



The Town of Barnstable
Affordable Housing Growth & Development
Trust Fund Board
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Mark S. Ells, Chairman

Friday, February 23, 2024
Affordable Housing Growth & Development Trust Fund
Fund Board Meeting APPROVED Minutes
9:00 A.M.

Alternative public access to this meeting was provided by utilizing a Zoom link or telephone number, both provided in the posted meeting notice.

Board Member Attendees: Mark Ells, Chairman, Andy Clyburn, Mark Milne, Laura Shufelt and Wendy Northcross (present at 9:06 a.m.)

Other Attendees: Elizabeth Jenkins, Director, Planning & Development; Jillian Douglass, Trust Administrator, Planning & Development; Karen Nober, Town Attorney; Charlie McLaughlin, Senior Counsel; Tom LaRosa, Assistant Town Attorney; David Anthony, Asset Management Director; Ellen Swiniarski, Community Preservation Coordinator, Planning & Development. Attorney Robert Galvin, Special Counsel; Attorney David Lawler for Standard Holdings; Jake Dewey and Attorney Kilroy for Linnell Landing.

Call to Order

With a quorum present, Chairman Ells called the meeting to order at 9:00 a.m. and stated that today's meeting will be recorded and rebroadcast via Xfinity Channel 8 or high-definition Channel 1072. It may also be accessed via the Video on Demand section on the Town of Barnstable's website. In accordance with MGL Chapter 30A, s. 20, the Chair will inquire whether anyone is taping the meeting and, if so, please make your presence known. No one came forward.

Member Introduction

By roll call (present): Laura Shufelt, Mark Milne, Andy Clyburn and Mark Ells. Wendy Northcross (9:06 a.m.)

Public Comment

None.

Topics for Discussion

1. Notation of anticipated 10:00 am "hard stop".

2. Introduction of Attorney Robert Galvin, Jr., Special Counsel.

Town Attorney Karen Nober introduced Attorney Robert Galvin, Jr who is the Town Counsel for the towns of Norwell and the outside counsel for the town of Duxbury Affordable Housing Trust. Attorney Galvin outlined his experience as a municipal attorney for 32 years and said that he is Town Counsel for Norwell, Marshfield, and Stoneham and represents several municipal entities of relevance to the Barnstable Affordable Housing Trust saying he has also formed affordable housing trusts in all the other communities that he works in as special counsel including Stoneham and Rockland and recently Marshfield. He explained that his experience with affordable housing trusts began in 2005 in a variety of ways while having a private practice representing developers and abutters on select projects providing a good perspective of all parties' interests related to affordable housing. He said he glad for the opportunity to assist Attorney Nober and the Barnstable Affordable Housing Trust.

Chair Ells said he would be working with Karen Nober directly and thanked Attorney Galvin for being a resource in support of the work of the Barnstable Affordable Housing Trust.

3. Discussion of mortgage liens, options for duration, and recommendations for Trust policy – Town Attorney Karen Nober and Attorney Robert Galvin, Jr.

Attorney Nober referenced a memorandum that Attorney Galvin had provided to the Trust Board members. Attorney Galvin confirmed that the Trust has been presented with a request for the discharge of a subordinate \$1.4M mortgage that was granted to the developer of the project at 850 Falmouth Road, Hyannis. He noted that the 10 affordable units contemplated in the project have been successfully deed-restricted and fully occupied and the Trust has been asked by the developer's attorney to consider various options with respect to this. Attorney Galvin noted that he looked at this question practically and reasonably, considering all perspectives and viewpoints and after review of the relevant background documents he determined that the existing mortgage would be forgiven as a matter of right at the end of the 30-year period. He noted that when the mortgage was originally granted, it was expected that that mortgage would be in place for 30 years and probably for good reason. Attorney Galvin explained that not only is it important to create and restrict affordable housing perpetually, but it is important to continue to maintain it. He noted unforeseen occurrences such as foreclosures, and transfers to owners who do not want to follow the conditions of the affordable housing restriction. He said it is most important that there be the required continued reporting extending over the 30-year term saying it would not be his recommendation to discharge the mortgage or consider anything other than allowing the developer to refinance. He explained that he would be amenable for the Trust to consider allowing the developer to tap some equity or gain a more favorable interest rate by agreeing to subordinate to a refinance mortgage provided there was a reasonable amount of security for the ongoing obligations. This he said is in recognition of the maintenance of affordable housing and possible capital improvements that need to be made and the developer's ability to gain more favorable financing terms. He noted the continuing obligations under the grant agreement for reporting and maintenance and said it is advisable not to discharge the mortgage and provide instead language to subordinate to a refinance mortgage noting this is fair to everyone and ensures that the affordable units will stay on the SHI.

Chair Ells invited questions from Trust members. Laura Shufelt noted that she agreed with Attorney Galvin's opinion. She asked if the regulatory agreement Attorney Galvin had provided from Wenham was SHI compliant because it did not appear to list the subsidizing agencies as a

party to the agreement. She explained that the town has been using the Local Affordable Unit (LAU) LIP restriction form which would survive foreclosure through agreements with Fannie and Freddie. She noted one change to the LIP form the town was successful in receiving approval from the state allowing the town to insert language for dual enforcement which the town has had to request each time, however it has been approved for the last 10 years. Laura asked Attorney Galvin if the LIP restriction is something that the Trust should continue to use. She noted that the Wenham restriction example seemed to put responsibility back on the town, where the modified LIP the town is presently using would provide partnering with the state.

Attorney Galvin explained that the only way to gain perpetual protection for the affordable units is to have the state approve the restriction saying that short of that, it just becomes an ordinary restriction that could expire. He noted that the statute does say that an affordable housing restriction can be perpetual, but to gain that perpetual status you must have Executive Office of Housing and Livable Communities' approval. He said that he believed the Wenham restriction example had been approved by the state and recommended that the Trust stay as closely to the state's LIP form as possible because it is an approved form, noting his agreement for using dual enforcement. Attorney Galvin said he had reached out to the Executive Office of Housing for other forms that might be acceptable to provide additional alternatives to the Trust and is waiting for their response.

4. Linnell Landing, 50 Yarmouth Road – CCR Holdings - Continued – Request for Phasing and Changes to Proposed Grant Agreement – Jake Dewey and Attorney Bernard Kilroy

Jake Dewey said Attorney Galvin reviewed and made edits to the agreements to incorporate Laura's request for additional of language requiring approval of the Trust Board if the property was ever to be divided into condos, noting this is not his intention as the property owner. Attorney Kilroy relayed that he and Attorney Galvin spoke yesterday and deferred to Attorney Galvin and his experience to help finalize the restriction. Attorney Galvin said after review of all the documents provided, he substantially reworked the grant agreement, however, did not change the substance, only clarified. He explained that he called the state seeking simple versions of the form for CPA or Trust funds only and is waiting for their response. He asked if the Trust would require the note and mortgage for this project saying having these in place relates principally to the ability to claw back the money in the event there is a default or failure to maintain the units as affordable.

Chair Ells invited questions from Trust members. Laura Shufelt said she could not find the Trust's approval for a shorter-term restriction for the 100% AMI units; however, she did find that the Trust voted to require a note and mortgage. She noted that local preference is an issue that the town must ask the state for and could possibly be notated in the documents that the town plans to do this. Attorney Galvin said these are simple revisions that can be made.

Jake Dewey noted that there has been discussion that this project is different in that he is completing the project before funds are advanced once the restrictions are in place. Laura Shufelt explained that the reasons for the note and mortgage is to secure the funds and the affordability long term. Although there is enforceability in the restriction, it has not proven to work very well when there is only a restriction without a note and mortgage. She noted that the this has been a precedence of the Trust to better secure the affordability and the conditions of the grant agreement as well as protect the investment.

Chair Ells asked Board members for recommendations for action. Laura Shufelt said that she believed that the Trust previously voted to have outside counsel prepare the documents, however the discussion provided a good recap to ensure the documents reflect the votes taken by the Trust to which the developer had been agreeable.

Attorney Nober asked Attorney Galvin if a new vote would be helpful, however he indicated that he is clear on what needs to be done. He said it is his recommendation that the Trust mortgage be subordinate to any existing mortgage and any construction financing that may be needed to construct the new buildings. Attorney Kilroy inquired if foreclosure of the Trust mortgage would terminate the restrictions; Attorney Galvin noted that restrictions would not terminate because the Trust mortgage would be subordinate to the affordable housing restriction. He explained that if there is no existing mortgage, the restriction would be placed on the property first and subsequent lenders would be subject to the affordable housing restriction. Attorney Kilroy confirmed that the Trust mortgage will not amortize over the term and remains at the full amount.

Jake Dewey said he had hoped there would be a vote of the Trust that authorizes the execution of the agreement upon final edits incorporating what has been discussed today. Attorney Nober agreed the request was reasonable.

The motion of Andy Clyburn was seconded by Laura Shufelt to authorize the execution of the agreement upon final edits incorporating today's Trust meeting discussions.

Roll Call Vote: Laura Shufelt (yes), Mark Milne (yes), Andy Clyburn (yes), and Mark Ells (yes). Motion carries.

5. Standard Holdings, Residences at 850 Falmouth Road – Continued – Request for Discharge of Trust Mortgage – Attorney David Lawler for Standard Holdings

Attorney David Lawler noted the recommendations of Attorney Galvin, special counsel, with respect to the request for discharge of the Trust mortgage. He said in anticipation of the Trust following the advice not to discharge the mortgage, it would be prudent to withdraw the request. Attorney Nober confirmed that she advises the Trust to follow the recommendations of Attorney Galvin, special counsel. Attorney Lawler asked if subordination of refinancing of the project would likely be approved by the Trust within a meeting or two. Attorney Galvin suggested that an appraisal depicting sufficient equity for the Trust's investment would be required for approval to subordinate the Trust mortgage to the refinance mortgage. Attorney Lawler said his client is very appreciative of the funds received from the Trust, but wanted to ensure future business decisions would not be hampered by the \$1.4M Trust mortgage being a small portion of the total value. The Trust Board members accepted the withdrawal of the request to discharge the Trust mortgage.

Wendy Northcross has left the meeting at 9:37 a.m.

6. Approval of minutes from the 1/5/24 Trust meeting.

The motion of Laura Shufelt was seconded by Andy Clyburn to approve the January 5, 2024, Trust meeting minutes as submitted. Roll Call vote: Laura Shufelt (yes); Andy Clyburn (yes); Mark Milne (abstained) and Mark Ells (yes). Motion carried.

7. Topics for Future Meetings/Agendas

Chair Ells noted the list of items for future meetings in the minutes of January 5, 2024, and asked Jillian Douglass to determine if there is an appropriate time to bring forward items relevant to the list that was created. Jillian Douglass asked if review and revisions of Trust policy and caps for funding in the NOFA should be brought back as a priority. There was a brief discussion regarding the Trust policies that are in place, the use of the town-modified, and state approved LAU LIP regulatory agreement with dual enforcement going forward as well as revising caps in the NOFA as an agenda item.

8. Matters Not Reasonably Anticipated by the Chair

None.

9. Next Meeting Date – 9:00 a.m., March 1, 2024.

Will confirm availability of Trust members.

Adjournment

The motion of Andy Clyburn was seconded by Laura Shufelt to adjourn the meeting.

Roll Call Vote: Laura Shufelt (yes), Mark Milne (yes), Andy Clyburn (yes) and Mark Ells (yes).

Meeting adjourned.

List of documents/exhibits used by the Board at the meeting:

Exhibit 1 – Affordable Housing Growth and Development Trust Fund Board Agenda 2/23/24

Exhibit 2 – Draft Minutes from the 1/5/24 Trust Fund Board meeting.

Exhibit 3 – Recorded deed for 50 Yarmouth Road, Hyannis.

Exhibit 4 – Trust Application – 50 Yarmouth Road, Hyannis – Linnell Landing

Exhibit 5 – Proposed Agreement and Declaration of Restrictive Covenants-Linnell Landing

Exhibit 6 - Updated Grant Agreement for 50 Yarmouth Road, Hyannis dated 2/21/24 with edits from special counsel.

Respectfully submitted,

Ellen M. Swiniarski

CPC Coordinator

Planning & Development