

Complying with Design and Construction Requirements for Housing Credit Projects

By A. J. Johnson

The Fair Housing Amendments Act of 1988 prohibits discrimination in housing practices on the basis of race, color, religion, sex, national origin, familial status, and disability.

In addition, the Act contains special requirements relative to the design and construction of most multifamily housing built for initial occupancy after March 13, 1991, including low-income housing tax credit developments. But while all credit properties are subject to the Act's anti-discrimination provisions, not all are subject to the design and construction requirements.

This article will address: (1) The types of properties subject to the Act's design and construction requirements; (2) The design and

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Housing Groups Propose Changes to Utility Allowance Rules

Six national housing organizations have proposed specific changes to the current utility allowance rules for the low-income housing tax credit program, in a joint letter to the Internal Revenue Service.

The letter, dated 12/12/03, was submitted by the Council for Affordable and Rural Housing, National Apartment Association, National Affordable Housing Management Association, National Association of Home Builders, National Leased Housing Association, and National Multi Housing Council.

The groups were invited to propose changes by the IRS, which late last summer received approval to open a project to revise the utility allowance rules. (*For background, see The Tax Credit Advisor, September 2003, p. 10,*

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New Mixed-Income Boston Project Contains Housing Credit Units, For-Sale Condos

Low-cost funds and various subsidies have been used to subsidize production of low-income rental units and moderate-income for-sale condominiums in a new, 184-unit mixed-income housing development in Boston's South End.

The \$65 million project, called Rollins Square, was developed by the Planning Office for Urban Affairs (POUA), a tax-exempt Section 501(c)(3) organization affiliated with the Roman Catholic Archdiocese of Boston. The

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project was dedicated on 11/21/03.

Like other developments by POUA, Rollins Square reflects a philosophy that shelter for low-income families should be in housing with households of diverse income.

"We really believe in not concentrating poverty or isolating people of more modest means," Lisa Alberghini, executive director of POUA, told *The Tax Credit Advisor* in a recent interview. "It is very much a core part of our mission to try to create economically diverse communities — vibrant communities that do not isolate or stigmatize lower-income residents."

Rollins Square, which occupies a full city block between Washington Street and Harrison Avenue, is 20 percent low-income; 40 percent moderate-income; and 40 percent market-rate. All 184 units are condominiums, but 37 are owned by a limited partnership and rented as low-income housing tax credit units. There are also 73 moderate-income and 74 market-rate for-sale condos.

Though credit units are restricted to households at or below 60 percent of area median, Alberghini said they were actually rented to households at or below 30 percent of median income, taken from the Boston Housing Authority's high-priority waiting list. She noted the 37 units have 10-year project-based HUD Section 8 rental assistance, and a 99-year restricted use period.

The tax credit units, like the other condo units, range from one- to three-bedrooms, up to 1,900 square feet in size. The units are dispersed through seven of the eight small brick buildings that comprise the development.

The 73 moderate-income condos, all sold, are restricted to households earning 80-120 percent of area median income [\$64,640-\$96,960]. Alberghini said the buyers were chosen from 1,500 households that requested applications. These units will remain affordable in perpetuity. Owners that re-sell their units will be limited in the profit they can make, and units must be re-sold to moderate-income households.



Photo: Robert Benson Photography

Rollins Square Development

Of the remaining, 74 market-rate condos, all but three have been sold, Peter Roche, the development finance consultant to POUA on the project, told *The Tax Credit Advisor*. He noted sales prices for the market-rate condos ranged from roughly \$300,000 (without a garage space) to \$750,000 (with a space), and \$140,000-\$260,000 (without a space) for the moderate-income condos. The development, Roche said, also has a 275-space underground parking garage with spaces that have sold for up to \$60,000, and 6,000 square feet of ground-floor commercial space that was sold to another developer as two condominiums and leased to a bank and convenience store.

Origins of Project, Income Mix

Rollins Square was developed on a mostly vacant, 2.2-acre tract formerly owned by the Boston Redevelopment Authority, which designated the Archdiocese to redevelop the urban renewal site more than 30 years ago, primarily for expansion of a nearby Catholic high school.

But changing plans and other difficulties delayed development, and it wasn't until about five years ago that a consensus developed between the Archdiocese and the city — led by Boston Mayor Thomas Menino — to build housing on the site. The plans for Rollins Square evolved from there.

Alberghini said POUA likes to develop housing projects that are one-third low-income, one-third moderate-income, and one-third market-rate. At Rollins

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Square, however, she said there was a desire to provide a larger share of units for moderate-income households, whom have been heavily displaced from the South End in recent years from substantial gentrification. At the same time, the South End already has a fair amount of affordable rental housing for very low-income families, including several larger public housing developments.

"There's a lot of very low-income housing in Boston," according to Alberghini, "and million-plus [dollar] condos, and very little in between. So in Rollins Square we tried to make a major statement about the need for moderate-income units."

Need for Extensive Subsidies

Alberghini and Roche noted extensive subsidies were needed to produce the 110 affordable housing units – the credit rentals and moderate-income condos. The overall project was expensive because of costly environmental remediation plus development of the underground parking garage, commercial space, and a neighborhood park.

The development was made feasible by a combination of low-cost funds, housing credit equity, various subsidies, land cost write-down, and other aid.

Pivotal was a \$470,000 allocation of 9 percent housing credits from the Massachusetts Department of Housing and Community Development, which was used to raise a \$3.9 million equity investment from Fleet Bank (Boston, MA). Fleet also served as the lead lender on a \$52 million construction loan to the project.

In addition, the Boston Redevelopment Authority sold the site for a favorable price – \$1.5 million – that reflected a charge only for the market-rate units.

Other funding sources included low-interest,

long-term soft debt from the city of Boston (Leading the Way, housing linkage funds) and from the state (Affordable Housing Trust, HOME, and Brownfield funds). The trust fund dollars were provided by MassHousing (formerly Massachusetts Housing Finance Agency), which also participated in the construction loan. MassHousing will also make the sole permanent first mortgage on the tax credit units. Roche said the 40-year \$2.9 million loan, which is about to close, will be funded by taxable bond proceeds and have a fixed rate of probably 7-7.5 percent.

The bulk of the subsidy for the moderate-income units, however, was internal – profits from the sale of the market-rate condos. Another boost came from POUA, which Alberghini said is foregoing much of its development fee. She anticipated any development fee POUA gets from Rollins Square will probably be closer to 3 percent instead of its usual, maximum 5 percent fee, with the bulk of its fee deferred, in order to help provide the moderate-income affordable units.

Talented Development Team, Valued Partners

Alberghini credited POUA's development team and financing partners for the success of Rollins Square.

In addition to POUA, the development team included: Peter J. Roche, development finance consultant; CBT/Childs Bertman Tseckares Inc., the architectural firm that designed the project; Suffolk Construction, the general contractor; Goulston & Storrs, P.C., attorney; Maloney Properties, management agent and broker for the moderate-income condos; and Peabody Properties, broker for the market-rate condos.

Alberghini praised financing partners Fleet Bank, MassHousing, and the AFL-CIO Housing Investment Trust. She said the AFL-CIO rescued the project by providing a \$27 million bridge loan after a "lot" of pre-sales of the condos were lost following the 9-11 terrorist attacks. "People lost confidence in the market after 9-11," she noted. The bridge loan enabled POUA to pay the contractor

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SOURCES AND USES STATEMENT

A complete breakdown of the sources and uses of funds for Rollins Square can be found online, at <http://www.housingonline.com/tca/january2004.html>

and continue construction until it could recoup pre-sales to satisfy the requirements for the construction loan and Fleet Bank's equity investment.

Alberghini particularly lauded Fleet Bank for its support of the Rollins Square project throughout a number of trials and tribulations, and for investing in such a complex project.

Marianne Votta, of Fleet Bank, told *The Tax Credit Advisor* that Rollins Square is the bank's first equity investment in a housing credit project with for-sale condo units. She described the project as a "great, innovative" development that addresses the city's public policy preferences for mixed-income communities, new opportunities for homeownership for moderate-income households, and more affordable housing.

While corporate investors generally don't like to invest in mixed-income tax credit projects, because they feel they are exposed to added risk from the market-rate rental units without additional benefit, Votta said Fleet didn't have such a reservation with Rollins Square. The reason, she explained, is that the bank's only risk as the equity investor is from the 37 housing credit units, since the remaining units are all condos that have been sold.

Condominium Association Issue

Votta, though, indicated one initial concern was whether Rollins Square's condominium association – dominated by condo owners – might make future financial decisions adverse to the tax credit unit residents and Fleet's interest as the equity investor, such as to build a pool or make costly special improvements that would increase operating expenses or result in a special assessment on the credit units. However, she said that with the project's design and lack of land for a pool, "we became comfortable that that probably wasn't going to become an issue."

In addition, the 37 condos rented as tax credit units are owned by a single limited partnership that will therefore have a significant say in how the condo association is run.

Karen J. Kepler, a partner in Goulston & Storrs, P.C. (Boston, MA), said that for the tax credit units, "one chief complication was working out a condominium arrangement where all of the different income levels in the building would feel comfortable with one another." She indicated this meant finding a way to assure the credit investor that condominium costs wouldn't be run up by the higher-income residents, and to assure the higher-income residents that the low-income component of the building wouldn't dilute the level of services that they wanted and expected. The challenge, Kepler explained, was to "try and balance those interests and yet have documents that could be marketed to people paying top dollar for a high-cost, market-rate condo unit."

Kepler's firm performed all legal work for POUA on the Rollins Square transaction, including the drafting of the condominium documents, bylaws, and rules.

Kepler noted her firm also helped POUA avoid paying roughly \$1 million in Massachusetts sales tax on the construction materials for Rollins Square by obtaining a favorable letter ruling from the state confirming that POUA – a tax-exempt organization – qualified for the sales tax exemption, even though parts of the building it was constructing would ultimately be sold to private individuals and an interest sold to an equity investor. **TC**

– Glenn Petherick

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the QAP. Developers will be notified of the firm assigned to prepare their market study, and receive a copy when it is forwarded to the agency.

Developers will be charged \$4,000 for the market study, according to the QAP.

Asked why SCSHFDA decided to switch to commissioning the market studies, Nicholson said, "We thought that we could have better control over [the market study], and maybe get a better quality product."

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