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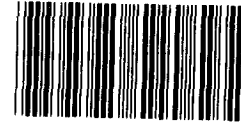
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COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

AUGUST 12, 1980

B-199708

The Honorable Norman E. D'Amours
House of Representatives



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Dear Mr. D'Amours:

Subject: [Inquiry into the Farmers Home Administration's Selection of a Developer To Construct a Housing Project in New Hampshire](CED-80-119)

In accordance with your December 7, 1979, request and subsequent agreements with your office, we inquired into the Farmers Home Administration's (FmHA's) selection of a proposal submitted by Mr. Jack Heaton of Dorset, Vermont, to develop a rental housing project for the elderly under FmHA's Congregate Housing Demonstration Project in Carroll County, New Hampshire.

We made our review at FmHA headquarters in Washington, D.C.; the FmHA State office in Montpelier, Vermont; and the Federal Emergency Management Agency in Boston, Massachusetts.

On April 3, 1980, we briefed you on our review. As requested, this letter confirms the information provided to you at that time. To summarize, we found that:

- While FmHA has not yet developed procedures for implementing Executive Order 11988 on flood plain development, FmHA State offices are required to comply with the order. FmHA officials maintain that the flood plain requirements would have been complied with had the original developer completed the project.
- The July 3, 1979, site feasibility analysis was prepared by the FmHA State office architect because the preapplication data requested by FmHA was minimal. This analysis is usually prepared by applicants, and not by FmHA personnel, during a later application phase. While the analysis did not refer to the project's access road, which is located in a flood plain, FmHA State office officials told us that they were aware of this problem. Had the project progressed to the next

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phase in the application cycle, they said that either the road problem would have been solved or the project would not have been built on that site.

--FmHA notification that project applications were to be processed on a priority basis was intended to inform regular loan applicants that FmHA's normal business may be suspended while the demonstration project applications were being processed. We found no evidence that special considerations were given to applicants.

--The appraisal form on file was not intended to be a formal appraisal of the Carroll County project site locations. This form was used by FmHA as a worksheet to capture general site information.

--The project's funds were mistakenly left obligated to the successful applicant after project termination. After we brought this matter to the attention of FmHA officials, the funds were deobligated.

BACKGROUND

FmHA is the rural credit agency of the Department of Agriculture (USDA). It makes loans to farmers and to rural residents and communities for housing, farms, and assorted rural development projects. FmHA administers about 22 different loan programs.

Rental Housing Loans

The Housing Act of 1949 and subsequent amendments authorize FmHA to make loans to finance rental housing for low- and moderate-income families, persons 62 or older, and the handicapped. Under section 512 (42 U.S.C. 1485), loans are made to corporations, cooperatives, public agencies, individuals, and partnerships to build, buy, improve, or repair rental or cooperatively owned houses or apartments. Under the authority of State office directors, these loans are made for the amount of development costs or the project's security value, whichever is less, up to a maximum of \$1,500,000. The maximum repayment period is 50 years. Profit-oriented borrowers must pay FmHA's maximum interest rate; nonprofit or limited-profit sponsors can qualify for interest credit.

FmHA's selection of a developer to construct rental housing is divided into two phases--a preapplication phase and a complete application phase. A builder desiring to obtain a rental housing loan submits a preapplication to FmHA. Preapplications of the more experienced builders provide FmHA with a rough schematic development plan, indicate that the land is available and buildable, and state that funding has been refused by the applicable State housing finance agency and the Department of Housing and Urban Development (HUD).

If the preapplication is determined to have merit and the building location is within an area that FmHA and State authorities have targeted for housing, FmHA will discuss program requirements with the applicant. The applicant is then instructed to submit a complete application for the project which includes architectural plans, completed engineering work, and State and local zoning approvals. Once FmHA has reviewed the complete application and all requirements have been met, FmHA obligates funds for the loan. The process for the complete application stage could take from 3 months to 2 years, depending on the extent to which FmHA loan requirements were completed at the time the application was submitted.

Congregate Housing Demonstration Project

FmHA announced in the May 18, 1979, Federal Register a demonstration project to provide congregate housing for the elderly in 10 rural counties. Congregate housing is housing for the elderly which provides one or more of the following services: meals, housekeeping, personal care, and transportation. The demonstration project was a joint effort of USDA, FmHA, and the Department of Health and Human Services ^{1/} Administration on Aging to provide congregate rental housing for the rural elderly in each of the 10 Federal regions.

While section 515 funds were used for the demonstration projects, normal FmHA procedures for selecting developers were not followed because of the unique circumstances surrounding these projects and FmHA headquarters instruction to obligate the funds by September 20, 1979. The May 18, 1979, Federal Register notice invited interested parties to submit to FmHA

^{1/}On May 4, 1980, part of the Department of Health, Education, and Welfare responsible for the activities discussed in this report became the Department of Health and Human Services.

competitive preapplications for loans by June 15, 1979 (subsequently changed to June 22, 1979). The preapplications were required, among other things, to provide satisfactory evidence of review and approval by applicable State and local officials and to address the following areas:

- Community involvement in planning and developing the project.
- Involvement of the area agency on aging.
- Site location.
- Architectural design concepts.
- Management plans.

According to the FmHA State office Director and rural housing specialist, because of the short time allowed for developing the preapplications, applicants were told to submit a preapplication that included only a narrative description of the project, preliminary site drawings, and background information on themselves rather than what was required for the preapplications in the Federal Register.

The FmHA State office received seven preapplications to build the Carroll County demonstration project--five from New Hampshire, one from Vermont, and one from Pennsylvania. They were reviewed by a site selection committee consisting of the Director, rural housing specialist, and architect, FmHA State office; the Director and Area Director, New Hampshire State Council on Aging; and the Coordinator, Office of the New Hampshire Governor. The committee selected three preapplications as having merit--those submitted by the Carroll County Elderly Housing Associates, Jack Heaton, and Wolfeboro Home for the Aged, Inc.--and forwarded them to FmHA headquarters. The preapplications forwarded were not ranked to indicate an FmHA State office preference.

The selection of a developer to build the Carroll County demonstration project was made by an FmHA headquarters national selection committee consisting of four FmHA national office officials; one Administration on Aging official; and six staff members of the International Center for Social Gerontology, a consultant to the Administration on Aging. On July 20, 1979, this selection committee chose the Jack Heaton proposal over the Carroll County Elderly Housing Associates proposal because of better management experience, site location,

and service package. The Wolfeboro preapplication was eliminated because the applicant did not have a land purchase option.

On August 7, 1979, FmHA's State office was notified by headquarters that Mr. Heaton's application for a loan was approved subject to meeting a number of conditions. Subsequently, FmHA State office and headquarters officials became aware of the problem of site access. Consequently, Mr. Heaton was informed on August 14, 1979, that the loan was approved subject to his complying by October 15, 1979, with the conditions noted previously, as well as the following four special conditions.

--The access road will be raised above the 50-year flood level at the applicant's expense.

--Emergency access to the project will be maintained via the covered bridge.

--Public water and sewerage shall be available to the project.

--All State and local approvals must be obtained, including the waiver of density scheduled for hearing on October 4, 1979.

However, on October 3, 1979, Mr. Heaton withdrew his application, citing excessive political pressure. Mr. Heaton told us that, in his opinion, he could have satisfied all of the loan conditions, including those listed above.

RESULTS OF OUR INQUIRY

The following information was developed in response to your specific questions (Q) and subsequent agreements with your office.

Executive Order 11988

- Q. Has FmHA finalized the proposed rules for the implementation of Executive Order 11988 and have any regulations or guidelines been issued to the State offices? If there are regulations, how do they apply to the preapplication process and were they followed?

On May 24, 1977, the President issued Executive Order 11988. The objective of the order is to avoid to the extent possible the long- and short-term adverse impacts of flood plain development. This order applies to all Federal actions and requires agencies to

- avoid developing on the base flood plain unless no practical alternative is available;
- adjust to the base flood plain if it cannot be avoided by reducing the hazard and risk of flood loss, managing the flood risk, and restoring and preserving the flood plain values;
- provide public notice on plans to build within the base flood plain and encourage participation in flood plain decisionmaking; and
- issue regulations and procedures for implementing the above.

FmHA's proposed rules for implementing the Executive order were published in the Federal Register on September 14, 1978. As of May 29, 1980, these rules had not been finalized. In addition, FmHA headquarters has not issued interim guidelines to its State offices on the order and does not plan to issue such guidelines. However, FmHA held a September 1979 meeting in Rosslyn, Virginia, for its State office architects and engineers to familiarize them with the order and the Water Resources Council Guidelines for implementing it, which are part of FmHA's proposed rules. A similar meeting was held for FmHA State office directors in December 1979.

FmHA's Assistant Administrator of Multifamily Housing and its rural aging specialist told us that although there was no written guidance, State offices were still required to comply with Executive Order 11988. The Assistant Administrator cited two instances where the order resulted in actions after FmHA State offices became aware of it. In Mississippi, consideration of the order resulted in a project being moved to an alternate site. In Oregon, a project was allowed to be built only after complying with the order's flood plain requirements. FmHA's Assistant Administrator of Multifamily Housing, Director of Environmental Technology Staff, and State office Director told us that the order would have been complied with in Carroll County had the project continued beyond the preapplication phase.

Site analysis

- Q. Describe the procedures for preparing the "technical comments site feasibility analysis." Who is responsible for doing this? Why were the flood plain problems not identified in the July 3, 1979, analysis?

FmHA requires applicants to provide certain site analysis data with the completed, not the preapplication, package. However, the July 3, 1979, analysis of Heaton's proposed project was prepared by the FmHA State office architect who visited the site. He made this visit and analysis because the preapplication data requested was minimal. The analysis was described as an attempt to identify obvious site problems that could not be overcome. The architect told us that he based the analysis on his professional competence, the Federal regulations applicable to the National Flood Insurance Program, and the HUD minimum property standards.

National flood insurance regulations require that the first-floor elevation of a dwelling or housing unit must be above the 100-year flood level. While the building site portion (habitable area) of Heaton's project site was to be located on a bluff above the 100-year flood plain at the juncture of the Saco and Swift Rivers, the building site was surrounded by a flood plain. Access to the site is by a lengthy roadway across the 100-year flood plain and a regulatory floodway (an area regulated by Federal, State, or local requirements which must be reserved in an open manner--that is, unconfined or unobstructed). The access road connects the site to a single public road (West Side Road), which also crosses the 100-year flood plain and the regulatory floodway. During flooding the building site area is temporarily isolated. Pedestrian access to the site is provided by a historic covered bridge that crosses the Swift River and connects the site with West Side Road.

The architect's analysis of Heaton's project site references the applicable Federal Insurance Administration flood map and identifies the tract in Zone C, which is above the 100-year flood plain. The site is described as a 7.1-acre parcel in parts of the analysis and as a tract in other parts. Of the 7.1-acre project parcel, approximately 2.4 acres are in Zone C above the 100-year flood plain and the remaining 4.7 acres are in the flood plain. The architect stated that "tract" refers to the building area and that in retrospect he should have more clearly defined the difference between the

parcel and the tract. However, FmHA's Assistant Administrator of Multifamily Housing, rural aging specialist, and Director of Environmental Technology Staff who reviewed the analysis informed us that they were aware that the property is surrounded by a flood plain.

The architect's analysis did not refer to the access road which crosses the 100-year flood plain and the regulatory floodway. HUD's minimum property standards address access roads, stating that:

"Streets shall be usable during runoff equivalent to a 10 year return frequency. Where drainage outfall is inadequate to prevent runoff equivalent to a 10 year return frequency from ponding over 6 inches deep, streets shall be made passable for local commonly used emergency vehicles during runoff equivalent to a 25 year return frequency except where an alternate access street not subject to such ponding is available."

The FmHA State office architect and rural housing specialist told us that while they were aware that the access road was in the flood plain, their primary concern at the time was with the habitable area. The FmHA Director of Environmental Technology Staff and two Federal Emergency Management Agency 1/ flood plain management specialists told us that the access road problem had to be addressed eventually because the road must provide egress from the project to the center of the community or to a point of safety. The point of safety is required to be determined by the State office Director, based on the type of tenants residing in the housing project.

FmHA's Assistant Administrator of Multifamily Housing and Director of Environmental Technology Staff told us that even if the analysis had identified the access road problem, the site would not have been automatically disqualified. Knowledge of the problem would have required the FmHA State office to provide FmHA headquarters with further information, such as proposed solutions to the problem.

1/Federal agency which, among other things, administers the National Flood Insurance Program.

In this regard, when FmHA subsequently identified the access road problem, it required that the road be raised above the 50-year flood plain level as a condition of the loan. ^{1/} This level exceeded HUD's minimum property standards, which require emergency vehicle passage equal to a 25-year flood frequency. Also, as a condition of the loan, emergency access to the project was required to be maintained via the covered bridge.

With regard to raising the access road, it should be noted that the Town of Conway flood plain management ordinance, which is the basis of the town's participation in the National Flood Insurance Program, forbids new development, such as the raising of a roadway, within the regulatory floodway. The access road is within the regulatory floodway, as is the town road (West Side Road), which is the only route from the project site to the Town of Conway. Consequently, plans to raise the access road would have to consider the limitation on new development within the regulatory floodway.

The reference in HUD's minimum property standards to an alternate access street in lieu of an emergency vehicle passage equal to a 25-year flood frequency is intended to provide for passage of emergency vehicles, such as ambulances and fire engines. However, the covered bridge, because of its age and condition, is closed to vehicular traffic.

FmHA's Assistant Administrator of Multifamily Housing, State office Director, and rural housing specialist stressed that the Heaton proposal was still in the preapplication stage when it was withdrawn. In their opinion, had the project progressed to the complete application stage, either the identified road problem would have been solved to the satisfaction of FmHA, State, and local officials or the project would not have been allowed to be built on that site. These officials pointed out that during the complete application stage an appraisal of the property is made which includes engineering studies, identification of flood problems, and public hearings.

^{1/}If the project was determined by the FmHA State office Director to be a critical use facility, such as a hospital, it would have to be located above the 500-year flood level. This project was terminated before a determination of critical use was made.

Notifying applicants

- Q. Does "priority basis" (7 CFR part 1822, exhibit s, sec. II A(2), last line of paragraph) apply to both formally and informally notified developers? Identify all advertisements, notices, and letters or other communications to developers regarding this demonstration project. Did any developer get "top" priority (or any other considerations other developers did not get) for this project?

Applicable Federal regulations 7 CFR part 1822, sec. A(1) and (2) provide that:

1. The Administrator of FmHA publish in the "Notice Section" of the Federal Register a list of the locations selected for the demonstration projects. Publication is intended to encourage interested persons and organizations to submit proposals for funding.
2. The FmHA office director in the State selected for a demonstration project will also inform interested persons and organizations by formal or informal notification. Formal notification may consist of public notice in widely circulated newspapers in the State or area selected. Informal notification may consist of notification by letter or other written notice to builders, developers, and others known to be interested in the section 515 Rural Rental Housing Program. Such applications may be processed on a priority basis.

FmHA's normal routine is to process loan applications on a first-come-first-served basis. According to FmHA's Assistant Administrator of Multifamily Housing and rural aging specialist, the intent of the priority basis rule was to inform regular loan applicants that FmHA's normal business may be suspended while the demonstration project applications were being processed. Because of the priority basis designation, the State office authorized overtime payments to staff processing the demonstration project applications to ensure that FmHA's specified time frames would be met. Priority basis was defined by these FmHA officials and the State office Director and rural housing specialist as applying to both formally and informally notified developers.

FmHA did not advertise this project beyond the Federal Register, although the State office notified in writing three New Hampshire builders as well as New England Non Profit Housing (consultant to the Carroll County Elderly Housing Associates) and the New Hampshire State Council on Aging. The New Hampshire Governor's Office announced the project to the press. We were also advised by the State office rural housing specialist that the State office orally notified a number of builders, including Jack Heaton. According to Mr. Heaton and State office officials, this notification was given during discussions of an FmHA-financed project that Mr. Heaton was building in Vermont.

Also, the New Hampshire State Council on Aging sent information about the demonstration project to 15 organizations including the following who submitted proposals: Jack Heaton, three New Hampshire builders, one Pennsylvania builder, and New England Non Profit Housing. In this regard, it should be noted that:

- Eighteen builders received written notice of the project from the FmHA State office and New Hampshire State Council on Aging.
- Our interviews with two New Hampshire builders who received written notice of the project and elected not to submit proposals disclosed no knowledge of special considerations.
- Representatives of the New Hampshire State and Area Councils on Aging and the New Hampshire Governor's Office were on the site selection committee.
- The proposals selected for FmHA headquarters consideration were not ranked to show preference.
- The final selection of Mr. Heaton was made by the FmHA headquarters review committee.

Appraisal report

- Q. Is FmHA Form 422-7, Appraisal Report for Multiunit Housing, adequate to identify flood plain problems for this demonstration project or for regular section 515 housing projects? Who prepares this report and what does FmHA do to verify its accuracy? (For example, does FmHA use outside

consultants as some other agencies do?) In regard to the appraisal submitted on the Carroll County project, why were the flood plain problems not identified in Part I-Question H or in Part II-Question A-2?

FmHA's Assistant Administrator of Multifamily Housing, State Office Director, and rural housing specialist told us that the appraisal form on file was not an appraisal of the Carroll County project site locations. Rather, this form was used as a worksheet to capture site information on a rush basis because of FmHA headquarters instruction to obligate the funds by September 20, 1979.

An appraisal is usually performed by FmHA after its State office has received final plans and specifications from the builder during the complete application stage. Since this project did not progress beyond the preapplication stage, an appraisal of the site was not made. Unlike the form on file for the Carroll County sites, we found other project appraisal forms to be typed, all questions answered, and the forms dated and signed by the appraiser.

FmHA district office construction inspectors, on instructions from the State office housing specialist, used the appraisal form to gather general descriptive information about the sites. The data on the form was used only as an internal worksheet for recording distances and other general information for this one-time competitive loan application. FmHA's Assistant Administrator of Multifamily Housing, State office Director, and rural housing specialist told us that this form was not part of the State office submission to FmHA headquarters.

Obligation of project funds

- Q. Identify how and to whom the project funds are obligated. Does the withdrawal of the Carroll County proposal require deobligation? If the funds are deobligated, is there a mechanism to ensure that a comparable project can be built in Carroll County?

On September 21, 1979, the demonstration project funds were obligated to Mr. Jack Heaton for use in Carroll County, New Hampshire. The loan was to be in the amount of \$1,000,000 at a 9 percent interest rate for 50 years. As

previously discussed, on October 3, 1979, Mr. Heaton withdrew his application. However, the funds were still obligated to Mr. Heaton at the time of our field work.

We discussed this matter with FmHA headquarters officials, who advised us that the funds should have been deobligated as soon as Mr. Heaton withdrew from the project. Subsequently, in accordance with FmHA headquarters instruction to its State office, the funds were deobligated on April 2, 1980.

The deobligation of these funds has not affected the funding for the Carroll County Congregate Housing Demonstration Project. FmHA has reserved another \$1,000,000 for this purpose. The project was readvertised in the Federal Register on January 24, 1980. The State office received two proposals which it considered viable and forwarded them to FmHA headquarters. On June 2, 1980, the FmHA Administrator, following the recommendation of the FmHA headquarters selection committee, chose the Wolfeboro Home for the Aged, Inc., proposal. The Wolfeboro proposal differed from the proposal it had submitted previously and contained a land purchase option.

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At your request, we submitted a draft of this report to the Secretary of Agriculture for his comments. On July 23, 1980, a USDA official told us that the Department agreed with the facts presented in the report.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 3 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,



Henry Eschwege
Director