

**TROY COMMUNITY LAND BANK
RESOLUTION TO EXPEND AMERICAN RESCUE PLAN FUNDS (ARPA)**

A Regular meeting of the Troy Community Land Bank Corporation (the “TCLB”) was convened pursuant to and was in all respects duly held pursuant to Governor’s Executive Order 202.1 (2020) and all extensions of the order permits the board to consider the use of telephone conferencing, “to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed; and due notice of the time and place of said meeting was duly given in accordance with the Governor’s Executive Order 202.1 (2020) and all extensions of the Order, on May 24, 2022 at 8:30 am o’clock local time, local time.

The meeting was called to order by the Chair of TCLB and, upon roll being called, the following members of the Agency were:

PRESENT:

Heather King	Chair
Suzanne Spellen	Vice-Chair
Elbert Watson	Treasurer
Brian Barker	Secretary
Andrew Cooper	Member
Jeanette Nicholson	Member
John Carmello	Member
Krystina Marable	Member
Patricia Reilly	Member

WHEREAS, the City of Troy has applied for and has been awarded funds from the United States Government through the State and Local Fiscal Recovery Fund (“SLFRF”) under the American Rescue Plan Act of 2021 (“ARPA”), enacted on March 11, 2021, as Public Law No: 117-2; an

WHEREAS, the purpose of ARPA is to provide fiscal relief to address the continued impact of COVID-19 on the economy, public health, state and local governments, non-profits, individuals, and businesses; and

WHEREAS, under section 603(c)(3) of Title VI of the Social Security Act, the City may transfer SLFRF funds to a private nonprofit organization as that term is defined under 42 U.S.C. 11360(19), for the purpose of meeting ARPA’s goals; and

WHEREAS, the Subrecipient, Troy Community Land Bank Corporation, is a private nonprofit

organization as defined under 42 U.S.C. 11360(19), whose mission is to provide affordable housing and to encourage responsible home ownership for low-income residents of the City of Troy; and

WHEREAS, the Land Bank has received its first disbursement of ARPA/SLFRF and pursuant to the terms and conditions of its sub-recipient Agreement entered into with the City of Troy the Land Bank Finance Committee and Land Bank Board has reviewed the proposed expenses to be paid from the allocated funds as set forth in detail on the attached Schedule “A;” and

WHEREAS, the Land Bank Board has sought legal review of the Eligible Uses of ARPA funds pursuant to 31 C.F.R. 35.6; and

WHEREAS the Land Bank Board and its Legal Counsel have reviewed the Eligible Uses and the proposed expenditures and have made the determination that all expenses attached hereto as Schedule “A” are deemed Eligible Uses of ARPA funds pursuant to 31 C.F.R. 35.6 as set forth more fully in the supporting memorandum attached hereto a Schedule “B;” and

NOW, THEREFORE, BE IT RESOLVED by the Troy Community Land Bank Corporation that:

1. That the Troy Community Land Bank Corporation hereby approves payment of all expenses as set forth in Schedule “A” pursuant to the Sub-Recipient Agreement with the City of Troy; and
2. The Chairman, Treasurer and General Counsel are authorized to make payment of all expenses a set forth on Schedule “A;” and
3. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Heather King	Chair	VOTING <u>YES</u>
Suzanne Spellen	Vice-Chair	VOTING <u>YES</u>
Elbert Watson	Treasurer	VOTING <u>YES</u>
Brian Barker	Secretary	VOTING <u>YES</u>
Andrew Cooper	Member	VOTING <u>YES</u>
Jeanette Nicholson	Member	VOTING <u>YES</u>
John Carmello	Member	VOTING <u>YES</u>
Krystina Marable	Member	VOTING <u>YES</u>
Patricia Reilly	Member	VOTING <u>YES</u>

The foregoing Resolution was thereupon declared duly adopted unanimously meeting the

requirements of the Land Bank's bylaws requiring a majority of the Board approving this resolution.

**SCHEDULE A
EXPENSES**

1	TAP - LCAP architectural as-builts	\$ 10,000.00	\$ 10,000.00
2	Bonadio	\$ 7,750.00	\$ 7,750.00
3	Bowers	\$ 2,125.00	
	Bowers	\$ 3,765.00	
	Bowers	\$ 3,680.00	\$ 9,570.00
4	CenterState - NYLBA dues	\$ 1,000.00	\$ 1,000.00
6	Hedgeman Law - Dec	\$ 3,135.00	
	Hedgeman Law - Feb	\$ 5,455.76	
	Hedgeman Law - Jan	\$ 3,046.35	\$ 11,637.11
7	National Grid - 11 Winnie	\$ 168.22	
	National Grid - 3229 Sixth	\$ 18.06	
	National Grid - 54 Fifth	\$ 221.43	
	National Grid - 54 Fifth	\$ 329.83	
	National Grid - 791 River Floor 1	\$ 272.25	
	National Grid - 791 River Floor 2	\$ 336.10	
	National Grid - 791 River Floor 3	\$ 58.69	\$ 1,404.58
8	Bobo - 11 Winnie	\$ 1,000.00	\$ 1,000.00
9	Bobo - 3229 Sixth	\$ 19,000.00	\$ 19,000.00
11	City of Troy - 3209-11 Seventh - vacant building fee	\$ 400.00	\$ 400.00
	City of Troy - 791 River	\$ 6,184.00	\$ 6,184.00
13	Holland Property Management - 791 River Street - Exterior panels	\$ 39,349.00	\$ 39,349.00
14	Positive Communities - Uploaded 01-12-2022.pdf	\$ 2,210.00	
	Positive Communities	\$ 1,742.50	
	Positive Communities	\$ 2,082.50	\$ 6,035.00
15	Reeves Engineering - 11 Winnie	\$ 5,090.00	
	Reeves Engineering - 54 Fifth	\$ 8,355.00	\$ 13,445.00
16	SEAT - 54 Fifth	\$ 16,200.00	\$ 16,200.00
17	TRIP - Aug 2021	\$ 2,240.78	
	TRIP - Dec 2021	\$ 2,113.81	
	TRIP - Jan 2022	\$ 3,307.63	
	TRIP - July 2021	\$ 2,726.89	
	TRIP - June 2021	\$ 2,910.30	
	TRIP - Nov 2021	\$ 1,981.32	
	TRIP - Oct 2021	\$ 3,287.05	
	TRIP - Sept 2021	\$ 3,253.67	\$ 21,821.45
18	Lee & Mason - March coverage	\$ 323.45	
	Lee & Mason - April coverage	\$ 313.02	
	Lee & Mason Total Unpaid Invoices	\$ 636.47	
SUM TOTAL UNPAID INVOICES:		\$ 165,432.61	

**SCHEDULE B
MEMO**

The Troy Community Land Bank was incorporated in 2014. Its focus area is North Central. The Land Bank operates in Census Tract 404 in Rensselaer County.¹ Pursuant to its funding Agreement with Enterprise Community Partners, the Land Bank must comply with an affordable housing covenant and a minimum of 80% of units of the Land Bank’s projects must serve residents with incomes at 100% AMI or below. This restriction applies for at least ten years from the initial date of occupancy. The Land Bank incorporates this restriction into its deeds transferring any real property or any leases or other instruments conveying real property benefiting from this Agreement.

In 2014, the Land Bank was initially funded with initial funds from the City of Troy in the amount of \$50,000. In addition, the City granted the use of two City employees to operate the Land Bank.

The Land Bank subsequently received the following grant support from Enterprise Community Partners:

Round	Amount
2	\$1,257,748
4	\$900,000

The Enterprise Community Partners Funds did not include funding to cover the complete cost of salaries and overhead. No further funds or employee time were given to the Land Bank from the City to fund operations after its initial investment that ended in 2016. The only other revenue source for the Land Bank has been property sales. The inventory of properties purchased from the City and or donated to the Land Bank had no significant value that would generate sustainable revenue for operations.

The impact of the pandemic on Land Bank operations and finances has been significant and in some ways catastrophic. In March of 2020, the Land Bank was in the midst of several projects including:

The gut-rehab of 54 Fifth Avenue & 11 Winnie Avenue;
The stabilization of 3229 Sixth Avenue; and
A Design-Build of 791 River Street.

All projects were at various stages of completion but were no more than 50% complete when the pandemic shut down hit. The immediate impact on the projects was the shut down of all labor performing construction work. In addition, when work was able to resume, almost six months later, the materials needed to complete the projects were also delayed and when they became available, the cost of lumber, panels, masonry block and labor had risen exponentially, adding unforeseen contingent costs. Supply chain issues resulted in delays in receiving materials, difficulties in securing and maintaining subcontractors and some properties further deteriorated

¹ [Census Tract 404, Rensselaer County, New York Demographics and Housing 2020 Decennial Census | rgj.com](https://www.rgj.com/story/news/2020/04/01/census-tract-404-research/)

as they were exposed to the weather for a longer period of time due to the pause, resulting in unanticipated additional project expenses.

Enterprise Communities itself recognized the COVID impacts because it extended the deadline to complete deliverables from Jan 01, 2019 - Dec 31, 2020. However the bottom line was that cost of operations originally projected to cover 24 months had to cover 39 months.

From our best calculation, costs to finish the project had increased by 20-30%. The increased costs of completion were not foreseeable and resulted in creating debt for the organization. In addition to the unforeseen costs, the delay in finishing the projects to list them for sale, delayed sales revenue realization causing cash flow issues for the Land Bank effecting its operations.

As of the date of this memo, 54 Fifth and 11 Winnie are finally complete and under contract for sale. We anticipate closing on the sales by June 30.

In or about the Fall of 2021, the Land Bank met with the Deputy Mayor, City Comptroller, the City of Troy Economic Director and representatives from Habitat for Humanity and the Troy Housing Authority to discuss affordable housing projects for the City and funds to become available to the City of Troy through the American Rescue Plan (ARPA) of 2021. At that time, the parties discussed different affordable housing projects that could be completed using ARPA Funds which included those properties mentioned above and a new project to be undertaken in connection with the Legacy Cities grant program.²

Based upon this discussion, the Land Bank submitted an application and budget proposal to receive \$1 million of ARPA Funds. The request is summarized as follows:

Pursuant to its enacting legislation and its Grant Funding Agreement with Enterprise Community, the Land Bank's focus neighborhood is North Central, a census-tracked area. Eighty (80) percent of the projects that the land bank undertakes must be for affordable housing owner occupancy or rental for people whose income does not exceed 100% of the AMI. All affordable properties must have restrictive covenants on the properties requiring that the property, including rents, remain affordable for a period of ten (10) years.

The current affordable housing projects are:

1. 3229 Sixth Avenue
2. 54 Fifth Avenue
3. 11 Winnie Avenue
4. 791 River Street

In addition, the Land Bank seeks to apply to the Legacy Cities program for additional grant funds to support an additional affordable housing project that would include the following properties:

1. 3340 Sixth Ave
2. 3230 Sixth Ave

² <https://hcr.ny.gov/legacy-city-access-program#:~:text=The%20Legacy%20City%20Access%20Program%20will%20address%20these,promote%20affordable%20homeownership%20for%20underserved%20families%2C%20particularly%20first-time>

3. 3229 Sixth Ave
4. 3209 Seventh
5. 3211 Seventh
6. 17 Park Ave
7. 834 River
8. 836 River
9. 3215 Sixth Ave

TCLB seeks ARPA funding to cover the following costs/scope of work to be performed on all properties:

- Property clean outs
- Streetscape improvements, parking, gangway completion
- Fencing, grading and landscaping
- Closing/title costs for property acquisition and disposition
- Property/Casualty Insurance
- Maintenance costs-snow/lawn
- Grant writing assistance for submission of LCAP application
- To hire a Project manager
- Conduct land surveys
- Conduct environmental surveys and remediation
- Obtain construction drawings and scope of work
- Architectural services
- General construction/rehab costs
- Demolition costs

In addition to the direct funding for project costs and capital expenditures, the Land Bank also sought ARPA recovery funds to mitigate the financial hardship the pandemic caused to the Land Bank, including its decline in revenue and increased project costs. Such expenditures included property maintenance and insurance costs and program staff, professional services costs and other overhead.

The Land Bank's proposal for the expenditure of ARPA Funds is legitimate and well within the legal bounds of permissible uses pursuant to the Final Treasury Rule 31 CFR 35.6.

The American Rescue Plan (ARPA) of 2021 established the State and Local Fiscal Recovery Funds Program (SLFRF) to provide state, local and tribal Governments with the resources needed to respond to the Pandemic and its economic effects in order to build a stronger, more equitable economy during recovery. SLFRF is specifically designed to provide vital resources to respond to the pandemic and its economic effects and to **replace revenue lost** due to the public health emergency.

Specifically, ARPA provides the SLFRF funds may be used to respond to the negative economic impacts of the public health emergency, including assistance to households, small business and nonprofits. The final rule (31 CFR 35.6) gives municipalities substantial flexibility to determine how best to use the payments from the SLFRF program to meet the needs of their communities.

The Final Treasury Rule 31 CFR 35.6 sets forth Eligible uses for ARPA Funds and a framework through which an eligible use determination may be made by recipients. The Rule states in pertinent part that an eligible use is:

“(b)(i) A program, service, or capital expenditure is eligible under this paragraph (b)(1) if a recipient identifies a harm or impact to a beneficiary or class of beneficiaries caused or exacerbated by the public health emergency or its negative economic impacts and the program, service, or capital expenditure responds to such harm.

(ii) A program, service, or capital expenditure responds to a harm or impact experienced by an identified beneficiary or class of beneficiaries if it is reasonably designed to benefit the beneficiary or class of beneficiaries that experienced the harm or impact and is related and reasonably proportional to the extent and type of harm or impact experienced.”³

The Rule further identifies presumptive harm or impact on certain impacted or disproportionately impacted beneficiaries. Impacted beneficiaries may include households or populations that experienced increased housing insecurity and funds to be used by affordable housing programs. In addition, the Rule affirmatively states:

“The following households, communities, small businesses, and nonprofit organizations are presumed to be disproportionately impacted by the public health emergency or its negative economic impacts:

(A) Households and populations residing in a qualified census tract... ”⁴

Once a presumed beneficiary or impacted nonprofit is identified, the next step is to determine if the proposed response and the expense attached thereto is a reasonably proportional response to the economic harm.

“Enumerated eligible uses: Responses presumed reasonably proportional. A recipient may use funds to respond to the public health emergency or its negative economic impacts on a beneficiary or class of beneficiaries for one or more of the following purposes unless such use is grossly disproportionate to the harm caused or exacerbated by the public health emergency or its negative economic impacts:⁵

(5) Development, repair, and operation of affordable housing and services or programs to increase long-term housing security;

(11) A program, service, capital expenditure, or other assistance that is provided to a disproportionately impacted household, population, or community, including:

(iv) Capital expenditures and other services to address vacant or abandoned properties;

(C) Assistance to nonprofit organizations including programs, services, or capital expenditures, including loans or grants to mitigate financial hardship such as declines in revenues or increased costs, or technical assistance; ”⁶

Based upon the foregoing summary of Legal eligible uses of ARPA Funds, it is clear that the Land

³ 31 C.F.R. 35.6 (b)(1)(i) and (ii).

⁴ 31 C.F.R. 35.6 (2)(iii)(A).

⁵ 31 C.F.R. 35.6(b)(3)

⁶ 31 C.F.R. 35.6(b)(3)(C)

Bank is permitted to expend funds for affordable housing projects, capital expenditures and other services to address vacant or abandoned properties, and may use ARPA funds to mitigate financial hardship such as declines in revenues or increased costs (overhead, staff, insurance). The use of ARPA funds to pay existing debt resulting directly from the pandemic pause is exactly the type of relief ARPA is designed to provide and surely will put the Land Bank back on pre-pandemic solid ground.