

The Development Side of Building Quimper Village Finance and Legal Considerations

Carolyn Salmon
QV Finance & Legal Team Leader

*Part of the Session “How to Grow a Senior Cohousing Community”
Presented at the Aging Better Together Cohousing Conference, May 2016
in Salt Lake City.*

Pat and David have told you the story of how Quimper Village was imagine, initiated and marketed. David will tell you it is a whole lot easier to market the community if you have something to sell. I’m going to tell you how we simultaneously addressed the legal and financial requirements for building the physical community so he will have something to sell.

The development side of Quimper Village has been on fast track since we began. Our motto is: we don’t buy green bananas. Our goal is move-in within 3 years of our decision to build Quimper Village.

While we were pulling together the first households and promoting the Getting It Built workshop, we started to educate ourselves about how to develop a housing project. We invited local architects, lenders, a lawyer and general contractor to talk to us about what we needed to do and what roles their professions play in development. We asked lots of questions about costs, processes and governmental requirements.

Based on what we learned from our local experts and at the GIB workshop, and assessing our resources, we decided we could be our own developer. That would save us at least 5% of the cost of the project and enable us to control the outcome. Sometimes we have second thoughts about that.

Seniors have some specific resources that younger folks don’t have, that may enable them to be the developers.

– time, lots of time– most of our members are retired and have time to devote to a significant project.

- all kinds of life experiences and skills which will be helpful - financial services, business owners, researchers & writers, IT skills, counselors, teachers, etc.
- stable incomes – we have predictable pensions, social security, and other established income sources so that we will be able to purchase the homes when completed.
- accumulated financial assets we can draw on, such as equity in our current homes, retirement savings and other investments to help finance the project

We established a Finance and Legal Team to be responsible for our financial and legal stuff.

This is what we considered our responsibility.

- Preparing budgets and loan applications
- Drafting & updating Offering Memorandums
- Drafting contracts
- Drafting future owners' association documents
- Handling purchases and sale of real estate
- Accounting

The first question we should have asked those experts was **what is are we selling?**

Seemed pretty obvious to us that we were selling houses to prospective members. Sounded like real estate to us. Not quite.

In developing a cohousing community, we're not selling houses, because they haven't been built yet. We are selling **memberships** or an **interest** in an organization that **plans** to build houses and **plans** to sell the houses to the members, if and when they are completed. In the financial world, this is called selling a security.

Federal Securities Exchange Commission regulations require that all securities be registered with the SEC unless specifically exempted.

There are exemptions for small offerings, such as our \$10 million project, if the state where the project is located has regulations for small projects.

Each state makes its own regulations. Some states, such as California, have very few regulations for small projects, other than requiring that the seller provide full disclosure of the risks involved.

Others, such as Washington State, have more complicated regulations that restrict where and how and to whom sales can be made. Since we are developing our cohousing community in Washington State we are subject to WA securities regulations. The regulation that applies to our size of project and allows us the greatest freedom in selling our memberships limits us to marketing and selling our memberships only to individuals and couples whose primary residence is in Washington State.

WA requires that we provide an up-to-date Offering Memorandum that discloses all material facts, expectations and **risks** to any person who is considering purchasing a membership. All of our advertising material must include information about this limitation. Needless to say, this limitation has been frustrating for our marketing folks; although your may have noticed, David didn't mention it.

The Washington residency requirement may have been a blessing in disguise. Most of our members live within 2 hours of Port Townsend and are able to attend most of our general membership meetings and social events and participate on teams. This has made integrating these folks into the community relatively easy. It has been much harder to integrate those folks who live further away and cannot attend on a regular basis.

The lesson here is spend the money early on a consultation with a securities attorney to keep yourselves legal in your development process. (Do you sense a hidden story?...there is. We skated along thinking we were selling houses for about 6 months, until we discovered how thin the ice was. It cost lots of time and dollars to straighten out the mess.)

Now that we know what business we are in and the legal restrictions we must consider, we got on with deciding what our **business structure** would be and how we would operate, what **professionals** we would need to help us and **how we will pay for all of this.**

Legal structure was relatively easy. We created a cooperative association named Townsend Meadows Cooperative and registered it with the state. We drafted articles of incorporation and bylaws describing who and how to be a member, who the officers are, how we make decisions, where the money comes from and goes, and what happens if we need to terminate the organization.... Usual organization stuff. Word to the wise, give some thought to the bylaws and their implications. Ask and answer the ‘what if x happens, how will we handle it’ question. David gave you an example of how we needed to change our pathway to membership over time. Most recently, we had to develop a procedure for dealing with folks withdrawing from TMC so we could quickly put the units they had previously committed to back on the market.

Building our Professional team.

It quickly became obvious that we would need a **local** project manager with extensive experience in development, construction, and permitting in the local area to advise on the development process. Fred is a gem, who has earned his fee over and over.

We have also retained:

- a local real estate development attorney who just happens to have been a civil engineer for the city some years ago,
- _ a securities attorney to keep us clean with the SEC and WA State.
- a development consultant - Cohousing Solutions (Katie McCamant), to guide us through the overall development process and help us with bank presentations and contractor interviews.
- a design architect (McCamant & Durrett) to work through the 14 days of workshops for site planning and structure designs,

strategy for obtaining permits and consultations on construction documents and construction administration.

- a local architect to guide obtaining entitlements & permits and eventually serve as Architect of Record for drafting Construction Drawings and Specifications and construction administration.

- a CPA for accounting advice and to file necessary tax reports.

- assorted consulting engineers, landscape designers, surveyors, environmental assessors, etc.

- General Contractor

In each case we entered into a written contract for services.

Financing plan:

How we will we raise the money to build the project? Since we are the developer, we, the members of TMC, will provide the initial financing for the project and will obtain a commercial construction loan on the strength of our combined assets and borrowing power. That is called guaranteeing the loan. Most construction loans cover about 80% of the total development costs. Our money (equity) will cover the remaining 20%.

We agreed that each member household will make capital contributions totaling 20% of the cost of the house they will be purchasing. At this time, each member household has made payments totaling \$36,500. Our 22 members have contributed almost half of the 20% (\$814,000) to the project to date. These funds have been used to pay all of our expenses, including the down payment on the land we purchased, architects' fees, permitting fees, legal fees and many other services. We have now submitted our application for a construction loan to a local bank which will consider loaning us close to \$7,800,000 at terms that will allow us to build. All members will pay the rest of their 20% equity contributions before we close on the construction loan. We expect our equity in the project to be about \$1,704,000. All of this money is at risk if we are not able to complete the project.

Reality check, because this is our financing model, we are recruiting middle income folks who have steady incomes and adequate assets to purchase a home and live in it long term. Our units will cost in the range of \$290,000 to \$425,000.

This seems to be a workable funding plan...pretty straight forward, with identifiable risks.

I haven't talked about the third leg of our project: the design and permitting process. There is a lot of crossover between the Finance and Legal and the folks working on entitlements and permits. F&L handles the contracts with all professionals and drafting

In two years, we have sold 22 of our 28 memberships. Some more than once. We expect that when we break ground in about 2.5 months that we will quickly sell out.

Our current status: the construction documents have been completed, the general contractor has given us his Guaranteed Maximum Cost, the necessary documents have been submitted to the bank and the plans and specs have been sent to the appraiser. We anticipate receiving the appraisal in 6-8 weeks. Assuming the appraisal supports our loan request, we should be able to close on the construction loan within 2 weeks. We will break ground as soon as possible... best case the end of July.

Questions:

Contact Information:

Carolyn Salmon
2salmon@earthlink.net
360-379-9392

