



JOHN J. TECKLENBURG
MAYOR

*City of Charleston
South Carolina*

OFFICE OF
COMMUNICATIONS

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City of Charleston, Mayors Tecklenburg and Riley File Suit to Recover Loan Funds Totaling \$22.8 Million

SUMMARY

Today, the City of Charleston, joined by Mayor John J. Tecklenburg and former Mayor Joseph P. Riley, Jr. as co-plaintiffs, filed a lawsuit against the Charleston LDC and related defendants to recover \$22.8 million owed to City taxpayers for a 1983 loan that enabled the development of Charleston Place.

Originally created as an arm of City government, the Charleston LDC received \$10 million from the City of Charleston in 1983 for the express purpose of lending that money to the original developers of Charleston Place. At the time, there was a clear understanding that the funds would come back to the City when the loan was eventually repaid.

In June of 2016, the Charleston LDC received \$22.8 million from the developers in repayment of the original loan plus interest. To date, the Charleston LDC has refused to provide any or all of those funds to the City, which plans to use them for affordable housing.

An advance copy of the full complaint is attached.

FULL BACKGROUND AND DETAILS

On Thursday, March 28, 2019, the City of Charleston filed a Complaint against Charleston LDC (f/k/a Charleston Citywide Local Development Corporation) and other defendants. The City's claims arise out of an ongoing dispute over the Urban Development Action Grant (UDAG) funds awarded to the City in 1983 for the development of the area now known as the Belmond Charleston Place ("Charleston Place"). Mayor John Tecklenburg and former Mayor Joseph P. Riley, Jr. join in the suit.

Soon after his election as Mayor in 1975, Riley focused much of his efforts on a plan to revitalize the downtown area of Charleston. Riley worked with the United States Department of Housing and Urban Development (HUD) to obtain funds to help the City of Charleston ("City"). In November of 1983, HUD awarded Charleston an Urban Development Action Grant ("UDAG") in the amount of \$14,500,000 for the Charleston Place development.

The UDAG program targeted specific locations, such as the City of Charleston, for economic development through a competitive award process. The UDAG program intended the recipient cities to benefit not only from the initial development project but also from developer repayments arising from the project. The UDAG program intended the repayment to provide the recipient cities with a future source of funds for further redevelopment efforts.

The expectation of significant repayment funds was an important motivating factor for the City to seek the UDAG award in the first place. At a Special Meeting of City Council in January of 1983 former Mayor Riley spoke to City Council about the benefit of the repayments the City expected to receive. The minutes from the January 1983 City Council meeting state: “The Mayor estimated to City Council that in some years several hundred thousand dollars would be generated from this project which could be used for community development activities. . . . The important fact was that the money would be repaid to the City for the City’s benefit.”

After the City received the UDAG funds, \$10 million was loaned to the developer through a non-profit corporation called Charleston Central Local Development Corporation (“Charleston Central LDC”). The City chose Charleston Central LDC as the conduit for the UDAG funds because it operated as an arm of the City. Charleston Central LDC was created by the City’s mayor, operated out of City offices, and used City employees as its staff. Charleston Central LDC’s founding documents state its purpose is to “further the economic development in the City of Charleston, to promote and assist the growth and development of business concerns, including small business concerns in the City of Charleston, to promote and assist the development of residential housing in the City of Charleston.” Charleston Central LDC served no region outside the City of Charleston, and conducted no work in any other areas.

The UDAG Agreement signed by HUD, and the City states the City will “make available” \$10,000,000 of the UDAG funds to Charleston Central LDC for the limited purpose of allowing the non-profit to loan the funds to the developer of Charleston Place. The City thereafter made available \$10,000,000 to Charleston Central LDC, and it thereafter loaned the UDAG funds to the Charleston Place developer. The Charleston Place was successfully built and opened in 1986.

In June of 2016, the developer repaid the loan principal of \$10,000,000 plus interest for a total of \$22,818,607 to satisfy the UDAG loan (Charleston Central LDC had at this point become Charleston Citywide LDC and is hereafter “LDC”). On June 19, 2016, the headline published in the Post and Courier stated “City revitalization gets \$22.8 M boost.” The June 19, 2016 article continued stating “The City of Charleston has about \$22.8 million in new money for affordable housing and economic development efforts now that Belmond Charleston Place has paid back a loan that dates to the construction of the luxury lodging.” The June 19, 2016 article quotes Mayor Riley’s statement that “the City’s loan was well-secured by the luxury property and was accruing interest.” The article also cites Sharon Brennan, the executive director of the Charleston Citywide LDC, who stated “the \$22.8 million will be used only within the city limits. . . .” The article goes on to quote Ms. Brennan’s statement that “The city as a whole will benefit from these funds being deployed for revitalization and redevelopment.”

Since the developer’s repayment, the City has attempted to work with LDC to use the repaid funds for affordable housing in the City. Unfortunately, the LDC has refused to work with the City on its affordable housing goals, and has sought to keep the funds for its own purposes. The City, therefore, has filed suit against the LDC.

The City’s Complaint against the LDC asserts claims in equity, tort and contract. The Complaint also requests a declaratory judgment as to the City’s rights over the UDAG funds. In support of these claims, the Complaint details the City’s history with the LDC and the parties’ agreement relating to these funds. The Complaint asserts the City has never relinquished its rights as the grant recipient to the repaid UDAG funds. The Complaint details the history of the LDC, and cites the corporation’s limited mission to support the City and its redevelopment efforts at the time the City received the UDAG award. The Complaint goes on to state that the City relied on the LDC’s limited mission when it selected the corporation as a conduit for the funds.

The Complaint alleges that once the LDC executive director and executive committee realized the transformational impact of the funds, they developed a plan to keep the funds and separate from the City. The Complaint alleges the executive director and executive committee sought to use the funds to

grow the lending power of their corporation and expand its operations statewide. The Complaint alleges the LDC's goal is to become a "100 million CDFI", to expand throughout South Carolina, and to lend over \$23.5 million of the UDAG funds for business loans over the next three years.

The Complaint also asserts a derivative claim by Tecklenburg and Riley, who are members of the corporation. The derivative claims are asserted against LDC's former executive director and executive committee on behalf of the corporation's membership. The derivative claims are based on the alleged attempt to eliminate the corporation's membership in April of 2018 and the alleged failure to properly notify the members of those plans. The Complaint alleges the former executive director and executive committee sought to eliminate the membership because the members knew the history of the UDAG funds and favored returning them to the City.

The Complaint also includes a claim under the South Carolina Freedom of Information Act ("FOIA"). The FOIA claim is based on the LDC's receipt of public funds and alleged failure to follow FOIA requirements.

The City filed its Complaint in the Charleston County Court of Common Pleas and plans to vigorously pursue the claims. The City hopes the lawsuit will result in the funds being used for affordable housing in the City.

MEDIA CONTACT:

Jack O'Toole, Director of Communications
Media Relations/Public Information
(843) 518-3228
otoolej@charleston-sc.gov