

Bond Case Briefs

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Public-Private Partnership Withstands Court Challenge.

Attorney Mariah DiGrino of DLA Piper details a recent Illinois court case.

Housing for chronically homeless individuals in Lake County, Ill., has been preserved and expanded through a public-private partnership that recently withstood a court challenge by opposing residents. The Lake County Housing Authority is working with PADS Lake County, a local nonprofit homeless services provider, to provide permanent housing for chronically homeless individuals, using funding under the Department of Housing and Urban Development's (HUD's) Continuum of Care program.

The public-private partnership in this case uses a multifaceted approach to reach a narrow segment of the homeless population, whose unique challenges have proven difficult to address. This approach allows the housing authority to tap into multiple resources to reactivate a vacant facility: HUD funding, existing public housing tenant selection processes, and PADS' experience and expertise serving the chronically homeless. PADS itself is a nonprofit organization that engages a variety of community and financial resources to address homelessness.

The public-private partnership in this case follows a long history of government efforts to engage the private sector in housing programs, beginning with New Deal-era loan guarantees and subsidized loan programs. So-called P3s have evolved to include a variety of arrangements, but all share the common features of combining government resources and authority—such as public funding, public property or facilities, access to better financing, credits, or other incentives—with private-sector funding and expertise to achieve a government objective.

The Lake County case is a reminder that public-private partnerships remain a valuable tool for providing a coordinated and customized approach to housing. It's also a reminder that, while the public-private partnership framework encourages alliances and broad-based support, such projects are not immune from opposition. Local regulations and stakeholder dynamics are important considerations that can either support or hinder the public agency's objectives. In this case, local zoning regulations and building officials cleared the way for a project that would otherwise not be permitted absent the involvement of the housing authority but not before community opposition and a decision by a local zoning board delayed the project for two and half years. Given the cyclical and competitive nature of funding, justice delayed is often justice denied.

In recent decades, HUD has sought to use P3s to increase local control of housing efforts, partly in an effort to reduce the reliance on federal funds. The current administration's goals suggest that trend will continue. While there are unique challenges associated with negotiating and implementing a public-private partnership, P3s provide a unique opportunity to leverage private-sector expertise and resources to achieve a public objective.

PADS previously provided permanent housing for 13 chronically homeless individuals through a lease arrangement with a federal Veterans Affairs health-care center. Hospital administration notified PADS that it needed to reclaim the space, requiring PADS to relocate the residents. After looking for suitable replacement units for several years, PADS and the housing authority entered

into a master lease, pursuant to which PADS would sublease units in a vacant facility, known as Midlothian Manor, to chronically homeless individuals, enabling PADS to preserve the existing 13 units and add a new unit. Midlothian Manor was acquired by the housing authority in 2001 as part of its non-federally funded housing inventory and was operated by the housing authority as an assisted-living facility for low-income seniors. Because it was never federally subsidized, the occupancy rate was perpetually low, and the housing authority closed the facility in 2010.

After PADS obtained permits for the proposed project from the local building department, nearby residents objected to the proposed reuse by filing a lawsuit seeking to stop the proposed project. The residents objected on the grounds that their homes and Midlothian Manor are located in the R-1 Residential District under the Lake County Unified Development Ordinance (UDO), which establishes zoning and development regulations throughout unincorporated Lake County. The R-1 district permits low-density, large-lot residential development. The objectors contended that re-occupancy of Midlothian Manor would be inconsistent with the R-1 district regulations.

After a two-and-a-half year battle, PADS, represented by DLA Piper LLP (US), successfully argued to the Circuit Court in November 2016 and then again to the Appellate Court in August 2017 that the project was permitted under the UDO as a “Government Use,” which is a permitted use in all zoning districts under the UDO. “Government Use” is defined under the UDO as a “building or structure owned or leased by a unit of government and used by the unit of government in exercising its statutory authority.” The effect of this definition is that a use which would otherwise be prohibited in a given zoning district is permitted when the governmental requirements of the definition are met, even though the uses may be functionally identical.

In upholding the building department’s decision permitting the project, the Second District Illinois Appellate Court held in October that the housing authority’s ownership of Midlothian Manor and the public-private partnership with PADS satisfied the definition of “Government Use.” The objectors had argued that, with a public-private partnership arrangement, the property would not be “used by the housing authority,” but would instead be used by PADS. The court rejected this argument and held that the public-private partnership leveraged the housing authority’s express power to contract with and assist other entities—public or private—to reuse Midlothian Manor in a way that fits squarely within the agency’s statutory purpose of providing safe and sanitary housing.

Affordable Housing Finance

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At DLA Piper, Mariah DiGrino concentrates her practice in the areas of land use and zoning, public-private financing, public incentives, historic preservation, and community and economic development.