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HISTORIC TAX CREDIT TOOL BOX

Rehabbing a Single Historic Building with Multiple Owners



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At first blush, property ownership seems like a simple issue.

Most often, it is straightforward, with a single owner for the land and building. However, it is also easy to be caught off guard with a complicated structure that could include a land lease, a land lease with multiple owners or a condominium structure in a single property

These ownership structures can and do affect and complicate historic tax credit (HTC) projects, both in terms of certifying the property as a historic structure and certifying the rehabilitation. It is also important to recognize that for HTC purposes, the National Park Service (NPS) interprets ownership for listing in the National Register of Historic Places (National Register) differently from how it interprets ownership for certified historic structures in an HTC development. For example, for listing in the National Register, a property may be listed if a majority of owners concur in the listing. For an HTC project, the owner undertaking the rehabilitation must show that other owners are aware of the project, as the NPS views a property as a single historic resource. Consequently, these two roles of ownership have

significant implications for buildings with multiple owners. The relatively new guidance on functionally related properties may help in deciphering the NPS interpretation of ownership.

If multiple owners complete work in a rehabilitation, the NPS still considers this one HTC project, regardless of ownership, and will only issue one Part 3 at the end of the completed project. The applicants are reliant on the completion of all work proposed by others in order to obtain Part 3 approval. Until all work is complete, the NPS will not issue a Part 3 approval. While the NPS sees this as a way to protect buildings from being partially compliant with the Secretary of the Interior's Standards for Rehabilitation (Standards), it increases the risk for an owner due to their reliance on the other owners to complete their work as approved in the Part 2.

It is not uncommon to have a large building divided into separate condominiums, each with separate unrelated owners. In situations like this, where there are multiple owners of a single historic building,

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it is paramount to the success of a project to obtain the cooperation of the other condominium owners as work they undertake could affect an applicant’s ability to obtain approvals and ultimately, use HTCs. One such HTC project which overcame the challenges of condominium owner cooperation was the recently completed Second National Bank Building in Wilkes-Barre, Pa.

Case Study: The Second National Bank Building, Wilkes-Barre, Pa.

History of the Second National Bank Building

The Second National Bank Building located at 11 West Market Street in Wilkes-Barre Pa., is a contributing resource to the River Street Historic District, which was originally listed in the National Register in 1979. Wilkes-Barre was famous in the late 19th through mid-20th century for the anthracite coal industry. The area surrounding River Street was an elite neighborhood, which housed the city’s financial center and the homes of wealthy industrialists. In the late 19th through the early 20th century, many buildings related to finance and banking were built, including the Second National Bank Building. Today, the Second National Bank Building is one of the surviving commercial buildings dating to the River Street Historic District’s time as Wilkes-Barre’s premier neighborhood.

The 11-story brick and terracotta tower at 11 West Market St. was built in 1906 as the first skyscraper in Wilkes Barre. It was designed in the Beaux Arts style by local architects McCormick and French of Wilkes-Barre. The building was constructed for the Second National Bank, a national bank established in Wilkes-Barre in 1863. Located on the southeast corner of the intersection of Franklin and Market streets, the Second National Bank building, along with two other

banks at the intersection, formed the financial hub of the city. The three large banks at this corner date from the era of the City Beautiful Movement, when American architects inspired by classical architecture transformed industrial centers into “white cities” reflecting the nation’s new-found status as a world power. McCormick and French also designed the Wyoming National Bank, while Daniel H. Burnham of Chicago designed the United Penn Bank Building (also known as the Citizen’s Bank Center).

Image: Courtesy of Heritage Consulting Group
The Second National Bank Building in Wilkes-Barre, Pa., featured two unrelated condominium owners, which added complexity to the historic tax credit-financed renovation.



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The bank's original office was located on the same site as the subject building (11 West Market Street) and built its new headquarters in 1906. The ground floor was the bank's lobby and teller area, where the public accessed the bank's services, while the upper floors housed offices for the bank as well as various businesses. A four-story addition was constructed at the building's south elevation in the 1930s; a second three-story addition was built to the south of the 1930s addition around 1960.

Project Overview

Wilkes-Barre-based developer D&D Realty recently completed a \$5 million historic rehabilitation of the Second National Bank Building known as Riverview West. The Riverview West project transformed a long-vacant office building into 40 luxury apartments with one floor of office space. In addition to federal HTCs, the building was selected through a competitive process to receive a state HTC allocation.

The development successfully rehabilitated the building into luxury apartments and office space, filling a need for quality housing in downtown Wilkes-Barre. The project involved the rehabilitation of the third floor as leasable office space and the upper floors as apartments. In reconfiguring the upper floors for reuse as apartments, the historic corridor locations were maintained. After multiple renovation campaigns and years of vacancy, little of the original finishes remained, with the exception of the ninth floor, where the original millwork and doorways were maintained in the corridor. The modern aluminum windows were replaced with new compatible windows on the upper floors.

Ownership Structure

The basement, first floor and second floor, with the exception of limited shared common areas, were considered a separate condominium, under separate ownership unrelated to the HTC applicant. A branch

of PNC Bank is at those levels within the separate condominium. D&D Realty maintained access to the upper floors through a shared elevator lobby at the first floor, which also accesses the bank branch.

Project Challenges

While the project scope was relatively straightforward, the deal was complicated by the fact that the building contained two unrelated condominium owners. Consequently, as part of the HTC submission, it was necessary to submit floor plans that denoted the ownership of each condominium. Perhaps the most important aspect of the project involved the NPS requirement to obtain consent from the other condominium owners for the submission of the HTC application. If the other condominium owner declined to consent to the HTC submission, the application may not have been reviewed by the NPS and consequently the HTC project would not have moved forward.

Because the NPS views the building as one historic resource, the distinct sections with unrelated owners all fell under project design review of the current project. Thus, any work undertaken by the other condominium owner could have affected the HTC project should the work have not met the Standards. As a result, it was important for the applicant to forge a positive working relationship with the other owner to ensure that the HTC project would be successful. When there are multiple owners in different sections of the building, there is always the potential for unauthorized work, which could jeopardize the HTCs, should it not meet the Standards. To help solve this problem, the other owner was asked to execute a letter confirming that any work completed during the current project and within the five-year period following the completion of the project would be submitted for review by state historic preservation office (SHPO) and the NPS. In the end, both owners agreed to the HTC submission requirements, which lessened the risk of possible

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denial of the project's certification due to unauthorized work not in keeping with the Standards.

Conclusion

Projects that have multiple owners can present challenges that could result in project delays and may preclude a project from moving forward using HTCs. It is important to recognize up front that for buildings with multiple separate ownership entities, the project requirements extend beyond obtaining approvals for proposed work and require consent from the other owners for the HTC project to be undertaken, as seen in the case of the Second National Bank Building.

Perhaps the most important aspect of the project is maintaining a working relationship with the other owners and securing written confirmation of their understanding of the HTC process in order to reduce

exposure. It is also extremely important to have buy-in from the other owners and for them to agree that any work they may undertake on the building will meet the Standards during the current project and the five-year review period following the completion of the project, as any nonconforming work may jeopardize certification of the project and ultimately the use of HTCs. An experienced project team that understands the nuances of the HTC process can help avoid project delays and can steer a challenging project to approval.



John M. Tess is president and founder of Heritage Consulting Group, a national firm that assists property owners seeking local, state and federal historic tax incentives for the rehabilitation of historic properties. Since 1982 Heritage Consulting Group has represented historic projects totaling more than \$3 billion in rehabilitation construction. He can be reached at 503-228-0272 or jmtess@heritage-consulting.com.

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