville County 2010 Q1 Report, *supra* note 234.
242 *Id.*
243 *Id.*
244 Telephone Interview with Imma Nwobodu, *supra* note 237.
245 *Id.*
246 Telephone Interview with Michael Chesser, *supra* note 235.
247 *Id.*
248 *Id.*
249 Telephone Interview with Imma Nwobodu, *supra* note 237.
250 Telephone Interview with Michael Chesser, *supra* note 235.

complete on two sites, and new construction and rehabilitation were underway on further properties.[251]

Homeownership

The county granted $100,000 of its set-aside to the nonprofit Nehemiah Corporation, which is redeveloping two foreclosed-upon single-family homes for rent and eventual sale to very low-income households.[252] The first two years of the tenancy will be under a lease-to-purchase agreement.[253] A portion of the tenants' rent will go toward the eventual down payment, and the time will be used to prepare the tenants for a home purchase.[254]

GCRA is also purchasing and rehabilitating a small number of single-family homes on its own, without NSP funds, for sale to very low-income households.[255] It has already sold one home with a $1,000 down payment and $70,000 purchase price.[256]

Creekside Redevelopment

Greenville County is working with UHC to redevelop a vacant 14-acre former mobile home park into mixed-income housing for families and the elderly.[257] This project was designed to use NSP set-aside funds, but the county later realized the activity did not qualify for inclusion under NSP program regulations because the property had not been foreclosed or abandoned.[258] The county rearranged its plans in order to contribute support for this activity, and added the UHC rental housing and Nehemiah homeownership projects to fulfill the rest of the set-aside requirement.[259]

The project budget includes HUD Section 202 funds in addition to $581,000 of the county's NSP grant.[260] The town of Greer, where the property is located, has also agreed to devote its portion of county HOME and CDBG funds to the project.[261] Rent for tenants residing in HUD Section 202 units will be 30% AGI,[262] and a HUD Section 202 Project Rental Assistance Contract will cover the rest.[263]

The finished Creekside Development will include 36 one-bedroom units in 18 duplexes; 36 single-family homes; new roads, sewer, and water lines; and a new community center.[264] A few homes in the community will be ownership units.[265] Ten of the homes will be Section 202 units for seniors, and the NSP grant will fund the infrastructure that serves these homes.[266] The other 26 duplex apartments will not be subsidized by NSP or Section 202 but will be restricted to seniors. The affordability period is 20 years, but UHC plans to maintain the property as affordable housing for the indefinite future, in keeping with its organizational commitment to ending homelessness.[267] UHC views its HUD-subsidized senior housing as preventative work to serve elderly populations vulnerable to homelessness.[268] The projected completion date for the senior duplexes is fall 2010.[269]

The new community center will provide a space for services to elderly tenants.[270] UHC will coordinate with the local council on aging to make sure tenants receive benefits to which they are entitled as well as assistance with transportation.[271] A

[251] Greenville County, April 1, 2010 thru June 30, 2010 Performance Report, Grant B-08-UN-45-0001, NSP Resource Exchange, http://hudnsphelp.info.
[252] Telephone Interview with Imma Nwobodu, *supra* note 237.
[253] *Id.*
[254] *Id.*
[255] *Id.*
[256] *Id.*
[257] Greenville County, July 1, 2009 thru September 30, 2009 Performance Report, Grant B-08-UN-45-0001, NSP Resource Exchange, http://hudnsphelp.info [hereinafter Greenville County 2009 Q3 Report].
[258] Telephone Interview with Imma Nwobodu, *supra* note 237. It is important to note that this determination was made prior to the passage of the Dodd-Frank Act.
[259] *Id.*
[260] Greenville County 2010 Q1 Report, *supra* note 234.
[261] Telephone Interview with Imma Nwobodu, *supra* note 237.
[262] The tenants' rent contribution is set by 12 U.S.C.A. § 1701q(c)(3) (Westlaw July 30, 2008).
[263] Telephone Interview with Michael Chesser, *supra* note 235.
[264] Greenville County 2009 Q3 Report, *supra* note 257.
[265] Greenville County, October 1, 2009 thru December 31, 2009 Performance Report, Grant B-08-UN-45-0001, NSP Resource Exchange, http://hudnsphelp.info.
[266] Telephone Interview with Michael Chesser, *supra* note 235.
[267] *Id.*; About UHCSC, Upstate Homeless Coalition, http://www.upstatehomeless.com/pages/about_uhcsc.html (last visited Sept. 1, 2010).
[268] Telephone Interview with Michael Chesser, *supra* note 235.
[269] Christina Wilson, *Groups Planning Neighborhood for Elderly, Low-Income*, SPARTANBURG HERALD-J., Sept. 24, 2009, http://www.goupstate.com/article/20090924/NEWS/909239901.
[270] Telephone Interview with Michael Chesser, *supra* note 235.
[271] *Id.*

staff person will be present six hours a day on weekdays to assist residents with any problems.[272]

Difficulties Acquiring Property

GCRA and its development partners encountered difficulty in locating and acquiring NSP-eligible properties.[273] Most of the time private investors acquired properties first.[274] According to GCRA staff, local banks delayed in responding to GCRA inquiries and offers.[275] Part of the problem was that, due to NSP program requirements, the county sought a discount below the property's appraised value, and competition for the properties did not generally support lower prices.[276] Even where the price was right, the county's need for a lengthy due diligence and environmental review process before closing, lasting 45-60 days, created a severe disadvantage compared to speculators who were prepared to close in 15-30 days.[277]

The county found creative answers to its difficulties through an NSP problem-solving clinic in Atlanta that staff attended in early 2010.[278] The county found its solution in directing county-foreclosed properties to developers, who purchased the properties with other funds.[279] The county's NSP funds were then slated only for redevelopment costs.[280] In addition, time and effort paid off: by June 2010, county redevelopment staff felt they had assembled a group of banks educated about NSP funding requirements and willing to work on finding appropriate properties.[281]

Summary

Although the county might have appreciated more flexibility in applying NSP funds to properties not in foreclosure, NSP resources helped projects such as Creekside take shape. Otherwise, these redevelopment plans might have continued to languish. In addition, the county's creative approach to putting together many small projects ensured that it met its low-income set-aside even though its activities at Creekside were determined to be ineligible, with the result that 73% of Greenville County's NSP grant was directed to housing for very low-income households.

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[272] *Id.*
[273] Telephone Interview with Imma Nwobodu, *supra* note 237.
[274] *Id.*
[275] *Id.*
[276] *Id.*
[277] *Id.*
[278] *Id.*
[279] *Id.*
[280] *Id.*
[281] *Id.*

Hamilton County, Ohio

- The entire set-aside will go to one activity, which was spearheaded by residents of the existing development
- 86 homes, predominantly rental, will be constructed in three redevelopment phases
- 13 NSP-funded rental units will be constructed in Phase I and reserved for very low-income seniors 55 and older
- Ownership of the new homes will go to a resident cooperative after 15 years

Introduction

Hamilton County received an NSP grant of about $7.97 million.[282] Hamilton County's entire NSP low-income set-aside, $1,992,623, fit neatly into a local redevelopment project that had been taking shape for years.[283] The property, Valley Homes Housing Cooperative, is located in Lincoln Heights, a Cincinnati suburb founded, governed, and near-exclusively occupied by African-American residents.[284] The project will demolish the extremely deteriorated housing and rebuild in three phases.[285] A new housing development, Villas of the Valley, will result.

Location History

To understand the public process involved in bringing about this NSP activity, a general grasp of the property's unique history is essential. Valley Homes was 1940s-era housing,[286] made up of 50 buildings in townhouses with four to eight units each, for a total of about 300 homes.[287] It was constructed as temporary shelter for African-American workers at the Wrights Aeronautical Plant during World War II.[288] When built, the housing was intended to remain in use for only six years.[289] In 1953, 10 residents formed the cooperative Valley Homes Mutual Housing Corporation (VHMHC) to purchase Valley Homes from the federal government.[290] The federal government sold the complex to the cooperative for approximately double its appraised value, an act somewhat ameliorated when, in the late 1970s, the remaining debt was cancelled.[291]

VHMHC consisted of members who possessed perpetual use rights in their individual housing units.[292] Over the years member-owners moved out, but their perpetual use rights were not alienable, so the vacated units came to be occupied by tenants of the cooperative, creating a separate class of non-owner residents.[293] Property management by the member-owners did not go well.[294] Utilities were master metered and high cost, but the cooperative board repeatedly voted to maintain owner dues at a level too low to cover their share of utility costs.[295] Tenants paid more, but tenant rents and the lower member dues combined were not always enough to pay utilities and left little for ongoing maintenance and operating reserves.[296] In fall 2005, the cooperative owed more than $200,000 in utility bills, many units were in disrepair, and the complex's garbage service had been cut off for nonpayment.[297] The remaining cooperative members could not solve the crisis, and the tenants, represented by the Legal Aid Society of Greater Cincinnati, sought receivership for the property.[298]

The receiver who took over management of the property in early 2006, Maureen Wood, was a well-respected affordable housing developer local to the area.[299] In addition to her duties as receiver, she organized thousands of hours of volunteer services

[282] Hamilton County, Action Plan, Grant B-08-UN-39-0004, Hamilton County, Nov. 26, 2008, http://www.hamiltoncountyohio.gov/commdev/NSP/ [hereinafter Hamilton County Action Plan].
[283] *Id.* See appendices A and D for Hamilton County AMI figures and 30% rent figures. Appendix E categorizes Hamilton County's NSP set-aside development by housing type.
[284] Telephone Interview with Steve Smith, CEO, Model Group (July 12, 2010).
[285] *Id.*
[286] Maureen F. Wood, Fortieth and Final Report of the Receiver, *Winters v. Valley Homes Mutual Hous. Corp.*, A0500757, Hamilton County Ct. of Common Pleas (Oct. 21, 2009).
[287] Telephone Interview with Steve Smith, *supra* note 284.
[288] Wood, *supra* note 286.
[289] *Id.*
[290] *Id.*
[291] Telephone Interview with Noel Morgan, Senior Attorney, Legal Aid Society of Greater Cincinnati (June 9, 2010).
[292] Wood, *supra* note 286.
[293] Telephone Interview with Noel Morgan, *supra* note 291.
[294] *Id.*
[295] *Id.*
[296] *Id.*
[297] *Id.*
[298] *Id.*
[299] Wood, *supra* note 286.

and raised over $70,000 in contributions.[300] She also raised funds for her own receiver fee, as it was not possible to pay the fee from operating the property.[301] Though the property lacked an operating reserve, the receiver reinstated liability insurance, arranged a property appraisal that resulted in the reduction of the property's real estate tax assessment by over 90%, and performed emergency apartment and roof maintenance.[302] Because a previous redevelopment plan had been scrapped at the last minute due to resident distrust, the receiver arranged for members of the cooperative's redevelopment task force to attend housing conferences that would acquaint them with what to expect from the redevelopment process.[303] The receiver was also instrumental in arranging a meeting with the developer the cooperative eventually chose to rebuild their community.[304]

The judge overseeing the receivership also went beyond the traditional requirements of her role, adopting the unusual policy of turning receivership court hearings into public meetings.[305] At those meetings the judge would step down and allow the cooperative board, cooperative members, and tenants to air their concerns about how Valley Homes was being preserved.[306] The judge also presided over two board elections in an attempt to standardize the cooperative's operations sufficiently to support its redevelopment commitments.[307]

Despite efforts to slow the decline, Valley Homes' occupancy steadily decreased during the receivership. Due to low rents and lack of maintenance reserve, funds were not available to do anything beyond keeping the utilities on and performing the most urgent emergency repairs.[308] Valley Homes suffered ongoing vandalism, including damage to both vacant and occupied units, dumpster fires, and theft of pipes, interior fixtures, gutters, and downspouts.[309] The site received illegal late-night dumping from non-residents, who abandoned automobiles, construction debris, and household furnishings.[310] Due to poorly insulated walls and water leaks, utility costs from the common meters rose substantially higher than costs in similar housing complexes.[311] As of September 2009, only 109 of the units were occupied.[312] In 2009, the local health inspector condemned every unit in Valley Homes and issued a vacate order for March 1, 2010.[313] The order was abated because of pending development, but the housing remained severely substandard.[314]

Developer Background

With the aid of NSP funds, developer Model Group will completely demolish Valley Homes and rebuild it as Villas of the Valley.[315] Model is experienced in federally funded and historic redevelopment projects. It has completed $150 million in real estate development since 2001 and is engaged in several NSP2 development projects, as well as an NSP project with the city of Cincinnati.[316] The developer was chosen through a selection process initiated by the residents of Valley Homes, who, under the guidance of the property's receiver, formed a redevelopment task force and issued a request for proposals for developers to engage in comprehensive redevelopment.[317] Model was chosen for its eligibility to receive tax credits and because it met the task force priority of addressing senior housing in the first phase of redevelopment.[318]

Model was recruited by the receiver, who requested that it submit a bid on the redevelopment.[319] Model's CEO declined based on the costs and limited sources of funding, but on the strength of the receiver's reputation in the affordable housing community, he agreed to meet with the cooperative's redevelopment task force and explain why the numbers could not work.[320] Once he met the

[300] *Id.*
[301] Telephone Interview with Noel Morgan, *supra* note 291.
[302] *Id.*
[303] *Id.*
[304] *Id.*
[305] *Id.*
[306] *Id.*
[307] *Id.*
[308] *Id.*
[309] Wood, *supra* note 286.
[310] *Id.*
[311] *Id.*
[312] *Id.*
[313] Telephone Interview with Noel Morgan, *supra* note 291.
[314] *Id.*
[315] Telephone Interview with Susan Walsh, Director, Hamilton County Office of Community Development (June 2, 2010).
[316] Telephone Interview with Steve Smith, *supra* note 284.
[317] Wood, *supra* note 286.
[318] *Id.*
[319] Telephone Interview with Steve Smith, *supra* note 284.
[320] Telephone Interview with Steve Smith, *supra* note 284.

women of the task force, the CEO found he could not refuse them, and in late 2007, Model submitted a bid and began the process of assembling funding.[321] According to Model's CEO, the Valley Homes redevelopment has been the most difficult project he has been involved in, but also the most meaningful, because it offered a chance to come in at a time of crisis and help the residents win back their homes.[322]

Costs and Funding Sources

In addition to the county's nearly $2 million low-income set-aside, funding sources for Phase I development of Villas of the Valley include LIHTC equity, state housing funds, and deferred developer fees, for a total budget of $9.76 million.[323] Prior to the inclusion of NSP funds, project financing suffered a setback when tax credits yielded less than expected.[324] An initial award of 9% LIHTCs seemed to fund the project, but in the course of assembling the development deal, the tax credit market significantly declined, creating a huge funding gap.[325] NSP funds filled that gap and saved the deal.[326] As Model's CEO puts it "I was actually procrastinating on calling to let them know the deal was dead when the county called up out of the blue with $2 million."[327] The NSP funds were offered in the form of a zero-interest loan, deferred for 20 years and then forgiven.[328]

The extremely distressed condition of the property created difficulties for redevelopment.[329] To begin, Model had to pay off utility and tax arrearages accumulated prior to receivership.[330] The total arrearage was approximately $500,000, but Model arranged to pay it in stages, prorated to the phased development.[331] In addition, the 50 buildings were riddled with asbestos, so demolition required an expensive remediation process.[332]

The initial cost of the property was to be $1 rent for a long-term lease from the cooperative. However, when Model obtained additional financing, it offered to pay more for the lease in an amount sufficient to pay off outstanding tax and utility debts.[333] Model acknowledges that the developer fee and HUD-allowed construction fees may not make up for the three years Model worked on the deal without any fees.[334] However, affordable housing is an important component of Model's overall goal as a developer, which is to revitalize struggling communities and increase quality of life.[335]

Redevelopment Process

Prior to redevelopment, tenants and member-owners had already experienced the upheaval of relocation whenever their units were overly compromised by floods, fires, roofing decay, or failing infrastructure.[336] The redevelopment strategy calls for assisting tenants in relocating from the portions of the project under construction to the best of the vacant units.[337]

When Phase I is complete, Villas of the Valley will consist of 42 two-bedroom cottages for seniors 55 years and older.[338] Each will be a single-family detached unit with its own porch.[339] The 13 NSP-funded cottages will be reserved for very low-income households,[340] and will be rented at affordable rates.[341] A portion of the tax credit equity payments will fund an operating reserve equal to one year of operating expenses.[342] As of mid-July, most of the Phase I infrastructure and street construction had

[321] Telephone Interview with Steve Smith, *supra* note 284.
[322] Telephone Interview with Steve Smith, *supra* note 284.
[323] Email from Scott Puffer, Project Manager, Model Group, to Nikolena Moysich, Public Interest Fellow, National Housing Law Project (July 21, 2010) (on file with NHLP).
[324] Telephone Interview with Susan Walsh, *supra* note 315.
[325] Telephone Interview with Steve Smith, *supra* note 284.
[326] Telephone Interview with Susan Walsh, *supra* note 315.
[327] Telephone Interview with Steve Smith, *supra* note 284.
[328] Hamilton County Action Plan, *supra* note 282.
[329] Telephone Interview with Susan Walsh, *supra* note 315.
[330] Telephone Interview with Steve Smith, *supra* note 284.
[331] Email from Scott Puffer, Project Manager, Model Group, to Nikolena Moysich, Public Interest Fellow, National Housing Law Project (Aug. 9, 2010) (on file with NHLP).
[332] Telephone Interview with Susan Walsh, *supra* note 315.
[333] Telephone Interview with Steve Smith, *supra* note 284.
[334] *Id.*
[335] *Id.*
[336] Wood, *supra* note 286.
[337] Telephone Interview with Susan Walsh, *supra* note 315.
[338] Telephone Interview with Steve Smith, *supra* note 284.
[339] Telephone Interview with Susan Walsh, *supra* note 315.
[340] Hamilton County, January 1, 2010 thru March 31, 2010 Performance Report, Grant B-08-UN-39-0004, NSP Resource Exchange, http://hudnsphelp.info.
[341] Telephone Interview with Steve Smith, *supra* note 284. "Affordable" was not strictly defined in negotiations between the developer and the cooperative. *Id.*
[342] *Id.*

been completed.[343] Eight new houses stood framed, roofed, ready for interior painting, and soon to be occupied by existing Valley Homes residents.[344] By the end of 2010 it is expected that all 42 of the Phase I homes will be complete and ready for occupancy.[345] In Phase II of the redevelopment, 35 townhome-style attached residences will be built, most for rent to very low-income households, though without an age restriction.[346] Phase II of the project will be funded in part through an NSP2 grant, and is expected to be complete by September 2011.[347] A final development phase will build five multifamily units and 3-4 single-family homes for purchase.[348]

The first priority for occupancy of the new units will go to the cooperative's member-owners, then to the tenants.[349] Despite a reduction in the total number of units, there will likely be sufficient housing for all remaining residents in good standing who qualify on the basis of the income and age restrictions.[350]

The original plan for Villas of the Valley Homes called for much more dense development, including 65 accessible senior cottages during Phase I.[351] The design was drawn up in response to requests from the redevelopment task force that the new homes be single-family homes rather than townhomes or duplexes.[352] A high density single-family layout required approval of a Planned Use Development, but approval was delayed by the zoning commission, two of whose seven members refused to convene for the necessary review meetings.[353] With LIHTC deadlines pressing, the developer went forward with a reduced plan of 42 accessible homes, a less efficient use of the land which did not require the same approval process.[354]

Rents and Affordability Periods

The finished apartment rents may not exceed HOME rents, but the developer has agreed with the cooperative that it will set rents as low as possible while maintaining the complex and funding an operating reserve.[355] Initial unit rents will be $508-$548 for a two-bedroom unit, well under HOME rent standards but somewhat higher than what tenants had paid previously.[356] The area rental market is depressed, and Valley Homes rents had been low for the area.[357] The project pro forma calls for a 3% annual rent increase to incrementally phase-in the higher rents.[358]

The affordability period for the 13 NSP-funded units will last 20 years, meeting requirements of the NSP loan.[359] The affordability period for the other Phase I units will be 15 years, as required by tax credit funding.[360]

Unusual Project Style

Hamilton County's use of NSP funds is distinct from others surveyed in this report in that the impetus came largely from the property's residents and other interested parties in the community, who were working to set up a deal with the developer well before NSP funding was authorized.[361] The deal itself is also unusual. The cooperative continues as owner of the land under the emerging Villas of the Valley, but the developer's long-term lease on the property grants it the right to operate the newly constructed dwellings and to receive rent from them.[362] Ownership of all units on the property will revert to the cooperative when the lease expires, which will occur in stages, 50 years from completion of each development phase.[363] The cooperative will have an option to purchase the units after 15 years by paying

[343] *Id.*
[344] *Id.*
[345] *Id.*
[346] Email from Scott Puffer, *supra* note 323.
[347] Email from Scott Puffer, Project Manager, Model Group, to Nikolena Moysich, Public Interest Fellow, National Housing Law Project (Aug. 4, 2010) (on file with NHLP).
[348] *Id.*
[349] Telephone Interview with Susan Walsh, *supra* note 315.
[350] *Id.*; Email from Scott Puffer, *supra* note 331.
[351] Wood, *supra* note 286.
[352] Telephone Interview with Noel Morgan, *supra* note 291.
[353] Telephone Interview with Susan Walsh, *supra* note 315.
[354] *Id.*
[355] Telephone Interview with Steve Smith, *supra* note 284.
[356] Email from Scott Puffer, *supra* note 323.
[357] Telephone Interview with Steve Smith, *supra* note 284.
[358] *Id.*
[359] Hamilton County Action Plan, *supra* note 282.
[360] *Id.*
[361] Telephone Interview with Steve Smith, *supra* note 284.
[362] *Id.*
[363] Villas of the Valley: Frequently Asked Questions, Model Group, June 1, 2010, http://www.modelgroup.net/files/documents/VVI%20FAQS.pdf.

all outstanding debt, and Model has committed to seek grants and financing that will leave little or no debt remaining after 15 years.[364]

The developer found it a great challenge to use a brand new source of federal funding and to layer it with a half dozen other funding sources under tight deadlines.[365] The situation was complicated by the novelty of dealing with a cooperative property owner.[366] The developer's solution to the difficulty was to fund a separate attorney, representing only the cooperative, who could make sure the cooperative was in compliance with its own bylaws and able to make authorized decisions.[367]

Public Reaction to Redevelopment

In addition to the difficulties with site plan approval from the town zoning board, a minority of cooperative members felt Valley Homes should be rehabilitated rather than demolished, regardless of the buildings' deterioration.[368] Despite the fact that their homes were literally falling down around them, a few members wanted to preserve their perpetual use rights to their own units.[369] Others understood that those rights were only a memory, having disappeared when the units became unlivable.[370]

To address community concerns, Model engaged in substantial public process around the redevelopment plans, including many meetings with the VHMHC redevelopment task force, the larger Valley Homes community of residents, and interested members of the public.[371] As noted above, Model funded an attorney to independently represent the VHMHC in their negotiations and to help them review and update their operating procedures and bylaws. In the course of this process, VHMHC held a vote to authorize the Villas of the Valley plans.[372] The vote drew 64 Valley Homes residents, including tenants who cast an advisory ballot.[373] The residents voted overwhelmingly to approve the plans.[374] From that point on, the developer saw a continual improvement in community relations.[375]

Local Hiring / Section 3 Compliance

Model views local hiring as integral to building trust in the community.[376] The cooperative's decision to work with the developer hinged in part on Model's commitment to do everything possible to hire local workers. Model made promises in city council meetings and to members of the cooperative task force that if the development went forward, Model would hire locally.[377]

Part of Model's efforts to hire locally included meeting its Section 3 obligations. Section 3 is a hiring requirement that flows with federal housing funds, including NSP.[378] Section 3 obligates recipients of NSP funds to, at a minimum, comply with numerical safe harbors demonstrating the recipients' best efforts to hire and contract to local, low-income residents and businesses. The recipient must fill 30% of new or vacant positions by hiring low-income locals referred to as Section 3 residents.[379] The recipient is also required to settle 10% of its development-related contracts on Section 3 business concerns.[380] Model Group has worked with city, county, and public housing agency representatives to collaboratively develop Section 3 procedures and forms.[381]

Even without numbers on hand to show percentages of local hires, the developer believes local participation to be extraordinarily high.[382] This is in large part due to the outreach efforts of the developer's hiring team.[383] The developer's system for making sure it hired locally was to partner with

[364] *Id.*
[365] Telephone Interview with Steve Smith, *supra* note 284.
[366] *Id.*
[367] *Id.*
[368] Telephone Interview with Susan Walsh, *supra* note 315.
[369] Telephone Interview with Steve Smith, *supra* note 284.
[370] *Id.*
[371] Telephone Interview with Susan Walsh, *supra* note 315.
[372] Telephone Interview with Noel Morgan, *supra* note 291.
[373] *Id.*
[374] *Id.*
[375] Telephone Interview with Steve Smith, *supra* note 284.
[376] *Id.*
[377] *Id.*
[378] HUD NSP1 Notice, *supra* note 5, at 58343; 12 U.S.C.A. § 1701u (Westlaw Sept. 22, 2006).
[379] 24 C.F.R. § 135.30(b)(1) (2003), 24 C.F.R. § 135.5 (1996).
[380] 24 C.F.R. § 135.30(b)(2). Section 3 business concerns are businesses that are majority owned by Section 3 residents, employ at least 30% Section 3 residents, or direct more than 25% of subcontracts to Section 3 business concerns. 24 C.F.R. § 135.5.
[381] Telephone Interview with Steve Smith, *supra* note 284.
[382] *Id.*
[383] *Id.*

minority contractors whenever possible, letting them know up front that whenever a new position was open, they must try to hire from within Hamilton County first.[384] To facilitate that process, Model contracted with a temporary agency equipped to process paperwork for many local construction applicants.[385] Model requested applications significantly in advance of development.[386] In the first week they sought applications, 300 people applied.[387] The pool of applicants became a ready referral source for subcontractors looking to hire.[388] Model provides new hires with OSHA certifications and other 10-hour-type certification training free of charge.[389]

The innovations that made the local hiring process effective were implemented by Model's newly hired director of economic inclusion, who is himself a business owner local to the Cincinnati area.[390] Model's director of economic inclusion also formed a Section 3 committee and shepherded the draft forms and procedures through approval.[391]

Summary

This unusual redevelopment project came about through the collaboration of many members of the community, particularly the residents of the housing. An accomplished developer came to the project on the strength of personal relationships, despite a seemingly impossible financial situation. Negative public opinion hampered the project from developing the full number of rental units that had been planned, but the developer has built trust by honoring its commitments and rigorously pursuing local hiring. Although it might have been preferable to create more affordable rental homes on the property, the continued use of this historic site as resident-owned community housing may preserve an important part of the town's identity.

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[384] *Id.*
[385] *Id.*
[386] *Id.*
[387] *Id.*
[388] *Id.*
[389] *Id.*
[390] *Id.*
[391] *Id.*

Conclusion

Public opinion can be a crucial factor in the success of affordable housing development. Goodwill can smooth the way or make a difficult NSP project possible, as is demonstrated by the successful developer recruitment efforts of community members in Cleveland and Hamilton County. However, negative public sentiment can delay or diminish the scope of a multifamily project. Knoxville and Hamilton County each experienced and addressed difficulties arising from public resistance to their very low-income NSP activities. In Knoxville, concern was predominantly expressed by residents seeking to prevent housing sites near their homes, and issues raised included public safety and distrust of the motivations of nonprofit developers. Ongoing public dialogue and site-design responsive to local concerns has built support for affordable housing activities, though conflict continues. In Hamilton County, while there was widespread approval for very low-income housing at the Valley Homes site, some community members distrusted the intentions of an outside developer and protested the demolition and redevelopment of a historic, if dilapidated, housing complex. There, the developer was particularly successful in meeting public concerns through community meetings and promises kept. Outcomes in both communities demonstrate the value of earnest dialogue followed by commitments that address stakeholder concerns.

As might be expected of recipients of the first wave of NSP grants, misunderstandings and difficulties with the NSP regulatory requirements plagued nearly all the grantees, and caused Greenville County and Knoxville to commit resources to very low-income rental projects that were later deemed ineligible for inclusion in the set-aside. As an unexpected upside to this confusion, both grantees chose to continue their ineligible commitments in addition to new projects that would meet the set-aside.[392]

Grantees found the discount requirement particularly onerous when trying to meet the 25% low-income set-aside. The requirement that properties be foreclosed or abandoned also created difficulties in meeting the set-aside because it restricted the pool of properties possible for consideration. However, both of these obstacles have since been removed by subsequent rulemaking or legislation.[393]

Greenville County and Phoenix endured competition from investors who could close on properties more quickly, though Greenville County found that over time, banks became more willing to work with the county as they became more comfortable with the NSP funding process.

For those grantees still struggling to find discounted properties suitable for rehabilitation or redevelopment, the Federal Housing Administration's decision to offer NSP grantees 12 business days to make offers on FHA REO-owned properties may render property acquisition more feasible.[394] Hopefully, grantees currently obligating NSP funds and those who are funded in future cycles will be more familiar with program requirements and able to abbreviate the learning curve by taking advantage of training resources now in place, their own past experience, and the experience of other grantees. Likewise, it is hoped that property sales will go more smoothly now that the NSP program is better known and some of the regulations have been amended to address problems in implementation. Grantees in future rounds of funding may also find it easier to assemble rental programs using NSP funds, due to the increasing availability of training and sample program materials covering NSP rental activities. For example, the NSP Resource Exchange hosts guidance on creating an NSP-eligible rental project[395] and

[392] As discussed, with the passage of the Dodd-Frank Act, activities that were ineligible because the properties had not been foreclosed or abandoned may also turn out to be eligible for inclusion in the set-aside.

[393] NSP Bridge Notice, supra note 18, at 29,225; Dodd-Frank Wall Street Reform and Consumer Protection Act, § 1497(b)(1).

[394] Federal Housing Administration (FHA) First Look Sales Method for Grantees, Nonprofit Organizations, and Subrecipients Under the Neighborhood Stabilization Programs (NSP), 2010, 75 Fed. Reg. 41,225 (July 15, 2010). A similar "first look" program for REO properties held by private financial institutions was announced in September 2010. HUD Secretary Announces National First Look Program to Help Communities Stabilize Neighborhoods Hard-Hit by Foreclosure, Sept. 1, 2010, http://portal.hud.gov/portal/page/portal/HUD/press/press_releases_media_advisories/2010/HUDNo.10-187.

[395] Creating An NSP-Eligible Rental Project, Compass Group, Aug. 2010, http://hudnsphelp.info/media/resources/CreatingNSPEligibleRentalProject.pdf.

provides a sample request for qualifications, letter of intent, award acceptance agreement, predevelopment grant agreement, and gap financing loan agreement.[396]

For future rounds of NSP funding and for those planning affordable housing development, important goals to keep in mind may include facilitating Section 3 compliance,[397] guaranteeing that rents are affordable to very low-income tenants and ensuring extended affordability durations. Grantees can make it easier for developers to meet and exceed Section 3 hiring and contracting requirements by providing best practices, self-certification forms, and qualified participant lists. Grantees seeking to provide housing that is affordable to tenants at or below the poverty line may wish to set rent maximums at 30% of individual tenant income. Finally, grantees should consider seeking the longest-possible affordability durations and writing agreements that obligate building owners to seek and accept additional subsidies when rental assistance contracts expire. As demonstrated by the jurisdictions featured in this report, grantees have been most successful in creating low-income housing when they add additional requirements regarding long-term affordability and address local needs, such as homelessness. With careful attention to such details, future recipients of NSP funding can ensure that their affordable housing activities will benefit very low-income households over the long term.

[396] NSP Resource Exchange, http://hudnsphelp.info/index.cfm?do=search&keywords=Multifamily+Rental+Toolkit (last visited Aug. 11, 2010).

[397] As discussed above, Section 3 is a hiring and contracting requirement that flows with federal housing money.

Appendix A: Area Median Incomes

Area Median Income for Highlighted Grantees[398]

	1 Person	2 People	3 People	4 People
Cleveland, OH	$45,400	$51,900	$58,400	$64,800
Greenville, SC	$40,600	$46,400	$52,200	$58,000
Hamilton County, OH	$48,700	$55,600	$62,600	$69,500
Knoxville, TN	$41,800	$47,800	$53,800	$59,700
Phoenix, AZ	$46,700	$53,300	$60,000	$66,600

[398] Area Median Income (AMI) figures are based on 2010 Adjusted HOME Income Limits, HUD, Apr. 2010, http://hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/2010/. NSP funds generally must benefit households whose income does not exceed 120% of AMI. At least 25% of NSP funds must be set aside to build housing that would be occupied by households earning no more than 50% of AMI.

Appendix B: HOME Rent Maximums[399]

High HOME Rents[400]

Grantee	0 BR	1 BR	2 BR	3 BR
Cleveland	$526	$610	$735	$942
Greenville County	$547	$593	$659	$871
Hamilton County	$476	$566	$733	$981
Knoxville	$529	$608	$732	$975
Phoenix	$654	$762	$919	$1,092

Low HOME Rents[401]

Grantee	0 BR	1 BR	2 BR	3 BR
Cleveland	$526	$608	$730	$842
Greenville County	$507	$543	$652	$754
Hamilton County	$476	$566	$733	$903
Knoxville	$522	$560	$672	$776
Phoenix	$583	$625	$750	$866

[399] 2010 HOME Program Rent Limits, HUD, May 2010, http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/rent/2010/.
[400] High HOME rents represent the minimum affordability standard required by HUD for very-low income NSP housing. They are provided here as a reference, though not all grantees chose these as their rent limits.
[401] Low HOME rents are provided for reference. As discussed, Cleveland and Knoxville each chose this rent limit for some of their set-aside activities.

Appendix C: HOME Rent Maximums Adopted by Phoenix, Arizona[402]

Maximum Rents for Low-Income Set-Aside Units

Number of Bedrooms	Rent
0	$483
1	$552
2	$646
3	$687
4	$751

[402] Email from Angela Duncan, *supra* note 138.

Appendix D: 30% of Monthly Income at Extremely Low-Income (ELI) and Very Low-Income (VLI) Levels[403]

Cleveland, OH	1 Person	2 People	3 People	4 People
ELI	$341	$390	$439	$486
VLI	$568	$649	$730	$810

Greenville County, SC	1 Person	2 People	3 People	4 People
ELI	$305	$349	$393	$435
VLI	$508	$580	$653	$725

Hamilton County, OH	1 Person	2 People	3 People	4 People
ELI	$365	$418	$470	$521
VLI	$609	$695	$783	$869

Knoxville, TN	1 Person	2 People	3 People	4 People
ELI	$314	$359	$404	$448
VLI	$523	$598	$673	$746

Phoenix, AZ	1 Person	2 People	3 People	4 People
ELI	$341	$390	$439	$486
VLI	$568	$649	$730	$810

[403] Rent figures based on HUD ELI (30% AMI) and VLI (50% AMI) income limits. 2010 Adjusted HOME Income Limits, HUD, Apr. 2010, http://hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/2010/.

Appendix E: NSP-Funded Housing Units By Type of Housing

	Family	Senior	Permanent Supportive Housing	Total
Cleveland, OH	208	45	0	253
Greenville, SC	23	10	0	33
Hamilton County, OH	0	13	0	13
Knoxville, TN	11	0	105	116
Phoenix, AZ	311	0	80	391