



047

Heather Gardens ASSOCIATION

BOARD OF DIRECTORS HEATHER GARDENS ASSOCIATION Minutes of the Special Meeting Monday, May 9, 2022

Attendance: President Jill Bacon, Vice President Larry Dávila, Secretary David Baxter, Treasurer Terry Hostetler, Directors Beverly Havens, Mike Pula, David Kennedy, Linda Hileman, and Peter Cukale

Staff: Jon Rea (CEO), Jerry Counts (CFO), and Board Assistant Evelyn Ybarra

Visitors: Approximately 85 Residents, and Russell White (Auditor with RubinBrown)

Call to Order: President Bacon called the meeting to order at 3:02 p.m.

President's Remarks: President Bacon welcomed everyone for attending the special meeting. The meeting was regarding the Paycheck Protection Program (PPP) loan that Heather Gardens obtained in early 2020 during the Pandemic and the impacts of COVID-19. The meeting went as follows: CEO Rea spoke first and was followed by CFO Counts providing details concerning the PPP loan. During the presentation, the chat on Zoom was not used, and questions and comments were held until the presentation was completed. After the presentation, comments or questions were taken from the Board of Directors. Following questions and comments from members of the community were heard with a 3-minute time limit to speak when recognized. President Bacon asked to please not to repeat questions or comments in order to allow other members of the community the opportunity to speak. Again, President Bacon thanked everyone for attending and for their interest in the community.

Paycheck Protection Program (PPP) Loan:

CEO Rea explained it was appropriate to provide accurate information about the PPP Loan application and the forgiveness process to the community. He outlined the requirements along with the entities that were involved to review the entire process. He could not stress enough that at no time during this PPP Loan application/acceptance activity there was no mischievous intent, or misrepresentation of Heather Gardens Association and/or its community at large. CEO Rea emphasized that the Association met the Requirements to Apply for the PPP Loan as well as the requirements to have the Loan ultimately forgiven.

CFO Counts provided important information that was helpful to the Board of Directors and the community in understanding the PPP Loan process. When applying for the loan Heather Gardens needed to follow guidance from the Small Business Administration (SBA). The SBA provided FAQs as of May 5, 2020, which Heather Gardens used as a guide, especially for Question #37 of the FAQs that specifically addressed one of the concerns. CFO Counts provided the Q&A as follows: **Question 37** - Do businesses owned by private companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan? The SBA Answer -



Heather Gardens

ASSOCIATION

In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should carefully review the required certification that "current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." Borrowers must make this certification in good faith, considering their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification. This is the end of the answer by the SBA.

CFO Counts said going back to Heather Garden's situation there has been some information noted that is not accurate and provide the correct details of Heather Gardens' financial situation. At the time of the original application (April 2020), there was uncertainty about the global pandemic and its impact on the local, national, and global economies. At the end of 2019, Heather Gardens had \$22,000 in its Operating Fund (equity account). The cash balance in the Operating Fund is mainly due to the Impound Fund, a liability owed to the owners. Had the HG community seen a large mortality rate with COVID, it is conceivable that HG could have seen a dramatic drop in HOA fees requiring us to go deep into the cash balance resulting in a large negative equity balance in our Operating Fund. In fact, at the end of 2020, Heather Garden's Operating Fund was actually at a negative \$89,000. The negative number can be seen in the audited financial statements for 2020. Furthermore, the government was enacting mortgage and rent restrictions on banks and landlords; at the time it would not have been unreasonable to think HOA fees could have been added to the restrictions. As of February 2020, the month prior to the shutdown, Heather Garden's Accounts Receivable balance was \$138,000 which are HOA fees that were owed from residents and have not been received. As of July 2021, the month Heather Gardens applied for the loan forgiveness, the Accounts Receivable balance was \$430,000, a 211% increase. Although Heather Gardens did not know this information at the time of the loan application, actual facts demonstrate the impact COVID had on HOA collections. The above facts met the "good faith" and "current economic uncertainty" criteria required by the SBA. This information was first submitted to KeyBank which had a PPP Team that reviewed the information and forwarded it to the SBA that approved the loan. The PPP funds were received in April 2020.

The application for the loan forgiveness process began in June 2021. Heather Gardens had to certify a variety of items, but the applicable certifications for this discussion are as follows:

- The dollar amount for which forgiveness is requested was used to pay business



Heather Gardens

ASSOCIATION

costs that are eligible for forgiveness, in Heather Gardens' case it was the payroll costs.

- In the original loan agreement with KeyBank (April 2020), Heather Gardens was required to represent and warrant, among other items, the following:
 - Borrower shall use the Loan only for payroll costs, interest on mortgages, rent, and utilities
 - Borrower shall use account no. *****348 (Heather Gardens operating bank account) to facilitate the application of the Loan towards the approved costs

The loan proceeds were deposited into Heather Gardens' operating bank account. This is the same account used for all other deposits including the HOA payments received from residents.

All payroll and payroll-related costs were and continue to be paid out of the Heather Gardens operating bank account *****348, period. Neither KeyBank nor SBA required us to open a PPP loan proceeds bank account, that was a Heather Gardens internal decision. There have been many references about the bank account that was set up by Heather Gardens that showed the PPP loan proceeds but was not a requirement from KeyBank or SBA. This was an internal matter. It is important to understand that the loan proceeds were deposited into the Heather Gardens operating bank account which is the same account that all funds go into. The approved and eligible payroll costs all were paid out from this operating account.

During this application forgiveness process, Heather Gardens had to certify the following three items:

1. The Borrower did not reduce the annual salary or hourly wages of any employee by more than 25 percent during the Covered Period compared to the most recent full quarter before the Covered Period. **We met this certification.** In fact, many employees were paid an additional \$3/hour as HERO pay that started in 2020 and went through 2021.
2. The Borrower did not reduce the number of employees or the average paid hours of employees between January 1, 2020, and the end of the Covered Period. **We did not meet this certification,** but by answering no, the following clarifying question further defined meeting the certification.
3. The Borrower was unable to operate during the Covered Period at the same level of business activity before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020, and December 31, 2020, by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement



050

Heather Gardens ASSOCIATION

related to COVID-19. **We met this certification.**

What is most important for our community to know is that Heather Gardens met the criteria for obtaining the loan and met the criteria required for the forgiveness of the loan. Both processes were reviewed and approved by a designated PPP loan team at KeyBank and the SBA.

CFO Counts pointed out that we all are seeing a high level of inflation within this community and across the nation because of these policies and funds that have gone into this economy that are now increasing the inflation rate. If the \$1 million plus will help defray some of the inflation cost and help out the community in this greatest generation, he sees no issues.

After the CFO Counts presentation, the floor was opened to the Board of Directors for comments and questions. Their questions were all answered. Following the floor was opened to the community and their comments and questions were answered.

Based upon the Board members and community discussion, the Board of Directors took no further action on the PPP loan.

Adjournment: There being no further business, the meeting was adjourned at 4:22 p.m.

David Baxter, Secretary

Evelyn Ybarra, Recording Secretary