



THE LIHTC Property Compliance ISSUE

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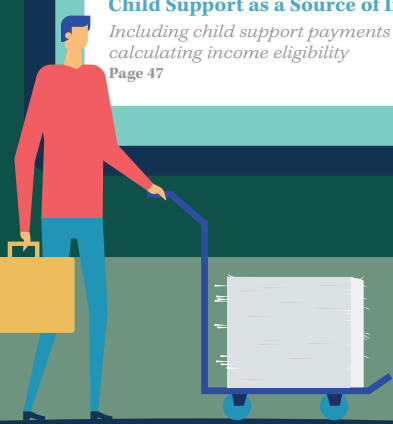
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Setting the Stage for a Timely Historic Tax Credit Review



CINDY HAMILTON, HERITAGE CONSULTING GROUP

Timing is everything. In real estate development, this phrase can be attributed to any number of moving parts that encompass each individual development. This saying holds even more weight for real estate development projects using historic tax credits (HTCs).

HTC projects require design review through submissions to both the state historic preservation office (SHPO) and the National Park Service (NPS). Each submission results in an approximately 60-day review, but this review timeframe can be significantly extended, which can have serious implications for financing and construction. It is not uncommon for projects to be placed on hold by the SHPO and/or NPS if the respective reviewer files a request for information (RFI). RFIs can further elongate the review timeline beyond the standard 60 days. Because SHPO and the NPS each have the ability to place projects on hold pending receipt of additional information, and because the review clock restarts with each RFI response submission, the 60-day review can easily extend to 120 days.

As developers and investors navigate the HTC process, understanding how to ensure a timely review can be the difference between a successful and unsuccessful project. This article looks at different aspects of the application process and their potential to impact review timing. To better understand the reviewer's perspectives on how to properly navigate review timelines, Heritage Consulting Group consulted members of its own staff, which consists of former

SHPO project reviewers from Massachusetts, New Jersey and Wisconsin.

Understanding the Level of Documentation Required

A Part 2 application that lacks the basic components required through the HTC incentive will inevitably be placed on hold or, worse, denied. It is important to understand the level of documentation required for the reviewers to consider the application complete. This documentation includes both a comprehensive photo set taken before any demolition or new construction, as well as an adequate drawing set.

The reviewers focus heavily on the existing physical conditions of the building to understand what significant features and finishes remain. According to Jen Davel, former deputy state historic preservation officer and HTC reviewer in Wisconsin, "thorough photographic documentation is of the utmost importance." She continued, "if the building is not adequately photographed, reviewers will very likely request additional photos to understand the historic features and finishes." Lack of sufficient pre-rehabilitation documentation is one of the most common reasons for denial of an HTC project.

Linda Santoro, a former HTC project reviewer in Massachusetts, echoed Davel's sentiments. Santoro said, "now more than ever, reviewers are requiring more in-depth documentation, including photos and drawings, so that they can have a complete understanding of the existing conditions and proposed plans." The level of documentation required, however, is largely dependent upon the building type and the complexities of the design.

The Part 2 process extends the full duration of design development and construction, documenting the full scope of the project including any changes that occur during the course of construction. Following initial documentation of the building, a critical decision must be made before submitting the Part 2 application: is it advantageous to submit the Part 2 early in the process with schematic drawings to obtain baseline approvals or should the Part 2 be submitted once drawings have advanced? There is no right or wrong answer to when a Part 2 application should be submitted, but there are pros and cons to either approach. The answer to that question depends on the specifics of each project but the consequences of this decision can dramatically impact a project schedule.

Knowing When to Submit a Part 2 Application

Submitting a Part 2 with schematic-level architectural drawings can be a successful approach for developments that are more straightforward in nature, such as mill buildings or warehouses that generally have basic floor plans and are devoid of ornate architectural features. Part 2 applications for such buildings can be more linear, as the largely open floor plans with minimal architectural detailing typically have less obstacles to encounter in the HTC reviews.

By contrast, buildings that are more ornate, such as downtown office buildings, often have more design challenges to resolve in the Part 2 process. These buildings often retain original lobbies, corridors and office spaces that are finished with a higher degree of ornamentation, such as decorative plaster work. It may

be tempting to submit a Part 2 application at the early stage of a project, when it would be helpful to have approvals for conceptual layouts, but the program requires that the Part 2 application be comprehensive, inclusive of not only layouts, but also proposed finishes in all building spaces. A Part 2 application for an intact office building that is lacking proposed finish schedules and articulation of mechanical design will inevitably result in an RFI from SHPO and NPS. This delay could extend what should be a 60-day review to 120 days or more.

Alternatively, one of the most foolproof ways to ensure a more expeditious Part 2 review is to submit a fully developed project with advanced drawing sets that include full mechanical electrical and plumbing (MEP) designs, among other details. While the advantage in this approach is that an RFI from SHPO or the NPS is less likely, the downside is a delay in the initial submission. Davel expanded upon this, noting that, "in submitting more developed drawings, reviewers will see the whole picture. For example, including MEP drawings with the Part 2 submission will allow the reviewer to understand how the mechanical systems will impact ceilings and walls, which may be character-defining features."

Strategies for balancing the need for early feedback versus the need for a Part 2 approval with limited conditions include the preliminary review option provided by the NPS. This option allows for a single-issue review before the Part 2 submission. Another strategy is to engage the SHPO reviewers during the early design phase. SHPO reviewers are generally very willing to review preliminary designs and will often make site visits to get an in-person view.

Regardless of when the Part 2 application is submitted, it is important to ensure that the narrative accurately describes the work to be completed. The HTC program requires that the Part 2 narrative fully describe all aspects of the project. Project consultants should have a keen understanding of the scope of work and convey the full scope to the reviewers. It is

very common for reviews to be placed on hold and for reviewers to issue an RFI because the narrative does not match the drawings. Santoro explained this, stating, “the drawings and narrative need to match. If there is a big difference between the two, the application will very likely be reviewed with a fine-tooth comb and may result in RFIs that place the project on hold.”

In many cases, the buildings being rehabilitated have been altered over time. These alterations result in modern finishes that either replaced or concealed historic finishes. As finish plans for the proposed rehabilitation are developed, it is important for project teams to have a strong understanding of the building’s materials. Reviewers frequently ask what finishes lie beneath or above modern finishes in an effort to determine the original design of the building and if proposed finishes are appropriate. Conducting selective demolition, therefore, can help to inform the project team what floor, wall and ceiling finishes might be appropriate, as well as explain to the reviewers at an early stage what the existing conditions of the building are. This may also assist the project in team in design development, as the NPS will likely require remaining historic finishes to be re-exposed. Historic consultants must anticipate what a reviewer might need to know in order to complete their review and avoid project review delays.

Open Line of Communication with Reviewers

Perhaps one of the most impactful ways of ensuring timely reviews is to keep an open line of communication with the reviewers. This particular tool was impacted by the COVID-19 pandemic more than any other, as reviewers at the federal level, as well as many states, continue to work remotely. Regardless, reviewers have maintained their accessibility and have embraced video conferencing, which has permitted unprecedented collaboration.

Speaking from experience, Linda Santoro explained reviewers’ readiness to discuss a wide range of topics relating to the projects, including ambitious scope items, i.e., rooftop additions or more typical requests, such as the potential to replace windows. As she explained, “reviewers want these projects to succeed. But more importantly, they enjoy being involved in the projects, as opposed to being surprised by certain proposals.” Communication with the reviewers, however, should be limited to specific questions and is often best handled by the project’s consultant. Multiple lines of communication from a project team may lead to confusion and frustration and could ultimately delay a review due to the likelihood of miscommunication.

Conclusion

As is the case throughout real estate development, proper timing within the HTC process can make or break a project. From project financing to construction change orders, the HTC review period can impose significant challenges to developers and investors alike. Developing a strategy for when to submit the Part 2 application is an important component in the process. Understanding the timing of reviews, and accounting for this timeline in application submissions, can play an extremely important role in keeping projects on target.

Although there is no direct shortcut to getting reviews completed on an as-needed basis, project teams can set themselves up to be minimally impacted by the review timelines. Perhaps the most important aspect to having a successful project, however, is to have a qualified and experienced project team that understands how to navigate HTC reviews. ❖

Cindy Hamilton is president of Heritage Consulting Group.

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